ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC029898
Case Name	Joann Fleming v. State of Illinois – Ann Kiley Developmental Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0151
Number of Pages of Decision	11
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Jim Vainikos
Respondent Attorney	James Gale

DATE FILED: 4/4/2023

/s/ Kathryn Doerries, Commissioner

Signature

23IWCC0151

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify Reduce PPD	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOANN FLEMING,

Petitioner,

vs. NO: 16 WC 29898

STATE OF ILLINOIS (SOI),
ANN KILEY DEVELOPMENTAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection and permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission, herein, affirms the Arbitrator's decision as to causal connection.

The Commission, herein, modifies the Arbitrator's decision as to the permanent partial disability award, as stated below. The Commission performs an analysis under Section 8.1b(b) as follows:

(i). Neither party submitted an impairment rating or report therefore this factor is given no weight.

(ii). Petitioner was employed as a Mental Health Technician III at the time of the accident and she is able to return to work in her prior capacity. Great weight is given to this factor.

(iii). Petitioner was 48 years old at the time of the accident and has a significant amount of

potential work life remaining to work with her ongoing conditions. Great weight is given to this factor.

(iv). Although Petitioner has not returned to her work duties, there is no credible evidence she was unable to return to work due to work-related injuries or the injury affected Petitioner's future earnings capacity. Petitioner was released at maximum medical improvement within a month of the accident and had been released to her pre-injury position with no restrictions. No weight is given to this factor.

(v). As a result of the work-related accident, Petitioner diagnosed with a lumbar strain, bilateral back pain with sciatica requiring conservative treatment. Petitioner attended physical therapy and received one lumbar ESI. Dr. Levin noted in his July 20, 2016, letter to TriStar that he had reviewed Petitioner's MRI which revealed degenerative disc disease and stenosis and those findings were consistent with myofascial strain with some extension to the thoracic area. The September 29, 2016, MRI noted mild bulging and degenerative discs L2 through L5 with shallow foramina encroachment and thecal sac abutment. Petitioner testified to ongoing pain while performing activities of daily living. Petitioner utilizes a cane for ambulation and testified she has difficulty walking and needs to take breaks if walking longer distances. Petitioner's primary care physician continues to prescribe pain medication. Petitioner testified she drives only short distances because driving longer distances increases her pain. Dr. Levin and Respondent's IME doctor, Dr. Lami, both indicated that Petitioner exhibited pain behaviors. Significant weight is given to this factor.

In reviewing the totality of the evidence and applying the five factors as enumerated above, the Commission finds that Petitioner sustained permanent partial disability in the amount of 7% loss of use of Petitioner's person as a whole.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $531.37 per week for a period of 111-2/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $478.23 per week for a period of 35 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused 7% loss of use of Petitioner's person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay reasonable and necessary medical services of $36,851.15, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Pursuant to Section 19(f)(1) of the Act, this decision is not subject to judicial review. *820 ILCS 305/19(f)(1) (West 2013)*.

April 4, 2023

o-3/28/23
KAD/jsf

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

/s/*Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC029898
Case Name	Joann Fleming v. State of Illinois Ann Kiley Developmental Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Jim Vainikos
Respondent Attorney	Adam McCall

DATE FILED: 7/21/2022

THE INTEREST RATE FOR THE WEEK OF JULY 19, 2022 2.91%

/s/ Paul Seal, Arbitrator
Signature

CERTIFIED as a true and correctcopy pursuant to 820 ILCS 305/14

July 21, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF LAKE)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JOANN FLEMING
Employee/Petitioner

v.

STATE OF ILLINOIS
ANN KILEY DEVELOPMENTAL CENTER
Employer/Respondent

Case # **16** WC **29898**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Waukegan**, on **May 24, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **April 6, 2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**41,447.12**; the average weekly wage was $**797.06**.

On the date of accident, Petitioner was **48** years of age, ***single*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***hasnot*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**29,840.13** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**29,840.13**.

Respondent is entitled to a credit of $**8,195.20** under Section 8(j) of the Act.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $**531.37**/week for **111 2/7** weeks, commencing **April 7, 2016** through **June 25, 2018**, as provided in Section 8(b) of the Act.

Medical benefits

Respondent shall pay reasonable and necessary medical services of $**36,851.15**, as provided in Sections 8(a) and 8.2 of the Act.

Permanent Partial Disability: Schedule injury

Respondent shall pay Petitioner permanent partial disability benefits of $**478.23**/week for **50** weeks, because the injuries sustained caused the **10% loss of the person as a whole**, as provided in Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment;

however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

JULY 21, 2022

Signature of Arbitrator

STATEMENT OF FACTS

On April 6, 2016 Petitioner was employed by the Respondent as a Mental Health Technician III. She had been hired in February 1998. Her work shift was 6:30am to 3:00pm. As a supervisor, her job duties included direct care to individuals and supervising staff. She was assigned to Cottage 14 at the Respondent's facility.

On the date of the accident, April 6, 2016 Petitioner was transporting an individual in a wheelchair. Petitioner had placed a program book onto the lap of the individual while transporting her. The program book fell off of the individual's lap onto the floor. As Petitioner was picking up the program book, the wheelchair began to buckle and it hit Petitioner's left leg/calf which in turn caused Petitioner to fall backwards over the wheelchair. Petitioner testified that she fell over the footrests of the wheelchair onto the floor. She fell hitting the floor with her back and left wrist. Petitioner noticed pain in her back as she tried to stand up.

Petitioner gave notice to her employer and sought medical attention immediately at Lake Forest Acute Care. The medical provider, Dr. Shipley diagnosed sprains of the spine and the left wrist. The provider prescribed a wrist splint and Motrin. She was instructed to return to work with restrictions of 20 pounds.

On April 14, 2016 Petitioner returned to Dr. Shipley. He ordered physical therapy and continuation of light duty.

On April 18, 2016 Petitioner also started treating with her primary care physician, Dr. Engstrom. He diagnosed Petitioner with pain in her back. He prescribed pain medication.

On June 9, 2016 Petitioner started treating with Dr. Jay Levin at Adult and Pediatric Orthopedics. Dr. Levin ordered a MRI and kept Petitioner off work. He also ordered physical therapy which was performed at Athletico.

Two MRIs were done on July 12, 2016. The lumbar spine MRI showed mild bulging discs between L2-L5. The thoracic MRI showed bulging discs at T8-T10.

On July 20, 2016 Dr. Levin reviewed the MRIs and concluded that they were consisted with strains. Dr. Levin prescribed Ibuprofen, continuation of physical therapy, and time off from work. He also ordered another MRI in September 2016.

On September 29, 2016 the lumbar MRI showed bulging discs from L2-L5 with some thecal sac encroachment. On October 6, 2016 Dr. Levin opined that Petitioner was not a surgical candidate. He referred Petitioner to Dr. Lanoff.

On October 13, 2016 Petitioner saw Dr. Lanoff. Dr. Lanoff did not find any objective pathology. He rated Petitioner with a 5/5 Waddell findings. In fact, Dr. Lanoff discharged Petitioner from care at MMI.

Petitioner testified that she returned to work for 1 day but she could not handle her job without pain. Petitioner was seen by Dr. Engstrom on October 14, 2016 who wrote a medical note keeping Petitioner off work. Dr. Engstrom treated Petitioner once every month until March 2017.

On March 10, 2017 Petitioner was examined by the State's IME, Dr. Lami. He opined that Petitioner's behavior was consistent with symptom magnification.

Dr. Engstrom continued to treat Petitioner throughout 2017. He referred Petitioner to Dr. Parikh at the Illinois Bone and Joint Institute. On May 9, 2017 Petitioner was seen by Dr. Parikh. Upon examination, he found persistent pain in Petitioner's back with radiculopathy down her left leg. He prescribed L4-L5 epidural steroid injection, pain medication, and home exercise program.

On June 19, 2017 Petitioner was seen by Dr. Arber who was referred by Dr. Parikh. Ultimately, he prescribed additional pain medication such as Tramadol.

On July 25, 2017 Petitioner had an epidural steroid injection into low back.

On September 14, 2017 Petitioner had a MRI arthrogram at Vista Medical Center East. The findings were normal.

On September 20, 2017 Dr. Chabria from Lake County Neurologists examined Petitioner. He ordered an EMG that was done on October 3, 2017. The conclusions of the EMG were that the study was normal.

Dr. Chabria also ordered another MRI of the lumbar spine that was done on November 8, 2017. The impression of the MRI was no evidence of bulging or herniated discs.

Petitioner testified that she has been kept off work by Dr. Engstrom to the present day. She has been receiving temporary disability benefits from SERS from April 14, 2017 to the present day. She has not received temporary total disability benefits since April 2017.

Petitioner testified that since April 2017 she has been using her group health insurance to pay her medical bills. Petitioner testified that she has applied for Social Security Disability Income. That application is still pending.

Petitioner testified that she still notices pain in her back. She cannot go about her daily living without some level of pain. She uses a cane to support herself when she walks. She is still on pain medication. Petitioner testified that she still has pain down her left leg. She walks much slower now and takes breaks when walking. She drives only short distances to avoid increasing her pain level.

CONCLUSIONS OF LAW

"F" (Is Petitioner current condition of ill-being causally related to the injury?)

The Arbitrator finds that Petitioner sustained an injury on April 6, 2016 that has resulted in a disability to her lower back which consists of bulging discs at L2-L5 with radiculopathy down her left leg. Based on the chain of events, where Petitioner did not have symptoms or treatment prior to her work injury, and now has significant symptoms and complaints, the Arbitrator finds that the accident of April 6, 2016 was the cause of these symptoms.

Multiple doctors have examined the Petitioner and found objective evidence of bulging discs with pain pathology. Dr. Engstrom, her primary care physician, referred Petitioner to specialists who ordered physical therapy and epidural steroid injections.

Based on section 12 examiner, Dr. Lami's opinions, the petitioner's benefits terminated in March of 2017.

Petitioner continued treating with the specialists through June of 2018.

"J" (Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?)

The Arbitrator, having found in favor of Petitioner for accident and causation, also finds that Respondent is liable for her medical bills through June 25, 2018. These bills totaled $36,851.15.

"K" (What temporary benefits are in dispute?)

The Arbitrator finds that Petitioner was actively treating and being kept off work by her physicians from April 7, 2016 through June 25, 2018. The medical records of Dr. Engstrom provide the medical time off slips to substantiate her time from work.

"L" (What is the nature and extent of the injury?)

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a Mental Health Tech III at the time of the accident and that she *is* able to return to work in her prior capacity as a result of said injury. The Arbitrator therefore gives ***some*** weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 48 years old at the time of the accident. The Arbitrator therefore gives ***no*** weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator therefore gives ***no*** weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner testified that she still notices pain in her back. She cannot go about her daily living without some level of pain. She uses a cane to support herself when she walks. She is still on pain medication. Petitioner testified that she still has pain down her left leg. She walks much slower now and takes breaks when walking. She drives only short distances to avoid increasing her pain level. The Arbitrator therefore gives ***greater*** weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of **10% loss of use of person as a whole** pursuant to §**8(d)2** of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC013582
Case Name	Hector Fernandez v. Hillside Landscaping Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0152
Number of Pages of Decision	31
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Kevin Botha
Respondent Attorney	Adan Ramirez, Micaela Cassidy

DATE FILED: 4/5/2023

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

HECTOR FERNANDEZ,

Petitioner,

vs. NO: 16 WC 13582

HILLSIDE LANDSCAPE, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of prospective medical treatment and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but makes a clarification as outlined below. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission affirms the Arbitrator's Decision as to the award of prospective medical, however modifies the award as follows:

The Commission modifies the first paragraph of page 24 of the Arbitrator's Decision in striking lines 4 and 5 and replaces with the following: "… intrathecal pain pump with Prialt medication as recommended by Dr. Timothy Lubenow and any required medical treatment related thereto."

Additionally, the Commission corrects the following scrivener's errors:

In the tenth line of page 7, the date "August 15, 2007" is replaced with "August 15, 2017".

In the nineteenth line of page 7, the phrase "was very" is replaced with "varied".

In the last sentence of the second full paragraph of page 16, the Commission strikes the word "worked" and replaces with the word "would".

In the sixth sentence of the second full paragraph of page 22, the Commission strikes the word "affects" and replaces with the word "effects".

In the third sentence of the second full paragraph of page 23, the Commission strikes the words "are all" and replaces with the word "oral".

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 15, 2021 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 5, 2023

s/ *Maria E. Portela*

MEP/dmm

O: 22123

/s/ *Kathryn A. Doerries*

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SPECIAL CONCURRING OPINION

This case was scheduled for Oral Argument on February 21, 2023, before a three-member panel of the Commission including members Maria E. Portela, Kathryn A. Doerries and Thomas J. Tyrrell, at which time Oral Arguments were either heard, waived or denied. Subsequent to Oral Arguments and prior to the departure of member Tyrrell on March 17, 2023, a majority of the panel members reached agreement as to the results set forth in this Decision and Opinion, as evidenced by the internal Decision worksheet initialed by the entire three-member panel. However, no formal written decision was signed and issued prior to member Tyrrell's departure.

I was not a member of the panel in question at the time Oral Arguments were heard, waived or denied, and I did not participate in the agreement reached by the majority in this case. However, I have reviewed the Decision worksheet, which shows that former member Tyrrell voted with the majority in this case, and have reviewed the provisions of the Supreme Court in Zeigler v. Industrial Commission, 51 Ill.2d 137, 281 N.E.2d 342 (1972), which authorizes signature of a Decision by a member of the Commission who did not participate in the Decision. Accordingly, I am signing this Decision in order that it may issue.

/s/ *Deborah J. Baker*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC013582
Case Name	FERNANDEZ, HECTOR v. HILLSIDE LANDSCAPING, INC.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	27
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Kevin Botha
Respondent Attorney	Ivan Nieves

DATE FILED: 12/15/2021

/s/Gerald Napleton, Arbitrator
Signature

INTEREST RATE WEEK OF DECEMBER 14, 2021 0.13%

STATE OF ILLINOIS)
)SS.
COUNTY OF **LAKE**)

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Hector Fernandez
Employee/Petitioner

v.

Hillside Landscaping, Inc.
Employer/Respondent

Case # **16** WC **13582**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Napleton**, Arbitrator of the Commission, in the city of **Rockford**, on **August 18, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On the date of accident, **April 15, 2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**38,246.52**; the average weekly wage was $**735.51.**

On the date of accident, Petitioner was **40** years of age, ***married*** with **0** dependent children.

Respondent ***has in-part*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**126,997.98** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**126,997.98**.

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

- The Respondent shall pay Petitioner temporary total disability benefits of $**490.34**/week, for **278 4/7** weeks, commencing **4/16/2016** through **8/18/2021**, pursuant to §8(b) of the Act. Respondent is entitled to a credit for temporary total disability benefits already paid.
- The Respondent shall pay for the outstanding, unpaid medical expenses outlined in Petitioner's Exhibit 22 reflecting a balance of $**68,760.24**, according to the Illinois Medical Fee Schedule. Respondent shall receive credit for medical expenses already paid.
- The Respondent shall authorize and pay for the additional reasonable, necessary and related medical treatment and trial of the intrathecal pain pump with Prialt medication as recommended by Dr. Timothy Lubenow and the any required medical treatment related thereto.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

/s/ Gerald W. Napleton **December 15, 2021**

Signature of Arbitrator

ICArbDec19(b)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

Petitioner's Accident, Medical Treatment, and Testimony

The parties have stipulated that the Petitioner sustained an accidental injury to his left hand on April 15, 2016, while working for the Respondent. Petitioner testified that he injured his left hand when it was struck by a sledgehammer by a coworker. He was seen initially in the emergency room at Calumet Medical Center for a left-hand injury as a result from a crush injury by a sledgehammer with a direct blow to his left hand. X-rays showed a comminuted fracture of the proximal phalanx of the left index finger. A 5 cm subcutaneous laceration to the palm of his left hand was irrigated and sutured. He was prescribed antibiotics and pain medication and advised to follow up with a hand specialist and definitive care.

On April 19, 2016 he was evaluated by Dr. Seth Levitz at the request of Dr. McCormick. He was diagnosed with a crush injury with left index finger proximal phalanx fracture which was very comminuted and had some rotational component with some rotational deformity and Dr. Levitz then recommended surgical exploration On April 22, 2016, Dr. Levitz performed an irrigation and debridement procedure involving the skin, subcutaneous tissue and fascia of the index finger along the volar side, neurolysis of the radial and ulnar digital nerves, closed reduction and percutaneous pinning of the index finger proximal phalanx shaft including shaft components as well as components involving the articular surface of the metacarpophalangeal joints. The post operative diagnosis was a left index finger proximal phalanx fracture including comminuted components of the shaft and proximal phalanx base involving the metacarpophalangeal joint and open wound of the forearm are left index finger

He followed up postoperatively on May 5, 2016, K wires were in position and there was no change in fracture alignment. He was to remain off work. On May 19, 2016, he returned to see Dr. Levitz 4 weeks post operatively and Dr. Levitz had concerns for development of CRPS symptoms due to swelling and nerve type pain. Petitioner was prescribed a Medrol Dosepak and referred to the pain team to possibly begin nerve type medication to help the pain. He was to remain off work. On June 2, 2016, Dr. Levitz removed the pins from the left index finger proximal phalanx fracture. Dr. Levitz also informed Petitioner that given the nature of the crush injury and fracture, it was not likely that he was going to regain full motion but hopefully regain functional use of the left hand

Treatment with Dr. Richard Caner

On June 6, 2016, he was evaluated by Dr. Richard Caner at Prairieshore Pain Center for initial pain management. Dr. Caner's assessment was complex regional pain syndrome type I with fracture of proximal phalanx of left index finger. Dr. Caner prescribed topical lidocaine ointment, Voltaren topical gel, as well as Lyrica 50 mg twice a day. He was to continue with Norco medication as needed.

He saw Dr. Levitz on June 23, 2016 who noted Petitioner's pain management evaluation and prescription of Norco and Lyrica. He was to continue with occupational therapy and work with the pain team. Dr. Levitz noted that he could still see the fracture which may proceed to a

non-union and may require further surgery.

On June 27, 2016, Petitioner followed up with Dr. Caner for medication review. He was prescribed Norco, Lyrica and Voltaren gel and was to follow up with Dr. Levitz is scheduled for left hand x-rays. Dr. Caner noted that they would consider a stellate ganglion block if there was no improvement. On July 21, 2016, Petitioner followed up with Dr. Levitz with continued pain. X-rays revealed removal of K wires, no change in fracture alignment, disuse osteopenia and no significant increase in healing with the fracture still visible. On July 25, 2016, the Petitioner followed up with Dr. Caner for medication recheck, Norco was reduced, and Lyrica was increased, and Petitioner was advised to proceed with a left stellate ganglion block. The left stellate ganglion block was performed on August 23, 2016. Petitioner followed up with Dr. Levitz on August 25, 2016 reporting no improvement in pain following the injection along with anxiety the past two weeks which Dr. Levitz felt was likely posttraumatic and should be evaluated by the pain team or a primary care physician. The fracture had not healed by this time; however, Dr. Levitz did not recommend further surgery as this could make the condition worse. He stated further therapy was not indicated as Petitioner had not made much progress.

Dr. John Fernandez Section 12 Examination

Petitioner was evaluated by Dr. John Fernandez at the request of the Respondent on August 25, 2016. Dr. Fernandez' conclusions included a diagnosis of a crush injury to the left index finger and a severely comminuted fracture with possible delayed union or nonunion of the proximal phalanx with significant stiffness in the left hand, particularly the index finger. The diagnosis was one of CRPS likely type I. Dr. Fernandez noted that it was questionable whether there had been any healing across the fracture site and that Petitioner may have an overlying nerve injury but gave a diagnosis of CRPS based upon the Budapest criteria which is related to the crush injury. Dr. Fernandez recommended evaluation and treatment through a pain clinic knowledgeable in the treatment of CRPS to include multimodal treatment including medication, sympathetic ganglion blocks and/or similar treatments. Dr. Fernandez noted that if in the future, the CRPS becomes stable, consideration could be given to further treatment for the index finger noticing that bone repair was an option another option was complete amputation of the index finger, however it was noted that it would be risky given the phase of possible CRPS. Petitioner's prognosis to return to regular heavy work as a landscaper was very guarded and unknown and Petitioner's response was complicated and MMI was at least 6-12 months out from that point.

Petitioner followed up with Dr. Caner on August 29, 2016 for a second left stellate ganglion block. The records note the first one gave him no relief. He followed up with Dr. Caner on September 8, 2016 and noted some pain relief from the injections. On August 29, 2016 hand pain improvement was noted and a third left stellate ganglion block was performed by Dr. Caner. On September 15, 2016, Petitioner followed up with Dr. Caner and reported zero relief with the injection a week before. Petitioner complained of feeling more agitated as well as some low back pain, weakness in both legs as well as posterior neck pain. Dr. Caner recommended a DEXA bone scan and performed a fourth left stellate ganglion block. Petitioner followed up September 21, 2016 with Dr. Caner and again reported no pain relief from those injections. Dr. Caner noted that Petitioner's pain threshold appeared to have decreased as part of CRPS and uncovered an underlying cervical and lumbar radiculopathy. They stopped the prescription of Norco and prescribed tramadol instead.

He followed up with Dr. Levitz on September 22, 2016 and noted no improvement following the last injection from the pain clinic and reported that he was then having migraines and shoulder pain. He still reported pain in the hand and index finger. Dr. Levitz recommended that he return to the pain clinic and considered a second opinion from a different pain clinic. He was recommended to also try further therapy to help with motion in other fingers, wrist, and his forearm. Dr. Levitz did not recommend any surgical intervention at that time. Petitioner was then seen by Dr. George Procento, his primary care physician, and presented with anxiety and hand pain. He was prescribed sertraline, alprazolam for anxiety and was given a referral for outpatient psychiatry evaluation for generalized anxiety disorder.

Petitioner testified that he went to the emergency room at Condell Medical Center on October 3, 2016 because his pain was unmanageable. The records indicate that he presented with generalized pain, onset yesterday. He reported a history of CRPS and chronic pain since an injury to his arm. He also reported generalized pain in his back, legs, arms, and an associated headache. He reported that he was evaluated by his pain physician two weeks ago and given tramadol which did not improve his pain. He also gave a history of previous injections. He was treated with intravenous Dilaudid, Ativan and Zofran and discharged once pain was under control. He was advised to follow-up with his pain specialist.

Petitioner followed up again for a medication review with Dr. Richard Caner on October 17, 2016 with a chief complaint of left-hand pain, neck/head pain and bilateral leg pain. He was noted to be compliant with his medication and pain was 5/10 on average. His medications were changed at his last visit where Norco 10/325 mg was discontinued, and he began Belbuca. The Petitioner advised that the Norco helps pain significantly but causes him to feel sedated and that the Belbuca did not provide any pain relief. He was also taking Lyrica 300 mg per day but was unsure if it helped. Petitioner voiced concerns about experiencing good pain relief on Norco however it made him feel sedated and he was afraid of becoming dependent, so he requested to try something new. Dr. Caner recommended cervical and lumbar epidural steroid injections and recommended a referral to a psychologist for cognitive behavioral therapy. A drug screen showed that he was compliant with therapy and use of medication.

He saw Dr. Caner again on October 24, 2016. Petitioner also reported symptoms of feeling more fatigued and experiencing headaches that originated in the back of his head and now from the back of his eyes and forehead to the back of his head. He also complained of increased pain shooting from his left hand to his left upper extremity radiating to the back of his left shoulder blade. He also reported new red bumps on his left hand. Dr. Caner's plan was to continue chronic opioid therapy, the patient had tried and failed (or has had limited) relief from other therapies and medications. He noted that the Petitioner understood the risks of the continued chronic opioid therapy program and replaced the prescription of Lyrica with Gabapentin and continued to recommend epidural injections for his newly manifested pain into the cervical and lumbar regions. Dr. Caner also noted that Petitioner had an appointment to see Dr. Howard Konowitz for a second opinion and discussed the fact that Petitioner was a candidate for a spinal cord stimulator. This was Petitioner's final visit with Dr. Caner.

Treatment with Dr. Howard Konowitz and Emergency Providers

Petitioner testified that he was evaluated by Dr. Howard Konowitz for a second opinion on October 26, 2016 regarding his pain management. His chief complaint was headache, neck pain,

low back pain, bilateral leg and arm pain, left hand, and finger pain. He reported pain localizing and left hand specifically over the first and second metatarsal heads. There were also dysesthesias radiating up his forearm as well as a complaint of two to three months of occipital base headaches, predominantly right sided. Petitioner described the quality of pain varying between burning and throbbing and aching specifically over the metatarsal heads. Review of Petitioner's systems was positive for appetite loss and fatigue, positive for leg cramps with exertion, positive for muscle cramps, back pain, and muscle aches, positive for changes in skin color and changes in nailbeds, and positive for headaches and depression. Current medications were amitriptyline, clonazepam, belbuca, gabapentin and sertraline. A Beck Depression screening was performed which revealed that Petitioner had no thoughts at all that he would be better off dead or of him hurting himself in any way. Dr. Konowitz' impression was traumatic arthropathy of the left hand as well as sympathetic pain. He recommended further diagnostics in the form of an EMG/NCV and MRI as well as a neurologic evaluation. An MRI done on November 5, 2016 at 3T Imaging revealed partial bony fusion across the index finger metacarpal and trapezoid bone and marked irregularity of the joint space between the trapezoid and trapezium bones which may represent the sequela of old injury. The findings were suggestive of old fracture involving the index finger proximal phalanx.

Petitioner was evaluated by Dr. Igor Richitsky, a neurologist, on November 7, 2016. Dr. Richitsky noted his medical treatment including the stellate ganglion injections without improvement. Petitioner complained of continuous, fluctuating, and diffuse pain of burning, crushing, throbbing quality in the left hand which frequently changed color and had excessive sweating. He reported prominent allodynia. There was no range of motion of the left index finger and he had difficulty both opening and closing the hand. Occasionally, the pain radiated up to the forearm and sometimes even to the upper arm. Dr. Richitsky agreed with Dr. Konowitz' impression of complex regional pain syndrome. Despite the obvious clinical suspicion, the doctor could not demonstrate the presence of a left median or ulnar neuropathy at the wrist. Dr. Richitsky opined that although Petitioner had residual left forearm deformity following a childhood injury, there was no clear clinical or electrodiagnostic evidence of proximal left median, ulnar, radial, anterior, or posterior interosseous neuropathy. Therefore he concludes that Petitioner has type I CRPS. The EMG showed normal electrodiagnostic study of the left upper extremity.

He followed up with Dr. Konowitz on November 8, 2016. The Beck Depression screening was again performed noted that Petitioner had no thoughts at all that he would be better off dead or that he would hurt himself in any way. The prescription of gabapentin was discontinued due to lack of efficacy and he was given samples of Topamax. He was also prescribed Relafen for the joint type of pains and anxiety will be addressed with clonazepam. Amitriptyline will be titrated to address his sleep cycles and down the regulation of pain. He was also given a referral for psychological evaluation.

On November 17, 2016 he followed up with Dr. Levitz, the hand surgeon, who noted that he has been through pain management and was now working with a new pain clinic but has had little improvement. A recent MRI was ordered and evaluated by Dr. Levitz. He was 7 months post-surgery and has not made much progress with therapy which should be stopped. He should continue home exercise program. He would continue with new pain management team to see if he could make any headway and Dr. Levitz did not recommend any surgery at that time. Dr. John Fernandez agreed with Dr. Levitz that no further orthopedic surgery should be done at this time

given the diagnosis of CRPS type I. In fact, he commented that any surgery would be contraindicated for that diagnosis.

He followed up with Dr. Konowitz on November 29, 2016 with continued complaints of pain in the volar aspect of the left hand with continued contracture, atrophy, exquisite tactile allodynia, and hyperalgesia of all the digits of his left hand. Pain continued to radiate up his arm with swelling times. Petitioner also reported symptoms at night which sounded like nightmares of listening to the sound of the sledgehammer on his head and in other body parts. Petitioner also reported being a driver of a car two weeks ago and was involved in a car accident. There was no new pain state or trauma from this car accident. The Beck Depression screening was again performed and noted that Petitioner had no thoughts at all that he would be better off dead or of hurting himself in any way. Dr. Konowitz' impression was sympathetic pain which was unchanged, and he recommended medication management to address sympathetic instability. Dr. Konowitz counselled the Petitioner of the importance of being treated with clinical psychology for cognitive behavioral management of chronic pain as well as PTSD, anxiety, and depression.

He followed up with Dr. Konowitz again on December 15, 2016 for medication management. The Beck Depression screening was again performed and noted that Petitioner had no thoughts that he would be better off dead or of him hurting himself in any way. Dr. Konowitz noted that there were no inconsistent behavioral responses and there were continued trophic changes of the left hand and fingers with ruddy color and contracture in the fingers. Symptoms were unchanged. Pain still radiated into the left forearm and posterior shoulder as before. Petitioner was seen by Dr. Konowitz for medication management on January 3, 2017, January 17, 2017, and January 26, 2017, where he was scheduled for another stellate ganglion block under sedation.

Petitioner testified that he went to the emergency room at Condell Medical Center on January 20, 2017 due to unmanageable pain. He complained of a chronic pain episode flareup with an onset of 3 weeks ago. Pain was located in the back and neck shooting down the bilateral arms. He stated that he saw his pain specialist one week ago and had his medications changed but stated that his pain had not improved. He also had a chronically swollen left hand since April 2016 status post injury to the hand with a hammer. Petitioner was treated for acute on chronic generalized pain and discharged to follow-up with Dr. Konowitz.

On February 3, 2017 Petitioner underwent a left stellate ganglion block injection under ultrasound guidance by Dr. Konowitz at Gottlieb Memorial Hospital. On February 14, 2017 he followed up with Dr. Konowitz. Dr. Konowitz recommended a formal psychological consultation for clearance for a spinal cord stimulator trial to see if it is appropriate and if the Petitioner was a viable candidate. Dr. Konowitz also recommended a brachial plexus block. The left supraclavicular brachial plexus block was done by Dr. Konowitz at Gottlieb Memorial Hospital on February 17, 2017.

Petitioner followed up with Dr. Konowitz on March 9, 2017. The left-handed pain did not respond to a brachial plexus block. Petitioner's assessment continued to be CRPS type I. He would begin long-acting 150 mg of Nucynta, continue medical management, continue weaning off the amitriptyline and go forward with psychological evaluation for the spinal cord stimulator.

Petitioner underwent a psychological evaluation by Enrique Gonzalez, PhD, for a spinal cord stimulator trial on February 28, 2017 and March 10, 2017. The diagnostic impression was adjustment disorder with mixed features including depressed mood, complex regional pain syndrome and low self-esteem due to temporary unemployment and changes in quality of life and

daily functioning due to a work-related injury. He was determined to be an excellent candidate for spinal cord stimulator since he had not responded to conservative treatment. The psychological testing results were consistent with an individual who was overwhelmed by chronic pain, but the symptoms were not severe enough contraindicate a spinal cord stimulator (or SCS) trial. Dr. Gonzalez also opined that Petitioner would benefit from continued cognitive behavioral therapy to learn pain management strategies.

The trial SCS was placed on April 4, 2017, and Petitioner followed up with Dr. Konowitz who noted recent coverage of the SCS helped the left arm, coverage was complete with multiple programs, his left hand was 70% improved with pain. He followed up again on April 18, 2017 to review placement of the stimulator. The Petitioner's current medications provided 30% relief of his symptoms while the Petitioner reported that the spinal cord stimulation for the left arm and neck provided near-complete relief. There were issues with the stimulation that were related to positional changes in the lead which resulted in less or more stimulation. The assessment was again CRPS type I and his medication management would be continued, he should continue with a home exercise program and they will look to schedule a permanent implantation of the spinal cord stimulator. He followed up again on May 11, 2017 after implantation of the permanent spinal cord stimulator on May 5, 2017. Petitioner had low back pain at the site of incision battery pack with pain localizing over the spinal cord stimulator battery. The SCS coverage was over the complete left arm, right arm from the elbow to hand. Petitioner stated that the coverage was over all areas of his pain. Petitioner reported changes in stimulation depending on neck position and continued to report difficulties with physical function, mood, and sleep. Spinal cord stimulation combined with medication management as provided nearly 100% relief of his symptoms, it did not resolve his neuropraxia for the left hand but improved his clinical pain state. They would begin medication management weaning in 2 weeks and begin a work conditioning program. On May 25, 2017 he followed up with Dr. Konowitz' nurse practitioner Andrea Iantorno. It was noted that pain had markedly improved at least 60% in the left arm and neck and legs of the spinal cord stimulator. There was 100% coverage. Petitioner was to remain off work and begin work conditioning.

On June 2, 2017 he then presented to Dr. Konowitz' office and was evaluated by Andrea Iantorno. He complained of pain of various states including the left hand, left arm, left axillary region, left upper shoulder, neck, bilateral posterior lower legs as before. He also related that he felt a lot of anxiety. He reported having total coverage of the spinal cord stimulator, but it was also bothersome to him as sometimes the intensity of the vibration changes with the positioning and this is upsetting to him. He was advised to meet with the Boston scientific Representative to evaluate the coverage and complaints about the positional aspects and coverage of the SCS. On June 12, 2017 he reported that pain in his left arm, shoulder and hand have improved with the spinal cord stimulator coverage. He continued to wear a brace on the left hand. Work conditioning was not initiated as there was a recommendation from Athletico to begin physical therapy first. There were no inconsistent behavioral responses noted and there continued to be contracture and atrophy of the left hand and wrist with mild pink color compared to the right hand and wrist. The recommendation was to begin physical therapy without using his left arm for reconditioning of his overall body and they will begin reducing his medications.

He followed up with Dr. Konowitz's assistant on June 29, 2017 with pain that continues in left arm and hand. He has had full coverage with the spinal cord stimulator. Unfortunately, his left hand had now experienced erythema and multiple raised areas. He reports that he lost vision

for 45 minutes 2 weeks ago and walked into a wall and has searing shooting type pain and headaches. Plan was to meet with Boston scientific for reprogramming, decrease Trileptal to 300 mg 3 times per day, continue Nucynta and the rest of the other medications. He was also to continue physical therapy follow-up in 3 weeks. On July 18, 2017 Petitioner presented to Dr. Konowitz' office with pain localizing in the left hand, some swelling and redness, headaches, sharp pain. The pain was of a burning, stabbing, cramping nature. He complained that headaches were worse. He was seen in Dr. Konowitz office on August 1, 2017 with pain localizing in bilateral legs and arm with the pain being worse in the morning and during the day. He has coverage over the whole body when supine, but nighttime coverage change makes pain worse. He will continue with medication management. On August 15, 2007 he reported to Dr. Konowitz's office that pain is stabilized in the left hand and arm with spinal cord stimulator giving full coverage. On September 5, 2017 he reports pain that continues in the infrascapular region of the left arm, left hand, bilateral buttocks, bilateral lower extremities, bilateral feet, and head. He reported that the spinal cord stimulator did help him and has given him adequate coverage. Physical therapy, which he found very painful, was at a plateau. He reported that the Trileptal medication combined with Nucynta is no longer helpful whatsoever. The assessment was that he had improved so they will obtain a functional capacity evaluation and discontinue physical therapy. On September 12, 2017, Petitioner reported with pain localizing in the left arm with coverage of the spinal cord stimulator. Pain score was very between 6-9/10. He restarted some medications without significant change in his pain state. His anxiety remained significant. The plan was to continue medication management.

On September 29, 2017 Petitioner completed an FCE at Lake County physical therapy. The FCE demonstrated the ability to perform 0.5% of the physical demand of his job as a landscaper. Petitioner put forth full effort and reliability of pain results obtained during testing indicate that pain could've been considered while making functional decisions. Petitioner demonstrated the ability to perform within the sedentary physical demand level however his job is characterized in the heavy physical demand level.

Petitioner followed up with Dr. Konowitz on October 3, 2017. He described a pain that is consistent over the left hand. Dr. Konowitz noted that the type I CRPS is localized in the left arm and covered by the spinal cord stimulator and that Petitioner also had anxiety and significant depressive disorder with poor coping with pain skills. These issues were reviewed with the Petitioner and Dr. Konowitz. Petitioner was noted to have reached MMI at this point. He would need medication post MMI along with blood work annually, monthly visits weaning and adjusting medication, then he would need follow ups every 3 months for 4 years. He was released to sedentary duty as per the FCE.

Petitioner then returned to Dr. Konowitz office on November 7, 2017 with continued complaints of pain in his left arm. Coverage of SCS improved with last stimulator. Pain was between 8 and 9. Activities of daily living are not changed. Sleep is difficult on low dose of amitriptyline. Diagnosis was CRPS type I that was stable with spinal cord stimulator. The Petitioner's global pain, anxiety and functional status remained the greatest issue. Petitioner's medication management was near maximum improvement and it was clear that weaning off medication will be slow and over time. Functional restoration though had not occurred, and this was noted to be multifactorial in nature including psychological, functional, and physical issues. To reverse this trend, Dr. Konowitz recommended the RIC pain program that is multidisciplinary, daily and can be beneficial and successful .

Petitioner had the initial evaluation at Shirley Ryan Ability Lab for a comprehensive interdisciplinary pain evaluation done by Dr. Morgan Callahan and Dr. James Atchison on December 18, 2017. He had a chief complaint of diffuse body pain and his medical history was reviewed. He reported pain in his head, hands, neck, back, legs and feet and described it as a sharp, shooting, throbbing and intermittent except that the pain in his left hand was constant. He reported that the medications only helped a little and reports that he often feels dizzy from taking them. His pain was currently a 9/10 and at best it was 5/10 and at worst 10/10. It was determined that he satisfied the criteria for CRPS based upon the Budapest criteria and that he would be a good candidate to participate in the full day interdisciplinary pain/functional restoration program to address the CRPS symptoms of the left upper limb and the central sensitization pattern that is contributing to his diffuse pain elsewhere. The program included a combination of PT and OT sessions as well as pain psychology for cognitive behavioral techniques as well as biofeedback therapy. He was counseled that this type of program was designed to help him manage his pain flareups and increase his activity but will likely not eliminate his pain.

He underwent a psychological evaluation as part of the program on December 18, 2017 by Patricia Cole, a licensed clinical psychologist. She reviewed his medical history and conducted a psychological evaluation. Petitioner denied any current suicidal ideation, intent, or plan. He reported some symptoms of depression, disrupted sleep and decreased energy level.

He began the program on December 26, 2017 and completed the program on January 18, 2018. The medical progress notes from Dr. Kelly Gates dated April 24, 2018 indicates that the last visit was April 12, 2018 where he had completed the full day 4-week program and had limited overall improvement and Limited continuation of program tools. They discussed with Petitioner that he needs to optimize his function and weaning off his opioid medication. He will also need treatment for depression and anxiety which were currently limited by his opioid use. They discussed an inpatient detox program to wean him off opioids as well as manage his depression and anxiety. At his April 24, 2018 visit Petitioner reported that he had to go to the emergency room due to the trazodone that he was given by his psychiatrist which caused him to have dizziness, headaches, stuffy nose/face and was admitted for 3 days for pain control. The impression was CRPS type I of the left upper extremity, chronic pain syndrome with marked reduction of functional activity levels, chronic opiate dependence with ongoing low all glenoid management, sleep disturbance unresponsive to previous med management and mood disturbance, anxiety, and possible components of posttraumatic syndrome.

On March 3, 2018, the Mundelein Fire Department was dispatched to a traffic accident with injuries including the Petitioner and found him sitting in the driver's seat of his vehicle with a chief complaint of neck and back pain. Petitioner stated he swerved out of the way of another vehicle and hit a curb, his vehicle had minor damage to the front fender and damage to the front driver wheel. He was restrained and no airbag was deployed. Due to mechanism of injury and positive findings on exam, they took full C-spine precautions placed him in a c-collar and moved him to a backboard where he was transported to Condell Medical Center for evaluation.

The records from Condell Medical Center indicate that Petitioner was status post MVA as a restrained driver. Records indicate a history of anxiety and depression and low back and neck pain following a motor vehicle accident. Petitioner informed the staff that he was on medication for multitude of reasons including Norco, gabapentin, clonazepam, and the entire history was limited due to intoxication. A CT of the head and neck were done due to initial presentation including findings of intoxication and further workup was negative. Toxicology was positive for

opiates screen but there was no alcohol detected in his blood. Amphetamine screen was also negative. On reevaluation patient was more alert he admits to taking Norco and gabapentin that morning. He was instructed not to do this in the future, and he understood. Impression and plan were lumbar strain motor vehicle accident and he was treated and discharged.

On March 13, 2018 he was evaluated by Associates in Psychiatric Wellness for chronic pain, GAD, increasing anxiety and depression. Petitioner reported been frustrated at the inability to be independent in his personal life and stated that he wanted to go to sleep so the pain goes away. He also reported being in a motor vehicle accident last week and stated that he gets fuzzy and doesn't remember a lot of things. His current medications were clonazepam, hydrocodone, oxcarbazepine, prozasin and venlafaxine. He reported having a SCS in cervical area and was under the care of pain management. There was an extensive discussion concerning prescribed medications and addictive effects of pain medication. The assessment was chronic pain undertreated versus supratentorial versus hyperalgesia versus chronic pain syndrome. The plan was to prescribe Latuda 20 mg to address anxiety mood and possibly pain and he was to continue under the care of Dr. Atchinson. On March 27, 2018, he Followed up with the psychiatrist stating he was having double and blurred vision with mental confusion since starting the medication. Petitioner reported falling on Sunday, explaining that he was using a crutch for balance. He was wincing in pain frequently pointing to both heels and right knee even with all medications and spinal cord stimulator he was very emotive, restless with eyes closed most of the visit. His current medications included Butrans patch 20mcg every 7 days, Norco 5 mg 3-4 times daily, 225 mg of Effexor daily, 1 mg clonazepam twice daily oxcarbazepine 600 mg twice daily, prazosin 2 mg once daily and doxepin 10 mg at bedtime. The assessment was chronic pain, GAD and PTSD. The plan was to discontinue the doxepin, add trazodone 50 mg at bedtime to aid with sleep and try to wean down Norco use as well as follow up with Dr. Atchinson.

On March 30, 2018, Petitioner was seen in the ER at Condell Medical Center with a history of CRPS to be evaluated for headache and generalized pain. He stated that headache has being ongoing for over a year. Petitioner reported that a pain specialist, Dr. Atchison, prescribed medications including hydrocodone. He complained of worsening symptoms after seeing the case manager today which prompted the visit to the ER. He also complained about generalized pain throughout his joints. While in the hospital he was evaluated by nurse practitioner Janaies Joseph, NP who noted a history of nerve damage due to trauma, anxiety, and depression. He had a nerve stimulator implanted and presented with complaints of severe headache which started last Saturday. He stated that his medication was switched from doxepin 10 mg to trazodone 50 mg and since then he has had generalized headaches and sometimes double vision. Petitioner testified that he went to the emergency room at Condell Medical Center on this date the course of intense pain.

He was examined by Dr. Mariusz Milejczyk, an internist, who noted a past medical history of CRPS. He presented for evaluation of symptomatic hyponatremia. Upon admission, his symptoms resolved, and he was reeducated on dilutional hyponatremia and agreed to reduce intake of free water to 1.5 L per day. Upon discharge, he was given a list of all the medications he was on and advised to discontinue the Butrans medication. He was discharged on March 31, 2018.

On April 6, 2018 he followed up with Associates in psychiatric wellness and reported that he had spent 2 days in the ER because of a headache that started after he used a Butrans 20 mcg patch in addition to his usual Norco. It was noted by the psychiatrist that He continued to focus on

his problems and expressed disappointment with previous treatment instead of focusing on what was offered - replacing Norco with the BUP product. They were concerned about his real use of Norco and inability to treat depression/anxiety unless opioids are streamlined. The psychiatrist's plan was to continue Effexor and will add Remeron to help with sleep.

On April 18, 2018, Petitioner was seen in the ER at Condell Medical Center. The records indicate complaints of anxiety, headaches, and tremors since yesterday when he started a new medication. His history noted CRPS with chief complaint of dizziness. Patient reported taking mirtazapine and tramadol for the second time causing him to feel dizzy and lethargic, he also indicated the same symptoms the first time he took the medication. He was given an infusion of sodium chloride and lorazepam. The medical staff suspected that he was suffering from serotonin syndrome due to his medications. The provider requested the pharmacy to do a full assessment of his medications noticing that the half-life of mirtazapine is 26 hours, so the patient was being admitted for metabolism of mirtazapine and for observation of serotonin syndrome. Petitioner was also prescribed Effexor. It was suspected that the culprit and contributors included Norco, tramadol, and venlafaxine. Petitioner felt much better after Ativan and fluids. Discharge diagnosis was serotonin syndrome.

On April 19, 2018 he consulted Dr. Jay Hurh for Serotonergic syndrome/CRPS. Petitioner reported that he recently started mirtazapine and trazodone prescribed by his psychiatrist and was having palpitations, blurry vision, and generalized unease. Secondary to these findings he reported flushing those medications down the toilet. His Symptoms did not get any better, so he came to the ER. He was also taking hydrocodone through his pain management physician. The assessment was dizziness with comorbidities secondary to serotonin syndrome currently improving. Dr. Hurh did not believe he had any continued serotonin syndrome and that his symptoms were more secondary to anxiety related issues. He was recently started on the antidepressant and trazodone which caused the symptoms the patient described in the ER. He also had a diagnosis of CRPS but Dr. Hurh did not see this diagnosis since his whole body was experiencing symptoms. Dr. Hurh opined that the symptoms were more linked to myalgia or possible fibromyalgia with a variant component and ordered continuance of Norco and Valium. Dr. Hurh did not think admittance to the ICU was necessary at that time. He was discharged on 4/20/18. Petitioner testified that the doctors at Shirley Ryan ability lab did not wean him off his medication but cut it off completely.

On May 10, 2018 he followed up with Dr. Atchinson at Shirley Ryan ability lab. He reported that he had not been to the hospital since his last visit 4/24. Petitioner reported no new medications and that he is no longer following up with the psychiatrist, Dr. Shukman anymore and overall he felt mentally clearer and had less confusion but thinks his pain had worsened. He reported pain over his whole body, most significantly in his left hand and complained of a worsening electrical shooting sensation. For pain he continued to take oxcarbazepine 600 mg, Tylenol 500 mg and since his last visit he ran out of diazepam. He also stopped using prazosin and venlafaxine that his psychiatrist prescribed. He reported that he took 2-3 tabs of Norco yesterday and still has one prescription for that was provided to him by Dr. Atchinson at his last visit. He has not fully completed the Norco taper. He reported that his pain interferes with his ability to function on a day-to-day basis, he tried to walk daily but finds it painful and he must lie down in bed to relax. He has poor sleep due to persistent pain. Mood is depressed. Prior medications tried were Lyrica 200 mg, Norco 10 mg, Voltaren, gabapentin, tramadol, and Lexapro. Prior interventions tried were physical therapy injections spinal cord stimulator. He

still rates pain 9/10. Plan is to continue weaning him off Norco which is been hindered by his hospitalization and prescription of Norco from other sources. They did give him a refill of oxcarbazepine 600 mg and he is unsure whether this medication is beneficial for his pain control .

On May 15, 2018 he was again seen in the emergency room at Advocate Condell Medical Center with complaints of bilateral arm and leg pain and a 10/10 headache. He reported as if he felt that he has shooting pains through his body and reports taking Tylenol and ibuprofen with minimal relief. He reported that his primary care physician has taken him off all his pain medication and has since been complaining of increased pain. He also complained of pain in the left hand from his sledgehammer incident at work. He stated he had been taking Tylenol at home with no relief from his pain. He was given an injection of morphine for pain control. Diagnosis was chronic pain and he was prescribed hydrocodone and advised to follow-up with pain management.

On May 21, 2018, he was again seen emergently at Condell Medical Center for ongoing pain. Petitioner gave a history of CRPS and a chief complaint of generalized body pain. He complained of pain in his head, groin, and bilateral upper and lower extremities. He also complained of subjective warmth and cold in his left hand which was chronically swollen. Petitioner reported that he had presented to the ER a week ago with same symptoms at which time he was prescribed Norco which he has taken daily to little effect. Diagnosis was chronic pain he was advised to follow-up with Dr. Konowitz as planned. He was noted to have a spinal cord stimulator in place, and he had run out of hydrocodone taking his last 10 mg yesterday morning. He was also taking a muscle relaxer. He was advised to follow-up as needed and was given an injection of Toradol, lorazepam and morphine to bring his pain under control.

Petitioner then followed up with Dr. Konowitz on May 22, 2018, for neck pain, bilateral arms, and leg pain. He complained of sharp and burning pains with electricity in both arms and reported ER visits to Condell Medical Center where he received pain medications and some sleep. The Beck Depression screening at this visit again noted that Petitioner had no thoughts at all that he would be better off dead or of him hurting himself in any way. Dr. Konowitz noted that inconsistent behavioral responses were absent and that there were left arm skin color changes and left arm edema present on examination. Dr. Konowitz' impression was CRPS type I of left upper extremity. The clinical situation was that of a spinal cord stimulator that was intermittently providing coverage depending on the position of his neck so X-rays of the spinal cord stimulator leads were ordered and a follow-up will be scheduled to review the positioning of those leads with reprogramming of the spinal cord stimulator. Dr. Konowitz gave Petitioner a trial of Zonegran medication for his arm dysesthesias.

Petitioner was again seen in the emergency room at Condell Medical Center on May 27, 2018. He presented with complaints of generalized pain and chronic pain which had worsened recently. He reported that he had an appointment with pain management in a few days but that his pain had become unbearable at home. He was prescribed a Medrol Dosepak and Valium. He was also given a fentanyl injection while in the hospital to bring his pain under control. He was discharged the same day and advised to follow-up with pain management.

He followed up with Dr. Konowitz on May 29, 2018 with complaints of pain in bilateral arms, bilateral legs, face, and complained of pain with activities of daily living. He described the pain as burning, stabbing, and sharp. His current medications were Zonegran and hydrocodone from the emergency room. The impression was CRPS type I and they performed a reprogramming of the SCS with a complete download which demonstrated global daily use of the

SCS. He was still on a medication trial of Zonegran low-dose and still obtaining hydrocodone from multiple other prescribers. The cervical x-rays showed no apparent lead abnormality. There were two new programs that cover the arm and pain areas more stable in the arms bilaterally. Dr. Konowitz noted that Petitioner's pain perception was higher when he was not using the stimulator. Petitioner then refused to finish his visit.

After seeing Dr. Konowitz and refusing to finish his visit, Petitioner then reported to the emergency room at Highland Park Hospital the night of May 29, 2018 complaining of unmanageable pain. The records indicate chronic pain to left upper extremity with a long-winded history with various referrals, recurrent opioid dependence, and noted that he was to follow up later this week with a new pain provider but stated that his pain was awful and intractable. The pain is throbbing and lightninglike from his left hand up to the shoulder and severe. They noted a similar presentation in the past and that he was without pain medication at that time. He was given pain meds/Ativan and reassessed at 12:05 AM. He appeared much more comfortable, felt improved ,and was discharged.

On June 2, 2018 Petitioner was seen at Condell Medical Center emergency room with symptoms of dizziness and chest pain. The records indicate that Petitioner was diagnosed with CRPS in April 2016 and has been on Norco for pain and occasionally takes oxcarbazepine but not regularly. He complained of headaches and pain all over as well as photophobia and phonophobia. He reported feeling cold and slightly dizzy. He was noted to have a spinal cord stimulator for pain and saw his pain management doctor this week. The provider ordered an EKG, labs and sent him to the emergency department for evaluation. He was provided intravenous pain medication, diagnosed with chronic pain, and he was discharged. He was advised to follow up with Dr. Jay Huhr.

Petitioner later returned to the emergency room at Highland Park Hospital the same date, June 2, 2018 and was admitted into hospital again for uncontrolled pain. He was evaluated by Dr. Daniel Wachter for severe pain in his left hand, back, and legs. He stated he was in the emergency room several days ago and received benzol and narcotic medication for pain relief but is having continued severe pain. He was noted to have an exacerbation of chronic pain and has not had adequate or definitive relief from opioids or benzodiazepines. He was given pain medication intravenously and was admitted for pain management.

He was then evaluated by Dr. Ruchi Patel with a chief complaint of severe pain in the left hand, upper back, and legs. His left-hand injury two years ago and diagnosis of CRPS was noted. He stated he planned to switch to a new pain doctor and had an appointment scheduled for June 7, 2018 but has had uncontrolled pain. The plan was to admit him for pain control and consultation with anesthesia and pain management.

He was evaluated by Dr. Ali Khan on June 6, 2018 who noted his admission on June 2, 2018 with a chief complaint of severe pain in his left hand, upper back, and legs. He reported his left-hand pain was much better and left shoulder and back pain were improving as well. He was noted to have an exacerbation of CRPS symptoms. He had been taking Norco as an outpatient for 2 years and acknowledged having a lower back pain stimulator. He received IV Dilaudid and ketamine with minimal improvement. Anesthesia and palliative care were consulted for pain control as he did not report having any pain specialist currently. Anesthesia recommendations were to discontinue Dilaudid, discontinue scheduled buprenorphine, increase tizanidine and gabapentin and recommend that he go back to see Dr. Konowitz to optimize spinal cord stimulator settings. He would the discharged from the hospital on June 7, 2018.

On June 14, 2018 he reported to Highland Park Hospital for uncontrollable pain. His left-hand injury 2 years ago with CRPS to the left upper extremity was noted. He was noted that have been seen in that particular ER on May 29, 2018 for severe pain in the left hand and was treated with opioids, pain improved to 5/10 and was discharged on Norco. He returned and was admitted on June 3, 2018 and treated with buprenorphine, ketamine, gabapentin and tizanidine. He was advised to see a pain specialist but had not due to insurance reasons and he returned with an exacerbation of his left-hand pain and pain in his legs and upper back. The CRPS pain was noted to be debilitating but was controlled with buprenex, Zanaflex and gabapentin. His pain was controlled, and he was discharged from care on June 16, 2020.

On June 24, 2018 Petitioner was admitted to Glenbrook Hospital for pain control and remained there until discharged on June 27, 2018. He gave a history of acute on chronic left-hand pain status post injury and the diagnosis of CRPS. He presented with complaints of left-hand pain at 10/10 which radiated to the entire upper left extremity and left shoulder. He also complained of sharp pain in his lower back that radiated to his groin and both lower extremities. He was noted to have been discharged from Highland Hospital after being treated for similar symptoms and was evaluated by a pain service who recommended gabapentin and tizanidine. He reported not been able to tolerate gabapentin due to nausea and vomiting. He reported seeing a pain management specialist on an outpatient basis. He was given intravenous buprenorphine, gabapentin, Valium, tizanidine, ketorolac and Tylenol. He was diagnosed with an exacerbation of chronic pain syndrome and his case was discussed with Dr. Konowitz who advised the medical provider that Petitioner displayed pain seeking behavior. On discharge, Petitioner was provided a Medrol Dosepak, a one-month supply of Lyrica was recommended, and he was discharged.

Dr. Konowitz issued a letter to the Petitioner on June 28, 2018 informing him that the Petitioner was formally discharged from the practice effective in 30 days. Petitioner was advised to seek further medical attention from his primary care physician.

Petitioner testified at hearing that he did not feel any relief from the spinal cord stimulator that was placed by Dr. Konowitz. He stated that there are days when he feels better and then there are days when he is all messed up and can't really distinguish. He testified to taking Norco for a very long period of time and a lot of medications and that he had difficulty acknowledging a distinction but stated felt the spinal cord stimulator was helping him more than hurting him.

Petitioner returned to the emergency room at Highland Park Hospital on July 13, 2018 by ambulance complaining of severe left arm pain which he described as throbbing, sharp and radiating to his left shoulder. Pain was noted to be worse with movement or palpation. He was noted to be a very poor historian and kept moaning in pain without answering many questions. His chart indicated a work-related accident a few years prior resulting in contracture of his left arm and a history of CRPS, a nerve stimulator, and several recent hospital admissions for pain control. His pain was treated with Toradol and Ativan which provided no relief, so he was given Dilaudid.

He returned to Highland Park Hospital emergency room on July 27, 2018. Petitioner stated he had run out of Norco two days ago and today had his typical back pain and hand pain. They treated his pain, brought it under control and discharged him after IV pain medication. He was again seen in the emergency room days later on July 31, 2018 for left arm pain and back pain. He described severe shooting pain all the way up to his left jaw. He also reported pain in the back of his head that shoots down his spine. He reported a mild frontal headache with photophobia and sonophobia. His pain was brought under control and he was discharged and advised to follow-up

with a pain management doctor.

Petitioner again reported to the emergency room at Condell Medical Center on August 8, 2018. He was seen with complaints of worsening chronic pain since the night before located in the left arm and head. A history of CRPS and taking Norco, Tylenol, and some other medication to help with sleep was noted. He also complained of chills and an episode of vomiting. He reported that the pain specialist advised him that there was nothing further that could be done for him. His pain was treated with medication, it was noted that he had not seen a specialist for the past 4 months and reported that he was currently out of Norco. Once his pain was under control, he was discharged from care and advised to follow-up with Dr. Jay Huhr.

Petitioner was again seen in the Condell Medical Center emergency room on August 19, 2018. He reported pain in the left arm, head, and both legs which had flared up over the last several days. Petitioner had been taking Tylenol at home without relief. He had been unable to see a primary care doctor or pain specialist due to the lack of medical insurance and reported no acute injuries. His pain was brought under control and he was discharged from care and advised to follow-up with a pain management doctor.

He was seen again in the emergency room, this time at Alexian Brothers Medical Center on August 29, 2018. He reported a history of chronic left arm and back pain secondary to trauma from 2016. He was seen in the ER for worsening chronic pain in his left arm and back. He denied any new injuries or symptoms. He reported having multiple surgeries and a spinal cord stimulator in place. He stated he had been getting pain medication through a pain specialist but is no longer being managed by Worker's Comp. The medical provider checked the ILPM site to see that his prescriptions correlated with the Petitioner's history of present illness. He was given a prescription for 30 days for gabapentin and Norco and discharged from care.

He was seen again at Alexian Brothers Medical Center on September 27th. He complained of worsening chronic pain in his left arm and back and complains of generalized diffuse pain in his entire body. Petitioner denied recent injuries or new symptoms. He reported he had been unable to get an appointment with chronic pain doctor due to insurance and legal issues. Diagnosis was chronic pain and he was prescribed Norco and discharged from care. He reported that he was trying to find a pain specialist.

Treatment with Dr. Timothy Lubenow, Rush Pain Center

On October 25, 2018, he was evaluated by Dr. Timothy Lubenow at the Rush Pain Center. Dr. Lubenow noted the Petitioner's history of headaches, injections without relief, and a spinal stimulator implanted by Dr. Konowitz in May 2018. He reported that he did not have more than 50% relief from the trial. Dr. Lubenow noted Petitioner effectively experienced no pain relief. Dr. Lubenow's assessment was CRPS, type I of the left upper extremity and flexion contracture of the joint of the left hand and spinal cord stimulator status. Dr. Lubenow opined that Petitioner was not at maximum medical improvement and has had a poor response to conventional SCS and opined that it was medically necessary to proceed with DRG (dorsal root ganglion) stimulation of the left upper extremity which would require a tunneled trial with 2 DRG leads placed in the low cervical spine. If the Petitioner had greater than 50% relief, then a permanent implanted battery will be carried out. He was to follow-up in 3 weeks.

Petitioner testified that he was seen in the emergency room on all these different occasions because of the unmanageable pain. On cross examination when asked why he went to so many

different hospitals, he testified that Condell told him that they could do nothing further for him and that he had a chronic problem and was to see a specialist. While in the hospital he was prescribed medication and then referred to a specialist for treatment.

He was seen yet again at Condell Medical Center emergency room on November 30, 2018. He reported having taken Tylenol and ibuprofen without relief. He last saw his pain doctor in October and has an appointment with Dr. Lubenow in 1 week for evaluation of a spinal cord stimulator. He was advised that there may be a newer version that may work better. He was given pain medication and discharged from care and advised to follow-up with Dr. Lubenow.

He followed up with Dr. Lubenow on December 6, 2018 and reported that it took longer than 3 weeks to follow-up because he was unable to schedule an appointment. He reported going to the ER at Condell because his pain was not well managed. At the last visit, his SCS was reprogrammed however he still felt discomfort while stimulator is on. He was prescribed 1 month of Mobic at the last visit but ran out and reported that it did not provide relief. Dr. Lubenow reviewed the CT scan and x-rays which noted the SCS lead in highest place at C3 level with no concern for spinal stenosis. Dr. Lubenow opined that the Petitioner had failed treatment with a conventional SCS so the next step would be to do a trial with a cervical DRG stimulation. Dr. Lubenow prescribed Lyrica, tramadol and Mobic for his pain and recommended participation in counseling. He was to follow-up in 4 weeks to remove the old SCS and install the new DRG.

He underwent a psychological evaluation by Patricia Merriman, PhD to determine whether he was a candidate for DRG stimulation trial. During this evaluation they performed a suicide risk assessment, the assessment was not included in the records however Petitioner was cleared for DRG stimulation trial.

The DRG trial stimulator was implanted on January 14, 2019. He followed up with Dr. Matthew Jaycox, Dr. Lubenow's associate, on January 23, 2019. Petitioner was on day nine post implantation of the Saint Jude DRG at C6 and C8. Petitioner reported 30-50% pain relief. They reprogrammed the DRG stimulator by reversing polarity on contacts and pulse which greatly improved coverage and analgesia. He was told to return on February 1, 2019 for IPG (implantable pulse generator) placement. On January 30, 2019 he followed up with Dr. Adam Young for checkup on trial placement of the DRG on January 14, 2019 and reported 50% pain relief and rated his pain 6/10 on that date. He was ready to undergo permanent placement on February 1, 2019. The DRG stimulator was permanently implanted on February 1, 2019 and the spinal cord stimulator was removed.

Petitioner followed up with Dr. Jaycox on February 11, 2019. Petitioner reported 40% improvement in symptoms initially after the permanent implant, but his pain has worsened and was at 7/10 requiring him to take tramadol to cover his pain. He was prescribed tramadol and Lyrica. On February 18, 2019, he saw Dr. Buvanendran at Rush Pain Clinic, and reported 40% improvement in symptoms initially but still reported occasional shooting pains (7/10) and reported taking tramadol. He had tried different programs but thinks the most recent program was too strong with buzzing in the arm that forced him to turn the stimulator off at night. He also reported having anxiety because of his pain. He was prescribed clonazepam and tramadol.

On March 7, 2019 he followed up with Dr. Lubenow and again noted that he had 40% improvement in symptoms initially but has pain of a 7–8/10 which has significantly affected his sleep. He has been taking tramadol to try better control his pain. He was to continue Lyrica and increase tramadol as needed. The DRG stimulator was also re-programmed and Petitioner was advised to keep a diary documenting his pain. On March 20, 2019, Dr. Lubenow noted that x-rays

showed the C6 and C8 leads in adequate position. Again, there was improvement after reprogramming and then worsening pain to a 7-8/10 requiring him to take tramadol to control his pain. Dr. Lubenow noted that if it were not for the tramadol, he would be visiting the emergency room again. His DRG was again reprogrammed under physician direction and he was to follow-up with the Abbott Representative in a week. He was also prescribed trazodone for sleep and a Medrol dosepak for a flareup of his CRPS. He was to continue Lyrica and tramadol.

On April 18, 2019 Petitioner reported to Dr. Lubenow that the current stimulator feels better on the softer stimulation, however his pain is not much improved. Petitioner continues to have good days and bad days. On good days he experiences up to 60% improvement in pain and he continues to wear the sling and orthotic brace most the time. His prescriptions were Lyrica, mirtazapine, Topamax, tramadol, and he was to stop the trazodone as it did not have any effect. The stimulator was reprogrammed with lower intensity. He was ordered a new orthotic for his left hand with a soft sling.

On June 5, 2019 he followed up with Dr. Lubenow and rated his pain at 8/10 and described pain as an electrical sensation mostly in his left arm and reports having gone to the emergency room twice as his pain had not been controlled in the last couple of months. Petitioner endorsed a feeling of depression, decreased appetite and "felt like he would be better off dead" however he denied any thoughts of hurting himself. He was to continue Lyrica and tramadol and start fluoxetine for depression. Dr. Lubenow explained to the case manager, Elizabeth Spreck, that his CRPS is causally related to his injury and that Petitioner was at maximum medical improvement with future medical care being an office visit once every 3 months for the first year and once every 6 months thereafter for the rest of his life. He worked require IPG placement once every 5 years and ongoing use of medication.

On June 19, 2019, Petitioner returned to Rush Pain Center to see Dr. Lubenow but saw Dr. Jaycox in his absence. Petitioner noted continued pain in his left arm and did not think the Lyrica or DRG was helping and had periodic electrical sensation down his extremities. He had no relief from Medrol Dosepak, SGB's, PT, OTC medications, or tramadol. Petitioner also reported posterior headaches with neck pain which was worse with neck movement along with hearing changes feeling like there is an echo. Petitioner also reported diffuse pain in his legs as shooting and stabbing at times. Dr. Jaycox recommended a trial of pamidronate infusions for 90 minutes once a week for 3 total sessions and noted that the neck pain seemed like cervical facet arthropathy giving him neck pain and cervicogenic headaches which correlated with the MRI findings of facet arthropathy. X-rays of the cervical spine from March 2019 show stable and appropriate position of DRG leads. He was to continue use of tramadol and increase the dose of Lyrica and follow-up at the end of August.

On June 25, 2019 he was seen in the emergency room at Glenbrook Hospital. Petitioner reported having been seen by multiple specialists and currently on a nerve stimulator and tramadol which was not controlling his pain and he was requesting reevaluation. Petitioner was given a dose of Dilaudid and referred to the pain clinic for further evaluation without a prescription for additional pain medication and was discharged in stable condition.

He followed up with Dr. Lubenow on July 18, 2019 with continued pain in left arm and legs. Petitioner voiced concern that he did not think that the Lyrica or DRG was helping and has had periodic electrical sensations down his extremities. He also reported posterior headaches and neck and pain which worsens with neck movement along with associated hearing changes. Dr. Lubenow recommended starting tizanidine and to continue Lyrica and tramadol. The DRG would

also be reprogrammed under physician direction. He followed up on September 12, 2019 and again voiced his concern to Dr. Lubenow that he did not feel Lyrica or DRG was helping. He continued to complain of the same symptoms as before. Dr. Lubenow noted a suboptimal response to the DRG, ordered x-rays which showed electrodes in good position and the DRG was reprogrammed under physician directed supervision. He was to follow-up in 3 months. Dr. Lubenow noted that Petitioner was having difficulty driving and secondary to pain, he must sometimes pull over to the side of the road and therefore, Dr. Lubenow recommends that Petitioner have transportation to and from the physician's office.

Petitioner saw Dr. Lubenow on January 2, 2020. Petitioner continued to complain that he did not feel that the Lyrica or DRG was helping and that he had a poor quality of life and was very frustrated with his pain. He also uses headphones constantly to blunt the auditory stimulation but reported feeling that the sounds are originating from inside his ears. Petitioner voiced concerns that he would have these limitations for the rest of his life. Dr. Lubenow noted a passive suicidal ideation thinking "God just take me". Dr. Lubenow also noted that he did not have active suicidal ideation/homicidal ideation and denied the voices tell him to hurt himself or others. Dr. Lubenow attempted several different settings with the Abbott representative and the DRG was reprogrammed under physician supervision. Dr. Lubenow then discussed changing his pain management program to intrathecal drug delivery program and discussed the possibility of a trial ITP (intrathecal pump) prior to permanent implant placement which would consist of a trial of an intra-spinal drug delivery system using a drug called Prialt and would involve a temporary trial injected intrathecally to determine if he has 50% or more pain relief and if so, to proceed to permanent device placement as they have exhausted all other options. He was to follow-up in 3 months.

Petitioner then sought a second opinion from Illinois Pain Institute on January 17, 2020 and was evaluated by Dr. Chadi Yaacoub. Dr. Yaacoub noted left upper extremity pain and his CRPS diagnosis. Petitioner rated his pain as 8/10 which is aggravated by touching the painful area. The pain was eased a little bit by Lyrica and tramadol. He reported being unable to use his left hand because of weakness and pain. He explained his history of treatment including nerve blocks and a spinal cord stimulator which did not help and a DRG stimulator which gave him only minimal relief. He also complained of headache in the posterior part of his head that is aggravated by moving his neck. Petitioner informed Dr. Yaacoub that he was scheduled for an intra-thecal pump trial. On exam, his arm was in a left sling, there was allodynia, hyperalgesia, and skin discoloration noted. Dr. Yacoub confirmed the diagnosis of CRPS type I and recommended that Petitioner keep following with his current physician to see what other options he had. He might also benefit from left cervical medial branch blocks and radial frequency lesioning. Petitioner might also benefit from lidocaine IV infusion and from stem cell therapy.

On March 25, 2020 Petitioner was evaluated by Dr. Lubenow virtually due to Covid-19. The Petitioner's symptoms remained the same as prior visits and Dr. Lubenow continued the prescriptions of Lyrica and tramadol and continued to recommend the intrathecal Prialt trial.

On May 28, 2020, Petitioner was evaluated by Dr. Syed Anwar for a psychiatric evaluation due to his depression and anxiety. Dr. Anwar's diagnosis was major depressive disorder, single episode, moderate without psychotic features secondary to the medical condition. Dr. Anwar did not make any changes to his medication but would like him to try some SNRIs but due to high doses of tramadol he would have to hold off. He saw Dr. Anwar again on June 22, 2020, for follow-up for depression and anxiety prescribed Zoloft and Xanax and Dr. Anwar

specifically noted that the Petitioner denied suicidal ideation or intent. On follow-up visits with Dr. Anwar on July 17, 2020 and August 20, 2020, his medications were adjusted and again the Petitioner denied suicidal ideation or intent.

He followed up with Dr. Lubenow on July 8, 2020. Petitioner was wearing a left arm sling and his pain was 7/10. He described the pain as constant and burning, worse with touch. Dr. Lubenow reviewed the medications prescribed by the psychiatrist and recommended that Petitioner continue taking the brand name Lyrica and not the generic pregabalin. On October 7, 2020, Petitioner followed up with Dr. Lubenow for a medication recheck and Dr. Lubenow continued to recommend the intrathecal pain pump trial. On October 29, 2020, Petitioner reported having significant pain which had increased within the few weeks to months. His left arm was in a sling and his pain level was 7/10. Petitioner complained that his life was severely limited by his pain and stated that "his life was horrible". Dr. Lubenow refilled his medication and continued to recommend the intrathecal trial of Prialt. Dr. Lubenow also noted that Petitioner requires transportation to and from doctor's appointments as he is unable to drive.

On January 6, 2021, March 31, 2021, and June 30, 2021 Petitioner continued to see Dr. Lubenow with his left arm still in the sling indicating that the stimulator intermittently helps with pain but there are times when it does not help at all. His pain at these visits was at a level of 10/10 and he was unable to use his left arm. He always keeps it in a sling. He is becoming desperate to be approved for the ITP and is not sure else what to do. Dr. Lubenow continues to refill his medication and continues to recommend the ITP.

On June 17, 2021 Petitioner underwent a driver's assessment at Rush University Physical Therapy. The reason for referral by Dr. Candido was to test functional skills and provide a driving assessment. He was noted to experience persistent and significant pain and hypersensitivity throughout daily tasks. Under the assessment, a driving assessment was not recommended for patient to test the ability to safely drive. It was noted that Petitioner requires skilled occupational therapy to address the problems identified and to achieve the individualized patient goals. Overall rehabilitation potential is was noted to be poor. Based on the Petitioner's clinical presentation it was the occupational therapist's opinion that the Petitioner's prognosis was poor, and he was not fit to drive a vehicle.

Petitioner testified that, at the time of trial he felt like his bone hurts and indicated to the arbitrator pointing to the left elbow down to the left hand. Petitioner removed his arm from his sling and showed the arbitrator his hand and forearm. The photographs contained in Respondent exhibit #5 accurately reflects the severe atrophy of the left hand and fingers as well as the severe contracture and ruddy discoloration of the Petitioners left hand in the courtroom on August 18, 2021. Petitioner moved slowly and deliberately while removing his sling. He was in visible discomfort and wincing while moving his left hand and arm. The Arbitrator noted that Petitioner's fingernails on his left hand were extraordinarily long and starting to curl in.

Petitioner testified that he has never had any thoughts of injuring himself or anyone else. He explained that when he felt very bad and when the medicine doesn't get rid of the pain, he asked God to get rid of the pain, but he has never thought about suicide. He also testified that he never stated any thoughts of killing himself to any medical providers. He testified further that he wishes to proceed with the implantation of the pain pump recommended by Dr. Lubenow because he does not like the lifestyle that he has now. He stated it is not nice having to be in bed with unmanageable pain.

Dr. Kenneth Candido's Section 12 Evaluations

At the request of the Respondent, Dr. Kenneth Candido examined the Petitioner on February 7, 2017. He reviewed medical records from various providers and performed a physical examination. He noted a history of injury of being hit in the hand with a sledgehammer. Dr. Candido opined that there was sufficient criteria met for a diagnosis of CRPS of the left hand despite a few peculiarities namely and absence of tactile allodynia and hyperesthesia or hyperalgesia and the failure of stellate ganglion blocks to reduce the pain, but opines that Petitioner's subjective complaints did correlate with the objective findings and felt that the Petitioner's current complaints were causally related to the work injury. He further opined that treatment was appropriate but insufficient. He felt that Petitioner was a reasonable candidate for up to 6 interscalene or infraclavicular brachial plexus blocks. He also opined that Petitioner was a candidate for a spinal cord stimulator. Medication use was acceptable, and Petitioner was not capable of working at that time. Petitioner's pain was relatively uncontrolled and return to work as a landscaper would entail in exclusively right-handed activities which likely would only be marginally able to accomplish. MMI would be approximately 12 months.

Petitioner was reevaluated by Dr. Candido on January 30, 2018 where he opined that Petitioner had a nonfunctional atrophic left hand with shiny atrophic skin and changes in the nails of the left hand. The clinical presentation is consistent with either a severe brachial plexopathy and/or complex regional pain syndrome which is related to the injury. Surveillance footage was consistent of him not being capable of using the left hand and left arm. His prognosis was guarded as he had no use of the left hand or wrist and it did not appear as though he would regain function of that extremity. Again, medical treatment was noted to be reasonable, necessary, and related to the work accident. He opined that Petitioner could work in a capacity that requires no use whatsoever of the left arm or left hand. He can use the right hand for light duty work no lifting or carrying more than 25 pounds. Dr. Candido disagreed with the sedentary work restrictions that the FCE documented and opined that the Petitioner was as good as he was going to get, but would still require ongoing medical management of the spinal cord stimulator and occasional evaluation and reprogramming of the SCS device. Dr. Candido explained that having obtained maximum medical improvement does not mean that the Petitioner was "cured" or "healed", rather that the expectations are such that he should not be expected to achieve greater success in the use of the left arm or hand now or in the future. The photographs contained in the report reflect the beginning of the contracture of the Petitioners left hand.

Petitioner was evaluated a third time by Dr. Candido on July 10, 2018. His findings and diagnoses have not changed from his prior examinations. He notes and atrophic nonfunctional left hand consistent with a diagnosis of CRPS. He believes it is type II CRPS not type I because there is evidence of severe neural dysfunction. Petitioner has a severely limited use of the left hand with contracture of the left hand and wrist with limited range of motion. Dr. Candido opined that though the course of medical treatment has been reasonable, the Petitioner's use of the emergency department was for incident related pain which is uncontrolled as he no longer received any pain management from Dr. Konowitz (discharged due to alleged noncompliance). Dr. Candido did not advocate for his seeking emergency medical treatment but didn't understand that there were times that he needs treatment for unremitting remitting pain. His work restrictions remain no use of the left arm or hand and he can use the right hand for light duty work no lifting carrying more than 25 pounds and opines that Petitioner is at maximum medical improvement.

Dr. Candido performed a fourth section 12 examination of the Petitioner on April 30,

2019. Petitioner was noted to have an atrophic, nonfunctional left hand which appeared to be consistent with a severe brachial plexopathy or CRPS type II. Prognosis guarded as he has no use of the left hand or wrist and it does not appear that he will regain function of that extremity. It was disputed whether there was 30-50% transient improvement in pain with the DRG trial because he was using high doses of opioids when the trial of the DRG stimulator was going on. Petitioner stated independently that the trial was not a success. Dr. Candido stated that because the trial was not a success that the permanent trial leads should have been explanted and he should have been declared at MMI with no additional care from that point forward. He believed all treatment to date had been reasonable and necessary, his ability to do one-handed work is unchanged and Dr. Candido opined that he can and does operate his own motor vehicle. Petitioner is at MMI and no additional care treatment is medically indicated or warranted. Dr. Candido goes on to suggest that the Boston Scientific SCS was nonfunctional and ought to have been explanted. But this wasn't performed for some reason and now he is left with another nonfunctional foreign body in his neck, that being the DRG stimulator. He opines further that rather than have him undergo any additional medical surgical care or treatment, he recommended that it should be left alone and not to manipulate that failed device. Further additional procedures and/or surgery or only likely to lead to potential consequences of an adverse nature for him and should not be undertaken. He should follow-up with his primary care physician for medication to manage his pain which he should be weaned off over the course of time. He should avoid any well-intentioned attempts at further intervention which by historical precedent are bound to fail as previous treatment has not helped including everything from blocks from Dr. Caner to a spinal and DRG stimulator. The photographs contained in the report reflect the severe atrophy of the left hand and fingers and the contracture of the Petitioners left hand.

Dr. Candido examined the Petitioner on January 26, 2021 for a fifth section 12 evaluation to determine whether Petitioner is a candidate for the Prialt intra-thecal injection and offered the following opinion:

> "Mr. Fernandez continues to express high levels of pain and dysfunction of the left hand and left arm. His pain can be 10/10 with activities, and his left hand is nonfunctional. He has edema and a severe contracture of the left hand and wrist. He has either CRPS type II of the left hand and wrist or a brachial plexopathy. I find that he has failed to derive even minimal benefit from use of several spinal cord (and DRG) stimulator devices. He hasn't responded to medical management. His condition is work-related as per the history and my prior opinions. He can work Light to Medium duty type work using the right hand only. He may benefit from vocational rehabilitation. He can lift to 25 lbs. using the right hand and right arm regularly. He can perform one-handed overhead work. He has no limitations for sitting, standing, or walking. He has expressed interest in considering an intrathecal drug delivery system using morphine. As he is not presently using opioids, however, it is unclear what advantage a morphine pump would afford him. It is not as though he has used opioids and has incurred opioid-related prohibitive side effects. In the first place, it is unclear whether his pain is opioid sensitive and responsive, or not. At the very least, he should undergo no less than six months of transdermal and/or oral use of opioids to determine whether or not he has satisfactory pain relief and control using that class of pharmacological agents before pursuing consideration of use of a morphine (or other opioid) pump. It simply has yet to be determined whether he is a candidate for consideration of opioid use via an intrathecal drug delivery system. It is a premature conclusion to proceed towards such a device and he should undergo a careful assessment

of opioid use before even rendering that as an option for him, in my opinion. He is otherwise at MMI for his condition. His treatment to date has all failed him. I do find that the treatment provided was reasonable and necessary and was consistent and related to his work-injury as described and as deduced by my review of the provided medical records.

On February 7, 2021, Dr. Candido provided an addendum report based upon his review of the surveillance reports and surveillance videos. Dr. Candido opines that the Petitioner was actively engaged in use of his right hand for moderate-to-heavy duty type of work including shoveling and pushing snow and moving a garbage can. He believed that the Petitioner could work at least a Medium Duty type work using the right arm and right hand only.

On March 26, 2021, Dr. Candido provided another addendum report at the request of Respondent. Dr. Candido opines that the diagnosis was the same, that being a nonfunctional left hand, either a severe brachial plexopathy or CRPS type II, a failed spinal cord stimulator as well as a DRG stimulator, and that the prognosis is guarded. Dr. Candido stated that Petitioner is a non-responder, has undergone multiple nerve blocks and 2 separate trials and permanent implant procedures for neurostimulator's. He noted that Petitioner told his treating physicians that these were somewhat beneficial however he denied it to Dr. Candido saying that they failed to help him. Dr. Candido believes this is inconsistent with the medical charting. Dr. Candido reported that Petitioner told him that nothing has helped him at all. Dr. Candido believes this is a problem as it means that he is a totally unreliable historian or that due to language constraints his treating physicians or even translators don't understand them. The simplest metric, his pain reporting, over four years of Dr. Candido seeing him, has never changed. Pain level was noted to be 5/10 at rest and 10/10 with activity. Furthermore he reported history of having hallucinations and he suffers from poorly treated but severe depression. Dr. Candido states he has expressed suicidal ideation and posttraumatic stress disorder. The drug Prialt, according to Dr. Candido, has a propensity to result in worsening suicidal ideation which is not a reasonable choice for him under those circumstances. He then also includes an article of increased risk of suicide under intrathecal Prialt treatment which essentially states that this treatment is contraindicated in patients with a history of psychosis. He again opines that he can return to restricted duty work with no use of the left arm, he has plateaued despite 4 years of advanced therapeutic interventions that he is at an end of treatment besides chronic medication consumption and monitoring in his opinion. Lastly, Dr. Candido believes he has not had effective relief with opioid medications therefore he is not a good candidate for a morphine pump.

CONCLUSIONS OF LAW

Regarding Issue (J) whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

The Respondent does not dispute treatment from Petitioner's date of accident through December of 2019. The dispute arises when, on January 2, 2020, Dr. Lubenow recommended an intrathecal pain pump with Prialt and on January 26, 2021 Dr. Candido disagreed with the need for the intrathecal pain pump and said Petitioner just needs oral or patch-delivered opioids. Further, there is dispute as to Respondent's liability for payment of medical expenses based upon

what was perceived as excessive visits to many different hospital emergency rooms for uncontrolled pain.

The parties have stipulated that Petitioner sustained an accidental injury that arose out of and in the course of his employment and that the Petitioner's current condition of ill-being is causally related to the accident of April 5, 2016. *Arbitrator's Exhibit 1*. Dr. Candido opined that although the course of the Petitioner's medical treatment had been reasonable, the Petitioner's use of the emergency department was for incident related pain which was uncontrolled as he no longer received any pain medicine and although Dr. Candido did not advocate seeking emergency medical treatment for this as he understood that there were times that Petitioner needed treatment for unremitting pain.

The Arbitrator believes Petitioner testified credibly. He has suffered a severe injury to his hand that has had a devastating impact on his life. He seemed very uncomfortable at trial but his answers to questions were straightforward. The Arbitrator notes the legitimate concern of Petitioner demonstrating "drug-seeking" behavior and that Petitioner has struggled to control his mental health difficulties. The fact remains Petitioner suffered a significant injury to his hand rendering his arm deformed, painful, and essentially useless. Petitioner was diagnosed with and continues to experience the affects of CRPS and chronic pain. The Arbitrator finds it reasonable that Petitioner vacillated on the level of relief he remembers experiencing over the past several years after several surgeries, injections, pain pumps, and opioid therapies he endured. It is not irrational or a mark against Petitioner's credibility that a Petitioner that suffered an injury that has caused chronic and intractible pain would do whatever he can to alleviate such pain. Petitioner's various doctors at various hospitals noted the severity of Petitioner's injuries and routinely provided the treatment he required.

Based upon the credible testimony of the Petitioner, the medical records from various medical providers and emergency rooms, the Arbitrator finds that Petitioner's medical treatment to date, including his visits to the emergency rooms, were reasonable, necessary, and causally related to Petitioner's accident. Respondent shall pay the unpaid balance of $68,760.24 (per Petitioner's Exhibit 22) in medical expenses under Section 8(a) of the Act and pursuant to the Illinois Fee Schedule. The Respondent will receive credit for any medical expenses already paid.

Regarding Issue (K) whether Petitioner is entitled to prospective medical care, the Arbitrator finds as follows:

It is the Commission's function, to choose between conflicting medical opinions. *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill.2d 1, 4, 31 Ill.Dec. 789 (1979); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225, 232 (1992). Not only may the Commission decide which medical view is to be accepted, it may attach greater weight to the opinion of the treating physician. Id.

The dispute as to prospective medical treatment under Section 8(a) is based upon the differing medical opinions between Dr. Timothy Lubenow, the Petitioner's treating physician and Dr. Kenneth Candido, the Respondent's section 12 physician. The parties stipulated that the Petitioner's current condition of ill-being is causally related to the accident of April 15, 2016. As a result of the petitioners ongoing pain related to his CRPS diagnosis, he came under the care of Dr. Lubenow on October 25, 2018. At that time, he had a failed spinal cord stimulator which was implanted by Dr. Konowitz. Petitioner had been struggling to control his pain with multiple visits

to hospital emergency rooms. Dr. Lubenow switched out the spinal cord stimulator and tried the DRG stimulator which was also unsuccessful. Petitioner's records show Petitioner experienced some degree of relief at times after the implantations, but it was short-lived. Most recently, Dr. Lubenow's proposal for controlling the petitioner's pain is the implantation of an intrathecal pain pump. The implantation process involves an initial trial period where a pain pump would administer Prialt directly into the central nervous system. If the trial is successful, then Dr. Lubenow would implant a permanent pump. Dr. Lubenow has stated that petitioner has exhausted all other forms of pain control. Petitioner testified that he desires to undergo this treatment because is hopeful that his life will improve. He cannot perform daily tasks due to his unmanageable pain.

Dr. Candido opined in his seventh report on March 26, 2021 that petitioner is not a candidate for this because of suicidal ideation and his depression. The medical records do not support that position. When he was under the care of Dr. Konowitz, the Beck Depression screening revealed that petitioner had no thoughts at all that he would be better off dead or any thoughts of him hurting himself in any way. There was no mention of any suicidal ideation during any of the psychological evaluations for the spinal cord stimulator or DRG stimulator. When evaluated by Patricia Cole at Shirley Ryan ability lab petitioner specifically denied any suicidal ideation intended or plan. Petitioner did state to Dr. Lubenow on June 5, 2019 when his pain was 8/10 that he felt like he would be better off dead. However, Dr. Lubenow specifically stated that petitioner denied any thoughts of hurting himself. Again, petitioner mentioned to Dr. Lubenow on January 20, 2020 that he had a poor quality of life and was very frustrated with his pain. Dr. Lubenow noted that petitioner had stated, "God just take me" and yet again, Dr. Lubenow specifically stated that petitioner did not have any active suicidal ideation/homicidal ideation and no intention to hurt himself or others. Petitioner was evaluated by a psychiatrist, Dr. Anwar, who on several occasions specifically noted that the petitioner denied any suicidal ideation or intent. Dr. Candido's opinion that the petitioner is not a candidate for the intrathecal pain pump because of his depression or suicidal thoughts is a not a persuasive reason to deny a potentially helpful course of treatment. It is clear that the Petitioner has issues related to depression, but these seem more directly related to his pain and the change in lifestyle his injury caused. It is plausible that if his pain can be controlled, his depression may be better addressed. Overall, the Arbitrator disagrees with Dr. Candido's characterization of Petitioner having suicidal ideation and believes his statements in the records are more suggestive of depressive histrionics than a desire for death or an interest in self-harm.

The other reason cited by Dr. Candido, that Petitioner doesn't respond well to opioids, is similarly unpersuasive. In five of his section 12 evaluations, Dr. Candido never expressed this opinion before, despite having reviewed all the records on several occasions. Furthermore, in his January 26, 2021 evaluation, he gave a different reason to deny the petitioner the intrathecal pain pump recommended by Dr. Lubenow stating that the petitioner at the very least should undergo no less than 6 months of trans-dermal and/or are all use of opioids to determine whether or not he would have satisfactory pain relief and control. He did not mention any suicidal thoughts at that time, nor did he mention any opinions about petitioner being a "non-responder". In fact, contrary to his recommendation about opioid treatment, every time the petitioner presented to an emergency room for pain control, he was provided with opioid medication which temporarily resolved his pain symptoms and allow him to be discharged. The Arbitrator finds Dr. Candido's opinions contradictory and unpersuasive.

Based upon the credible, unrebutted testimony of the Petitioner and the medical evidence in the record, the Arbitrator finds that the Petitioner is entitled to additional, reasonable, necessary, and prospective medical treatment and that Respondent shall authorize and pay for the intrathecal pain pump with Prialt medication as well as any associated medical treatment as recommended by Dr. Lubenow to address the petitioners ongoing condition of ill-being.

Regarding Issue (L) concerning what temporary disability benefits the Petitioner is entitled to, the Arbitrator finds as follows:

It is well-settled that when a claimant seeks TTD benefits, the dispositive inquiry is whether the claimant's condition has stabilized, i.e., whether the claimant has reached maximum medical improvement. *Westin Hotel v. Industrial Comm'n*, 372 Ill.App.3d 527, 542, 310 Ill.Dec. 18, 865 N.E.2d 342 (2007).

Following the Petitioners injury on April 15, 2016, the petitioner sought immediate medical treatment at Calumet Medical Center and has continuously followed up with his treating doctors. There is no dispute that the petitioner was off work from the date of the injury and has not returned to work. Dr. Konowitz and Dr. Lubenow have continually ordered the petitioner off work. Dr. Candido is of the opinion that the petitioner can return to right-handed work only as the petitioner essentially has a nonfunctional left upper extremity.

There is no evidence in the record that Respondent offered Petitioner a job within the restrictions set by Dr. Candido. There is a vocational assessment in evidence that opines that Petitioner is employable if he complies with vocational rehabilitation services, however, the Arbitrator notes that this is based on the vocational rehabilitation specialist using Dr. Candido's restrictions and not Dr. Konowitz's and Dr. Lubenow's sedentary duty restrictions based on a functional capacity evaluation. The Arbitrator does not find the vocational assessment based on Dr. Candido's restrictions to be persuasive.

Although Dr. Candido has opined that the petitioner is at maximum medical improvement, he further stated that having obtained maximum medical improvement did not mean that the petitioner was cured or healed. The Arbitrator again finds the opinions of Dr. Lubenow to carry more weight than those of Dr. Candido. Seeing that Dr. Lubenow has recommended ongoing treatment the Arbitrator finds that Petitioner has not reached maximum medical improvement.

Accordingly, the Arbitrator finds that the Petitioner is entitled to temporary total disability benefits in the amount of $490.34 per week for 278 4/7 weeks, commencing April 16, 2016 through August 18, 2021, pursuant to §8(a) of the Act. Respondent is entitled to receive a credit of $126,997.98 for TTD benefits already paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC003428
Case Name	Sandra Rojas v. M.B Strugis Fittings Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0153
Number of Pages of Decision	19
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Matthew Jones
Respondent Attorney	Jane Ryan

DATE FILED: 4/5/2023

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SANDRA ROJAS,

Petitioner,

vs. NO: 21 WC 3428

M.B. STURGIS FITTINGS, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, prospective medical treatment and benefits rate and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but makes a clarification as outlined below. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission affirms the decision of the Arbitrator, however clarifies the Findings section of the Arbitrator's Decision as follows:

The Commission clarifies the 6th finding to read: "In the year preceding the injury, Petitioner earned $17,281.55; the average weekly wage was $364.35."

The Commission clarifies the 7th finding to read: "On the date of the accident, Petitioner was 36 years of age, married with 1 dependent child."

Finally, the Commission corrects the minomer of Respondent's name from "M.B. Strugis" to "M.B. Sturgis" throughout the Arbitrator's Decision.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 2, 2022 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $2,800.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 5, 2023

/s/ *Maria E. Portela*

/s/ *Kathryn A. Doerries*

MEP/dmm
O: 22123
49

SPECIAL CONCURRING OPINION

This case was scheduled for Oral Argument on February 21, 2023, before a three-member panel of the Commission including members Maria E. Portela, Kathryn A. Doerries and Thomas J. Tyrrell, at which time Oral Arguments were either heard, waived or denied. Subsequent to Oral Arguments and prior to the departure of member Tyrrell on March 17, 2023, a majority of the panel members reached agreement as to the results set forth in this Decision and Opinion, as evidenced by the internal Decision worksheet initialed by the entire three-member panel. However, no formal written decision was signed and issued prior to member Tyrrell's departure.

I was not a member of the panel in question at the time Oral Arguments were heard, waived or denied, and I did not participate in the agreement reached by the majority in this case. However, I have reviewed the Decision worksheet, which shows that former member Tyrrell voted with the majority in this case, and have reviewed the provisions of the Supreme Court in Zeigler v. Industrial Commission, 51 Ill.2d 137, 281 N.E.2d 342 (1972), which authorizes signature of a Decision by a member of the Commission who did not participate in the Decision. Accordingly, I am signing this Decision in order that it may issue.

/s/ *Deborah J. Baker*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC003428
Case Name	ROJAS, SANDRA v. M.B. STRUGIS FITTINGS, INC.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Adam Rosner
Respondent Attorney	Jane Ryan

DATE FILED: 2/2/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 1, 2022 0.50%

/s/Frank Soto, Arbitrator

Signature

STATE OF ILLINOIS)	☐ Injured Workers' Benefit Fund (§4(d))
) SS	☐ Rate Adjustment Fund (§8(g))
COUNTY OF GENEVA)	☐ Second Injury Fund (§8(e)18)
	☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Sandra Rojas
Employee/Petitioner

v.

M.B. Strugis Fittings, Inc.
Employer/Respondent

Case # **21** WC **003428**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Frank Soto**, Arbitrator of the Commission, in the city of **Geneva**, on **December 16, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. ☐ Was there an employee-employer relationship?

C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to Respondent?

F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?

G. ☐ What were Petitioner's earnings?

H. ☒ What was Petitioner's age at the time of the accident?

I. ☒ What was Petitioner's marital status at the time of the accident?

J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

K. ☒ Is Petitioner entitled to any prospective medical care?

L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD

M. ☐ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☐ Other

FINDINGS

On the date of accident, **January 19, 2021**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $; the average weekly wage was $**364.35**.

On the date of accident, Petitioner was **36** years of age, with **1** dependent children.

Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $6,924.55 for TTD, $**0** for TPD, $**0** for maintenance, and **$0** for medical, and **$0** for other benefits, for a total credit of $6,924.55**.**

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Temporary Total Disability

By agreement of the parties, the issue of whether Petitioner is due TTD benefits was reserved.

Medical Benefits

Respondent shall pay Advocate Sherman Hospital the sum of $2,577.20 and Midwest Plastic Surgery Specialists the sum of $100.00, pursuant to Sections 8.2 and 8(a) of the Act, subject to the fee schedule, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Prospective Medical

Respondent to pay the right index finger surgery with capsular release of the PIP joint release procedure recommended by recommended by Dr. Thors including any reasonable pre-procedure examination and testing as well as reasonable ancillary follow up care, pursuant to Section 8.2 and 8(a) of the Act, subject to fee schedule, as set forth in the Conclusions of Law attached hereto and incorporated herein;

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

By: /o/ *Frank J. Soto* **FEBRUARY 2, 2022**

Arbitrator

Procedural History

This case proceeded to trial pursuant to Sections 19(b) and 8(a) of the Act. The disputed issues are: (1) whether Petitioner's current condition of ill-being is causally connected to her injury, (2) whether Petitioner is 36 years old, married with one child, (3) whether Respondent is liable to unpaid medical bills and whether Petitioner is entitled to prospective medical care. (Arb. Ex. 1).

On the eve of trial, Respondent was advised Petitioner started working. Petitioner's employment was terminated due to Respondent's inability to accommodate Petitioner's work restrictions. Respondent made an oral motion to continue the trial so Respondent could subpoena information involving Petitioner's new employment. Respondent also objected to the trial alleging Respondent is being denied the opportunity to subpoena information regarding Petitioner's employment in the hope the information could provide additional information to bolster Respondent's previously secured Section 12 opinions. Respondent's Section 12 examiner opined Petitioner was at MMI, did not require additional medical treatment and that Petitioner could return to work in her previous occupation as a machine operator. (Rx 1 & 2).

Based upon Petitioner recently obtaining employment, Petitioner withdrew her request for TTD benefits reserving the issue for a subsequent hearing. (T. 12).

After balancing the rights of the parties and any prejudice that may be created by proceeding to trial, the Arbitrator denied Respondent's oral motion to continue the trial. The Arbitrator noted Petitioner withdrew her request for TTD benefits reserving the issue for a later proceeding which would allow Respondent the ability to obtain information regarding Petitioner's new employment. The Arbitrator also noted the Act doesn't allow discovery and Respondent was seeking to delay the trial for purpose of purpose of potentially bolstering the opinions of their Section 12 examiner. The Arbitrator found Petitioner's right to proceed under to trial pursuant to Section 19(b) and 8(a) seeking recommended surgery outweighs Respondent's right, if any, to secure additional information to hope that new information may bolster the Section 12 examiner's previously secured opinions. The Act is a remedial statute, which should be liberal construed to effectuate its main purpose of providing financial protection for injured workers. *Interstate Scaffolding, Inc. V. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 149 (2010).

After denying Respondent's motion to continue the trial, the Arbitrator reminded the parties they could request a bifurcation of the trial depending upon the nature the testimony elicited at trial. At the conclusion of the trial, Respondent made an oral motion to bifurcate the trial based upon the same basis Respondent articulated at the onset of the trial. The Arbitrator concluded based upon the trial testimony a bifurcation was not warrant and denied the request.

Findings of Fact

Sandra Rojas (hereafter referred to as "Petitioner") testified she started employment with her current employer, Paramount Colors, on October 4, 2021. (T. 19). Petitioner testified prior to working for Paramount Colors, she worked for M.B. Strugis Fittings, Inc. (hereafter referred to as "Respondent") from 2019 until January of 2021. Petitioner testified Respondent is a company dedicated to fabricating parts for hoses and gas valves. (T. 19-20). Petitioner testified she worked as a machine operator, shipping, receiving, and in caliper (quality control). (T. 20).

Petitioner testified she worked as a machine operator for six to seven hours a day spending the rest of the day in shipping and quality control. Petitioner testified, on January 19, 2021, she was working on a machine that makes an orifice for valves. Petitioner testified the machine did not have a stop button. (T. 22). Petitioner testified she had to use a cable to get the machine to work. Petitioner testified some smaller pieces got stuck in the machine, so she went to grab the pieces when her hand was clamped on by the part of the machine that makes the orifices. (T. 23-24). Petitioner testified the orifice part which clamped on her hand was sharp. (T. 24). Petitioner testified her hand was stuck clamped down in the machine for three to four minutes before being able to turn the machine off. (T. 24).

Petitioner testified after she turned off the machine, she notified her supervisor. Petitioner testified she was wearing gloves at the time of the accident and that her right index finger was injured by the machine. (T. 24-25). Petitioner testified when she took off her gloves her right index finger was cut up and "a piece of flesh" was hanging off. (T. 25). Petitioner testified immediately following accident, her right index finger was in pain and "cold." Petitioner testified when she went to her supervisor, her finger was bleeding so her supervisor took her to the hospital. (T. 27-28).

On January 19, 2021, Petitioner presented to Dr. Sajid at Advocate Sherman Occupational Health. (Px. 4). On physical examination, Dr. Sajid noted a right finger laceration measuring almost 2.5cm located on the middle of the phalanx, 0.5cm laceration in the distal phalanx, and

limited range of motion in the index finger. Dr. Sajid applied sutures, administered a tetanus shot, and placed Petitioner on no work with the right-hand restrictions. Petitioner followed up with Dr. Sajid on January 21, 2021 and January 27, 2021. (Px. 4).

On January 27, 2021, Dr. Sajid removed Petitioner's sutures and continued Petitioner's work restrictions until she was cleared by an orthopedic specialist. On January 27, 2021, Petitioner presented to Dr. Thors at Midwest Plastic Surgery Specialists with numbness of the distal half of the volar aspect of the finger and also the dorsum of the finger. (Px 1). On physical examination, Dr. Thors noted Petitioner's right index finger was cold to touch and pale. Dr. Thors recommended an exploration of the index finger to evaluate for injury of nerves or vasculature. (Px. 1).

On January 29, 2021, Petitioner presented to Dr. Wiesman with no sensation and no movement past the MP joint of the right index finger. (Px 3). On physical examination of the right index finger, Dr. Wiesman noted no sensation on the both the volar or dorsal aspect of the finger and no range of motion of the MP joint, PIP, or DIP joints. As with Dr. Thors, Dr. Wiesman also recommended an exploration surgery with nerve and tendon repair of the right index finger and kept Petitioner off work. (Px. 3).

On February 2, 2021, Dr. Thors performed the exploration surgery of Petitioner's right index finger and found intact digital nerves right index finger. (Px 1). Petitioner followed up with Dr. Thors on February 8, 2021 reporting numbness distal on both sides of the right index finger and pain at the site of the injury. Dr. Thors recommended right hand therapy and placed Petitioner off work. (Px 2). Petitioner attended therapy from February of 2021 through June of 2021. (T. 32-33). Petitioner was discharged from therapy after twenty-four visits which she attended at Advocate Medical Group. (Px 1, Px 2).

Petitioner followed up with Dr. Thors on February 15, 2021 reporting diminished perfusion of her right index finger with no improvement in sensation distal to the level of injury. (Px 2). Dr. Thors continued Petitioner's off work restrictions. On March 5, 2021, Petitioner returned to Dr. Thors reporting numbness distal to the injury at the right index finger. Dr. Thors continued Petitioner's off work restrictions and recommended an MRI of the right hand to assess soft tissue structures of the right index finger. (Px 2).

On March 24, 2021, Petitioner underwent the MRI of the right hand at Brightlight Medical Imaging with Dr. Mendi who indicated the MRI showed subcutaneous soft tissue swelling along

the volar aspect of the 2nd finger with adjacent mild tenosynovitis involving the flexor tendon, no MR abnormality is detected along the digital nerves.

Following the MRI, Petitioner returned Dr. Thors on April 5, 2021 reporting pain in the right index finger and stiffness. At this visit, Dr. Thors reviewed the MRI report and noted mild tenosynovitis palmar finger, no injury to the digital nerves of finger observed. Dr. Thors recommended Petitioner continue with hand therapy and return Petitioner to work with restrictions. On April 26, 2021, Petitioner followed up with Dr. Thors. The exam stiffness in DIP and PIP joint and numbness distal the PIP joint on both the palmar and dorsal aspect of the index finger, pain over the proximal phalanx with passive flexion of the PIP joint and radiating pain to dorsolateral elbow with full arm extension and stretching. Dr. Thors noted he discussed the MRI with the reading radiologist which indicated no evidence for tendon injury or neurovascular transection but was evidence of inflammation at the site of injury in the soft tissue. Dr. Thors assessed Petitioner with neuropraxia and probable axonotmesis of digital nerves, recommended an EMG and took Petitioner off work. (Px 2).

On June 2, 2021, Petitioner underwent the EMG of her right upper extremity at DuPage Medical Group with Dr. Ghumra who indicated the EMG was an abnormal with evidence of median branch neuropraxia affecting the 2nd digit and no evidence of acute or chronic denervation of the upper extremity. (Px 6).

On June 2, 2021, Petitioner underwent a Section 12 examination with Dr. Birman. (Rx 1). Petitioner reported numbness at the tip of the right index finger, lost strength in the hand, and pain sometimes radiating proximally int her right upper extremity. On physical examination, Dr. Birman noted a healed laceration of the right index finger, midline scar having thickness distal to the PIP joint, tender dorsally over the metacarpophalangeal joint, PIP joint, and at the A1 pulley of the right index finger. Dr. Birman also noted limited range of motion of the right index finger. Dr. Birman assessed Petitioner with a right index finger laceration and crush injury, right index finger radial and ulnar digital nerve neuropraxia, and right index finger stiffness. Dr. Birman opined that Petitioner may have residual neuropraxia but that her digital nerves were intact based on the initial exploration surgery and the MRI of the right hand. Dr. Birman opined that Petitioner could return to work on a full duty trial basis and placed Petitioner at maximum medical improvement. (Rx 1).

On June 7, 2021, Petitioner followed up with Dr. Thors reporting numbness distal to the PIP joint, pain with pressure at the level of injury, and flexion deficit/stiffness at the PIP joint. Dr. Thors reviewed the EMG report and noted it showed neuropraxia of the right index finger. At this visit, Dr. Thors recommended another exploration surgery of the right index finger with neurolysis of digital nerves, capsular release of the PIP joint and placed Petitioner on work restrictions. (Px 2).

On August 23, 2021, Petitioner returned to Dr. Thors whose examination showed sensory numbness from PIP joint to tip of finger both on dorsum and palmar aspect of the right index finger, PIP joint relatively stiff in extension and limited flexion, and limited flexion at the PIP and DIP joints. Dr. Thors also noted complaints of radiating pain into the distal palm and up and up the dorsum of the radial hand and radial forearm with the skin being smooth and glossy on the palmar aspect distal to the injury. (Px 2).

At trial, Petitioner testified during her treatment, she did not have feeling in half of her finger and that she had difficulty grabbing things. (T 31). Petitioner testified when Dr. Thors placed her on light duty work restrictions after April 5, 2021, Respondent was unable to accommodate her restrictions. (T. 34). Petitioner testified her new employer, Paramount Colors, was able to accommodate her restrictions. (T. 35-36).

Petitioner testified she has difficulty using her right hand to write with a pen and uses the fingers other than her right index finger on the right hand. (T. 37). Petitioner testified she wishes to proceed with the surgery recommended by Dr. Thors. (T. 40). Petitioner testified she still has pain and no feeling in the front and back area of her right index finger. Petitioner testified she has a five-year-old son and her finger affects her ability to play with him. (T. 41). Petitioner testified her right finger condition affects her ability to cook, wash, clean, and grab things. (T. 41-42). Petitioner testified prior to the accident she had no issues with her right index finger. (T. 42). Petitioner testified she has not seen a physician since her last visit with Dr. Thors on August 23, 2021. (T. 58). Petitioner testified she did not work anywhere from April of 2021 when she was placed on work restrictions until her new employment in October of 2021 as she could not find employment. (T. 62-63).

Petitioner testified to her son's birth certificate which shows her son was born on November 5, 2016. (T. 8, 43). Petitioner testified to her marriage certificate which shows she was

married to Julio Caesar Reynoso on August 3, 2013. (Px 9, T. 43). Petitioner testified her divorce was completed on November 4, 2021. (T. 43).

On cross-examination, Petitioner testified she believed she started work in early 2020. (T. 45-46). Petitioner testified she has a blood issue related to cancer. (T. 48). Petitioner testified that the x-ray performed at Advocate Sherman on the date of the accident showed no fracture. (T. 49). After being shown Petitioner's initial intake paperwork for Midwest Plastic Surgery Specialists, Petitioner testified she filled out single as she was in the process of securing her divorce at that time. (T. 50). Petitioner testified she was unsure if she should still had to put down since she was still married but going through a divorce. (T. 51).

The Arbitrator found the Petitioner's testimony to be credible.

Testimony of Dr. Gunnar Thors

On September 21, 2021, Dr. Thors testified to the opinions contained in his medical records and treatment of Petitioner. (Px 7). Dr. Thors testified his initial physical examination of Petitioner occurred on January 27, 2021 and, at that time, he noted Petitioner's right index finger being cold to touch and pale meaning that there could be a vascular injury or injury to the blood vessels that supply the finger. Dr. Thors testified the numbness of Petitioner's right index finger signified that Petitioner may have an injury to the nerves of the fingertip. Dr. Thors testified Petitioner's injury coupled with his physical examination required the exploration surgery that was performed on February 2, 2021 and testified the surgery showed:

> "[t]o me that signified that she may have had a neurapraxia, which is basically nerves intact, but potentially the injury could have caused injury to the nerve vesicles inside the sheath, and that would disrupt the sensory impulses going through. So you have the sheath intact, but the vesicles that carry the information on the inside may have been either apart or crushed to a lesser extent where they would possibly recover fairly quickly." (Px. 7, pgs. 11-12)
> .

Dr. Thors testified the numbness following the surgery can be explained by the nerve fibers inside the nerve sheath being apart or temporarily disabled. Dr. Thors testified there was no surgical intervention being recommended at the February 8, 2021 visit. Dr. Thors testified moving forward with Petitioner's treatment, he recommended therapy. Dr. Thors testified he continued to treat Petitioner through February and March of 2021 with Petitioner continuing to have numbness Id. Dr. Thors testified regarding the significance of Petitioner still having numbness over two months after surgery stating:

> ". . . certainly nerves can take some time to recover. It could take up to three, four months to see some improvement. And generally you would see marching of sensation past the injury; in other words, you can see recovery of regeneration maybe one centimeter per month or so. And I wouldn't be seeing anything at that time. It didn't seem to be marching forward or distal towards the tip of the finger. So I was concerned, and I thought maybe getting an MRI of the hand just to take a look. . . in terms of the nerves in particular." (Px. 7, pg. 16).

Dr. Thors testified he reviewed the MRI report of the right hand and discussed the results with the reading radiologist, which indicated no transection of the nerves. Dr. Thors testified the MRI correlated with his February of 2021 exploration surgery. Dr. Thors testified to his continuing treatment of Petitioner and his records. Dr. Thors testified that during his April of 2021 visit, he was not seeing any improvement or recovery of the sensory nerve function with Petitioner. Dr. Thors testified it is uncommon to see no improvement of the nerves within three months of the date of the accident. Dr. Thors testified he eventually diagnosed Petitioner with neurapraxia, which means that the "nerve asleep, and maybe that the fibers inside the sheath had been severed due to the crush injury and haven't recovered." (Px 7, pg. 22). Dr. Thors testified he eventually recommended Petitioner undergo an EMG to determine if there were no signals coming across the site of the injury.

Dr. Thors testified the EMG showed neuropraxia of the right index finger. (Px. 7, pg. 24). Dr. Thors testified on his June 7, 2021 visit, he recommended a second exploration surgery of the right index finger to see if there was any "*potential scar formation, encroachment, impingement on the nerve neurovascular bundle that might be released . . . .*" (Px. 7, pg. 25). Dr. Thors did testify the surgery was a "*shot in the dark*" but indicated "*that was the only thing I could offer is to go back and see if one can maybe during the healing there is some scarring that exacerbated the original injury.*" (Px. 7, pg. 25). When explaining why he was recommending the second exploration surgery after it was initially found to have no nerve transection in the first exploration surgery, Dr. Thors testified:

> ". . . then standard of care would be to allow the nerve to recover and regenerate in its own way. If it's apart, then you put it together. And I wouldn't expect it to be apart, but maybe there was some compression in the nerve that kept it in a compressed state, you know, maybe from scarring, and I wanted to see if I could reduce that.". (Px. 7, pg. 27).

Dr. Thors testified there was nothing else other than the second exploration surgery to recommend for Petitioner. Dr. Thors testified the capsular release of the PIP joint being recommended was to incise the capsule to release it so Petitioner could have range of motion. (Px. 7, pg. 28). Dr. Thors testified Petitioner's prognosis if she does not undergo the surgery is not good and that she may continue to have numbness, stiffness, and pain with range of motion. Dr. Thors testified he last saw Petitioner on August 23, 2021 and that he continued to recommend the second exploration surgery with a capsular release of the PIP joint. (Px. 7, pgs. 31-32). Dr. Thors testified Petitioner work accident on January 19, 2021 was causally related to her current condition. (Px. 7, pg. 33). Dr. Thors testified Petitioner's treatment had been reasonable and necessary as it relates to her condition. (Px. 7, pg. 34).

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706, 714 (Ill. App. 5th Dist. 1992).

With Respect to Issue (F), Whether the Petitioner's Current Condition of Ill-being is Causally Related to the Injury, the Arbitrator Finds as follows:

The Arbitrator has carefully reviewed and considered all medical evidence along with all testimony. The Arbitrator concludes Petitioner has proven by the preponderance of the credible evidence that her current right finger condition is causally related to her work accident of January 19, 2021 as set forth more fully below.

As stated above, the Arbitrator found Petitioner's testimony credible. The Arbitrator also finds the opinions of Dr. Thors to be more persuasive than the opinions of Dr. Birman. As Petitioner testified and as the medical records indicate, her right hand was crushed and stuck for a period of time at a machine with sharp edges. Petitioner testified she took off her glove and her right index finger was bleeding.

At that time, Petitioner's supervisor took her to Advocate Sherman Occupational Health where she was diagnosed with a right index finger laceration and sutures were applied. Petitioner was placed on work restrictions and continued following up with Advocate Sherman Occupational Health. Petitioner presented to Dr. Thors on January 27, 2021 with numbness and coldness to her right index finger. At that time, Dr. Thors recommended an exploration surgery of Petitioner's

right index finger. Petitioner also saw Dr. Wiesman, on January 29, 2021, who also recommended the same exploration surgery. Petitioner underwent the exploration surgery on February 2, 2021 which showed intact digital nerves. Petitioner continued treatment with Dr. Thors until August of 2021 reporting the same complaints of numbness, coldness, and limited range of motion in the right index finger. Petitioner underwent a right-hand MRI on March 24, 2021, which showed soft tissue swelling, but intact digital nerves. Petitioner also underwent an EMG on June 2, 2021 which was abnormal showing neuropraxia. Additionally, Petitioner underwent four months of physical therapy but continued to have numbness, coldness, and limited range of motion. Based upon Petitioner's continuing symptoms, examination findings and EMG Dr. Thors recommended a second exploration surgery with a capsular release of the PIP joint.

Dr. Thors testified Petitioner's initial exploration surgery of the right index finger showed intact nerves. Dr. Thors explained even though the nerves are intact, the "vesicles" within the nerve or sheath could be pulling apart and that's what's causing Petitioner's symptoms. Dr. Birman admitted that the MRI would not adequately assess the digital nerves.

Dr. Thors saw Petitioner seven months post exploration surgery. During that treatment, Dr. Thors consistently noted numbness, coldness, and limited range of motion in the right index finger. Further, Dr. Thors testified he used an objective pinprick test, which practically breaks Petitioner's skin with a needle, in which Petitioner had no reaction, meaning that Petitioner lost sensation in that part of her index finger. Dr. Thors testified the only option, at this time, is a second exploration surgery with capsular release of the PIP joint to potentially alleviate Petitioner's symptoms. Dr. Thors testified as the nerves begin to heal scar tissue builds up and the second exploration surgery would show that Petitioner has built up scare tissue.

Petitioner continues to experience subjective complaints of numbness to her right index finger and positive physical examination findings. Dr. Thors opined that Petitioner's work accident of crushing and lacerating her right index finger is the cause of Petitioner's current condition. Petitioner testified that she had no issues with her right index finger prior to the accident. Further, no medical records were submitted into evidence showing Petitioner had any issues with her right index finger prior to the accident.

With Respect to Issues (G and H), Petitioner age and marital status at the time of the accident, the Arbitrator Finds as follows:

Petitioner's medical records indicate her birth date is December 4, 1984. (Px 1). As such, Petitioner was 36 years old on January 19, 2021. Petitioner testified at the time of the accident she was married with one dependent child. At trial, Petitioner presented a marriage certificate showing she was married to Julio Caesar Reynoso on August 3, 2013. (Px 9). Petitioner admitted she filled out "single" on Dr. Thors' initial intake because she was in the process of obtaining a divorce. Petitioner testified she was married on the date of the accident and was not yet divorced. Petitioner also presented her son's birth certificate showing he was born November 5, 2016. (Px 8). As such, the Arbitrator also finds Petitioner was married with one dependent child on January 19, 2021.

With Respect to Issue (J), Whether Respondent is liable for Medical Expenses, the Arbitrator Finds as Follows:

Section 8(a) of the Act states a Respondent is responsible "…*for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury*…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See *Gallentine v. Industrial Comm'n*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

The Arbitrator finds Petitioner proved by the preponderance of the evidence the medical treatment for the treatment rendered necessary and the expenses reasonable to cure and alleviate her condition. As such, Respondent shall pay, pursuant to Sections 8.2 and (a) of the Act, subject to the fee schedule, Advocate Sherman Hospital the sum of $2,577.20 and Midwest Plastic Surgery Specialist the sum of $100.00. (See Arb. Ex. 1, Px. 5, Px. 1 and 2).

As stated above, the Arbitrator found the opinions of Dr. Thors persuasive. Dr. Thors was Petitioner's treating physician who examined Petitioner on numerous occasions and was well equipped to assess, diagnose treat Petitioner. Dr. Birman, who performed the Section 12 examination, who agreed the initial exploration surgery of the right index finger. However, Dr. Birman only examined Petitioner on one occasion. Dr. Birman reviewed additional medical records and authored an addendum report but he never reexamined Petitioner. Without an additional examination, Dr. Birman was unable to question Petitioner regarding her current

symptoms and how her current symptoms adversely impact her daily life. Dr. Birman opines Petitioner reached MMI, could return to work and that no additional medical treatment is warranted based upon his interpretation of Petitioner's medical records without the benefit of his own examination. The Arbitrator finds Dr. Birman's opinions are based, in part, upon speculation and/or surmise. It is axiomatic that the weight accorded and expert opinion is measured by the facts supporting it and the reasons given for it; an expert opinion cannot be based on guess, surmise, or conjecture. *Wilfert v. Retirement Board*, 318 Ill.App.3d 507, 514-15 (First Dist. 2000).

With Respect to Issue (K), Prospective Medical Treatment, the Arbitrator Finds as Follows:

Section 8(a) of the Act entitles a claimant to compensation for all necessary medical, surgical and hospital services "thereafter incurred" that are reasonably required to cure or relieve the effects of injury. Procedures or treatment that have been prescribed by a medical service provider are "incurred" within the meaning of the statute, even if they have not yet been paid. *Plantation Mfg. Co. v. Industrial Comm'n*, 294 Ill.App.3d 705, 710 (Ill. App. 2nd Dist. 1997).

Petitioner seeks prospective medical care consisting of a right index finger exploration with capsular release of the PIP joint recommended by Dr. Thors. Petitioner attempted all conservative treatment available to her including hand therapy. As Petitioner's condition progressively worsened even following the initial exploration surgery, Dr. Thors recommended a right index finger exploration with capsular release of the PIP joint surgery. Dr. Thors indicated the several months of following the accident could have created scar tissue buildup that may have not been present at the initial exploration surgery. Further, Dr. Thors indicated the capsular release of the PIP joint would help improve Petitioner's range of motion. Dr. Thors' opinions regarding Petitioner's prognosis with the surgery coupled with Petitioner's consistent subjective complaints and positive physical examination findings, factored into Dr. Thors' recommendation for a second exploration surgery with capsular release.

The Arbitrator finds Petitioner proved by the preponderance of the evidence that she is entitled to prospective medical treatment consisting of right index finger exploration with capsular release of the PIP joint recommended by Dr. Thors. The Arbitrator finds the recommended surgery reasonable and necessary to cure or relive Petitioner from the effects of

her injury. As such, Respondent shall pay, pursuant to Sections 8.2 and 8(a) of the Act, subject to the fee schedule, the right index finger exploration with capsular release of the PIP joint recommended by Dr. Thors in addition to reasonable pre-procedure examinations and/or testing as well as reasonable ancillary and/or follow up care.

By: /o/ Frank J. Soto — February 2, 2022

Arbitrator — Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC011144
Case Name	Carmella Sorice v. City of Chicago
Consolidated Cases	14WC022701;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0154
Number of Pages of Decision	16
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Crystal Figueroa
Respondent Attorney	Lucy Huang

DATE FILED: 4/7/2023

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CARMELLA SORICE,

Petitioner,

vs. NO: 14 WC 11144

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's current neck and left shoulder conditions are causally related to the December 19, 2013 work accident, entitlement to temporary disability benefits, and the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. This case was consolidated for hearing with case number 14 WC 22701.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 12, 2022 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $902.71 per week for a period of 208 1/7 weeks, representing December 20, 2013 through December 15, 2017, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $1,513.12 for medical expenses, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $721.66 per week for a period of 325 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused a 65% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Under Section 19(f)(2), no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 7, 2023

/s/ *Deborah J. Baker*

DJB/lyc

O: 3/8/23

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC011144
Case Name	SORICE, CARMELLA v. CITY OF CHICAGO
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Haris Huskic
Respondent Attorney	Lucy Huang

DATE FILED: 5/12/2022

THE INTEREST RATE FOR THE WEEK OF MAY 10, 2022 1.38%

/s/Elaine Llerena, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **COOK**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Carmella Sorice
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **14** WC **011144**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **March 23, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **December 19, 2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**70,408.00**; the average weekly wage was $**1,354.00**.

On the date of accident, Petitioner was **63** years of age, ***single*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**118,383.97** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**118,383.97**.

Respondent is entitled to a credit of $**613.45** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $902.71 per week for 208-1/7 weeks, commencing December 20, 2013, through December 15, 2017, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $1,513.12, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $721.66 per week for 325 weeks, because the injuries sustained caused the 65% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Elaine Llerena
Signature of Arbitrator

MAY 12, 2022

STATEMENT OF FACTS

Petitioner testified that she was employed by Respondent on December 19, 2013. (T.23) Petitioner testified that worked as a motor truck driver. (T. 11) Petitioner would drive Respondent's garbage trucks. *Id.* To get into the garbage truck, Petitioner would have to climb onto a step to get inside. *Id.* To operate the truck, Petitioner was required to have a valid CDL. (T.12) Petitioner worked 40 hours on average, except for holidays. (T.13)

On December 19, 2013, Petitioner was 63 years of age and had been employed by Respondent since November of 2005. (T.10)

Petitioner testified that on December 19, 2013, while climbing back into the garbage truck and holding the handlebar with her left hand, she slipped and pulled her left shoulder area, causing pain from the left hand up to the neck area. (T.23)

Immediately after the accident, Petitioner sought treatment at Mercyworks Occupational Medicine complaining of left arm, shoulder, upper back, and neck pain. (PX1) Petitioner underwent x-rays of her cervical spine and left shoulder and Dr. Anderson diagnosed Petitioner with a cervical spine strain, left shoulder strain and left arm strain. *Id.* Dr. Anderson also prescribed Ibuprofen 800mg, Flexeril and ordered Petitioner to remain off work. *Id.*

On December 23, 2013, Petitioner followed up with Dr. Anderson complaining of severe neck pain, left greater than right, going down to the left arm to the left thumb, index, and middle finger. *Id.* Petitioner also complained of low back pain, left greater than right with occasional pain into left anterior thigh. *Id.* Dr. Anderson continued Petitioner's pain medications and referred Petitioner for physical therapy. *Id.* Dr. Anderson kept Petitioner off work. *Id.*

Petitioner continued to follow up with Dr. Anderson. (PX1) On January 21, 2014, noted Petitioner's ongoing pain complaints and ordered an MRI of the cervical spine. *Id.*

The cervical spine MRI, taken on January 20, 2014, revealed multilevel moderate spondylotic change, most notable from C5-6 through C7-T1; multifactorial spinal stenosis in the mid to lower cervical spine, most severe at C6-7; multilevel moderate to severe foraminal stenosis; and partially visualized prominence of the lateral ventricles. *Id.*

Petitioner followed up with Dr. Anderson on February 4, 2014, and reported that her cervical spine symptoms and radiation down the arm remained the same. *Id.* Dr. Anderson reviewed the cervical spine MRI and noted that it revealed multi-level moderate spondylitic changes with disc osteophyte complexes with foraminal and spinal canal stenosis. *Id.* Dr. Anderson referred Petitioner to a neurosurgeon, Dr. Keith Schiable, kept Petitioner off work and discharged Petitioner from his care. *Id.*

Petitioner saw Dr. Schiable on February 6, 2014. (PX4) Dr. Schiable reviewed the diagnostic images and discussed several treatment options with Petitioner, including additional therapy, epidural injections, or possible surgical intervention. *Id.*

On March 12, 2014, Petitioner underwent a lumbar spine MRI, the results of which showed post-operative changes of right hemilaminectomy at L4-5 and L5-S1; multilevel disc bulging and facet arthrosis; multilevel foraminal stenosis; and mild central stenosis at L2-3 and L3-4. *Id.* Petitioner also underwent a brain MRI that day which revealed hydrocephalus, moderate to severe in degree. *Id.*

On March 18, 2014, Dr. Schiable ordered an EMG and additional physical therapy. *Id.* On April 8, 2014, Petitioner returned to see Dr. Schiable and reported continued symptoms of neck pain, pain in the extremities, pain in the back, pain down the legs, numbness in the arms, numbness in the hands, pain extended down into the feet, numbness at times and sometimes burning. *Id.* Dr. Schiable recommended pain management treatment. *Id.*

On April 30, 2014, Petitioner presented to Little Company of Mary Hospital complaining of numbness on the left side of her face and in both legs and arms since starting therapy. (PX5) Later that day, Petitioner was admitted into Advocate Christ Medical Center due to complaints of facial numbness and left sided pain. (PX6) Petitioner remained at Advocate Christ from April 30, 2014, through May 4, 2014. *Id.* Petitioner underwent an MRI of the brain and cervical spine and an EMG on May 2, 2014. *Id.* The EMG revealed bilateral cervical nerve root irritation and electrodiagnostic evidence for a sensory, motor, mixed peripheral polyneuropathy in the lower extremities. *Id.* Petitioner was diagnosed as having sensory motor, mixed peripheral polyneuropathy, lower extremities; cervical nerve root irritation; hyperlipidemia; osteoarthristic; cervical spine stenosis; and chronic low back pain. *Id.*

On May 22, 2014, Petitioner followed up with Dr. Schiable who recommended that Petitioner proceed with an epidural injection for the cervical stenosis. (PX4)

On August 27, 2014, Petitioner saw Dr. Richard Lim out of Midwest Orthopaedic Consultants complaining of cervical spine pain with numbness and tingling and weakness in her upper extremities and hands bilaterally, left worse than right. (PX7) Dr. Lim diagnosed Petitioner with cervical stenosis and recommended an anterior cervical discectomy and fusion at C5-C6 and C6-C7. *Id.*

On September 10, 2014, Petitioner underwent another MRI of the cervical spine which revealed cervical spondylosis and spondylolisthesis changes; multilevel spinal stenosis, most marked at C6-C7 where there is spinal cord compression; slight cord indentation noted at C5-C6; and multilevel spinal and neural foraminal stenosis. *Id.*

On September 18, 2014, Dr. Lim performed an anterior cervical discectomy and fusion at C5-6 and C6-7. *Id.*

Petitioner followed up with Dr. Lim on September 26, 2014. Id. Petitioner reported that a lot of her pre-surgery symptoms had went away. *Id* Dr. Lim ordered physical therapy and kept Petitioner off work. *Id.*

On October 10, 2014, Petitioner started physical therapy at Select Physical Therapy/NovaCare Rehabilitation. (PX9) Petitioner followed up with Dr. Lim on October 24, 2014, and reported having tingling in her hands and feet and having an episode where she felt as though she needed to go to the bathroom right away unless she would have an accident. (PX7) Dr. Lim recommended that she continue with therapy and get repeat diagnostic exams. *Id.* On November 25, 2014, Dr. Lim referred Petitioner to Dr. Victor, a neurologist, to evaluate for symptoms that may have been associated with hydrocephalus. *Id.* On December 9, 2014, Petitioner was seen by Dr. Irabagon complaining of soreness in her hands and a tingling sensation in her feet. (PX4)

Petitioner followed up with Dr. Lim on December 23, 2014, and reported numbness and tingling in her legs daily. (PX7) Petitioner also reported having bowel and bladder issues where she would feel a fullness like she had to go to the bathroom and noticed that her underwear would be damp from time to time. *Id.* Dr. Lim recommended that she follow up with a urologist and neurologist to address those issues. *Id.*

On January 19, 2015, Petitioner presented to Dr. Jae Kim out of Associated Urological Specialists, LLC for an evaluation of urinary and fecal incontinence. (PX10) Petitioner reported having intermittent fecal urgency and incontinence. *Id.* Dr. Kim recommended that Petitioner undergo urodynamic evaluation for further functional evaluation of her lower urinary tract. *Id.*

On January 20, 2015, Petitioner returned to see Dr. Lim and reported having pain in her left shoulder and soreness and weakness in both of her hands. (PX7) Dr. Lim restarted physical therapy and refilled her prescription. *Id.* On February 20, 2015, Petitioner reported that the hypersensitivity in her hands was improving, however she still had some weakness. *Id.* Dr. Lim's records note that the reasoning for Petitioner's complaints was because she had a spinal cord compression with severe stenosis and that her symptoms would take time to improve. *Id.* Additionally, as therapy was helping, Dr. Lim ordered more therapy, refilled Petitioner's Tramadol prescription, and kept Petitioner off work. *Id.*

On February 25, 2015, Petitioner returned to see Dr. Kim and reported constant damp underwear, decreased insensate urinary incontinence and fecal urgency. (PX10) Dr. Kim reviewed Petitioner's urodynamic study, which demonstrated stable detrusor and normal abdominal leak point pressure. *Id.* Dr. Kim recommended anticholinergic to decrease her fecal and bladder incontinence and urgency. *Id.*

On March 9, 2015, Petitioner presented to Dr. Melvin Wichter out of Neurological Associates, LTD complaining of incontinence of bowel as well as urine. (PX11) Petitioner informed Dr. Wichter that she used VESIcare, which resulted in left preauricular pain and constipation. *Id.* Dr. Wichter noted several problems that could be at issue, such as the inflammatory process related to left temporomandibular joint; however, temporal arteritis had to be excluded. *Id.* Dr. Wichter recommended a repeat brain MRI for comparative purposes to see whether ventricles had increased in size and to rule out normal pressure hydrocephalus, inflammatory markers looking for temporal arteritis or temporomandibular joint syndrome and if necessary, an MRI of the lumbar spine to rule out lumbar stenosis or other compressive lesions causing incontinence. *Id.*

On March 25, 2015, Petitioner returned to Dr. Kim due to overactive bladder symptoms and reported experiencing insensate loss of urine and urinary urgency. (PX10) Dr. Kim prescribed Toviaz 8 mg and Myrbetriq 50 mg daily for 4 weeks. *Id.*

On April 7, 2015, Petitioner followed up with Dr. Lim and reported persistent symptoms in her lower extremities. (PX7) Dr. Lim recommended that Petitioner undergo a Functional Capacity Evaluation ("FCE"). *Id.*

On April 13, 2015, Petitioner underwent a repeat MRI of the brain at Advocate Christ Medical Center. (PX6) The MRI demonstrated stable hydrocephalus with a small pituitary gland in the right clinic setting. *Id.*

On May 1, 2015, Petitioner returned to see Dr. Lim complaining of problems with fecal incontinence, bowel and urinary issues, urgency, and symptoms in her legs. (PX7) Dr. Lim ordered an MRI of Petitioner's cervical spine to rule out residual damage to the cord. *Id.*

On May 20, 2015, Petitioner presented to Chicago Ridge Medical Imaging and underwent an MRI of the cervical spine. (PX12) The MRI showed anterior surgical fusion of C5-C7 vertebral bodies; mild to moderate loss of C6 and C7 vertebral body heights; moderate right foraminal stenosis due to right posterior disc osteophyte complex at C4-C5 level; mild to moderate bilateral foraminal stenosis due to mild diffuse disc osteophyte complex at C4-C5 level; mild spinal canal stenosis and mild to moderate bilateral foraminal stenosis due to broad based disc bulge at C5-C6 level; mild spinal canal stenosis with mild to moderate right and moderate right and moderate left foraminal stenosis due to bilateral disc osteophyte complexes at C6-C7 level;

and mild spinal canal stenosis and moderate to severe bilateral foraminal stenosis due to moderate disc osteophyte complex at C7-T1 level. *Id.*

On May 26, 2015, Dr. Lim reviewed the MRI and noted some residual myelomalacial changes within the spinal cord, but there did not appear to be any severe spinal cord compression. (PX7) Dr. Lim recommended that Petitioner proceed with an MRI of the lumbar spine. *Id.*

On June 5, 2015, Petitioner underwent a lumbar spine MRI at High Tech Medical Park, the result of which showed minimal enhancement in the post-surgical region probably related to post operative granulation tissue; facet arthrosis; minimal generalized disc bulging at the L2-L5 levels; and subtle high intensity zones in the annulus fibrosis at the L3-L4 and L4-L5 levels may be secondary to annular fissuring or annular tearing. (PX13)

Petitioner returned to Dr. Lim on June 19, 2015, who reviewed the lumbar spine MRI and recommended a surgical intervention to address the spinal stenosis. (PX7) Dr. Lim also noted residual myelomalacia change, which may had caused Petitioner's hand symptoms. *Id.*

On August 3, 2015, Petitioner underwent a complex open L2-3, L3-4 segmental decompression with direct visualization of the L2, L3, and L4 nerve root and intraoperative c-arm. *Id.*

On August 14, 2015, Petitioner had her first post-operative follow up with Dr. Lim and reported some improvement in her symptomatology since surgery. (PX7) Petitioner also reported not feeling the numbness and tingling as much in her legs. *Id.* Dr. Lim ordered physical therapy. *Id.*

On September 11, 2015, Petitioner reported having some tingling and numbness in her feet. *Id.* Dr. Lim ordered physical therapy and refilled her Tramadol prescription. *Id.* On October 23, 2015, Petitioner returned to Dr. Lim and reported that her bowel urgency had returned. *Id.* Petitioner also reported that physical therapy was helping with her strength, but she still had numbness and tingling in her feet. *Id.* Dr. Lim noted that the numbness and tingling in her feet was associated with a neuropathy documented by the EMG. *Id.* Dr. Lim ordered that she continue with therapy, prescribed Tramadol 50mg and referred her to Dr. Kenneth Finkelstein, a synecologist. *Id.*

On November 23, 2015, Petitioner presented to Dr. Finkelstein out of Providea Health Partners, LLC for evaluation of urinary problems. (PX14) Petitioner reported that she felt an intense desire to void and that she would urinate 10 times a day and had an urgency of bowel movement and fecal incontinence. *Id.* Dr. Finkelstein diagnosed Petitioner as having urge incontinence, urinary Frequency, urgency of urination, encounter for gynecological examination without abnormal findings, and incontinence of feces. *Id.* Dr. Finkelstein ordered a PAP with HPV and urinalysis. *Id.*

On December 4, 2015, Petitioner underwent urodynamic testing, the results of which revealed incomplete bladder emptying; nocturia; urgency of urination; urinary frequency; and urinary incontinence. *Id.* Petitioner was ordered to complete the following: (1) Complex cystometrogram with voiding pressure studies and urethral pressure profile study; (2) Complex uroflowmetry; (3) Electromyography study of anal sphincter using any technique other than needle; and (4) Voiding pressure studies; intra-abdominal pressure. *Id.* Dr. Finkelstein recommended an implantable stimulator which would help control both urine as well as fecal incontinence. *Id.* On December 7, 2015, after reviewing the urodynamic study, Dr. Finkelstein noted that Petitioner's bladder evaluation revealed urinary incontinence and incomplete bladder empty and prescribed Oxybutynin Chloride 10mg. *Id.*

On January 15, 2016, Petitioner followed up with Dr. Lim and reported that her neck symptoms had worsened since the last visit. (PX7) Petitioner also reported that the medication that Dr. Finkelstein prescribed to help with urinary control gave her an adverse reaction to the medication. *Id.* Dr. Lim prescribed Tramadol 50mg and instructed her to do home exercises to concentrate on core stability. *Id.*

Petitioner returned to see Dr. Finkelstein on January 27, 2016, and reported that she stopped taking the prescribed medication due to burning/irritation of her throat. (PX14) Petitioner also reported that she did not have any relief of her urinary symptoms and that the leakage had worsened. *Id.* Dr. Finkelstein scheduled an interstim perct. *Id.*

On February 12, 2016, Petitioner was seen by Dr. Lim and reported cervical spine pain radiating into the bilateral upper extremities, left worse than right. (PX7) Dr. Lim ordered a repeat cervical spine MRI and kept Petitioner off work. *Id.*

On February 18, 2016, Dr. Finkelstein performed a percutaneous interstim placement due to Petitioner's bladder issues and ordered an implantation of temporary sacral nerve stimulator. (PX14) Petitioner followed up with Dr. Finkelstein on February 22, 2016, and reported having no significant symptoms or problems since the procedure. *Id.*

On February 23, 2016, Petitioner presented to Advocate Christ Medical Center and underwent an MRI of the cervical spine. (PX6) The MRI revealed cervical spine degenerative changes causing variable spinal stenosis. *Id.*

Petitioner followed up with Dr. Lim on March 8, 2016, and complained of arm tingling and numbness. (PX7) Dr. Lim reviewed the cervical spine MRI, expressed concern about the C7-T1 level and noted that cervical stenosis persisted and that a posterior approach would be an option for Petitioner. *Id.* On March 25, 2016, Petitioner followed up with Dr. Lim and reported that her cervical spine symptoms had worsened. *Id.* Petitioner reported that the previous surgery helped her with the mid cervical pain but at the current time, she was left with pain distal to the surgical site with inability to stand straight or walk for any period of time. *Id.* Petitioner also reported having symptoms into her right upper extremity and developing a sharp stabbing pain in her lower extremities. *Id.* Dr. Lim recommended that Petitioner proceed with a surgical intervention to address her current symptoms. *Id.*

On May 25, 2016, Petitioner followed up with Dr. Wichter complaining of neck pain and numbness and tingling of the hands and feet. (PX11) Dr. Wichter ordered a repeat EMG and nerve conduction study. *Id.* On June 15, 2016, Petitioner underwent the EMG, the results of which showed mild diffuse sensory motor polyneuropathy of the mixed axonal and demyelinating type. *Id.*

Petitioner followed up with Dr. Lim on June 24, 2016, who reviewed the EMG findings. On June 26, 2016, Petitioner informed Dr. Lim that she had elected to proceed with a posterior cervical decompression and fusion. (T.47-48)

On August 29, 2016, Petitioner underwent a posterior cervical decompression and fusion performed by Dr. Lim. (PX7)

On September 9, 2016, Petitioner reported significant improvement since surgery and highlighted the fact that her hands felt better, her feet felt better, her balance was better and that her urine control had improved. (PX7) Dr. Lim removed Petitioner's sutures, ordered a repeat x-ray of the cervical spine and for Petitioner to remain off work. *Id.* Petitioner returned to Dr. Lim on September 23, 2016, and reported that compared to

before surgery, all the heavy pressure that she had in the back of her neck had been alleviated. *Id.* Dr. Lim prescribed Tramadol 50mg and ordered repeat x-rays of the cervical spine. *Id.* On October 14, 2016, Dr. Lim prescribed physical therapy. *Id.*

On November 25, 2016, Petitioner reported that her cervical spine pain and tingling in the hands had been improving since surgery. *Id.* Dr. Lim recommended that Petitioner continue with physical therapy, ordered repeat x-rays of the cervical spine, and ordered Petitioner to remain off work for another 6 weeks. *Id.* On January 6, 2017, Petitioner reported her cervical spine pain as moderate. *Id.* Petitioner also reported experiencing some hand numbness and swelling. *Id.* Petitioner was instructed to continue with the home exercise program and to remain off work for another 2 months. *Id.* On March 3, 2017, Petitioner reported pain down her left arm into her left hand and stated it was associated with arm motion such as when she reached behind her head. *Id.* Dr. Lim referred Petitioner to Dr. James Leonard out of Midwest Orthopaedics. *Id.*

On March 8, 2017, Petitioner presented to Dr. Leonard complaining of left shoulder pain. *Id.* Petitioner reported that she developed left shoulder pain following the cervical fusion and that the pain in the shoulder was primarily bothersome when she was reaching up above her head, behind her back or across the body. *Id.* After an x-ray was done, Dr. Leonard diagnosed Petitioner with left shoulder impingement and noted that based on the examination and the time frame of the shoulder pain, it could have resulted from the cervical fusion. *Id.* Dr. Leonard recommended and administered a left subacromial cortisone injection to help with the subacromial bursitis. *Id.* Dr. Leonard also recommended that Petitioner resume physical therapy and to follow up with him in a month. *Id.* On April 10, 2017, Petitioner was seen by PA Michael Castelli out of Midwest Orthopaedic Consultants and complained of cervical spine and left shoulder pain. *Id.* Petitioner reported that she had some relief from the left shoulder injection. *Id.* Petitioner was instructed to resume physical therapy, follow up with Dr. Lim and to remain off work. *Id.*

Petitioner followed up with PA Castelli on May 22, 2017, and July 3, 2017. At the July 3, 2017, follow up visit Petitioner reported that physical therapy was not helping with her left shoulder pain and that she continued to experience lateral deltoid pain as well as neck and upper trap pain and bilateral hand numbness and tingling. *Id.* An MRI of the left shoulder was ordered, and Petitioner was kept off work. *Id.*

On July 17, 2017, Petitioner underwent the left shoulder MRI, the results of which revealed moderate tendinosis of supraspinatus with a small low-grade partial thickness interstitial tear at the critical zone; mild tendinosis of infraspinatus with a small low-grade bursal surface tear at the enthesis; focal high-grade tendinosis of the subscapularis tendon enthesis; moderately advanced tendinosis of the intra-articular long head biceps tendon; degenerative fraying in the superior labrum adjacent to the biceps anchor; and mild AC joint arthrosis. *Id.*

On July 19, 2017, Petitioner returned to see Dr. Leonard and reported no change in her left shoulder symptoms. *Id.* Dr. Leonard reviewed the left shoulder MRI and diagnosed Petitioner with a left rotator cuff tear and biceps tendinitis. *Id.* Dr. Leonard recommended a left shoulder arthroscopic extensive debridement, subacromial decompression and biceps tenotomy. *Id.*

On August 8, 2017, Petitioner underwent a left shoulder arthroscopic subacromial decompression and extensive debridement. *Id.*

Petitioner followed up with Dr. Leonard on August 14, 2017. *Id.* Dr. Leonard ordered physical therapy and kept Petitioner off work. *Id.* On September 11, 2017, Petitioner reported that she was having pain, particularly with end range of motion and that her back and neck were still bothering her. *Id.* Dr. Leonard ordered additional therapy and encouraged Petitioner to see Dr. Lim. *Id.*

Petitioner returned to see Dr. Lim on September 29, 2017, and reported having numbness in her fingers and feet. Id. Petitioner also informed Dr. Lim that she was feeling 50% better than she did before surgery. Id. Dr. Lim instructed Petitioner to continue treating for the left shoulder, ordered a course of therapy for the neck and to follow up with him once she completes treatment for the left shoulder. Id.

On October 11, 2017, Petitioner was seen by Dr. Leonard for the final time. Id. Petitioner reported improvements in her range of motion, both externally and internally, and felt like the physical therapy following surgery helped a lot. Id. Dr. Leonard instructed Petitioner to continue doing home exercises and therapy for the cervical spine and discharged Petitioner from his care. Id.

On December 15, 2017, Petitioner was seen by Dr. Meeker and reported feeling 60% better since the last visit regarding the cervical spine. *Id.* Dr. Meeker released Petitioner back to work with permanent light duty restrictions and found her to be at maximum medical improvement. *Id.*

Petitioner testified that she retired on December 31, 2017. (T. 57) Petitioner testified that she still experiences neck pain, numbness and tingling sensation in her feet and hands. (T. 58-59) Petitioner also reported that she has difficulties with getting dressed, bending, running due to issues with her legs. (T. 60-61) Petitioner explained that due to arthritis, when the weather changes, it affects her legs. (T. 61)

Petitioner testified that following the June 27, 2012, work accident, she returned to work as a Motor Truck Driver. (T. 63) Petitioner also testified that she underwent an IME with Dr. Butler on May 2, 2016. (T. 64) Petitioner stated that it was her understanding that Dr. Butler opined that she had reached maximum medical improvement ("MMI"). *Id.* Petitioner testified that it was her understanding that because of Dr. Butler's opinion, her temporary total disability benefits were suspended on June 24, 2016. (T. 65) Petitioner reported that she had no prior injury to her cervical spine prior to the June 27, 2012, work accident. (T. 65-66) However, Petitioner testified that she was diagnosed with cervical stenosis prior to the June 27, 2012, accident. (T. 66) Petitioner also testified that she did not have any prior injury to her lumbar spine prior to the June 27, 2012, accident. (T. 66-67) Petitioner testified that she did not have any injury to the left shoulder prior to the June 27, 2012, accident. (T. 68) Petitioner testified that she does not have any future appointments for the left shoulder, cervical spine, and lumbar spine. *Id.*

Petitioner testified that the last time she saw Dr. Lim and Dr. Leonard was in 2017. (T. 69) When asked whether she underwent an MRI for the cervical spine in 2009 and that the results showed that she had cervical stenosis, Petitioner reported that she did not remember. (T. 71) Petitioner further testified that if the records show that she underwent an MRI and the MRI results show that she had cervical stenosis, she agreed with the records. (T. 71-72) Petitioner also testified that she agreed with the records showing that she was diagnosed with lumbar disc herniation and underwent a lumbar surgery on November 15, 2010. (T. 72) Petitioner also testified that she does not take any medication for her pain. (T. 73) Petitioner acknowledged that she had requested her doctor provide her with a letter stating that she couldn't drive the truck in the winter. (T. 72-73)

Petitioner testified that she did not remember having any cervical treatment from 2009 through 2013. (T. 74) Petitioner testified that she underwent a lumbar surgery in 2010 and that she was working full duty for Respondent from late 2010 through 2012. (T. 74) Petitioner acknowledged that she was seen by Dr. Xia from Integrated Pain Management on October 12, 2010, and had complained of neck pain and back pain that radiated to her right lower extremity. (T. 76)

This matter had been bifurcated for purposes of allowing Respondent the opportunity to provide additional documentation regarding the issue of Section 8(j) credit for both cases. On March 23, 2022,

Respondent submitted into evidence proof of Section 8(j) credit for case 14WC011144 as Respondent's Exhibit 11. Proofs were then closed.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

A causal connection between work duties and a condition of ill-being may be established by a chain of events including claimant's ability to perform job duties before the date of the accident and inability to perform the same duties following that date. *Peabody Coal Co. v. Industrial Comm'n,* 213 Ill. App.3d 64. 65 (1991). It is the function of the Commission to resolve disputed questions of fact, including those of causal connection, to draw permissible inferences and to decide which of conflicting medical views is to be accepted. *Material Service Corp. v. Industrial Comm'n*, 97 Ill. 2d 382, 387 (1983)

Petitioner was able to perform her regular duties for Respondent before the December 19, 2013, work accident. Petitioner testified that prior to December 19, 2013, she had no issues with her left shoulder. The Arbitrator notes that Petitioner underwent a lumbar discectomy in November of 2010. However, following the discectomy, Petitioner was able to return to work for Respondent full duty and without any complaints. Petitioner testified that she injured her lumbar spine at work on June 27, 2012. Regarding that accident, she saw Dr. Anderson and was diagnosed with a lumbar contusion. Petitioner did not undergo any course of treatment for the lumbar spine following that accident. Petitioner returned to work full duty for Respondent and did not seek any treatment for the lumbar spine until December 19, 2013. Petitioner acknowledged that she might have been seen at Integrated Pain Management on October 12, 2010, and complained of cervical and lumbar pain. However, even if Petitioner did previously complain of the cervical spine and lumbar spine pain, she was able to return to work full duty for Respondent. Petitioner testified that she also injured her cervical spine at work on June 27, 2012. Similarly, Dr. Anderson diagnosed Petitioner with a cervical strain, and she did not seek any additional treatment for that accident. From June 27, 2012, until December 19, 2013, Petitioner was able to work for Respondent full duty and made no complaints nor sought any treatment for any spine issues.

Following the December 19, 2013, work accident, Petitioner was diagnosed with cervical stenosis (which required an anterior cervical discectomy and fusion at C5-C6 and C6-C7 and a posterior cervical decompression and fusion), lumbar spine stenosis with neurogenic claudication (which required a complex open L2-3, L3-4 segmental decompression with direct visualization of the L2, L3 and L4 nerve root and interoperative c-arm), and a left rotator cuff tear and biceps tendinitis (which required a left shoulder arthroscopic subacromial decompression and extensive debridement).

Based on the above and the evidence presented at trial, including medical opinions, and witness testimony, the Arbitrator finds that Petitioner established a causal connection between the work-related accident of December 19, 2013, and her current condition of ill- being regarding the cervical spine, lumbar spine, and left shoulder.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Under Section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the

expenses incurred were reasonable. *City of Chicago v. Illinois Workers' Compensation Commission*, 409 Ill. App. 3d 258, 267 (1st Dist., 2011).

Based upon the Arbitrator's finding above as to causal connection in Section (F) and the evidence presented, the Arbitrator finds that Petitioner's treatment for injuries sustained to the lumbar spine, cervical spine, and left shoulder on December 19, 2013, was reasonable and necessary.

Petitioner admitted PX15 with multiple balances from Little Company of Mary Hospital and Skan National Radiology. Having reviewed the bill exhibits and the medical records submitted, the Arbitrator finds the following bills to be reasonable, necessary, and casually connected:

Little Company of Mary Hospital: $259.00
Skan National Radiology: $1,254.12

Respondent is responsible for the outstanding balances listed in PX15 and shall pay reasonable and necessary services totaling $1,513.12 as detailed herein, as provided in Sections 8(a) and 8.2.

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Petitioner was temporarily and totally disabled from December 20, 2013, through December 15, 2017. Dr. Lim and Dr. Leonard had Petitioner off work following the cervical, lumbar, and left shoulder surgeries. Petitioner remained off work until she was released back to work with permanent light duty work restrictions on December 15, 2017.

Based on the above and the Arbitrator's finding above as to causal connection in Section (F), the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from December 20, 2013, through December 15, 2017.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to Section 8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors;

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and

(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of Section 8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. No weight is given to this factor.

With regard to subsection (ii) of Section 8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a Motor Truck Driver at the time of the accident and that she was not able to return to work in her prior capacity as a result of said injury. The Arbitrator gives this factor considerable weight.

With regard to subsection (iii) of Section 8.1b(b), the Arbitrator notes that Petitioner was 63 years old at the time of the accident. The Arbitrator gives this factor some weight.

With regard to subsection (iv) of Section 8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner testified that she did not return to work for Respondent following her permanent light duty release on December 15, 2017, and that she eventually retired on December 31, 2017. The Arbitrator gives this factor considerable weight.

With regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner completed a significant amount of medical care and treatment, including cervical spine, lumbar spine and left shoulder surgeries. Petitioner was ultimately released from care with permanent restrictions which did not allow her to return to her prior position. The Arbitrator gives this factor great weight.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 65% loss of use of the person as a whole, pursuant to Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC022701
Case Name	Carmella Sorice v. City of Chicago
Consolidated Cases	14WC011144;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0155
Number of Pages of Decision	10
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Crystal Figueroa
Respondent Attorney	Stephanie Lipman

DATE FILED: 4/7/2023

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CARMELLA SORICE,

Petitioner,

vs. NO: 14 WC 22701

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's current conditions are causally related to the June 27, 2012 work accident, and the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. This case was consolidated for hearing with case number 14 WC 11144.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 12, 2022 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $1,012.64 for medical expenses, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $695.12 per week for a period of 4.1 weeks, as provided in §8(e)9 of the Act, for the reason that the injuries sustained caused the 2% loss of use of the right hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $695.12 per week for a period of 2.05 weeks, as provided in §8(e)9 of the Act, for the reason that the injuries sustained caused the 1% loss of use of the left hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $695.12 per week for a period of 15 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 3% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Under Section 19(f)(2), no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 7, 2023

/s/ *Deborah J. Baker*

DJB/lyc

O: 3/8/23

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC022701
Case Name	SORICE, CARMELLA v. CITY OF CHICAGO
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Haris Huskic
Respondent Attorney	Lucy Huang

DATE FILED: 5/12/2022

THE INTEREST RATE FOR THE WEEK OF MAY 10, 2022 1.38%

/s/Elaine Llerena, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **COOK**)

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Carmella Sorice
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **14** WC **022701**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **March 23, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **June 27, 2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**70,408.00**; the average weekly wage was $**1,354.00**.

On the date of accident, Petitioner was **62** years of age, ***single*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**5,029.39** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**5,029.39**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of $1,012.64, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $695.12 per week for 4.1 weeks, because the injuries sustained caused the 2% loss of the right hand, as provided in Section 8(e)(9) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $695.12 per week for 2.05 weeks, because the injuries sustained caused the 1% loss of the left hand, as provided in Section 8(e)(9) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $695.12 per week for 15 weeks, because the injuries sustained caused the 3% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Elaine Llerena **MAY 12,2022**

Signature of Arbitrator

STATEMENT OF FACTS

Petitioner testified that she was employed by Respondent on June 27, 2012. (T.10) Petitioner testified that she was a motor truck driver. *Id.* Petitioner's job consisted of driving Respondent's garbage trucks. (T.11). To get into the garbage truck, Petitioner would have to climb on a step in order to get inside. *Id.* Petitioner was required to have a valid CDL. (T.12) Petitioner worked 40 hours on average, except for holidays. (T.13).

On June 27, 2012, Petitioner was 62 years of age and had been employed by Respondent since November 1, 2005. (T. 10) Petitioner testified that on June 27, 2012, she parked the garbage truck by Holly Cross Hospital and while getting out/backing out of the truck, she stepped into a pothole and fell backwards landing on her hands. (T.14-15) Petitioner testified that prior to June 27, 2012, she had no prior bilateral hand treatment. Petitioner did have a lumbar spine surgery in November of 2010. However, following (lumbar discectomy) surgery, Petitioner was able to return to work with Respondent in full capacity, without any restrictions. *Id*.

On June 27, 2012, Petitioner sought initial treatment at Mercyworks Occupational Medicine. (PX1) Petitioner complained of pain in both wrists, both hands, neck, and lower back. *Id*. Dr. Steven Anderson diagnosed Petitioner with a back contusion, cervical strain, and bilateral wrist contusions. *Id.* Petitioner was prescribed Ibuprofen 80 mg, Scalactin 800 mg and was ordered to remain off work. *Id.* On July 2, 2012, Petitioner followed up with Dr. Anderson complaining of pain at the base of her right thumb, neck on the left side and down to the right arm to left middle finger and tightness across the lower back. *Id.* Dr. Anderson prescribed physical therapy and ordered Petitioner to remain off work. *Id.*

Petitioner saw Dr. Anderson six more times between July 9, 2012, and September 12, 2012. *Id.* On September 12, 2012, Petitioner reported constant soreness and pain in her right wrist and lower back soreness. *Id.* Dr. Anderson prescribed Mobic 7.5mg and ordered occupational therapy 2 times a week for 4 weeks. *Id.* On September 17, 2012, Petitioner started occupational therapy for her right wrist. *Id.* On October 12, 2012, Petitioner complained of persistent pain at the base of her right thumb and left middle finger up to the forearm. *Id.* Dr. Anderson referred Petitioner to Dr. William Heller and discharged Petitioner from his care. *Id.*

On October 16, 2012, Petitioner saw Dr. Heller out of Midland Orthopedic Associates. (PX2) Petitioner complained of bilateral hand pain and reported that the right hand pain was greater than the left hand pain. *Id.* Dr. Heller noted evidence of thumb CMC joint; underlying osteoarthrosis, most likely aggravated in her fall resulting in inflammation and pain in Petitioner's right hand. *Id.* Dr. Heller recommended and performed a right thumb CMC joint intraarticular injection of Depomedrol and local anesthetic through a distal approach under fluoroscopic guidance. *Id.*

Petitioner followed up with Dr. Heller on October 23, 2012, and reported that the injection helped with her symptoms, but she was still having some mild diffuse pain in the right hand. *Id.* Dr. Heller diagnosed Petitioner with a right thumb CMS sprain and underlying osteoarthrosis and recommended that Petitioner continue with anti-inflammatories and discharged Petitioner from his care. *Id.*

Petitioner testified that she returned to worked for Respondent and continued to work for Respondent until she sustained another work-related accident on December 19, 2013. (T. 23)

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

A causal connection between work duties and a condition of ill-being may be established by a chain of events including claimant's ability to perform job duties before the date of the accident and inability to perform the same duties following that date. *Peabody Coal Co. v. Industrial Comm'n,* 213 Ill. App.3d 64. 65 (1991). It is the function of the Commission to resolve disputed questions of fact, including those of causal connection, to draw permissible inferences and to decide which of conflicting medical views is to be accepted. *Material Service Corp. v. Industrial Comm'n*, 97 Ill. 2d 382, 387 (1983)

Petitioner was able to perform her regular duties for Respondent before the event of June 27, 2012. Petitioner testified that prior to June 27, 2012, she had no bilateral hand issues. The Arbitrator notes that Petitioner underwent a lumbar discectomy in November of 2010. The Arbitrator further notes that Petitioner acknowledged that she might have been seen at Integrated Pain Management on October 12, 2010, and complained of cervical and lumbar pain. However, even if Petitioner did previously complain of the cervical spine and lumbar spine pain, she was able to return to work full duty for Respondent.

Following the June 27, 2012, work accident, Petitioner underwent a formal course of physical therapy and a right thumb CMC joint intra-articular injection (with a diagnosis of a right thumb CMS sprain). Petitioner was discharged from care by Dr. Heller on October 23, 2012. Petitioner then returned to work, full duty and without issues, until December 19, 2013.

Based on the above and the evidence presented at trial, including medical opinions, and witness testimony, the Arbitrator finds that Petitioner's conditions of ill-being as to the cervical spine, lumbar spine, and bilateral hands are causally related to the June 27, 2012, work accident through October 23, 2012, when Petitioner was discharged from care

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Under Section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers' Compensation Commission*, 409 Ill. App. 3d 258, 267 (1st Dist., 2011).

Petitioner admitted PX15 with multiple balances from Midland Orthopedic Associates. The date of services for the balances were October 16, 2012, and October 23, 2012. Having reviewed the bill exhibits and the medical records submitted, the Arbitrator finds the following bills from Midland Orthopedic Associates, totaling $1,012.64, to be reasonable, necessary, and casually to the June 27, 2012, work accident.

Based upon the Arbitrator's finding above as to causal connection in Section (F) and the evidence presented, the Arbitrator finds that Petitioner's treatment for injuries sustained to the lumbar spine, cervical spine, and bilateral hands on June 27, 2012, was reasonable and necessary. Respondent is responsible for the outstanding balances listed in PX15 and shall pay reasonable and necessary services totaling $1,012.64 as detailed herein, as provided in Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to Section 8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors;

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of Section 8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator gives this factor no weight.

With regard to subsection (ii) of Section 8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a motor truck driver at the time of the accident and that she was able to return to work in her prior capacity as a result of said injury. The Arbitrator gives this factor considerable weight.

With regard to subsection (iii) of Section 8.1b(b), the Arbitrator notes that Petitioner was 62 years old at the time of the accident. The Arbitrator gives this factor some weight.

With regard to subsection (iv) of Section 8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that not evidence was presented to indicate that Petitioner's future earning capacity was affected by the work accident. Petitioner returned to work following the work accident and was paid were usual salary upon her return. The Arbitrator gives this factor considerable weight.

With regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner was diagnosed with a lumbar contusion, cervical strain and bilateral wrist contusions. Petitioner underwent physical therapy and occupational therapy and was subsequently released to return to work, full duty. Dr. Anderson also prescribed right wrist support for Petitioner. Dr. Anderson referred Petitioner to Dr. Heller, who on October 16, 2012, administered a right thumb CMC joint intra-articular injection of Depomedrol and local anesthetic through a distal approach under fluoroscopic guidance. Dr. Heller discharged Petitioner from care on October 23, 2012, without restrictions. The Arbitrator gives this factor great weight.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 2% loss of use of the right hand pursuant to Section 8(e)(9) of the

Act, that Petitioner sustained permanent partial disability to the extent of 1% loss of use of the left hand pursuant to Section 8(e)(9) of the Act, that Petitioner sustained permanent partial disability to the extent of 3% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC033731
Case Name	Michael D Bauman v. City of Rockford
Consolidated Cases	16WC003687; 16WC021252;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0156
Number of Pages of Decision	27
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Thomas Duda
Respondent Attorney	Kevin Luther

DATE FILED: 4/7/2023

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify Temporary Disability, Credit	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL D. BAUMAN,

Petitioner,

vs. NO: 14 WC 33731

CITY OF ROCKFORD,

Respondent.

DECISION AND OPINION ON REVIEW

This matter comes before the Commission pursuant to timely Petitions for Review of the Decision of the Arbitrator filed by the Respondent and Petitioner herein. Notice having been given to all parties, the Commission, after considering the issues of whether Petitioner's current condition of ill-being is causally related to the March 5, 2014 accident, entitlement to medical expenses, Petitioner's entitlement to temporary disability benefits as well as Respondent's entitlement to credit for PEDA benefits paid, and the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, modifies the Decision as stated below but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

PROCEDURAL HISTORY

This case was consolidated for hearing with case numbers 16 WC 03687 and 16 WC 21252. All three cases involve injuries to Petitioner's back: 14 WC 33731 involves a March 5, 2014 accident, 16 WC 03687 involves an October 18, 2015 accident, and 16 WC 21252 involves an April 2, 2016 accident. The claims proceeded to arbitration before Arbitrator Gerald Napleton on February 23, 2022. The Request for Hearing form submitted by the parties for the instant matter, case 14 WC 33731, identifies the following issues in dispute: 1) whether Petitioner sustained an accidental injury arising out of and occurring in the course of his employment on March 5, 2014; 2) whether Petitioner's current condition is causally related to the March 5, 2014 accident; 3) entitlement to medical expenses; and 4) the nature and extent of Petitioner's permanent disability. Arb.'s Ex. 1.

On June 1, 2022, Arbitrator Napleton issued the same decision under all three case numbers; therein, the Arbitrator found Petitioner sustained accidental injuries on March 5, 2014; October 18, 2015; and April 2, 2016, and his current low back condition is causally related to all three work accidents. The Arbitrator awarded identical benefits under each case number: medical expenses and out-of-pocket costs totaling $8,304.91, 66 1/7 weeks of Temporary Total Disability ("TTD") benefits subject to Respondent's credit of $32,142.86 for Public Employee Disability Act ("PEDA") benefits paid, and 17.5% loss of use of the person as a whole. Both parties filed Petitions For Review.

Respondent's Petition for Review identifies the following issues on Review: whether Petitioner sustained an accidental injury arising out of and occurring in the course of his employment on March 5, 2014, whether Petitioner's current condition is causally related to the March 5, 2014 accident, entitlement to medical expenses, entitlement to temporary disability benefits, and the nature and extent of Petitioner's permanent disability. Petitioner's Petition for Review identifies the following issues: entitlement to medical expenses, entitlement to temporary disability benefits, and Respondent's entitlement to credit. The Commission observes Respondent did not advance an argument on the accident issue in its Statement of Exceptions or during oral arguments, and thus the Commission views the issue as forfeited. Moreover, as detailed below, the Commission finds the issues of Petitioner's entitlement to temporary disability benefits and Respondent's entitlement to credit are moot.

CONCLUSIONS OF LAW

The Arbitrator found Petitioner's current condition of ill-being is causally related to all three work accidents. The Commission's analysis of the evidence yields the same result. However, the award of identical benefits in all three cases is duplicative and contrary to the parties' stipulations on the Request for Hearing form.

Medical Expenses and Permanent Disability

The Commission finds Petitioner's current low back condition is causally related, in part, to his March 5, 2014 accident: Petitioner suffered an initial low back injury on March 5, 2014, which had not reached maximum medical improvement ("MMI") before he suffered subsequent exacerbations on October 18, 2015 and April 2, 2016. Consistent with our determination that Petitioner's current low back condition is causally related to all three work accidents but originated with the March 5, 2014 accident, the Commission clarifies that medical expenses and permanent disability benefits are awarded only under the instant case 14 WC 33731.

Temporary Disability and Credit

The Arbitrator found Petitioner entitled to various periods of TTD benefits and Respondent entitled to an associated credit for PEDA benefits paid. The Commission observes, however, that the Request for Hearing form establishes that neither party asserted entitlement to those respective benefits; to be clear, Petitioner made no claim for TTD benefits associated with the March 5, 2014 accident, nor did Respondent make a claim for any credit. Arb.'s Ex. 1. Commission Rule 9030.40 provides as follows: "The completed Request for Hearing form, signed by the parties (or their counsel), shall be filed with the Arbitrator as the stipulation of the parties and a settlement of the questions in dispute in the case." *50 Ill. Adm. Code 9030.40*. The Appellate Court considered this

language in *Walker v. Industrial Commission*, 345 Ill. App. 3d 1084, 1088 (4th Dist. 2004), and confirmed that "the request for hearing is binding on the parties as to the claims made therein." As neither TTD benefits nor an associated credit were claimed by the parties in the instant matter, the awards of same were improper and are hereby vacated.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 1, 2022, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $5,669.84 in medical expenses, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $2,635.07, representing reimbursement of Petitioner's out-of-pocket medical costs, as provided in §8(a).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $721.66 per week for a period of 87.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 17.5% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of Temporary Total Disability benefits is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent's credit of $32,142.86 is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

Under Section 19(f)(2), no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 7, 2023

/s/ *Deborah J. Baker*

DJB/mck

O: 2/22/23

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC033731
Case Name	BAUMAN, MICHAEL D v. CITY OF ROCKFORD
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Gerre Anne Harte
Respondent Attorney	Kevin Luther

DATE FILED: 6/1/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 1, 2022 1.58%

/s/Gerald Napleton, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Winnebago**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Michael D. Bauman
Employee/Petitioner
v.

CITY OF ROCKFORD
Employer/Respondent

Case # **14** WC **33731**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Napleton**, Arbitrator of the Commission, in the city of **Rockford**, on **February 23, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **March 5, 2014**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**78,000.00**; the average weekly wage was $**1,500.00**.

On the date of accident, Petitioner was **43** years of age, ***married*** with **1** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**32,142.86** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**32,142.86**.

Respondent is entitled to a credit of $**231,469.47** under Section 8(j) of the Act.

ORDER (CONSOLIDATED)

Respondent is liable for payment of Petitioner's reasonable and necessary medical costs evidenced in Petitioner's Exhibit 1 showing an unpaid balance of $5,669.84 pursuant to Section 8(a), the Medical Fee Schedule in 8.2, and Section 8.2(e). Respondent is entitled to a credit for payments made pursuant to its group health insurance and shall hold Petitioner harmless from any claim asserted by said group health insurance carriers.

Respondent shall reimburse Petitioner the amount of $2,635.07 for out-of-pocket costs borne by Petitioner for his reasonable and necessary medical treatment.

Petitioner was temporarily and totally disabled for the periods of March 5, 2014 through August 5, 2014; November 21, 2014 through December 23, 2014; October 19, 2015 through November 24, 2015; and July 28, 2017 through March 23, 2018 reflecting 66 and 1/7 weeks pursuant to Section 8(b) of the Act. Respondent is entitled to a credit for Public Employee Disability Act benefits paid for these periods. Respondent shall pay TTD benefits of $1,000 per week for the TTD periods from March 5, 2014 through November 24, 2015 and benefits of $1,065.21 per week for the period of July 28, 2017 through March 23, 2018 subject to the aforesaid credit for PEDA benefits paid.

Respondent shall pay Petitioner Permanent Partial Disability benefits of $721.66/week for 87.5 weeks as Petitioner sustained a 17.5% loss of the Person as a Whole pursuant to Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

/s/ Gerald W. Napleton **JUNE 1, 2022**

Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL BAUMAN,	)		
	)		
Petitioner,	)		
	)		
vs.	)	Case #	14 WC 33731
	)	Consolidated Cases:	16 WC 3687
CITY OF ROCKFORD,	)		16 WC 21252
	)		
Respondent.	)		

FINDINGS OF FACT and CONCLUSIONS OF LAW

Petitioner is a firefighter/paramedic who has worked for the Respondent since 2002. Petitioner is alleging injuries on three separate occasions while working for Respondent on March 5, 2014, October 18, 2015, and April 2, 2016. Petitioner testified this is a physically demanding job. His schedule with the City of Rockford is a 24-hour shift with 48-hours off between shifts. Petitioner testified he was employed by the City of Belvidere for ten months prior to his being hired by the City of Rockford and that he experienced no work injuries while working for the City of Belvidere.

Petitioner testified to his duties as a firefighter. While performing fire suppression duties, he wears specialized firefighting gear which weighs 40 to 50 pounds and in addition wears a self-contained breathing apparatus and air tank which weighs 40 to 50 pounds; otherwise, he wears a standard uniform similar to street clothing. His uniform and equipment are shown in PX19. Petitioner testified that for paramedic duties he carries equipment weighting 10 to 50 pounds. He also uses equipment to transport patients including a "mega mover" and a gurney. Petitioner explained that a mega mover is a cloth type carrier weighing less than ten pounds used transport a patient when a gurney cannot be used.

Petitioner testified that prior to March 5, 2014, he treated on an as needed basis with Hulsebus Chiropractic for his back and that prior to his alleged accident he last treated at Hulsebus on March 4, 2014, but that he was not under any prescribed treatment plan, nor did he have any scheduled follow-up appointment after the March 4, 2014, visit.

Records document that petitioner treated with Hulsebus Chiropractic from 2004 until March 4, 2014. PX 5. The March 4, 2014, Hulsebus Chiropractic note state Petitioner was to follow up as needed. PX5. The Records document that Petitioner treated at Hulsebus on an as needed basis throughout 2013 and 2014. PX5. He treated three times in 2014 prior to his March 5, 2014, accident and at each visit was released on an as needed basis or to call if needed. PX5.

March 5, 2014, injury

Petitioner testified that on March 5, 2014, his shift started at 8:00 am, he was working full duty, and that he felt fine at the start of his shift. The conditions on March 5, 2014, consisted of ice-covered ground with eight inches of snow. Petitioner testified he began his shift on the engine and then was assigned as a paramedic. During his assignment as a paramedic, he responded to a residential injury call and during that call slipped on the ice and fell to the ground onto his medical bag which was over one shoulder and impacted his back and shoulder. He immediately felt upper and lower back pain but was able to complete the call, ambulate to the engine and return to the fire station. At the station he continued to feel pain, completed an injury report, but was not able to complete his shift. He went home where he took medication and went to sleep.

When he woke the next morning, he continued to have pain in his upper and lower back and sought treatment. Petitioner sought treatment at Hulsebus Chiropractic for his neck and back pain. The March 6, 2014, records note Petitioner complained of "neck and back pain and muscle spasms" and "following the accident at work, the patient complained about very severe neck stiffness bilaterally … and very severe constant pulling lower back pain bilaterally." PX5 p 5. The chiropractic records document that he experienced neck and back pain which gradually increased and that he was referred to Immediate Care. PX5, p. 5-7. Later that day, Petitioner presented to Physicians Immediate Care reporting neck pain due to a work injury. X-rays were taken, he was diagnosed with a neck sprain and lumbar sprain, and he was given work restrictions. PX6, p. 26-29. Physical therapy was recommended, and petitioner completed a course of physical therapy from March 31, 2014, through July 31, 2014, at ORS of Rockford. PX 11.

Petitioner was seen by his primary care physician, Rose M. Stocker, DO on April 9, 2014, and reported his symptoms were increasing with physical activity, that "he has had low back pain before but no numbness like this before … numbness in left hip and radiating down his left hip to the bottom of his foot." PX 7, p. 8-10. Dr. Stocker diagnosed petitioner with a rhomboid muscle strain, piriformis muscle strain, and sciatica. She prescribed steroids, kept Petitioner off work and recommend a possible MRI if his radiculopathy did not improve. PX7, p. 10.

Petitioner followed up with Dr. Stocker, on April 25, 2014. She noted Petitioner's thoracic back was improved, recommended an MRI for Petitioner's lower back, and referred Petitioner to an orthopedic. PX7, p. 006. Petitioner obtained an MRI on May 2, 2014. PX8. The MRI revealed a L4-L5 broad based disc bulge and facet arthropathy resulting in left lateral recessed stenosis. PX8

Records document that Petitioner then sought treatment with Dr. Michael Roh at Rockford Spine Center on May 13, 2014. Dr. Roh, diagnosed Petitioner with axial lumbar issues following a work-related fall, L4-5 soft tissue injury/inflammation, and left L5 radiculopathy secondary to lateral stenosis and disc herniation. PX9, p57. Dr. Roh recommended continued observation, physical therapy, epidural steroid injections, and a work conditioning program. If these failed, he indicated a need for surgical intervention and/or an ablation. PX 9, p. 57. Petitioner received Epidural Steroid Injections and facet injections from Dr. Freedman at Rockford Pain Center on May 20, 2014, June 17, 2014, and July 15, 2014. PX9, p. 89-90, 87-88, PX10 p. 5-7, 13-14, 20-21.

Petitioner testified he returned to work full duty on August 5, 2014. Petitioner was taken off work from March 6, 2014, through August 5, 2014. Petitioner was paid his full salary and benefits under the Public Employee Disability Act while off work. Petitioner continued to treat after his full duty return to work for his continuing radiculopathy and low back pain with Dr. Socker and Dr. Freeman. He continued to take off work intermittently and took FMLA leave for his pain flare ups on August 19, 2015, and October 15, 2015 (PX7, p. 82-83, 80-81). Dr. Freeman performed additional ESIs at L4-5 and noted that if injections are not able to improve his radicular pain, he would have Petitioner revisit Dr. Roh. PX9, p. 85-86; PX10, p. 28-29. The records document that on November 21, 2014, petitioner was again taken off work related to his

previous injury. PX15, p. 18. On December 16, 2014, Dr. Freeman performed another ESI (PX10, p. 28-29, 35-36) and performed an ESI at L4-5 and an L5-S1 facet joint injection on January 20, 2015 (PX10, P 41-42).

On February 17, 2015, Petitioner returned to Dr. Freeman who indicated if the injections provide Petitioner long lasting relief, then they can be repeated intermittently otherwise he would consider medial branch blocks with possible radiofrequency ablation. PX10, p. 49-50.

On March 12, 2015, Petitioner was examined by Dr. Jay Levin for a Section 12 Examination. Dr. Levin found Petitioner was at MMI for his cervical condition but did not provide an opinion regarding Petitioner's lumber condition.

On March 18, 2015, Petitioner's primary care physician returned Petitioner to full duty as of March 23, 2015. PX 7, p. 87-88. Petitioner testified he returned to work full duty on March 23, 2015.

The Petitioner testified that he continued to have low back pain after his return to work. Petitioner sought treatment for his low back with his primary care physician in August of 2015 and used vacation, sick time, and FMLA benefits for his time off due to pain flare ups. PX 7, p. 82-83, PX15, p. 34, 35.

On October 2, 2015, Petitioner saw Dr. Freeman again who noted he was improved and doing well since his last bilateral L4-5 and L5-S1 facet joint injection of February 2015 but had a flare up of pain with numbness and tingling in the left buttock and leg. PX10, p. 53. Dr. Freeman diagnosed Petitioner with low back pain with radiation into the left buttock and leg with numbness and tingling likely multifactorial with possible radicular component. PX 10, p. 53. Dr. Freeman performed a left L4-5 interlaminar epidural steroid injection in the hope that this would improve his left buttock and leg pain and continued Petitioner's work restrictions. He was to follow up in three to four weeks. He was not restricted from any work duties. PX10, p. 54.

October 18, 2015 injury

Petitioner testified that on October 18, 2015, he started his shift at 8:00 am and was working as a paramedic. During his assignment, he responded to a patient who required transport to the hospital. While moving the obese patient with a mega mover down steps he felt a strain or pain in his lower back. PX 3; PX 15, p. 26, 31, 37. Petitioner was able to get to the ambulance

with the patient and that in the back of the ambulance on route to the hospital Petitioner's lower back and left leg experienced numbness, tingling, and spasms. PX3, PX 15, p. 25. Petitioner testified he did not complete his shift and went home.

Petitioner testified that when he awoke the next morning, he continued to have pain in his back and sought medical treatment with his PCP. On October 19, 2015, he was placed on light duty work restrictions of no pushing, pulling, or lifting more than 10lbs. PX15, p. 33, 36, 42.

On October 30, 2015, Petitioner was referred by Dr. Stocker for an MRI, which indicated a mild worsening disc bulge at L4-L5 now demonstrating superimposing central protrusion which indents the thecal sac. PX 8, p. 3-5. On November 3, 2015, Dr. Freeman reviewed the MRI, noticed evidence of compression of the left L5 nerve root, performed bilateral L4-L5 and L5-S1 facet joint injections, and noted that if Petitioner's leg pain worsens, he will repeat the L4-5 epidural steroid injection. PX10, p. 30.

On November 30, 2015, Petitioner returned to Dr. Freeman and reported near complete relief for two week and that the pain returned but is currently tolerable. PX10, p. 67. Dr. Freeman noted Petitioner had completed physical therapy, indicated no injections were necessary and released Petitioner to follow-up as needed. PX10, p. 67. Dr. Freeman indicated that if Petitioner continues to have long lasting relief with fact injections those can be repeated in the future. Id. On November 20, 2015, Dr. Freeman released Petitioner to resume previous activity, but minimize activity that causes pain. PX10, p. 68. Petitioner testified and the record documents Petitioner returned to work on December 1, 2015. PX15, p. 41.

<u>April 2, 2016 injury</u>

Petitioner testified that on April 2, 2016, his shift started at 8:00 am. He was working full duty and attended a fire suppression call and fell backward onto his SCBA tank. PX4; PX 15, p. 51. He testified he felt back pain but continued working the fire until its conclusion and was able to return to the station. Petitioner testified that after returning to the station he continued to feel pain, completed an injury report, did not complete his shift, but went home where he took medication and went to sleep. When he awoke the next morning, he continued to have pain in his back and sought treatment.

The records document that the Petitioner saw his PCP, Dr. Stocker, on April 4, 2016, complained of pain and was given a diagnosis of low back pain without sciatica. Petitioner was prescribed medication, possible physical therapy, further imaging, and restricted from heavy lifting. The doctor's note does note remove Petitioner from work entirely. PX7, p. 75-76. Petitioner then followed up with Dr. Freeman on April 19, 2016, who performed facet injections at L4-L5 and L5-S1 and noted that if the injections provide only short-lived relief, he would consider medical branch blocks. PX10, p. 70-71. Dr Freeman did not restrict Petitioner from work but was advised to avoid activity that causes pain. PX10 p 70-72. As of April 27, 2016, Dr. Stocker noted Petitioner was ready to return to work and returned Petitioner to work full duty on May 2, 2016. PX15, p. 59.

Petitioner testified he returned to work full duty on May 2, 2016, but that he continued to have back pain symptoms and continued to treat with Dr. Freedman. Petitioner treated with Dr. Dahlberg after Dr. Freedman left Rockford Pain Center. Petitioner testified that he did not sustain any back injury either at work or outside of work.

On June 30, 2017, Petitioner received another ESI at L4-5 and was discharged prn but to avoid activities that cause pain. An MRI performed on 7/20/2017 revealed moderately severe spinal stenosis at L4-5 with moderately severe compromise of the left foramen. The August 21, 2017, addendum to the July 20, 2017, MRI report states "there is a 2mm anterolisthesis of L4-L5 which had developed since 10/13/2015." PX 9, p.76. Petitioner was not restricted from work. Another injection was performed on July 28, 2017, by Dr. Dahlberg and Petitioner was referred to Dr. Roh for a surgical consultation. In the July 28, 2017, notes, Dr. Dahlberg noted Petitioner's initial injury of slipping on ice while on a medical call. PX15, p68. Dr. Roh recommended surgical intervention. Another injection was performed on August 31, 2017, by Dr. Dahlberg. Petitioner was given a work slip that said "no work no lite duty" handwritten with a date of July 28, 2017.

When Petitioner followed up with Dr. Roh on August 10, 2017, he complained of lumbar back pain that radiates into the hip and down the posterior, lateral and anterior thigh, lateral and posterior lower leg and into both dorsal and plantar aspects of the foot with numbness and tingling in the same nerve distribution area. PX9, p. 47. Dr. Roh recorded that Petitioner stated these symptoms started with his fall on the ice three years ago and that Petitioner has continued

conservative treatment. Id. Dr. Roh diagnosed petitioner with severe left L4 and L5 radiculopathy secondary to L4-5 degenerative spondylolisthesis, central and lateral recess stenosis with a synovial cyst and that all conservative treatments have failed. PX9, p. 48-9. Dr. Roh noted the MRI shows instability at the L4-L5 level as well as central canal/lateral recess stenosis. Id. Dr. Roh stated Petitioner "has had these symptoms now for 3+ years, getting worse over that time. He has failed conservative care including chiropractic care, physical therapy, epidural steroid injections, and anti-inflammatories." PX9, p. 49. Dr. Roh opined that a fusion would be the best treatment option. PX9, p. 49.

Petitioner received an x-ray on August 17, 2017, PX 9, p. 73, PX 11. P. 24. On August 31, 2017, Dr. Dahlberg performed intraarticular facet joint injections at L4-5 and L5-S1 bilaterally. PX9, p. 81-82.

Petitioner was seen by Matthew D. Schawbero, PA on November 16, 2017, for a preoperative consultation. PX9, p. 46. Dr. Roh provided an addendum to that progress note that he "discussed the fact that surgery is for [Petitioner's] buttock and leg pain, not back pain," and that Dr. Roh's goal was to improve his buttock and leg pain, "not to be his champion for his workers' compensation claim." Dr. Roh mentioned that he discussed with Petitioner the possibility of further surgery Id.

On November 21, 2017 Dr. Roh performed a minimally invasive spinal fusion on Petitioner consisting of: 1) L4-L5 posterior spinal fusion and transforaminal lumbar interbody fusion; 2) L4-L5 posterior spinal segmental instrumentation using cannulated Legacy screws; 3) L4-L5 insertion of intervertebral fusion device using titanium crescent cage; 4) L4-L5 transfacet decompression beyond simple disc preparation; 5) harvest of left iliac crest bone graft; 6) harvest local bone autograft; 7) use of surgical microscope, spinal cord monitoring and intraoperative fluoroscopy. PX9, p. 92.

Dr. Roh saw petitioner on January 10, 2018, six weeks post-surgery and noted Petitioner's "symptoms of left leg pain are significantly improved, and he really has very little in the way of buttock or thigh pain," "some residual discomfort in the left lateral calf and dorsal foot" was noted which "is still at least 50-60% better than before surgery." PX9, p. 45

On February 27, 2018, Petitioner was seen by Matthew Schwabero, PA. Petitioner reported mild symptoms in the leg but that it has improved. He was given 2-3 additional weeks

of work hardening and was released to work without restrictions after that. He was released from care prn at that time. PX9, p. 44. Petitioner was discharged from physical therapy on March 23, 2018. PX9 p 99.

Petitioner testified he returned to work on March 23, 2018, and continues to work full duty as of the date of hearing. Petitioner testified that he continues to treat with Rockford Pain for his back pain symptoms, that his last date of treatment was December 23, 2021, but that he was not able to treat during the year 2020 because of covid.

Petitioner continued to treat with Dr. Dahlberg who performed a facet injection on November 7, 2019, and Dr. Roh. PX 10, p. 162. On November 6, 2018, Petitioner received an MRI with Dr. Roh, and his impression noted Petitioner's instrumentation appears in good position, fusion status indeterminate, and no evidence of complication. PX9, p. 69.

Petitioner saw Dr. Marie Walker, at Rockford Spine Clinic on November 13, 2018, and her history notes that Petitioner's left leg pain had been ongoing for almost five years. PX9, p. 36. She diagnosed him with left leg pain which is neuropathic in nature and that his nerve pain is part sciatic and part L4 nerve root distribution. Id. She indicated this was puzzling given no abnormalities were reflected in his November 6, 2018, MRI and ordered an EMG. Id; PX9, p. 69. The records document that on November 27, 2018, Dr. Walker reviewed Petitioner's EMG study and that Petitioner reported significant pain in the top and the inside of his foot and some pain in the anterior lateral calf. PX9, p. 35, 67-68. Dr. Walker concluded the EMG study demonstrated evidence of a chronic left L5 radiculopathy. Id. She noted that it could take up to two years for the nerve to recover from decompression and that if his pain persisted with conservative treatments a referral for a spinal cord stimulator may be considered. Id.

Petitioner testified he continues to receive injections and the records document he has received injections on March 19, 2021, April 6, 2021, June 11, 2021, and September 13, 2021. PX10, p. 158, 153, 149, 146. The Petitioner testified that he continues to receive treatment from his primary care physician and the doctors at Rockford Pain Center. The medical records produced by the Rockford Pain Center stop at December 23, 2021, but Petitioner testified that he had a follow up spinal injection scheduled for February 23, 2022.

Petitioner testified that his back condition effects his life as he no longer can participate in the sports as he previously did, including softball, football, soccer, and snowboarding. He has

difficulty running. He continues to work full duty and in 2020 he obtained a promotion to Engineer, which is a less physically strenuous assignment. Petitioner testified he continues to do household chores, but that he requires assistance for some of those activities. Petitioner testified that he has paid out-of-pocket expenses for medication which is listed in PX 16.

Deposition Testimony of Dr. Michael Roh

Michael S. Roh, MD, a board-certified orthopedic surgeon, testified via evidence deposition on January 24, 2022. PX13, p. 7. Dr. Roh testified he does not provide medical expert opinions apart from the patients he treats. PX13, p. 8. Dr. Roh opined to a reasonable degree of medical and surgical certainty that Petitioner's medical care was reasonable and necessary and that his March 2014 accident "at the very least resulted in an aggravation and progression of his preexisting findings in the lumbar spine with new onset L5 radiculopathy which ultimately required surgery." PX13, p. 16-19. Dr. Roh's opinion was based on Petitioner's history, chronology, MRIs, examination findings, and Dr. Roh's professional experience. PX13 p.20.

Dr. Roh acknowledged that Petitioner experienced lumbar discomfort prior to his March 5, 2014, accident but that his chiropractic treatment prior to March 5, 2014, did not change his causation opinion. PX 13 p. 19, 43. Dr. Roh testified that Petitioner's new left sided complaints were unrelated to any chiropractic treatment prior to March 5, 2014, because, Petitioner had no left-sided complaints before or at the March 4, 2014, chiropractic visit, but that after the March 5, 2014, event, Petitioner reported left-sided complaints including left buttock pain radiating down the left leg with paresthesia or tingling. PX 13 51-54. Dr. Roh opined that before the 2014 fall Petitioner experienced only generalized back and neck-type pain and that first time Petitioner developed left-sided radicular symptoms was after the 2014 fall and that the new onset herniated disc at L4-5 went on to develop an unstable spondylolisthesis at L4-5 with a synovial cyst. PX13, p. 28-30.

Dr. Roh testified regarding the course of treatment he administered to Petitioner and restated his diagnosis of L4-L5 soft tissue injury and left L5 radiculopathy secondary to L4-5 lateral recess stenosis and disk herniation. PX13, p. 9-12, 46-48. Dr. Roh based his diagnoses on his physical examination, the history, the May 2, 2014, MRI and the May 13, 2014, x-rays. PX13, p. 9-12, 46-48. Dr. Roh testified that the disk herniation from Petitioner's March 5, 2014,

accident, as seen in the May 2, 2014, MRI, was one of the causative factors of Petitioner's November 27, 2017, surgery. PX13, p. 46-47. Dr. Roh opined that Petitioner's need for surgery was not exclusively based on a degenerative condition. PX13, p. 47-48.

Dr. Roh testified that he proceeded with surgery consisting of an L4-5 minimally invasive decompression, instrumented fusion and transforaminal lumber interbody fusion with iliac crest bone graft. PX13, p. 15. After surgery Petitioner report to Dr. Roh that his left leg pain symptoms were significantly improved, and he had little buttock or thigh pain. PX13, p. 16.

On cross-examination on the issue of whether Petitioner had a herniated disk which did not appear in the records or operative report, Dr. Roh stated Petitioner had a clear broad-based disk herniation or protrusion which did to go away and that his reports note disk level pathology, L4-5 spondylolisthesis, and that mentioning disk herniation while noting spondylolisthesis would be redundant. PX13, p. 31, 33, 45. He further opined that it is "super rare" to see degenerative spondylolisthesis in a 40-ish-year-old male. PX13, p. 31.

When discussing the opinions of Dr. Levin, Dr. Roh noted that Dr. Levin did not review the July 20, 2017, MRI (the Arbitrator notes that Dr. Levin's Reports pre-date that MRI) and that although there was a myofascial component to Petitioner's injury, Dr. Levin did not address Petitioner's complaints of left leg pain and paresthesia which suggest a neurological and radiculopathic component to Petitioner's condition. (PX13, p. 85).

Deposition Testimony of Dr. Andrew Zelby, Section 12 Examining Physician

Andrew Zelby, MD, board certified in Neurosurgery, testified via evidence deposition on January 10, 2022. RX4. Dr. Zelby examined Petitioner on November 6, 2017 and testified that Petitioner was not able to squat down completely, that Petitioner had an abnormal antalgic gait favoring the left side and had vibratory sensation in the lower extremities which was diminished in the entire left lower extremity. RX4, 84-85, 113-4. Dr. Zelby noted Petitioner's history of low back pain and chiropractic treatment for years prior to his March 5, 2014, accident. RX4, 80, 111.

Dr. Zelby testified that prior to March 4, 2014, petitioner's back treatment consisted only of medication and chiropractic and Petitioner's complaints in the chiropractic records on March 4, 2014, were limited to the right leg. RX4, 110-111.

Dr. Zelby opined that Petitioner's lumbar spondylolisthesis is related to age in part and genetics in part. RX4, 91-92, 93. Dr. Zelby noted Petitioner had a sensory loss in the left lower extremity but opined that this was inconsistent with any spinal condition because the left leg symptoms do not correlate with the L4-5 level and that Petitioner did not exacerbate or aggravate any preexisting condition because he had been symptomatic for years and he received treatment the day before his reported injury. RX4, 92-94. Dr. Zelby then opined that it was more likely than not that Petitioner had a temporary exacerbation of his preexisting and long symptomatic degenerative condition, a diagnosis of soft tissue strain, and not symptoms that represented a radiculopathy. RX4, 95-96. Dr. Zelby stated that he reviewed the May 2, 2014, October 30, 2015, and July 20, 2017, MRIs, and x-rays from 2014, March 12, 2015, and August 10, 2017. RX4, 86-89. Dr. Zelby opined that the MRIs showed progression related to the passage of time and the x-ray reports showed degenerative changes in the mid and lower portion of the lumbar spine. RX4, 89-91, 108. Dr. Zelby opined that Petitioner's left side complaints represent the ongoing manifestations of his preexisting long symptomatic degenerative condition. RX4, 129.

Dr. Zelby opined that Petitioner's recommendation for a laminectomy was reasonable but based on solely his degenerative condition. RX4, 98-99, 103-4. Dr. Zelby opined that all of Petitioner's injection treatment was for a degenerative condition, but that there was no evidence of a degenerative change in the spine that points to the need for the introduction of injection treatment. RX4, 128-30. He further opined that Petitioner required no more than three or four weeks off work followed by three to four months of restricted duty after each of his reported injuries. RX4, 97, 99. Dr. Zelby was not aware of Petitioner's October 18, 2015, injury, but testified he could still opine that Petitioner could return to work within three to four months of that injury because Petitioner had a long history of neck pain and back pain and his diagnostic study showed only a degenerative condition based on the MRI findings. RX4, 108-109. Dr. Zelby was not aware the Petitioner never missed work for back pain prior to March of 2014. RX4, HRVA 119-120. Dr. Zelby acknowledged that 46 years old would be relatively young to have degenerative findings on an MRI and X-rays but went on to state that a degenerative spine is more prone to traumatic injury. RX4, 112, 116.

Section 12 Examination and Impairment Rating Reports

Stephen F. Weiss, M.D., Board Certified in Orthopedic Surgery, provided a June 21, 2017, report and impairment rating. Dr. Weiss took a history of Petitioner's low back pain since 2009, reviewed the Chiropractic records, and acknowledged Petitioner's pre-existing lumbar degenerative disc disease. PX14, p. 2-5. Dr. Weiss diagnosed petitioner with a permanent aggravation of his pre-existing lumbar condition with L5 radiculopathy secondary it his 2014 accident related to his fall on the ice and rated Petitioner's impairment as 11% whole person impairment. PX14, p. 5-6.

Jay L. Levin, M.D., reviewed medical records, examined Petitioner, and provided reports dated March 12, 2015, and November 13, 2015. RX2, RX1. Dr. Levin's March 12, 2015 report was limited to Petitioner's cervical condition related to the March 5, 2015 accident. Dr. Levin opined Petitioner's diagnosis was contusion of the cervical spine, related to his March 5, 2014 accident. RX 2. Dr. Levin further opined that at the time of his March 12, 2015 examination, Petitioner was at MMI as to his cervical spine issue concerning the March 5, 2014 accident. RX2, 52.

In his November 13, 2015 report, Dr. Levin diagnosed Petitioner with an acute lumbar myofascial strain related to a pre-existing lumbar spine condition. RX1, 20. Dr. Levin opined that as of his November 13, 2015 report, Petitioner was at MMI related to the March 5, 2014 accident and no additional treatment was required. RX1, 20. Dr. Levin did not provide an opinion regarding Petitioner's October 18, 2015 or Petitioners April 2, 2016 accident.

CONCLUSIONS OF LAW

March 5, 2014, 14WC033731, October 18, 2015, 16WC003687, April 2, 2016, 16WC021252

C. Regarding issue C, whether an accident occurred that arose out of Petitioner's employment, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner proved he suffered an accidental injury on March 5, 2014 during his course of employment with Respondent during an EMS call, when he slipped on ice and fell to the ground onto his medical bag and onto his back and shoulder. Further, the Arbitrator finds that Petitioner proved he suffered an accidental injury on October 18, 2015,

during the course of his employment while working full and unrestricted duty and sustained an accident during an EMS call. He sustained an injury to his lower back while transporting a patient downstairs to the ambulance with the mega mover. Lastly, the Arbitrator finds that Petitioner proved he sustained an accidental injury on April 2, 2016 when he fell backward onto his SCBA tank. The Arbitrator notes that the Petitioner credibly testified to these occurrences, completed timely injury reports, and provided corroborating histories to his treating doctors. There is no evidence in the record that disputes accident.

F. Regarding issue (F) whether Petitioner's current condition of ill-being is causally related to his injuries, the Arbitrator finds as follows:

It is axiomatic that a Petitioner has the burden of proving the elements of his case including that his condition of ill-being is causally connected to his work-related injury by a preponderance of the evidence. See *Bolingbrook Police Dep't v. Illinois Workers' Compensation Comm'n,* 2015 Il. App. 3d 130869WC (3rd Dist., 2015). The Illinois Supreme Court has long held that employers take their employees as they find them (*O'Fallen School Dist. No. 90 v Industrial Comm'n*, 313 Ill.App.3d 413, 417 (2000)) and that a preexisting condition does not prevent recovery under the Act if the condition was aggravated or accelerated by the claimant's employment (*Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill.2d 30, 26 (1982)). The Arbitrator finds that the record as a whole supports a finding that Petitioner's condition of ill-being is related to his work injury.

The record is clear that Petitioner suffered an accident on March 5, 2014. He endured subsequent accidents on October 8, 2015 and April 2, 2016. All of these accidents involved Petitioner's low back which is the body part that received myriad injections and eventual surgery. It is clear that Petitioner had a preexisting issue with his back for which he sought treatment prior to his work-related injury. The record supports a finding that Petitioner's work-related injury aggravated or accelerated his preexisting back issue as his symptoms increased in magnitude, radicular pain and numbness to the lower extremities developed, and treatment became much more frequent, consistent, and intense.

The Petitioner was diagnosed with upper and lower back strains, left L5 radiculopathy after his March 5, 2014 incident. He was diagnosed with low back pain with radiation into the left buttock and leg with numbness and tingling after his October 18, 2015 incident. Lastly, he was diagnosed with continuing back pain after his April 2, 2016 incident.

The evidence supports a finding that Petitioner experienced new left lower extremity symptoms after his March 5, 2014 accident, that Petitioner continued to treat with numerous providers from March 5, 2014 to the present for his left lower extremity symptoms and that his back pain continued through the date of hearing requiring Petitioner to continue to seek pain management post-surgery.

The record supports a finding that Petitioner never truly recovered from his March 5, 2014 accident as he continued to treat after his various attempts to return to work. Petitioner was initially diagnosed with a sprain on March 6, 2014 and treated conservatively with his PCP and Dr. Roh who noted L4-L5 issues including radiculopathy. He was returned to work in August of 2014 but still experienced issues with his back and continued to seek treatment, including injections. He was taken off work again on November 21, 2014, due to his continued symptoms. There is no evidence in the record of an intervening accident. He returned to work again on March 23, 2015. Petitioner continued to seek medical treatment after his return to work. He returned to work for several months but still complained of issues. He was injured again on October 18, 2015 and his back pain and radiation into the leg and buttocks continued. An MRI of October 30 2015 showed a worsening dick bulge and Dr. Freeman noted nerve compression. He was returned to work on December 1, 2015 but again continued to experience discomfort and sought ongoing medical treatment. He was injured again on April 2, 2016 and quickly returned to work on May 2, 2016 but continued to seek medical treatment. He sought further extensive treatment in June of 2017 which continued until Dr. Roh performed surgery in November of 2017. Petitioner was off work from November 21, 2017 through March 23, 2018. There is no evidence in the record of any intervening accidents during this time. Petitioner used FMLA, sick time, and Public Employee Disability Act benefits while off work.

The Arbitrator finds the opinions of Dr. Wiess and Petitioner's treating surgeon, Dr. Roh, to be more credible than those of Respondent's Section 12 examiner, Dr. Zelby. The Arbitrator relies on Dr. Weiss' opinion that petitioner sustained a permanent lumbar aggravation related to

his March 5, 2014 accident and notes that Dr. Wiess considered Petitioner's preexisting lumbar degenerative disc disease in forming his opinion. The Arbitrator finds that Dr. Roh's assessment to be more credible than Dr. Zelby as Dr. Roh was familiar with the Petitioner's history of low back pathology beginning with Dr. Roh's initial May 13, 2014 treatment. Dr. Roh's familiarity with Petitioner's condition dated back to his March 5, 2014 injury. As such, Dr. Roh was familiar with the history, pain complaints and the symptoms experienced by Petitioner in 2014 through 2017.

Dr. Roh noted that Petitioner failed conservative care which led to his eventual need for fusion surgery at L4-L5 and that his complaints were related to his March 5, 2014 injury. Dr. Roh's opinions were clear in that Petitioner only experienced left-sided radicular symptoms after the March 5, 2014 accident and that Petitioner's pre-accident treatment consisted of general back pain and right-sided complaints. Dr. Roh clearly and consistently opined that the 2014 accident was a causative factor or at least an aggravation of a preexisting condition in the spine with a new onset of left L5 radiculopathy which ultimately led to the requirement of Petitioner's November 2017 surgery. The record supports a finding by a preponderance of the evidence that Petitioner's March 5, 2014, accident is causally related to Petitioner's ongoing back and left lower extremity symptoms which ultimately led to his need for lumbar surgery and his current state of disability.

The Arbitrator finds Dr. Zelby's opinions less credible. Dr. Zelby's testimony acknowledged that Petitioner had only right leg symptoms prior to his March 5, 2014 accident and that Petitioner's treatment prior to March 5, 2014 was limited to medication and chiropractic treatment with no injection therapy. Dr. Zelby opined that related to his accidents Petitioner sustained a temporary exacerbation of his preexisting degenerative condition which was based on Petitioner's diagnostic studies and reported symptoms. Dr. Zelby opined that after each of Petitioner's reported accident he would need to be off work or on restricted duty for three to four months. Dr. Zelby opined that Petitioner's laminectomy was reasonable but related solely degenerative condition. The Arbitrator notes that Dr. Zelby opined Petitioner's injection treatment was related solely to a degenerative condition but testified there was no medical evidence of a degenerative change in the spine that required injection treatment. Dr. Zelby opined that a portion of Petitioner's treatment was related to his work accidents but did not

quantify what treatment dates were or were not related to which accident date. Dr. Zelby acknowledged that Petitioner was rather young to have degenerative findings. Dr. Zelby's findings essentially ignore the Petitioner's increase in symptoms, the addition of radicular issues, and Petitioner's ongoing need for frequent and consistent medical treatment after his accident. The record, again, supports a finding that Petitioner's preexisting back issue was aggravated or accelerated by his injury.

The Arbitrator give some weight to the opinions of Dr. Levin. Dr. Levin diagnosed Petitioner with a myofascial strain with longstanding pre-existing lumber spine complaints related to Petitioner's March 5, 2014 accident and opined that Petitioner was at MMI related to his March 5, 2014 accident as of his November 13, 2015 the Arbitrator notes that Dr. Levin's opinion is limited to his examination of Petitioner in March of 2015 and medical records through December 19, 2014. While the cervical injury and treatment was minimal in comparison to Petitioner's low back-related treatment, the Arbitrator finds his cervical issue related to his injury. The Arbitrator relies on the opinion of Dr. Levin. Dr. Levin diagnosed Petitioner with a contusion of the cervical spine related to the March 5, 2014 accident.

Ultimately, the Arbitrator finds that petitioner suffered an injury to his back on March 5, 2014 which caused ongoing pain with radiculopathy which eventually required his November 21, 2017. This finding is based on the opinions of Drs. Roh and Wiess in addition to the medical records which document me and left sided symptoms after the March 5, 2014 accident and the credible testimony of Petitioner. The Arbitrator finds that Petitioner sustained an aggravation of his preexisting lumbar condition related to the October 18, 2015 accident based on his ongoing need for medical treatment in the medical records and medical expert opinions. Further, Petitioner sustained an aggravation of his preexisting lumbar condition related to the April 2, 2016 accident based on his ongoing need for medical treatment in the medical records and medical expert. Petitioner's course of treatment which led him to the need for surgery was ultimately caused by his March 5, 2014 injury from which he never truly recovered despite conservative treatments and numerous attempts to return to work.

J. Regarding issue (J) whether the medical services provide to Petitioner were reasonable and necessary, and whether Respondent paid all appropriate charges for the reasonable and necessary medical services; the Arbitrator finds the following:

Having found Petitioner's cervical and lumbar conditions of ill-being is related to his accidents the Arbitrator finds that the treatment received for Petitioner's cervical condition through April 25, 2014 and lumbar condition through the date of hearing and ongoing were reasonable and necessary. The Arbitrator basis his finding on the opinions of Drs. Roh, Wiess, and Levin. Of note, the Arbitrator notes that Dr. Roh testified that all of Petitioner's treatment including all the injection treatment provided at Rockford Pain was reasonable and necessary and causally related Petitioner's work injuries. Accordingly, the Arbitrator finds that the bills and lien evidenced in PX1 were reasonable and necessary and that Respondent is responsible for payment pursuant to Section 8(a) pursuant to the fee-schedule or negotiated rate. The Respondent shall pay the unpaid balances of $5,668.84 pursuant to the fee schedule as documented in Petitioner's Exhibit 1. Respondent shall hold the Petitioner harmless for any reimbursement claim or lien asserted by the group insurance carrier, BCBS.

The Arbitrator finds that Petitioner has borne out-of-pocket expenses which related to the above-mentioned treatment that is reasonable and necessary. Accordingly, the Arbitrator orders Respondent to reimburse Petitioner the amount of $1,624.86 for out-of-pocket medical expenses paid by Petitioner evidenced in Exhibit 1 and $1,010.21for out-of-pocket medication expenses paid by Petitioner in Exhibit 16, totaling $2,635.07. Respondent is entitled to a credit for amounts paid pursuant to Section 8(j).

K. Regarding the disputed issue (K) on whether the Petitioner is entitled to TTD, the Arbitrator finds the following:

Having found for issues F and J above, the Arbitrator finds Petitioner was restricted from work numerous times for his three accidents. Petitioner received his full salary pursuant to the Public Employee Disability Act for a large portion of the TTD periods alleged. The Request for Hearing sheets marked AX1 and AX2 note that no TTD is in dispute and AX3 notes that

Petitioner is alleging TTD for periods of April 2, 2016 through May 5, 2016 and June 12, 2017 through March 28, 2018 (which may be a typo or misprint as all other facts in record show March 23, 2018). The Arbitrator finds that Petitioner is entitled to TTD benefits for the following periods of time:

- March 5, 2014 through August 5, 2014, reflecting 22 weeks;
- November 21, 2014 through December 23, 2014, reflecting 4 and 5/7 weeks;
- October 19, 2015 through November 24, 2015, reflecting 5 and 2/7 weeks; and
- July 28, 2017 to March 23, 2018, reflecting 34 and 1/7 weeks.

It remains Petitioner's burden to prove all elements of his claims for relief sought. As far as the disputed TTD period is concerned in April and May of 2016, the record notes Petitioner saw Dr. Stocker, on April 4, 2016, and was restricted from heavy lifting. The doctor's note does note remove Petitioner from work entirely. PX7, p. 75-76. Petitioner then followed up with Dr. Freeman on April 19, 2016, for injections but Dr. Freeman did not remove Petitioner from work, but Petitioner was rather advised to avoid activity that causes pain and continue Dr. Stocker's restrictions. PX10 p 70-72. As of April 27, 2016, Dr. Stocker noted Petitioner was ready to return to work and returned Petitioner to work full duty on May 2, 2016. PX15, p. 59. The record does not support a finding that TTD is due for this time period as Petitioner was restricted to light duty and there is nothing in the record to show that he requested light duty or that light duty was declined. Further, Petitioner previously worked light duty from December 24, 2014, through March 24, 2015.

The record is not clear that Petitioner was restricted from work on June 12, 2017. On June 30, 2017, Petitioner received another ESI and was discharged prn but advised to avoid activities that cause pain. Another injection was performed on July 28, 2017, by Dr. Dahlberg and Petitioner was referred to Dr. Roh for a surgical consultation. In the July 28, 2017, records, there is a handwritten note on a discharge instruction sheet that reads, "no work no lite duty." Another injection was performed on August 31, 2017, by Dr. Dahlberg. Dr. Dahlberg did not mention work restrictions in his records at that time and the discharge instructions that previously stated "no work no lite duty" are silent as to work restrictions. The Arbitrator draws an inference here that as Petitioner's complaints had not changed that the restrictions from July

28, 2017, would remain unchanged as well. Petitioner underwent surgery, recuperated, and was eventually returned to full duty work on March 23, 2018. Accordingly, the Arbitrator finds that the period of TTD payable from is from July 28, 2017, to March 22, 2018.

The TTD periods total 66 and 1/7 weeks at a rate of $1,000.00 per week for the first 32 weeks and $1,065.21 per week for the final 34 and 1/7 weeks based on Petitioner's average weekly wage (AX1,2,3). Respondent shall receive credit for amounts paid to Petitioner for the TTD weeks awarded above.

L. Regarding issue (L), the nature and extent of the Petitioner's injury, the Arbitrator finds the following:

The Arbitrator has considered the five factors outlined in Section 8.1(b) and finds that Petitioner has sustained permanent disability of 17.5% loss of use of the person as a whole. The Arbitrator analyzes the Petitioner's permanency under five factors as follows:

Regarding subsection (i), the Arbitrator notes that Dr. Weiss provided an AMA impairment rating of 11% of Petitioner's condition, however, this report was authored with a focus on Petitioner's pre-surgical April 5, 2014, accident and not his March 5, 2014, accident. This factor is given little weight.

Regarding subsection (ii), Petitioner's occupation, Petitioner was able to return to his pre-accident employment as a firefighter/paramedic and is currently performing the duties of a fire engineer which Petitioner testified is not as labor-intensive. The Arbitrator finds Petitioner's ongoing complaints could negative affect the remainder of his career as a firefighter/paramedic/engineer. The Arbitrator places great weight on this factor.

Regarding subsection (iii), Petitioner's age, the Arbitrator places moderate weight on this factor as Petitioner's age of 44 suggests he has decades of employment ahead of him. Dr. Zelby noted that Petitioner was young to experience a degenerative lumbar condition.

Regarding subsection (iv), Petitioner's future earning capacity, the Arbitrator gives little weight to this factor as there is no evidence in the record that Petitioner has or will experience any diminishment in his earning capacity from Petitioner or his doctors.

Regarding subsection (v), evidence of disability corroborated by medical records, the record is unambiguous that Petitioner underwent a substantial course of conservative treatment, a fusion surgery, and still complains of issues as of the date of hearing. Petitioner was released to regular duty and is not subject to any permanent limitations from his doctors. His return-to-work slips advise him to avoid activities that cause pain. Petitioner may also need future pain management treatment. Accordingly, the Arbitrator finds that petitioner sustained a permanent partial disability loss of 17.5% of the person as a whole pursuant to Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC003687
Case Name	Michael D Bauman v. City of Rockford
Consolidated Cases	14WC033731; 16WC021252;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0157
Number of Pages of Decision	27
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Thomas Duda
Respondent Attorney	Kevin Luther

DATE FILED: 4/7/2023

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify Temp. Disability, Credit, Medical, Perm. Disability	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL D. BAUMAN,

Petitioner,

vs. NO: 16 WC 03687

CITY OF ROCKFORD,

Respondent.

DECISION AND OPINION ON REVIEW

This matter comes before the Commission pursuant to timely Petitions for Review of the Decision of the Arbitrator filed by the Respondent and Petitioner herein. Notice having been given to all parties, the Commission, after considering the issues of whether Petitioner's current condition of ill-being is causally related to the October 18, 2015 accident, entitlement to medical expenses, Petitioner's entitlement to temporary disability benefits as well as Respondent's entitlement to credit for PEDA benefits paid, and the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, modifies the Decision as stated below but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

PROCEDURAL HISTORY

This case was consolidated for hearing with case numbers 14 WC 33731 and 16 WC 21252. All three cases involve injuries to Petitioner's back: 14 WC 33731 involves a March 5, 2014 accident, 16 WC 03687 involves an October 18, 2015 accident, and 16 WC 21252 involves an April 2, 2016 accident. The claims proceeded to arbitration before Arbitrator Gerald Napleton on February 23, 2022. The Request for Hearing form submitted by the parties for the instant matter, case 16 WC 03687, identifies the following issues in dispute: 1) whether Petitioner sustained an accidental injury arising out of and occurring in the course of his employment on October 18, 2015; 2) whether Petitioner's current condition is causally related to the October 18, 2015 accident; 3) entitlement to medical expenses; and 4) the nature and extent of Petitioner's permanent disability. Arb.'s Ex. 2.

On June 1, 2022, Arbitrator Napleton issued the same decision under all three case numbers; therein, the Arbitrator found Petitioner sustained accidental injuries on March 5, 2014; October 18, 2015; and April 2, 2016, and his current low back condition is causally related to all three work accidents. The Arbitrator awarded identical benefits under each case number: medical expenses and out-of-pocket costs totaling $8,304.91, 66 1/7 weeks of Temporary Total Disability ("TTD") benefits subject to Respondent's credit of $32,142.86 for Public Employee Disability Act ("PEDA") benefits paid, and 17.5% loss of use of the person as a whole. Both parties filed Petitions For Review.

Respondent's Petition for Review identifies the following issues on Review: whether Petitioner sustained an accidental injury arising out of and occurring in the course of his employment on October 18, 2015, whether Petitioner's current condition is causally related to the October 18, 2015 accident, entitlement to medical expenses, entitlement to temporary disability benefits, and the nature and extent of Petitioner's permanent disability. Petitioner's Petition for Review identifies the following issues: entitlement to medical expenses, entitlement to temporary disability benefits, and Respondent's entitlement to credit. The Commission observes Respondent did not advance an argument on the accident issue in its Statement of Exceptions or during oral arguments, and thus the Commission views the issue as forfeited. Moreover, as detailed below, the Commission finds the issues of Petitioner's entitlement to temporary disability benefits and Respondent's entitlement to credit are moot.

CONCLUSIONS OF LAW

The Arbitrator found Petitioner's current condition of ill-being is causally related to all three work accidents. The Commission's analysis of the evidence yields the same result. However, the award of identical benefits in all three cases is duplicative and contrary to the parties' stipulations on the Request for Hearing form.

Medical Expenses and Permanent Disability

The Commission finds Petitioner's current low back condition is causally related, in part, to his October 18, 2015 accident: Petitioner suffered an initial low back injury on March 5, 2014, which had not reached maximum medical improvement ("MMI") before he suffered subsequent exacerbations on October 18, 2015 and April 2, 2016. Consistent with our determination that Petitioner's current low back condition is causally related to all three work accidents but originated with the March 5, 2014 accident, the Commission clarifies that medical expenses and permanent disability benefits are awarded only under case 14 WC 33731.

Temporary Disability and Credit

The Arbitrator found Petitioner entitled to various periods of TTD benefits and Respondent entitled to an associated credit for PEDA benefits paid. The Commission observes, however, that the Request for Hearing form establishes that neither party asserted entitlement to those respective benefits; to be clear, Petitioner made no claim for TTD benefits associated with the October 18, 2015 accident, nor did Respondent make a claim for any credit. Arb.'s Ex. 2. Commission Rule 9030.40 provides as follows: "The completed Request for Hearing form, signed by the parties (or their counsel), shall be filed with the Arbitrator as the stipulation of the parties and a settlement of the questions in dispute in the case." *50 Ill. Adm. Code 9030.40*. The Appellate Court considered

this language in *Walker v. Industrial Commission*, 345 Ill. App. 3d 1084, 1088 (4th Dist. 2004), and confirmed that "the request for hearing is binding on the parties as to the claims made therein." As neither TTD benefits nor an associated credit were claimed by the parties in the instant matter, the awards of same were improper and are hereby vacated.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 1, 2022, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that all benefits and credits awarded under the instant case 16 WC 03687 are hereby vacated, and the claimed medical expenses and permanent disability benefits are instead awarded in companion case 14 WC 33731.

Under Section 19(f)(2), no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 7, 2023

/s/ *Deborah J. Baker*

DJB/mck

O: 2/22/23

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC003687
Case Name	BAUMAN, MICHAEL D. v. CITY OF ROCKFORD
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Thomas Duda
Respondent Attorney	Kevin Luther

DATE FILED: 6/1/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 1, 2022 1.58%

/s/Gerald Napleton, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Winnebago**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Michael D. Bauman
Employee/Petitioner

v.

CITY OF ROCKFORD
Employer/Respondent

Case # **16** WC **03687**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Napleton**, Arbitrator of the Commission, in the city of **Rockford**, on **February 23, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **October 18, 2015**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**78,000.00**; the average weekly wage was $**1,500.00**.

On the date of accident, Petitioner was **44** years of age, ***married*** with **1** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**32,142.86** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**32,142.86**.

Respondent is entitled to a credit of $**231,469.47** under Section 8(j) of the Act.

ORDER (CONSOLIDATED)

Respondent is liable for payment of Petitioner's reasonable and necessary medical costs evidenced in Petitioner's Exhibit 1 showing an unpaid balance of $5,669.84 pursuant to Section 8(a), the Medical Fee Schedule in 8.2, and Section 8.2(e). Respondent is entitled to a credit for payments made pursuant to its group health insurance and shall hold Petitioner harmless from any claim asserted by said group health insurance carriers.

Respondent shall reimburse Petitioner the amount of $2,635.07 for out-of-pocket costs borne by Petitioner for his reasonable and necessary medical treatment.

Petitioner was temporarily and totally disabled for the periods of March 5, 2014 through August 5, 2014; November 21, 2014 through December 23, 2014; October 19, 2015 through November 24, 2015; and July 28, 2017 through March 23, 2018 reflecting 66 and 1/7 weeks pursuant to Section 8(b) of the Act. Respondent is entitled to a credit for Public Employee Disability Act benefits paid for these periods. Respondent shall pay TTD benefits of $1,000 per week for the TTD periods from March 5, 2014 through November 24, 2015 and benefits of $1,065.21 per week for the period of July 28, 2017 through March 23, 2018 subject to the aforesaid credit for PEDA benefits paid.

Respondent shall pay Petitioner Permanent Partial Disability benefits of $721.66/week for 87.5 weeks as Petitioner sustained a 17.5% loss of the Person as a Whole pursuant to Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

/s/ Gerald W. Napleton **JUNE 1, 2022**

Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL BAUMAN,	)		
	)		
Petitioner,	)		
	)		
vs.	)	Case #	14 WC 33731
	)	Consolidated Cases:	16 WC 3687
CITY OF ROCKFORD,	)		16 WC 21252
	)		
Respondent.	)		

FINDINGS OF FACT and CONCLUSIONS OF LAW

Petitioner is a firefighter/paramedic who has worked for the Respondent since 2002. Petitioner is alleging injuries on three separate occasions while working for Respondent on March 5, 2014, October 18, 2015, and April 2, 2016. Petitioner testified this is a physically demanding job. His schedule with the City of Rockford is a 24-hour shift with 48-hours off between shifts. Petitioner testified he was employed by the City of Belvidere for ten months prior to his being hired by the City of Rockford and that he experienced no work injuries while working for the City of Belvidere.

Petitioner testified to his duties as a firefighter. While performing fire suppression duties, he wears specialized firefighting gear which weighs 40 to 50 pounds and in addition wears a self-contained breathing apparatus and air tank which weighs 40 to 50 pounds; otherwise, he wears a standard uniform similar to street clothing. His uniform and equipment are shown in PX19. Petitioner testified that for paramedic duties he carries equipment weighting 10 to 50 pounds. He also uses equipment to transport patients including a "mega mover" and a gurney. Petitioner explained that a mega mover is a cloth type carrier weighing less than ten pounds used transport a patient when a gurney cannot be used.

Petitioner testified that prior to March 5, 2014, he treated on an as needed basis with Hulsebus Chiropractic for his back and that prior to his alleged accident he last treated at Hulsebus on March 4, 2014, but that he was not under any prescribed treatment plan, nor did he have any scheduled follow-up appointment after the March 4, 2014, visit.

Records document that petitioner treated with Hulsebus Chiropractic from 2004 until March 4, 2014. PX 5. The March 4, 2014, Hulsebus Chiropractic note state Petitioner was to follow up as needed. PX5. The Records document that Petitioner treated at Hulsebus on an as needed basis throughout 2013 and 2014. PX5. He treated three times in 2014 prior to his March 5, 2014, accident and at each visit was released on an as needed basis or to call if needed. PX5.

March 5, 2014, injury

Petitioner testified that on March 5, 2014, his shift started at 8:00 am, he was working full duty, and that he felt fine at the start of his shift. The conditions on March 5, 2014, consisted of ice-covered ground with eight inches of snow. Petitioner testified he began his shift on the engine and then was assigned as a paramedic. During his assignment as a paramedic, he responded to a residential injury call and during that call slipped on the ice and fell to the ground onto his medical bag which was over one shoulder and impacted his back and shoulder. He immediately felt upper and lower back pain but was able to complete the call, ambulate to the engine and return to the fire station. At the station he continued to feel pain, completed an injury report, but was not able to complete his shift. He went home where he took medication and went to sleep.

When he woke the next morning, he continued to have pain in his upper and lower back and sought treatment. Petitioner sought treatment at Hulsebus Chiropractic for his neck and back pain. The March 6, 2014, records note Petitioner complained of "neck and back pain and muscle spasms" and "following the accident at work, the patient complained about very severe neck stiffness bilaterally … and very severe constant pulling lower back pain bilaterally." PX5 p 5. The chiropractic records document that he experienced neck and back pain which gradually increased and that he was referred to Immediate Care. PX5, p. 5-7. Later that day, Petitioner presented to Physicians Immediate Care reporting neck pain due to a work injury. X-rays were taken, he was diagnosed with a neck sprain and lumbar sprain, and he was given work restrictions. PX6, p. 26-29. Physical therapy was recommended, and petitioner completed a course of physical therapy from March 31, 2014, through July 31, 2014, at ORS of Rockford. PX 11.

Petitioner was seen by his primary care physician, Rose M. Stocker, DO on April 9, 2014, and reported his symptoms were increasing with physical activity, that "he has had low back pain before but no numbness like this before … numbness in left hip and radiating down his left hip to the bottom of his foot." PX 7, p. 8-10. Dr. Stocker diagnosed petitioner with a rhomboid muscle strain, piriformis muscle strain, and sciatica. She prescribed steroids, kept Petitioner off work and recommend a possible MRI if his radiculopathy did not improve. PX7, p. 10.

Petitioner followed up with Dr. Stocker, on April 25, 2014. She noted Petitioner's thoracic back was improved, recommended an MRI for Petitioner's lower back, and referred Petitioner to an orthopedic. PX7, p. 006. Petitioner obtained an MRI on May 2, 2014. PX8. The MRI revealed a L4-L5 broad based disc bulge and facet arthropathy resulting in left lateral recessed stenosis. PX8

Records document that Petitioner then sought treatment with Dr. Michael Roh at Rockford Spine Center on May 13, 2014. Dr. Roh, diagnosed Petitioner with axial lumbar issues following a work-related fall, L4-5 soft tissue injury/inflammation, and left L5 radiculopathy secondary to lateral stenosis and disc herniation. PX9, p57. Dr. Roh recommended continued observation, physical therapy, epidural steroid injections, and a work conditioning program. If these failed, he indicated a need for surgical intervention and/or an ablation. PX 9, p. 57. Petitioner received Epidural Steroid Injections and facet injections from Dr. Freedman at Rockford Pain Center on May 20, 2014, June 17, 2014, and July 15, 2014. PX9, p. 89-90, 87-88, PX10 p. 5-7, 13-14, 20-21.

Petitioner testified he returned to work full duty on August 5, 2014. Petitioner was taken off work from March 6, 2014, through August 5, 2014. Petitioner was paid his full salary and benefits under the Public Employee Disability Act while off work. Petitioner continued to treat after his full duty return to work for his continuing radiculopathy and low back pain with Dr. Socker and Dr. Freeman. He continued to take off work intermittently and took FMLA leave for his pain flare ups on August 19, 2015, and October 15, 2015 (PX7, p. 82-83, 80-81). Dr. Freeman performed additional ESIs at L4-5 and noted that if injections are not able to improve his radicular pain, he would have Petitioner revisit Dr. Roh. PX9, p. 85-86; PX10, p. 28-29. The records document that on November 21, 2014, petitioner was again taken off work related to his

previous injury. PX15, p. 18. On December 16, 2014, Dr. Freeman performed another ESI (PX10, p. 28-29, 35-36) and performed an ESI at L4-5 and an L5-S1 facet joint injection on January 20, 2015 (PX10, P 41-42).

On February 17, 2015, Petitioner returned to Dr. Freeman who indicated if the injections provide Petitioner long lasting relief, then they can be repeated intermittently otherwise he would consider medial branch blocks with possible radiofrequency ablation. PX10, p. 49-50.

On March 12, 2015, Petitioner was examined by Dr. Jay Levin for a Section 12 Examination. Dr. Levin found Petitioner was at MMI for his cervical condition but did not provide an opinion regarding Petitioner's lumber condition.

On March 18, 2015, Petitioner's primary care physician returned Petitioner to full duty as of March 23, 2015. PX 7, p. 87-88. Petitioner testified he returned to work full duty on March 23, 2015.

The Petitioner testified that he continued to have low back pain after his return to work. Petitioner sought treatment for his low back with his primary care physician in August of 2015 and used vacation, sick time, and FMLA benefits for his time off due to pain flare ups. PX 7, p. 82-83, PX15, p. 34, 35.

On October 2, 2015, Petitioner saw Dr. Freeman again who noted he was improved and doing well since his last bilateral L4-5 and L5-S1 facet joint injection of February 2015 but had a flare up of pain with numbness and tingling in the left buttock and leg. PX10, p. 53. Dr. Freeman diagnosed Petitioner with low back pain with radiation into the left buttock and leg with numbness and tingling likely multifactorial with possible radicular component. PX 10, p. 53. Dr. Freeman performed a left L4-5 interlaminar epidural steroid injection in the hope that this would improve his left buttock and leg pain and continued Petitioner's work restrictions. He was to follow up in three to four weeks. He was not restricted from any work duties. PX10, p. 54.

October 18, 2015 injury

Petitioner testified that on October 18, 2015, he started his shift at 8:00 am and was working as a paramedic. During his assignment, he responded to a patient who required transport to the hospital. While moving the obese patient with a mega mover down steps he felt a strain or pain in his lower back. PX 3; PX 15, p. 26, 31, 37. Petitioner was able to get to the ambulance

with the patient and that in the back of the ambulance on route to the hospital Petitioner's lower back and left leg experienced numbness, tingling, and spasms. PX3, PX 15, p. 25. Petitioner testified he did not complete his shift and went home.

Petitioner testified that when he awoke the next morning, he continued to have pain in his back and sought medical treatment with his PCP. On October 19, 2015, he was placed on light duty work restrictions of no pushing, pulling, or lifting more than 10lbs. PX15, p. 33, 36, 42.

On October 30, 2015, Petitioner was referred by Dr. Stocker for an MRI, which indicated a mild worsening disc bulge at L4-L5 now demonstrating superimposing central protrusion which indents the thecal sac. PX 8, p. 3-5. On November 3, 2015, Dr. Freeman reviewed the MRI, noticed evidence of compression of the left L5 nerve root, performed bilateral L4-L5 and L5-S1 facet joint injections, and noted that if Petitioner's leg pain worsens, he will repeat the L4-5 epidural steroid injection. PX10, p. 30.

On November 30, 2015, Petitioner returned to Dr. Freeman and reported near complete relief for two week and that the pain returned but is currently tolerable. PX10, p. 67. Dr. Freeman noted Petitioner had completed physical therapy, indicated no injections were necessary and released Petitioner to follow-up as needed. PX10, p. 67. Dr. Freeman indicated that if Petitioner continues to have long lasting relief with fact injections those can be repeated in the future. Id. On November 20, 2015, Dr. Freeman released Petitioner to resume previous activity, but minimize activity that causes pain. PX10, p. 68. Petitioner testified and the record documents Petitioner returned to work on December 1, 2015. PX15, p. 41.

<u>April 2, 2016 injury</u>

Petitioner testified that on April 2, 2016, his shift started at 8:00 am. He was working full duty and attended a fire suppression call and fell backward onto his SCBA tank. PX4; PX 15, p. 51. He testified he felt back pain but continued working the fire until its conclusion and was able to return to the station. Petitioner testified that after returning to the station he continued to feel pain, completed an injury report, did not complete his shift, but went home where he took medication and went to sleep. When he awoke the next morning, he continued to have pain in his back and sought treatment.

The records document that the Petitioner saw his PCP, Dr. Stocker, on April 4, 2016, complained of pain and was given a diagnosis of low back pain without sciatica. Petitioner was prescribed medication, possible physical therapy, further imaging, and restricted from heavy lifting. The doctor's note does note remove Petitioner from work entirely. PX7, p. 75-76. Petitioner then followed up with Dr. Freeman on April 19, 2016, who performed facet injections at L4-L5 and L5-S1 and noted that if the injections provide only short-lived relief, he would consider medical branch blocks. PX10, p. 70-71. Dr Freeman did not restrict Petitioner from work but was advised to avoid activity that causes pain. PX10 p 70-72. As of April 27, 2016, Dr. Stocker noted Petitioner was ready to return to work and returned Petitioner to work full duty on May 2, 2016. PX15, p. 59.

Petitioner testified he returned to work full duty on May 2, 2016, but that he continued to have back pain symptoms and continued to treat with Dr. Freedman. Petitioner treated with Dr. Dahlberg after Dr. Freedman left Rockford Pain Center. Petitioner testified that he did not sustain any back injury either at work or outside of work.

On June 30, 2017, Petitioner received another ESI at L4-5 and was discharged prn but to avoid activities that cause pain. An MRI performed on 7/20/2017 revealed moderately severe spinal stenosis at L4-5 with moderately severe compromise of the left foramen. The August 21, 2017, addendum to the July 20, 2017, MRI report states "there is a 2mm anterolisthesis of L4-L5 which had developed since 10/13/2015." PX 9, p.76. Petitioner was not restricted from work. Another injection was performed on July 28, 2017, by Dr. Dahlberg and Petitioner was referred to Dr. Roh for a surgical consultation. In the July 28, 2017, notes, Dr. Dahlberg noted Petitioner's initial injury of slipping on ice while on a medical call. PX15, p68. Dr. Roh recommended surgical intervention. Another injection was performed on August 31, 2017, by Dr. Dahlberg. Petitioner was given a work slip that said "no work no lite duty" handwritten with a date of July 28, 2017.

When Petitioner followed up with Dr. Roh on August 10, 2017, he complained of lumbar back pain that radiates into the hip and down the posterior, lateral and anterior thigh, lateral and posterior lower leg and into both dorsal and plantar aspects of the foot with numbness and tingling in the same nerve distribution area. PX9, p. 47. Dr. Roh recorded that Petitioner stated these symptoms started with his fall on the ice three years ago and that Petitioner has continued

conservative treatment. Id. Dr. Roh diagnosed petitioner with severe left L4 and L5 radiculopathy secondary to L4-5 degenerative spondylolisthesis, central and lateral recess stenosis with a synovial cyst and that all conservative treatments have failed. PX9, p. 48-9. Dr. Roh noted the MRI shows instability at the L4-L5 level as well as central canal/lateral recess stenosis. Id. Dr. Roh stated Petitioner "has had these symptoms now for 3+ years, getting worse over that time. He has failed conservative care including chiropractic care, physical therapy, epidural steroid injections, and anti-inflammatories." PX9, p. 49. Dr. Roh opined that a fusion would be the best treatment option. PX9, p. 49.

Petitioner received an x-ray on August 17, 2017, PX 9, p. 73, PX 11. P. 24. On August 31, 2017, Dr. Dahlberg performed intraarticular facet joint injections at L4-5 and L5-S1 bilaterally. PX9, p. 81-82.

Petitioner was seen by Matthew D. Schawbero, PA on November 16, 2017, for a preoperative consultation. PX9, p. 46. Dr. Roh provided an addendum to that progress note that he "discussed the fact that surgery is for [Petitioner's] buttock and leg pain, not back pain," and that Dr. Roh's goal was to improve his buttock and leg pain, "not to be his champion for his workers' compensation claim." Dr. Roh mentioned that he discussed with Petitioner the possibility of further surgery Id.

On November 21, 2017 Dr. Roh performed a minimally invasive spinal fusion on Petitioner consisting of: 1) L4-L5 posterior spinal fusion and transforaminal lumbar interbody fusion; 2) L4-L5 posterior spinal segmental instrumentation using cannulated Legacy screws; 3) L4-L5 insertion of intervertebral fusion device using titanium crescent cage; 4) L4-L5 transfacet decompression beyond simple disc preparation; 5) harvest of left iliac crest bone graft; 6) harvest local bone autograft; 7) use of surgical microscope, spinal cord monitoring and intraoperative fluoroscopy. PX9, p. 92.

Dr. Roh saw petitioner on January 10, 2018, six weeks post-surgery and noted Petitioner's "symptoms of left leg pain are significantly improved, and he really has very little in the way of buttock or thigh pain," "some residual discomfort in the left lateral calf and dorsal foot" was noted which "is still at least 50-60% better than before surgery." PX9, p. 45

On February 27, 2018, Petitioner was seen by Matthew Schwabero, PA. Petitioner reported mild symptoms in the leg but that it has improved. He was given 2-3 additional weeks

of work hardening and was released to work without restrictions after that. He was released from care prn at that time. PX9, p. 44. Petitioner was discharged from physical therapy on March 23, 2018. PX9 p 99.

Petitioner testified he returned to work on March 23, 2018, and continues to work full duty as of the date of hearing. Petitioner testified that he continues to treat with Rockford Pain for his back pain symptoms, that his last date of treatment was December 23, 2021, but that he was not able to treat during the year 2020 because of covid.

Petitioner continued to treat with Dr. Dahlberg who performed a facet injection on November 7, 2019, and Dr. Roh. PX 10, p. 162. On November 6, 2018, Petitioner received an MRI with Dr. Roh, and his impression noted Petitioner's instrumentation appears in good position, fusion status indeterminate, and no evidence of complication. PX9, p. 69.

Petitioner saw Dr. Marie Walker, at Rockford Spine Clinic on November 13, 2018, and her history notes that Petitioner's left leg pain had been ongoing for almost five years. PX9, p. 36. She diagnosed him with left leg pain which is neuropathic in nature and that his nerve pain is part sciatic and part L4 nerve root distribution. Id. She indicated this was puzzling given no abnormalities were reflected in his November 6, 2018, MRI and ordered an EMG. Id; PX9, p. 69. The records document that on November 27, 2018, Dr. Walker reviewed Petitioner's EMG study and that Petitioner reported significant pain in the top and the inside of his foot and some pain in the anterior lateral calf. PX9, p. 35, 67-68. Dr. Walker concluded the EMG study demonstrated evidence of a chronic left L5 radiculopathy. Id. She noted that it could take up to two years for the nerve to recover from decompression and that if his pain persisted with conservative treatments a referral for a spinal cord stimulator may be considered. Id.

Petitioner testified he continues to receive injections and the records document he has received injections on March 19, 2021, April 6, 2021, June 11, 2021, and September 13, 2021. PX10, p. 158, 153, 149, 146. The Petitioner testified that he continues to receive treatment from his primary care physician and the doctors at Rockford Pain Center. The medical records produced by the Rockford Pain Center stop at December 23, 2021, but Petitioner testified that he had a follow up spinal injection scheduled for February 23, 2022.

Petitioner testified that his back condition effects his life as he no longer can participate in the sports as he previously did, including softball, football, soccer, and snowboarding. He has

difficulty running. He continues to work full duty and in 2020 he obtained a promotion to Engineer, which is a less physically strenuous assignment. Petitioner testified he continues to do household chores, but that he requires assistance for some of those activities. Petitioner testified that he has paid out-of-pocket expenses for medication which is listed in PX 16.

Deposition Testimony of Dr. Michael Roh

Michael S. Roh, MD, a board-certified orthopedic surgeon, testified via evidence deposition on January 24, 2022. PX13, p. 7. Dr. Roh testified he does not provide medical expert opinions apart from the patients he treats. PX13, p. 8. Dr. Roh opined to a reasonable degree of medical and surgical certainty that Petitioner's medical care was reasonable and necessary and that his March 2014 accident "at the very least resulted in an aggravation and progression of his preexisting findings in the lumbar spine with new onset L5 radiculopathy which ultimately required surgery." PX13, p. 16-19. Dr. Roh's opinion was based on Petitioner's history, chronology, MRIs, examination findings, and Dr. Roh's professional experience. PX13 p.20.

Dr. Roh acknowledged that Petitioner experienced lumbar discomfort prior to his March 5, 2014, accident but that his chiropractic treatment prior to March 5, 2014, did not change his causation opinion. PX 13 p. 19, 43. Dr. Roh testified that Petitioner's new left sided complaints were unrelated to any chiropractic treatment prior to March 5, 2014, because, Petitioner had no left-sided complaints before or at the March 4, 2014, chiropractic visit, but that after the March 5, 2014, event, Petitioner reported left-sided complaints including left buttock pain radiating down the left leg with paresthesia or tingling. PX 13 51-54. Dr. Roh opined that before the 2014 fall Petitioner experienced only generalized back and neck-type pain and that first time Petitioner developed left-sided radicular symptoms was after the 2014 fall and that the new onset herniated disc at L4-5 went on to develop an unstable spondylolisthesis at L4-5 with a synovial cyst. PX13, p. 28-30.

Dr. Roh testified regarding the course of treatment he administered to Petitioner and restated his diagnosis of L4-L5 soft tissue injury and left L5 radiculopathy secondary to L4-5 lateral recess stenosis and disk herniation. PX13, p. 9-12, 46-48. Dr. Roh based his diagnoses on his physical examination, the history, the May 2, 2014, MRI and the May 13, 2014, x-rays. PX13, p. 9-12, 46-48. Dr. Roh testified that the disk herniation from Petitioner's March 5, 2014,

accident, as seen in the May 2, 2014, MRI, was one of the causative factors of Petitioner's November 27, 2017, surgery. PX13, p. 46-47. Dr. Roh opined that Petitioner's need for surgery was not exclusively based on a degenerative condition. PX13, p. 47-48.

Dr. Roh testified that he proceeded with surgery consisting of an L4-5 minimally invasive decompression, instrumented fusion and transforaminal lumber interbody fusion with iliac crest bone graft. PX13, p. 15. After surgery Petitioner report to Dr. Roh that his left leg pain symptoms were significantly improved, and he had little buttock or thigh pain. PX13, p. 16.

On cross-examination on the issue of whether Petitioner had a herniated disk which did not appear in the records or operative report, Dr. Roh stated Petitioner had a clear broad-based disk herniation or protrusion which did to go away and that his reports note disk level pathology, L4-5 spondylolisthesis, and that mentioning disk herniation while noting spondylolisthesis would be redundant. PX13, p. 31, 33, 45. He further opined that it is "super rare" to see degenerative spondylolisthesis in a 40-ish-year-old male. PX13, p. 31.

When discussing the opinions of Dr. Levin, Dr. Roh noted that Dr. Levin did not review the July 20, 2017, MRI (the Arbitrator notes that Dr. Levin's Reports pre-date that MRI) and that although there was a myofascial component to Petitioner's injury, Dr. Levin did not address Petitioner's complaints of left leg pain and paresthesia which suggest a neurological and radiculopathic component to Petitioner's condition. (PX13, p. 85).

Deposition Testimony of Dr. Andrew Zelby, Section 12 Examining Physician

Andrew Zelby, MD, board certified in Neurosurgery, testified via evidence deposition on January 10, 2022. RX4. Dr. Zelby examined Petitioner on November 6, 2017 and testified that Petitioner was not able to squat down completely, that Petitioner had an abnormal antalgic gait favoring the left side and had vibratory sensation in the lower extremities which was diminished in the entire left lower extremity. RX4, 84-85, 113-4. Dr. Zelby noted Petitioner's history of low back pain and chiropractic treatment for years prior to his March 5, 2014, accident. RX4, 80, 111.

Dr. Zelby testified that prior to March 4, 2014, petitioner's back treatment consisted only of medication and chiropractic and Petitioner's complaints in the chiropractic records on March 4, 2014, were limited to the right leg. RX4, 110-111.

Dr. Zelby opined that Petitioner's lumbar spondylolisthesis is related to age in part and genetics in part. RX4, 91-92, 93. Dr. Zelby noted Petitioner had a sensory loss in the left lower extremity but opined that this was inconsistent with any spinal condition because the left leg symptoms do not correlate with the L4-5 level and that Petitioner did not exacerbate or aggravate any preexisting condition because he had been symptomatic for years and he received treatment the day before his reported injury. RX4, 92-94. Dr. Zelby then opined that it was more likely than not that Petitioner had a temporary exacerbation of his preexisting and long symptomatic degenerative condition, a diagnosis of soft tissue strain, and not symptoms that represented a radiculopathy. RX4, 95-96. Dr. Zelby stated that he reviewed the May 2, 2014, October 30, 2015, and July 20, 2017, MRIs, and x-rays from 2014, March 12, 2015, and August 10, 2017. RX4, 86-89. Dr. Zelby opined that the MRIs showed progression related to the passage of time and the x-ray reports showed degenerative changes in the mid and lower portion of the lumbar spine. RX4, 89-91, 108. Dr. Zelby opined that Petitioner's left side complaints represent the ongoing manifestations of his preexisting long symptomatic degenerative condition. RX4, 129.

Dr. Zelby opined that Petitioner's recommendation for a laminectomy was reasonable but based on solely his degenerative condition. RX4, 98-99, 103-4. Dr. Zelby opined that all of Petitioner's injection treatment was for a degenerative condition, but that there was no evidence of a degenerative change in the spine that points to the need for the introduction of injection treatment. RX4, 128-30. He further opined that Petitioner required no more than three or four weeks off work followed by three to four months of restricted duty after each of his reported injuries. RX4, 97, 99. Dr. Zelby was not aware of Petitioner's October 18, 2015, injury, but testified he could still opine that Petitioner could return to work within three to four months of that injury because Petitioner had a long history of neck pain and back pain and his diagnostic study showed only a degenerative condition based on the MRI findings. RX4, 108-109. Dr. Zelby was not aware the Petitioner never missed work for back pain prior to March of 2014. RX4, HRVA 119-120. Dr. Zelby acknowledged that 46 years old would be relatively young to have degenerative findings on an MRI and X-rays but went on to state that a degenerative spine is more prone to traumatic injury. RX4, 112, 116.

Section 12 Examination and Impairment Rating Reports

Stephen F. Weiss, M.D., Board Certified in Orthopedic Surgery, provided a June 21, 2017, report and impairment rating. Dr. Weiss took a history of Petitioner's low back pain since 2009, reviewed the Chiropractic records, and acknowledged Petitioner's pre-existing lumbar degenerative disc disease. PX14, p. 2-5. Dr. Weiss diagnosed petitioner with a permanent aggravation of his pre-existing lumbar condition with L5 radiculopathy secondary it his 2014 accident related to his fall on the ice and rated Petitioner's impairment as 11% whole person impairment. PX14, p. 5-6.

Jay L. Levin, M.D., reviewed medical records, examined Petitioner, and provided reports dated March 12, 2015, and November 13, 2015. RX2, RX1. Dr. Levin's March 12, 2015 report was limited to Petitioner's cervical condition related to the March 5, 2015 accident. Dr. Levin opined Petitioner's diagnosis was contusion of the cervical spine, related to his March 5, 2014 accident. RX 2. Dr. Levin further opined that at the time of his March 12, 2015 examination, Petitioner was at MMI as to his cervical spine issue concerning the March 5, 2014 accident. RX2, 52.

In his November 13, 2015 report, Dr. Levin diagnosed Petitioner with an acute lumbar myofascial strain related to a pre-existing lumbar spine condition. RX1, 20. Dr. Levin opined that as of his November 13, 2015 report, Petitioner was at MMI related to the March 5, 2014 accident and no additional treatment was required. RX1, 20. Dr. Levin did not provide an opinion regarding Petitioner's October 18, 2015 or Petitioners April 2, 2016 accident.

CONCLUSIONS OF LAW

March 5, 2014, 14WC033731, October 18, 2015, 16WC003687, April 2, 2016, 16WC021252

C. Regarding issue C, whether an accident occurred that arose out of Petitioner's employment, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner proved he suffered an accidental injury on March 5, 2014 during his course of employment with Respondent during an EMS call, when he slipped on ice and fell to the ground onto his medical bag and onto his back and shoulder. Further, the Arbitrator finds that Petitioner proved he suffered an accidental injury on October 18, 2015,

during the course of his employment while working full and unrestricted duty and sustained an accident during an EMS call. He sustained an injury to his lower back while transporting a patient downstairs to the ambulance with the mega mover. Lastly, the Arbitrator finds that Petitioner proved he sustained an accidental injury on April 2, 2016 when he fell backward onto his SCBA tank. The Arbitrator notes that the Petitioner credibly testified to these occurrences, completed timely injury reports, and provided corroborating histories to his treating doctors. There is no evidence in the record that disputes accident.

F. Regarding issue (F) whether Petitioner's current condition of ill-being is causally related to his injuries, the Arbitrator finds as follows:

It is axiomatic that a Petitioner has the burden of proving the elements of his case including that his condition of ill-being is causally connected to his work-related injury by a preponderance of the evidence. See *Bolingbrook Police Dep't v. Illinois Workers' Compensation Comm'n,* 2015 Il. App. 3d 130869WC (3rd Dist., 2015). The Illinois Supreme Court has long held that employers take their employees as they find them (*O'Fallen School Dist. No. 90 v Industrial Comm'n*, 313 Ill.App.3d 413, 417 (2000)) and that a preexisting condition does not prevent recovery under the Act if the condition was aggravated or accelerated by the claimant's employment (*Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill.2d 30, 26 (1982)). The Arbitrator finds that the record as a whole supports a finding that Petitioner's condition of ill-being is related to his work injury.

The record is clear that Petitioner suffered an accident on March 5, 2014. He endured subsequent accidents on October 8, 2015 and April 2, 2016. All of these accidents involved Petitioner's low back which is the body part that received myriad injections and eventual surgery. It is clear that Petitioner had a preexisting issue with his back for which he sought treatment prior to his work-related injury. The record supports a finding that Petitioner's work-related injury aggravated or accelerated his preexisting back issue as his symptoms increased in magnitude, radicular pain and numbness to the lower extremities developed, and treatment became much more frequent, consistent, and intense.

The Petitioner was diagnosed with upper and lower back strains, left L5 radiculopathy after his March 5, 2014 incident. He was diagnosed with low back pain with radiation into the left buttock and leg with numbness and tingling after his October 18, 2015 incident. Lastly, he was diagnosed with continuing back pain after his April 2, 2016 incident.

The evidence supports a finding that Petitioner experienced new left lower extremity symptoms after his March 5, 2014 accident, that Petitioner continued to treat with numerous providers from March 5, 2014 to the present for his left lower extremity symptoms and that his back pain continued through the date of hearing requiring Petitioner to continue to seek pain management post-surgery.

The record supports a finding that Petitioner never truly recovered from his March 5, 2014 accident as he continued to treat after his various attempts to return to work. Petitioner was initially diagnosed with a sprain on March 6, 2014 and treated conservatively with his PCP and Dr. Roh who noted L4-L5 issues including radiculopathy. He was returned to work in August of 2014 but still experienced issues with his back and continued to seek treatment, including injections. He was taken off work again on November 21, 2014, due to his continued symptoms. There is no evidence in the record of an intervening accident. He returned to work again on March 23, 2015. Petitioner continued to seek medical treatment after his return to work. He returned to work for several months but still complained of issues. He was injured again on October 18, 2015 and his back pain and radiation into the leg and buttocks continued. An MRI of October 30 2015 showed a worsening dick bulge and Dr. Freeman noted nerve compression. He was returned to work on December 1, 2015 but again continued to experience discomfort and sought ongoing medical treatment. He was injured again on April 2, 2016 and quickly returned to work on May 2, 2016 but continued to seek medical treatment. He sought further extensive treatment in June of 2017 which continued until Dr. Roh performed surgery in November of 2017. Petitioner was off work from November 21, 2017 through March 23, 2018. There is no evidence in the record of any intervening accidents during this time. Petitioner used FMLA, sick time, and Public Employee Disability Act benefits while off work.

The Arbitrator finds the opinions of Dr. Wiess and Petitioner's treating surgeon, Dr. Roh, to be more credible than those of Respondent's Section 12 examiner, Dr. Zelby. The Arbitrator relies on Dr. Weiss' opinion that petitioner sustained a permanent lumbar aggravation related to

his March 5, 2014 accident and notes that Dr. Wiess considered Petitioner's preexisting lumbar degenerative disc disease in forming his opinion. The Arbitrator finds that Dr. Roh's assessment to be more credible than Dr. Zelby as Dr. Roh was familiar with the Petitioner's history of low back pathology beginning with Dr. Roh's initial May 13, 2014 treatment. Dr. Roh's familiarity with Petitioner's condition dated back to his March 5, 2014 injury. As such, Dr. Roh was familiar with the history, pain complaints and the symptoms experienced by Petitioner in 2014 through 2017.

Dr. Roh noted that Petitioner failed conservative care which led to his eventual need for fusion surgery at L4-L5 and that his complaints were related to his March 5, 2014 injury. Dr. Roh's opinions were clear in that Petitioner only experienced left-sided radicular symptoms after the March 5, 2014 accident and that Petitioner's pre-accident treatment consisted of general back pain and right-sided complaints. Dr. Roh clearly and consistently opined that the 2014 accident was a causative factor or at least an aggravation of a preexisting condition in the spine with a new onset of left L5 radiculopathy which ultimately led to the requirement of Petitioner's November 2017 surgery. The record supports a finding by a preponderance of the evidence that Petitioner's March 5, 2014, accident is causally related to Petitioner's ongoing back and left lower extremity symptoms which ultimately led to his need for lumbar surgery and his current state of disability.

The Arbitrator finds Dr. Zelby's opinions less credible. Dr. Zelby's testimony acknowledged that Petitioner had only right leg symptoms prior to his March 5, 2014 accident and that Petitioner's treatment prior to March 5, 2014 was limited to medication and chiropractic treatment with no injection therapy. Dr. Zelby opined that related to his accidents Petitioner sustained a temporary exacerbation of his preexisting degenerative condition which was based on Petitioner's diagnostic studies and reported symptoms. Dr. Zelby opined that after each of Petitioner's reported accident he would need to be off work or on restricted duty for three to four months. Dr. Zelby opined that Petitioner's laminectomy was reasonable but related solely degenerative condition. The Arbitrator notes that Dr. Zelby opined Petitioner's injection treatment was related solely to a degenerative condition but testified there was no medical evidence of a degenerative change in the spine that required injection treatment. Dr. Zelby opined that a portion of Petitioner's treatment was related to his work accidents but did not

quantify what treatment dates were or were not related to which accident date. Dr. Zelby acknowledged that Petitioner was rather young to have degenerative findings. Dr. Zelby's findings essentially ignore the Petitioner's increase in symptoms, the addition of radicular issues, and Petitioner's ongoing need for frequent and consistent medical treatment after his accident. The record, again, supports a finding that Petitioner's preexisting back issue was aggravated or accelerated by his injury.

The Arbitrator give some weight to the opinions of Dr. Levin. Dr. Levin diagnosed Petitioner with a myofascial strain with longstanding pre-existing lumber spine complaints related to Petitioner's March 5, 2014 accident and opined that Petitioner was at MMI related to his March 5, 2014 accident as of his November 13, 2015 the Arbitrator notes that Dr. Levin's opinion is limited to his examination of Petitioner in March of 2015 and medical records through December 19, 2014. While the cervical injury and treatment was minimal in comparison to Petitioner's low back-related treatment, the Arbitrator finds his cervical issue related to his injury. The Arbitrator relies on the opinion of Dr. Levin. Dr. Levin diagnosed Petitioner with a contusion of the cervical spine related to the March 5, 2014 accident.

Ultimately, the Arbitrator finds that petitioner suffered an injury to his back on March 5, 2014 which caused ongoing pain with radiculopathy which eventually required his November 21, 2017. This finding is based on the opinions of Drs. Roh and Wiess in addition to the medical records which document me and left sided symptoms after the March 5, 2014 accident and the credible testimony of Petitioner. The Arbitrator finds that Petitioner sustained an aggravation of his preexisting lumbar condition related to the October 18, 2015 accident based on his ongoing need for medical treatment in the medical records and medical expert opinions. Further, Petitioner sustained an aggravation of his preexisting lumbar condition related to the April 2, 2016 accident based on his ongoing need for medical treatment in the medical records and medical expert. Petitioner's course of treatment which led him to the need for surgery was ultimately caused by his March 5, 2014 injury from which he never truly recovered despite conservative treatments and numerous attempts to return to work.

J. Regarding issue (J) whether the medical services provide to Petitioner were reasonable and necessary, and whether Respondent paid all appropriate charges for the reasonable and necessary medical services; the Arbitrator finds the following:

Having found Petitioner's cervical and lumbar conditions of ill-being is related to his accidents the Arbitrator finds that the treatment received for Petitioner's cervical condition through April 25, 2014 and lumbar condition through the date of hearing and ongoing were reasonable and necessary. The Arbitrator basis his finding on the opinions of Drs. Roh, Wiess, and Levin. Of note, the Arbitrator notes that Dr. Roh testified that all of Petitioner's treatment including all the injection treatment provided at Rockford Pain was reasonable and necessary and causally related Petitioner's work injuries. Accordingly, the Arbitrator finds that the bills and lien evidenced in PX1 were reasonable and necessary and that Respondent is responsible for payment pursuant to Section 8(a) pursuant to the fee-schedule or negotiated rate. The Respondent shall pay the unpaid balances of $5,668.84 pursuant to the fee schedule as documented in Petitioner's Exhibit 1. Respondent shall hold the Petitioner harmless for any reimbursement claim or lien asserted by the group insurance carrier, BCBS.

The Arbitrator finds that Petitioner has borne out-of-pocket expenses which related to the above-mentioned treatment that is reasonable and necessary. Accordingly, the Arbitrator orders Respondent to reimburse Petitioner the amount of $1,624.86 for out-of-pocket medical expenses paid by Petitioner evidenced in Exhibit 1 and $1,010.21for out-of-pocket medication expenses paid by Petitioner in Exhibit 16, totaling $2,635.07. Respondent is entitled to a credit for amounts paid pursuant to Section 8(j).

K. Regarding the disputed issue (K) on whether the Petitioner is entitled to TTD, the Arbitrator finds the following:

Having found for issues F and J above, the Arbitrator finds Petitioner was restricted from work numerous times for his three accidents. Petitioner received his full salary pursuant to the Public Employee Disability Act for a large portion of the TTD periods alleged. The Request for Hearing sheets marked AX1 and AX2 note that no TTD is in dispute and AX3 notes that

Petitioner is alleging TTD for periods of April 2, 2016 through May 5, 2016 and June 12, 2017 through March 28, 2018 (which may be a typo or misprint as all other facts in record show March 23, 2018). The Arbitrator finds that Petitioner is entitled to TTD benefits for the following periods of time:

- March 5, 2014 through August 5, 2014, reflecting 22 weeks;
- November 21, 2014 through December 23, 2014, reflecting 4 and 5/7 weeks;
- October 19, 2015 through November 24, 2015, reflecting 5 and 2/7 weeks; and
- July 28, 2017 to March 23, 2018, reflecting 34 and 1/7 weeks.

It remains Petitioner's burden to prove all elements of his claims for relief sought. As far as the disputed TTD period is concerned in April and May of 2016, the record notes Petitioner saw Dr. Stocker, on April 4, 2016, and was restricted from heavy lifting. The doctor's note does note remove Petitioner from work entirely. PX7, p. 75-76. Petitioner then followed up with Dr. Freeman on April 19, 2016, for injections but Dr. Freeman did not remove Petitioner from work, but Petitioner was rather advised to avoid activity that causes pain and continue Dr. Stocker's restrictions. PX10 p 70-72. As of April 27, 2016, Dr. Stocker noted Petitioner was ready to return to work and returned Petitioner to work full duty on May 2, 2016. PX15, p. 59. The record does not support a finding that TTD is due for this time period as Petitioner was restricted to light duty and there is nothing in the record to show that he requested light duty or that light duty was declined. Further, Petitioner previously worked light duty from December 24, 2014, through March 24, 2015.

The record is not clear that Petitioner was restricted from work on June 12, 2017. On June 30, 2017, Petitioner received another ESI and was discharged prn but advised to avoid activities that cause pain. Another injection was performed on July 28, 2017, by Dr. Dahlberg and Petitioner was referred to Dr. Roh for a surgical consultation. In the July 28, 2017, records, there is a handwritten note on a discharge instruction sheet that reads, "no work no lite duty." Another injection was performed on August 31, 2017, by Dr. Dahlberg. Dr. Dahlberg did not mention work restrictions in his records at that time and the discharge instructions that previously stated "no work no lite duty" are silent as to work restrictions. The Arbitrator draws an inference here that as Petitioner's complaints had not changed that the restrictions from July

28, 2017, would remain unchanged as well. Petitioner underwent surgery, recuperated, and was eventually returned to full duty work on March 23, 2018. Accordingly, the Arbitrator finds that the period of TTD payable from is from July 28, 2017, to March 22, 2018.

The TTD periods total 66 and 1/7 weeks at a rate of $1,000.00 per week for the first 32 weeks and $1,065.21 per week for the final 34 and 1/7 weeks based on Petitioner's average weekly wage (AX1,2,3). Respondent shall receive credit for amounts paid to Petitioner for the TTD weeks awarded above.

L. Regarding issue (L), the nature and extent of the Petitioner's injury, the Arbitrator finds the following:

The Arbitrator has considered the five factors outlined in Section 8.1(b) and finds that Petitioner has sustained permanent disability of 17.5% loss of use of the person as a whole. The Arbitrator analyzes the Petitioner's permanency under five factors as follows:

Regarding subsection (i), the Arbitrator notes that Dr. Weiss provided an AMA impairment rating of 11% of Petitioner's condition, however, this report was authored with a focus on Petitioner's pre-surgical April 5, 2014, accident and not his March 5, 2014, accident. This factor is given little weight.

Regarding subsection (ii), Petitioner's occupation, Petitioner was able to return to his pre-accident employment as a firefighter/paramedic and is currently performing the duties of a fire engineer which Petitioner testified is not as labor-intensive. The Arbitrator finds Petitioner's ongoing complaints could negative affect the remainder of his career as a firefighter/paramedic/engineer. The Arbitrator places great weight on this factor.

Regarding subsection (iii), Petitioner's age, the Arbitrator places moderate weight on this factor as Petitioner's age of 44 suggests he has decades of employment ahead of him. Dr. Zelby noted that Petitioner was young to experience a degenerative lumbar condition.

Regarding subsection (iv), Petitioner's future earning capacity, the Arbitrator gives little weight to this factor as there is no evidence in the record that Petitioner has or will experience any diminishment in his earning capacity from Petitioner or his doctors.

Regarding subsection (v), evidence of disability corroborated by medical records, the record is unambiguous that Petitioner underwent a substantial course of conservative treatment, a fusion surgery, and still complains of issues as of the date of hearing. Petitioner was released to regular duty and is not subject to any permanent limitations from his doctors. His return-to-work slips advise him to avoid activities that cause pain. Petitioner may also need future pain management treatment. Accordingly, the Arbitrator finds that petitioner sustained a permanent partial disability loss of 17.5% of the person as a whole pursuant to Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC021252
Case Name	Michael D Bauman v. City of Rockford
Consolidated Cases	14WC033731; 16WC003687;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0158
Number of Pages of Decision	28
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Thomas Duda
Respondent Attorney	Kevin Luther

DATE FILED: 4/7/2023

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WINNEBAGO

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify Temp. Disability, Credit, Medical, Perm. Disability	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL D. BAUMAN,

Petitioner,

vs. NO: 16 WC 21252

CITY OF ROCKFORD,

Respondent.

DECISION AND OPINION ON REVIEW

This matter comes before the Commission pursuant to timely Petitions for Review of the Decision of the Arbitrator filed by the Respondent and Petitioner herein. Notice having been given to all parties, the Commission, after considering the issues of whether Petitioner's current condition of ill-being is causally related to the April 2, 2016 accident, entitlement to medical expenses, Petitioner's entitlement to temporary disability benefits as well as Respondent's entitlement to credit for PEDA benefits paid, and the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, modifies the Decision as stated below but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

PROCEDURAL HISTORY

This case was consolidated for hearing with case numbers 14 WC 33731 and 16 WC 03687. All three cases involve injuries to Petitioner's back: 14 WC 33731 involves a March 5, 2014 accident, 16 WC 03687 involves an October 18, 2015 accident, and 16 WC 21252 involves an April 2, 2016 accident. The claims proceeded to arbitration before Arbitrator Gerald Napleton on February 23, 2022. The Request for Hearing form submitted by the parties for the instant matter, case 16 WC 21252, identifies the following issues in dispute: 1) whether Petitioner sustained an accidental injury arising out of and occurring in the course of his employment on April 2, 2016; 2) whether Petitioner's current condition is causally related to the April 2, 2016 accident; 3) entitlement to medical expenses; 4) Petitioner's entitlement to temporary disability benefits as well as Respondent's entitlement to credit; and 5) the nature and extent of Petitioner's permanent disability. Arb.'s Ex. 3.

On June 1, 2022, Arbitrator Napleton issued the same decision under all three case numbers; therein, the Arbitrator found Petitioner sustained accidental injuries on March 5, 2014; October 18, 2015; and April 2, 2016, and his current low back condition is causally related to all three work accidents. The Arbitrator awarded identical benefits under each case number: medical expenses and out-of-pocket costs totaling $8,304.91, 66 1/7 weeks of Temporary Total Disability ("TTD") benefits subject to Respondent's credit of $32,142.86 for Public Employee Disability Act ("PEDA") benefits paid, and 17.5% loss of use of the person as a whole. Both parties filed Petitions For Review.

Respondent's Petition for Review identifies the following issues on Review: whether Petitioner sustained an accidental injury arising out of and occurring in the course of his employment on April 2, 2016, whether Petitioner's current condition is causally related to the April 2, 2016 accident, entitlement to medical expenses, entitlement to temporary disability benefits, and the nature and extent of Petitioner's permanent disability. Petitioner's Petition for Review identifies the following issues: entitlement to medical expenses, entitlement to temporary disability benefits, and Respondent's entitlement to credit. The Commission observes Respondent did not advance an argument on the accident issue in its Statement of Exceptions or during oral arguments, and thus the Commission views the issue as forfeited.

CONCLUSIONS OF LAW

The Arbitrator found Petitioner's current condition of ill-being is causally related to all three work accidents. The Commission's analysis of the evidence yields the same result. However, the award of identical benefits in all three cases is duplicative and contrary to the parties' stipulations on the Request for Hearing form.

Medical Expenses and Permanent Disability

The Commission finds Petitioner's current low back condition is causally related, in part, to his April 2, 2016 accident: Petitioner suffered an initial low back injury on March 5, 2014, which had not reached maximum medical improvement ("MMI") before he suffered subsequent exacerbations on October 18, 2015 and April 2, 2016. Consistent with our determination that Petitioner's current low back condition is causally related to all three work accidents but originated with the March 5, 2014 accident, the Commission clarifies that medical expenses and permanent disability benefits are awarded only under case 14 WC 33731.

Temporary Disability and Credit

On the Request for Hearing for case 16 WC 21252, Petitioner alleged he was temporarily and totally disabled for two periods: April 2, 2016 through May 2, 2016 and June 12, 2017 through March 28, 2018; Respondent disputed Petitioner's entitlement to TTD benefits, asserting "Petitioner initially paid some PEDA benefits which were then severed-remainder of the period Petitioner received sick time." Arb.'s Ex. 3. The Arbitrator found Petitioner was entitled to TTD benefits for the following periods: March 5, 2014 through August 5, 2014; November 21, 2014 through December 23, 2014; October 19, 2015 through November 24, 2015; and July 28, 2017 through March 23, 2018. The Arbitrator further found Respondent entitled to an associated credit

of $32,142.86 for PEDA benefits paid. The Commission finds the award must be modified to conform to the Request for Hearing and the evidence.

The Commission first observes Petitioner made no claim for TTD benefits for March 5, 2014 through August 5, 2014; November 21, 2014 through December 23, 2014; or October 19, 2015 through November 24, 2015. Arb.'s Ex. 3. As Petitioner did not allege entitlement to TTD benefits for those periods, the TTD awards were improper and are hereby vacated.

Turning to the TTD benefits in dispute, the Commission finds Petitioner is entitled to TTD benefits from April 4, 2016 through May 1, 2016 and July 12, 2017 through March 23, 2018. The Commission observes that following the April 2, 2016 accident, Petitioner first sought medical attention on April 4, 2016. That day, Petitioner presented to his primary care physician's office and was evaluated by Sarah Gurney, APN, who prescribed pain medications and imposed work restrictions. Pet.'s Ex. 7. The record reflects that Petitioner was off work due to those restrictions until his primary care doctor, Dr. Rose Stocker, released him to return to full duty as of May 2, 2016. T. 33, Pet.'s Ex. 7. As such, the Commission finds Petitioner is entitled to TTD benefits from April 4, 2016 through May 1, 2016. The Request for Hearing form reflects the parties stipulated to an average weekly wage of $1,591.82 (Arb.'s Ex. 3), which yields a TTD rate of $1,061.21.

The Commission further finds Petitioner's next period of temporary disability commenced on July 12, 2017. While Petitioner claimed a June 12, 2017 start date, the Commission observes the only treatment record from June 12, 2017 is a physical therapy initial evaluation. Pet.'s Ex. 11. However, on July 12, 2017, Dr. Thomas Dahlberg authorized Petitioner off work pending a surgical consultation: "E/EE Report on Medical Condition – Is pt able to return to normal duties? No. Is pt able to return to restricted duty? No." Pet.'s Ex. 10. The Commission notes Petitioner thereafter underwent surgery with Dr. Michael Roh and remained off work until completion of his work hardening program on March 23, 2018. Pet.'s Ex. 9. Therefore, the Commission finds Petitioner is entitled to TTD benefits from July 12, 2017 through March 23, 2018.

As to Respondent's credit for PEDA benefits paid in lieu of TTD, the Commission finds that although there is no dispute as to whether Respondent paid PEDA benefits, there is insufficient information to calculate a specific credit. To be clear, while Petitioner confirmed he initially received PEDA benefits following the April 2, 2016 accident, the record reflects PEDA benefits were thereafter terminated. Significantly, Petitioner was unable to recall the PEDA benefit termination date (T. 40-41), and Respondent failed to provide documentation of what amounts were paid or what periods were covered by PEDA benefits. Given the record before us, it is impossible for the Commission to calculate a total PEDA benefit credit. Therefore, the Commission finds Respondent is entitled to a credit of $1,061.21 per week, that being its weekly TTD liability, for only those weeks PEDA benefits were paid. *See 820 ILCS 305/8(j)*.

The Commission modifies the award of TTD benefits and credit as follows:

- the award of TTD benefits from March 5, 2014 through August 5, 2014 is vacated;

- the award of TTD benefits from November 21, 2014 through December 23, 2014 is vacated;

- the award of TTD benefits from October 19, 2015 through November 24, 2015 is vacated;

- Petitioner is entitled to TTD benefits of $1,061.21 per week from April 4, 2016 through May 1, 2016 and July 12, 2017 through March 23, 2018;

- Respondent's credit of $32,142.86 for benefits paid is vacated; and

- Respondent is entitled to a credit of $1,061.21 per week limited to those weeks PEDA benefits were paid.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 1, 2022, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,061.21 per week for a period of 40 3/7 weeks, representing April 4, 2016 through May 1, 2016 and July 12, 2017 through March 23, 2018, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent shall have a credit of $1,061.21 per week for only those weeks PEDA benefits were paid.

IT IS FURTHER ORDERED BY THE COMMISSION that awards of TTD benefits for March 5, 2014 through August 5, 2014; November 21, 2014 through December 23, 2014; and October 19, 2015 through November 24, 2015 are vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent's credit of $32,142.86 is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that the medical expenses and costs as well as the permanent disability benefits awarded under the instant case 16 WC 21252 are hereby vacated, and the claimed medical expenses and permanent disability benefits are instead awarded in companion case 14 WC 33731.

Under Section 19(f)(2), no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 7, 2023

/s/ *Deborah J. Baker*

DJB/mck

O: 2/22/23

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC021252
Case Name	BAUMAN, MICHAEL D. v. CITY OF ROCKFORD
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Gerre Anne Harte
Respondent Attorney	Kevin Luther

DATE FILED: 6/1/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 1, 2022 1.58%

/s/Gerald Napleton, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Winnebago**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Michael D. Bauman
Employee/Petitioner

v.

CITY OF ROCKFORD
Employer/Respondent

Case # **16** WC **21252**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Napleton**, Arbitrator of the Commission, in the city of **Rockford**, on **February 23, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **April 2, 2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**82,774.64**; the average weekly wage was $**1,591.82**.

On the date of accident, Petitioner was **45** years of age, ***married*** with **1** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**32,142.86** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**32,142.86**.

Respondent is entitled to a credit of $**231,469.47** under Section 8(j) of the Act.

ORDER (CONSOLIDATED)

Respondent is liable for payment of Petitioner's reasonable and necessary medical costs evidenced in Petitioner's Exhibit 1 showing an unpaid balance of $5,669.84 pursuant to Section 8(a), the Medical Fee Schedule in 8.2, and Section 8.2(e). Respondent is entitled to a credit for payments made pursuant to its group health insurance and shall hold Petitioner harmless from any claim asserted by said group health insurance carriers.

Respondent shall reimburse Petitioner the amount of $2,635.07 for out-of-pocket costs borne by Petitioner for his reasonable and necessary medical treatment.

Petitioner was temporarily and totally disabled for the periods of March 5, 2014 through August 5, 2014; November 21, 2014 through December 23, 2014; October 19, 2015 through November 24, 2015; and July 28, 2017 through March 23, 2018 reflecting 66 and 1/7 weeks pursuant to Section 8(b) of the Act. Respondent is entitled to a credit for Public Employee Disability Act benefits paid for these periods. Respondent shall pay TTD benefits of $1,000 per week for the TTD periods from March 5, 2014 through November 24, 2015 and benefits of $1,065.21 per week for the period of July 28, 2017 through March 23, 2018 subject to the aforesaid credit for PEDA benefits paid.

Respondent shall pay Petitioner Permanent Partial Disability benefits of $721.66/week for 87.5 weeks as Petitioner sustained a 17.5% loss of the Person as a Whole pursuant to Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

/s/ Gerald W. Napleton

Signature of Arbitrator

JUNE 1, 2022

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL BAUMAN,	)		
	)		
Petitioner,	)		
	)		
vs.	)	Case #	14 WC 33731
	)	Consolidated Cases:	16 WC 3687
CITY OF ROCKFORD,	)		16 WC 21252
	)		
Respondent.	)		

FINDINGS OF FACT and CONCLUSIONS OF LAW

Petitioner is a firefighter/paramedic who has worked for the Respondent since 2002. Petitioner is alleging injuries on three separate occasions while working for Respondent on March 5, 2014, October 18, 2015, and April 2, 2016. Petitioner testified this is a physically demanding job. His schedule with the City of Rockford is a 24-hour shift with 48-hours off between shifts. Petitioner testified he was employed by the City of Belvidere for ten months prior to his being hired by the City of Rockford and that he experienced no work injuries while working for the City of Belvidere.

Petitioner testified to his duties as a firefighter. While performing fire suppression duties, he wears specialized firefighting gear which weighs 40 to 50 pounds and in addition wears a self-contained breathing apparatus and air tank which weighs 40 to 50 pounds; otherwise, he wears a standard uniform similar to street clothing. His uniform and equipment are shown in PX19. Petitioner testified that for paramedic duties he carries equipment weighting 10 to 50 pounds. He also uses equipment to transport patients including a "mega mover" and a gurney. Petitioner explained that a mega mover is a cloth type carrier weighing less than ten pounds used transport a patient when a gurney cannot be used.

Petitioner testified that prior to March 5, 2014, he treated on an as needed basis with Hulsebus Chiropractic for his back and that prior to his alleged accident he last treated at Hulsebus on March 4, 2014, but that he was not under any prescribed treatment plan, nor did he have any scheduled follow-up appointment after the March 4, 2014, visit.

Records document that petitioner treated with Hulsebus Chiropractic from 2004 until March 4, 2014. PX 5. The March 4, 2014, Hulsebus Chiropractic note state Petitioner was to follow up as needed. PX5. The Records document that Petitioner treated at Hulsebus on an as needed basis throughout 2013 and 2014. PX5. He treated three times in 2014 prior to his March 5, 2014, accident and at each visit was released on an as needed basis or to call if needed. PX5.

March 5, 2014, injury

Petitioner testified that on March 5, 2014, his shift started at 8:00 am, he was working full duty, and that he felt fine at the start of his shift. The conditions on March 5, 2014, consisted of ice-covered ground with eight inches of snow. Petitioner testified he began his shift on the engine and then was assigned as a paramedic. During his assignment as a paramedic, he responded to a residential injury call and during that call slipped on the ice and fell to the ground onto his medical bag which was over one shoulder and impacted his back and shoulder. He immediately felt upper and lower back pain but was able to complete the call, ambulate to the engine and return to the fire station. At the station he continued to feel pain, completed an injury report, but was not able to complete his shift. He went home where he took medication and went to sleep.

When he woke the next morning, he continued to have pain in his upper and lower back and sought treatment. Petitioner sought treatment at Hulsebus Chiropractic for his neck and back pain. The March 6, 2014, records note Petitioner complained of "neck and back pain and muscle spasms" and "following the accident at work, the patient complained about very severe neck stiffness bilaterally … and very severe constant pulling lower back pain bilaterally." PX5 p 5. The chiropractic records document that he experienced neck and back pain which gradually increased and that he was referred to Immediate Care. PX5, p. 5-7. Later that day, Petitioner presented to Physicians Immediate Care reporting neck pain due to a work injury. X-rays were taken, he was diagnosed with a neck sprain and lumbar sprain, and he was given work restrictions. PX6, p. 26-29. Physical therapy was recommended, and petitioner completed a course of physical therapy from March 31, 2014, through July 31, 2014, at ORS of Rockford. PX 11.

Petitioner was seen by his primary care physician, Rose M. Stocker, DO on April 9, 2014, and reported his symptoms were increasing with physical activity, that "he has had low back pain before but no numbness like this before … numbness in left hip and radiating down his left hip to the bottom of his foot." PX 7, p. 8-10. Dr. Stocker diagnosed petitioner with a rhomboid muscle strain, piriformis muscle strain, and sciatica. She prescribed steroids, kept Petitioner off work and recommend a possible MRI if his radiculopathy did not improve. PX7, p. 10.

Petitioner followed up with Dr. Stocker, on April 25, 2014. She noted Petitioner's thoracic back was improved, recommended an MRI for Petitioner's lower back, and referred Petitioner to an orthopedic. PX7, p. 006. Petitioner obtained an MRI on May 2, 2014. PX8. The MRI revealed a L4-L5 broad based disc bulge and facet arthropathy resulting in left lateral recessed stenosis. PX8

Records document that Petitioner then sought treatment with Dr. Michael Roh at Rockford Spine Center on May 13, 2014. Dr. Roh, diagnosed Petitioner with axial lumbar issues following a work-related fall, L4-5 soft tissue injury/inflammation, and left L5 radiculopathy secondary to lateral stenosis and disc herniation. PX9, p57. Dr. Roh recommended continued observation, physical therapy, epidural steroid injections, and a work conditioning program. If these failed, he indicated a need for surgical intervention and/or an ablation. PX 9, p. 57. Petitioner received Epidural Steroid Injections and facet injections from Dr. Freedman at Rockford Pain Center on May 20, 2014, June 17, 2014, and July 15, 2014. PX9, p. 89-90, 87-88, PX10 p. 5-7, 13-14, 20-21.

Petitioner testified he returned to work full duty on August 5, 2014. Petitioner was taken off work from March 6, 2014, through August 5, 2014. Petitioner was paid his full salary and benefits under the Public Employee Disability Act while off work. Petitioner continued to treat after his full duty return to work for his continuing radiculopathy and low back pain with Dr. Socker and Dr. Freeman. He continued to take off work intermittently and took FMLA leave for his pain flare ups on August 19, 2015, and October 15, 2015 (PX7, p. 82-83, 80-81). Dr. Freeman performed additional ESIs at L4-5 and noted that if injections are not able to improve his radicular pain, he would have Petitioner revisit Dr. Roh. PX9, p. 85-86; PX10, p. 28-29. The records document that on November 21, 2014, petitioner was again taken off work related to his

previous injury. PX15, p. 18. On December 16, 2014, Dr. Freeman performed another ESI (PX10, p. 28-29, 35-36) and performed an ESI at L4-5 and an L5-S1 facet joint injection on January 20, 2015 (PX10, P 41-42).

On February 17, 2015, Petitioner returned to Dr. Freeman who indicated if the injections provide Petitioner long lasting relief, then they can be repeated intermittently otherwise he would consider medial branch blocks with possible radiofrequency ablation. PX10, p. 49-50.

On March 12, 2015, Petitioner was examined by Dr. Jay Levin for a Section 12 Examination. Dr. Levin found Petitioner was at MMI for his cervical condition but did not provide an opinion regarding Petitioner's lumber condition.

On March 18, 2015, Petitioner's primary care physician returned Petitioner to full duty as of March 23, 2015. PX 7, p. 87-88. Petitioner testified he returned to work full duty on March 23, 2015.

The Petitioner testified that he continued to have low back pain after his return to work. Petitioner sought treatment for his low back with his primary care physician in August of 2015 and used vacation, sick time, and FMLA benefits for his time off due to pain flare ups. PX 7, p. 82-83, PX15, p. 34, 35.

On October 2, 2015, Petitioner saw Dr. Freeman again who noted he was improved and doing well since his last bilateral L4-5 and L5-S1 facet joint injection of February 2015 but had a flare up of pain with numbness and tingling in the left buttock and leg. PX10, p. 53. Dr. Freeman diagnosed Petitioner with low back pain with radiation into the left buttock and leg with numbness and tingling likely multifactorial with possible radicular component. PX 10, p. 53. Dr. Freeman performed a left L4-5 interlaminar epidural steroid injection in the hope that this would improve his left buttock and leg pain and continued Petitioner's work restrictions. He was to follow up in three to four weeks. He was not restricted from any work duties. PX10, p. 54.

October 18, 2015 injury

Petitioner testified that on October 18, 2015, he started his shift at 8:00 am and was working as a paramedic. During his assignment, he responded to a patient who required transport to the hospital. While moving the obese patient with a mega mover down steps he felt a strain or pain in his lower back. PX 3; PX 15, p. 26, 31, 37. Petitioner was able to get to the ambulance

with the patient and that in the back of the ambulance on route to the hospital Petitioner's lower back and left leg experienced numbness, tingling, and spasms. PX3, PX 15, p. 25. Petitioner testified he did not complete his shift and went home.

Petitioner testified that when he awoke the next morning, he continued to have pain in his back and sought medical treatment with his PCP. On October 19, 2015, he was placed on light duty work restrictions of no pushing, pulling, or lifting more than 10lbs. PX15, p. 33, 36, 42.

On October 30, 2015, Petitioner was referred by Dr. Stocker for an MRI, which indicated a mild worsening disc bulge at L4-L5 now demonstrating superimposing central protrusion which indents the thecal sac. PX 8, p. 3-5. On November 3, 2015, Dr. Freeman reviewed the MRI, noticed evidence of compression of the left L5 nerve root, performed bilateral L4-L5 and L5-S1 facet joint injections, and noted that if Petitioner's leg pain worsens, he will repeat the L4-5 epidural steroid injection. PX10, p. 30.

On November 30, 2015, Petitioner returned to Dr. Freeman and reported near complete relief for two week and that the pain returned but is currently tolerable. PX10, p. 67. Dr. Freeman noted Petitioner had completed physical therapy, indicated no injections were necessary and released Petitioner to follow-up as needed. PX10, p. 67. Dr. Freeman indicated that if Petitioner continues to have long lasting relief with fact injections those can be repeated in the future. Id. On November 20, 2015, Dr. Freeman released Petitioner to resume previous activity, but minimize activity that causes pain. PX10, p. 68. Petitioner testified and the record documents Petitioner returned to work on December 1, 2015. PX15, p. 41.

<u>April 2, 2016 injury</u>

Petitioner testified that on April 2, 2016, his shift started at 8:00 am. He was working full duty and attended a fire suppression call and fell backward onto his SCBA tank. PX4; PX 15, p. 51. He testified he felt back pain but continued working the fire until its conclusion and was able to return to the station. Petitioner testified that after returning to the station he continued to feel pain, completed an injury report, did not complete his shift, but went home where he took medication and went to sleep. When he awoke the next morning, he continued to have pain in his back and sought treatment.

The records document that the Petitioner saw his PCP, Dr. Stocker, on April 4, 2016, complained of pain and was given a diagnosis of low back pain without sciatica. Petitioner was prescribed medication, possible physical therapy, further imaging, and restricted from heavy lifting. The doctor's note does note remove Petitioner from work entirely. PX7, p. 75-76. Petitioner then followed up with Dr. Freeman on April 19, 2016, who performed facet injections at L4-L5 and L5-S1 and noted that if the injections provide only short-lived relief, he would consider medical branch blocks. PX10, p. 70-71. Dr Freeman did not restrict Petitioner from work but was advised to avoid activity that causes pain. PX10 p 70-72. As of April 27, 2016, Dr. Stocker noted Petitioner was ready to return to work and returned Petitioner to work full duty on May 2, 2016. PX15, p. 59.

Petitioner testified he returned to work full duty on May 2, 2016, but that he continued to have back pain symptoms and continued to treat with Dr. Freedman. Petitioner treated with Dr. Dahlberg after Dr. Freedman left Rockford Pain Center. Petitioner testified that he did not sustain any back injury either at work or outside of work.

On June 30, 2017, Petitioner received another ESI at L4-5 and was discharged prn but to avoid activities that cause pain. An MRI performed on 7/20/2017 revealed moderately severe spinal stenosis at L4-5 with moderately severe compromise of the left foramen. The August 21, 2017, addendum to the July 20, 2017, MRI report states "there is a 2mm anterolisthesis of L4-L5 which had developed since 10/13/2015." PX 9, p.76. Petitioner was not restricted from work. Another injection was performed on July 28, 2017, by Dr. Dahlberg and Petitioner was referred to Dr. Roh for a surgical consultation. In the July 28, 2017, notes, Dr. Dahlberg noted Petitioner's initial injury of slipping on ice while on a medical call. PX15, p68. Dr. Roh recommended surgical intervention. Another injection was performed on August 31, 2017, by Dr. Dahlberg. Petitioner was given a work slip that said "no work no lite duty" handwritten with a date of July 28, 2017.

When Petitioner followed up with Dr. Roh on August 10, 2017, he complained of lumbar back pain that radiates into the hip and down the posterior, lateral and anterior thigh, lateral and posterior lower leg and into both dorsal and plantar aspects of the foot with numbness and tingling in the same nerve distribution area. PX9, p. 47. Dr. Roh recorded that Petitioner stated these symptoms started with his fall on the ice three years ago and that Petitioner has continued

conservative treatment. Id. Dr. Roh diagnosed petitioner with severe left L4 and L5 radiculopathy secondary to L4-5 degenerative spondylolisthesis, central and lateral recess stenosis with a synovial cyst and that all conservative treatments have failed. PX9, p. 48-9. Dr. Roh noted the MRI shows instability at the L4-L5 level as well as central canal/lateral recess stenosis. Id. Dr. Roh stated Petitioner "has had these symptoms now for 3+ years, getting worse over that time. He has failed conservative care including chiropractic care, physical therapy, epidural steroid injections, and anti-inflammatories." PX9, p. 49. Dr. Roh opined that a fusion would be the best treatment option. PX9, p. 49.

Petitioner received an x-ray on August 17, 2017, PX 9, p. 73, PX 11. P. 24. On August 31, 2017, Dr. Dahlberg performed intraarticular facet joint injections at L4-5 and L5-S1 bilaterally. PX9, p. 81-82.

Petitioner was seen by Matthew D. Schawbero, PA on November 16, 2017, for a preoperative consultation. PX9, p. 46. Dr. Roh provided an addendum to that progress note that he "discussed the fact that surgery is for [Petitioner's] buttock and leg pain, not back pain," and that Dr. Roh's goal was to improve his buttock and leg pain, "not to be his champion for his workers' compensation claim." Dr. Roh mentioned that he discussed with Petitioner the possibility of further surgery Id.

On November 21, 2017 Dr. Roh performed a minimally invasive spinal fusion on Petitioner consisting of: 1) L4-L5 posterior spinal fusion and transforaminal lumbar interbody fusion; 2) L4-L5 posterior spinal segmental instrumentation using cannulated Legacy screws; 3) L4-L5 insertion of intervertebral fusion device using titanium crescent cage; 4) L4-L5 transfacet decompression beyond simple disc preparation; 5) harvest of left iliac crest bone graft; 6) harvest local bone autograft; 7) use of surgical microscope, spinal cord monitoring and intraoperative fluoroscopy. PX9, p. 92.

Dr. Roh saw petitioner on January 10, 2018, six weeks post-surgery and noted Petitioner's "symptoms of left leg pain are significantly improved, and he really has very little in the way of buttock or thigh pain," "some residual discomfort in the left lateral calf and dorsal foot" was noted which "is still at least 50-60% better than before surgery." PX9, p. 45

On February 27, 2018, Petitioner was seen by Matthew Schwabero, PA. Petitioner reported mild symptoms in the leg but that it has improved. He was given 2-3 additional weeks

of work hardening and was released to work without restrictions after that. He was released from care prn at that time. PX9, p. 44. Petitioner was discharged from physical therapy on March 23, 2018. PX9 p 99.

Petitioner testified he returned to work on March 23, 2018, and continues to work full duty as of the date of hearing. Petitioner testified that he continues to treat with Rockford Pain for his back pain symptoms, that his last date of treatment was December 23, 2021, but that he was not able to treat during the year 2020 because of covid.

Petitioner continued to treat with Dr. Dahlberg who performed a facet injection on November 7, 2019, and Dr. Roh. PX 10, p. 162. On November 6, 2018, Petitioner received an MRI with Dr. Roh, and his impression noted Petitioner's instrumentation appears in good position, fusion status indeterminate, and no evidence of complication. PX9, p. 69.

Petitioner saw Dr. Marie Walker, at Rockford Spine Clinic on November 13, 2018, and her history notes that Petitioner's left leg pain had been ongoing for almost five years. PX9, p. 36. She diagnosed him with left leg pain which is neuropathic in nature and that his nerve pain is part sciatic and part L4 nerve root distribution. Id. She indicated this was puzzling given no abnormalities were reflected in his November 6, 2018, MRI and ordered an EMG. Id; PX9, p. 69. The records document that on November 27, 2018, Dr. Walker reviewed Petitioner's EMG study and that Petitioner reported significant pain in the top and the inside of his foot and some pain in the anterior lateral calf. PX9, p. 35, 67-68. Dr. Walker concluded the EMG study demonstrated evidence of a chronic left L5 radiculopathy. Id. She noted that it could take up to two years for the nerve to recover from decompression and that if his pain persisted with conservative treatments a referral for a spinal cord stimulator may be considered. Id.

Petitioner testified he continues to receive injections and the records document he has received injections on March 19, 2021, April 6, 2021, June 11, 2021, and September 13, 2021. PX10, p. 158, 153, 149, 146. The Petitioner testified that he continues to receive treatment from his primary care physician and the doctors at Rockford Pain Center. The medical records produced by the Rockford Pain Center stop at December 23, 2021, but Petitioner testified that he had a follow up spinal injection scheduled for February 23, 2022.

Petitioner testified that his back condition effects his life as he no longer can participate in the sports as he previously did, including softball, football, soccer, and snowboarding. He has

difficulty running. He continues to work full duty and in 2020 he obtained a promotion to Engineer, which is a less physically strenuous assignment. Petitioner testified he continues to do household chores, but that he requires assistance for some of those activities. Petitioner testified that he has paid out-of-pocket expenses for medication which is listed in PX 16.

Deposition Testimony of Dr. Michael Roh

Michael S. Roh, MD, a board-certified orthopedic surgeon, testified via evidence deposition on January 24, 2022. PX13, p. 7. Dr. Roh testified he does not provide medical expert opinions apart from the patients he treats. PX13, p. 8. Dr. Roh opined to a reasonable degree of medical and surgical certainty that Petitioner's medical care was reasonable and necessary and that his March 2014 accident "at the very least resulted in an aggravation and progression of his preexisting findings in the lumbar spine with new onset L5 radiculopathy which ultimately required surgery." PX13, p. 16-19. Dr. Roh's opinion was based on Petitioner's history, chronology, MRIs, examination findings, and Dr. Roh's professional experience. PX13 p.20.

Dr. Roh acknowledged that Petitioner experienced lumbar discomfort prior to his March 5, 2014, accident but that his chiropractic treatment prior to March 5, 2014, did not change his causation opinion. PX 13 p. 19, 43. Dr. Roh testified that Petitioner's new left sided complaints were unrelated to any chiropractic treatment prior to March 5, 2014, because, Petitioner had no left-sided complaints before or at the March 4, 2014, chiropractic visit, but that after the March 5, 2014, event, Petitioner reported left-sided complaints including left buttock pain radiating down the left leg with paresthesia or tingling. PX 13 51-54. Dr. Roh opined that before the 2014 fall Petitioner experienced only generalized back and neck-type pain and that first time Petitioner developed left-sided radicular symptoms was after the 2014 fall and that the new onset herniated disc at L4-5 went on to develop an unstable spondylolisthesis at L4-5 with a synovial cyst. PX13, p. 28-30.

Dr. Roh testified regarding the course of treatment he administered to Petitioner and restated his diagnosis of L4-L5 soft tissue injury and left L5 radiculopathy secondary to L4-5 lateral recess stenosis and disk herniation. PX13, p. 9-12, 46-48. Dr. Roh based his diagnoses on his physical examination, the history, the May 2, 2014, MRI and the May 13, 2014, x-rays. PX13, p. 9-12, 46-48. Dr. Roh testified that the disk herniation from Petitioner's March 5, 2014,

accident, as seen in the May 2, 2014, MRI, was one of the causative factors of Petitioner's November 27, 2017, surgery. PX13, p. 46-47. Dr. Roh opined that Petitioner's need for surgery was not exclusively based on a degenerative condition. PX13, p. 47-48.

Dr. Roh testified that he proceeded with surgery consisting of an L4-5 minimally invasive decompression, instrumented fusion and transforaminal lumber interbody fusion with iliac crest bone graft. PX13, p. 15. After surgery Petitioner report to Dr. Roh that his left leg pain symptoms were significantly improved, and he had little buttock or thigh pain. PX13, p. 16.

On cross-examination on the issue of whether Petitioner had a herniated disk which did not appear in the records or operative report, Dr. Roh stated Petitioner had a clear broad-based disk herniation or protrusion which did to go away and that his reports note disk level pathology, L4-5 spondylolisthesis, and that mentioning disk herniation while noting spondylolisthesis would be redundant. PX13, p. 31, 33, 45. He further opined that it is "super rare" to see degenerative spondylolisthesis in a 40-ish-year-old male. PX13, p. 31.

When discussing the opinions of Dr. Levin, Dr. Roh noted that Dr. Levin did not review the July 20, 2017, MRI (the Arbitrator notes that Dr. Levin's Reports pre-date that MRI) and that although there was a myofascial component to Petitioner's injury, Dr. Levin did not address Petitioner's complaints of left leg pain and paresthesia which suggest a neurological and radiculopathic component to Petitioner's condition. (PX13, p. 85).

Deposition Testimony of Dr. Andrew Zelby, Section 12 Examining Physician

Andrew Zelby, MD, board certified in Neurosurgery, testified via evidence deposition on January 10, 2022. RX4. Dr. Zelby examined Petitioner on November 6, 2017 and testified that Petitioner was not able to squat down completely, that Petitioner had an abnormal antalgic gait favoring the left side and had vibratory sensation in the lower extremities which was diminished in the entire left lower extremity. RX4, 84-85, 113-4. Dr. Zelby noted Petitioner's history of low back pain and chiropractic treatment for years prior to his March 5, 2014, accident. RX4, 80, 111.

Dr. Zelby testified that prior to March 4, 2014, petitioner's back treatment consisted only of medication and chiropractic and Petitioner's complaints in the chiropractic records on March 4, 2014, were limited to the right leg. RX4, 110-111.

Dr. Zelby opined that Petitioner's lumbar spondylolisthesis is related to age in part and genetics in part. RX4, 91-92, 93. Dr. Zelby noted Petitioner had a sensory loss in the left lower extremity but opined that this was inconsistent with any spinal condition because the left leg symptoms do not correlate with the L4-5 level and that Petitioner did not exacerbate or aggravate any preexisting condition because he had been symptomatic for years and he received treatment the day before his reported injury. RX4, 92-94. Dr. Zelby then opined that it was more likely than not that Petitioner had a temporary exacerbation of his preexisting and long symptomatic degenerative condition, a diagnosis of soft tissue strain, and not symptoms that represented a radiculopathy. RX4, 95-96. Dr. Zelby stated that he reviewed the May 2, 2014, October 30, 2015, and July 20, 2017, MRIs, and x-rays from 2014, March 12, 2015, and August 10, 2017. RX4, 86-89. Dr. Zelby opined that the MRIs showed progression related to the passage of time and the x-ray reports showed degenerative changes in the mid and lower portion of the lumbar spine. RX4, 89-91, 108. Dr. Zelby opined that Petitioner's left side complaints represent the ongoing manifestations of his preexisting long symptomatic degenerative condition. RX4, 129.

Dr. Zelby opined that Petitioner's recommendation for a laminectomy was reasonable but based on solely his degenerative condition. RX4, 98-99, 103-4. Dr. Zelby opined that all of Petitioner's injection treatment was for a degenerative condition, but that there was no evidence of a degenerative change in the spine that points to the need for the introduction of injection treatment. RX4, 128-30. He further opined that Petitioner required no more than three or four weeks off work followed by three to four months of restricted duty after each of his reported injuries. RX4, 97, 99. Dr. Zelby was not aware of Petitioner's October 18, 2015, injury, but testified he could still opine that Petitioner could return to work within three to four months of that injury because Petitioner had a long history of neck pain and back pain and his diagnostic study showed only a degenerative condition based on the MRI findings. RX4, 108-109. Dr. Zelby was not aware the Petitioner never missed work for back pain prior to March of 2014. RX4, HRVA 119-120. Dr. Zelby acknowledged that 46 years old would be relatively young to have degenerative findings on an MRI and X-rays but went on to state that a degenerative spine is more prone to traumatic injury. RX4, 112, 116.

Section 12 Examination and Impairment Rating Reports

Stephen F. Weiss, M.D., Board Certified in Orthopedic Surgery, provided a June 21, 2017, report and impairment rating. Dr. Weiss took a history of Petitioner's low back pain since 2009, reviewed the Chiropractic records, and acknowledged Petitioner's pre-existing lumbar degenerative disc disease. PX14, p. 2-5. Dr. Weiss diagnosed petitioner with a permanent aggravation of his pre-existing lumbar condition with L5 radiculopathy secondary it his 2014 accident related to his fall on the ice and rated Petitioner's impairment as 11% whole person impairment. PX14, p. 5-6.

Jay L. Levin, M.D., reviewed medical records, examined Petitioner, and provided reports dated March 12, 2015, and November 13, 2015. RX2, RX1. Dr. Levin's March 12, 2015 report was limited to Petitioner's cervical condition related to the March 5, 2015 accident. Dr. Levin opined Petitioner's diagnosis was contusion of the cervical spine, related to his March 5, 2014 accident. RX 2. Dr. Levin further opined that at the time of his March 12, 2015 examination, Petitioner was at MMI as to his cervical spine issue concerning the March 5, 2014 accident. RX2, 52.

In his November 13, 2015 report, Dr. Levin diagnosed Petitioner with an acute lumbar myofascial strain related to a pre-existing lumbar spine condition. RX1, 20. Dr. Levin opined that as of his November 13, 2015 report, Petitioner was at MMI related to the March 5, 2014 accident and no additional treatment was required. RX1, 20. Dr. Levin did not provide an opinion regarding Petitioner's October 18, 2015 or Petitioners April 2, 2016 accident.

CONCLUSIONS OF LAW

March 5, 2014, 14WC033731, October 18, 2015, 16WC003687, April 2, 2016, 16WC021252

C. Regarding issue C, whether an accident occurred that arose out of Petitioner's employment, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner proved he suffered an accidental injury on March 5, 2014 during his course of employment with Respondent during an EMS call, when he slipped on ice and fell to the ground onto his medical bag and onto his back and shoulder. Further, the Arbitrator finds that Petitioner proved he suffered an accidental injury on October 18, 2015,

during the course of his employment while working full and unrestricted duty and sustained an accident during an EMS call. He sustained an injury to his lower back while transporting a patient downstairs to the ambulance with the mega mover. Lastly, the Arbitrator finds that Petitioner proved he sustained an accidental injury on April 2, 2016 when he fell backward onto his SCBA tank. The Arbitrator notes that the Petitioner credibly testified to these occurrences, completed timely injury reports, and provided corroborating histories to his treating doctors. There is no evidence in the record that disputes accident.

F. Regarding issue (F) whether Petitioner's current condition of ill-being is causally related to his injuries, the Arbitrator finds as follows:

It is axiomatic that a Petitioner has the burden of proving the elements of his case including that his condition of ill-being is causally connected to his work-related injury by a preponderance of the evidence. See *Bolingbrook Police Dep't v. Illinois Workers' Compensation Comm'n,* 2015 Il. App. 3d 130869WC (3rd Dist., 2015). The Illinois Supreme Court has long held that employers take their employees as they find them (*O'Fallen School Dist. No. 90 v Industrial Comm'n*, 313 Ill.App.3d 413, 417 (2000)) and that a preexisting condition does not prevent recovery under the Act if the condition was aggravated or accelerated by the claimant's employment (*Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill.2d 30, 26 (1982)). The Arbitrator finds that the record as a whole supports a finding that Petitioner's condition of ill-being is related to his work injury.

The record is clear that Petitioner suffered an accident on March 5, 2014. He endured subsequent accidents on October 8, 2015 and April 2, 2016. All of these accidents involved Petitioner's low back which is the body part that received myriad injections and eventual surgery. It is clear that Petitioner had a preexisting issue with his back for which he sought treatment prior to his work-related injury. The record supports a finding that Petitioner's work-related injury aggravated or accelerated his preexisting back issue as his symptoms increased in magnitude, radicular pain and numbness to the lower extremities developed, and treatment became much more frequent, consistent, and intense.

The Petitioner was diagnosed with upper and lower back strains, left L5 radiculopathy after his March 5, 2014 incident. He was diagnosed with low back pain with radiation into the left buttock and leg with numbness and tingling after his October 18, 2015 incident. Lastly, he was diagnosed with continuing back pain after his April 2, 2016 incident.

The evidence supports a finding that Petitioner experienced new left lower extremity symptoms after his March 5, 2014 accident, that Petitioner continued to treat with numerous providers from March 5, 2014 to the present for his left lower extremity symptoms and that his back pain continued through the date of hearing requiring Petitioner to continue to seek pain management post-surgery.

The record supports a finding that Petitioner never truly recovered from his March 5, 2014 accident as he continued to treat after his various attempts to return to work. Petitioner was initially diagnosed with a sprain on March 6, 2014 and treated conservatively with his PCP and Dr. Roh who noted L4-L5 issues including radiculopathy. He was returned to work in August of 2014 but still experienced issues with his back and continued to seek treatment, including injections. He was taken off work again on November 21, 2014, due to his continued symptoms. There is no evidence in the record of an intervening accident. He returned to work again on March 23, 2015. Petitioner continued to seek medical treatment after his return to work. He returned to work for several months but still complained of issues. He was injured again on October 18, 2015 and his back pain and radiation into the leg and buttocks continued. An MRI of October 30 2015 showed a worsening dick bulge and Dr. Freeman noted nerve compression. He was returned to work on December 1, 2015 but again continued to experience discomfort and sought ongoing medical treatment. He was injured again on April 2, 2016 and quickly returned to work on May 2, 2016 but continued to seek medical treatment. He sought further extensive treatment in June of 2017 which continued until Dr. Roh performed surgery in November of 2017. Petitioner was off work from November 21, 2017 through March 23, 2018. There is no evidence in the record of any intervening accidents during this time. Petitioner used FMLA, sick time, and Public Employee Disability Act benefits while off work.

The Arbitrator finds the opinions of Dr. Wiess and Petitioner's treating surgeon, Dr. Roh, to be more credible than those of Respondent's Section 12 examiner, Dr. Zelby. The Arbitrator relies on Dr. Weiss' opinion that petitioner sustained a permanent lumbar aggravation related to

his March 5, 2014 accident and notes that Dr. Wiess considered Petitioner's preexisting lumbar degenerative disc disease in forming his opinion. The Arbitrator finds that Dr. Roh's assessment to be more credible than Dr. Zelby as Dr. Roh was familiar with the Petitioner's history of low back pathology beginning with Dr. Roh's initial May 13, 2014 treatment. Dr. Roh's familiarity with Petitioner's condition dated back to his March 5, 2014 injury. As such, Dr. Roh was familiar with the history, pain complaints and the symptoms experienced by Petitioner in 2014 through 2017.

Dr. Roh noted that Petitioner failed conservative care which led to his eventual need for fusion surgery at L4-L5 and that his complaints were related to his March 5, 2014 injury. Dr. Roh's opinions were clear in that Petitioner only experienced left-sided radicular symptoms after the March 5, 2014 accident and that Petitioner's pre-accident treatment consisted of general back pain and right-sided complaints. Dr. Roh clearly and consistently opined that the 2014 accident was a causative factor or at least an aggravation of a preexisting condition in the spine with a new onset of left L5 radiculopathy which ultimately led to the requirement of Petitioner's November 2017 surgery. The record supports a finding by a preponderance of the evidence that Petitioner's March 5, 2014, accident is causally related to Petitioner's ongoing back and left lower extremity symptoms which ultimately led to his need for lumbar surgery and his current state of disability.

The Arbitrator finds Dr. Zelby's opinions less credible. Dr. Zelby's testimony acknowledged that Petitioner had only right leg symptoms prior to his March 5, 2014 accident and that Petitioner's treatment prior to March 5, 2014 was limited to medication and chiropractic treatment with no injection therapy. Dr. Zelby opined that related to his accidents Petitioner sustained a temporary exacerbation of his preexisting degenerative condition which was based on Petitioner's diagnostic studies and reported symptoms. Dr. Zelby opined that after each of Petitioner's reported accident he would need to be off work or on restricted duty for three to four months. Dr. Zelby opined that Petitioner's laminectomy was reasonable but related solely degenerative condition. The Arbitrator notes that Dr. Zelby opined Petitioner's injection treatment was related solely to a degenerative condition but testified there was no medical evidence of a degenerative change in the spine that required injection treatment. Dr. Zelby opined that a portion of Petitioner's treatment was related to his work accidents but did not

quantify what treatment dates were or were not related to which accident date. Dr. Zelby acknowledged that Petitioner was rather young to have degenerative findings. Dr. Zelby's findings essentially ignore the Petitioner's increase in symptoms, the addition of radicular issues, and Petitioner's ongoing need for frequent and consistent medical treatment after his accident. The record, again, supports a finding that Petitioner's preexisting back issue was aggravated or accelerated by his injury.

The Arbitrator give some weight to the opinions of Dr. Levin. Dr. Levin diagnosed Petitioner with a myofascial strain with longstanding pre-existing lumber spine complaints related to Petitioner's March 5, 2014 accident and opined that Petitioner was at MMI related to his March 5, 2014 accident as of his November 13, 2015 the Arbitrator notes that Dr. Levin's opinion is limited to his examination of Petitioner in March of 2015 and medical records through December 19, 2014. While the cervical injury and treatment was minimal in comparison to Petitioner's low back-related treatment, the Arbitrator finds his cervical issue related to his injury. The Arbitrator relies on the opinion of Dr. Levin. Dr. Levin diagnosed Petitioner with a contusion of the cervical spine related to the March 5, 2014 accident.

Ultimately, the Arbitrator finds that petitioner suffered an injury to his back on March 5, 2014 which caused ongoing pain with radiculopathy which eventually required his November 21, 2017. This finding is based on the opinions of Drs. Roh and Wiess in addition to the medical records which document me and left sided symptoms after the March 5, 2014 accident and the credible testimony of Petitioner. The Arbitrator finds that Petitioner sustained an aggravation of his preexisting lumbar condition related to the October 18, 2015 accident based on his ongoing need for medical treatment in the medical records and medical expert opinions. Further, Petitioner sustained an aggravation of his preexisting lumbar condition related to the April 2, 2016 accident based on his ongoing need for medical treatment in the medical records and medical expert. Petitioner's course of treatment which led him to the need for surgery was ultimately caused by his March 5, 2014 injury from which he never truly recovered despite conservative treatments and numerous attempts to return to work.

J. Regarding issue (J) whether the medical services provide to Petitioner were reasonable and necessary, and whether Respondent paid all appropriate charges for the reasonable and necessary medical services; the Arbitrator finds the following:

Having found Petitioner's cervical and lumbar conditions of ill-being is related to his accidents the Arbitrator finds that the treatment received for Petitioner's cervical condition through April 25, 2014 and lumbar condition through the date of hearing and ongoing were reasonable and necessary. The Arbitrator basis his finding on the opinions of Drs. Roh, Wiess, and Levin. Of note, the Arbitrator notes that Dr. Roh testified that all of Petitioner's treatment including all the injection treatment provided at Rockford Pain was reasonable and necessary and causally related Petitioner's work injuries. Accordingly, the Arbitrator finds that the bills and lien evidenced in PX1 were reasonable and necessary and that Respondent is responsible for payment pursuant to Section 8(a) pursuant to the fee-schedule or negotiated rate. The Respondent shall pay the unpaid balances of $5,668.84 pursuant to the fee schedule as documented in Petitioner's Exhibit 1. Respondent shall hold the Petitioner harmless for any reimbursement claim or lien asserted by the group insurance carrier, BCBS.

The Arbitrator finds that Petitioner has borne out-of-pocket expenses which related to the above-mentioned treatment that is reasonable and necessary. Accordingly, the Arbitrator orders Respondent to reimburse Petitioner the amount of $1,624.86 for out-of-pocket medical expenses paid by Petitioner evidenced in Exhibit 1 and $1,010.21for out-of-pocket medication expenses paid by Petitioner in Exhibit 16, totaling $2,635.07. Respondent is entitled to a credit for amounts paid pursuant to Section 8(j).

K. Regarding the disputed issue (K) on whether the Petitioner is entitled to TTD, the Arbitrator finds the following:

Having found for issues F and J above, the Arbitrator finds Petitioner was restricted from work numerous times for his three accidents. Petitioner received his full salary pursuant to the Public Employee Disability Act for a large portion of the TTD periods alleged. The Request for Hearing sheets marked AX1 and AX2 note that no TTD is in dispute and AX3 notes that

Petitioner is alleging TTD for periods of April 2, 2016 through May 5, 2016 and June 12, 2017 through March 28, 2018 (which may be a typo or misprint as all other facts in record show March 23, 2018). The Arbitrator finds that Petitioner is entitled to TTD benefits for the following periods of time:

- March 5, 2014 through August 5, 2014, reflecting 22 weeks;
- November 21, 2014 through December 23, 2014, reflecting 4 and 5/7 weeks;
- October 19, 2015 through November 24, 2015, reflecting 5 and 2/7 weeks; and
- July 28, 2017 to March 23, 2018, reflecting 34 and 1/7 weeks.

It remains Petitioner's burden to prove all elements of his claims for relief sought. As far as the disputed TTD period is concerned in April and May of 2016, the record notes Petitioner saw Dr. Stocker, on April 4, 2016, and was restricted from heavy lifting. The doctor's note does note remove Petitioner from work entirely. PX7, p. 75-76. Petitioner then followed up with Dr. Freeman on April 19, 2016, for injections but Dr. Freeman did not remove Petitioner from work, but Petitioner was rather advised to avoid activity that causes pain and continue Dr. Stocker's restrictions. PX10 p 70-72. As of April 27, 2016, Dr. Stocker noted Petitioner was ready to return to work and returned Petitioner to work full duty on May 2, 2016. PX15, p. 59. The record does not support a finding that TTD is due for this time period as Petitioner was restricted to light duty and there is nothing in the record to show that he requested light duty or that light duty was declined. Further, Petitioner previously worked light duty from December 24, 2014, through March 24, 2015.

The record is not clear that Petitioner was restricted from work on June 12, 2017. On June 30, 2017, Petitioner received another ESI and was discharged prn but advised to avoid activities that cause pain. Another injection was performed on July 28, 2017, by Dr. Dahlberg and Petitioner was referred to Dr. Roh for a surgical consultation. In the July 28, 2017, records, there is a handwritten note on a discharge instruction sheet that reads, "no work no lite duty." Another injection was performed on August 31, 2017, by Dr. Dahlberg. Dr. Dahlberg did not mention work restrictions in his records at that time and the discharge instructions that previously stated "no work no lite duty" are silent as to work restrictions. The Arbitrator draws an inference here that as Petitioner's complaints had not changed that the restrictions from July

28, 2017, would remain unchanged as well. Petitioner underwent surgery, recuperated, and was eventually returned to full duty work on March 23, 2018. Accordingly, the Arbitrator finds that the period of TTD payable from is from July 28, 2017, to March 22, 2018.

The TTD periods total 66 and 1/7 weeks at a rate of $1,000.00 per week for the first 32 weeks and $1,065.21 per week for the final 34 and 1/7 weeks based on Petitioner's average weekly wage (AX1,2,3). Respondent shall receive credit for amounts paid to Petitioner for the TTD weeks awarded above.

L. Regarding issue (L), the nature and extent of the Petitioner's injury, the Arbitrator finds the following:

The Arbitrator has considered the five factors outlined in Section 8.1(b) and finds that Petitioner has sustained permanent disability of 17.5% loss of use of the person as a whole. The Arbitrator analyzes the Petitioner's permanency under five factors as follows:

Regarding subsection (i), the Arbitrator notes that Dr. Weiss provided an AMA impairment rating of 11% of Petitioner's condition, however, this report was authored with a focus on Petitioner's pre-surgical April 5, 2014, accident and not his March 5, 2014, accident. This factor is given little weight.

Regarding subsection (ii), Petitioner's occupation, Petitioner was able to return to his pre-accident employment as a firefighter/paramedic and is currently performing the duties of a fire engineer which Petitioner testified is not as labor-intensive. The Arbitrator finds Petitioner's ongoing complaints could negative affect the remainder of his career as a firefighter/paramedic/engineer. The Arbitrator places great weight on this factor.

Regarding subsection (iii), Petitioner's age, the Arbitrator places moderate weight on this factor as Petitioner's age of 44 suggests he has decades of employment ahead of him. Dr. Zelby noted that Petitioner was young to experience a degenerative lumbar condition.

Regarding subsection (iv), Petitioner's future earning capacity, the Arbitrator gives little weight to this factor as there is no evidence in the record that Petitioner has or will experience any diminishment in his earning capacity from Petitioner or his doctors.

Regarding subsection (v), evidence of disability corroborated by medical records, the record is unambiguous that Petitioner underwent a substantial course of conservative treatment, a fusion surgery, and still complains of issues as of the date of hearing. Petitioner was released to regular duty and is not subject to any permanent limitations from his doctors. His return-to-work slips advise him to avoid activities that cause pain. Petitioner may also need future pain management treatment. Accordingly, the Arbitrator finds that petitioner sustained a permanent partial disability loss of 17.5% of the person as a whole pursuant to Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC004649
Case Name	Yovanny Cabarcas v. Millennium Auto Sales
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0159
Number of Pages of Decision	16
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Mario Encinas
Respondent Attorney	Katrina Robinson

DATE FILED: 4/10/2023

/s/ Kathryn Doerries, Commissioner

Signature

23IWCC004649

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
X Modify medical, TTD, PPD. Strike paragraphs, strike and replace, and correct scrivener's errors	☐ PTD/Fatal denied
☒ Modify reduce PPD	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

YOVANNY CABARCAS,

Petitioner,

vs. NO: 18 WC 04649

MILLENNIUM AUTO SALES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, medical expenses, prospective medical, and permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission, herein, affirms the finding of causal connection. However, the Commission modifies the Arbitrator's decision regarding medical expenses, temporary total disability, and permanent partial disability. The Commission further strikes two paragraphs and corrects scrivener's errors as stated below.

The Commission affirms the award of medical expenses but modifies the medical award to award the bills as supported by the evidence and subject to the medical fee schedule as provided in Sections 8(a) and 8.2 of the Act, as follows:

1. $20,871.90 to Delaware Physicians.
2. $49,680.00 to River North Pain Management.
3. $36,965.70 to Lake Shore Surgery.
4. $490.00 to Lake Shore Physicians.

5. $630.00 to West Touhy Anesthesiology.
6. $1,046.00 to Lake Shore MRI.
7. $840.00 to Micro Neuro Spine.

The Commission, herein, modifies the award of temporary total disability benefits awarded from February 10, 2018, through January 5, 2022. After a careful review of the evidence, the Commission excludes the periods from February 10, 2018, through February 11, 2018, and from October 17, 2018, through January 22, 2019, as there are no off-work slips from Dr. Erickson for those periods of claimed lost time. As such, Petitioner is entitled to temporary total disability benefits from February 12, 2018, through October 16, 2018, and from January 23, 2019, through January 5, 2022, for a total of 189-3/7 weeks.

The Commission, herein, affirms the Arbitrator's Section 8.1b(b) findings as to factors (i) through (iv) but modifies factor (v) and reduces the permanent partial disability award.

(v) Regarding evidence of disability corroborated by the treating medical records, as a result of the work-related accident of February 9, 2018, Dr. Salahi diagnosed Petitioner with lumbar spine degenerative disc disease, annular tear, and low back pain as a result of the work injury. Dr. Salahi also stated the diagnosis was secondary to aggravation of the pre-existing and previously asymptomatic L4-5, L5-S1 disc disease/annular tear. Treating physicians at Delaware Physicians diagnosed lumbar spine discogenic radiculopathy, lumbar spine discogenic pain syndrome, L4-L5 and L5-S1 herniated discs, and lumbar spine axial facet pain syndrome. The MRI performed March 21, 2018, revealed multilevel spondylosis, broad based posterior herniation L4-5 causing mild central canal and foraminal stenosis, annular bulge with central herniation L5-S1 causing mild central canal, and foraminal stenosis. There were no MRI findings of nerve impingement of any significance noted. The EMG/NCV performed June 8, 2018, revealed mild right lumbar radiculitis involving the L5 and S1 dermatomal distributions. Petitioner received several transforaminal epidural steroid injections and select nerve root blocks bilaterally at L4-5 and L5-S1. The diagnosis noted there was lumbar spine discogenic radiculopathy, lumbar spine discogenic pain syndrome, L4-5 and L5-S1 herniated discs. Respondent's examiner, Dr. Butler, in his November 27, 2018, report stated that Petitioner had suffered a strain injury and had pre-existing degenerative disc disease, required no further treatment, had reached maximum medical improvement from the accident and that surgery was not reasonable and necessary or related to the accident. In his consult report of May 21, 2019, Dr. Salahi noted his recommendation for surgical intervention if symptoms became intolerable. He further noted there that Petitioner did not want surgery, so the alternative was to obtain a functional capacity evaluation. On November 22, 2019, Dr. Erickson at Micro Neuro Surgery noted Petitioner had not improved with conservative care and Petitioner had reached a plateau with conservative care. Neither Dr. Butler nor any treating doctor found any indication of symptom magnification, however, an FCE performed December 31, 2021, was found to be invalid, indicating Petitioner consciously represented less than full effort. Petitioner had been released to a medium capacity work level, but there was no indication that Petitioner ever tried to return to any type of work since the medical release.

Petitioner testified that the accident had certainly changed what he can and cannot do, and when, and how he can do it. Petitioner testified that he cannot stand for long periods of time and cannot sit for long periods. He had to change his desk to study and to read. He testified that he cannot climb steps and cannot work out for long periods of time. Petitioner testified that when he sleeps, depending on body position, sometimes he will wake with the pain. Petitioner stated in the beginning he could not mop and sweep at the same time; he has good and bad days. Petitioner testified that while he had improved, he still cannot do chores for a very long time. Petitioner still takes over-the-counter medications as needed and he continues to do the home exercises he learned from physical therapy. This factor is given significant weight.

Based on the foregoing factors, the Commission reduces the permanent partial disability award to 12.5% loss of use of his person as a whole, for injuries sustained as provided in Section 8(d)(2) of the Act. Therefore, the Respondent shall pay Petitioner the sum of $220.00 per week for a period of 62.5 weeks for injuries sustained as provided in Section 8(d)(2) of the Act.

The Commission, herein, modifies the Arbitrator's decision, page 7, Section (F), second paragraph, sentence beginning with "Even Dr. Butler…", to strike "from the 2/9/18 examination" and replace with "from the 11/27/18 examination". The Commission, herein, further modifies that sentence to strike "degermation" and replace it with "degeneration".

The Commission, herein, modifies the Arbitrator's decision, page 8, Section (J) to strike the last two paragraphs of that section.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $220.00 per week for a period of 189-3/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $220.00 per week for a period of 62.5 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused 12.5% loss of use of Petitioner's person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay reasonable and necessary medical services, pursuant to adjustment with the medical fee schedule, of $20,871.90 to Delaware Physicians, $49,680.00 to River North Pain Management, $36,965.70 to Lake Shore Surgery, $490.00 to Lake Shore Physicians, $630.00 to West Touhy Anesthesiology, $1,046.00 to Lake Shore MRI, and $840.00 to Micro Neuro Spine, as provided in Section 8(a) and Section 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 10, 2023

o-2/21/23
KAD/jsf

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

SPECIAL CONCURRING OPINION

This case was scheduled for Oral Argument on February 21, 2023, before a three-member panel of the Commission including members Kathryn A. Doerries, Maria E. Portela, and Thomas J. Tyrrell, at which time Oral Arguments were either heard, waived or denied. Subsequent to Oral Arguments and prior to the departure of member Tyrrell on March 17, 2023, a majority of the panel members reached agreement as to the results set forth in this Decision and Opinion, as evidenced by the internal Decision worksheet initialed by the entire three-member panel. However, no formal written decision was signed and issued prior to member Tyrrell's departure.

I was not a member of the panel in question at the time Oral Arguments were heard, waived or denied, and I did not participate in the agreement reached by the majority in this case. However, I have reviewed the Decision worksheet, which shows that former member Tyrrell voted with the majority in this case and have reviewed the provisions of the Supreme Court in *Zeigler v. Industrial Commission*, 51 Ill.2d 137, 281 N.E.2d 342 (1972), which authorizes signature of a Decision by a member of the Commission who did not participate in the Decision. Accordingly, I am signing this Decision in order that it may issue.

/s/*Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC004649
Case Name	CABARCAS, YOVANNY v. MILLENNIUM AUTO SALES
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Mario Encinas
Respondent Attorney	Katrina Robinson

DATE FILED: 6/24/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 22, 2022 2.39%

/s/Steven Fruth, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Yovanny Cabarcas
Employee/Petitioner
v.
Millennium Auto Sales
Employer/Respondent

Case # **18 WC 004649**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **02/25/2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **02/09/2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**2,451.70**; the average weekly wage was $**323.83**.

On the date of accident, Petitioner was **44** years of age, ***single*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**10,340.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**10,340.00**.

Respondent is entitled to a credit of $**0** under §8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to adjustment in accord with the medical fee schedule, of $**7,884.29** to **Delaware Physicians**, $**8,117.02** to **River North Pain Management**, $**8,454.10** to **Lakeshore Surgery Center (Facility)**, $**164.86** to **Lakeshore Surgery Center (Physicians)**, $**508.20** to **Western Touhy Anesthesiology**, $**979.75** to **Lakeshore MRI** and $**264.44** to **Micro Neuro Spine**, as provided in §§8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $**220.00**/week for **203** weeks, commencing **02/10/2018** through **01/05/2022**, as provided in §8(b) of the Act.

Respondent shall be given a credit of $**10,340.00** for temporary total disability benefits that have been paid.

The Arbitrator finds that Petitioner sustained a permanent partial disability to the extent of **30**% loss of a person-as-a-whole pursuant to §8(d)2 of the Act: **150** weeks at $**220.00** per week.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

JUNE 24, 2022

Signature of Arbitrator

YOVANNY CABARCAS v. MILLENNIUM AUTO SALES
18 WC 004649

INTRODUCTION

The disputed issues in the above-cited proceeding are: ***F:*** Is Petitioner's current condition of ill-being causally related to the injury?; ***J:*** Whether the medical services provided to Petitioner were reasonable and necessary? Has Respondent paid all appropriate charges or all reasonable and necessary medical services?; ***K:*** What amount of temporary total disability benefits is due to Petitioner?; ***L:*** What is the nature and extent of the injury?

FINDINGS OF FACT

Petitioner Yovanny Cabarcas was working for Respondent Millennium Auto Sales on February 9, 2018. He was working as a trainee car salesman. Respondent is a car dealer. Petitioner had been working for Respondent just over seven (7) weeks up until that time. On this day, Petitioner's supervisor Sebastian asked him along with all the other salesman to clean snow off of all the cars that were for sale on Respondent's car lots. After clearing the snow for a while, Petitioner was going to take a break. He was walking toward the office when he slipped and fell on an ice patch. Petitioner fell backwards landing on his back and striking his head. Petitioner reported this injury to his supervisor, Sebastian, and went home.

Three days following the accident, 02/12/2018, Petitioner sought treatment at New Life Medical Center (PX #1). Petitioner was referred to that clinic by a friend. Petitioner was recommended physical therapy which included, hot/cold packs, exercise, manual therapy, ultrasound, electric stimulation and taken off of work. The physical therapy helped Petitioner with his complaints of pain. Petitioner's therapy and work status continued and remained the same through 03/21/2018 until Petitioner was referred for an MRI (PX #1 & PX #2).

The MRI was performed on 03/21/18 at Archer Open MRI (PX #2). The MRI demonstrated a "[b]road-based posterior herniation at L4-5 causing mild central canal and foraminal stenosis" and an "annular bulge with central herniation at L5-S1 causing mild central canal and foraminal stenosis." After the MRI, Petitioner continued to receive physical therapy and was still off work.

Petitioner was then referred to Dr. Axel Vargas at Delaware Physicians. Dr. Vargas reviewed the MRI, performed an examination, ordered continued physical therapy,

prescribed medications, and recommended a series of bilateral lumbar epidural injections along with selective nerve root blocks (PX #3).

Petitioner continued physical therapy with New Life Medical Center (PX #1). Petitioner felt that physical therapy provided temporary relief from his radicular symptoms. The first set of injections was performed on 04/20/2018 by Dr. Vargas (PX #4, PX #5, PX #6, & PX #7). The second set of injections were performed on 05/04/2018 by Dr. Vargas.

Petitioner had mild to moderate clinical improvement after these two uneventful procedures (PX #3). Even though the Petitioner experienced improvements, he still had continued pain, radicular complaints, and problems with his activities of daily living. Dr. Vargas recommended continued physical therapy, prescription medication, staying off of work and the third and final set of injections.

The third set of injections was performed on 06/01/2018 by Dr. Vargas (PX #4, PX #5, PX #6, & PX #7). Petitioner returned to New Life Medical and an EMG/NCV was ordered.

The EMG/NCV was performed on 06/04/2018 by Dr. Gregory Thurston (PX1). The results showed a "mild right lumbar radiculitis involving the L5, S1 dermatomal distributions" (PX1). Petitioner followed up with Dr. Vargas on 07/10/2018. Petitioner received no further benefit from the third injection and continued to have7/10. Dr. Vargas discontinued physical therapy, prescribed medication, kept him off of work, and ordered a discogram and post discogram CT (PX #3).

The discogram and CT were performed on 08/23/2018 at Lakeshore Surgery Center and Lakeshore Open MRI. The resulted showed "Unequivocal concordant discogenic pain at L4-L5 and L5-S1 levels" PX #4, PX #5, PX #6, & PX #7). The CT demonstrated "at the L4-5 level a 3-4 mm posterior broad-based central disk herniation with an extruded nucleus pulposus with central stenosis" and "at L5-S1 level, a 4-5 mm broad-based posterior mostly central disk herniation also with an extruded nucleus pulposus, with generalized spinal stenosis" (PX #8). These findings were discussed with Dr. Vargas on 09/06/2018 and Petitioner was referred for a surgical consult.

Petitioner was seen by Dr. Robert Erickson on 10/17/2018. After reviewing prior conservative treatment records along with the discogram and CT, he recommended a two-level fusion from L4 through S1 (PX #3). Dr. Erickson kept Petitioner off work and prescribed medication for pain and awaited authorization for the surgery.

Petitioner had an IME at Respondent's request on 11/27/18 with Dr. Jesse Butler (RX #1). Dr. Butler indicated that although this recommended two-level fusion was reasonable, he did not agree with the recommendation. Dr. Butler noted that "there is a body of literature to support the performance of spinal fusion surgery in this situation." Furthermore, Dr. Butler stated "[t]he patient may consider the spinal fusion as proposed by Dr. Erickson … Once again, I do not agree that surgery is reasonable or necessary." Dr. Butler placed Petitioner at MMI on 08/09/2018 and stated he could return to work without any restrictions.

Petitioner followed up with Dr. Erickson on 01/23/2019 complaining of 2 – 8/10 pain, depending on medication and exertion level (PX #3). He noted Petitioner had not improved in over one year since the accident and wants to proceed with surgery upon approval. Dr. Erickson kept the Petitioner off work and prescribed medication. Petitioner returned to see Dr. Erickson on 04/03/2019. There has been no change in Petitioner's pain complaints and no prior complaints with his back before the accident. Dr. Erickson continued to recommend surgery and to try to obtain approval.

After this last visit with Dr. Erickson, Petitioner decided to seek a second opinion with Dr. Sean Salehi regarding the need for surgery. Dr. Salehi diagnosed Petitioner with degenerative disc disease of the lumbar spine, minimal bulges at L4-5 and L5-S1 and annular tears at those levels (PX #10 & PX #12). Dr. Salehi noted that Petitioner had low back pain as a result of the work injury. Petitioner had a previously asymptomatic L4-5, L5-S1 disc disease/annual tear. He offered Petitioner two options of treatment of his condition. The first was surgical intervention as prescribed by Dr. Erickson if Petitioner's symptoms were intolerable. The second was an FCE with permanent restrictions if Petitioner is able to manage the pain.

Petitioner followed up with Dr. Erickson on 05/24/2019, 11/22/2019, and 08/21/2020 without any change in his condition and with the same surgical recommendations (PX #9). However, on 09/23/2021, Petitioner feels slightly improved over the long interval since he was last seen. Dr. Erickson noted that Petitioner's condition had stabilized, and Petitioner indicated an interest in returning to work. Dr. Erickson recommended a FCE and a follow-up once it was completed. The FCE was performed on 12/13/2021 at ATI. However, the evaluation noted as "invalid", and ATI was unable to assess Petitioner's physical demand limits and capabilities (PX #11).

Petitioner returned to Dr. Erickson on 01/05/2022. Dr. Erickson reviewed the FCE, placed Petitioner at MMI with the ability to return to work within a medium duty capacity and that he should avoid lifting more than 40 pounds occasionally and 25 pounds on a more frequent basis (PX #9).

Petitioner testified that prior to this accident, he had not had any issues, injuries, or complaints regarding his lumbar spine. Also, because of this accident, he has some difficulty in performing his activities of daily living. Petitioner has difficulty sleeping throughout the night and can neither stand nor sit for too long without complaints of pain or numbness. Also, getting dressed, showering, using the facilities cause him discomfort. Petitioner takes over the counter ibuprofen to help control his pain which he rates at a constant 3 - 4/10. Changes in the weather continue to cause him pain and discomfort in his low back from time to time.

CONCLUSIONS OF LAW

F: Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator finds that Petitioner proved that his current condition of ill-being was caused by his work-related accident on February 9, 2018.

The record is clear that Petitioner was working in a full-duty capacity for Respondent without incident prior to the undisputed accidental injury on February 9, 2018. Petitioner credibly testified that prior to that date of accident, he suffered neither symptoms nor required any treatment or diagnostic examinations for his lumbar spine. After the accident, Petitioner remained symptomatic as has yet to return to his pre-accident baseline. Additionally, the objective medical evidence of the MRI, EMG/NCV, discogram, post discogram CT, along with subjective evidence of Petitioner's continued complaints, no malingering and no symptom magnification show clear evidence of pathology in Petitioner's lumbar spine. The findings on the objective evidence were further supported by the temporary relief that Petitioner received from the combination of physical therapy, prescription medications, durable medical equipment, and injections to the lumbar spine. Even Dr. Butler, the Respondent's section 12 examiner, indicated on his report from the 02/09/18 examination that "[t]he patient's diagnosis is a lumbar strain with lumbar disk degermation at L4-L5 and L5-S1. The patient's current complaints relate to the claimed work injury of the slip and fall on the ice."

The Arbitrator finds the opinions of all doctors, treating or IME, linking Petitioner's condition of ill-being to his traumatic work injury well-reasoned and credible. The further Arbitrator finds the opinions of Petitioner's treating doctors regarding continued complaints more reliable and credible than the opinion of Dr. Butler who was retained by Respondent and examined the Petitioner on only one occasion.

J: Whether the medical services provided to Petitioner were reasonable and necessary? Has Respondent paid all appropriate charges or all reasonable and necessary medical services?

The Arbitrator finds that Petitioner proved that the medical services and the bills for those services he received were reasonable and necessary.

Petitioner's treating physicians, Dr. Bowman, Dr. Axel Vargas, Dr. Sean Salehi, Dr. Robert Erickson, and even Respondent's IME doctor, Dr. Jesse Butler from Spine Consultants opined that the Petitioner's work accident caused his condition of ill-being with regard to his lumbar spine (PX #1, PX #3, PX #4, PX #9, PX #10, & RX #1). Dr. Butler even went on to say that all treatment was reasonable and necessary up until November of 2018 (RX #1). However, Dr. Butler did opine that the recommended surgery was not reasonable or necessary. Based on the Petitioner's treating doctors records, Respondent's §12 physician, no evidence to the contrary, and having found causal connection, the Arbitrator finds that all treatment rendered to Petitioner was reasonable and necessary.

The Arbitrator finds that the care and treatment Petitioner received has been reasonable and necessary. The Arbitrator finds that the physical therapy, injections, prescription medication, imaging, and related services were for reasonable and necessary diagnostic and therapeutic interventions intended to cure or relieve Petitioner's lumbar spine injury.

Respondent shall therefore pay the medical expenses enumerated in Petitioner's exhibits and Arbitrator's Exhibit #1, Fee Schedule Stip Sheet, as provided in §8(a) and adjusted in accord with the Medical Fee Schedule provided by §8.2 of the Act. Respondent shall be given a credit for any amounts previously paid under §8(a) of the Act for medical benefits and Respondent shall hold Petitioner harmless from claims by any providers of the services for which Respondent is receiving a credit.

Therefore, Respondent shall pay $26,372.66 in outstanding medical expenses. ***See*** Medical Fee Schedule Agreed Stipulation (ArbX #1).

K: What amount of temporary total disability benefits is due to Petitioner?

The parties agree that Petitioner was temporarily totally disabled from 02/12/2018 through 08/09/2018. Respondent disputes Petitioner's claim for temporary total disability benefits from 08/10/2018 through 01/05/2022 (ArbX #1). Respondent relies on Dr. Butler's opined from his 11/27/2018 §12 IME, wherein Dr. Butler disagreed with

the recommendation for surgery and states that Petitioner can return to all activities without any need for specific restrictions.

The Arbitrator finds that the evidence supports a finding that Respondent is liable for payment of temporary total disability benefits from 02/12/2018 through at least 11/27/2018. The Arbitrator further finds, as for temporary total disability benefits from 11/28/2018 through 01/05/2022, that Petitioner has met his burden of proof that his current condition of ill-being in his lumbar spine is causally connected to the injury of 02/09/2018, Respondent is liable for payment of temporary total disability benefits from 11/28/2018 through 01/05/2022.

The parties stipulated that Petitioner's average weekly wage is $323.83, resulting in a TTD rate of $220.00. The parties further stipulated that Petitioner was temporarily totally disabled for the period 02/12/18 through 08/09/18, a total of 47 weeks, and received benefits for that period, for which Respondent shall receive a credit of $10,340.00 in TTD benefits paid.

L: What is the nature and extent of the injury?

The Arbitrator evaluated Petitioner's Permanent Partial Disability in accord with §8.1b of the Act:

i) No AMA Impairment Rating was admitted in evidence. The Arbitrator cannot give any weight to this factor.

ii) Petitioner was a car salesman at the time of the accident. He did not return to this position, however the Arbitrator notes that the evidence documented the physical job requirements as: cleaning cars, cleaning parking lot, opening/closing gates, transfer cars around the lot to the mechanics, car sales, test drive cars with customers and phone calls. This required Petitioner to perform the following physical motions: standing, sitting, walking, and pulling. Furthermore, Petitioner reported being required to lift the following weight: 0.0 lbs. from floor, 0.0 lbs. overhead, 25 lbs. carry and 25 lbs. push/pull. These actions are performed about 11 hours a day. Dr. Erickson placed Petitioner in the medium duty category and his car salesman job was listed as a light occupational demand level. Petitioner would have been able to return to his full duties with Respondent following his release by Dr. Erickson. However, Petitioner may still undergo the recommended two-level fusion if his symptoms become intolerable. Petitioner also testified credibly as to his activities of daily living are still affected by the injury. The Arbitrator moderate weight to this factor.

iii) Petitioner was 44 years old at the time of the accident. He had a statistical life expectancy of approximately 37 years. The Arbitrator notes that Petitioner suffered a severe injury to the lumbar spine that may require

surgery in the future, and which has affected his activities of daily living as well as any future employment. The Arbitrator gives great weight to this factor.

iv) Petitioner was working full-time for Respondent, earning approximately $323.83 per week. However, Petitioner's job was commission-based wherein he earned a base salary plus commissions when he sold a car. He was just 7 weeks into this job and had earned only 2 commissions which he had to split with a co-worker because he was still in training. The specific work restriction was placed by Dr. Erickson and categorized Petitioner as being able to work in the medium duty capacity. This severely limits the types of jobs that Petitioner would be able to find in the future. The Arbitrator gives great weight to this factor.

v) Petitioner's medical records are consistent with his testimony that he suffered a lumbar disc injury that necessitated injections, physical therapy, prescription medications, and may require a surgery in the future. It was noted that at Petitioner's last visit on 01/05/2022, even though his injury has stabilized, he has permanent restrictions and shows ongoing complaints which were consistent with his testimony at the time of trial. The Arbitrator further finds Petitioner was credible in describing his current pain and limitations. The Arbitrator gives great weight to this factor.

Based on the evidence, including the above five factors, the Arbitrator finds that Petitioner sustained a permanent partial disability to the extent of 30% of a person-as-a-whole pursuant to §8(d)2 of the Act.

Steven J. Fruth, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000773
Case Name	Matthew Richardson v. Magnuson Group
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	23IWCC0160
Number of Pages of Decision	9
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Bryan Shell
Respondent Attorney	Brent Halbleib

DATE FILED: 4/12/2023

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MATTHEW RICHARDSON,

Petitioner,

vs. NO: 21 WC 000773

MAGNUSON GROUP,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection and temporary total disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 18, 2022 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $36,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 12, 2023

/s/*Christopher A. Harris*
Christopher A. Harris

CAH/tdm
O: 4/6/23
052

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/*Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000773
Case Name	Matthew Richardson v. Magnuson Group
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Bryan Shell
Respondent Attorney	Brent Halbleib

DATE FILED: 7/18/2022

/s/Gerald Granada, Arbitrator

Signature

INTEREST RATE WEEK OF JULY 12, 2022 2.68%

23IWCC0160

STATE OF ILLINOIS)
)SS.
COUNTY OF **DUPAGE**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Matthew Richardson
Employee/Petitioner

v.

Magnuson Group
Employer/Respondent

Case # **21** WC **000773**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Wheaton**, on **5/12/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **10/24/19**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**29,640.00**; the average weekly wage was $**570.00**.

On the date of accident, Petitioner was **39** years of age, ***single*** with **0** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**4,434.87** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**4,434.87**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $380.00/week for 94 4/7 weeks, commencing 7/20/20 through 5/12/22, as provided in Section 8(b) of the Act.

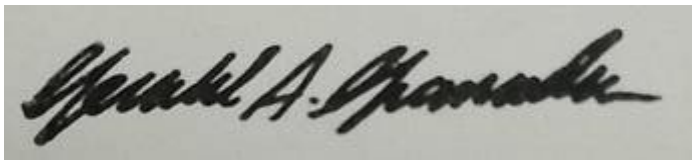
Respondent shall pay reasonable and necessary medical services of $4,740.21, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for prospective medical treatment for Petitioner's right arm as recommended by Dr. Hurbanek.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of **Arbitrator Gerald Granada** July 18, 2022

FINDINGS OF FACT

This case involves Petitioner Matthew Richardson, who alleges to have sustained injuries while working for the Respondent Magnuson Group on October 24, 2019. Respondent disputes Petitioner's claim, with the issues being: 1) causation; 2) medical expenses; 3) prospective medical care; and 4) TTD. This case proceeded to hearing pursuant to Section 19(b) of the Act.

On October 24, 2019 petitioner was a 38 year old quality control worker for the insured. On that date, he was sanding product using a drill with his right upper extremity when he began experiencing pain in his right arm radiating from the right elbow to the right forearm. He advised the safety person at work and later that day went for treatment at DuPage Medical Center.

At DuPage Medical Center, Petitioner saw a physician's assistant for right elbow pain. He was diagnosed with right elbow tendinitis from overuse, put on light duty and referred to orthopedics.

On October 30, 2019, Petitioner saw Dr. Jimenez at the DuPage Medical Group and was diagnosed with lateral epicondylitis of his right elbow. He was kept off work and referred again to orthopedics.

On November 13, 2019, Petitioner saw Dr. Cohen, an orthopedic surgeon, for right elbow pain. He was again diagnosed with lateral epicondylitis and provided a brace for his elbow. He was given a cortisone injection and was asked to come back if his symptoms had not resolve in the next 6 to 8 weeks.

Petitioner returned to work after the injection and he did not return to Dr. Cohen until April 28, 2020. It appears that he worked that entire time. It also appears that he did go to DuPage Medical Group once during that period of time for an unrelated health issue.

On April 28, 2020, Petitioner returned to Dr. Cohen complaining of increased symptoms in his right elbow. He declined any therapy for his elbow, but did have a second injection in his right elbow. He was instructed again by Dr. Cohen to return if his symptoms were not alleviated.

On June 30, 3020, Petitioner went to DuPage Medical Group with reports of lower back pain for two days. He noted no specific injury but stated he does heavy lifting at work. He made no mention at that time of any elbow problems.

On July 20, 2020, almost 3 months after the 2nd injection with DuPage Medical Group, Petitioner started treatment at Ostir Chiropractic Clinic. He was referred there by his mother. His complaint was pain in his right elbow. He received treatment to his right elbow with this medical provider through August 10, 2020. Petitioner testified that he stopped treatment with Ostir because he was terminated by Respondent on August 6, 2020 and could no longer afford to pay for his chiropractic treatment. There is a referral to Dr. Hurbanek at Hinsdale Orthopedics in the August 10, 2020 note. The chiropractic records contain off work slips for July 20, 2020 to July 27, 2020, from July 24, 2020 to August 3, 2020, and from July 31, 2020 to August 7, 2020. There is no indication at the August 10, 2020 visit of any off work slip.

On April 12, 2021, Petitioner saw Dr. Hurbanek at Hinsdale Orthopedics. Dr. Hurbanek diagnosed right elbow lateral epicondylitis and recommended an MRI to evaluate the right elbow. He put the petitioner on modified duty of no use of the right arm. The April 19, 2021 right elbow MRI showed common extensor tendinosis with no evidence of tendon tear or ligament tear. On May 6, 2021, Dr. Hurbanek

recommended that the petitioner undergo surgery based on the petitioner's condition and MRI.

On December 15, 2020, Dr. Ajay Balaram, an orthopedic surgeon, saw the petitioner for a Section 12 IME at the request of the respondent. Dr. Balaram stated that the petitioner developed lateral epicondylitis after his work activities in October, 2019. He noted that the petitioner underwent steroid injection which resolved the lateral epicondylitis. He noted that the petitioner had not worked since August, 2020, yet had increased symptoms. Therefore, he stated that the original lateral epicondylitis had resolved through appropriate treatment and the further care, starting with the chiropractic care in July, 2020 was unrelated to the original injury. He did not think surgery was necessary for his current condition at that time. On May 3, 2022, Dr. Balaram issued an addendum report. He had reviewed the records of Dr. Hurbanek that had been generated after his initial report. He did not change his opinion on causation, stating that the current problems are unrelated to the original injury of October 24, 2019. He stated that surgery was an option for the petitioner's condition, but it was unrelated to the October 24, 2019 injury.

The Petitioner testified that he was eager to undergo the procedure as recommended by Dr. Hurbanek. The Petitioner still has problems grasping with his right hand, he has aches and pain in the right arm, especially when it is cold, or there is precipitation. He now uses his left arm more, he doesn't go frisbee golfing, ride his bicycle, or golf. All of these activities were things he enjoyed prior to the work injury.

CONCLUSIONS OF LAW

1. With regard to the issue of causation, the Arbitrator finds that the Petitioner has met his burden of proof. In support of this finding, the Arbitrator relies on the Petitioner's unrebutted testimony and the records of the treating physicians. Petitioner's complaints of pain in his right arm have been consistent and well-documented in the medical evidence. There is no evidence of Petitioner having any prior complaints or medical treatment for his right elbow, nor any evidence of any subsequent injury to that elbow. Both the medical records and Petitioner's testimony reflect that his pain complaints never completely subsided following his undisputed work accident on October 24, 2019. The Arbitrator finds the medical evidence and Petitioner's unrebutted testimony persuasive on this issue – i.e. that Petitioner developed lateral epicondylitis, for which he now needs surgery. Although the Respondent did obtain an IME opinion from Dr. Balaram indicating that Petitioner's condition has since resolved - this opinion is not supported by a preponderance of the evidence that indicates Petitioner's right elbow complaints have not abated. Petitioner credibly testified as to his current complaints of elbow pain that are consistent with his medical evidence. There was no evidence of Petitioner showing signs of symptom magnification in his medical evaluation and there was no evidence of any intervening incidents involving his elbow. Based on these facts, the Arbitrator concludes that the Petitioner's current condition of ill-being in his right elbow is causally connected to his October 24, 2019 work accident.

2. Regarding the issue of medical expenses and consistent with the Arbitrator's findings on the issue of causation, the Arbitrator further finds that the Petitioner's medical treatment for his right elbow following his undisputed October 24, 2019 work accident have been both reasonable and necessary to address his work-related condition. Therefore the Respondent shall be liable for and shall pay Petitioner for any outstanding, related medical expenses relating to Petitioner's right elbow as set forth in Petitioner's exhibits, pursuant to the Section 8.2 of the Illinois Workers' Compensation Act subject to the Fee Schedule.

3. Consistent with the findings above, the Arbitrator further finds that the Petitioner's request for prospective medical treatment is both reasonable and necessary in addressing his work-related elbow condition stemming from his October 24, 2019 work accident. Accordingly, Respondent shall authorize and pay for the surgery, as recommended by Dr. Hurbanek, and the attendant care, subject to the fee schedule and in accordance with the provisions of §8 and §8.2 of the Act.

4. Regarding the issue of TTD, the Arbitrator finds the Petitioner was temporarily totally disabled from July 20, 2020 (the date he was taken off work by Dr. Ostir) through the date of this arbitration hearing. The Petitioner was restricted from work during this time representing a period of 94-4/7 weeks. Further, the Arbitrator notes that Petitioner has been terminated from Respondent on August 6, 2020. Therefore, the Arbitrator awards TTD of 94-4/7 weeks and continuing through MMI pursuant to Section 8(b) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC011116
Case Name	Christina K Kerr v. Dot Foods Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0161
Number of Pages of Decision	10
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Daniel Simmons

DATE FILED: 4/13/2023

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Christina K. Kerr,

Petitioner,

vs. NO: 18 WC 011116

Dot Foods, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of medical expenses, permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 23, 2022 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $35,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 13, 2023

o030723
MEP/ypv
049

/s/ *Maria E. Portela*

/s/ *Kathryn A. Doerries*

/s/ *Marc Parker*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC011116
Case Name	KERR, CHRISTINA K. v. DOT FOODS, INC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Daniel Simmons

DATE FILED: 2/23/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 23, 2022 0.71%

/s/Edward Lee, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **ADAMS**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

CHRISTINA K, KERR Case # **18** WC **011116**
Employee/Petitioner
v.
DOT FOODS, INC.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Quincy**, on **November 3, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **October 12, 2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's condition of ill-being regarding her disc herniation at C6-7 for which she was treated by Dr. DeGrange ***is*** causally related to the accident. All other conditions of ill-being claimed by the petitioner are personal to her and are not causally related to the accident

In the year preceding the injury, Petitioner earned $**27,032.72**; the average weekly wage was $**519.86**.

On the date of accident, Petitioner was **51** years of age, ***married*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** *not* paid all appropriate charges for all reasonable and necessary medical services.

The petitioner was temporarily totally disabled from March 6, 2017 to June 12, 2017, representing 14 weeks.

Respondent shall be given a credit of $**4,851.98** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**4,851.98**.

ORDER

The petitioner's C6-7 disc herniation for which she underwent treatment and surgery with Dr. DeGrange is causally related to her October 12, 2016 work accident. All other conditions of ill-being claimed by the petitioner are personal to her and are not causally related to the October 12, 2016 work accident including, but not limited to, all medical treatment after January 29, 2018.

Respondent shall pay to the petitioner $904.45 for reimbursement of related medical expenses paid by the petitioner. The remainder of the petitioner's claimed medical expenses are for treatment not causally related to this accident and are denied.

The Petitioner is entitled to permanent partial disability benefits for 125 weeks of permanency at a permanent partial disability rate of $311.92 because the injury caused permanent partial disability to the extent of 25 percent of a person as a whole.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Edward Lee
Signature of Arbitrator

FEBRUARY 23, 2022

ATTACHMENT TO DECISION

F. Is petitioner's current condition of ill-being causally related to the injury?

The petitioner was employed by the respondent as a meeting room clerk on October 12, 2016 (T.7). On October 12, 2016, she was in charge of one of the meeting rooms that had divider walls (T.8-9). She was opening and shutting divider walls to divide them for meetings on two different sides of the meeting space. The divider walls were hard to push and pull and when she gave an effort to get the divider wall moving she felt a streak of pain go down the back of her neck and down her back (T.9). After initially treating with her primary care physician and undergoing some massage therapy and chiropractic treatment, the petitioner ultimately came under the care of Dr. DeGrange (T.11-12).

Dr. DeGrange first saw the petitioner on January 20, 2017. Petitioner's Exhibit 5. Dr. DeGrange diagnosed the petitioner with a disc herniation at C6-7 with a cervical strain. *Id*. He noted that the petitioner's work-related activities appeared either to be a direct cause or a significant aggravation of a pre-existing problem at C6-7. *Id*.

After an MRI was performed, Dr. DeGrange called the petitioner on February 10, 2017 to let her know that the MRI showed severe spinal cord compression because of the very large disc herniation at C6-7 and that he was recommending surgery. *Id*. Surgery was performed on March 6, 2017. Dr. DeGrange performed a C6-7 anterior cervical discectomy with decompression of the spinal cord and spinal nerve roots with an interbody fusion with autograft. *Id*. As of the petitioner's first follow-up visit with Dr. DeGrange on March 17, 2017, she noted that she was doing very, very well and did not have any pain in her neck, arms or hip. *Id*. She continued her to progress until her final visit with Dr. DeGrange on November 29, 2017. Dr. DeGrange noted that the petitioner "has done quite well since her surgery on March 6, 2017. The radicular symptoms except for the numbness over the left small finger have completely resolved and she has returned to her usual and customary job duties. She can be discharged today having reached maximum medical improvement. No further follow up is required." *Id*. Dr. DeGrange encouraged the petitioner to continue her range of motion exercises and that she was going to have her physical therapy extended at Quincy Medical Group. *Id*. The petitioner continued with physical therapy at Quincy Medical Group and was discharged on January 29, 2018. Petitioner's Exhibit 4. The petitioner reported having minimal symptoms but that she could perform all necessary daily and work-related tasks. *Id*. She understood that she could contact the clinic if there were any further needs or had any concerns arise. *Id*. The petitioner had no further follow up with physical therapy or Dr. DeGrange after Dr. DeGrange's discharge in November 29, 2017 and the physical therapy discharge on January 29, 2018.

Dr. DeGrange concludes in his medical records that the petitioner's disc herniation at C6-7 is causally related to the work accident. The respondent has stipulated that the disc herniation at C6-7 with medical treatment provided by Dr. DeGrange and Quincy Medical Group for physical therapy is causally related to the October 12, 2016 work accident. Accordingly, the arbitrator finds that the injury to the C6-7 disc with disc herniation and surgery with Dr. DeGrange and follow-up with Dr. DeGrange and physical therapy at Quincy Medical Group is causally related to the work accident.

The petitioner submitted significant additional medical records from Quincy Medical Group for conditions that she claims are related to the work accident. The first record is a telephone consultation on February 21, 2018 where the petitioner was seeking Botox injections for migraine headaches. Petitioner's Exhibit 4. Another telephone consultation was had on February 23, 2018 for chronic pain in the petitioner's mid back. *Id*. The

petitioner had an office visit on the March 27, 2018 to address her migraine headaches. *Id*. An office visit on April 2, 2018 was for lumbar and sacroiliac pain. *Id*. She underwent a bilateral sacroiliac joint injection on April 13, 2018. *Id*. She followed up again for sacroiliac and lumbar pain on May 11, 2018. *Id*.

The Quincy Medical Group records reveal a gap in care between May 11, 2018 and October 15, 2018. On October 15, 2018, she returned for thoracic, lumbar, and sacroiliac pain in the back. I*d*. She underwent an injection in the upper back on October 25, 2018. *Id*. The petitioner returned again on December 6, 2018 with pain felt primarily across the low back and down her legs to her feet. She underwent upper middle back injections again on December 14, 2018. *Id*. She returned for complaints in her upper middle back and low back again on January 15, 2019. *Id*. Another upper middle back injection was done on January 21, 2019. *Id*. The Quincy Medical Group records go on to document similar treatment well into 2019. At this point in the chronology, the petitioner is at the one-year anniversary point of being discharged by physical therapy for her C6-7 disc herniation and 14 months after being discharged by Dr. DeGrange at a level of maximum medical improvement and no work restrictions.

The petitioner has not provided any medical opinion supporting her claim that any treatment received by her after being discharged from physical therapy on January 29, 2018 is related to the work accident. The only causal connection opinion provided is from Dr. DeGrange who limits the causation opinion to the C6-7 disc herniation. At the time he discharged the petitioner on November 29, 2017, Dr. DeGrange indicated that the petitioner was at maximum medical improvement, therefore implying no additional care or treatment for the herniated disc was necessary other than the completion of physical therapy at Quincy Medical Group that was accomplished on January 29, 2018. A chain of events analysis has to be used to examine the petitioner's claim that her ongoing treatment at Quincy Medical Group is related to this accident. The records are clear that the petitioner received treatment for migraine headaches, upper to mid back pain, lumbar pain and sacroiliac pain. None of those conditions are related to the work injury and are different than the condition for which she was treated by Dr. DeGrange. The medical evidence does not support the petitioner's claim that any medical treatment obtained by her after January 29, 2018 was for any condition causally related to the work accident. Accordingly, the arbitrator finds that the petitioner's multiple conditions of ill-being for which she obtained treatment after January 29, 2018 are not causally related to the October 12, 2016 work accident.

J. Were the medical services that were provided to petitioner reasonable and necessary? Has respondent paid all appropriate charges for all reasonable and necessary medical services?

The petitioner's claimed medical bills are in evidence as Petitioner's Exhibit 11. The petitioner received massage therapy from Mary Karsgaard at the recommendation of Dr. Schroeder, her primary care physician. Accordingly, massage therapy from the date of accident through January 29, 2018 is compensable. The petitioner incurred out-of-pocket expenses with Mary Karsgaard from November 18, 2016 through January 2, 2018 for a total of $469.00. Treatment after January 29, 2018 is not causally related to this accident, therefore bills from Mary Karsgaard after January 29, 2018 are not compensable and are denied. The respondent shall pay to the petitioner $469.00 for her out-of-pocket expenses for massage therapy treatment with Mary Karsgaard.

The petitioner testified that she received limited chiropractic treatment with Chiropractor Gerleman. The petitioner paid $435.45 out-of-pocket for chiropractic treatment with Gerleman Chiropractic. The chiropractic treatment was from November 28, 2016 through December 19, 2016 and was for a period of time before the

petitioner the began seeing Dr. DeGrange. Accordingly, the chiropractic treatment is compensable and that the respondent shall reimburse the petitioner $435.45 for her out-of-pocket chiropractic expenses.

A review of the Quincy Medical Group bills before January 29, 2018 reveal that they are for treatment not related to this claim, including, but not limited to, mammography, strep A treatment and an MRI of the brain. The majority of the Quincy Medical Group bills relate to treatment after January 29, 2018. The petitioner's multiple conditions of ill-being after January 29, 2018 are not causally related to the work accident. Accordingly, the Quincy Medical Group bills are denied.

Passavant Area Hospital bills are also contained in Petitioner's Exhibit 11. The billing for a December 24, 2017 service date was for an emergency room visit for the petitioner's abdomen, Petitioner's Exhibit 6, and is not related to the work accident. Accordingly, the December 24, 2017 bill from Passavant Area Hospital is denied. The remainder of the Passavant Area Hospital bills are for dates of service from March 5, 2019 forward and are for a period of time for which the petitioner's multiple conditions of ill-being are not causally related to the accident, therefore, those bills are denied.

The Clinical Radiologists bill for the December 24, 2017 service date is for a CT of the abdomen and pelvis at Passavant Area Hospital and is for a condition unrelated to the work accident and is denied.

The Clinical Pathologists of Illinois medical bills show that the billing is for treatment not related to the work accident, therefore those bills are denied.

Physiotherapy Professionals' bills are for treatment after January 29, 2018. The petitioner's multiple conditions of ill-being during that period of time are not causally related to this work accident, therefore those bills are denied.

The compensable medical bills are the petitioner's out-of-pocket expenses to Mary Karsgaard of $469.00 and Chiropractor Gerleman of $435.45. Accordingly, medical bills totaling $904.45 shall be reimbursed by the respondent to the petitioner.

L. What is the nature and extent of the injury?

With regard to subsection (i) of Section 8.1b(b), the arbitrator notes that no permanent partial disability impairment report or opinion was submitted into evidence. The arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of Section 8.1b(b), the occupation of the employee, the arbitrator notes that the record reveals that the petitioner was employed as a meeting room clerk at the time of the accident. She was released to return to work with no permanent work restrictions at a level of maximum medical improvement by Dr. DeGrange on November 29, 2017. The petitioner currently works for the respondent in accounts payable (T. 23). She testified that she could not return to her work as a meeting room clerk, however, the treatment that led to her decision to change jobs within Dot Foods was after January 29, 2018 and is for conditions not related to the work accident. The arbitrator gives greater weight to this factor because the petitioner fully recovered from her surgery for the C6-7 disc herniation and was released by her treating surgeon to return to work without restrictions.

With regard to subsection (iii) of Section 8.1b(b), the arbitrator notes that the petitioner was 51 years old at the time of the accident. The petitioner is still employed with the respondent. The arbitrator gives lesser weight to this factor.

With regard to subsection (iv) of Section 8.1b(b), petitioner's future earnings capacity, the arbitrator notes that the petitioner did not offer any evidence of any impact on her future earning capacity as a result of this work accident. The medical records reveal that the C6-7 disc herniation will not have any impact on the petitioner's ability to work or her future earnings capacity because she was found to be at maximum medical improvement with no work restrictions four years ago on November 29, 2017. The arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the arbitrator notes that the petitioner has had significant medical treatment since her completion of care with Dr. DeGrange and physical therapy in January, 2018, however, the petitioner has not had any medical treatment related to the this claim for almost four years. There is no evidence of disability because of Dr. DeGrange's finding on November 29, 2017 that the petitioner was at maximum medical improvement and could work without restrictions. The physical therapy discharge note on January 29, 2018 likewise shows that the petitioner made an excellent recovery from her surgery. While it is true that the petitioner has sought medical treatment for a variety of unrelated conditions, there is no evidence of disability resulting from this accident and the C6-7 disc herniation and surgery. The arbitrator therefore gives lesser weight to this factor.

Based on the above factors, and the record taken as a whole, the arbitrator finds that the petitioner sustained permanent partial disability to the extent of 25% loss of use of a person as a whole pursuant to Section 8(d)(2) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC013909
Case Name	Judi Lutes v. General Dynamics
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0162
Number of Pages of Decision	17
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Brian McGovern
Respondent Attorney	James Keefe, Jr.

DATE FILED: 4/13/2023

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Judi Lutes,

Petitioner,

vs. NO: 20WC 013909

General Dynamics,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, temporary total disability, permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 9, 2022 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $32,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 13, 2023

o030723
MEP/ypv
049

/s/ *Maria E. Portela*

/s/ *Kathryn A. Doerries*

/s/ *Marc Parker*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC013909
Case Name	LUTES, JUDI v. GENERAL DYNAMICS
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Brian McGovern
Respondent Attorney	James Keefe, Jr.

DATE FILED: 3/9/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 8, 2022 0.71%

/s/Linda Cantrell, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **WILLIAMSON**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JUDI LUTES
Employee/Petitioner

v.

GENERAL DYNAMICS
Employer/Respondent

Case # **20-WC-013909**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **12/21/2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **05/04/2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**55,979.03**; the average weekly wage was $**1,076.52**.

On the date of accident, Petitioner was **59** years of age, **married** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**5,955.66** for short term disability benefits paid to Petitioner, for a total credit of $**5,955.66**.

Respondent is entitled to a credit of $**Any Paid** under Section 8(j) of the Act.

ORDER

Respondent shall pay the medical expenses contained in Petitioner's Group Exhibit 4 directly to Petitioner as Respondent disputed liability for medical expenses prior to trial. Said payments shall be made pursuant to the fee schedule and as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits and Respondent shall hold Petitioner harmless from claims by any providers of the services for which Respondent is receiving this credit. Pursuant to the stipulation of the parties, Respondent shall receive a credit for all medical bills paid through its group medical plan, if any, under Section 8(j) of the Act. Respondent shall further hold Petitioner harmless from all claims or liabilities made by the group medical plan to the extent of such 8(j) credit.

Respondent shall pay Petitioner temporary total disability benefits of $**717.68**/week for **11** weeks, commencing **9/1/20 through 11/16/20**, as provided in Section 8(b) of the Act. Pursuant to the parties' stipulation, Respondent shall receive credit for short term disability benefits paid to Petitioner in the amount of $5,955.66,

Respondent shall pay Petitioner the sum of $**645.91**/week for a period of **47.5 weeks**, as provided in Section 8(e)9 of the Act, because the injuries sustained caused permanent partial disability to the extent of **12.5% loss of use of Petitioner's right hand, and 12.5% loss of use of Petitioner's left hand at the 190 week hand value.**

Respondent shall pay Petitioner compensation that has accrued from **11/16/20 through 12/21/21**, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

MARCH 9, 2022

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JUDI LUTES,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 20-WC-013909
	)	
GENERAL DYNAMICS,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on December 21, 2021 on all issues. On June 19, 2020, Petitioner filed an Application for Adjustment of Claim alleging injuries to her bilateral hands as a result of repetitive trauma on May 4, 2020 while working for Respondent. The issues in dispute are accident, causal connection, medical bills, temporary total disability benefits, and the nature and extent of Petitioner's injuries. All other issues have been stipulated.

TESTIMONY

Petitioner was 59 years old, married, with no dependent children at the time of accident. Petitioner has been employed with Respondent for fifteen years making ammunition. She testified that in 2019 she was an LCA (large caliber ammunition) Operator in the Tank Division. She completed an injury report for bilateral carpal tunnel syndrome with a date of injury May 4, 2020. (PX2) Her symptoms included pain and tingling in her hands and wrists that radiated up to her shoulders. She testified she started experiencing symptoms a couple of months prior to 5/4/20.

Petitioner first sought treatment on 12/9/19 at Family Health Center. She then sought treatment with Occupational Health at Respondent's facility, which is affiliated with Heartland Regional Medical Group. She treated with orthopedic surgeon Dr. Ahn on 1/31/20. An EMG/NCS was performed on 3/3/20 that Dr. Ahn reviewed with her on 5/4/20. Petitioner was told she had severe bilateral carpal tunnel syndrome for which Dr. Ahn recommended surgery. Petitioner underwent a left carpal tunnel release on 9/1/20 and a right carpal tunnel release on 9/15/20. She worked up until the time of her first surgery. She underwent post-operative physical therapy and was released to full duty work on 11/16/20.

Petitioner testified that the tank division was busy in 2019 and she was working some 8-hour shifts, a lot of 10-hour shifts, and some 12-hour shifts. She worked some overtime. Petitioner testified that one of her job duties involved sewing propellant bags. She sewed one end of each bag closed with a sewing machine so they could be filled with powder. She testified that the 865 ammunition required sewing the propellant bags and she sewed a lot of them in 2019. She testified that the 10-02's did not require sewing. She testified that each bag took a couple of minutes to sew and she sewed 300 or more per day. She stated the sewing machine vibrates.

Petitioner testified she reviewed a series of short videos of various job activities at Respondent's plant. The videos were provided to Section 12 examiner Dr. Rotman. Petitioner testified that none of the videos depicted sewing. She identified video 659 that depicted the PCCA station where parts are put together. She stated the video is shown after the bag is on the fixture. Petitioner testified that prior to that she would place a retaining ring on the fixture, place a spring disc into the bag, and place the bag on the fixture. She testified she maintains a tight grip on the bag to keep it taut before placing the case on the fixture. She stated that the person depicted in the video is not holding the bag taut. She stated the ammunition depicted in the video is 10-02's and none of the videos show 865's. She testified that she would do 42 to 60 units per hour. Petitioner testified that the other videos show a shell called IM-HET.

Petitioner also testified to a job position called blousing which is shown on video 637. Blousing is performed on the 865's, 10-02's, and IM-HET's. Employees are rotated so they only perform blousing duties one to two times per day, working 2 to 2.5 hours each assignment. Blousing requires staking a metal rod a couple of times in a case base opening. This process opens the bag so powder can be inserted. Petitioner testified she blouses 60 case bases per hour.

Petitioner testified to a procedure known as leak checking which is depicted in videos 640 and 641. This involves checking the pressure inside ammunition cans. Petitioner was shown still photos taken from the videos and testified that Petitioner's Exhibit 7 shows the 30 cans depicted in video 640. She stated the video shows the operator crimping, but it does not show him cutting off pieces of excess wire once the crimping process is completed.

Petitioner identified Petitioner's Exhibit 8, which is a still photo taken from video 641. The operator is attaching flip gauges to the can lids in preparation for checking the cans for pressure leaks. The operator is using a clamp gauge in the video which is placed on the can and sealed when the clamp is pulled down. Petitioner testified that she also uses a stick gauge that has to be screwed into the can and then attached to hoses. She stated that none of the videos depict the use of stick gauges. She stated that stick gauges are still used at the plant based on operator preference which she prefers and used in 2019. Petitioner performed approximately two skids of 30 cans per hour.

Petitioner described a work process called adaptor bonding. Adaptors, also known as sleeves, have an adhesive and a hardener applied to them from a hand-held gun which has an adhesive hose and hardener hose attached to it. The adhesive is applied and then the hardener is squeezed onto the sleeve. Petitioner testified that none of the videos show this process. She testified that the hoses being attached make the process cumbersome and she must maintain her grip on the gun and press the trigger.

In 2019, Petitioner primarily worked on 10-02 and 865 shells. The 10-02's came 72 to a crate and she worked on them in groups of 16 to a cart. The process was to reach into the crate and grab the top of each shell with both hands and place 16 of them on a cart. She wheeled the cart to the adaptor bay and removed the shells from the cart. After putting on the adaptor she picked the shells up again and placed them back on the cart. She then wheeled the cart to the projectile assembly station where the shells are taken off the cart and placed in the fixture. The shell were placed back on the cart and the entire process is started over again. Petitioner testified that each shell weighs approximately 20 pounds and she processed about 32 shells per hour.

Petitioner testified that all munitions must run through the primer station that is depicted in videos 638 and 639 and Petitioner's Exhibits 9 and 10. She testified that the green boxes shown are ammo boxes that hold the primers. Petitioner testified that the primers shown in the videos are for IM-HET's that weigh approximately one pound and are roughly five inches long, whereas the 10-02 and 865 primers are eight to ten inches long and weigh a couple of pounds more. A full ammo box of 10-02 or 865 primers weighs 50 to 60 pounds. Petitioner testified that the primers are hot, meaning explosive, and are kept in an explosive cabinet called the red box located about ten feet from the primer station. The operator must carry the ammo boxes to the station being careful not to drop them, which required a solid grip.

The primer station is a large metal box. Video 639 shows a man moving his hands up and down in the box to make an indentation in the powder before inserting an IM-HET primer. Petitioner testified that for 10-02's and 865's however, she uses a vibrating tool to make the indentation. The tool is depicted in the video hanging down to the operator's right. (PX10) Petitioner testified that her rate in the primer station is 90 primers every 2 to 2.5 hours.

Petitioner testified that the job functions of an LCA Operator identified in Respondent's Job Function Analysis were accurate. (PX5) She testified that the two forms dated 3/19/15 and 7/7/21 were nearly identical. She confirmed that her job duties require her to use her hands and arms continuously, and that simple grasping, power gripping, fine manipulation, forearm rotation, and repetitive hand action is performed bilaterally. She agreed that she performed frequent power gripping 33-67% of the time, and continuously performed grasping and manipulating with both hands.

Petitioner testified that her hands are much better since surgery. She has occasional pain and tingling, and her hands get cold easily. Her grip strength has improved but it is not as it was prior to her condition. She is able to lift the 60-pound primer boxes more easily since surgery.

On cross examination. Petitioner testified that sometimes she experienced pain and numbness/tingling in her hands while driving and sleeping prior to her surgeries. She confirmed she did not have diabetes, hypertension, or thyroid issues. Her hobbies included spending time outdoors with her dogs and grandchildren and tending to her garden.

Petitioner testified that in 2019 she performed the sewing job eight hours per day because she was the only employee that could perform the job. She stated that another employee was eventually trained to sew allowing her to alternate that position. Petitioner clarified she slid the

material into the sewing machine and held and adjusted it while she operated the machine with a foot press. She stated she had to grip the material while sewing. Petitioner admitted that other than sewing the propellant bags in 2019, she did not work any particular position eight hours per day as there was a two-hour job duty rotation.

Petitioner testified she has returned to working in the tank division. She is earning more per hour since returning to work due to raises. She last saw Dr. Ahn on 11/16/20 and agreed she told him that her numbness/tingling had pretty much resolved.

MEDICAL HISTORY

On 12/9/19, Petitioner presented to Quality Healthcare Clinics with numbness and tingling to her bilateral hands and wrists for 1 to 2 weeks, right worse than left. She reported her symptoms radiate up her arms at night and she had difficulty opening bottles and jars. Petitioner was referred to an orthopedic doctor. (PX1).

On 12/10/19, Petitioner reported to Respondent's onsite occupational health facility run by Heartland Regional Medical Group. (PX2). She reported bilateral hand, wrist, elbow, and shoulder pain that throbbed like a toothache, with numbness and tingling in her bilateral hands. She denied specific knowledge of the method of injury and noted she had been performing the same tasks for months and had been working 12-hour shifts. Petitioner reported her symptoms were worse with driving and opening bottles. Clinician Chris Proctor, LAT prescribed anti-inflammatories and a home exercise program.

Petitioner returned to Heartland Regional Medical Group several times thereafter with no change in her bilateral numbness and tingling.

On 1/31/20, Petitioner was examined at Orthopedic Center of Southern Illinois. Dr. Ahn noted Petitioner had bilateral hand numbness, tingling, and pain, particularly with lifting, driving a car, and at nighttime. Physical exam was consistent with CTS. On 3/3/20, a nerve conduction study was performed on 5/4/20 Dr. Ahn diagnosed Petitioner with severe bilateral carpal tunnel syndrome.

On 9/1/20, Petitioner underwent a left carpal tunnel release and on 9/15/20 she underwent a right CTS release. On 11/16/20, Dr. Ahn noted Petitioner's pain was 0/0 and her numbness/tingling resolved. Physical examination was normal. Dr. Ahn placed Petitioner at MMI and released her to return to work without restrictions. Petitioner was off work from 9/1/20 through 11/16/20.

On 7/19/21, Dr. Mitchell Rotman performed an examination pursuant to Section 12 of the Act. Petitioner reported improvement with numbness and tingling since surgery. She had occasional locking in her thumbs. She reported she could now lift the 60-pound cans of primer that she could not do prior to surgery. Examination of the hands and wrists was normal. Grip strength was improved and revealed 40 on the right and 45 on the left. Dr. Rotman opined that the work activities did not cause or aggravate the bilateral carpal tunnel syndrome. He gave an AMA impairment rating of 2% loss of use of each hand. (RX1)

Dr. Joon Ahn testified by way of evidence deposition on 8/23/21. Dr. Ahn is a board-certified orthopedic surgeon specializing in carpal tunnel surgeries. His testimony was consistent with his records. Dr. Ahn was presented with a hypothetical regarding Petitioner's job duties, including sewing 300 to 330 propellant bags per day and rotating between four jobs that required pulling a bag over a ring and holding tightly, putting a rod in a cannister to spread out the bag in the container, screwing a stick gage into the lid of a container and attaching an air hose to it, and pulling projectiles out of a wooden crate. Dr. Ahn opined to a reasonable degree of medical certainty these activities would most likely cause or contribute to the development of Petitioner's bilateral carpal tunnel syndrome. He did not see any other risk factors for her condition.

On cross examination Dr. Ahn admitted that during his treatment of Petitioner he did not discuss the details of her job and was first made aware of those details in the hypothetical presented at deposition. He did not know how long Petitioner worked for Respondent. He admitted he had not viewed any videos of Petitioner's job duties. He did not feel Petitioner suffered any functional loss from the surgeries. (PX6)

Dr. Mitchell Rotman testified by way of evidence deposition on 9/23/21. Dr. Rotman is a board-certified orthopedic surgeon with a subspecialty in hand surgery. Dr. Rotman reviewed the videos taken by Respondent of the various job positions in the tank division and opined Petitioner's job activities did not cause or aggravate her bilateral carpal tunnel syndrome because the activities did not include sustained repetitive heavy gripping. (RX1) He gave an AMA rating of 2% loss of use of each hand.

On cross-examination, Dr. Rotman admitted Petitioner had bilateral carpal tunnel syndrome and her surgeries were reasonable and necessary to correct the condition. He would not admit that repetitive activity or vibration in the hands causes or contributes to the development of carpal tunnel syndrome. He agreed that if high forces were associated with those activities then those high forces would be an aggravating factor. He testified there is no real scientific proof that even forceful or power gripping is a risk factor but it is just his opinion over the years that a really forceful, repetitive job that is being done over 50% of the time would be an aggravating factor.

Dr. Rotman admitted that none of the videos he reviewed showed sewing of propellant bags. He did not know the types of ammunition shown in the videos, why the primer station work took place in a metal box, what blousing was or if it was shown on any of the videos, or if any of the videos showed adapter bonding. Dr. Rotman did not know of any of Petitioner's job duties that were not shown in the videos or when or how often the IM-HET shells were worked on at the plant. Dr. Rotman admitted that carrying an ammo box may require power gripping "for a few seconds" and that the explosive nature of primers may "possibly" result in the operator gripping them forcefully.

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

In a repetitive trauma case, issues of accident and causation are intertwined. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture,* 99 I.I.C. 0961. In order to better define "repetitive trauma" the Commission has stated: "The term 'repetitive trauma' should not be measured by the frequency and duration of a single work activity, but by the totality of work activity that requires a specific movement that is associated with the development of a condition. Thus, the variance in job duties is not as important as the specific force, flexion, and vibratory movements requisite in Petitioner's job." *Craig Briley v. Pinckneyville Corr. Ctr.*, 13 I.W.C.C. 0519 (2013).

"[I]n no way can quantitative proof be held as the *sine qua non* of a repetitive trauma case." *Christopher Parker v. IDOT*, 15 I.W.C.C. 0302 (2015). The Appellate Court's decision in *Edward Hines Precision Components v. Indus. Comm'n* further highlights that there is no standard threshold which a claimant must meet in order for his or her job to classify as sufficiently "repetitive" to establish causal connection. *Edward Hines*, 365 Ill.App.3d 186, 825 N.E.2d 773, 292 Ill.Dec. 185 (Ill.App.2d Dist. 2005). In fact, the Court expressly stated, "There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Id.* at N.E.2d 780. Similarly, the Commission recently noted in *Dorhesca Randell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), a repetitive trauma claim, a claimant must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain amount of time each day on a specific task before a finding of repetitive trauma can be made. *Randell* citing *All Steel, Inc. v. Indus. Comm'n*, 582 N.E.2d 240 (1991) and *Edward Hines supra.*

The Appellate Court in *Darling v. Indus. Comm'n* even stipulated that quantitative evidence of the exact nature of repetitive work duties is not required to establish repetitive trauma injury in reversing a denial of benefits, stating that demanding such evidence was improper. *Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 195, 530 N.E.2d 1135, 1142 (1st Dist. 1988). The Appellate Court found that requiring specific quantitative evidence of amount, time, duration, exposure or "dosage" (which in Petitioner's case would be force) would expand the requirements for proving causal connection by demanding more specific proof requirements, and the Appellate Court refused to do so. *Darling,* N.E.2d at 1143. The Court further noted, "To demand proof of 'the effort required' or the 'exertion needed' . . . would be meaningless" in a case where such evidence is neither dispositive nor the basis of the claim of repetitive trauma." *Id.* at 1142. Additionally, the Court noted that such information "***may***" carry great weight "only where the work duty complained of is a common movement made by the general public." *Id.* at 1142. The evidence shows that Petitioner's job duties involve the performance of tasks distinctly related to his employment as a forklift operator, many of which are not activities that are even performed by the general public, let alone ones to which the public would be equally exposed.

In *City of Springfield v. Illinois Workers' Comp. Comm'n*, the Appellate Court issued a favorable decision in a repetitive case to a claimant in which the claimant's work was "varied" but also "repetitive" or "intensive" in that he used his hands, albeit for different task, for at least five (5) hours out of an eight (8) hour work day. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (Ill.App. 4th Dist., 2009). As was noted by the Commission and reiterated in the Appellate Court decision in *City of Springfield v. Illinois Workers' Compensation Comm'n*, "while [claimant's] duties may not have been 'repetitive' in a sense that the same thing was done over and over again as on an assembly line, the Commission finds that his duties required an intensive use of his hands and arms and his injuries were certainly cumulative." *Id.*

The Commission has also recognized that a claimant's employment may not be the only factor in his or her development of a repetitive compressive peripheral neuropathy. The Commission awarded benefits in a correctional case where the claimant was involved in martial arts activity outside of his employment with Respondent (*see Samuel Burns v. Pinckneyville Corr. Ctr.*, 14 I.W.C.C. 0482 (2014)), and in another correctional case where the claimant, who was a Correctional Officer promoted through the ranks to Correctional Lieutenant, was involved in weight lifting outside of his employment. *See Kent Brookman v. State of Illinois/Menard Corr. Ctr.*, 15 I.W.C.C. 0707 (2015). In the repetitive trauma case of *Fierke*, the Appellate Court specifically held that non-employment related factors that contribute to a compensable injury do not break the causal connection between the employment and a claimant's condition of ill-being." *Fierke v. Indus. Comm'n*, 309 Ill.App.3d 1037, 723 N.E.2d 846 at 849 (3rd Dist. 2000). The Court stated, "The fact that other incidents, whether work related or not, may have aggravated a claimant's condition is irrelevant." *Id*.

Under Illinois law an injury need not be the sole factor, or even the primary factor of an injury, as long as it is **a** causative factor. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 205, 797 N.E.2d 665 (Ill. 2003) [Emphasis added]. Even when other non-occupational factors contribute to the condition of ill-being, "[*A*] Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Indus. Comm'n*, 309 Ill.App.3d 1037, 723 N.E.2d 846 (3rd Dist. 2000). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 834 N.E.2d 583 (2d Dist. 2005). Employers are to take their employees as they find them. *A.C.& S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1st Dist. 1999) citing *General Electric Co. v. Industrial Comm'n*, 433 N.E.2d 671, 672 (1982). The Supreme Court in *Durand v. Indus. Comm'n* noted that the purpose of the Illinois Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work. *Durand v. Indus. Comm'n*, 862 N.E.2d 918, 925 (Ill. 2006).

The Arbitrator finds that Petitioner met her burden on the issues of accident and causation. In support of this finding, the Arbitrator finds Petitioner's testimony credible and the causation opinion of Dr. Ahn to be persuasive and supported by the evidence.

Petitioner initially reported bilateral hand symptoms in December 2019. She testified that her duties in the tank division were busy in 2019 requiring her to work a lot of 10-hour shifts and

some 12-hour shifts, with some overtime. Petitioner testified that one of her job duties involved sewing one end of propellant bags. She had to hold the material taut while she sewed them with a machine. In 2019, Petitioner was the only employee in the plant for a period of time that could perform the sewing duties. She sewed for 8-hour periods and was not rotated off the position until another employee was trained. She stated the sewing machine vibrated. She testified that each bag took a couple of minutes to sew and she sewed 300 or more per day. Her testimony as to her job duties was unrebutted and consistent with the hypothetical posed to Dr. Ahn in providing his causation opinion.

On 12/10/19, Petitioner reported to Respondent's onsite occupational health facility with complaints of bilateral hand, wrist, elbow, and shoulder pain, with numbness and tingling in her bilateral hands. She stated she had been performing the same tasks at work for months and had been working 12-hour shifts.

Petitioner testified that the job functions of an LCA Operator identified in Respondent's Job Function Analysis were accurate. She confirmed that her job duties required her to use her hands and arms continuously, and that simple grasping, power gripping, fine manipulation, forearm rotation, and repetitive hand action is performed bilaterally. She agreed that she performed frequent power gripping 33-67% of the time, and continuously performed grasping and manipulating with both hands. Respondent did not call any fact witnesses to rebut Petitioner's testimony as to her job duties.

The job videos admitted into evidence by Respondent show 18 separate clips ranging in time from 15 to 43 seconds, totaling just over 7 minutes. Petitioner testified that the videos are not fully representative of her job duties. Respondent's videos did not show any footage of the sewing position that Petitioner performed quite frequently in 2019 when she sought medical treatment for her bilateral hands. Petitioner testified that the PCCA station video did not depict the full job duties as it started after the bag was on the fixture. Petitioner testified that prior to that she would place a retaining ring on the fixture, place a spring disc into the bag, and place the bag on the fixture. She testified she maintains a tight grip on the bag to keep it taut before placing the case on the fixture. She stated that the person depicted in the video is not holding the bag taut.

Similarly, the video of leak checking showed the operator crimping, but not cutting off pieces of excess wire once the crimping process was completed. Another video depicted the operator using a clamp gauge before checking for pressure leaks. Petitioner testified she preferred to use a stick gauge in 2019, which was an acceptable method. Petitioner testified she used a vibratory tool to make indentations in the shell powder, as opposed to the operator's process of using his hands as seen in the video.

The Arbitrator finds Dr. Ahn's opinions more persuasive than those of Dr. Rotman. Dr. Ahn was presented with a hypothetical of Petitioner's job duties that were consistent with Petitioner's testimony and Respondent's job function analysis. Dr. Ahn opined that Petitioner's job duties most likely caused or contributed to the development of carpal tunnel syndrome. He did not find any other risk factors for Petitioner's bilateral hand conditions.

Dr. Rotman testified that without heavy grasping or forceful gripping no amount of vibration or repetitive activity can cause, contribute to, or aggravate carpal tunnel syndrome. Yet, he admitted the etiology of carpal tunnel syndrome is multifactional. Dr. Rotman's causation opinion was primarily based on his review of the job duty videos and written job analysis provided by Respondent. Petitioner testified at length how the videos do not completely encompass her full job duties, including many of them that required the use of vibratory tools. Dr. Rotman testified it is just his opinion over the years that a really forceful, repetitive job that is being done over 50% of the time would be an aggravating factor. Respondent's written job analysis states that bilateral "power gripping" is done frequently, 33-67% of the time, which Petitioner confirmed was accurate.

Based on the above evidence, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent, and that her current condition of ill-being in her bilateral hands is causally connected to her injury on 5/4/20.

Issue (J): **Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?**

Based upon the above findings as to accident and causal connection, the Arbitrator hereby awards the reasonable and necessary medical bills. Respondent shall therefore pay the medical expenses contained in Petitioner's Group Exhibit 4 directly to Petitioner as Respondent disputed liability for medical expenses prior to trial, pursuant to the fee schedule and as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits and Respondent shall hold Petitioner harmless from claims by any providers of the services for which Respondent is receiving this credit. Pursuant to the stipulation of the parties, Respondent shall receive a credit for all medical bills paid through its group medical plan, if any, under Section 8(j) of the Act. Respondent shall further hold Petitioner harmless from all claims or liabilities made by the group medical plan to the extent of such 8(j) credit.

Issue (K): What temporary benefits are in dispute? (TTD)

Based upon the above findings as to accident and causal connection, the Arbitrator finds Petitioner is entitled to temporary total disability benefits from the date she was taken off work on 9/1/20 through the date she was released to full duty work without restrictions on 11/16/20, representing 11 weeks. Pursuant to the parties' stipulation, Respondent shall receive credit for short term disability benefits paid to Petitioner in the amount of $5,955.66.

Issue (L): **What is the nature and extent of the injury?**

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employ; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The

Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment:** The Arbitrator notes that Section 12 examiner, Dr. Rotman, offered an AMA rating of 2% impairment of each hand. The Arbitrator places some weight on this factor.

(ii) **Occupation**: Petitioner returned to full duty work without restrictions for Respondent. She continues to work in the Tank Division performing the same job duties. Petitioner testified that her grip strength has improved but it is not as it was prior to her injury. She is able to lift the 60-pound primer boxes more easily since surgery. The Arbitrator places some weight on this factor.

(iii) **Age:** Petitioner was 59 years of age at the time of her injury. She is advanced age and under no physical restrictions. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity:** There is no evidence of reduced earning capacity contained in the record. Petitioner testified she is making more money now than she did at the time of the injury. The Arbitrator places less weight on this factor.

(v) **Disability:** Petitioner was diagnosed with bilateral carpal tunnel syndrome that were surgically released in September 2020. She was placed at MMI and released to full duty work without restrictions on 11/16/20. Petitioner testified she still experiences occasional pain and tingling in her hands, with weather sensitivity, but her condition has greatly improved overall. She testified her grip has improved with surgery, but it is not as it was prior to the injury. The Arbitrator places greater weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator orders Respondent to pay Petitioner the sum of $**645.91**/week for a period of **47.5 weeks**, as provided in Section 8(e)9 of the Act, because the injuries sustained caused permanent partial disability to the extent of **12.5% loss of use of Petitioner's right hand, and 12.5% loss of use of Petitioner's left hand at the 190 week hand value.**

Respondent shall pay Petitioner compensation that has accrued from **11/16/20 through 12/21/21**, and shall pay the remainder of the award, if any, in weekly payments.

Linda J. Cantrell

Arbitrator Linda J. Cantrell DATED:

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC025442
Case Name	Joel Sams v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0163
Number of Pages of Decision	14
Decision Issued By	Maria Portela, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	Jim Vainikos
Respondent Attorney	Kayla Koyne

DATE FILED: 4/13/2023

/s/Maria Portela, Commissioner

Signature

DISSENT

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Joel Sams,

Petitioner,

vs. NO: 16WC 025442

State of Illinois, Graham Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, temporary total disability, permament partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 28, 2022 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

April 13, 2023

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MEP/ypv
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/s/ *Maria E. Portela*

/s/ *Kathryn A. Doerries*

Dissent

I respectfully dissent from the Decision of the Majority. I would have reversed the Decision of the Arbitrator finding that section 11 of the Act precludes compensation in this matter. I do not believe that an employee playing basketball during his break when not allowed to leave the facility by the employer is the type of activity contemplated by section 11. Therefore, I respectfully dissent.

/s/ *Marc Parker*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC025442
Case Name	SAMS, JOEL v. STATE OF ILLINOIS, GRAHM CORRECTIONAL CENTER
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Jim Vainikos
Respondent Attorney	Kayla Koyne

DATE FILED: 3/28/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 22, 2022 0.87%

/s/ Edward Lee, Arbitrator
Signature

CERTIFIED as a true and correct copypursuant to
820 ILCS 305/14

March 28, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Sangamon)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Joel Sams
Employee/Petitioner

v.

State of Illinois, Graham Correctional Center
Employer/Respondent

Case # **16** WC **025442**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **February 23, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **May 28, 2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**89,291.75**; the average weekly wage was $**1,717.15.**

On the date of accident, Petitioner was **41** years of age, ***married*** with 2 dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**N/A** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**N/A**.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

ORDER

The Arbitrator finds that Petitioner has failed to prove by a preponderance of the credible evidence that his injury arose out of and in the course of his employment with Respondent. Petitioner's injury was the result of a voluntary recreational activity. As such, all benefits are denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Edward Lee
Signature of Arbitrator

MARCH 28, 2022

FINDINGS OF FACT

On August 18, 2016, Petitioner Joel Sams filed an Application for Adjustment of Claim stating an accident occurred on May 28, 2016. Specifically, Petitioner stated he was injured playing basketball while at work.

Petitioner testified that he was employed at Graham Correction Center on his date of accident as a correctional sergeant. (TX 6-7). Petitioner had been employed with the State of Illinois for 19 years at that time. (TX 7). Petitioner's current position is a correctional lieutenant. (TX 7).

On May 28, 2016, Petitioner was the gatehouse sergeant. (TX 7). Petitioner described the job duties for this position as "I would identify anybody coming or going from the facility; any visitors that were coming in to visit an inmate I would first put them in the computer, log them in the computer, have them sign in. They would lock up their belongings; I would search them or the female staff in the gatehouse would search them, and we would send them on to their visit." (TX 7-8). Petitioner testified that other positions as a sergeant would include working in a cell house to monitor inmates, supervising staff and assisting the lieutenant in the house, and being responsible for trucks and deliveries to the prison. (TX 8). Petitioner indicated that the only place that inmates are not allowed at the facility is outside the gates, except for a handful of inmates that clean the outside. (TX 9).

Petitioner's shift was from 7:00a.m.-3:00p.m. on the date of accident and included one 30-minute uninterrupted and unpaid lunch break. (TX 8, 11). Petitioner testified that "…multiple times when I was on my lunch break I was called to a fight or a medical emergency or a drill that we were doing, and my lunch break was interrupted and I would go deal with the issue…" (TX 9). Petitioner testified that he "absolutely" considers himself as being on call during that break. (TX 9-10). Petitioner testified that Graham Correctional Center is one of two facilities in the state that has a dialysis unit and has "about 80-90 inmates that are dialysis patients, and they go to our dialysis and they dialyze every two days." (TX 10). Petitioner estimated that in "a given day I would say on average there are three to four Code 3's which is a medical emergency called; at least three to four a day." (TX 10).

Petitioner testified that he is on call during his unpaid lunch and still in uniform. (TX 11). Petitioner testified that on the date of accident, he was on his lunch break in the multi-purpose building. (TX 12). A basketball struck his finger and his distal joint of the left ring finger bent down. (TX 12). Petitioner went to healthcare at Graham Correctional Center, who advised him that his finger was probably broken. (TX 13). Petitioner then drove himself to the emergency room. (TX 13). Petitioner testified that at the time of the accident, there were eight to ten other officers with him. (TX 13). Petitioner later testified to two specific witnesses to his injury—Derek Durbin and Greg Seago. (TX 22).

Petitioner testified that "We use our lunch break to exercise. We play basketball. Right now a lot of people are playing pickleball. You can lift weights or walk or run." (TX 13). Petitioner indicated that "usually when the inmates started showing up we would wrap it up and leave, but the inmate workers were always there five days a week." (TX 14). Petitioner testified that if inmates showed up, and he still has "time left you could go to the other areas that are approved" during the remainder of their break. (TX 36-37).

Petitioner indicated that while he was a lieutenant on his lunch break he was written up for not reporting an incident. (TX 15-16).

Petitioner indicated that he is not allowed to leave the facility during his shift, as all security staff have to stay at the facility. (TX 16). While they are not allowed to leave the facility, they can "go to the dietary and eat…you

can go to what we call the smoking pole and smoke cigarettes or chew tobacco because it can't be in the institution. You can go to the multi-purpose building and walk. Like I said, walk, run, work out, play basketball, play pickleball…" (TX 16-17). Employees can also go to the library or walk around the outer perimeter road that circles the perimeter. (TX 17). Petitioner indicated that if they left the facility during their break they would be disciplined up to termination if it happened enough times. (TX 17-18).

During his testimony, Petitioner identified Petitioner's Exhibit 4 as a supplemental agreement between his union (AFSCME) and the state, which specified the areas available to employees, including the employee lounge area at the multi-purpose building, the roll call room, the administration building, the lounge area in the academic building, the lounge area in the healthcare unit and the walkway between the gatehouse and the administration building. (TX 18-19).

Petitioner testified that in the year prior to his accident, Graham Correctional Center had a basketball team made up of employees and claimed the "basketball practices were sanctioned by the Warden." (TX 20). Practice took place in the multi-purpose building. (TX 21). However, Petitioner later testified that he was not positive if the team was still ongoing at the time he was injured; that when the basketball team was active, not every employee in the facility would play on the team; that he would not be disciplined if he chose not to play on that team; and that on the date he was injured he was not practicing as part of that basketball team. (TX 31). Petitioner testified that he is right handed and was playing basketball with fellow staff, not inmates, on his date of accident. (TX 37, 38). Petitioner testified that while they are not allowed to play basketball today, due to COVID, he still plays pickleball "five days a week." (TX 36).

Petitioner testified that he went to the emergency room at Anderson Hospital on May 28, 2016, and was diagnosed with a mallet deformity of the left ring finger. (TX 22). Petitioner indicated that the x-ray showed an avulsion fracture at the dorsal base of the fourth distal phalanx. (TX 23). Petitioner indicated that he was released to return to work light duty and was referred to a specialist, Dr. McKee. (TX 23). Dr. McKee prescribed a splint for six weeks and continued Petitioner on full duty work. (TX 23-24). Petitioner testified that Dr. McKee was concerned about the "goosenecking" in his knuckle, and that he eventually had surgery on August 25, 2016. (TX 24-25). Petitioner testified that Dr. McKee wrote him an FMLA form for him to be off work. (TX 25). Petitioner indicated that he underwent occupational therapy in December of 2016 and January of 2017, and was released from Dr. McKee's treatment on January 6, 2017. (TX 26).

Petitioner testified that he used his own sick time for two weeks after surgery. (TX 27). Petitioner testified that his insurance paid for the medical bills incurred for treatment related to this injury. (TX 27).

Regarding his symptoms today, Petitioner testified that he "still can't straighten it out after the surgery. I think Dr. McKee said it was like a 50 percent chance that I would be able to get movement back in that finger. I can't bend my finger up. I can't fully extend it. I can't fully close my fist so I have grip issues. I get achy pains in rainy months, cold months. (TX 27). Regarding his symptoms today, when asked if "your grip issues and your achiness in that hand are in relation to your finger injury?" Petitioner answered "yes." (TX 32).

On cross-examination, Petitioner confirmed that he is back to work full duty with no restrictions in relation to his finger, that he is not currently seeing a doctor for his finger, and is not currently taking any prescribed medications for this injury. (TX 28-29). Petitioner indicated that he does not currently wear any type of brace or protective devices for his finger in relation to this injury. (TX 29). Petitioner testified that he was never denied any medical treatment due to late payment of medical bills; and, that to his knowledge no medical bills are still outstanding.

(TX 29-30). Petitioner indicated that he has had performance evaluations since this injury, and all have been positive with no noted complaints or difficulties with doing his job in relation to this injury. (TX 30).

Petitioner indicated that while sometimes his lunch breaks get interrupted, he also has uninterrupted lunch breaks as well. (TX 30). Petitioner later estimated that as a sergeant "probably 10 percent of your lunch breaks were interrupted." (TX 33). Petitioner estimated that as a lieutenant, 15 to 20 percent of his lunch breaks were interrupted. (TX 34). The Arbitrator notes that Petitioner was a sergeant at the time of his injury, and finds estimations regarding his lieutenant position irrelevant to this claim.

Petitioner testified that he had no prior injuries and has since had no new injuries since 2016 to his left ring finger. (TX 26). The Arbitrator takes judicial notice, however, that Petitioner has a pending Worker's Compensation claim bearing case number 22WC001438, involving his left upper extremity.

The local union president, Nick McLaughlin, testified at trial. Mr. McLaughlin testified that he is a correctional officer at Graham Correctional Center and has worked there since November of 2014. (TX 39). He has been the union president for a year and was on the executive board since 2015. (TX 39). Mr. Laughlin also noted that lunch breaks are supposed to be uninterrupted, but that "a lot of times it is not." (TX 40). Interruptions included medical emergencies, fights, "just any kind of emergencies you have got to be ready to respond. Anything going on in your house." (TX 41). Mr. Laughlin estimated that his lunch breaks are interrupted once a week as a correctional officer. (TX 42). He testified that employees still wear a uniform during their lunch breaks. (TX 44).He testified that as long as he has been there, since 2014, officers are allowed to play basketball and that all shifts have played. (TX 44). Mr. Laughlin testified that in the year prior to Petitioner's accident, one hour of A-1 time was given for practice for the basketball team. (TX 44-45). Mr. Laughlin testified that around the time of Petitioner's accident, he would play basketball with co-workers, but not inmates. (TX 45-46). He indicated that if inmates started causing problems, they would have to respond. (TX 46). Mr. Laughlin indicated that the supplemental union agreement had been in effect since 2002. (TX 47).

On cross-examination, Mr. Laughlin confirmed that employees do not have to notify anyone what they are doing on their lunch break. (TX 49). Unless if they are actively responding, employees are free to spend their lunch as they wish "in the designated areas." (TX 49). No employees have been disciplined to Mr. Laughlin's knowledge for playing basketball on their lunch break. (TX 50). Mr. Laughlin testified that he chose to be on the basketball team in 2015. (TX 50).

Robert Gipson, a shift supervisor at Graham Correctional Center, testified next. (TX 51). Mr. Gipson had worked at Graham Correctional Center since 2004. (TX 51). Mr. Gipson is currently a major, and became a major in 2019. (TX 55, 56). Mr. Gipson was a correctional lieutenant in 2016. (TX 56). Mr. Gipson testified that he had lunch breaks available as a lieutenant in 2016, but they were interrupted sometimes. (TX 56). Lunch breaks varied and were not at a set time. (TX 57). As a major, Mr. Gipson indicated that he usually does not get a lunch break because he does not have anyone to relieve him, so his lunch break is paid. (TX 58, 59).

Mr. Gipson confirmed that security employees cannot leave the facility during their lunch. (TX 52). Employees would have to respond to calls, but employees are free otherwise to spend their breaks in designated areas as they wish. (TX 52). The multi-purpose building is one of the areas in which employees can spend their lunch break in and is open to inmates and employees. (TX 52). Mr. Gipson testified that employees have never been told that they have to play basketball, lift weights or do other physical activities on their lunch. (TX 52-53). Mr. Gipson confirmed that he is not aware of any official mandate or memorandum telling correctional officers that they have to work out or play basketball on their lunch break. (TX 53). Mr. Gipson testified that when correctional officers

are first hired there is a screening process that they have to go through; but, after being hired they do not have to do annual physicals. (TX 53). Mr. Gipson confirmed that employees are not given any type of bonus or monetary incentive to stay physically fit or work out over their lunch break. (TX 54).

Mr. Gipson confirmed that employees do not have to report to anyone if they choose to work out or play basketball on their lunch break. (TX 54). Mr. Gipson confirmed that some officers at the facility are more in shape while there are also officers who are out of shape. (TX 54). Mr. Gipson testified that supervisors probably play basketball during their lunch. (TX 54). Mr. Gipson testified that employees could lift weights and play basketball, run, and walk in the multipurpose room in 2016. (TX 54-55).

Respondent entered into evidence various notice documents. The Form 45: Employer's First Report of Injury noted that Petitioner "Was playing basketball at lunch" and "went to stop a pass, and the ball struck L ring finger; torn ligament and Fx of L ring finger." (RX 1). The Employee's Notice of Injury indicated the same, as Petitioner noted that "while playing basketball I tried to block a pass and the ball hit the tip of my left ring finger. (RX 2). Petitioner noted that his "left ring finger will not straighten. Bent at a 45 [degree] angle at first knuckle. (RX 2). Two witnesses were noted—Derek Durbin and Greg Seago. (RX 2). Derek Durbin's Witness Report noted that "during our chow break myself, (Derek Durbin), Sgt. Sams, c/o Seago and a few others were playing basketball in the gym. Whenever I passed the ball to c/o Seago, the ball hit Sgt Sams's L hand ring finger. Immediately, Sgt Sams went to the Health Care Unit to get it looked at." (RX 4). The other witness—Greg Seago—filled out a Witness Report as well, noting that he "was playing basketball in the Multi-Purpose Building on his lunch hour when Sgt. Sams reached out to deflect a pass intended for myself and the basketball hit Sgt. Sams on the tip of his ring finger. Play was halted and Sgt. Sams left the court and then left the Multi-Purpose Building holding his ring finger." (RX 5).

Medical Treatment

Petitioner first treated on May 28, 2016, on the date of accident at Anderson Hospital Express Care. At this time, Petitioner complained of "pain and inability to straighten the distal joint of his left ring finger. It started after he was struck on the end of the finger by a basketball today. He denies any numbness or tingling. He denies any prior hand surgeries." (PX 1, p7). It was noted that Petitioner had mild tenderness over the left ring finger and inability to extend his finger at that joint; Petitioner had normal range of motion and strength at the PIP. (PX 1, p7). Petitioner was diagnosed with a mallet deformity of the left ring finger at this time. (PX 1, p8). It was noted that Petitioner hurt his finger "playing basketball today at work." (PX 1, p 13). Petitioner was placed in a splint at this time. (PX 1, p22). Imaging showed a "punctate avulsion fracture at dorsal base of 4th distal phalanx with 1 mm distraction." (PX 1, p 24). A work slip was provided that stated "may return to work with limited use of left hand until cleared by specialist." (PX 1, p 27).

Petitioner first treated with Dr. McKee on 6/3/2016. (PX 2, p39). At this time, Dr. McKee recommended splinting for six weeks and returned Petitioner to work. (PX 2, p39, 43-44). Petitioner next followed up on 7/15/2016, and Dr. McKee recommended nighttime splinting with a follow up in two weeks. (PX 2, p40). Petitioner was returned to full time regular work at this time. (PX 2, p 40, 44-45, 47). Petitioner next followed up on 7/27/2016. (PX 2, p 40). At this time, Dr. McKee noted that "Joel is 8 weeks on his left ring finger boney mallet injury. It is a very small bone fragment. He has been 2 weeks now with nighttime splinting. He shows probably a 25-degree lag at the DIP joint. He is showing a little bit of a swan neck. The finger is generally kind of stiff at the DIP joint. I think we will just let him go without splinting now for the next couple of weeks and reevaluate this and see if he can't develop a little bit more flexion and extension." (PX 2, p 40).

Petitioner's next date of treatment was on 8/10/2016. At this time, Dr. McKee noted that splint treatment had essentially failed. (PX 2, p 41). Further treatment options were considered at this point, including pinning the joint to stabilize the extensor tendon so a Swan neck deformity would not happen. (PX 2, p 41).

Petitioner underwent surgery on 8/25/2016. (PX 2, p 57). Surgery involved an open repair of the terminal tendon with internal C-wire splint stabilization. (PX 2, p 57). The operative report noted that "He is hoping to go back to work as a corrections officer 3 days from now." (PX 2, p 58). Petitioner was taken off work until seen for follow up after surgery, until 9/12/2016. (PX 2, p 53). Imaging was done on 8/25/2016 in comparison to the 5/28/2016 imaging and impression was "status post recent placement of K wire transfixing the left 4th finger." (PX 2, p 59). On 8/29/2016, Dr. McKee indicated that petitioner was not to work on 8/28/2016. (PX 2, p 63).

Petitioner followed up two weeks post-surgery on 9/9/2016. (PX 2, p 41). Petitioner was referred to PT for 10 visits for increasing range of motion on 12/16/2016. (PX 2, p 42). At this time, it was noted that "Joel is 6 weeks since we removed the intramedullary rod of the left ring finger distal interphalangeal joint. He still has a lag at 10-15 degrees. Active motion remains limited." (PX 2, p 42).On 9/9/2016, Dr. McKee completed a physician's statement stating that Petitioner is able to work from 8/29/2016. (PX 2, p 65).

Petitioner began physical therapy on 12/22/2016. (PX 3). It was noted that Petitioner's DIP joint was very limited. (PX 3, p 71). The initial evaluation noted that Petitioner "was evaluated today following a left ring finger bony mallet injury from a basketball hitting him on the left ring finger. He was splinted for 8-10 weeks initially and eventually had to have a surgery for correction of the tendon laceration. He worked on his own after surgery and wasn't happy with his ROM so is here now to see if hand therapy will improve his movement." (PX 3, p 72). Petitioner had additional PT visits on 12/27/2016, 1/3/2017, and 1/5/2017. On 12/27, Petitioner was provided with a flexion band and night extension splint for lag. (PX 3, p 77). On 1/3, Petitioner noted that he "still isn't feeling better about his progress. The lack of extension is bothersome but the bending bothers him more." (PX 4, p 80). On the last date of physical therapy, it was noted that Petitioner was "re-evaluated today after 4 visits of hand therapy following a left ring finger bony mallet injury from a basketball hitting him on the left ring finger. He is also using a flexion band at home to improve his DIP flexion. He is pleased with his progress." (PX 4, p 86).

On 1/6/2017, Dr. McKee noted that Petitioner had a "good 15-degree lag at the distal interphalangeal joint and he has perhaps 5-6 degrees of active range of motion at the DIP joint. The PIP joint is very supple." (PX 2, p 42).

No further medical treatment was submitted into evidence after this 1/6/2017 visit with Dr. McKee.

Petitioner's exhibits 5, 6, and 7 were medical bills. The Arbitrator notes that Petitioner testified that to his knowledge, no bills remain outstanding. (TX 29-30).

CONCLUSIONS OF LAW

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?.

Petitioner has the burden to prove by a preponderance of the credible evidence that his injury arose out of and in the course of his employment with Respondent.

In order to obtain compensation under the Act, a claimant bears the burden of proving by a preponderance of the evidence two elements: (1) that the injury occurred in the course of claimant's employment and (2) that the injury

arose out of claimant's employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003) (collecting cases). *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848 , P32)

Section 11 of the Workers Compensation Act states that:

> Accidental injuries incurred while participating in voluntary recreational programs including but not limited to athletic events, parties and picnics do not arise out of and in the course of the employment even though the employer pays some or all of the cost thereof. This exclusion shall not apply in the event that the injured employee was ordered or assigned by his employer to participate in the program. (820 ILCS 305/11).

While it is an unpublished opinion, the Arbitrator notes that what appears to be the only voluntary recreation activity claim that has been decided by the Commission since *McAllister*, makes no reference to, nor does it rely on, *McAllister*. (*Stevens v. Triad Community Unit School District #2*, 2021 Ill. Wrk. Comp. LEXIS 304; *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848). The Commission in *Stevens* affirmed and adopted Arbitrator Cantrell's finding that the accident arose out of an in the scope of Petitioner's employment and made no mention of the standard outlined in *McAllister*. The Arbitrator finds that the facts of *Stevens* are not similar to the case at hand, since the Petitioner in *Stevens* was a teacher who was injured when she went outside for recess duty and played kickball with students and the Petitioner testified that "if she did not engage she might have lost her job for not performing her duties.". (*Stevens*, 2021 Ill. Wrk. Comp. LEXIS 304, *4-5, 6) The Arbitrator finds that no such evidence was presented by Petitioner in this case.

The Arbitrator notes that Petitioner's counsel asked Petitioner, Petitioner's union representative and Petitioner's supervisor questions regarding whether employees could leave the facility, whether they were in uniform, whether lunch breaks were interrupted, and general inquiries about a basketball team that Petitioner was not involved in. The Arbitrator finds these inquiries irrelevant under the analysis that the Commission has previously applied in voluntary recreational cases. For example, the Commission in *Downes, v. SOI, Centralia Correction Center* found that Petitioner's injury sustained while playing basketball did not arise out of or in the course of his employment. (2018 Ill. Wrk. Comp. LEXIS 688, *12). In finding this, the Commission noted that:

> The Arbitrator erred in his analysis of *Eagle Discount Supermarket v. Industrial Commission*, 82 Ill.2d 331 (1980) and the personal comfort doctrine. *Eagle Discount* was decided prior to the enactment of Section 11 of the Act. **Under the current Act, the first question to be determined is whether the claimant was engaged in a voluntary recreational program or activity. If so, then the injuries resulting from those activities are not compensable, regardless of any other theory of compensation.** *Kozak v. Industrial Comm'n*, 219 Ill. App. 3d 629, 633, 579 N.E.2d 921, 162 Ill. Dec. 107 (1991). Here, having found that the Petitioner was engaged in a voluntary recreational program as encompassed under section 11 of the Act, the Commission finds that the Petitioner is precluded from receiving compensation for his injuries. His claim for compensation is, therefore, denied. (2018 Ill. Wrk. Comp. LEXIS 688, *11-12, emphasis added)

Similarly, in *Tucker v. State of IL, Centralia Correctional Center*, in which Petitioner was injured while playing pickleball in the employee and inmate gym the Commission noted that:

> Prior to the effective date of the amended § 11, courts determined the compensability of cases involving injuries relating to recreational activities using an analysis very different from the post-

> amendment cases. As such, the *Eagle* [*8] *Disc.* Court applied the personal comfort doctrine and affirmed the Commission's conclusion that the petitioner sustained an accident arising out of and in the course of his employment.
>
> In the current case, the Arbitrator focused on issues such as the alleged benefits to Respondent if Petitioner stays in shape, the fact that Respondent prohibits its employees from leaving the premises during their unpaid break, and whether Respondent acquiesced to employees playing pickleball during their break. The Arbitrator noted that Respondent supplies some of the pickleball equipment--the gym and the net--and in the past allowed employees to use the paddles and balls purchased by Respondent. These factors are essential to the *Eagle Disc.* personal comfort analysis, not an analysis pursuant to § 11. (2018 Ill. Wrk. Comp. LEXIS 1261, *7-8)

The Commission in *Tucker* also noted that "Post-amendment, Illinois courts primarily focus on whether the employee's participation was voluntary, regardless of the employer's knowledge of or benefit from the activity. (2018 Ill. Wrk. Comp. LEXIS 1261, *9).

The Arbitrator finds *Case v. Vienna Correctional Center* to be instructive as well. (2017 Ill. Wrk. Comp. LEXIS 56). The Petitioner in that case was participating in a voluntary weightlifting competition, which was held on Respondent's premises during his lunch break. (Id, *1). The purpose of that weightlifting competition was to raise money for the Employee Benefit Fund and to promote awareness of the positive effects of exercising. (Id). The Arbitrator found that the participation in the weightlifting competition was within the personal comfort doctrine; the Commission disagreed and ultimately found Petitioner's participation to be a voluntary recreational activity under Section 11 of the Act, while relying on the number of participants involved. (Id, *1-2).

Here, Petitioner has presented no evidence that his participation in playing basketball on his lunch break was anything other than voluntary. Petitioner's union representative confirmed that employee's may spend their lunch as they wish within the designated areas and do not have to notify anyone of what they are doing on their lunch break. (TX 49). Additionally, no employees have been disciplined to Mr. Laughlin's knowledge for playing basketball on their lunch break. (TX 50). Mr. Laughlin testified that he chose to be on the basketball team in 2015. (TX 50).

Petitioner's supervisor testified that to his knowledge, there was no official mandate or memorandum telling correctional officers that they have to work out or play basketball on their lunch break, and that employees are not given any type of bonus or monetary incentive to stay physically fit or work out over their lunch break. (TX 53-54).

As such, the Arbitrator finds the facts of this case nearly identical to those of *Downes, v. SOI, Centralia Correction Center,* in which the Commission found that Petitioner's injury sustained while playing basketball did not arise out of or in the course of his employment. (2018 Ill. Wrk. Comp. LEXIS 688, *12). In *Downes*, Petitioner "testified that he would play basketball in the multi-purpose room during his unpaid lunch break, and he plays basketball to 'stay in shape.'" (2018 Ill. Wrk. Comp. LEXIS 688, *3). Similarly, the employer in *Downes* acquiesced to the games; additionally, in *Downes*, there was no official mandate asking that the correctional officers play basketball and there was no monetary bonus to stay in shape or incentive to play basketball. (Id at *3). Additionally, testimony in *Downes* indicated that employees were not permitted to leave the facility during their lunch break, and that physical fitness examinations were not given as part of their job requirement. (Id at *4, *7). Specifically, Respondent's representative in *Downes* confirmed that correctional

officers "cannot leave the facility during lunch due to the potential of having to respond to an altercation, and that he keeps track of where each staff member is at all times to account for their well-being." (Id at *18). Similarly, Petitioner in *Downes* was playing basketball with fellow correctional officers in the multipurpose building during his lunch break. (Id at *16).

As such, the Arbitrator finds that nothing in the record indicates that Petitioner's participation in playing basketball on the date of accident was anything but voluntary. Petitioner's injury did not arise out of or in the course of his employment with Respondent as Petitioner's injury while playing basketball was participation in a voluntary recreational activity as provided for in Section 11 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC006549
Case Name	Alisa Springer v. Illinois Department Of Corrections
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0164
Number of Pages of Decision	25
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Leandro Alhambra
Respondent Attorney	Sidney Gui

DATE FILED: 4/13/2023

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANKAKEE)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ALISA SPRINGER,
Petitioner,

vs. NO: 11 WC 6549

ILLINOIS DEPARTMENT OF CORRECTIONS,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability (TTD), medical expenses, and permanent partial disability (PPD), and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 28, 2022 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

April 13, 2023

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

O: 04/06/23
CMD/ma
045

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC006549
Case Name	Alisa Springer v. Illinois Department Of Corrections
Consolidated Cases	
Proceeding Type	
Decision Type	Amended Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Leandro Alhambra
Respondent Attorney	Sidney Gui

DATE FILED: 10/28/2022

THE INTEREST RATE FOR THE WEEK OF OCTOBER 25, 2022 4.39%

/s/ Roma Dalal, Arbitrator
Signature

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

October 28, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF KANKAKEE)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
AMENDED ARBITRATION DECISION

Alisa Springer
Employee/Petitioner

v.

Illinois Department of Corrections
Employer/Respondent

Case # **11 WC 006549**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **ROMA DALAL**, Arbitrator of the Commission, in the city **Kankakee**, on **07/26/2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Permanent Total Disability**

FINDINGS

On, **01/18/2011** Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** partially causally related to the accident.

In the year preceding the injury, Petitioner earned $**53,859.25**; the average weekly wage was $**1,035.75**.

On the date of accident, Petitioner was **46** years of age, ***single with*** **1** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**86,960.30** for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $.

Respondent is entitled to a credit of $_____under Section 8(j) of the Act.

ORDER

The Arbitrator finds Petitioner's condition of ill-being in regards to the left basal ganglia hemorrhage causally related to the January 18, 2011 injury reaching MMI as of March 21, 2014. The Arbitrator also finds no causal connection between the work-related incident of January 18, 2011 and any condition of ill-being regarding Petitioner's right hip, low back, or sinusitis.

Respondent shall pay Petitioner temporary total disability benefits of $690.50/week for 165 3/7 weeks, commencing 01/19/2011 through March 21, 2014, as provided in Section 8(b) of the Act. Respondent shall receive credit for amounts paid.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule regarding Petitioner's related condition from January 19, 2011 through March 21, 2014 as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for amounts already paid either directly or under Section 8(j) through the State's group insurance policy. Respondent shall hold Petitioner harmless for the same. No medical bills are awarded for Petitioner's right hip, low back, or sinusitis conditions.

Respondent shall pay Petitioner permanent partial disability benefits of $621.47/week for 150 weeks, because the injuries sustained caused the 30% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall be given a credit of $86,960.30 for TTD.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

OCTOBER 28, 2022

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Alisa Springer,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 11 WC 006549
State of Illinois,	)	
	)	
	)	
Respondent.	)	

STATEMENT OF FACTS

This matter proceeded to hearing on July 26, 2022 in Kankakee, Illinois before Arbitrator Roma Dalal. Issues in dispute include causation, disputed medical bills, temporary total disability benefits, nature and extent and permanent and total disability benefits. (Arb. Ex. 1).

This action was pursued under the Illinois Workers' Compensation Act by Alisa Springer (hereinafter "Petitioner") and sought relief from the State of Illinois (hereinafter "Respondent").

Petitioner testified on January 18, 2011 she was employed by the state as a corrections officer. (T.8). On January 18, 2011, Petitioner was in Springfield for parole agent training. As part of the parole agent training, Petitioner was sprayed in the face with a chemical agent, mace. (T. 9). Petitioner testified she instantly had a migraine headache. (T.9). This incident occurred between noon and 1 pm. Petitioner testified she completed training but felt violently sick. (T.10). Petitioner attempted to shower with cold water and lay down but could not sleep due to a severe headache. (T.11). The next morning Petitioner notified her supervisor and was taken to the ER at St. John's Hospital. (T.11-12).

On January 19, 2011, Petitioner presented to St. John's Hospital as a 46-year-old female with headache, nausea, and dizziness. Petitioner stated yesterday she was sprayed with mace as part of a job training and since then had a severe headache, dizziness, and nausea. (PX4, p.42). A CT scan of head was done which revealed a 19 mm hyperdense focus in the left basal ganglia region consistent with a hemorrhagic bleed. Further workup including the MRI of the brain showed a small amount of subarachnoid hemorrhage as well. Petitioner was started on Dilaudid for pain relief. Petitioner was diagnosed with an intracerebral hemorrhage. Petitioner was discharged on January 22, 2011 and instructed to follow up with her primary care physician. (PX4, p.46)

On January 25, 2011 Petitioner presented to her PCP. Petitioner was referred to a neurologist and taken off work. (PX4, p.10,20). (T.14).

Petitioner testified when she was discharged from the hospital her sister, Evelyn Washington, and her brother-in-law, Xavier Washington, moved in within a day to help her with her ten-year-old. (T.15).

On February 1, 2011, Petitioner testified she was resting in her bedroom. Around 5pm and 6pm that evening, Petitioner exited her bedroom and into the hallway and collapsed. (T.16-17). When she got up, she felt lightheaded. Evelyn Washington and Petitioner's 10-year-old son, Javarius Burgess, came to her aid. (T.17).

On February 1, 2011, Petitioner was taken by ambulance to St. Mary's Hospital. (PX7). Petitioner arrived complaining of a near-syncope episode and dizziness. She was recently hospitalized for a brain bleed. Upon arrival, she stated she has been having diarrhea since early that morning. She stood up and became dizzy. (PX7, p.208). It was also noted her son was sick with the flu over the weekend. She had dizziness, diarrhea, and decreased appetite. At that time, she had no headaches. *Id.* at198. CT of the Brain revealed subacute left basal ganglia acute intracerebral hematoma with surrounding edema and left-to-right midline shift of 4.4 mm. *Id*. at 215. That same evening Petitioner was transferred by ambulance from St. Mary's Hospital to Riverside Medical Center.

On February 1, 2011, Petitioner was admitted to Riverside. Petitioner was admitted with syncope and intracranial bleeding. The MRI raised the possibility of hemorrhage plus intracranial mass. During her inpatient stay Petitioner had neurology, oncology/hematology and cardiology workups performed. (PX6, p.85-101).

On initial presentation on February 1, 2011, Petitioner saw Dr. Milik at Riverside Hospital. Petitioner reported a chief complaint of syncope. Her history started when she was sprayed with Mace during training. She had immediate headaches and went to the ER. She was supposed to see a neurologist but had cancelled her appointment because of a snowstorm. Later in the day on February 1, 2011, she felt like she was passing out and passed out in her kitchen for a few minutes. She reported neither she nor her family noticed any seizure activity. She was recommended for a cardiology consult, along with neurology and hematology/oncology. (PX6, p.90).

Petitioner was examined by neurologist, Dr. Charles Harvey. On consultation with the neurosurgery department at Riverside, Petitioner reported she felt dizzy, went to call out for help, and could not get words out. She reported that her sister found her on the floor, unresponsive. He diagnosed her with a left intracerebral hemorrhage. CT of the brain done on February 1, 2011 revealed left basal ganglia acute intracerebral hematoma with surrounding edema and left to right midline shift. Dr. Harvey compared the current and prior radiological studies from the January 2011 hospitalization. Dr. Harvey opined she had a small basal ganglia hemorrhage which was now subacute in appearance. Dr. Harvey noted likely based upon the history that there was an occupational component to the hemorrhage based upon toxic exposure. (PX6, p.95-96, PX9, p.8).

On consultation with Dr. Sargeant the following day, Petitioner reported she had come into the hospital on February 1, 2011 because she was really sweaty and felt like she was coming down with the flu. (PX6, p.98). She underwent a brain MRI and Dr. Sargeant assessed Petitioner had a resolving left basal ganglia hernia with no shift in the midline. Dr. Sargeant believed Petitioner had an acute blood pressure spike that she must have had on January 19. He did not see evidence of any underlying malignancy but required follow up from other departments for confirmation. He recommended Petitioner keep an eye on her blood pressure and to avoid being exposed to mace again. (PX6, p. 98).

Petitioner was discharged on February 4, 2011 with medication. She was to follow up with Dr. Didwania, Dr. Pazooki, Dr. Harvey and Dr. Sergeant for further care. (PX6, p.85-101).

On February 7, 2011 Petitioner was examined by neurosurgeon, Dr. Jerrel Boyer. Dr. Boyer reviewed the CT scans, MRI, and CTA of her brain. His impression was intracranial hemorrhage. Dr. Boyer ordered a follow up scan in 6 weeks. Dr. Boyer noted Petitioner's conditions seemed to be clearly related causally to the chemical agent and presuming from sympathetic response and elevated blood pressure. He noted he believed she would eventually recover fully. (PX8, p.13-16).

On February 16, 2011, a repeat CT scan of Petitioner's brain was compared to her February 1, 2011 CT scan which revealed interval improvement and apparent resolution of intracranial hemorrhage with improving edema. Some very mild residual reactive changes still visible. (PX5, p.16).

On February 18, 2011 Petitioner followed up with PCP for her headache. (PX5, p.9).

Petitioner followed up of Dr. Harvey on February 23, 2011. Petitioner stated she was better but felt her vision was foggy. Petitioner was doing well overall, and the CT of her brain showed resolution of ICH. Petitioner was referred for speech therapy for cognition. (PX9, p.17-19).

Petitioner followed up with Dr. Boyer on March 18, 2011. Petitioner continued to have headaches and visual difficulties. Petitioner was diagnosed with intracranial hemorrhage. At this point there were no neurosurgical issues. Petitioner was to start on Topamax and would follow up with neurology. From his standpoint she could return to work. (PX8, p.9-11).

On March 28, 2011, Petitioner had an initial evaluation for Speech Therapy with Cynthia Provosst at Riverside Medical Center. (PX6, p.43-45). At that time, Petitioner reported she is no longer happy and laughing, she now writes small, is forgetful, and gets easily sidetracked when talking. Petitioner also reported drooling, but this has improved. *Id.* at. 43. Petitioner underwent speech therapy three times a week for six weeks throughout April and May 2011. *Id.* at 37-79. Petitioner was discharged from therapy as of May 27, 2011. *Id.* at 79-80.

On April 1, 2011 Petitioner was seen by her PCP for a follow-up of her headaches. (PX4, p.8)

On April 21, 2011 Petitioner presented to Dr. Wayne Kelly, from Health Benefits Pain Management for a consultation in evaluation and treatment of headaches and blurred vision. Dr. Kelly went over Petitioner's medical history and reported accident. She was diagnosed with a left basal ganglia hypertensive bleed, secondary to side effects from exposure to mace. She was also diagnosed with secondary sinusitis from the mace, and headaches that were likely due to a combination of her intracerebral bleed and chemically induced sinusitis from the mace she inhaled. Petitioner complained of difficulty sleeping, decreased memory and concentration, periodic limb movement affecting the right upper extremity, drooling, and mild right-sided facial weakness. This was all noted to be secondary to the left-sided intracerebral bleed Petitioner sustained. Dr. Kelly indicated there was no evidence of subtle occurring partial complex seizures at this time. He recommended Topamax for her headaches, a diagnostic sleep study for evaluation of periodic limb movement disorder and possible obstructive sleep apnea, and physical therapy for her right upper extremity and her right facial weakness. (PX13, p.3-5). Petitioner was to remain off work. *Id.* at 7.

Petitioner followed up with Dr. Kelly on May 13, 2011. Dr. Kelly reviewed the cerebral MRI and MRA that revealed a rather moderate to large size left basal ganglion hemorrhagic stroke/infract definitely related to her injury on the job on January 18, 2011. Dr. Kelly opined Petitioner had some subtle persistent cognitive deficits with some episodes of word reversals and concentration problems secondary to her left basal ganglia hemorrhage. Petitioner's headaches were also persisting, as she did not tolerate the Topamax due to severe nausea and vomiting, despite some pain relief. Petitioner was still having difficulty sleeping, which Dr. Kelly attributed to the periodic limb movement disorder related to the left hemorrhagic bleed, along with potential obstructive sleep apnea. Petitioner was also noted to have persistent dysgraphia or micrographia of the right upper extremity, which Dr. Kelly felt would respond well to physical therapy, which he continued to recommend. He further suggested occupational therapy for Petitioner's intermittent language difficulties, which was opined to be very consistent with a left hemorrhagic stroke. Dr. Kelly opined that all of Petitioner's ongoing conditions were related to being sprayed with mace at work. Dr. Kelly strongly recommended Petitioner undergo neuropsychological evaluation. Petitioner remained off work. (PX13, p.8-10).

On June 3, 2011, Petitioner followed up with Dr. Diowana regarding edema to her sinuses. Her blood pressure was slightly elevated, at 124/76. She was diagnosed with a stable intracranial hemorrhage, allergic rhinitis, and a thyroid nodule. (PX5, p. 7).

Petitioner followed up with Dr. Kelly on June 10, 2011. Petitioner's headaches were slightly improved. Petitioner reported difficulty maintaining sleep which was likely related to periodic limb movement disorder as a direct result of the hemorrhagic infarct from the capsaicin spray. Dr. Kelly once again recommended PT/OT and neuropsychological evaluation. Petitioner was instructed to restart Topamax for the headaches and given a prescription for Mirapex for treatment of periodic limb movement. Dr. Kelly continued to keep Petitioner off work. (PX13, p. 11-13).

On July 8, 2011 Petitioner returned to Dr. Kelly. Dr. Kelly opined Petitioner was mostly the same. Petitioner presented with the same symptoms of headaches and chronic sinusitis. The Doctor ordered a repeat MRI/MRA of the Brain, an EEG and continued to keep Petitioner off work. (PX13, p.14-17). Petitioner followed up on August 5, 2011. Dr. Kelly reviewed Petitioner's MRI and MRA, which demonstrated slight enlargement of the left ventricle based on his interpretation. He opined this was likely a result of the left basal ganglion hemorrhage. The MRA showed a very slight narrowing of the left internal carotid. Dr. Kelly prescribed Inderal for the migraines and continued her off work. (PX13, p.18-20). Petitioner returned to Dr. Kelly on September 2, 2011, who noted Petitioner's ear, nose, and throat provider had linked a significant component of Petitioner's headaches to sinus inflammation and had put her on a steroids. It had helped, but the headaches came back when she was off the steroid. Petitioner was recommended continued medication and remained off work. (PX13, p.21-22).

On September 23, 2011, Petitioner saw Dr. Diowana for bad headaches and severe sharp pains in her chest over the last four days. She was recommended for an EKG. (PX5, p.13).

Petitioner returned to Dr. Kelly on September 30, 2011. Petitioner advised she was in a motor vehicle accident on September 28, 2011 and now had stiffness and soreness in her neck. Dr. Kelly ordered an EEG to rule out possible partial complex seizures and provided medications. Petitioner remained off work. (PX13, p.23-26).

On October 4, 2011 Petitioner was seen by her PCP still complaining of bad headaches. (PX4, p.6).

On October 17, 2011 Respondent attended a Section 12 examination with Dr. Alan Shepard. Dr. Shepard diagnosed Petitioner with post traumatic syndrome likely related to being sprayed with Mace. He opined he felt the intracranial hemorrhage may be directly related the mace exposure during parole agent training. Dr. Shepard stated Petitioner was not capable of returning to a stressful job, like parole agent training or a correctional officer. Dr. Shepard recommended neuropsychological testing to determine what her cognitive problems were. (PX3, Ex.2).

On October 28, 2011, Petitioner returned to Dr. Kelly who noted a recent IME suggested a neuropsychological evaluation, which he agreed with. Petitioner was provided continued medications and remained off work. (PX13, p.27-29). In a November 18, 2011 follow up, Petitioner reported improved sleep and decrease of periodic limb movements. Complaints of cognitive affects memory and change of personality remained unchanged. Dr. Kelly recommended continued medication and Petitioner remained off work. (PX13, p.30-32).

On November 28, 2011 and December 12, 2011, Petitioner saw Dr. Gelbort for a neuropsychological evaluation who wrote a narrative report. The Doctor went over Petitioner's medical history and reviewed medical records. Petitioner was administered a battery of neuropsychological tests. The test revealed mid to low average IQ of 84. Verbal comprehension was on the cusp of between low average and borderline deficient. Reasoning skills and visual spatial reasoning were borderline deficient. Tests of learning and memory were borderline deficient. Petitioner exhibited mild to moderate impairment of fine motor speed and dexterity with the right hand. Tests of

higher cognitive functions found that verbally mediated processing speeds were variable and slowed with mild impairment displayed. Non-verbal problem-solving reasoning skills were mild to moderately impaired. The overall pattern suggested some mild generalized suppression affecting the frontal lobe abilities. According to Dr. Gelbort, Petitioner demonstrated cognitive suppressions which appeared to be an outgrowth both her vascular event in addition to debilitating or exacerbating the effects of feeling, badly, worrying about her health, and having fewer coping skills for this type of condition then many. She shows some suppression in terms of verbal and learning and memory as well as freedom from distractibility issues and episodically slowed processing speed. Additional speech pathology intervention, anti-depressants, adjustment counseling, and sleep disturbance treatment were all recommended. (PX12, p.2-6).

Petitioner followed up with Dr. Kelly on December 16, 2011. Petitioner reported difficulties in handling numbers with her checkbook. Dr. Kelly noted this is a form of dyslexia that indicates an interruption in cerebral connections between areas of the brain that serve these functions. She still complained of personality problems. Dr. Kelly recommended Petitioner continue current medications and follow up in February 2012 after completion of the neuropsychological evaluation. Petitioner continued to be off work. (PX13, p. 33-35).

On January 11, 2012, Petitioner had a check-up with Dr. Patel in advance of an ear-nose-and throat surgery. Dr. Patel noted Petitioner had allergic rhinitis that was symptomatic most of the year and triggered by grass, pollen, mold spores, and ragweed. She also had diagnoses of gastrointestinal reflux and migraines with auras. Petitioner was given a physical exam, which was normal apart from her swollen nose. (PX7, p. 131-132).

Petitioner followed up with Dr. Kelly on January 13, 2012. Petitioner's bifrontal headaches worsened since she last saw her. Petitioner was scheduled for a sinus surgery and was to maintain her medications. She remained off work. (PX13, p.36-37).

On January 13, 2012 Petitioner was seen at Provena Hospital. It was noted Petitioner had reading glasses. Her headaches were related to her sinuses and intra-cerebral hemorrhage. (PX7, p.150). On January 24, 2012 Petitioner underwent a bilateral inferior turbinoplasties by Hobson. Her post-operative diagnoses were turbinate hypertrophy, nasal obstruction, rhinogenic headaches and history of cerebrovascular accident. (PX7, p.140).

On February 10, 2012, Petitioner followed up with Dr. Kelly. It was two weeks after her sinus surgery had been completed, and Petitioner still had significant inflammation. Her primary care physician had given her Imitrex, which helped significantly with the headaches, but they would return the next day. Dr. Kelly increased Klonopin and Inderal dosages. Petitioner was to follow up in 1 month. Petitioner continued to be off work (PX13, p.38-40).

On March 26, 2012, Petitioner was examined by Dr. David Hartman at Respondent's Request. (RX3, Ex.2). Dr. Hartman performed a lengthy examination and reviewed medical records. *Id.* at 144-155. Based on the same he opined Petitioner sustained a left basal ganglia stroke when she was sprayed with pepper spray as part of a work training exercises. Based on examination Petitioner's evaluation indicated she was attempting to manipulate her case and was malingering *Id*. at 157-158. Petitioner was able to return to work and was at MMI. *Id*. at 158.

On April 3, 2012, Petitioner first presented to Dr. James Goodwin. Petitioner was a 47-year-old woman who was sprayed in the face with Mace on January 18, 2011. Since that time, she complained of difficulty seeing at nighttime. During daytime lighting everything seems blurry. Petitioner also complained of "palinopsia," where the image of an object she has been looking at persists for a minute or so after she shifts her gaze to something else. Dr. Goodwin performed a visual evaluation and found that Petitioner visual function was normal. According to Dr. Goodwin, her visual symptoms were probably related to higher cortical visual processing problems caused by the hemorrhage. Dr. Goodwin noted her difficulty seems most prominently to involve visual spatial relations and motion detection but there were also other cognitive problems including memory disturbance and even

aphasic symptoms. Petitioner was referred to Dr. Linda Laatsch for psychometric testing and to assess rehabilitative measures. (PX11, p.41-44).

Petitioner followed up with Dr. Kelly on April 6, 2012. She had a difficult month and had chronic fatigue. Petitioner was diagnosed with lumbosacral radiculopathy and chronic sleep deprivation. Petitioner was to continue with medications and remained off work. (PX13, p. 41-42). Petitioner returned to Dr. Kelly on May 4, 2012. Petitioner reported an increase in her headaches. Petitioner was instructed to continue with Mirapex, Klonopin and Inderal. (PX13, p. 43-45).

On June 1, 2012 Petitioner returned to Dr. Kelly with continued headaches. For the first time Petitioner reported symptoms in her right hip and lower extremity. Physical therapy was recommended. (PX13, p.46).

On June 16, 2012, Petitioner presented at St. Mary's Hospital for a headache that began at 9:00 a.m. and which felt to Petitioner like an intracranial bleed. Her blood pressure reading was hypertensive, at 180/90. (PX7, p.241-243). A brain CT on June 16, 2012 came back normal. *Id.* at 117.

Petitioner followed up with Dr. Kelly on July 2, 2012. Petitioner reported recurrence of bad migraines, occurring 2 to 3 times per week. Dr. Kelly prescribed Neurontin and Inderal. Petitioner was continued off work. (PX13, p. 49-51). In a July 25, 2012, Dr. Kelly noted Petitioner had right hip pain ever since her fall back in February of last year. Dr. Kelly noted that somehow the patient had injured the right hip locally, with slowly worsening pain. Petitioner reported to Dr. Kelly that it was currently very symptomatic. She was referred to orthopedics. (PX13, p.52-53).

Petitioner followed up with Dr. Goodwin on August 28, 2012. Petitioner continued to have bad headaches associated with nausea and vomiting. Petitioner sustained an intraparenchymal left basal ganglion hemorrhagic stroke with small subarachnoid component in January, 2011. She still had persistent higher cortical visual processing problems as a result this stroke. He explained to Petitioner that although her visual testing is normal, she may continue to experience visual difficulties based on her higher cortical visual processing problems. Petitioner was recommended bifocal sunglasses and to continue to follow up with Dr. Gelbort. She should return in six months. (PX11, p.28-30).

On September 5, 2012, Petitioner had an initial orthopedic consult with Dr. Rajeev Puri for her right hip pain. Petitioner noted she had two syncopal episode and awoke with hip pain back in February 2011. Since that time, she had increasing right hip pain in the groin. She had undergone physical therapy. A right hip MRI was recommended. (PX14, p.6, 57)

On October 3, 2012 Petitioner underwent an MRI of the right hip that revealed degenerative arthrosis in the right hip joint with subchondral cyst formation in the right superior acetabulum and small right hip joint effusion. (PX14, p.4).

Petitioner followed up with Dr. Puri on October 9, 2012. Petitioner noted her pain was moderate, constant dull and long in duration. Petitioner was referred to Dr. Santiago for a cortisone injection. She was to follow up in three weeks. (PX14, p.59-60).

Petitioner was seen by Dr. Santiago-Palma on October 12, 2012. Petitioner reported pain to the right hip since her fall. Dr. Santiago-Palma's impressions were right hip pain and right hip osteoarthritis. Dr. Santiago-Palma recommended a right intraarticular hip joint injection. (PX14, p.42-43, 72-73). The injection was performed on October 31, 2012. *Id.* at 49.

Petitioner returned to Health Benefits on November 8, 2012 and was seen by Dr. Jay Klokmeister. Petitioner was given an order for CT scan of her sinuses to rule out any other etiology of her chronic headaches. Petitioner was kept off work. (PX13, p. 56-58).

Petitioner followed up with Dr. Santiago-Palma on November 15, 2012. Petitioner reported thirty percent improvement of her hip symptoms. Petitioner was provided Tramadol and was to return to Dr. Puri. (PX14, p.74). On November 28, 2012, Petitioner returned to Dr. Puri. Petitioner was recommended therapy for her hip and an MRI of her spine. (PX14, p.75-76).

Petitioner returned to Health Benefits on December 4, 2012 and seen by Dr. Anas Alzoobi, anesthesiologist. Dr. Alzoobi advised Petitioner to do a trial of gabapentin for her headaches. Petitioner was referred back to Dr. Kelly or another neurologist. Dr Alzoobi believed Petitioner still had some residual effect of her previous stroke. Dr. Alzoobi continued to keep her off work and restricted her from driving. (PX13, p. 59-62).

Petitioner returned to Dr. Puri on December 19, 2012. Dr. Puri reviewed the lumbar spine MRI, which revealed significant foraminal stenosis. Petitioner was referred back to Dr. Santiago for possible injections to the spine. (PX14, p 77-78).

Petitioner was seen by Dr. Santiago-Palma on January 3, 2013. Petitioner presented for low back pain. Petitioner noted the right intra articular hip joint injection on October 31, 2012 partially improved her symptoms. Petitioner was diagnosed with lumbar degenerative disease, spinal stenosis, and right hip osteoarthritis. (PX14, p.8-9, p.86-87). On January 30, 2013, Dr. Santiago-Palma administered a L3-L4 epidural steroid injection. (PX14, p.15-16). Petitioner returned to Dr. Santiago-Palma on February 15, 2013. She reported no significant improvement in her symptoms following the epidural steroid injections. Dr. Santiago-Palma noted her symptoms were more likely secondary to right hip pathology and referred Petitioner back to Dr. Puri. (PX14, p.88).

On February 26, 2013, Petitioner was seen by Dr. James Goodwin, neuro-ophthalmologist. Petitioner complained of blurry vision, "things running together," and tearing. On exam, Petitioner's vision was 20/25 in both eyes. Dr. Goodwin recommended aggressive lubrication and to continue to follow up with Dr. Gelbort. Dr. Goodwin felt the cataracts were responsible for the halos she sees at night. According to Dr. Goodwin, the other visual phenomena seem most likely related to higher cortical cerebral processing problems from the stroke and should eventually improve spontaneously. (PX11, p.17-20).

Petitioner followed up with Dr. Puri on February 28, 2013. Petitioner had some relief from the injection in her back but still complained of right groin pain. Hip replacement surgery was discussed. The Doctor noted in general her seizure would have nothing to do with her hip arthritis and could not be at all definitive about why she had arthritis. Petitioner was referred to Dr. Alex Gordon for a second opinion on the right hip. (PX14, p 89-90).

On April 3, 2013, Petitioner presented to Dr. Alex Gordon for a second opinion for her right hip. Petitioner had progressive pain and associated debilitation secondary to advanced osteoarthritis in her hip. Dr. Gordan's diagnosis was advanced osteoarthritis of the right hip. Due to her progressive pain and associated debilitation and lack of pain relief, he opined she would be a candidate for a right total hip arthroplasty. (PX16, p. 4-5). Petitioner returned to Dr. Puri on April 4, 2013. Surgery was discussed and Petitioner was to consider it. (PX14, p.91-92).

On May 29, 2013 Petitioner first presented to Dr. Gulati at Neuroscience Institute. Dr. Gulati went over Petitioner's medical history and work accident. The Doctor noted Petitioner's physical and neurological examination was remarkable for slight right pronation and slight right facial weakness, the remainder of neurologic examination was normal. Petitioner complained of headaches. Although Petitioner complained of drooling, no drooling was observed. Petitioner complained of visual disturbance but there was no visual field

defect. Petitioner denied feelings of depression. Petitioner was recommended to keep a headache diary and provided medication. (PX15, p.31-32).

On June 4, 2013 Petitioner returned to Dr. Puri. Petitioner continued to have hip pain and was diagnosed with hip degenerative joint disease. Petitioner was to undergo therapy and was recommended for surgery. (PX14, p.93-94).

Petitioner performed physical therapy the right hip at ATI starting on June 18, 2013. Petitioner underwent 22 sessions of PT. Petitioner reached a plateau on her improvement and was discharged from therapy on August 8, 2013. Petitioner was waiting for approval for hip surgery. (PX18, p 327-329).

On June 24, 2013 Petitioner presented to Dr. Karen Levin for a Section 12 examination. (RX4, EX2, p.210). The Doctor examined her and reviewed medical records. Dr. Levin noted Petitioner's syncope episode was not work related and related to flu like symptoms. Her original basal ganglia hemorrhage could be related. None of her current complaints had anything to do with the basal ganglionic hemorrhage. She was at maximum medical improvement from a neurologic standpoint from the basal ganglionic hemorrhage. *Id.* at 216.

Petitioner returned to Dr. Gulati on June 28, 2013. Petitioner reported feeling groggy and kind of depressed. Petitioner's headache diary indicated she had daily headaches with 2-3 severe headaches. Petitioner was to start Topamax and to keep a record of the headaches. Petitioner was referred to a neuro-ophthalmologist. (PX15, p.26-27).

On July 23, 2013 Petitioner underwent an EMG which was normal. (PX15, p. 39).

On July 29, 2013, Petitioner followed up with Dr. Gulati. Petitioner still had significant complaints of headaches. Petitioner was once again advised to keep a headache diary. She was to obtain a CTA of the neck and head. Petitioner appeared to have a left hemispheric deep hemorrhage with complete resolution. Hemorrhage seemed to have occurred under circumstances of work. Her BP was high at that time and the Doctor suspected that most likely this was a hypertensive hemorrhage. Petitioner was to return in a month. (PX15, p.20-21).

Petitioner returned to Dr. Puri on August 21, 2013. Petitioner was waiting for authorization of hip surgery. (PX14, p.95-96).

On August 28, 2013 Petitioner underwent a CT Angiogram of the neck and head which were both unremarkable. (PX15, p.38).

On August 28, 2013, Petitioner followed up with Dr. Gulati for ongoing daily headaches. Petitioner noticed headaches were brought on by chocolate, hip pain, the sun, or lack of sleep. Petitioner was diagnosed with chronic migraines, along with a prior left deep basal ganglia hemorrhage, from which Dr. Gulati opined that she had a good recovery. Petitioner's CT angiogram of the head and neck was normal. There was no clinical evidence of language disturbance and Dr. Gulati opined that he was not impressed by cognitive impairment, memory impairment, or speech impairment, despite Petitioner's description of multiple instances wherein she forgot things or misplaced items. He also noted Petitioner had visual complaints which would be difficult to explain as related to her prior hemorrhage. She was given medication for her headaches and told to keep a headache diary. She was to remain off work. (PX15, p.16-17).

On September 24, 2013, Petitioner followed up with Dr. Gulati. Petitioner's neurologic examination revealed no new abnormalities. The headache pattern was consistent with common migraine headaches. The Doctor noted he was not sure that they were dealing with a progressive disorder. Petitioner spent a great deal of time talking about

these problems. The Doctor recommended repeat neuropsychological testing and an MRI of the brain. (PX15, p.12-13).

On October 3, 2013 Petitioner underwent an MRI of the brain which revealed no significant intracranial abnormality. (PX15, p.36).

Petitioner was again seen by Dr. Gelbort on October 15, 2013 and November 5, 2013 and authored another narrative report. (PX12). Petitioner was again given a battery of neuropsychological tests and found to be remarkably consistent with the prior results in 2011. Petitioner was described as having somewhat regressed, over-focusing on her health and frustration. Petitioner preferred to focus on her physical symptoms rather than any form of psychological process which might give rise to said symptoms. Dr. Gelbort opined Petitioner was focused on being upset about her health, rather than working to improve her situation in any way. This issue was noted to be more prominent than any genuine underlying deficits or dysfunction. (PX12, p. 7-9).

Petitioner followed up with Dr. Kelly on January 30, 2014, at TLC Pain Management and Sleep Restoration. Petitioner continued to complain of chronic pain in the right hip. Petitioner continued to have visual difficulties due to the cerebral injury and migraines. Dr. Kelly reiterated Petitioner's change of personality, chronic sinusitis, migraines, periodic limb movements and cognitive difficulties were all the resulted of the intracerebral bleed. Petitioner was prescribed Inderal and Mirapex. Petitioner continued to be off work. Dr. Kelly opined Petitioner is totally disabled. The Doctor noted if Petitioner underwent surgical intervention in the right hip improves then she may be able to return to work with limitations. (PX13, p. 64-70).

Petitioner was examined by neurologist, Dr. Kelly, on March 21, 2014. Dr. Kelly's examination revealed definite abnormalities pointing to the left cerebral hemisphere with right sided Babinski's response, hypertonicity of the upper and lower extremity with decreased fine finger movements and toe tapping that essentially has remained unchanged compared to her exam findings of her initial consultation in 2011. (PX1, EX. 2 p. 2). Dr. Kelly's impressions were 1) S/p left basal ganglion hypertensive bleed with extension into the interhemispheric region and small subarachnoid extension; 2) Chronic sinusitis, secondary to inhalation of capsaicin spray in 2011; 3) Chronic episodic headaches due to intracerebral bleed and chronic sinusitis; 4) periodic limb disorder as a result of the intracerebral hemorrhage; 5) visual changes secondary to intracerebral hemorrhage and avascular migrainous headache; 6) Persistent change of personality and cognition due to permanent cerebral injury from intracerebral hemorrhage and periodic limb movement; 7) right hip injury requires surgical intervention. (PX1, Ex.2, p. 6-7). Dr. Kelly opined Petitioner is completely disabled at this time due to the above diagnosis, but most prominently with regards to the right hip issue. (*Id.*)

On May 16, 2014, Petitioner consulted with orthopedic specialist, Dr. Lalit Puri (Dr. L. Puri) at referral of Dr. Rajeev Puri. Petitioner was diagnosed with moderate to severe degenerative joint disease of the right hip. Dr. L. Puri opined that she was a candidate for hip arthroplasty. (PX17, p.15-16).

On August 19, 2014, Dr. L. Puri performed right total hip arthroplasty with postoperative diagnosis of osteoarthritis of the right hip. (PX17, p. 92-94). Petitioner was admitted inpatient at Northshore Hospital on August 19, 2014 and discharged on August 22, 2014. She was instructed to follow up with Dr. L. Puri in 4 weeks. Physical therapy 2-3 times per week was ordered. Petitioner was instructed not drive until seen by the physician. (PX17, p.98-103).

Petitioner followed up with Dr. L. Puri on September 11, 2014. X-rays were taken and revealed no acute fracture or subluxation. The hardware was intact without evidence of subluxation. Physical therapy was ordered. (PX17, p.12-13).

Petitioner was last seen by Dr. L. Puri on December 8, 2014. Petitioner was four months status post hip arthroplasty and doing well. Petitioner had an excellent result. Petitioner was to increase her activities as tolerated and return at the one-year mark. (PX17, p.6).

Petitioner's Trial Testimony

At trial Petitioner testified somewhat consistently with her medical care.

She testified at the hospital when she became lucid, she noticed her right leg hurt bad. (T.19). She notified her doctor of the hip pain but was advised her brain swelling was first priority. (T.19). Petitioner testified she never had any prior problems with her right hip or leg prior to February 1, 2011. (T.20). Petitioner testified from February 1, 2011 up until she saw Dr. Harvey on May 2, 2012 her leg discomfort got worse. (T.31). She could not walk for more than 30 minutes. (T.31). With regard to Petitioner's right hip, Petitioner testified she saw Dr. Puri in August of 2015. (T.40). In regards to the February 1, 2011 incident, Petitioner testified she did not have flu symptoms at that time. (T.42). Petitioner further stated prior to the chemical exposure she never had any problems with her sinuses. (T.26). With regards to her headaches, Petitioner testified she last saw Dr. Kelly on December 21, 2020 and was unable to return to work. (T.41).

Petitioner testified she was paid temporary total disability benefits from January 19, 2011 through April 30, 2013. (T.43). Petitioner testified that she remained off work from April 30, 2013 to the present based on Dr. Kelly's opinion. (T.43).

At present, Petitioner testified she feels her personality is different. She was previously bubbly and talkative and now she never laughs, smiles, or talks. (T.44). She feels like she is not the same person since the brain bleed. (T.44-45). With regards to her vision, it is blurred from the lights, and she has problems with night driving (T. 47). Cognitively, Petitioner testified she still will twist numbers. (T.47).

In regards to her physical abilities, she cannot work out or ride a bike because her low back bothers her. (T.45). Petitioner testified that she takes Flexeril from Dr. Roland, a pain management physician. (T.46).

On Cross-Examination, Petitioner stated she never had vomiting, nausea or diarrhea leading up to the February 1, 2011 incident. (T.48). If the medical records stated, the same they would be inaccurate. (T.49). Petitioner further noted she felt hip pain on the day of the accident. She once again indicated if the medical records did not reflect any right hip pain until July 25, 2012 that would be incorrect. (T.50).

Petitioner further did not recall being in a motor vehicle collision. She further did not recall having headaches after a motor vehicle collision or going to the ER. (T.51). She disclosed that her mother had a history of high blood pressure. (T.53).

Testimony of Evelyn Washington

Evelyn Washington (Washington) testified on behalf of Petitioner. Washington is the older sister of Petitioner. (T.57). After the initial hospital stay in January 2011, Washington and her Husband stayed with her for at least four months and helped with activities of daily living (cooking, cleaning, and childcare). (T.58).

Washington testified on February 1, 2011, she was in a bedroom and heard a bump in the hallway. Washington went out to the hallway and saw Petitioner sliding down the wall and fall to her right side. Washington testified Petitioner could barely talk and called 911. (T.59). Washington testified she did not observe Petitioner having symptoms of flu like symptoms. (T.61-62).

Petitioner was eventually admitted to Riverside Hospital. (T.63). Washington testified Petitioner made right hip complaints while hospitalized. (T.64). Washington testified following Petitioner's discharge her personality was different. Petitioner did not smile anymore; her speech was slurred, and she would drop things. (T.65). Petitioner also had a little limp. (T.65).

At present, Washington testified Petitioner was formerly smiley and bubbly but now was not. (T.67). She was now quiet and laid back. (T.68). In addition, Petitioner's balance was off. (T.69). She further noted she only lived with Petitioner for four to six months after the initial January incident and has not lived with her since. (T.74).

DEPOSITION TESTIMONY

Testimony of Dr. Alan Shephard

The parties proceeded with the deposition of Respondent's Section 12 examiner, Dr. Alan G. Shepard, on December 5, 2018 at the request of Petitioner. Dr. Shephard is a board-certified neurologist, who performed a Section 12 exam on Springer, at Respondent's request. (PX3, p.4). Dr. Shepard conducted a Section 12 examination of Petitioner on October 17, 2011. *Id.* at 6. Dr. Shepard could not recall if he performed an examination. *Id.* at 8. Dr. Shepard opined Petitioner suffered a left basal ganglia hemorrhage from being exposed to mace, which resulted in right sided numbness. *Id.* at 11.

Dr. Shephard diagnosed Springer with post-traumatic stroke syndrome likely related to being sprayed with Mace. He opined that the way the timing was, the incident that occurred during her parole agent training caused the intracranial hemorrhage. *Id.* at 11-12. Dr. Shephard opined Petitioner's treatment for the stroke at the time of examination was reasonable, necessary, and related to the mace exposure. (PX3, p. 12).

Dr. Shephard opined Petitioner would not be able to return to her job as a correctional officer. (PX3, p.13). He also did not believe Petitioner could handle firearms. *Id.*at 14. Dr. Shepard opined basal ganglia is not typically a problem for memory problems, more of a motor area issue. *Id*. at 15. He also noted it could cause facial weakness and personality changes. *Id.*

On Cross-Examination, he noted the intracranial hemorrhage was related to the incident based on a neurological medical degree of certainty. (PX3, p.19). Dr. Shepard noted he did not perform any tests that he documented and did not know what, if any, medical records he reviewed prior to forming his opinions. *Id.* 19-20. He did not recall at his deposition reviewing any pre-accident medical records when forming his opinion and found no medical records upon a review of his file apart from his own letter and Dr. Hartman's IME. He did not comment on Dr. Hartman's IME report in his narrative letter as it came in later.

Testimony of Dr. Wayne Kelly

On June 16, 2014 the parties proceeded with the deposition of Dr. Wayne Kelly. (PX1). Dr. Kelly is a board-certified neurologist. *Id.* at. 3. Dr. Kelly reviewed his medical records. *Id.* at 4-25.

Dr. Kelly opined that the following diagnoses were directly related from the exposure to the capsaicin spray – 1) left basal ganglia bleed 2) vascular headaches 3) sinusitis 4) periodic limb movements during sleep 5) permanent visual changes 4) permanent personality changes 5) permanent cognitive issues. (PX1, Ex. 2, p.7-8).

Dr. Kelly opined Petitioner sustained the left basal ganglia bleed as a direct result from the capsaicin spray producing the hemorrhagic bleed. Due to the hemorrhage Petitioner developed an onset of vascular headaches. Petitioner also developed chronic sinusitis ever since the exposure as a direct result of the injury on the mucosal lining in the sinuses from inhalation of capsicum. Petitioner had difficulty maintaining sleep during periodic limb

movement disorder which was a direct result of the intracerebral hemorrhage. (PX1, p.30). Dr. Kelly also opined the damage of the interconnecting eye pathways permanently affected her vison. Petitioner's change in personality and cognitive difficulties were the result of interconnecting pathway damage. Lastly, Dr. Kelly opined Petitioner's right hip injury was the result of the fall from February 1, 2011 syncopal episode (PX1, 30).

Dr. Kelly opined that that within a reasonable degree of medical and surgical certainty the syncopal episode of February 1, 2011 was caused by the intracerebral bleed with increased intracranial pressure. There was evidence of a shift on the CT of the brain that a hundred percent correlated with the occurrence of syncope. It was one of the very well-known consequences of increased intracranial pressure. It even raised the potential of a seizure occurring due to the irritation of the acute blood present. (PX1, p.28). Dr. Kelly disagreed with the Section 12 examiner indicating the hemorrhage was flu induced. *Id.* at 27.

Dr. Kelly further explained that based on CT scan of February 2011, the increased pressure on the left side with the blood, pushed the central anatomy of the brain towards the right side where they didn't belong. (PX1, p. 29). Dr. Kelly's opinion was based on his review of the CTs films that were taken 2 weeks after the acute cerebral bleed. Dr. Kelly noted the CT showed diffuse subacute blood deep in the left side of the brain, extending from the basal ganglia into the cerebral hemisphere, interhemispheric region, with surrounding edema and slight compression of the left lateral frontal portion of the ventricle, indicating increased intracranial pressure. This increased cranial pressure resulted in the syncope she had on February 1, 2011. *Id.* at 32. Dr. Kelly further opined Petitioner's treatment for her neurological condition was reasonable and necessary. (PX1, p.34). Dr. Kelly recommended ongoing medications and remained off work as of March 21, 2014. *Id.*at 36.

On Cross-Examination, Dr. Kelly noted he is not an ENT or an orthopedic physician. (PX1, p.40). Dr. Kelly noted physical exams were not performed at each visit. *Id.* at 46. Each time he saw Petitioner he would talk to her and come up with impressions and recommendations. *Id.* at 47. Two-thirds of his patients are claimants in Workers' Compensation cases. *Id.* at 48. Dr. Kelly testified he did not treat Petitioner for her sinus, hip, or visual problems. (PX1, p.50). He also did not review any medical prior to April 2011. *Id.* at 50-51. Dr. Kelly did not review the neuropsychological evaluation by Dr. Hartman but did not agree that she was malingering. *Id.* at 54-55. He further noted there were many flaws with neuropsych and did not like relying on them. *Id.* at 56.

Dr. Kelly opined that diarrhea and flu symptoms causing dehydration were unlikely to be the cause of Petitioner's fainting on February 1, 2011. His findings were based on Petitioner having suffered a stroke two weeks prior, which was the more likely cause due to the short timing between both incidents. Dr. Kelly did not review pre-injury records related to Petitioner's sinuses, headaches, or high blood pressure prior to treating her. (PX1, p.58-59). He opined they would have no relevance because Petitioner's stroke happened shortly after the mace inhalation. Dr. Kelly did not think any prior sinus issues or high blood pressure would be contributory or cause Petitioner's intracranial bleed, because the timing after being exposed to mace was not coincidental. Unless Petitioner had extensive prior sinus issues or high blood pressure problems, the mace would be at least a factor in the stroke. He conceded that he had never seen an intracranial bleed of this nature caused by a chemical agent before, and that mace triggering this injury would be rare. He opined that memory loss, cognitive issues, and vision issues would all be related to and expected of a basal ganglia hemorrhage. He noted that a CT scan taken after the February 2011 fall showed a midline shift in the brain, which was evidence that the stroke caused the fainting. (PX1).

Testimony of Dr. David Hartman

Respondent's Section 12 examiner, Dr. David Hartman, testified on behalf of Respondent on September 26, 2014. Dr. Hartman is a clinical and forensic neuropsychologist. (RX3, p.10). Dr. Hartman performed a Section 12 examination on March 26, 2012. *Id.* at 17.

Dr. Harman evaluated Petitioner for six to seven hours and performed a clinical interview. (RX3, p.17-18). Petitioner noted she had cognitive errors and had difficulty controlling her lips and tongue. Dr. Hartman did not observe any drooling or defect. Petitioner also reported chronic headaches and recent high blood pressure. *Id.* at 19. The Doctor noted she had an unremarkable mental status and did not want to be there. *Id*. at 21. The Doctor administered several tests that measured validity, cognitive functions, and symptom patterns. *Id*. at 22-23.

Dr. Hartman noted Dr. Kelly did not formally test for memory and Dr. Gelbort never checked the validity of his memory testing. As such both were just listening to what Petitioner said and accepted them as factually correct but did not actually test it. (RX3, p.31). Dr. Hartman's diagnosed Petitioner with Malingering. Dr. Hartman opined Petitioner was at MMI from a neuropsychological and psychological perspective. He noted Petitioner was selective in her self-report as she reported some things and did not report others. *Id*. at 64. When asked during direct whether mace exposure could cause a stroke, Dr. Hartman opined it was a possible influence and could not rule out the pepper stray did not exacerbate her hypertension. *Id* at 65.

Dr. Hartman noted he could not use Dr. Gelbort's exam results because Dr. Gelbort did not use any test that would measure the validity of her symptoms. Therefore, there was no credible data set. *Id*. at 65. Dr. Hartman noted Petitioner's degree of exaggerations were high. *Id*. at 66. He discussed Dr. Gelbort's psychological exam of Petitioner, noting it contained objective testing which did not include evaluations of the credibility of her responses. Dr. Hartman felt a lack of credibility response evaluation blurred Dr. Gelbort's data, making it unreliable. *Id*. at 67.

Based on the same, Dr. Hartman concluded Petitioner did sustain a basal ganglia stroke. *Id*. at 68. She also had a history of hypertension and preexisting sinusitis that had nothing to do with her exposure to pepper spray. To a reasonable standard, she had a number of neuropsychological functions that were normal, low normal and inconsistent with lasting effects of basal ganglia stroke which suggested the effects of the stroke are largely recovered. *Id*. at 69. He further noted Petitioner's behavioral and psychological and neurocognitive pattern was so distorted by a malingered/exaggerated/implausible presentation that if there were remaining residua from the basal ganglia stroke, they were buried underneath a vast mountain of unrealistic presentations and could not be picked out. *Id*. at 69. Based on the same she was at MMI for her basal ganglia stroke. *Id*. at 70. He also noted Petitioner should get her blood pressure under control. *Id*. at 70.

Dr. Hartman further noted she could return to some kind of work. *Id*. at 72. He noted however he was not offering any opinion on whether she could perform any particular job. *Id*. at 72. Dr. Hartman further conceded it was plausible Petitioner's neuropsychological condition as of March 26, 2012 was related to her January 2011 work injury. However, Dr. Hartman could not testify to a reasonable degree of neuropsychological certainty regarding causation between the January 2011 incident and Petitioner's neuropsychological condition as of March 26, 2012. *Id*. at 73. Dr. Hartman opined she was at MMI from a neuropsychological and psychological perspective.

On Cross-Examination, Dr. Hartman noted his services in his practice were now exclusively diagnostic from a clinical psychological and neuropsychological standpoint. *Id*. at 77. The services he provided were typically for litigation purposes only. *Id*. at 78. He noted pepper stray could temporarily exacerbate sinusitis. *Id*. at 98. Lastly, Dr. Hartman opined that anyone that had a basal ganglia stroke probably should not be performing a weapon-related occupation. *Id*. at 108. Although Petitioner could return to work in some form of employment. *Id*. at 108.

Testimony of Dr. Lalit Puri

The parties proceeded with Dr. Lalit Puri's testimony on November 9, 2016. Dr. Puri is a board-certified orthopedic surgeon specializing in hip and knee arthroplasty, joint replacement surgery. (PX2, p.4). Dr. Puri diagnosed Petitioner with symptomatic osteoarthritis of the right hip and recommended a total arthroplasty of the right hip. *Id.* at 7-8. Petitioner underwent the same in August 2014. *Id.* at 8. Dr. Puri noted by December 8, 2014

Petitioner was doing very, very well. *Id.* at 10. With respect to causation, Dr. Puri testified assuming that Petitioner had no symptomology prior to February 1, 2011 fall and her symptoms started after the fall, then he was of the opinion that the fall likely contributed to her need for a hip arthroscopy. *Id*. at 14. The basis was she was symptom free prior to the fall then she complained immediately temporally related to the fall, that was the beginning of her onset of her symptomatology. *Id*. at 14. Dr. Puri testified patients usually reach MMI one year after surgery. Based on her December 8, 2014 note, she would not have any permanent restrictions. *Id.* at. 16.

On Cross Examination, Dr. Puri opined she did not recall if she reviewed any records prior to May 2014. (PX2, p.17). She further stated she did not have an opinion regarding the causation of her osteoarthritis. *Id.* at 18. Dr. Puri lastly opined that if Petitioner went 18 months without symptoms or without relaying symptoms to a healthcare professional after the point of the fall, then he would assume the fall had nothing to do with her hip pain. *Id*. at 20.

Testimony of Dr. Karen Levin

The parties proceeded with the testimony of Respondent's Section 12 examiner, Dr. Karen Levin on November 18, 2014. (RX4). Dr. Levin is a board-certified neurologist who examined Petitioner on June 24, 2014. *Id.* at 163-165. Dr. Levin reviewed medical records and conducted a physical exam. Dr. Levin diagnosed Petitioner with basal ganglionic hemorrhage. Dr Levin opined if she had no history of prior hypertension, it could have been related to the capsicums. Dr. Levin opined the syncopal episode on February 1, 2011 was not related to the work accident, but rather related to her flu-like symptoms and dehydration. *Id.* at 179. Dr. Levin opined the February 1, 2011 incident was likely triggered by Petitioner's diarrhea and flu-like symptoms around the time of this incident. Dr. Levin specifically noted Petitioner denied a headache on admission to the hospital, which would have been present if a complication in the basal ganglia area triggered the February 1, 2011 acute hemorrhage. Dr. Levin noted that Petitioner's medical records documented diarrhea and flu-like symptoms prior to her hospital admission on February 1, 2011. *Id.* at 179-180. Dr. Levin also opined that basal ganglia hemorrhages do not cause headaches years later in patients and was not causally related to the work accident. *Id.* at 180.

Dr Levin also opined Petitioner's vision problems, problems with her sense of taste, concentration, frustration, memory and mixing up numbers were not causally related. (RX4, p.181). Dr. Levin felt Petitioner was exhibiting discrepancies in cognitive responses during neuropsychological testing, which discredited the validity of Petitioner's memory impairment claims. Dr. Levin did not believe that those reported symptoms were real, based on the results of Dr. Hartman's neuropsychological exam. *Id.* at 182. Dr. Levin also opined Petitioner's sinus problems were not causally related to the work accident as basal ganglionic hemorrhage do not cause sinus problems. *Id*. at 182. Dr. Levin, however, when asked whether the sinusitis was caused by the inhalation of the spray, deferred that issue to an ENT doctor. *Id.* at 183. Dr. Levin further opined Petitioner's sleep disturbances were not related to the basal ganglionic hemorrhage as basal ganglionic hemorrhages do not cause sleep disturbances. *Id.* at 183.

Dr. Levin testified Petitioner does not have any permanent problems as a result of the work accident and was at maximum medical improvement form a neurologic standpoint. (RX4, p.183-184). Petitioner did not have any permanent restrictions and could work full duty. *Id*. at 184.

On Cross-Examination, Dr. Levin conceded that exposure from capsicum spray, more likely than not, can cause the basal ganglion hemorrhage that Petitioner sustained in January of 2011. (RX4, p.189). Dr. Levin denied basal ganglion hemorrhages can cause long-term personality changes. Id. at 190. Dr. Levin opined a basal ganglionic hemorrhage could cause slurred speech due to weakness in the mouth, as well as clumsiness due to weakness of the hand. *Id.* at 196.

Dr. Levin admitted she did not compare the January 2011 CT Scan films with the February 2011 CT Scan films. (Rx4, p.197). Dr. Levin denied comparing the films would be helpful in generating a causation opinion. *Id.* Dr. Levin further noted she disagreed with Dr. Hartman's opinion Petitioner could not handle a weapon or return to her job. *Id*. at 202.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her testimony to be partially persuasive. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and finds some major inconsistencies within the record. Petitioner testified she did not have diarrhea or flu like symptoms, when she specifically told St. Mary's that she had diarrhea since early morning and her son was sick with the flu over the weekend. (PX7, p.198, 208). Petitioner also testified she immediately told her healthcare providers of her leg pain/hip pain. The Arbitrator finds that not only the initial medical records are void of any mention of the same but also the treating records for months after her fall. The Arbitrator finds Dr. Kelly to note an array of medical issues out of his specialty but did not document any hip pain until June 2012. The Arbitrator also notes that Petitioner's testimony was exaggerated. The Arbitrator's findings below reflect these inconsistencies.

With regard to (F), whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following:

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

In this case, the Arbitrator finds Petitioner's current condition of ill-being is, in part, causally related to the injury.

Petitioner sustained a left basal ganglia hemorrhage on January 18, 2011, and Petitioner's direct exposure to a chemical agent during training was a contributing cause of that condition. The Arbitrator finds Petitioner's condition had not stabilized sufficiently as of February 1, 2011 and was directed for additional care. The Arbitrator finds the syncope episode on February 1, 2011 in her home was related to the original work injury.

In conjunction with the left basal ganglia hemorrhage, Petitioner sustained vascular headaches, periodic limb movements during sleep, visual changes, personality changes, cognitive issues all of which are related to the original injury. MRIs and CT scans of the brain taken during Petitioner hospitalization from 1/19/11 through 1/21/11 confirm confirmed the left basal ganglia hemorrhage. All of Petitioner's treating physicians relate the intracranial brain bleed to the chemical exposure. Moreover, Petitioner treating neurologist, Dr. Wayne Kelly as well as Respondent's Section 12 examiners, Dr. Alan Shephard and Dr. Karen Levine opined that the exposure capsicum exposure during parole agent training was a cause of the basal ganglia hemorrhage.

An additional issue is whether the syncopal episode of February 1, 2011 was causally related to the January 18, 2011 chemical exposure. The Arbitrator finds the February 1, 2011 syncopal episode causally related to the January 18, 2011 chemical exposure. Petitioner was examined by several neurologists in this case. The initial physician, Dr. Harvey, opined that based upon Petitioner's history there was an occupational component to the hemorrhage based upon toxic exposure. (PX6, p.95-96, PX9, p.8). Dr. Boyer also noted Petitioner's diagnosis of intracranial hemorrhage and noted she was not a surgical candidate. (PX8, p.9-11). Dr. Kelly took over the care and diagnosed her with the same. On October 17, 2011 Respondent attended a Section 12 examination with Dr. Alan Shepard. Dr. Shepard diagnosed Petitioner with post traumatic syndrome likely related to being sprayed with Mace. He opined he felt the intracranial hemorrhage may be directly related the mace exposure during parole agent training.

Based on the same, the Arbitrator finds these opinions more persuasive than the testimony of Dr. Levin regarding the February 1, 2011 episode. While Petitioner may have had an episode of diarrhea, the Arbitrator notes she was not fully recovered from the January 18, 2011 chemical exposure. In fact, Petitioner was to see a neurologist prior to her syncopal episode. As such the Arbitrator finds that the February 1, 2011 episode related to the January 18, 2011 chemical exposure.

Following the February 1, 2011 episode, Petitioner complained of increased headaches, limb movements, visual changes, cognitive changes, and personality changes. The Arbitrator notes Petitioner's complaints of headaches, memory difficulties, difficulties with numbers, balance issues are documented and consistent throughout the medical records. Moreover, the neuropsychological evaluation performed by Dr. Gelbort confirmed Petitioner's reasoning skills and visual spatial reasoning were borderline deficient, learning and memory were borderline deficient, mild to moderate impairment of fine motor speed and dexterity with the right hand, mediated processing speeds were variable and slowed with mild impairment displayed, non-verbal problem-solving reasoning skills were mild to moderately impaired.

In regards to Petitioner's vision change, Dr. Goodwin felt the cataracts were responsible for the halos she saw at night. According to Dr. Goodwin, the other visual phenomena seemed most likely related to higher cortical cerebral processing problems from the stroke and should eventually improve spontaneously. (PX11, p. 17-20).

The Arbitrator finds that Petitioner did eventually plateau from treatment. As of August 28, 2013 Petitioner was seen by another neurologist, Dr. Gulati. This physician opined Petitioner had a good recovery from the left deep basal ganglia hemorrhage. He found Petitioner's CT angiogram of the head and neck was normal. There were no clinical evidence of language disturbance and Dr. Gulati opined that he was not impressed by cognitive impairment, memory impairment, or speech impairment, despite Petitioner's description of multiple instances wherein she forgot things or misplaced items. He also noted Petitioner had visual complaints which would be difficult to explain as related to her prior hemorrhage. Petitioner, however, continued to have headaches. (PX15,

p.16-17). As such as of this date, the only active symptom was Petitioner's migraines. Petitioner continued to treat with Dr. Gulati who recommended a repeat MRI of the brain and neuropsychological testing. The October 3, 2013 Brain MRI was normal. In addition, the additional testing with Dr. Gelbort did not reveal any new findings.

After this date, Petitioner did not actively treat for her migraines which became chronic. Petitioner saw Dr. Kelly on January 30, 2014 and March 21, 2014 with no active medical care. Petitioner did not treat for her migraines after this date. Based on the same the Arbitrator finds Petitioner had reached Maximum Medical Improvement as of March 21, 2014.

Based on the same, the Arbitrator finds Petitioner's condition of ill-being in regards to the left basal ganglia hemorrhage causally related to the January 18, 2011 injury reaching MMI as of March 21, 2014.

The Arbitrator further finds that any condition of ill-being regarding Petitioner's right hip, back or sinusitis is not causally related to the injury.

First, the Arbitrator notes Dr. Kelly is not qualified to provide a causation opinion regarding the chronic sinusitis. Although Petitioner underwent bilateral inferior turbinoplasties for her sinuses, Dr. Hobson, the ENT surgeon, never provided an opinion regarding causation. In addition, prior to surgery, Dr. Patel noted Petitioner had allergic rhinitis that was symptomatic most of the year and triggered by grass, pollen, mold spores, and ragweed. (PX7, p. 131-132). Based on the same, the Arbitrator does not relate Petitioner's chronic sinusitis to her original January 18, 2011 work accident.

The Arbitrator also finds no causal connection between the work-related incident of January 18, 2011 and any condition of ill-being regarding Petitioner's right hip and low back. Drs. Kelly and Puri's causation opinions are not persuasive.

Petitioner's pain complaints for her back began on April 6, 2012 and for her hip on June 1, 2012, over a year after either hemorrhage occurred. The Arbitrator notes Dr. Kelly is not qualified to provide an orthopedic opinion regarding her back or hip pain. The only provider that is qualified to provide an opinion is Dr. Puri. Dr. Puri testified that assuming Petitioner had no symptomology prior to February 1, 2011 fall and her symptoms started after the fall, then he is of the opinion that the fall likely contributed to her need for hip surgery. *Id*. at 14. The basis was she was symptom free prior to the fall then she complained immediately temporally related to the fall, that was the beginning of her onset of her symptomatology. *Id*. at 14. He did further note, however, that he did not have an opinion regarding causation of her osteoarthritis. *Id.* at 18. Dr. Puri lastly opined that if Petitioner went 18 months without symptoms or without relaying symptoms to a healthcare professional after the point of the fall, then he would assume the fall had nothing to do with her hip pain. *Id*. at 20.

That finding of causation is not supported in the records. The medical records do not support the testimony that Petitioner initially complained of hip pain. The records, however, note Petitioner did not complain hip pain until June 2012, roughly 16 months after the injury. Dr. Puri's own medical treatment notes indicate that he is not able to ascertain the etiology of Petitioner's hip complaints, and he warned her that her hip issues could cause back problems. Additionally, Dr. Puri noted Petitioner's right hip and leg issues would be considered comorbid conditions unrelated to either stroke incident if she was not relaying pain symptoms to her medical providers until many months later. The medical records do not show consistent right hip complaints until June 2012, a substantial amount of time after either incident.

In addition, although Petitioner testified that she hit her hip on February 1, 2011, there was no mention of a right hip injury in the ER records or any subsequent treatment records. "It is presumed that a declaration to a treating physician as to one's physical condition and the cause thereof is true because the patient will not falsify such

statements to the one from whom he expects to get medical aid." Shell Oil Co. v. Industrial Commission, 2 Ill. 2d 590, 602 (1954). No history of right hip complaints in the initial ER records or subsequent medical records equals no causal connection.

Finally, the Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. Walker v. Chicago Housing Authority, 2015 IL App (1st) 133788, ¶ 47. Petitioner's testimony and exhibits do not persuade the Arbitrator that her current condition of ill-being regarding her hip or back is causally related to the injury.

With regard to issue (J), whether the medical services provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for reasonable and necessary medical services, the Arbitrator finds as follows:

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. In reviewing the medical services provided to Petitioner, the Arbitrator finds Respondent has not paid all appropriate charges for all reasonable and necessary medical services. The Arbitrator finds the medical services provided to Petitioner were reasonable and necessary.

Section 8(a) of the Act states a Respondent is responsible … "for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See Gallentine v. Industrial Comm'n, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

Given the Arbitrator's finding of causation between Petitioner's January 18, 2011 work accident and her condition of ill-being regarding her left deep basal ganglia hemorrhage, Respondent is liable for reasonable and necessary medical treatment of the causally related conditions through March 21, 2014.

The Arbitrator orders Respondent to pay Petitioner all other reasonable and necessary medical expenses incurred in connection with the care and treatment of her causally related conditions pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid.

The remainder of the claimed bills for Petitioner's back/spine, right hip and chronic sinusitis are not causally related to the injury and are denied.

With respect to Issue (K), what temporary benefits are in dispute, the Arbitrator finds as follows:

In order to prove entitlement to TTD benefits, a claimant must establish not only that he did not work, but that he was unable to work. Sharwarko v. Illinois Workers' Compensation Comm'n, 2015 IL App (1st) 131733WC. An employee is temporarily totally disabled from the time that an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. Archer Daniels Midland Co. v. Industrial Comm'n, 138 Ill. 2d 107, 118 (1990). Once an injured employee's physical condition stabilizes or he has reached MMI, he is no longer eligible for temporary total disability benefits. Archer Daniels Midland Co., 138 Ill. 2d at 118. A claimant reaches MMI when he is as far recovered or restored as the permanent character of his injury will permit. Nascote Industries v. Industrial Comm'n, 353 Ill. App. 3d 1067, 1072 (2004). Factors to be considered in determining whether a claimant has reached MMI include whether he has been released to return to work, medical evidence, testimony concerning the claimant's injury, the extent of his injury, and whether the

injury has stabilized. Nascote Industries, 353 Ill. App. 3d at 1072. The period of time during which a claimant is temporarily and totally disabled is a question of fact to be determined by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. Archer Daniels Midland, 138 Ill. 2d at 119-20.

Petitioner is claiming TTD benefits beginning on January 19, 2011 through July 26, 2022 as provided in Section 8(b) of the Act.

The Arbitrator finds Petitioner was temporarily totally disabled from January 19, 2011 through March 21, 2014; the last date Petitioner sought medical treatment for this injury. During this period of time, Petitioner remained under medical care and either had restrictions which Respondent could not accommodate or was completely removed from work. Having found in Petitioner's favor on accident and causation, the Arbitrator orders Respondent to pay Petitioner the claimed benefits. The Arbitrator note subsequent to this date Petitioner was at Maximum Medical Improvement.

Based on the same, TTD benefits are awarded at a rate of $690.50 per week for 165 3/7, commencing January 19, 2011 through March 21, 2014 provided in §8(b) of the Act. Respondent shall receive credit for amounts paid.

With respect to Issue (L), what is the nature and extent of the injury and with respect to issue (O), whether Petitioner is entitled to Permanent Total Disability Benefits, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner reached MMI as of March 21, 2014. The Arbitrator notes Dr. Kelly opined Petitioner was completely disabled at this time due to the above diagnosis, but most prominently with regards to the right hip issue. As discussed, the Arbitrator finds Petitioner's right hip issue is not related. In addition, Dr. Puri testified that Petitioner would likely have no restrictions in regards to her hip issue. Dr. Goodwin also noted Petitioner's vision issues would resolve and her halos were the result of her cataracts.

In regards to work restrictions, Respondent's Section 12 Examiners, Dr. Shepard, and Dr. Hartman both opined that Petitioner is unable to return to her job as a correction officer or parole agent. Dr. Shephard opined Petitioner was not capable of returning to a stressful job that would be involved in parole agent training. Dr. Shepard further opined it would be difficult for Petitioner to return to a job as a correctional officer. Dr. Hartman admitted that while Petitioner could return to some type of employment, anyone who has had a basal ganglia stroke, should not be performing a type of weapon-related occupation.

As such, while the Arbitrator finds Petitioner can return to work, she cannot return to her previous full-time job. Petitioner testified that she continues to have problems with memory and "twists" numbers. Petitioner also testified she is quiet, never smiles, and never laughs. Petitioner occasionally stumbles, bumps into walls and drops things.

Based on the same, while the Arbitrator disagrees Petitioner is permanently and totally disabled, the Arbitrator finds Petitioner has suffered a loss of profession.

Based on Petitioner's testimony and medical records, the Arbitrator finds Petitioner reached MMI as of March 21, 2014. Based on the same, Petitioner has sustained a 30% loss of use of the person. Since the injury happened before September 1, 2011, no analysis under Section 8(1)(b) is required.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC020211
Case Name	Donald Camerer v. DOT Transportation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0165
Number of Pages of Decision	14
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Steven Berg
Respondent Attorney	Daniel Simmons

DATE FILED: 4/13/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Donald Camerer,

Petitioner,

vs. No. 21 WC 20211

DOT Transportation,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the parties and proper notice given, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary disability and permanent disability, and being advised of the facts and law, corrects the Decision of the Arbitrator as stated herein and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Per the application for adjustment of claim and consistently with the record, the Commission corrects the caption to properly identify Respondent as "DOT Transportation." Respondent is *not* an agency of the State of Illinois.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 29, 2022 is hereby corrected, affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $47,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 13, 2023

SJM/sk

o-03/22/2023
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/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah L. Simpson*
Deborah L. Simpson

/s/ *Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC020211
Case Name	Donald Camerer v. IDOT Transportation
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Steven Berg
Respondent Attorney	Daniel Simmons

DATE FILED: 7/29/2022

THE INTEREST RATE FOR THE WEEK OF JULY 26, 2022 2.92%

/s/Maureen Pulia, Arbitrator
Signature

CERTIFIED as a true and correctcopy pursuant to 820 ILCS 305/14

July 29, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **ADAMS**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DONALD CAMERER,
Employee/Petitioner

v.

IDOT TRANSPORTATION,
Employer/Respondent

Case # **21** WC **20211**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Quincy**, on **7/6/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **3/22/21**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**57,878.08**; the average weekly wage was $**1,113.04**.

On the date of accident, Petitioner was **60** years of age, ***married*** with **no** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**00.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**19,968.00** for other benefits, for a total credit of $**19,968.00**.

Respondent is entitled to a credit of $**38,483.68** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $742.03/week for 30-6/7 weeks, commencing 5/12/21 through 12/13/21, as provided in Section 8(b) of the Act. Petitioner did receive $19,968.00 in short term benefits. Given that 30-6/7 weeks at $742.03 is $22,896.92, the respondent shall pay petitioner an underpayment of temporary total disability benefits in the amount of $2,928.92.

Respondent shall pay reasonable and necessary medical services for petitioner's right shoulder from 3/22/21 through 12/13/21, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit of $38,483.68 for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall reimburse petitioner for all unpaid out of pocket expenses for reasonable and necessary medical treatment petitioner received for his right shoulder from 3/22/21 through 12/13/21 that are listed in PX1.

Respondent shall pay Petitioner permanent partial disability benefits of $667.82/week for 50 weeks, because the injuries sustained caused the 10% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

JULY 29, 2022

Signature of Arbitrator

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 60 year old transfer driver, alleges that he sustained an accidental injury to his right shoulder that arose out of and in the course of his employment by respondent on 3/22/21. Petitioner began working for respondent on 11/9/98. Petitioner's duties included transferring trailers from one location to another, 1000-2000 miles one way.

Prior to the alleged injury on 3/22/21 petitioner had surgery to his right shoulder in the late 1990's or early 2000's. He denied any problems with his right shoulder after he recovered from the surgery. He testified that he continued working as a delivery driver helping customers separate pallets at the customer's dock, and reloading the pallets into the truck. Petitioner testified that he used his right shoulder for this and had no problems. He denied any right shoulder problems leading up to the injury on 3/22/21.

On 3/22/21 petitioner was not driving his regular truck, as he went to drop off a trailer. Once at the location petitioner attempted to release the 5th wheel by pulling the pin. To do this, he reached under the tire on the truck with his right arm to pull the handle that would release the pin, which would release the trailer. Petitioner testified that on his truck he has a J-hook to assist him with this task. Since he did not have a J-hook to assist him, when he reached his right arm under the tire and attempted to pull the 5th wheel pin it did not release and he felt burning in his right shoulder.

Petitioner reported the incident to his manager, Jake Allen, the next day. He completed the paperwork at a later date.

On 3/24/21 petitioner presented to Katie Dively at DOT physical therapy, He reported that he pulled the 5th wheel with his right arm which caused some irritation in the area, but that he was not concerned about it.

On 3/30/21 petitioner again saw Katie Dively at DOT physical therapy. They spoke about his elbow and he reported that the prior week he was not in his truck and therefore did not have his 5th wheel J-hook and had to reach with his hand under the trailer to pull the 5th wheel pin. He reported that when he did this he had some discomfort in his right elbow, but not enough to reinjure the area. He also reported some shoulder and hip soreness, which he stated comes up every year due to getting out in his yard and doing more work.

On 4/16/21 petitioner presented to Dr. Ma at Springfield Clinic, for follow up for his right elbow and shoulder pain. He reported doing well with his right shoulder until the fall. He complained of a popping sensation in the right shoulder, and locking in the right shoulder with certain motions. He

reported the pain was constant and stabbing in nature. Following an examination, Dr. Ma was of the opinion that petitioner did not need anything surgical at that time. He told him to continue with an at home exercise program. Dr. Ma performed a steroid injection into petitioner's right shoulder. Dr. Ma released petitioner to work as tolerated. Dr. Ma issued an order for physical therapy for 6 weeks of gentle range of motion and stretching 1-2 times a week. Petitioner testified that the injury history Dr. Ma transcribed was inaccurate, and Dr. Ma corrected it in his 5/28/21 injury history.

On 4/22/21 petitioner completed an 'Employee/Witness Summary of Incident' report. He gave a history of injuring his right shoulder while pulling the pin from the 5th wheel to lower the trailer. He reported that the 5th wheel pin was stuck and he gave it a yank that resulted in pain in his right shoulder. He noted that if he had his regular truck it would not have happened because his truck has a pin puller.

On 4/29/21 petitioner presented to Nurse Practitioner Jessica Boozer, at DOT Family Health Center. He complained of right anterior shoulder pain. He gave a history that approximately three weeks prior he reached under the 5th wheel to pull a pin and when he brought his shoulder back he felt a pop in his posterior shoulder that has continued since then. Following an examination and x-rays, petitioner was told to continue following up with Dr. Ma. Petitioner declined physical therapy. Boozer was of the opinion that petitioner could continue to work with caution to the right shoulder, and in a no touch capacity.

On 5/28/21 petitioner returned to Dr. Ma. Dr. Ma noted that the onset of pain in his right shoulder was not until 3/22/21 when he pulled a release pin off his trailer at work. Petitioner reported that the injection did not help. He reported that he was working in therapy and his pain and range of motion in his right shoulder was improving. He reported more pain in the right shoulder than the right elbow. Dr. Ma instructed petitioner to continue in therapy. An MRI of the right shoulder was ordered. Dr. Ma authorized petitioner off work.

On 6/16/21 petitioner returned to Dr. Ma. He reported that his right shoulder remained weak and painful, and he had difficulty lifting his right arm. Dr. Ma examined petitioner and reviewed the MRI that showed a full thickness tear of the anterior infraspinatus and posterior supraspinatus tendon, and AC joint arthritis was evident. Dr. Ma recommended surgical intervention. He continued petitioner off work.

On 7/15/21 petitioner underwent a right shoulder arthroscopy; arthroscopy repair of the supraspinatus and infraspinatus tendons; subacromial decompression; and excision of the distal clavicle. His postoperative diagnosis was right shoulder subacromial bursitis, right shoulder AC arthritis, and right shoulder rotator cuff full thickness tear. The surgery was performed by Dr. Ma. Petitioner followed up

with Dr. Ma on 7/28/21, 8/11/21, 9/15/21, 10/27/21, and 12/8/21. On 9/15/21 Dr. Ma prescribed a course of physical therapy which petitioner underwent at Advanced Physical Therapy. Additional therapy was ordered on 11/2/21. Petitioner continued in physical therapy through 11/26/21. On 11/26/21 petitioner was tolerating exercises without complaining of pain; demonstrated good range of motion; and, was able to perform resistive exercises throughout the range. He also demonstrated the skills needed to return to work safely.

On 12/8/21 petitioner last followed up with Dr. Ma. At that time petitioner reported that his range of motion was improving. He reported minimal pain. An examination revealed full range of motion; his strength in his right shoulder was improving; his Hawkins and Neers signs were negative; and, his sensation was normal upon light touch. Dr. Ma released petitioner to work without restrictions.

Petitioner was authorized off work by Dr. Ma from 5/12/21 through 12/13/21. Petitioner did not receive temporary total disability benefits, but did receive short term disability benefits.

Petitioner underwent physical therapy at Advanced Physical Therapy and on 12/13/21 he noted to DOT physical therapy that he had been pain free and had no issues during therapy at Advanced. He demonstrated ROM in the right shoulder which was within normal limits and without pain. He also got in and out of the truck a few times and hooked the truck up to a trailer, cranked the dolly and pulled the 5th wheel with his J-hook. He told them he felt comfortable coming back to work. Katie Dively was of the opinion that petitioner was functionally able to return to work.

After returning to work petitioner noticed that his right shoulder was weaker and tired easier. He testified that he did not have the strength he had before the incident.

Prior to the incident on 3/22/21 petitioner sustained any injury on 1/18/21 when he lost his balance and fell forward and caught himself with his right arm, while on his knees at a pond near his house looking for a hole. He presented to Blessing Physician Services on 1/19/21 with acute right elbow pain. He reported that he fell the day before and caught himself on his right elbow and heard a pop. There was no reports of any shoulder right shoulder pain or problems. An x-ray showed lucency at the base of the olecranon enthesophyte was concerning for a nondisplaced fracture of the right elbow.

On 1/20/21 petitioner was seen at Springfield Clinic by Angela Royer, PA, for his right elbow pain. Petitioner made no mention of any right shoulder complaints. His assessment was only with respect to the right elbow. Petitioner saw Dr. Laughlin at Springfield Clinic on 2/18/21 and petitioner only had complaints of right elbow pain, without any mention of any problems with his right shoulder. On 3/2/21 petitioner was seen by Royer and told her that he was declining an MRI to further evaluate the

triceps tendon injury associated with his right elbow fracture because the insurance would not pay for it. Petitioner made no mention of any right shoulder problems.

On 2/18/21 he was seen by Katie Dively at DOT physical therapy and gave a consistent history of the injury in January of 2021 and the problems with his right elbow. There was no mention of the right shoulder. He followed up on 3/9/21 and again there was no mention of any right shoulder problems.

On 3/5/21 petitioner presented to Dr. Ma at Springfield Clinic for his right elbow. Dr. Ma assessed some partial injury of the triceps tendon, which was recovering well. Petitioner made no mention of any right shoulder problems.

Petitioner offered into evidence as Petitioner's Exhibit #1, the unpaid out of pocket expenses he incurred as a result of his right shoulder, for which he has not been reimbursed by respondent.

Petitioner testified that he is left handed, but does do some activities with his right hand and arm. He stated that he is pretty much ambidextrous except for writing.

Petitioner is not taking any prescription pain medications, due to side effects. He only takes Tylenol in the evening. Petitioner also ices his right shoulder at home and does home exercises.

Petitioner testified that at no time between 1/18/21 and 3/21/21 did he injure his right shoulder.

B. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

Petitioner alleges he sustained an accidental injury to his right shoulder that arose out of and in the course of his employment by respondent on 3/22/21. Petitioner testified that he injured his right shoulder when he had to reach in over the tires and pull the pin on the 5th wheel with his right arm to release the 5th wheel. When he attempted to pull the pin he felt a burning in his right shoulder. Respondent disputes this claim.

Petitioner presented unrebutted testimony that he reported the incident to his manager, Jake Allen, the next day. Two days later he presented to respondent's physical therapy and provided a consistent history of the accident on 3/22/21. He also reiterated the injury to Dively in physical therapy on 3/30/21. The notes of that visit indicate that petitioner reported soreness in his shoulder and hip, which come up every year due to getting out in his yard and doing more work.

The history in Dr. Ma's report dated 4/16/21 indicates that petitioner injured his right shoulder when he fell on 1/18/21. However, Dr. Ma corrected this history on 5/28/21 to a history that is consistent

with the injury petitioner sustained on 3/22/21 and reported to respondent on 3/23/21, and treated for with physical therapy just two days later.

The arbitrator finds it significant that from the date of petitioner's injury to his right elbow on 1/18/22, there is no history of any injury or problems with his right shoulder in the 6 medical records from the Springfield Clinic, DOT physical therapy, or Dr. Ma from 1/18/22 through 3/21/21.

The arbitrator finds it significant that the history petitioner provided most contemporaneous to the incident was the history of injuring his right shoulder when attempting to remove the 5th wheel pin. Petitioner repeated this same accident history that was documented in the medical records on 3/24/21, 3/30/21, 4/22/21, 4/29/21, and 5/28/21 when Dr. Ma corrected his record. If Dr. Ma did not believe petitioner that the history given on 4/16/21 was incorrect there would be no reason for him to correct the record. The arbitrator finds this discrepancy in the accident history is outweighed by the consistent accident history provided from the date of accident through 5/28/21, except for Dr. Ma's record on 4/16/21 and a note on 3/30/21 where petitioner downplays his right shoulder problem.

Additionally, any attempt to try and link petitioner's right shoulder injury to an unrelated injury on 1/18/21 is without merit given that at no time from 1/18/21 through 3/21/21 did petitioner ever make mention of any right shoulder problems at the 6 medical visits he had during that period. The arbitrator makes a specific finding that the petitioner's testimony was very credible and supported by the credible evidence.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner has proven by a preponderance of the credible evidence that he sustained an injury to his right shoulder on 3/22/21 that arose out of and in the course of his employment while trying to remove the pin from the 5th wheel with his right arm.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

Having found the petitioner sustained an accidental injury to his right shoulder that arose out of and in the course of his employment by respondent on 3/22/21, the arbitrator also finds petitioner's current condition of ill-being as it relates to his right shoulder is causally related to the injury he sustained on 3/22/21.

The arbitrator finds it significant that following his right shoulder injury in the late 1990's and his recovery from surgery related to that injury, there is no credible evidence to support a finding that petitioner had any further treatment to his right shoulder until after his work injury on 3/22/21, including the period from 1/18/21 through 3/21/22, when petitioner was treating for his right elbow following a fall

on 1/18/21. Additionally, the arbitrator finds it significant that respondent failed to rely on any credible evidence to support a finding that petitioner's current condition of ill-being as it relates to his right shoulder is not causally related to the injury on 3/22/21, other than the history in the report of Dr. Ma on 4/16/21, which Dr. Ma corrected on 5/28/21. Although there are some slight inconsistencies in some of the credible medical records, the arbitrator finds the fact that petitioner made no mention of any right shoulder injury following the injury on 1/18/21, and did not receive any treatment for his right shoulder from the late 1990's through 3/21/21, more credible than the slight inconsistencies in the medical records.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner's current condition of ill-being as it relates to his right shoulder is causally related to the accident he sustained on 3/22/21.

J. WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?

Having found the petitioner sustained an accidental injury to his right shoulder that arose out of and in the course of his employment by respondent on 3/22/21, and that petitioner's current condition of ill-being as it relates to his right shoulder is causally related to the accident he sustained on 3/22/21, the arbitrator finds all medical services petitioner received for his right shoulder from 3/22/21 through 12/13/21 were reasonable and necessary to cure or relieve petitioner from the effects of the injury he sustained on 3/22/21.

The petitioner has also offered into evidence as PX1 the unpaid out of pocket expenses he incurred from 3/22/21 through 12/13/21 that are related to the treatment for his right shoulder, for which he has not yet been reimbursed.

Based on the above, as well as the credible evidence, the arbitrator finds the medical services that were provided to petitioner from 3/22/21 through 12/13/21 for his right shoulder were reasonable and necessary to cure or relieve petitioner from the effects of the injury he sustained on 3/22/21.

Respondent shall pay all reasonable and necessary medical services to petitioner's right shoulder from 3/22/21 through 12/13/21, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall also reimburse petitioner for all unpaid out of pocket expenses for reasonable and necessary medical treatment petitioner received for his right shoulder from 3/22/21 through 12/13/21 that are included on PX1.

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Having found the petitioner sustained an accidental injury to his right shoulder that arose out of and in the course of his employment by respondent on 3/22/21, and petitioner's current condition of ill-being as it relates to his right shoulder is causally related to the accident he sustained on 3/22/21, the arbitrator finds the petitioner was authorized off work by Dr. Ma from 5/12/21 through 12/13/21 and was temporarily totally disabled during this period.

The parties stipulate that although petitioner was paid short term disability benefit for the period 5/12/21 through 12/13/21 in the amount of $19,968.00, the petitioner is entitled to an underpayment of temporary total disability benefits in the amount of $2,928.92 ((30-6/7 weeks of TTD @ $742.03)-$19,968)), which is the difference between the temporary total disability benefits he is entitled to and the short term disability benefits he received.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

The nature and extent of petitioner's injury, consistent with 820 ILCS 305/8.1b, permanent partial disability, shall be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1b of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. No single enumerated factor shall be the sole determinant of disability. Id.

Neither party submitted an AMA rating pursuant to Section 8.1b of the Act into evidence. For this reason, the arbitrator gives no weight to this factor.

With respect to factor (ii), the occupation of the injured employee, the petitioner is a transfer driver. The arbitrator notes that the petitioner was able to return to full duty work on 12/14/21 and continues to work in that capacity today. After returning to work petitioner noticed that his right shoulder is weaker and more tired. He also reported decreased strength. For these reasons, the arbitrator gives some weight to this factor.

With respect to factor (iii), the age of the employee. Petitioner was 60 years old on the date of injury, and 61 years old on the date of trial. The petitioner has a work life expectancy of less than 5-10 years. For these reasons, the Arbitrator gives lesser weight to this factor.

With respect to factor (iv), the future earnings of the petitioner, the petitioner was released from care on 12/13/21 to full duty without restrictions. No evidence was offered to support a finding that petitioner has sustained any wage loss as a result of this accident, or that his future earnings have been negatively impacted as a result of this accident. For these reasons, the arbitrator gives no weight to this factor.

With respect to factor (v), evidence of disability corroborated by the treating medical records, the Arbitrator finds that as a result of the accident on 3/22/21 petitioner sustained a full thickness tear of the anterior infraspinatus and posterior supraspinatus tendon. AC joint arthritis was also noted. For this, he underwent a right shoulder right arthroscopy; arthroscopy repair of the supraspinatus and infraspinatus tendons; subacromial decompression; and excision of the distal clavicle. His postoperative diagnosis was right shoulder subacromial bursitis, right shoulder AC arthritis, and right shoulder rotator cuff full thickness tear.

Petitioner followed-up post-operatively with Dr. Ma, and underwent a course of physical therapy. When petitioner last followed up with Dr. Ma on 12/8/31 he reported that his range of motion was improving and he had minimal pain. Dr. Ma noted that his Hawkins and Neers signs were negative and his sensation was normal upon normal touch. He released petitioner to work without restrictions as of 12/14/21.

On 12/13/21 petitioner noted to DOT therapy that he had been pain free and no issues during therapy at Advanced. He demonstrated ROM in the right shoulder within normal limits and without pain. He also got in and out of the truck a few times and hooked the truck up to the trailer, cranked the dolly and pulled the 5th wheel pin with his J-hook. He reported that he felt comfortable coming back to work. He was found functionally able to return to work.

However, since returning to work petitioner has noticed that his right shoulder is weak and gets tired easier. He also stated that his strength is decreased. Petitioner is left handed and testified that he does some activities with his right hand and arm. He reported that he is pretty much ambidextrous, except for writing.

For these reasons, the Arbitrator gives greater weight to this factor.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner sustained a 10% loss of use to his person as a whole pursuant to Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC005967
Case Name	Eureka Ware v. Amazon
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0166
Number of Pages of Decision	17
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	David Jerome
Respondent Attorney	Juan Arias

DATE FILED: 4/13/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EUREKA WARE,

Petitioner,

vs. NO: 21 WC 005967

AMAZON,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, and prospective medical care, and being advised of the facts and law, affirms and adopts with correction the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission finds that the Arbitrator made a scrivener's error in the order. The Arbitrator's order in the final line of paragraph 2 references prescriptions for Tramadol and Motrin per Dr. Solmon. Dr. Solmon's clinical note from September 22, 2021, reflects prescriptions for Tramadol and Mobic having been given to Petitioner.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 12, 2022, is hereby affirmed and adopted with the foregoing correction. The order is hereby corrected to reflect that on September 22, 2021, Dr. Solmon prescribed to Petitioner Tramadol and Mobic.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the medical expenses outlined in Petitioner's exhibit 6, as provided in Section 8(a) and Section 8.2 of the Act, directly to the medical providers and pursuant to the medical fee schedule, with the exception of medical bills related to office visits with Dr. Brunkhorst dated 2/26/21 and 3/1/21 as no medical records were submitted into evidence supporting such charges. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties stipulate that no benefits were paid through Respondent's group plan for which Respondent would be entitled to an 8(j) credit.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is entitled to receive additional medical care recommended by Dr. Solmon. Therefore, Respondent shall authorize and pay for prospective medical treatment, including, but not limited to, physical therapy, ultrasound, a possible injection if Petition's symptoms fail to improve, and prescriptions for Tramadol and Mobic as set forth in Doctor Solmon's office note dated 9/22/21.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $400.00 (minimum rate)/week for a period of 2/10/21 through 1/31/22, representing 50 6/7th weeks, pursuant to Section 8(b) of the Act. Respondent shall receive credit for $6,285.71 in temporary total disability benefits paid.

IT IS FURTHER ORDERED BY THE COMMISSION that is no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or total disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $25,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 13, 2023

/s/ *Stephen J. Mathis*
Stephen J. Mathis

SJM/msb
o-03/22/2023
44

/s/ *Deborah L. Simpson*
Deborah L. Simpson

/s/ *Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC005967
Case Name	WARE, EUREKA v. AMAZON
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	David Jerome
Respondent Attorney	Juan Arias

DATE FILED: 4/12/2022

/s/Linda Cantrell, Arbitrator
Signature

INTEREST RATE WEEK OF APRIL 12, 2022 1.22%

STATE OF ILLINOIS)
)SS.
COUNTY OF **MADISON**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Eureka Ware
Employee/Petitioner

v.

Amazon
Employer/Respondent

Case No. **21-WC-005967**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Collinsville**, on **1/31/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On the date of accident, **12/26/20**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$3,882.52**; the average weekly wage was $**589.21**.

On the date of accident, Petitioner was **33** years of age, ***married*** with **4** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**6,285.71** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**6,285.71**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Respondent shall pay the medical expenses outlined in Petitioner's Exhibit 6, as provided in Section 8(a) and Section 8.2 of the Act, directly to the medical providers and pursuant to the medical fee schedule, with the exception of medical bills related to office visits with Dr. Brunkhorst dated 2/26/21 and 3/1/21 as no medical records were submitted into evidence supporting such charges. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties stipulate that no medical expenses were paid through Respondent's group plan for which Respondent would be entitled to an 8(j) credit.

The Arbitrator further finds Petitioner is entitled to receive the additional care recommended by Dr. Solman. Therefore, Respondent shall authorize and pay for prospective medical treatment, including, but not limited to, physical therapy, ultrasound, a possible injection if Petitioner's symptoms fail to improve with therapy and ultrasound, and prescriptions for Tramadol and Motrin as set forth in Dr. Solman's office note dated 9/22/21.

Respondent shall pay Petitioner temporary total disability benefits of **$400.00**(Min. rate)/week for the period **2/10/21 through 1/31/22**, representing **50-6/7th** weeks, pursuant to Section 8(b) of the Act. Respondent shall receive credit for **$6,285.71** in temporary total disability benefits paid.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Arbitrator Linda J. Cantrell

April 12, 2022

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

EUREKA WARE,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 21-WC-005967
	)	
AMAZON,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Collinsville on January 31, 2022, pursuant to Section 19(b) of the Act. The issues in dispute are accident, causal connection, medical bills, temporary total disability benefits, and prospective medical care. All other issues have been stipulated.

TESTIMONY

Petitioner was 33 years old, married, with four dependent children at the time of the accident. On 11/10/20, Petitioner was hired by Respondent as an Inbound Stower. She worked three consecutive 12-hour shifts per week. She received three work breaks during per day for a combined total of 45 minutes to an hour. The first 15-minute break was two hours into her shift, followed by a 30-minute lunch break, and the last 15-minute break was two hours before her shift ended. Petitioner is left hand dominant. She testified she sustained injuries to her non-dominant right elbow due to her work activities. Her job duties included scanning incoming products with a handheld scan gun (Scantron) and stowing the products in locations throughout the warehouse. She used the 5-pound Scantron with her left hand that was strapped to her wrist and her right hand to maneuver packages from her cart into cages. Petitioner stated she was hooked to a harness and held the scanner over the location of the cages while she twisted around and grabbed packages with her right hand to maneuver them into the cage.

Petitioner agreed with Respondent's job description of an Inbound Stower. (RX2). She stated she had to constantly reach, grasp, and lift up to 10 pounds. She stated she exclusively and constantly performed this activity with her right hand 76% to 100% of her workday. Petitioner agreed that she frequently (34% up to 66%) lifted, reached, and grasped items up to 20 pounds; occasionally (11% up to 33%) lifted, reached, and grasped items up to 30 pounds; and seldomly (1% up to 10%) lifted, reached, and grasped items up to 49 pounds. Petitioner used both arms when lifting items that weighed over 49 pounds. Petitioner testified that she performed these job duties 11 out of 12 hours per day as it was essentially the entirety of her job. Petitioner stated that when she was not moving product, she was driving to locations in the warehouse or moving empty cages on and off the cart with a lift. She used both hands to slide the crates into position.

Petitioner testified she began experiencing cramping and shooting pain in her right arm in early December 2020. She stated she informed her supervisors of her symptoms and they told her they would have someone come get her from the on-site medical facility, AmCare, due to COVID-19. Petitioner stated no one from AmCare contacted her and her job performance slowed because she could not use her arm properly. She completed an accident report when her symptoms progressed to shooting pains and her pain was constant.

Petitioner testified she was examined at AmCare on 1/9/21. She stated she told the facility that her symptoms were caused by her work duties. She completed an initial report for AmCare that stated her injuries occurred while stowing. She described extending and flexing that caused throbbing pain in her elbow. She reported that no specific item/incident caused her pain to start. Petitioner treated with Gateway Occupational Health on 2/10/21 where she was diagnosed with right lateral epicondylitis. She was provided with a tennis strap and prescribed Naproxen. Physical therapy was ordered three times per week for two weeks. Respondent did not approve the recommended therapy. Petitioner was placed on work restrictions which she stated she took to AmCare and they told her someone would contact her with instructions. Petitioner testified she was never offered a light duty position.

Petitioner was examined by Dr. Brunkhorst on 2/26/21 at the direction of her attorney who also diagnosed lateral epicondylitis. Dr. Brunkhorst kept Petitioner off work and she underwent therapy. Dr. Brunkhorst referred Petitioner to Dr. Solman for an orthopedic examination. On 6/23/21, Dr. Solman agreed with the diagnosis and Petitioner stated surgery was recommended which she desires to undergo. Dr. Solman has ordered Petitioner off work pending treatment. Petitioner testified she has pain in her right arm, with numbness and tingling in her right middle and ring fingers that started at the end of December 2020. Her pain fluctuates from 5-10/10 depending on activity.

Petitioner testified she had no injuries and never received treatment for her right arm prior to December 2020. Prior to her employment with Respondent, Petitioner worked for IFS as a warehouse clerk where she assigned jobs to forklift operators. She stated her job duties were not right arm intensive and she did not have any right arm/elbow symptoms while working for IFS. Petitioner testified she did not have any hobbies or perform any activities that were right elbow intensive prior to working for Respondent.

Petitioner testified she did not know a person by the name of Laura Brooks. Petitioner denied that she ever received a voice message from Ms. Brooks, AmCare, or Respondent offering light duty. Petitioner testified she received a termination letter on 3/29/21 for missing three shifts and "abandoning her job". Petitioner testified she was taken off work by Dr. Brunkhorst effective 2/26/21 and had not gone back to work for over a month at the time of termination, which was much more than three shifts as indicated in the termination letter. She stated that Dr. Brunkhorst's office emailed her off work slips directly to Respondent. Petitioner stated she would have accepted a light duty position had one been offered because she has four children to support.

On cross-examination, Petitioner testified she agreed with AmCare's office note that stated she started feeling pain in her right elbow the week of 12/26/20. She disagrees with AmCare's note that she did not indicate to the manager that her condition was work-related or that AmCare was not notified. She disagreed that she was being accommodated in the thermal screening department. She agreed that she lifted approximately 1,000 items per work shift which was Respondent's quota. She testified she was not able to make the quota when her right arm condition worsened. She stated she was written up for failing to meet the quota.

MEDICAL HISTORY

An Initial Report Form was completed by Petitioner on 1/9/21. (PX1) Petitioner reported that on 12/26/20 she developed throbbing pain in her right elbow when extending and flexing her arm while stowing. There was no specific item or incident that caused the pain to start.

On 1/10/21, Petitioner presented to Respondent's on-site medical facility AmCare. (PX1) She reported that the week of 12/26/20 she started to feel pain in her right elbow when extending and flexing her arm while stowing product. She reported there was not a specific incident that made the pain start. Petitioner stated she came to the AmCare office and no one was there and she was instructed to inform her manager. The note states Petitioner did not inform her manager that her symptoms were work-related. The note states that after reporting to her manager on 1/3/21, she was accommodated in thermal screening. She reported a pain level of 8/10 when extending and flexing. It was noted that Petitioner went to Human Resources on 1/9/21 and AmCare was notified at that time. Petitioner was treated at AmCare with ice, over-the-counter medications, and an elbow brace.

On 1/15/21, Petitioner followed up at AmCare and reported a pain level of 7/10. She stated she took over-the-counter medication and did not want treatment at that time. (PX1) From 1/30/21 through 2/5/21, Petitioner received treatment at AmCare in the form of heat, over-the-counter medication, and an ACE wrap. She continued to rate her right elbow pain at 7-8/10, especially with movement. On 2/6/21, Petitioner presented to AmCare and expressed dissatisfaction with her treatment and aggravation that HR and AmCare do not communicate. Petitioner stated she attempted to get paperwork from HR, and she never received it from AmCare. The nurse stated that "HR was not AmCare and HR had not relayed any information". Petitioner stated a desire to seek outside treatment.

On 2/10/21, Petitioner was examined by Dr. Christopher Knapp at Gateway Regional Occupational Health Services (GROHS) for right lateral elbow pain for approximately eight weeks. (PX2) Dr. Knapp noted that Petitioner's job involves handling big bulky items weighing up to 50 pounds, or a lot of small items that weighed less than 10 pounds. Her job involved scanning with her left hand and grabbing, handling, and lifting items with her right hand. She denied a history of prior right elbow injury. She denied numbness. Petitioner reported a slight burning sensation traveling down her right forearm towards the hand on the radial aspect and dorsally. The condition progressively worsened, and she reported her symptoms to her boss in December. Physical examination was positive for right lateral epicondylitis. She was given restrictions of no lifting over 10 pounds, no forceful gripping, and no operating machinery. Naproxen was prescribed and two weeks of physical therapy was ordered. Petitioner was fitted with a tennis elbow strap.

On 2/15/21, Respondent's Associate Onsite Placement department authored an email to Respondent's Human Resources Department ordering HR to contact Petitioner and notify her that the site can accommodate her work restrictions as a Thermal Screener beginning on 2/17/21. (RX4). A representative of Respondent, Laura Brooks, replied to the email within two hours and stated she left Petitioner a voicemail explaining the accommodation and asked her to come to AmCare on 2/17/21.

On 2/26/21, Petitioner sought medical care with Daniel Brunkhorst, D.C. Dr. Brunkhorst placed Petitioner off work through 3/12/21; however, no corresponding office note was admitted into evidence regarding this visit. (PX3, p.23)

On 3/5/21, Petitioner underwent a right elbow MRI ordered by Dr. Brunkhorst. (PX4). The MRI demonstrated tendinopathy at the extensor origin involving 20-30% of the tendon.

On 3/15/21, Dr. Brunkhorst noted Petitioner's symptoms began on 12/15/20 and her current symptoms included constant aching, soreness, numbness, sharp pain with movement, and throbbing with work activity. She had numbness and tingling in her hand. Dr. Brunkhorst opined that based on Petitioner's history of no prior injuries/symptoms, physical examination, and "other clinical findings including but not limited to advanced diagnostics, and past history", Petitioner's current health status is fully or in part related to the given history of trauma related to the accident. Dr. Brunkhorst diagnosed right lateral epicondylitis and impingement syndrome. (PX3, p.18-20) He placed Petitioner off work through 3/31/21 and recommended electric stimulation therapy and myofascial release 2-3 times per week for 6 weeks. Petitioner continued to treat with Dr. Brunkhorst through 4/19/21. On 4/6/21, Dr. Brunkhorst referred Petitioner to Dr. Solman and ordered her to remain off work until such consultation. (PX3, p.21)

On 6/23/21, Dr. Corey Solman noted Petitioner's condition began in December 2020 and she related her symptoms to her work duties. (PX5) Petitioner stated she quit working in February 2021 due to pain. He noted that prior to Petitioner working for Respondent she performed warehouse duties that were not as repetitive, and she had no issues with her right elbow. She stated she picked and stored boxes on racks for Amazon. Petitioner stated her symptoms have slightly improved since being off work, but she continues to have pain at night and shooting pain down her arm to her hand. Dr. Solman reviewed medical records from GROHS and Dr. Brunkhorst, including the MRI dated 3/5/21. He reviewed office notes of Dr. Brunkhorst dated 2/26/21 and 3/1/21, which the Arbitrator notes were not admitted into evidence or contained in Petitioner's Exhibit 3.

Dr. Solman performed a physical examination and assessed Petitioner with right elbow lateral epicondylitis with possible partial thickness tearing of the extensor origin. Dr. Solman opined that Petitioner's work activities of lifting for several hours per day was a substantial contributing factor in the development of her right elbow condition and need for treatment. He opined that such activity can certainly incite a lateral epicondylitis condition. Dr. Solman recommended physical therapy, Tramadol, Meloxicam, icing, a counterforce brace, and massage. He opined that injections and ultrasound were appropriate if her symptoms failed to improve.

On 9/22/21, Dr. Solman noted no improvement in Petitioner's symptoms, although the counterforce brace helped some. Physical examination was unchanged. Dr. Solman again recommended physical therapy and ultrasound to reduce inflammation. He ordered Petitioner to return in four weeks. (PX5)

On 11/17/21, Petitioner was examined by Dr. Shawn Kutnik pursuant to Section 12 of the Act. (RX1) Dr. Kutnik noted a history of persistent pain to the lateral aspect of Petitioner's right elbow. Petitioner reported she began working at Amazon in November 2020 and after a couple of weeks, she began getting a jamming feeling in her right arm where her arm felt stuck, which was aggravated by reaching and grasping. Petitioner reported she continued to work and after about four weeks, the pain began radiating proximally and distally down her forearm, prompting her to report the injury to her supervisor. Petitioner was initially treated at AmCare but her symptoms persisted and she ultimately sought outside treatment. Petitioner denied any numbness or tingling. She complained of continued pain to the lateral aspect of the right elbow radiating down her arm. She complained of increased pain with motion and a pain level of 8/10 at rest and 10/10 with light use. She denied any antecedent trauma to her arm before the onset of symptoms.

Petitioner described her job duties to Dr. Kutnik to include driving an order picker down aisles and taking items from behind her and placing them onto shelves. She stated she worked three 12-hour shifts per week. Petitioner reported the items she lifted varied in weight, and she handled approximately 1,000 items per shift. Petitioner stated she was terminated in March 2021 and she denied any employment since that time.

On physical examination, Dr. Kutnik noted tenderness over the lateral epicondyle, which was aggravated by resisted wrist extension, and mild pain with resisted long finger extension. She had full range of motion. Dr. Kutnik reviewed x-rays which showed concentric joint reduction with no acute bony abnormalities. He reviewed Petitioner's medical records dating back to 2007 and up through Dr. Solman's reported dated 6/23/21. Dr. Kutnik was not provided with the MRI report or films, but he noted based on Dr. Solman's records that the MRI revealed significant tendinopathy at the extensor origin involving about 20% to 30% of the tendon. Dr. Kutnik reviewed a Job Description from Respondent for a warehouse worker-inbound stow that required constant lifting/carrying up to 10 pounds, frequent lifting/carrying up to 20 pounds, and frequent pushing/pulling up to 49 pounds.

Dr. Kutnik stated that Petitioner's complaints were consistent with her history, the MRI findings, and diagnosis of right lateral epicondylitis. Dr. Kutnik noted the diagnosis was potentially a repetitive use injury; however, this was predicated on adequate exposure to allow for subacute accumulation of microscopic trauma over a period of time. Dr. Kutnik indicated this was a process which occurred over at least a number of months, if not years. He opined that Petitioner's development of symptoms two weeks into her employment was not an adequate exposure time to result in the development of a repetitive use injury. Dr. Kutnik concluded that Petitioner's right lateral epicondylitis condition was not causally related to her work activities.

Dr. Kutnik agreed that further care to treat Petitioner's lateral epicondylitis condition and work restrictions were reasonable; however, the need for treatment and restrictions was not a result of the alleged work injury. Dr. Kutnik opined that as Petitioner's condition was not work-related, she was at MMI, and she had 0% permanent partial impairment.

Respondent authored a letter to Petitioner advising her that her employment was involuntarily terminated effective 4/4/21. The letter is not dated. (PX7)

CONCLUSIONS OF LAW

ISSUE (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
ISSUE (F): Is Petitioner's current condition of ill-being causally related to the injury?

In a repetitive trauma case, issues of accident and causation are intertwined. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture*, 99 I.I.C. 0961. In order to better define "repetitive trauma" the Commission has stated: "The term "repetitive trauma" should not be measured by the frequency and duration of a single work activity, but by the totality of work activity that requires a specific movement that is associated with the development of a condition. Thus, the variance in job duties is not as important as the specific three, flexion and vibratory movements requisite in Petitioner's job." *Craig Briley v. Pinckneyville Corr. Ctr.,* 13 I.W.C.C. 0519 (2013).

"[I]n no way can quantitative proof be held as the *sine qua non* of repetitive trauma case." *Christopher Parker v. IDOT*, 15 I.W.C.C. 0302 (2015). The Appellate Court's decision in *Edward Hines Precision Components v. Indus. Comm'n* further highlights that there is no

standard threshold which a claimant must meet in order for his or her job to classify as sufficiently "repetitive" to establish causal connection. *Edward Hines*, 365 Ill.App.3d 186, 825 N.E.2d 773, 292 Ill.Dec. 185 (Ill.App.2d Dist. 2005). In fact, the Court expressly stated, "There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Id.* at N.E.2d 780. Similarly, the Commission recently noted in *Dorhesca Ranclell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), a repetitive trauma claim, a claimant must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain amount of time each day on a specific task before a finding of repetitive trauma can be made. *Randell* citing *All Steel, Inc. v. Indus. Comm'n*, 582 N.E.2d 240 (1991) and *Edward Hines, supra.*

The Appellate Court in *Darling v. Indus. Comm'n* even stipulated that quantitative evidence of the exact nature of repetitive work duties is not required to establish repetitive trauma injury in reversing a denial of benefits, stating that demanding such evidence was improper. *Darling v. Industrial Comm'n*, 530 N.E.2d 1135, 1142 (1st Dist. 1988). The Appellate Court found that requiring specific quantitative evidence of amount, time, duration, exposure or "dosage" (which in Petitioner's case would be force) would expand the requirements for proving causal connection by demanding more specific proof requirements, and the Appellate Court refused to do so. *Id.* at 1143. The Court further noted, "To demand proof of 'the effort required' or the 'exertion needed' . . . would be meaningless" in a case where such evidence is neither dispositive nor the basis of the claim of repetitive trauma." *Id.* at 1142. Additionally, the Court noted that such information "*may*" carry great weight "only where the work duty complained of is a common movement made by the general public. *Id. at 1142.* The evidence shows that Petitioner's job duties involve the performance of tasks distinctly related to her employment for Respondent, many of which are not activities that are even performed by the general public, let alone ones to which the public would be equally exposed.

In *City of Springfield v. Illinois Workers' Comp. Comm'n*, the Appellate Court issued a favorable decision in a repetitive case to a claimant in which the claimant's work was "varied" but also "repetitive" or "intensive" in that he used his hands, albeit for different task, for at least five hours out of an eight hour work day. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 901 N.E. 2d 1066, (Ill. App. 4th Dist., 2009). As was noted by the Commission and reiterated in the Appellate Court decision in the *City of Springfield,* "while [claimant's] duties may not have been 'repetitive' in a sense that the same thing was done over and over again as on an assembly line, the Commission finds that his duties required an intensive use of his hands and arms and his injuries were certainly cumulative." *Id.*

Under Illinois law an injury need not be the sole factor, or even the primary factor of an injury, as long as it is **a** causative factor. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 205 (Ill. 2003) [Emphasis added]. Even when other non-occupational factors contribute to the condition of ill-being, "[*A*] Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Indus. Comm'n*, 309 Ill.App.3d 1037 (3rd Dist. 2000). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 834 N.E.2d 583 (2d Dist. 2005). Employers are to take their employees as they find them. *A.C. & S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1 Dist. 1999), citing *General Electric Co. v. Industrial Comm'n*, 433 N.E.2d 671, 672 (1982). The Supreme Court in *Durand v. Indus. Comm'n* noted that the purpose of the Illinois Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work. *Durand v. Indus. Comm'n*, 862 N.E.2d 918, 925 (Ill. 2006).

The Commission has also recognized that a claimant's employment may not be the only factor in his or her development of a condition of ill-being. The Commission awarded benefits in a case where the claimant was involved in martial arts activity outside of his employment (*see Samuel Burns v. Pinckneyville Corr. Ctr.*, 14 0482 (2014)), and in another case where the claimant was involved in weight-lifting outside of his employment. *See* Kent Brookman v. State of Illinois/Menard Corr. Ctr., 15 I.W.C.C. 0707 (2015). In the repetitive trauma case of *Fierke*, the Appellate Court specifically held that non-employment related factors that contribute to a compensable injury do not break the causal connection between the employment and a claimant's condition of ill-being. *Id.* at N.E.2d at 849. The Court stated, "The fact that other incidents, whether work related or not, may have aggravated a claimant's condition is irrelevant" *Id.*

Petitioner testified that the Job Description of an Inbound Stower accurately described her job duties. She worked three consecutive 12-hour shifts per week, with two 15-minute breaks and a 30-minute lunch break. Petitioner testified that she held a 5-pound scan gun in her dominant left hand and maneuvered packages with her right hand 76-100% of her workday. Petitioner's job duties required her to constantly reach, grasp, and lift up to 10 pounds. Petitioner frequently (34% up to 66%) lifted, reached, and grasped items up to 20 pounds, occasionally (11% up to 33%) lifted, reached, and grasped items up to 30 pounds, and seldomly (1% up to 10%) lifted, reached, and grasped items up to 49 pounds. Petitioner used both arms when lifting items that weighed over 49 pounds. She stated she was able to meet Respondent's quota of 1,000 items per shift prior to the onset of her symptoms.

There is no evidence Petitioner had injuries or symptoms to her right elbow prior to her employment with Respondent. Petitioner testified that approximately one month after performing her job duties she developed cramping in her right arm. She continued to work, and her symptoms progressed to the point she reported her condition to Respondent on 1/3/21. Petitioner was examined by Respondent's on-site medical facility AmCare on 1/9/21 and she filled out an incident report the same day. She related her symptoms to extending and flexing her right arm while performing her stowing duties. Petitioner relayed to all of her treating providers that her symptoms were related to her job duties as a stower.

The initial AmCare note states Petitioner did not inform her supervisor on 1/3/21 that her symptoms were related to her job duties. The Arbitrator notes that AmCare is Respondent's on-site medical facility and no representative on behalf of Respondent was called to testify. The incident report prepared by Petitioner on 1/9/21 specifically relates her symptoms to her job duties as a stower which began the week of 12/26/20.

The Arbitrator finds the opinions of Dr. Solman to be more persuasive than those of Dr. Kutnik. Dr. Solman reviewed Petitioner's treatment records, including Dr. Christopher Knapp's description of Petitioner's job duties that included handling big bulky items weighing up to 50 pounds, or a lot of small items that weighed less than 10 pounds. Her job involved scanning with her left hand and grabbing, handling, and lifting items with her right hand. On 2/10/21, Dr. Solman diagnosed Petitioner with right lateral epicondylitis and her symptoms continued to progress to shooting pain down her arm with numbness in her hand.

Dr. Solman noted some improvement in Petitioner's symptoms since she was taken off work. He opined that Petitioner's work activities of lifting for several hours per day was a substantial contributing factor in the development of her right elbow condition and need for treatment. He opined that such activity can certainly incite a lateral epicondylitis condition.

Dr. Kutnik concluded that epicondylitis is a repetitive injury that takes months, if not years, to develop. He opined that Petitioner's condition was not causally related to her work

duties because such condition could not develop in such a short period of time. Petitioner was hired on 11/10/20 and the onset of her symptoms began on 12/26/21. She initially had cramping in her right arm that progressively worsened to shooting pain down her arm and numbness in her hand, resulting in a diagnosis of epicondylitis three months after her employment began.

Based on the testimony and objective medical evidence, the Arbitrator finds that Petitioner's current condition of ill-being is causally connected to her work injuries which manifested on 12/26/20.

ISSUE (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

ISSUE (K): Is Petitioner entitled to prospective medical care?

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

Based upon the above findings as to causal connection, the Arbitrator finds that the care and treatment Petitioner received has been reasonable and necessary. Respondent shall therefore pay the medical expenses outlined in Petitioner's Exhibit 6, as provided in Section 8(a) and Section 8.2 of the Act, directly to the medical providers and pursuant to the medical fee schedule, with the exception of medical bills related to office visits with Dr. Brunkhorst dated 2/26/21 and 3/1/21 as no medical records were submitted into evidence supporting such charges. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties stipulate that no medical expenses were paid through Respondent's group plan for which Respondent would be entitled to an 8(j) credit.

The Arbitrator further finds Petitioner is entitled to receive the additional care recommended by Dr. Solman. Therefore, Respondent shall authorize and pay for prospective medical treatment, including, but not limited to, physical therapy, ultrasound, a possible injection if Petitioner's symptoms fail to improve with therapy and ultrasound, and prescriptions for Tramadol and Motrin as set forth in Dr. Solman's office note dated 9/22/21.

ISSUE (L): What temporary benefits are in dispute? (TTD)

In order to be eligible for temporary total disability benefits, a claimant must prove not only that he did not work, but also that he was unable to work. *City of Granite City v. Industrial Comm'n*, 279 Ill.App.3d 1087, 1090 (1996).

Petitioner's unrebutted testimony and the medical evidence reflects Petitioner was placed on light duty restrictions on 2/10/21 by Dr. Knapp. Petitioner testified that work slips were turned into Respondent through her attorney. Petitioner testified that Respondent did not contact her to off a light duty position and she remained off work.

On 2/15/21, Respondent's Associate Onsite Placement department authored an email to Respondent's Human Resource Department ordering HR to contact Petitioner and notify her that the site could accommodate her work restrictions as a Thermal Screener beginning on 2/17/21. (RX4). A representative of Respondent, Laura Brooks, replied to the email within two hours and

stated she left Petitioner a voicemail explaining the accommodation and asked her to come to AmCare on 2/17/21. Petitioner testified she never received a voice message from Respondent offering light duty and she did not know who Ms. Brooks was. Laura Brooks did not testify on behalf of Respondent and no testimony was offered to rebut Petitioner's denial that light duty was offered. Petitioner credibly testified that she would have immediately reported to light duty work in order to support her four children. There was no evidence admitted at arbitration that Respondent made additional attempts to contact Petitioner regarding light duty work following Ms. Brook's email dated 2/15/21. The evidence suggests that the next contact Respondent made with Petitioner was by letter, that was not dated, stating she was involuntarily terminated effective 4/4/21. The letter did not provide a reason for Petitioner's termination; however, Petitioner testified she was told she was terminated for failure to show to work for three shifts.

Dr. Knapp took Petitioner off work beginning 2/10/21 and continued her off work until she was examined by Dr. Solman. Petitioner was examined by Dr. Solman on 6/23/21 and he continued her off work pending treatment.

The Arbitrator finds Petitioner is entitled to temporary total disability benefits for the period 2/10/21 through 1/31/22, representing 50-6/7th weeks, at the TTD rate of $400.00(Min. rate)/week. Respondent shall receive a credit of $6,285.71 for TTD benefits paid.

This award shall in no instance be a bar to further hearing and determination of any additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

_____

Arbitrator Linda J. Cantrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC008130
Case Name	Veronica Serna v. Farmland Foods Inc
Consolidated Cases	
Proceeding Type	Remand from the Circuit Court
Decision Type	Commission Decision
Commission Decision Number	23IWCC0167
Number of Pages of Decision	5
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Jennifer Anschuetz
Respondent Attorney	Matthew Brewer

DATE FILED: 4/13/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF ROCK ISLAND)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Veronica Serna,

Petitioner,

vs. No. 17 WC 08130

Farmland Foods, Inc.,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the circuit court. The circuit court ordered as follows:

"1. For all the reasons set forth on the record at the hearing held on December 7, 2021, Petitioner's Petition on Review is hereby granted;

2. The Workers' Compensation Commission decision and opinion is hereby reversed;

3. Petitioner's repetitive trauma left shoulder injury is covered by the Workers' Compensation Act;

4. Petitioner's repetitive trauma left shoulder injury is causally related to her employment by Respondent, FARMLAND FOODS; and

5. This matter is remanded to the Illinois Workers' Compensation Commission for assessment of damages, pursuant to the findings of this Honorable Court."

The Commission hereby complies with the Order of the circuit court.

To summarize the pertinent evidence, Petitioner testified on direct examination that she worked as a meat cutter for Respondent from 2002 until October of 2016. Petitioner is evidently right hand dominant and performed the cutting with the right hand at waist level. However, she flipped the meat and threw the finished cut on another, higher conveyor belt with her left hand. That higher conveyor belt was above her shoulder level. In 2014, Petitioner developed a sharp pain and popping in the left shoulder while performing her job duties. Petitioner underwent some conservative treatment and continued to work for Respondent until October of 2016, when her employment was terminated. Petitioner then consulted Dr. Schierer, an orthopedic surgeon. Ultimately, Dr. Schierer operated on the left shoulder. After a course of physical therapy, Dr. Schierer released Petitioner to return to unrestricted work. At the time of the arbitration hearing, Petitioner worked for another employer and had no problems with her shoulder at work. On cross-examination, Petitioner admitted prior injuries and problems with the left shoulder.

Respondent's witness, a supervisor who is 5 feet 10 inches tall, described the higher belt as "chest high" and denied that Petitioner's job required at or above shoulder lifting. On cross-examination, the supervisor acknowledged Petitioner's job required repetitive lifting with the left hand to put meat on the conveyor belt at *the supervisor's* chest/shoulder height. However, Petitioner is shorter.

Early medical records show Petitioner attributed her left shoulder pain to her job activities. There was a two-year gap in treatment between November of 2014 and October of 2016. Dr. Schierer connected Petitioner's left shoulder condition to her job activities, but he did not know the specifics. Respondent's section 12 examiner, Dr. Li, found no causation, noting that Petitioner indicated all the work was done below chest level, and Petitioner did not describe any above chest or overhead lifting. However, Dr. Li did not recall whether he had specifically asked Petitioner about any lifting above shoulder level.

In his narrative report, Dr. Schierer summarized his operative findings on November 9, 2017, as follows: "I saw no evidence of a full-thickness rotator cuff tear. There was evidence of partial tearing, tendonosis, and impingement, which the acromioplasty directly addressed." Dr. Schierer did not think Petitioner "suffered any permanent injuries to her left shoulder." In his evidence deposition, Dr. Schierer testified consistently with his narrative report. The physical therapist, on the other hand, noted that at the time of discharge on February 26, 2018, Petitioner reported the left shoulder continued to be weak and stiff with overhead motions. She also reported the pain woke her up at night. The physical therapist noted a limited range of motion and strength in the shoulder. Lastly, Dr. Li, who examined Petitioner on October 11, 2018, noted that Petitioner reported she currently had only slight pain and was working full duty for another employer. Physical examination of the left shoulder was normal. Dr. Li opined the alleged repetitive trauma did not cause any permanent disability.

Petitioner asks the Commission to award: temporary total disability benefits from October 25, 2016 through February 23, 2018; the medical bills in the sum of $64,990.10 subject to a credit (or unpaid medical bills in the sum of $58,953.59); and permanent partial disability benefits of 10 percent of the person as a whole.

As a preliminary matter, the Commission notes the application for adjustment of claim alleges the manifestation date of October 21, 2014. At the arbitration hearing, Respondent did not dispute that Petitioner gave timely notice of the alleged accident/repetitive trauma. The medical records from OSF Occupational Health, Respondent's company clinic, show that on October 21, 2014, Petitioner attributed her left shoulder condition to her job activities for Respondent. The Commission accepts October 21, 2014, as the correct manifestation date of the repetitive trauma.

The parties stipulated Petitioner's average weekly wage during the year preceding the injury was $756.00.

Turning to temporary total disability benefits, the Commission finds the benefits Petitioner requests are supported by the record. Respondent terminated Petitioner's employment on or about October 25, 2016, when Petitioner was on restricted duty. Regarding Petitioner's ability to work thereafter, Dr. Schierer testified she would have been on restricted duty or off work until February 23, 2018.

Petitioner submitted her medical bills in Petitioner's Exhibit 8. The Commission awards related medical bills in evidence pursuant to sections 8(a) and 8.2 of the Act and subject to appropriate credit.

Lastly, the Commission determines the permanency award. The Commission considers the five factors enumerated in section 8.1b(b) of the Workers' Compensation Act (the Act): "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

Regarding factor (i), the Commission notes no impairment rating has been submitted into evidence. The Commission therefore gives no weight to this factor.

Regarding factor (ii), at the time of the injury Petitioner was a meat cutter, which is a physically demanding job. The Commission gives considerable weight to this factor.

Regarding factor (iii), the parties stipulated Petitioner was 40 years old at the time of the injury. Petitioner has a long work life expectancy post-injury. The Commission gives considerable weight to this factor.

Regarding factor (iv), there is no evidence of impairment of earnings. The Commission gives appropriate weight to this factor.

Regarding factor (v), the record shows few residual symptoms and little disability. The Commission gives appropriate weight to this factor.

The Commission concludes that the injuries sustained caused a 10 percent disability to the person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $504.00 per week for a period of 69 4/7 weeks, from October 25, 2016 through February 23, 2018, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay related medical bills in evidence pursuant to §§8(a) and 8.2 of the Act. Respondent shall be given §8(j) credit for the amounts paid by its group health insurance, provided that Respondent holds Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving this credit. Respondent shall also be given credit for the medical payments made by its workers' compensation carrier.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $453.60 per week for a further period of 50 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the permanent disability to the extent of 10 percent of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 13, 2023
d-03/22/2023
SM/sk
44

/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah L. Simpson*
Deborah L. Simpson

/s/ *Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC015170
Case Name	Noemi Sosa v. Neighborhood Restoration Company of Illinois, Inc & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0168
Number of Pages of Decision	21
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Danielle Curtiss

DATE FILED: 4/13/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Noemi Sosa,

Petitioner,

vs. No. 19 WC 15170

Neighborhood Restoration Company of Illinois, Inc., and
Illinois State Treasurer as Ex-Officio Custodian of the Injured Workers' Benefit Fund,

Respondents.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, average weekly wage/benefit rates and permanent disability, and being advised of the facts and law, affirms with a different analysis and otherwise adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Petitioner testified that Respondent was a general contractor that mainly worked on roofs and siding. Petitioner worked for Respondent from June of 2015 through March of 2018, when she "left the company." On May 24, 2017, Petitioner was an office manager. That afternoon, Petitioner was taking pictures to document the progress of Respondent's expansion of its office space.[1] Also present were the CEO of Respondent's sister company and Respondent's sales manager. Petitioner described the accident as follows: "I was taking pictures. I was walking with John and Robert, and I was taking pictures. And as I was walking with them looking around, I tripped, not tripped, but I hit something that made me fall forward. But it was the intensity of the hit on my leg that when I fell forward, one of the walls broke my fall. So I hit this leg (indicating), falling forward I hit my right arm." Petitioner stated she hit "a pole or like a light pole, I don't know what the right term is, that was sitting across the ladder on the bottom of the ladder. * * * It was like a metal pipe, and I mean that's the only—I can't tell you the size, but it

[1] The construction work was performed by "[t]he building management."

was round. It was a pipe that was sticking out on the bottom of the ladder." Petitioner hit "the left side of my leg right below my shin (indicating)." Petitioner continued: "I felt excruciating pain. Robert and John came to my aid, but at this point I had said give me some space because at that point I was already crying. I was tearing up." Petitioner also had pain in her shoulder and "a nice bruise on my arm actually." Petitioner claimed the accident caused deep vein thrombosis in the left leg.

Petitioner further testified that the following day she sought treatment at DuPage Medical Group for pain in the leg. Petitioner denied that she reported an accident that took place two weeks earlier. On May 26, 2017, Petitioner underwent an ultrasound. Petitioner agreed that she did not have any further treatment until November 29, 2017. Petitioner stated that during that gap in treatment, she suffered from "[a] lot of sensitivity on the leg," as well as "[p]ain and just really a lot of discomfort." Petitioner used Tylenol and ice. Petitioner stated that she still had a lump in that area, right "below the shin."

Petitioner further testified that on November 29, 2017 she sought emergency treatment at Elmhurst Hospital because she "noticed swelling on my left leg. It was warm, and it was, not red, but kind of like a pink, like pink in coloration." Petitioner believed the flare-up was caused by wearing a short fashion boot. A repeat ultrasound showed deep vein thrombosis of the left leg. Petitioner was prescribed blood thinners. Petitioner then periodically followed up at Elmhurst Clinic.

Petitioner further testified that on July 24, 2018 she sought treatment at Old Irving Clinic because she did not have health insurance. The staff likewise prescribed blood thinners for deep vein thrombosis. Petitioner stated she has not followed up for deep vein thrombosis since. Upon further questioning, Petitioner mentioned subsequent treatment at Rush Hospital for swelling in the left leg, in the injured area.

Regarding her current condition, Petitioner testified the left leg has not improved. Petitioner has learned to live with it. There is still a bump in that area, about the size of a quarter, and discoloration.

Petitioner acknowledged having some swelling in her legs before May 24, 2017. The following colloquy then took place:

> "Q. What's the difference between the swelling in your legs that you had before May 24th of 2017 and this deep vein thrombosis condition that you had due to the accident?
>
> A. The difference is that I have lupus, so I will get a flare-up which would cause some of the joint pain or swelling in both legs. In this particular case, the difference is that that injury is causing my one leg to swell, and the pain is mostly in that area where I injured myself."

On cross-examination, Petitioner testified that she was diagnosed with lupus in 1997. Petitioner also suffered from fibromyalgia, diabetes, anxiety, depression and restless leg

syndrome. Petitioner introduced into evidence a photograph of the affected area, allegedly taken the day of the accident.

The medical records from DuPage Medical Group show that on May 25, 2017, Petitioner consulted Dr. Nikoleit about edema/swelling of the leg. Dr. Nikoleit noted the following history and complaints: "Has been seen for swelling legs for a few years. Thought she was anemic and needed iron. Now pain and leg is tight. Just the left leg. Better today. *** Has a sitting job. Hurts if sits too long recently hit with a pipe 2 weeks ago." Petitioner's medical history included lupus, Sjogren's disease, and being a victim of domestic violence. On physical examination, Dr. Nikoleit saw no edema or other abnormality. He ordered an ultrasound. The ultrasound, performed the following day, was unremarkable. There was no deep vein thrombosis.

The medical records from Elmhurst Clinic are mainly in connection with primary care complaints not involving the left leg. They show, in pertinent part, that on October 3, 2017, Petitioner complained of restless leg syndrome. On December 5, 2017, Petitioner followed up after an emergency room visit. The record contains the emergency room note, which states: "[The patient] presents [to] the emergency department with left leg pain and swelling. She initially injured her leg in April when she tripped and sustained an injury to the left lower leg anteriorly, just above the ankle. The pain in this area has persisted since the initial injury. *** She says that a few days ago she was wearing a low boot that was hitting the area of the prior injury and that it exacerbated the pain. She subsequently developed swelling in the left leg so much so that she describes the left leg as being tight. She says that today the swelling is better." An ultrasound showed: "Positive for subtle nonocclusive thrombus within a single of paired left peroneal veins. 2. No additional left lower extremity deep vein thrombosis." The clinic staff diagnosed acute deep vein thrombosis and referred Petitioner to a specialist.

The medical records from Old Irving Park Community Clinic show that in 2018 and 2019, Petitioner on multiple occasions mentioned restless leg syndrome, among other primary care complaints. In July of 2018, Petitioner also mentioned persistent tenderness in the left leg, but that was not the reason for the visit.

The medical record from Rush Hospital is one-page after-visit summary dated January 6, 2020, which Petitioner printed herself. The record indicates Petitioner presented with multiple complaints, including left leg pain and swelling. Respondent objected on the basis the record was not certified or returned pursuant to a subpoena. The Arbitrator took the issue under advisement and apparently overruled the objection, as he referred to the record in his decision. Even if the Arbitrator's ruling was erroneous, the error is harmless, as the evidence is cumulative and has no bearing on the dispositive issue of accident.

The Arbitrator denied the claim for failure to prove accident and causation. While the Commission agrees the claim is not compensable, it does so on narrower grounds. The Commission strikes the Arbitrator's subjective observations. Rather, the Commission gives great weight to the inconsistencies between Petitioner's testimony and the medical records. The Commission finds that Petitioner failed to prove a work accident took place. The Commission strikes the Arbitrator's analysis on the issue of causal connection as moot.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 4, 2022 is hereby affirmed with a different analysis and otherwise adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondents shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 13, 2023

SJM/sk

o-03/08/2023

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/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah L. Simpson*
Deborah L. Simpson

/s/ *Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC015170
Case Name	SOSA, NOEMI v. NEIGHBORHOOD RESTORATION COMPANY OF ILLINOIS, INC., AND ILLINOIS STATE TREASURER AS EX-OFFICIO CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND, STATE OF ILLINOIS,
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Danielle Curtiss

DATE FILED: 4/4/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 29, 2022 1.05%

/s/Charles Watts, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Cook**)

☒ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☐ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Noemi Sosa
Employee/Petitioner

v.

Case # **19** WC **015170**

Consolidated cases: _____

Neighborhood Restoration Company of Illinois, Inc., and Illinois State Treasurer as Ex-Officio Custodian of the Injured Workers' Benefit Fund, State of Illinois,

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Charles Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **November 15, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☒ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☒ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☒ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☒ What was Petitioner's age at the time of the accident?
I. ☒ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
O. ☒ Other **All issues in dispute.**

FINDINGS

On **May 24, 2017,** Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**52,042.00**; the average weekly wage was $**1,000.80.**

On the date of accident, Petitioner was **47** years of age, ***single*** with **0** dependent child.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

The Arbitrator finds that Petitioner has failed to sustain his burden of proving an accident occurred which arose out of and in the course of his employment. All compensation is denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

APRIL 4, 2022

Signature of Arbitrator

Noemi Sosa

Employee/Petitioner

v.

Case No. 19 WC 15170

Neighborhood Restoration Company of Illinois, Inc., Illinois State Treasurer as Ex-Officio Custodian of the Injured Workers' Benefit Fund, State of Illinois,

Chicago, IL

Employer/Respondent

FINDINGS OF FACT

Petitioner pursued this action under the Workers' Compensation Act and sought relief from Neighborhood Restoration Company of Illinois, Inc. (hereinafter "NRC"), and the Injured Workers' Benefit Fund (hereinafter IWBF). On November 12, 2021, the parties appeared at a hearing before Arbitrator Charles Watts. Kenneth Lubinski of Morici Longo & Associates appeared on behalf of Petitioner. Assistant Attorney General Danielle Curtiss of the Illinois Attorney General's Office appeared on behalf of IWBF. No one appeared on behalf of NRC. At hearing, Petitioner's Exhibits 1-9, and IWBF's Exhibits 1-2 were admitted into evidence. The IWBF objected to the admission of Petitioner's exhibits 10 and 11, and the Arbitrator took the issue of admissibility under advisement. After hearing the proofs and reviewing the evidence presented, the Arbitrator makes the following findings on the disputed issues.

Testimony of Petitioner

Petitioner testified that she worked as an office manager for Neighborhood Restoration Company ("NRC") between June 2015 and March 2018. NRC is a commercial and residential roofing and siding contractor located at 188 W. Industrial Drive, in Elmhurst, Illinois. Petitioner

reported to the CEO, Michael Flores. Petitioner's responsibilities included basic administrative duties, onboarding and training new hires, and ensuring that "the office ran smoothly."

Petitioner stated that she worked approximately 40 hours per week. She was paid by check. Petitioner provided income tax returns showing income of $25,016 for 2015, $52,488 for 2016, and $54,042 for 2017.

Petitioner testified that NRC had 18 employees. NRC was growing its office space at 188 W. Industrial Drive by expanding from its first floor location onto the third floor of the building. A third party was handling the buildout of the third floor space.

On May 24, 2017, Petitioner was walking and taking pictures of the progress of the build out of the new office space when she tripped over a metal bar or pipe-like object. The bar was resting on the bottom rung of two ladders sitting adjacent to each other. Petitioner hit the bar with the front shin area of her left leg, just above the ankle, and fell forward into a wall. Petitioner testified that she was not looking where she was walking as she took pictures. She did not see the bar before she tripped.

On the alleged date of accident, Petitioner was accompanied by Robert Flores and John Michael. Robert Flores is CEO of a separate company called "Neighborhood Adjusters" and he is the cousin of CEO Michael Flores. John Michael was employed as a sales person at NRC. Petitioner testified that Robert Flores witnessed the incident and that she often reported to Robert Flores when Michael was not present. She did not report the accident directly to Michael Flores.

Petitioner testified that she first sought medical treatment for pain to her left leg on May 25, 2017. She testified that she went the doctor the next day, because she was still having pain, and wanted to make sure her leg did not have any issues. Petitioner was diagnosed with acute deep vein thrombosis.

Petitioner testified that she continues to have pain in her left leg due to the incident on May 24, 2017. Petitioner testified that when she receives a massage or a pedicure, she has to notify the providers to be careful with the front lower shin area of her left leg. Petitioner rolled up her right pant leg to allow the court to view the front lower shin area of her left leg. The Arbitrator notes that no swelling was visible. It is also noted that Petitioner was wearing a short boot, which touched the area where the injury was alleged to have occurred.

Summary of Petitioner's Medical Treatment

Petitioner first sought medical treatment on May 25, 2017 at DuPage Medical Group with Dr. Nikoleit. (Petitioner's Exhibit ("PX" 3). Dr. Nikoleit noted that Petitioner has been seen for leg swelling for a few years. *Id.* Petitioner reported that she has left leg tightness, and her leg hurts if she sits for too long. *Id.* Petitioner noted that she hit her left leg with a pipe two weeks ago. *Id.* Dr. Nikoleit noted that Petitioner's left leg was tender, but no swelling was noted. *Id.* Dr. Nikoleit further noted that Petitioner has previously been diagnosed with lupus. *Id.* An ultrasound Venus Doppler was ordered. *Id.* Petitioner underwent an ultrasound of the left leg. *Id.* No deep vein thrombosis was noted. *Id.*

On July 24, 2017, Petitioner treated at Elmhurst Clinic for ear pain, which is unrelated to the alleged work accident. (PX 4). No complaints of left leg pain were noted in this record. *Id.* Petitioner next treated at the Elmhurst Clinic on August 31, 2017 for unrelated upper respiratory symptoms. *Id.* Petitioner did not seek treatment for her alleged left leg condition on this date. *Id.*

On October 3, 2017, Petitioner sought treatment at Elmhurst Clinic and complained of bilateral leg pain. *Id.* She noted that she has a pins and needles sensation in her legs when she sleeps and she wakes up stiff in the morning. *Id.* Petitioner also noted that for the last several months, she has had pain across the ball of her foot when weight bearing and ambulating. *Id.*

Petitioner's active diagnoses were noted as Sjogren's syndrome, fatigue, recent pain in right foot, and diffuse myofascial pain. *Id.*

Petitioner followed up at the Elmhurst Clinic on October 18, 2017. *Id.* The treating doctor noted that Petitioner has been taking gabapentin, which has reduced her shaking legs at night. *Id.* Petitioner noted that she has felt depressed, and does not want to leave her house and interact with others. *Id.* Petitioner was diagnosed with fibromyalgia, diabetes, anxiety and depression. *Id.*

On November 29, 2017, Petitioner was seen in the Elmhurst Hospital emergency room for complaints of leg pain and swelling. *Id.* The treating doctor noted that Petitioner initially injured her leg in April when she tripped and sustained an injury to her left lower leg anteriorly, just above the ankle. *Id.* Petitioner reported that the pain in that area has persisted since the initial injury. *Id.* Petitioner further reported that a few days ago, she was wearing a low boot that was hitting the area of the prior injury, and that exacerbated the pain. *Id.* She subsequently developed swelling in the left leg so much that she describes the pain as being tight. *Id.* Diagnosed with subtle non-occlusive thrombus within a single of paired left peroneal veins. An x-ray and ECG were performed, which were within normal limits. *Id.*

Petitioner followed up with Elmhurst Clinic on December 5, 2017. *Id.* She was diagnosed with acute deep vein thrombosis of left lower extremity, unspecified vein. *Id.*

More than seven months later, Petitioner was seen at Old Irving Park Community Clinic with reports of restless leg syndrome every night for the past month. (PX 5). Petitioner described feeling pins and needles, similar to a tingling sensation, from the knee down. *Id.* Petitioner reported that she used to take medication, but did not want to become dependent on them. *Id.*

Petitioner followed up at Old Irving Park Community Clinic on August 28, 2018 with Dr. Murphy. Petitioner complained of tenderness to her left leg, which she attributed to her injury

that she sustained over a year ago. *Id.* Petitioner complained of three episodes of dizziness, which felt like the room was spinning, and like she was going to faint. *Id.* Petitioner denied lupus flare up. *Id.* Petitioner reported that she has been easily fatigued, and has been stressed out due to not having a job. *Id.*

Petitioner was next seen at Old Irving Park Community Clinic on May 22, 2019 for health issues unrelated to the alleged injury. *Id.* Petitioner did not seek treatment for her left leg. *Id.* Petitioner followed up with Old Irving Park Clinic on August 20, 2019 and complained of restless leg syndrome, which she had experienced for the past month. *Id.*

Petitioner followed up at Old Irving Park Clinic on September 11, 2019. *Id.* She continued to complain about the restless leg syndrome, which she described as a pins and needles sensation in both legs. *Id.*

The last record submitted is dated January 6, 2020 from Rush Oak Park Hospital. (PX 10). Petitioner was treated on this date for musculoskeletal pain, cryotherapy, and shortness of breath. *Id.* She was diagnosed with left leg pain, dyspnea, and a breast nodule. The record indicates it one page one of nine, but no other records were attached.

CONCLUSIONS OF LAW

The Arbitrator adopts the Statement of Facts in support of the Conclusions of Law.

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d).

To obtain compensation under the act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim (O'Dette v. Industrial

Commission, 79 Ill.2d 249, 253 (1980) including that the accidental injury both arose out of and occurred in the course of his employment (Horvath v. Industrial Commission, 96 Ill.2d. 349 (1983)) and that there is some causal relationship between the employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, I29 Ill. 2d 52, 63 (1998). Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e).

Credibility is the quality of a witness which renders her evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with her testimony. Where a claimant's testimony is inconsistent with her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972). While it is true that an employee's uncorroborated testimony will not bar a recovery under the Act, it does not mean that the employee's testimony will always support an award of benefits when considering all the testimony and circumstances shown by the totality of the evidence. Caterpillar Tractor Co. v. Industrial Commission, 83 Ill. 2d 213 (1980). The mere existence of testimony does not require its acceptance. Smith v. Industrial Commission, 98 Ill.2d 20, 455 N.E.2d 86 (1983). To argue to the contrary would require that an award be entered or affirmed whenever a claimant testified to an injury no matter how much her testimony might be contradicted by the evidence, or how evidence it might be that her story is a fabricated afterthought. U.S. Steel v. Industrial Commission, 44 Ill2d 207, 214, 254 N.E.2d 522 (1969); see also Hansel & Gretel Day Care Center v. Industrial Commission, 215 Ill. App. 3d 284, 574 N.E.2d 1244 (1991).

The Petitioner bears the burden of proving every aspect of her claim by a preponderance of the evidence. Hutson v. Industrial Commission, 223 Ill App. 3d 706 (1992). "Liability under the Workmen's Compensation Act may not be based on imagination, speculation, or conjecture, but must have a foundation of facts established by a preponderance of the evidence…" Shell Petroleum Corp. v. Industrial Commission, 10 N.E.2d 352 (1937). The burden of proof is on a claimant to establish the elements of her right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment there is no right to recover. Revere Paint & Varnish Corp. v. Industrial Commission, 41 Ill.2d. 59 (1968). Preponderance of the evidence means greater weight of the evidence in merit and worth that which has more evidence for it than against it. Spankroy v. Alesky, 45 Ill. App.3d 432 (1st Dist. 1977).

The Arbitrator observed Petitioner's demeanor at trial and was left with the initial impression that Petitioner was disingenuous. Petitioner's body language and disjointed eye-contact was indicative of someone searching for answers as if thinking too much. The rate of speaking was likewise halting at times and gave the overall impression of someone seeking to keep a story straight rather than spontaneously responding as if in a conversation. Petitioner was notably different in body language and speaking style when cross examined. A review of the medical record put an exclamation mark on this initial assessment. Petitioner simply is not believed.

A. Was Respondent-Employer operating under and subject to the Illinois Workers' Compensation Act or Occupational Diseases Act?

Petitioner testified that Respondent-Employer, NRC, employed her on May 24, 2017, when the accident occurred. Respondent-Employer was a commercial and residential roofing

and siding contractor, that receives requests from property insurance adjusters to repair roofs and siding due to hail and storm damage. Based upon the automatic coverage provisions of Section 3 of the Act, the Arbitrator finds that the Petitioner has established by a preponderance of the evidence that on May 24, 2017, the Respondent-Employer was operating under and subject to the Illinois Workers' Compensation Act.

B. Was there was an Employee-Employer relationship?

This Arbitrator finds an employee-employer relationship existed between Petitioner and NRC. Petitioner testified that she worked as an office manager for NRC from June 2015 through March 2018. Petitioner's responsibilities included basic administrative duties, onboarding and training new hires, and ensuring that the office ran smoothly. She submitted tax returns for tax years 2015, 2016, and 2017. (PX 7). She was paid by check, though no check stubs were submitted at trial. However, Petitioner submitted a W-2 form for 2015 and copies of federal tax returns for the tax years of 2015, 2016, and 2017. (PX 7). The Arbitrator finds that an employee-employer relationship existed between Petitioner and Respondent-Employer NRC.

C. Did an accident occur that arose out of and in the course of Petitioner's employment with the Respondent-Employer?

The Arbitrator finds that an accident did not occur that arose out of Petitioner's employment by Respondent because Petitioner failed to present any credible evidence of an accident.

Petitioner attempted to prove that an accident occurred through her testimony and medical records. However, Petitioner's testimony directly contradicts the medical records. Therefore, the Arbitrator is forced to speculate as to which version of events are accurate.

Petitioner testified that on May 24, 2017, she tripped over a metal pipe-like object while taking photographs of a new office space for NRC. The bar was resting on the bottom rung of

two ladders sitting adjacent to each other. Petitioner hit the bar with the front shin area of her left leg, just above the ankle, and fell forward into a wall. Petitioner testified that she was not looking where she was walking as she took pictures. She did not see the bar before she tripped.

No witnesses testified at trial to corroborate Petitioner's testimony even though she was with two other persons at the time of her injury as alleged. Also, she submitted medical records that contradict the alleged date of accident. The evidence submitted at trial present two different potential accident dates, neither of which is May 24, 2017.

Petitioner sought medical attention on May 25, 2017. (PX 3). She testified that she sought medical treatment the day after the accident because she was feeling pain in her left leg and wanted to "make sure everything was okay." She reported to Dr. Nikoleit that she felt swelling in her left leg. *Id.* Dr. Nikoleit noted that he did not observe any swelling. Petitioner also reported left leg tightness, and her leg hurts when sitting for an extended period. *Id.* Dr. Nikoleit noted that Petitioner reported to him that she hit her left leg with a pipe ***two weeks ago***. *Id.* (Emphasis added). When questioned at trial, Petitioner denied informing Dr. Nikoleit that the accident occurred two weeks prior.

Following this treatment, Petitioner was seen at DuPage Medical Group, Elmhurst Clinic, and Old Irving Park Community Clinic for a myriad of conditions unrelated to the alleged accident.

Petitioner treated at Elmhurst Hospital on November 29, 2017. (PX 3). These records reflect that Petitioner injured her left leg in April 2017. This contradicts Petitioner's testimony that she injured her leg on May 24, 2017, and the medical records, which indicate that Petitioner injured her leg two weeks prior to May 25, 2017.

After reviewing all of the admitted evidence, the Arbitrator is left with more questions than answers as to when, and whether, the injury occurred. "It is a well-settled principle of law that it is the Petitioner's burden to prove all of the elements of his case by the preponderance of credible evidence. Moreover, liability cannot rest on imagination, speculation or conjecture, but must be based on the facts." Burns, 02 I.I.C. 0643 (Ill. Indus. Com'n Aug. 13, 2002).

This Arbitrator finds that Petitioner has presented no credible evidence that an accident occurred which arose out of an in the course of her employment for Respondent and Petitioner is not entitled to compensation for her injuries.

D. What was the date of the accident?

The Arbitrator finds Petitioner failed to meet her threshold burden of showing an accident occurred which arose out of her employment. All compensation is denied.

E. Was timely notice of the accident given to the Respondent?

The Arbitrator finds Petitioner failed to meet her threshold burden of showing an accident occurred which arose out of her employment. All compensation is denied.

F. Is the Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator finds Petitioner failed to meet her threshold burden of showing an accident occurred, which arose out of her employment. Therefore, the Arbitrator need not address causation but chooses to because it is clear the evidence does not support a finding of causal connection.

Petitioner presented evidence that at some point in the spring of 2017, she tripped over a metal pipe-like object, while scouting a new office space for NRC. Petitioner testified that the metal bar hit her left front shin. She did not immediately seek medical treatment. When she sought medical treatment a day, two weeks, or over a month after the alleged accident, Dr.

Nikoleit at DuPage Medical Group noted that Petitioner has been seen by DMG for leg swelling for a few years. (PX 3). Petitioner reported leg swelling, of which Dr. Nikoleit did not observe. Dr. Nikoleit noted that Petitioner has previously been diagnosed with lupus. *Id.* Petitioner's diagnosis was left leg pain with subjective edema. *Id.* Dr. Nikoleit noted that Petitioner was negative for deep vein thrombosis. *Id.*

Following this visit, Petitioner treated at Elmhurst Clinic on July 24, 2017 and October 3, 2017 for unrelated medical conditions. (PX 4). Petitioner did not treat for left leg pain at these visits. In fact, at the October 3, 2017 visit, Petitioner complained of bilateral leg pain, and a feeling of pins and needles while sleeping. *Id.* Additionally, she complained of pain across the ball of her right foot when weight bearing. *Id.*

Petitioner also did not treat for her alleged left leg condition at her October 18, 2017 visit at Elmhurst Clinic. *Id.* On this date, Petitioner was diagnosed with fibromyalgia, diabetes, anxiety, and depression. *Id.*

On November 29, 2017, Petitioner was seen in the Elmhurst Hospital emergency room for complaints of left leg pain and swelling. *Id.* The treating doctor noted that Petitioner initially injured her leg in April when she tripped and sustained an injury to her left lower leg anteriorly, just above the ankle. *Id.* At this visit, Petitioner reported that the pain in that area has persisted since the initial injury. *Id.* Petitioner's complaint of continued pain over a five-month period is not credible. She sought treatment over this entire time without mentioning the lower left leg pain.

The Arbitrator notes that, for the first time, on this visit to the emergency room, Petitioner was diagnosed with deep vein thrombosis, after previously being ruled out as the diagnosis on May 25, 2017. *Id.* Petitioner was initially diagnosed with leg pain and subjective swelling, and

only after wearing a low boot, and five months of unrelated treatment was she diagnosed with deep vein thrombosis. The Arbitrator finds that the diagnosis of deep vein thrombosis is not causally related to the work accident.

Additionally, Petitioner failed to submit an expert opinion as to whether the deep vein thrombosis was casually related to the alleged work accident. Petitioner suffered from multiple comorbidities which may have contributed to the deep vein thrombosis. Additionally, Petitioner was diagnosed with both lupus and fibromyalgia, both of which are widespread pain diseases. Lastly, Petitioner treated for leg pain for several years prior to the alleged accident, in addition to bilateral restless leg syndrome after the alleged accident.

The extensive gaps in treatment for the left leg condition are indicative of the fact that Petitioner was treating for an unrelated medical condition, as the May 24, 2017 left leg pain clearly no longer required medical treatment. The Arbitrator finds that Petitioner reached MMI on May 25, 2017 for left leg pain. Any treatment after this date is not causally related to this work accident.

G. What were the Petitioner's earnings?

The Arbitrator finds Petitioner failed to meet her threshold burden of showing an accident occurred which arose out of her employment. All compensation is denied.

H. What was the Petitioner's age at the time of the accident?

The medical records of Petitioner established that the Petitioner's date of birth is November 27, 1969, making her 47 years of age on the date of accident. The Arbitrator finds that Petitioner was 47 years old on the date of accident.

I. What was the Petitioner's marital status at the time of the accident?

Petitioner' testimony established that at the time of the accident Petitioner was single with no dependent children under the age of 18 on the date of accident. The Arbitrator finds that Petitioner was single with no dependent child on the date of the accident.

J. Were the medical services that were provided to the Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

The Arbitrator finds Petitioner failed to meet her threshold burden of showing an accident occurred which arose out of her employment. All compensation is denied.

K. What temporary benefits are in dispute?

Petitioner has not claimed any temporary total disability benefits. The Arbitrator finds that no temporary total disability benefits are owed.

L. Is Respondent IWBF liable for payment to Petitioner?

The Arbitrator finds Petitioner failed to meet her threshold burden of showing an accident occurred which arose out of her employment. All compensation is denied. Therefore, the Arbitrator need not address liability of the IWBF.

M. Was adequate and proper notice of hearing given to the Respondent-Employer?

The Arbitrator finds Petitioner failed to meet her threshold burden of showing an accident occurred which arose out of her employment. All compensation is denied. Therefore, the Arbitrator need not address notice.

N. What is the nature and extent of the Petitioner's injury?

The Arbitrator finds Petitioner failed to meet her threshold burden of showing an accident occurred which arose out of her employment. All compensation is denied. Therefore, the Arbitrator need not address nature and extent.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC006305
Case Name	Shaun Reiman v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0169
Number of Pages of Decision	10
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 4/14/2023

/s/Maria Portela, Commissioner

Signature

23IWCC0169

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify Up (Nature & Extent)	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Shaun Reiman,

Petitioner,

vs. NO: 20 WC 6305

State of Illinois—Menard Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issue of nature and extent, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

In the interest of efficiency, the Commission primarily relies on the Arbitrator's recitation of facts. Petitioner has worked as a correctional officer for Respondent for 16 years. On March 2, 2019, he sustained injuries to his cervical spine, lumbar spine, and left shoulder while breaking up an altercation between inmates. Extensive conservative treatment failed to improve Petitioner's significant complaints. On January 20, 2020, Dr. Edwards performed a left shoulder arthroscopy with arthroscopic labral repair, SLAP tear, and debridement of labral tear anteriorly, inferiorly, and posteriorly with subacromial decompression. The postoperative diagnosis was subacromial impingement and type 2 SLAP tear of the superior labrum with type 1 tearing anteriorly. In June 2020, Dr. Edwards placed Petitioner at maximum medical improvement ("MMI") regarding the left shoulder and released him to return to work without restrictions. On March 17, 2021, Dr. Gornet performed an anterior decompression at L5-S1 and disc replacement. The postoperative diagnosis was discogenic low back pain. On July 21, 2021, Dr. Gornet performed a disc replacement surgery at C5-C6 and C6-C7. The postoperative diagnosis was cervical radiculopathy.

Petitioner attended extensive physical therapy following his lumbar and cervical surgeries. In late December 2021, Petitioner was discharged from physical therapy. The therapist wrote that Petitioner had returned to his prior level of function and had recovered with no remaining deficits. In March 2022, Dr. Gornet wrote that Petitioner was doing very well. Petitioner was working full duty without restrictions. He placed Petitioner at MMI regarding his lumbar spine condition. In early April 2022, Petitioner told his chiropractor, Dr. Rheinecker, that he was steadily improving

and experienced less flare-ups between sessions. He reported not feeling as much pain; however, he did experience day-to-day stiffness after working. In early May 2022, Petitioner told Dr. Rheinecker that his lumbar and cervical spine symptoms had recently increased after he did some gardening and landscaping. In June 2022, he complained to Dr. Rheinecker of increased upper neck and low back pain after driving to and from Florida. He also reported increased low back pain after walking over 29,000 steps each day during his trip. Dr. Rheinecker wrote that "[d]ue to a structural weakening of the spinal column, traumatically induced, [Petitioner] can anticipate future recurrence of the pain and discomfort from time to time, especially prevalent at times of stress, fatigue or emotional upset." (PX 4). Petitioner returned to Dr. Gornet's office on July 11, 2022. He complained of experiencing some spasms and headaches, but reported that his symptoms were very tolerable. He also reported occasionally taking muscle relaxers. Petitioner was placed at MMI regarding the cervical spine. On July 20, 2022, Petitioner complained of left shoulder soreness over the prior few weeks to Dr. Rheinecker. Petitioner also complained of pain in the left low back, left hip, and left leg to the knee.

Petitioner testified that occasionally his neck muscles contract and cause neck pain. He also testified that activities such as extensive sitting or standing and navigating a lot of stairs aggravate his low back. He testified that activities such as stooping, bending, and lifting heavy items cause him to have pain in his low back and left upper hip. He testified that when his symptoms flare up, he takes over-the-counter pain medicine and muscle relaxers. Petitioner testified that he experiences a flare-up approximately two to three times per week. He denied having decreased range of motion; however, he testified that he suffers from a loss of strength and endurance. He testified that he is unable to participate in some of the activities that he loves such as hunting and walking through the woods due to his ongoing symptoms. He testified that his left hip and low back hurt when he tries to engage in activities such as hunting and mushroom hunting. While his residual complaints do not prevent him from performing his job duties, Petitioner testified that certain aspects of his job are now more difficult. He testified that this includes activities relating to being under lockdown and carrying food up and down the galleries. He testified that he is unable to sit or stand for extended periods. He testified that due to his low back pain, if he sits too long, he must stand up and if he stands too long, he must sit. Petitioner testified he frequently stands while completing paperwork.

The Arbitrator concluded that Petitioner sustained a 25% loss of the whole person due to the March 12, 2019, work incident. The Commission views the credible evidence differently than the Arbitrator and thus modifies the Arbitrator's analysis pursuant to the fifth factor of Section 8.1b(b) of the Act. After carefully considering the totality of the evidence and analyzing the five factors pursuant to Section 8.1b(b) of the Act, the Commission finds Petitioner sustained a 15% loss of the whole person regarding his left shoulder condition, a 15% loss of the whole person regarding his lumbar spine condition, and a 20% loss of the whole person regarding his cervical spine condition.

Petitioner sustained significant injuries to his left shoulder, cervical spine, and lumbar spine due to the work incident. Extensive conservative treatment failed and Petitioner eventually underwent left shoulder surgery, cervical spine surgery, and lumbar spine surgery. While the surgeries and postoperative treatment improved Petitioner's condition, he continues to suffer from chronic symptoms that affect his daily life. Petitioner testified that his neck muscles occasionally

contract and cause neck pain. Petitioner testified that his low back pain prevents him from participating in activities he used to love. While he denied having a decreased range of motion, Petitioner testified that he continues to suffer from a loss of strength and endurance. Petitioner continues to experience symptom flare-ups, particularly in his low back, when he engages in activities such as stooping, bending, and lifting heavy items. He also experiences increased low back pain when he climbs a lot of stairs or walks for extended periods. Petitioner testified that he takes over-the-counter pain medication or muscle relaxers a few times each week due to his symptom flare-ups. Dr. Rheinecker, Petitioner's chiropractor, wrote that Petitioner would continue to experience pain and discomfort occasionally due to the nature of his injuries.

Petitioner's doctors placed him at MMI regarding his left shoulder, lumbar spine, and cervical spine and cleared Petitioner to return to his normal job without restrictions. However, Petitioner credibly testified that his residual complaints make performing some aspects of his job duties harder. He testified that certain job duties, including carrying heavy trays, helping with lockdowns, and standing or sitting for long periods, aggravate his symptoms. Petitioner testified that his low back symptoms noticeably increase when he sits or stands for prolonged periods. He testified that one of his primary job duties involves completing paperwork. He testified that while completing his paperwork, his low back pain causes him to stand if he sits too long, and to sit if he stands too long.

After considering the totality of the evidence, including the severity of Petitioner's injuries and Petitioner's credible complaints of ongoing neck and low back pain, the Commission finds the Arbitrator's award of 25% loss of the whole person does not adequately account for the severity of Petitioner's permanent disability. Instead, the Commission finds Petitioner sustained a 15% loss of the whole person due to his left shoulder condition. The Commission also finds Petitioner sustained a 15% loss of the whole person due to his lumbar spine condition. Finally, the Commission finds Petitioner sustained a 20% loss of the whole person due to his cervical spine condition. In total, the Commission finds Petitioner sustained a 50% loss of the whole person due to the March 2, 2019, work incident.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 6, 2022, is modified as stated herein.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner permanent partial disability benefits of $775.47/week for 250 weeks, because Petitioner's left shoulder injury caused a 15% loss of the whole person, his lumbar spine injury caused a 15% loss of the whole person, and his cervical spine injury caused a 20% loss of the whole person, as provided for in §8(d)2 of the Act.

IT IS FURTHER ORDERED that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED that Respondent pay to Petitioner interest pursuant to §19(n) of the Act, if any.

Pursuant to Section 19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review.

April 14, 2023

/s/ *Maria E. Portela*
Maria E. Portela

d: 2/21/23
jds
51

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

SPECIAL CONCURRING OPINION

This case was scheduled for oral argument on February 21, 2023, before a three-member panel of the Commission including members Thomas J. Tyrrell, Maria E. Portela, and Kathryn A. Doerries, at which time oral arguments were either heard, waived, or denied. Subsequent to oral arguments and prior to the departure of member Tyrrell on March 17, 2023, a majority of the panel members reached agreement as to the results set forth in this Decision and Opinion, as evidenced by the internal Decision worksheet initialed by the entire three-member panel. However, no formal written decision was signed and issued prior to member Tyrrell's departure.

I was not a member of the panel in question at the time oral arguments were heard, waived, or denied, and I did not participate in the agreement reached by the majority in this case. However, I have reviewed the Decision worksheet, which shows that former member Tyrrell voted with the majority in this case, and have reviewed the provisions of the Supreme Court in *Zeigler v. Indus. Comm'n.*, 51 Ill. 2d 137 (1972), which authorizes signature of a Decision by a member of the Commission who did not participate in the Decision. Accordingly, I am signing this Decision and Opinion in order that it may issue.

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC006305
Case Name	Shaun Reiman v. SOI/Menard C.C.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	5
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 9/6/2022

THE INTEREST RATE FOR THE WEEK OF AUGUST 30, 2022 3.23%

/s/ Edward Lee, Arbitrator
Signature

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

September 6, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

Injured Workers' Benefit Fund (§4(d))
Rate Adjustment Fund (§8(g))
Second Injury Fund (§8(e)18)
None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Shawn Reiman
Employee/Petitioner

v.

SOI/Menard C.C.
Employer/Respondent

Case # **20** WC **06305**

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Edward Lee, Arbitrator of the Commission, in the city of **Herrin**, on **August 4, 2022.** By stipulation, the parties agree:

On the date of accident, 3/2/19, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned **$67,207.50**, and the average weekly wage was **$1,292.45.**

At the time of injury, Petitioner was **41** years of age, **Married,** with **2** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit for $27,696.86 in TTD Paid, **$0** for TPD, **$0** for maintenance, and, for a total credit of $**27,696.86 PAID .** .

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $775.47 for 125 weeks for 25% of a Person as a whole, for injuries to the cervical and lumbar spine, as well as the left shoulder, as provided in Sections 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

SEPTEMBER 6, 2022

Edward Lee
Signature of Arbitrator

FINDINGS OF FACT

A full hearing was held in this matter. The sole issue was nature and extent of the injuries to the Petitioner.

Mr. Reiman worked as a Correctional Sergeant at Menard Correctional Center at the time of the incident. The parties stipulated Petitioner suffered accidental injuries in the course of his employment. Petitioner testified he was injured while attempting to break up a fight between two inmate, suffering injury to his neck, back, and left shoulder.

Petitioner treated with Dr. James Edwards for his left shoulder with surgery being conducted on 1/20/20 in the form of a left shoulder arthroscopy with labral repair, superior labrum anterior and posterior tear and debridement of labral tear anteriorly, inferiorly and posteriorly with subacromial decompression. The post-operative diagnosis was subacromial impingement and a type 2 SLAP tear of the superior labrum and type 1 tearing anteriorly. He was released at MMI on 6/26/20.

Mr. Reiman eventually treated with Dr. Gornet of the Orthopedic Institute of St. Louis for both his low back and neck. He had previously been a patient of his back in 2010. He presented to see Dr. Gornet on 4/13/19. Dr. Gornet recommended new MRI scans of both the cervical and lumbar spines. On 6/25/20 he noted small central protrusions at C5-6 and C6-7 on the MRI but at that time his neck was trending downward and injections were both performed at recommended at L4-5 and L5-S1.

Surgery was performed on 3/17/21 in the form of an anterior decompression and disc replacement with activL [small, 6 degree, 8.5 mm] at L5-S1. Petitioner followed up on 4/1/21 with significant improvement, he felt like he was doing very well and was quite pleased. On 6/28/21 he was continuing to do well with his back but was still having neck pain.

Cervical surgery was performed on 7/21/21 in the form of disc replacement C5-6 with Prestige LP [6mm x 16 mm] and placement of Gardner-Wells tongs. Petitioner returned on 8/5/21 doing very well clinically. He reported feeling dramatically improved and was very pleased with his progress. He was returned to work full duty no restrictions on 1/3/22. Dr. Gornet placed him at MMI for his lumbar spine on 3/19/22 and MMI on 7/11/22 for his cervical spine.

At trial Mr. Reiman testified the lumbar surgery and PT helped him regain strength and motion. He testified that following his cervical surgery he was great. He also testified the surgery and PT helped for the shoulder. He also testified he did great after that surgery as well. All in all Mr. Reiman has had a very good result from his surgeries. He is back working full duty with no restrictions.

CONCLUSIONS OF LAW

Respondent shall pay Petitioner permanent partial disability benefits of $775.47 for 125 weeks for 25% of a Person as a whole, for injuries to the cervical and lumbar spine, as well as the left shoulder, as provided in Sections 8(d)2 of the Act.

In determining the level of permanent partial disability, the Commission shall base its determination on the following factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability; corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order." 820 ILCS 305/8.1b(b).

(i) Impairment Rating: The Arbitrator notes that no AMA rating has been offered in this case. Therefore, the Arbitrator gives no weight to this factor.

(ii) Occupation: Petitioner continues to be employed and is working full duty. The Arbitrator gives more weight to this factor.

(iii) Age: At the time of accident Petitioner was 41 years old. There was no evidence offered demonstrating his age is a factor in his healing or future. The Arbitrator gives lesser weight to this factor.

(iv) Earning Capacity: There is no evidence that Petitioner's future earnings capacity has been affected. The Petitioner is able to work full duty. The arbitrator gives no weight to this factor.

(v) Disability: As a result of his accidental injury, Petitioner sustained injury to his cervical spine, lumbar spine, and left shoulder resulting in disc replacement at C5-6, anterior decompression and disc replacement at L5-S1, left shoulder arthroscopy with labral repair, debridement, with subacromial decompression. He also had various injections.He was able to return to work full duty. The Arbitrator gives significant weight to this factor.

Based on the five factors enumerated above, the Arbitrator finds that Petitioner suffered an injury resulting in the 25% loss Person as whole for injuries to the cervical spine, lumbar spine, and left shoulder.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC030861
Case Name	Gail Dial v. Small Newspaper Group/ DBA Ottawa Publishing Co LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0170
Number of Pages of Decision	18
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Melinda Rowe-Sullivan
Respondent Attorney	Anthony Enrietti

DATE FILED: 4/14/2023

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LASALLE)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gail Dial,

Petitioner,

vs. NO: 16WC 030861

Small Newspaper Group, Inc
d/b/a Ottawa Publishing Co., LLC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, diagnosis and treatment for CRPS, order of SCS, temporary total disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 3, 2021 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $22,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 14, 2023
o032823
MEP/ypv
049

/s/ *Maria E. Portela*

/s/ *Kathryn A. Doerries*

/s/ *Deborah J. Baker*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC030861
Case Name	DIAL, GAIL v. SMALL NEWSPAPER GROUP INC D/B/A OTTAWA PUBLISHING CO, LLC
Consolidated Cases	No Consolidated Cases
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Laura Hall
Respondent Attorney	Anthony Enrietti

DATE FILED: 11/3/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 2, 2021 0.06%

/s/ Roma Dalal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **LASALLE**)

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☐ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Gail Dial
Employee/Petitioner

v.

Small Newspaper Group, Inc
d/b/a Ottawa Publishing Co., LLC
Employer/Respondent

Case # **16** WC **030861**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Carolyn Doherty,** Arbitrator of the Commission, in the city of **Ottawa on September 16, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Average weekly wage**

FINDINGS

On the date of accident, **December 8, 2015** Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being regarding the CRPS ***is*** causally related to the accident. Petitioner's current condition of ill-being regarding the right knee is not causally related to the accident.

In the year preceding the injury, Petitioner earned $**23,314.72**; the average weekly wage was $**448.36.**

On the date of accident, Petitioner was **47** years of age, ***single*** with **0** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**12,429.15** for TTD, $**0** for TPD, $**0** for maintenance, and $**25,227.11** for other benefits, for a total credit of $**37,656.26**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule regarding petitioner's CRPS condition as provided in Sections 8(a) and 8.2 of the Act. No further medical services shall be paid for petitioner's right knee. Respondent shall receive credit for amounts paid.

Pursuant to Section 8(a) of the Act, the Respondent shall authorize and pay for, pursuant to the fee schedule, the treatment recommended by Dr. Li, including, but not limited to a spinal cord stimulator, prescription medication and all necessary ancillary care. The total right knee arthroplasty recommended by Dr. Rhode is denied.

Respondent shall pay Petitioner temporary total disability benefits of $264.44/week for 225 3/7 weeks, commencing February 1, 2017 through May 28, 2021, as provided in Section 8(b) of the Act. Respondent shall receive credit for amounts paid.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.
STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

NOVEMBER 3, 2021

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF LASALLE)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Gail Dial,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 16 WC 030861
Small Newspaper Group, Inc d/b/a Ottawa Publishing Co., LLC,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on May 28, 2021 and September 16, 2021 on Case 16 WC 03086.

The parties stipulated to the occurrence of accident on December 8, 2015. Issues in dispute include causal connection, wages/average weekly wage, medical bills, TTD benefits as well as prospective medical. (Arb. Ex. 1).

On December 8, 2015, Gail Dial, (hereinafter the "Petitioner") was employed by the Respondent, Small Newspaper Group (hereinafter the Times) and had been so employed for approximately 2 years.

Petitioner, testified on December 8, 2015 she was delivering a fruit basket and walking to her car and fell in the parking lot. (May Tr. 13). She slipped, hyperextending her big left toe landing on her right knee. She reported the accident to her employer and sought treatment the next day. (May Tr. 13). Petitioner's accident report noted Petitioner stepped on stone and fell on uneven pavement, falling on her right knee and both hands. (PX 14). Petitioner presented to OSF on December 9, 2015. Petitioner was a 47-year-old female presenting with right knee and left foot pain after falling in the parking lot of her job. (PX 2). It was noted Petitioner had three previous right knee arthroscopic surgeries. X-rays were negative. Petitioner was diagnosed with a right knee contusion and left foot sprain and was to follow up with her primary care physician. (PX 2).

On December 28, 2015 Petitioner presented to Dr. Adriana Dumitrescu. Petitioner fell at work and injured her right knee and left foot. Petitioner's right knee was swollen, and left foot was tender. Petitioner was diagnosed with right knee pain and left foot pain. (PX 3). Petitioner was to return in two weeks. In a January 6, 2016 follow up Petitioner had been taking naproxen twice a day. Her right knee was 80% better. She noted she continued to have significant problems with the left foot. Petitioner was referred to a podiatrist. (PX 3).

Petitioner presented to Dr. Scott O'Connor, a podiatrist on April 4, 2016. The doctor noted that due to almost 4 months of ongoing pain of the left foot Petitioner should undergo an MRI. (PX 4). On April 18, 2016 Petitioner underwent an MRI of the left foot which revealed some minimal degenerative changes of the first

metatarsophalangeal joint. Otherwise unremarkable. (PX 2). On May 2, 2016 Dr. O'Connor referred Petitioner for physical therapy.

On May 3, 2016 Petitioner began physical therapy at ATI. Petitioner complained of left foot pain. Petitioner was to undergo therapy two to three times a week for six weeks. (PX 8). Petitioner underwent therapy throughout May and June 2016. Petitioner returned to Dr. O'Connor on June 6, 2016. Petitioner was diagnosed with a left foot joint pain, a sprain of the left foot, sesamoiditis, and complex regional pain syndrome (CRPS). (PX 4). Dr. O'Connor referred Petitioner to pain management. (PX 4). Petitioner also underwent therapy at ATI from May through December 2016. (PX 8).

On July 8, 2016 Petitioner presented to Dr. Li at Applied Pain Institute. Petitioner filled out a pain assessment form noting pain only in the left foot. Her left foot stayed in a flexed position for an extended period as a result of the fall and since that time she had constant pain. Petitioner's left foot pain was due to CRPS. Her pain should be treated with a left lumbar sympathetic nerve block. He also prescribed Celebrex and Lyrica. (PX 5).

In an August 12, 2016 ATI progress note, Petitioner felt left foot and ankle pain. Petitioner was to have medical evaluation to determine the cause of her significant pain. There was no mention of right knee pain. (PX 8).

On August 16, 2016 Petitioner presented to Dr. Kenneth Candido for a Section 12 Examination. Dr. Candido examined Petitioner and reviewed her medical records. He diagnosed Petitioner with left foot pain, left peroneal nerve neuritis and possible complex regional pain syndrome. He agreed Petitioner should try up to three lumbar sympathetic nerve blocks. He further noted that there were no prior conditions of the left foot noted before the work injury as such he found causation. The right knee abrasion or contusion was temporary and resolved. He found no competent ongoing injury to the right knee. (RX 4, Ex. 2).

In an August 30, 2016 ATI physical therapy progress note Petitioner still felt horrible in the left ankle and foot. Petitioner did not complain of any right knee pain. It was noted again that Petitioner was to have a medical evaluation to determine the cause of her pain. (PX. 8).

Petitioner returned to Dr. Dumitrescu on September 1, 2016 for bilateral knee pain. She still had a lot of pain in her left ankle and foot. Her knees were fine since January, but about three weeks ago, with the way she walks to protect the left foot she began to feel right knee pain. The pain was severe, sharp and at times would get swollen. She also began having pain in her left knee about one week ago. There was some joint effusion on the right. She should begin physical therapy. (PX 3). She underwent x-rays of her bilateral knees which revealed mild degenerative changes and a trace of a right knee joint effusion. (PX 2).

Throughout September 2016 Petitioner underwent therapy for her right knee. (PX 8). Petitioner followed up on October 3, 2016 for pain in the right knee with Dr. Dumitrescu. The doctor noted he could not examine her knees, neither was swollen and there was no erythema. Petitioner may have mild arthritis. (PX 2).

On October 25, 2016, Dr. Candido provided an addendum report after reviewing additional medical records. Dr. Candido noted that he reviewed ATI Physical Therapy notes and the records of Dr. Dumitrescu. He noted Petitioner had no competent injury ongoing in the right knee. Any bruise or contusion would have been healed by January 2016. (RX 4, Ex 3).

Dr. Li prescribed nerve block injections, Celebrex and Lyrica to manage the CRPS. (PX 5). Dr. Li administered the first sympathetic block on October 28, 2016 with subsequent injections on November 4, 2016 and November 18, 2016 (PX 5). The injections provided minimal relief. (PX 5, Tr. 28). Dr. Li continued to evaluate and treat Petitioner, prescribing medication for her pain. Eventually, he recommended a spinal cord

stimulator. (PX 5). Petitioner followed with Dr. Li on a regular basis for pain management of the CRPS as well as medication monitoring. (PX 5, PX 15).

Petitioner continued with therapy at ATI. In a November 29, 2016 progress note Petitioner was still having functional issues with the left ankle/foot. Petitioner was to continue with therapy. On December 29, 2016 Petitioner was discharged from therapy at ATI. She had not demonstrated significant progress with continued bilateral leg pain. (PX 8).

On February 1, 2017 Petitioner testified that Dr. Li had taken her off work. She noted that she had continued to work for the Cora J. Pope Home. (May Tr. 30, PX 5).

On April 18, 2017 Petitioner received a letter from her employer indicated that indicating that if Petitioner was not returned to work after her May appointment she would be terminated. (PX 13).

On April 27, 2017 Petitioner first presented to Dr. Blaire Rhode for a right knee injury. Petitioner sustained a direct blow to the right knee and had diffuse tenderness. Petitioner was recommended an MRI. (PX 7). On May 5, 2017 Petitioner underwent the right knee MRI which revealed osteoarthrosis of the right knee, abnormality of the medial meniscus and morphological features which could be associated with abnormal patellar tracking. (PX 9). Dr. Rhode reviewed the MRI on May 11, 2017 which revealed a grade 3 signal in the posterior horn of the medial meniscus. Petitioner was eventually recommended right knee injections. (PX 7).

Petitioner testified that Dr. Li released her to sedentary duty restrictions as of June 16, 2017. (May Tr. 36). She further noted that she was terminated by the Times as of May 17, 2017 as her FMLA had run out. In May 2017, her doctor had her completely off work. (May Tr. 37).

On October 27, 2017, Dr. Li ordered a Functional Capacity Examination, as recommended by the Respondent's IME physician, Dr. Candido. (PX 15).

On November 16, 2017 Petitioner underwent an EMG which was normal. (PX 12). Petitioner subsequently underwent a FCE on December 27, 2017 and December 28, 2017. (PX 11). Petitioner's effort was limited throughout the two-day evaluation by her complaints of upper and lower extremity pain. (PX 11). It was noted that when Petitioner was originally scheduled to take the FCE it was cancelled as her blood pressure was too high. Petitioner arrived at the FCE wearing Bermuda shorts and flip flop sandals without socks as she noted she could not tolerate direct contact with socks and shoes. On both days it was noted that it was single digits of Fahrenheit. It was noted it was unusual for someone with CRPS to tolerate such low temperatures. The FCE evaluator noted the results of the evaluation were limited by Petitioner's subjective complaints. Until her pain complaints were better controlled, she should be limited to the sedentary physical demand level. (PX 11).

Petitioner continued to treat with Dr. Rhode. On August 6, 2018 Petitioner received another injection to her right knee. Petitioner was referred to Dr. Patel for pain management. (PX 7).

On August 21, 2018 Petitioner presented to Dr. Udit Patel for a second opinion. Dr. Patel noted Petitioner had neuropathic pain finding allodynia to light touch, evidence of temperature asymmetry, positive for edema, and positive for skin changes. (PX 10). Dr. Patel agreed a spinal cord stimulator trial would be beneficial if Petitioner passed the neuro-psych evaluation. Petitioner returned to Dr. Patel on September 18, 2018 noting she had reflex sympathetic dystrophy. She should follow up with Dr. Li for the same. (PX 10).

On September 8, 2017 Dr. Candido performed a second Section 12 examination. Regarding his diagnoses, he still found Petitioner had left foot pian, left peroneal nerve neuritis and possible complex regional pain

syndrome. He noted unusual findings in that there was significant right foot coolness compared to the left. He still found that causation existed. At this point he recommended an EMG and FCE. (RX 4, Ex. 4).

Petitioner continued treatment with Dr. Rhode throughout 2018 and 2019 for her progressive knee pain. (PX 7). On February 27, 2018 Petitioner underwent a third Section 12 examination with Dr. Candido. At this time Dr. Candido diagnosed Petitioner with right knee pain, left foot pain and possible complex regional syndrome of the left foot but noted this was doubtful. He noted that a spinal cord stimulator would not work on petitioner as the injections failed to provide benefit. He noted that from a practical perspective she should be capable of working at a medium duty work level. He noted that she was at MMI. (RX 4, Ex. 5).

Petitioner's knee pain continued to progress, and she was eventually recommended a total knee arthroplasty on July 18, 2019. (PX 7).

On July 7, 2020 petitioner presented to Dr. Andrew Kim for a Section Examination. Dr. Kim went over petitioner's work history and job duties. Petitioner advised she slipped in the parking lot and landed on her right knee. The doctor went over her previous three right knee arthroscopies included in 1991, 2002 and 2003. She had no significant right knee problems until the work-related injury. Dr. Kim observed petitioner was 5 feet 10 inches, 299 pounds in weight, waddled from side to side and walked with a cane. Dr. Kim reviewed medical records beginning from December 9, 2015 through a progress note from Dr. Rhode on June 4, 2020. X-rays taken of the right knee showed bone on bone changes of the medial compartment of the right knee. Dr. Kim opined as it related to the work injury petitioner diagnosis was a resolved right knee contusion. The right knee osteoarthritis was not causally related to the work injury. He noted that quickly following her injury, her right knee pain basically resolved, and it was not until September 2016 when it began painful again. He further noted that the right knee osteoarthritis disease was not the result of overcompensating due to left foot pain. He opined further treatment was not needed regarding the work injury. Petitioner would have reached MMI one month after her injury, therefore January of 2016. (RX 3, Ex 2).

Dr. Rhode continued treatment in 2020 noting Petitioner was utilizing a cane. On April 23, 2020 Dr. Rhode indicated Petitioner fell again and impacted her bilateral knees. Petitioner was to continue with pain management and follow up in four weeks. Dr. Rhode further assessed Petitioner continued to wait for a spinal cord stimulator. On August 27, 2020 Dr. Rhode noted that the IME physician felt like there was a significant gap in knee complaints but documented he did not have access to past medical files to render a medical opinion on the gap in treatment. Dr. Rhode further stated Petitioner indicated her knee pain had been consistent since the fall which was contradictory to the IME opinion. (PX 7).

Petitioner began physical therapy on December 2, 2020 at Orland Park Orthopedics. Petitioner was to undergo therapy two times a week for four weeks. (PX 7). On December 30, 2020 Petitioner's therapist noted Petitioner was on track regarding normal and expected progress and making significant gains. (PX 7). As of January 14, 2021, Dr. Rhode documented Petitioner continued to be significantly symptomatic. He recommended a total knee arthroplasty. Treatment recommendations did not change throughout 2021. (PX 7).

Petitioner continued to follow up with Dr. Li throughout 2020 and 2021 every three months. There was no change in her treatment plan. She was advised to continue medications and follow up. (PX 5).

TESTIMONY

On December 19, 2019 Dr. Kenneth Candido testified. Dr. Candido is board certified in anesthesiology. Dr. Candido examined Petitioner on August 16, 2016. He reviewed medical records beginning from December 8, 2015. On examination, he noted some areas of tactile allodynia and hyperalgesia to digital pressure. (RX 4, p. 20). He found symmetry between both legs in measurements and no temperature discrepancies. Based on the

same he diagnosed Petitioner with left foot pain, left peroneal nerve neuritis and possible complex regional pain syndrome. (RX 4, p. 22). He utilized the Budapest criteria loosely to see if patients meet the criteria. He further noted that the CRPS is a diagnosis of exclusion. He believed Petitioner's condition was more consistent with peroneal nerve neuropathy. (RX 4, p. 27). He found no ongoing injury regarding the right knee. (RX 4, p. 28). Dr. Candido noted that Petitioner's subjective complaints were out of proportion to her objective findings. Petitioner described left foot swelling but he could not identify the same nor could he identify left foot temperature changes. (RX 4, p. 28). During his first examination, Dr. Candido opined Petitioner could try up to two lumbar sympathetic nerve blocks. If Petitioner did not have a minimum of 50% improvement, then the likelihood of CRPS would even be further remote. (RX 4, p. 30). If Petitioner did not receive any improvement of her activities of daily living and ambulation, then she would be at MMI. If she received at least 50% improvement, she would be a candidate for up to three additional nerve blocks. (RX 4, p.32-33). Dr. Candido further opined Petitioner was at MMI for the right knee. Dr. Candido testified that he authored an addendum report on October 25, 2016 reviewing additional medical records. These records did not change his initial opinions. (RX 4, p. 36). Dr. Candido next examined Petitioner on September 8, 2017. On exam, Petitioner's left handgrip strength increased which would be inconsistent with her upper extremity complaints. Additionally, her right foot was cooler than her left which was an unexpected finding. (RX 4, p. 42). Based on her findings, Dr. Candido still found causal connection to her left foot pain and recommended an EMG followed by an FCE. (RX 4, p. 43-44). Dr. Candido testified he examined Petitioner again on February 27, 2018. The EMG revealed no evidence of radiculopathy or neuropathy. He also reviewed the invalid FCE. Dr. Candido examined Petitioner and reviewed medical records. Petitioner's left lower extremity was improved, and the right side was markedly reduced for both quadriceps as well as iliopsoas and hip flexion strength. Petitioner was diagnosed with right knee pain, left foot pain and possible CRPS. He doubted Petitioner had CRPS as the only finding was slight reduction in range of motion. There were no color changes, no temperature disparity, no edema, no swelling, no signs of sympathetic nervous system dysfunction, no loss or alteration of hair or changes in the growth of nails, no tremors and no atrophy. (RX. 4, p. 52). The only finding that could be related to CRPS was tactile allodynia or pain to light touch. He further testified that considering the normal EMG and invalid FCE, he could not support that her complaints were related to a work condition. In other words, he could not find evidence of a focus of a pain generator. He opined Petitioner was at MMI and could work in a medium duty work capacity. (RX. 4, p. 54-55). During the deposition, Dr. Candido opined Petitioner did not have CRPS and likely never had CRPS of the left foot or left lower extremity. (RX 4, p. 56). Based on the same he would not recommend any treatment or testing for the left foot or right knee. (RX 4, p. 57). On Cross Examination Dr. Candido noted that although he did not have evidence to support the possibility of CRPS he still noted it as one of his diagnoses throughout all his examinations and reports. (RX 4, p. 62).

On March 12, 2021 Dr. Andrew Kim testified. (RX 3). Dr. Kim is board certified in adult reconstructive surgery, mainly doing hips and total knees. (RX 3, p. 9-10). Dr. Kim testified that during the examination Petitioner reported extreme right knee pain with instability. (RX 3, p. 15). He noted Petitioner had three right arthroscopies in the past, 1991, 2002 and 2003. (RX 3, p. 16). Dr. Kim testified Petitioner walked with a waddle, leaning her body from side to side and was considered morbidly obese. (RX 3, p. 18-19). Petitioner was very guarded and tender to touch with a possible issue of self-guarding. (RX 3, p. 20). Examination was difficult due to elicitation of pain. He noted, however, there were no significant signs of atrophy. Dr. Kim testified the medical records showed that on January 6, 2016 Petitioner indicated her right knee was 80% better. (RX 3, p. 25). Additionally, Dr. Candido's report of August 16, 2016 noted no competent injury was ongoing in the right knee. (Id). The next mention of right knee pain was September 1, 2016. Based on the records and his examination he diagnosed Petitioner with a contusion of the right knee that should have been resolved in a few weeks after the initial injury as it related to the work injury. (RX 3, p. 28). He noted that osteoarthritis was present but not related to the work injury as the medical records reflected by January 6, 2016 indicated she was 80% improved. (RX 3, p. 28). There was no mention of knee pain until September 1, 2016. At that time, she complained of bilateral knee pain. He further noted the pain assessment form filled out on July 8, 2016 did not mention right leg or right knee pain. Based on the same, the initial pain which she had was mostly gone by

January 6, 2016. (RX 3, p. 29). He further noted Petitioner's pain and hypersensitivity and extreme guarding appeared out of proportion to the objective findings, with minimal objective findings. (RX 3, p. 30). Regarding the work injury, Dr. Kim testified that Petitioner sustained a contusion and did not need any restrictions. (RX 3, p. 31). He further testified that he believed it was highly unlikely that the progression of right knee osteoarthritis and the need for the knee replacement surgery was directly related to compensation from left foot problem. He noted Petitioner was very immobile to begin with. Her level of activity and demand that she puts on her body overall was so low. He stated that even if she was compensating, if she was not able to walk more than five minutes at a time how much realistic stress could she put on the right leg. In addition, in his clinical practice, he did not see compensation from one injury of the contralateral leg leading to the need for a knee replacement of the other leg. Lastly, he testified Petitioner had preexisting arthritis and was morbidly obese. Over the course of five years, it was more likely that the natural course of arthritis progressed rather than overactivity and overcompensation from the other leg. (RX 3, p. 32-33). Dr. Kim noted that taking causation out of the equation, if Petitioner was his patient, he would recommend weight loss as he does not perform total joint replacement surgeries for patients who have BMI over 40. He would also ask her to maximize physical therapy and would then consider a knee replacement. (RX 3, p. 40).

Dr. Li testified on April 28, 2021. Dr. Li is a board-certified anesthesiologist and pain specialist. He testified that he began treating Petitioner on July 8, 2016. (PX 15, P. 6). Petitioner came in with severe left foot pain that was burning with hypersensitivity and allodynia. Petitioner also had redness and swelling. (PX 15, p. 6). Based on her physical exam he diagnosed her with CRPS. He noted the main presentation of pain for CRPS was the burning pain. He testified he began treatment with aggressive interventions, such as lumbar sympathetic blocks. He noted that by the time he saw Petitioner her condition was chronic and noted she may not respond to the sympathetic blocks. (PX 15, p. 9). Petitioner proceeded with the nerve blocks with minimum relief. (PX 15, p. 12). Dr. Li continued to prescribe different medications and a trial of a spinal cord stimulator. He also advised Petitioner to seek a second opinion if she wanted. (PX 15, p. 13). Dr. Li went on to testify that he had been seeing her regularly over the past several years every three months to follow up on pain medication. Around January of 2017, Dr. Li noted her pain began spreading to the left lower leg and then to her right lower extremity. She also began having symptom spread in the right and left upper extremities. (PX 15, p. 15). Dr. Li testified that neuropathic pain tended to spread to other limbs. He further testified he placed Petitioner at a sedentary duty as of June 16, 2017. (PX 15, p. 17). He noted Petitioner continued to complain of burning and had swelling in the left foot. (PX 15, p. 19). Eventually he ordered an EMG and a functional capacity exam as recommended by Dr. Candido. The FCE, however, could not be completed due to Petitioner's high blood pressure and pain. (PX 15, p. 20). Dr. Li went on to testify that throughout his treatment in 2018 Petitioner was symptomatic in the left lower extremity, right lower extremity and bilateral upper extremities. (PX 15, p. 21). He continued to see Petitioner throughout 2018, 2019 and 2020 prescribing pain medication and waiting for authorization of the spinal cord stimulator trial. (PX 15, p. 22-23). He last saw Petitioner on March 29, 2021. On that visit, her physical examination was still very similar. He saw typical skin changes in her lower extremities, which was shiny skin and redness compared to the normal skin and saw swelling. She always walked in barefoot even in the cold weather. He noted this was a classic CRPS patient presentation as it does not matter how cold it is, she did not want to have socks over her skin. He further noted that she had a significant hypersensitivity/allodynia, in both legs. (PX 15, p. 26). Based on the same, to a reasonable degree of medical certainty, Dr. Li diagnosed Petitioner with CRPS in her left lower extremity, right lower extremity and bilateral upper extremities. He noted that the initial fall of December 2015 contributed to the CRPS symptoms. (PX 15, p. 27). Lastly, he testified he has recommended a spinal cord stimulator as they have tried numerous pain medications and Petitioner failed lumbar sympathetic blocks. (PX 15, p. 28).

On Cross-Examination, Dr. Li testified he has been treating CRPS since 1990. He testified that allodynia is a subjective finding. He further noted that hypersensitivity is also a subjective finding. (PX 15, p. 30-31). Dr. Li noted, however, that there were objective findings, like the skin color, temperature changes and swelling. (PX 15, p. 33). He indicated that his notes documented the redness of her skin and temperature changes. (PX 15, p.

36). He further noted that Petitioner's range of motion was being limited. (PX 15, p. 37). Dr. Li conceded that he did not identify increases or decreases in grip strength. (PX 15, p. 37). He noted the EMG was negative which did not impact his diagnosis and was rather standard. Dr. Li advised CRPS involves the sympathetic nerve and the EMG is testing the somatic nerve. Based on the same, you typically obtain a negative EMG. (PX 15, p. 40). He did note that Petitioner could return to work at a sedentary capacity per the FCE. (PX 15, p. 42). Dr. Li noted that CRPS is a difficult diagnosis and you must look at the overall picture, the skin, the hypersensitivity, and all the presentations on the skin changes after the injury. (PX 15, p. 45). He noted that if he suspected malingering on a patient, he would accidentally touch the affected limb without notifying her and assess whether the patient would have the same physical response. He noted he did that a couple of times on Petitioner and she would have the same response. Based on the same, he did not believe she was malingering. (PX 15, p. 47).

Dr. Blair Rhode testified on May 17, 2021. Dr. Rhode is board-certified in sport medicine orthopedics. (PX 16, p. 5). He noted Petitioner initially presented on April 27, 2018 indicating she fell at work on December 8, 2015. She described a hyperextension injury to her left toe with a fall to the ground sustaining a direct blow-type injury to her right knee. (PX 16, p. 8). He testified that he wanted to treat her with conservative treatment due to her CRPS and recommended an MRI. The MRI revealed some grade 3 signal in the posterior horn of the medial meniscus suggestive of a possible meniscus tear. She also had chondral changes throughout the knee suggestive of cartilage damage. (PX 16, p. 10). On February 5, 2018, Dr. Rhode performed a steroid injection to the right knee. (PX 16, p. 11). Petitioner continued to follow up undergoing several intra-articular steroid injections. (PX 16, p. 12). They also attempted physical therapy, but Petitioner's symptoms continued to progress. (PX 16, p. 12). As a result, Dr. Rhode recommended a total right knee arthroplasty. (PX 16, p. 13). He further testified that he had kept Petitioner off work since the initial visit in 2017. Dr. Rhode noted Petitioner previously underwent three right knee arthroscopies and did not review those records. (PX 16, p. 14). Dr. Rhode testified in his opinion, to a reasonable degree of medical certainty, the December 8, 2015 fall and direct blow to the Petitioner's right knee was a causative or aggravating component to Petitioner's patellofemoral disease and an aggravating component to her medial and lateral compartment changes to the right knee. (PX 16, p. 17) In explaining his rationale, Dr. Rhode noted Petitioner's history of three prior right knee arthroscopies, with the last one being in 2004, and a lack of symptoms or problems to the right knee from 2004 until the December 8, 2015 work injury. (PX 16, p. 17). As such, he testified that the need for her total right knee replacement was causally connected to the work injury. (PX 16, p. 18). Dr. Rhode did advise that due to Petitioner's subjective complaints of pain, he was unable to perform provocative testing of the right knee. (PX 16, p. 25). Dr. Rhode noted there were degenerative changes in the medial meniscus which would be consistent with her three prior surgeries. (PX 16, p. 30). Dr. Rhode agreed that it would not be unusual for a patient to have some joint pain and tenderness being 50 years old, overweight with a history of three arthroscopic surgeries. (PX 16, p. 36). Lastly, he testified he did not have the past medical records so did not have an opinion as to the gap in treatment and whether it was significant or not. (PX 17, p. 38).

At trial Petitioner testified her symptoms to her left lower extremity have changed since December 8, 2015. (May Tr. 31) Of note, the sensation of pins and needles, burning and pain to touch has moved further up her left leg to her thigh. (May Tr. 31-32). She testified that although she did not complain of right knee pain it had not resolved. Rather the pain in her left foot and leg were so intense that the right knee did not compare. (May Tr. 25). She acknowledged that she had three surgeries with a gap of ten years between her last surgery and her work injury. (May Tr. 26).

Petitioner testified she continues to follow up with Dr. Li and sees him monthly for medication management. (May Tr. 31). Petitioner is currently taking Gabapentin, amitriptyline, duloxetine and Norco which she testified takes the edge off her pain. (May Tr. 31). She further testified that her symptoms have changed and have gone up to her leg/mid-thigh. She also continues to experience pins and needles sensation, burning and sensitivity to touch. Petitioner further testified that she wants to proceed with the spinal cord stimulator trial. (May Tr. 44).

She further testified her pain is a 9 out of 10. In addition, the weather can spike her pain. She wears sandals even when its cold outside as she is unable to wear socks or shoes due to the pain in her feet with the CRPS. (May Tr 47-48). She further testified that she advised Dr. O'Connor of all her injuries. She did concede that when she signed the 2016 Pain Assessment form, she only marked pain in the left foot and not in the right leg. (Sept Tr. 16-17). She testified that she did not go see Dr. Li for her right knee, so she did not mark it. Lastly, she testified she was focused on her left big toe and foot during January 2016 through September 2016 and not her right knee. (Sept. Tr. 37).

Petitioner testified that she was working at Cora J. Pope Home when she began working at the Times. (May Tr. 10). She held this job while she was working for the Times, working 3 hours a week and earning $17.00 an hour, of which the Times was aware. (May Tr. 10-11). She specifically testified that her boss Anne Hinterlong knew of her job at Cora J. Pope Home. (May Tr. 49). At the Times, Petitioner worked in classifieds, doing ads for sale, garage sales and legals. (May Tr 11-12). She noted that her job at the Times was essentially a desk job. She did have to go up and down the stairs and carry paper sometimes. (Sept. Tr. 7). Petitioner worked light duty until Dr. Li took her off work. (Sept Tr. 24). When she did work light duty, she did not have to go up and down the stairs. When she was placed back with restrictions Petitioner did not approach her previous employer with the restrictions when she was released because they had already terminated her. Regarding her employment with Cora J. Pope Home employment, Petitioner testified that she left her employment because she had issues with losing track of time and not remembering to do things. She noted that this was a sedentary part time position that she was able to do for about 20 years from her house. (Sept. Tr. 6).

Regarding the disputed concurrent wages, Petitioner submitted 2019 tax returns showing earnings of $2,200.82 and from 2020 showing gross earnings of $2507.50. Respondent submitted a subpoena request to Cora J. Pope Hope which indicated the business is shut down and could not provide any records.

CONCLUSIONS OF LAW

F. Is Petitioner's current condition of ill-being causally connected to this injury?

The Arbitrator adopts the Statement of Facts in support of the Conclusions of Law. To obtain compensation under the act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim (O'Dette v. Industrial Commission, 79 Ill.2d 249, 253 (1980) including that the accidental injury both arose out of and occurred in the course of his employment (Horvath v. Industrial Commission, 96 Ill.2d. 349 (1983)) and that there is some causal relationship between the employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, I29 Ill. 2d 52, 63 (1998). Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made her more vulnerable to injury, recovery for an accidental injury will not be denied as long as she can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if she can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

Additionally, a decision by the Commission cannot be based upon speculation or conjecture. *Deere and Company v Industrial Commission*, 47 Ill.2d 144, 265 N.E. 2d 129 (1970). A petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois*

Institute of Technology v. Industrial Commission, 68 Ill.2d 236, 369 N.E.2d 853 (1977). Where a petitioner fails to prove by a preponderance of the evidence that there exists a causal connection between work and the alleged condition of ill-being, compensation is to be denied. Id. The facts of each case must be closely analyzed to be fair to the employee, the employer, and to the employer's workers' compensation carrier. *Three "D" Discount Store v Industrial Commission*, 198 Ill.App. 3d 43, 556 N.E.2d 261, 144 Ill.Dec. 794 (4th Dist. 1989).

It is axiomatic that the weight accorded an expert opinion is measured by the facts supporting it and the reasons given for it; an expert opinion cannot be based on guess, surmise, or conjecture. *Wilfert v. Retirement Board,* 318 Ill.App.3d 507, 514-15 (1st Dist. 2000).

The courts presume that when a person seeks treatment for an injury, he will not falsify statements to a physician from whom he expects to receive medical aid. *Shell Oil Co. v. Industrial Comm'n,* 2 Ill.2d 590, 592 119 N.E. 2d 224, 226 (1954). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks*, 08 IL.W.C. 004187 (Ill. Indus. Comm'n 2010).

In this case, the Arbitrator finds Petitioner sustained an injury to her left foot resulting in CRPS and a right knee contusion on December 8, 2015. The Arbitrator will deal with each claim separately.

A review of the facts provides Petitioner sustained an injury on December 8, 2015 to her left toe/foot and her right knee. The Arbitrator notes that Petitioner had consistent complaints of her left foot/lower extremity pain since the injury. Both Dr. Li and Dr. Candido testified in this matter. Both Dr. Li and Dr. Candido testified CRPS is a difficult condition to diagnose because of the vague and primarily subjective complaints/factors to consider in forming such diagnosis. Both doctors agree that in addition to the multiple subjective complaints, there are multiple objective findings which would lead to the proper diagnosis.

Dr. Li noted that he observed objective findings of CRPS such as skin color, temperature changes and swelling throughout his treatment. (PX 15, p. 33). He testified further that he did not see any evidence of malingering. (PX 15, p. 47). Dr. Li treated petitioner from 2016 to the present, every three months. Dr. Li testified in his opinion, to a reasonable degree of medical certainty, the fall in December of 2015 was the trigger for the cascading of symptoms leading to CRPS. (PX 15). Further, Dr. Scott O'Connor diagnosed Petitioner with CRPS in 2016 (PX 4), and Dr. Udit Patel agreed Petitioner meets the criteria for neuropathic pain syndrome on August 21, 2018. (PX 10).

Dr. Candido, Respondent's IME physician, testified he conducted multiple examinations of Petitioner. (RX 4). Dr. Candido testified the Budapest model is the standard criteria for a determination of CRPS, yet he also testified he only follows this model loosely and disagreed with portions of the model, namely the use of allodynia as an objective finding. (Id). Dr. Candido, upon initial examination of the Petitioner, found a possible diagnosis of CRPS. (RX 4). By his final examination of Petitioner, on February 27, 2018, Dr. Candido provided diagnoses of right knee pain, left foot pain and possible complex regional pain syndrome of the left foot. (RX 4). Dr. Candido testified in contradiction to his own report and diagnosis, testifying he did not find Petitioner to have CRPS. (RX 4)

In this case the Arbitrator finds the opinions of the treating physician Dr. Li more persuasive than those of Dr. Candido. The Arbitrator further notes that Dr. Li was the physician who treated petitioner since 2016 and was in the best position to assess petitioner's condition and treatment options. Following consideration of the testimony and evidence presented, it is found by this Arbitrator that Petitioner's current condition of ill-being regarding her CRPS is causally connected to the injuries sustained on December 8, 2015.

On the issue of petitioner's right knee, the Arbitrator reviewed the medical records as well as the testimony of Drs. Rhode and Kim. Petitioner initially began treatment for her right knee immediately following the accident. By January 1, 2016 petitioner advised Dr. Dumitrescu, her primary care physician, her right knee was 80% better. In addition, she did not mention her right knee pain to either Dr. O'Connor or Dr. Li after this date. The Arbitrator further finds the July 2016 pain assessment persuasive noting petitioner only documented pain to her left foot at that time. In addition, Dr. Candido examined petitioner on August 16, 2016 and specifically found petitioner to have sustained a right knee abrasion or contusion which was temporary and resolved. He found no competent ongoing injury to the right knee. (RX 4, Ex. 2). The Arbitrator further notes that the August 30, 2016 ATI physical therapy progress report did not mention any right knee pain. (PX 8). It was not until Petitioner returned to Dr. Dumitrescu on September 1, 2016 that she complained of bilateral knee pain. She specifically indicated her knees were fine since January, but about three weeks ago, she felt pain. It was further noted to be bilateral pain.

During, Dr. Rhode's testimony, he testified that he had no information or knowledge of any of the medical treatment Petitioner received to the right knee prior to his treatment. Dr. Rhode also testified he never had a conversation with Petitioner regarding the eight-month gap in treatment. He further agreed that the MRI findings were consistent with ongoing natural progression of pre-existing and degenerative condition which could be consistent with results of three prior arthroscopic surgeries to the right knee. Dr. Rhode further testified in his opinion, to a reasonable degree of medical and orthopedic certainty, a force of that nature compresses, or damages the cartilage. (PX 16). He went on to opine this force was a causative or aggravating component to her patellofemoral disease and an aggravating component to her medial and lateral compartment changes. (Id).

Dr. Kim also testified in this matter. Dr. Kim is an orthopedic surgeon with the fellowship in reconstructive surgery to the hips and knees. Dr. Kim's primary practice consists of hip and knee replacement surgeries for the past 18 years. Dr. Kim's review of the MRI was consistent with degenerative changes. Dr. Kim found it pertinent Petitioner told her primary care physician less than 30 days after the incident she was 80% better. From that date Petitioner sought no additional medical treatment to her right knee until September 1, 2016. Dr. Kim testified that the gap in treatment was consistent with an ongoing degenerative condition which over time worsened to the point she needed medical care. Dr. Kim noted Petitioner was morbidly obese which was consistent with symptoms of osteoarthritis, which was found on MRI. Dr. Kim further testified it was highly unlikely the progression of right knee osteoarthritis and the need for the knee replacement surgery was directly related to compensation from her left foot problem. He noted Petitioner was very immobile to begin with. Her level of activity and demand that she puts on her body overall was so low. He stated that even if she was compensating, if she was not able to walk more than five minutes at a time how much realistic stress could she put on the right leg. In addition, in clinical practice, he does not see compensation from one injury of the contralateral leg leading to the need for a knee replacement of the other leg. Lastly, he testified Petitioner had preexisting arthritis and was morbidly obese. Over the course of five years, it was more likely that the natural course of the arthritis progressed rather than overactivity and overcompensation from the other leg. (RX 3, p. 32-33).

In this case the Arbitrator finds the opinions of the Dr. Kim more persuasive than those of Dr. Rhode. The Arbitrator further notes that Dr. Rhode did not review the medical records leading up to his treatment. He further could not explain the gap in medical care. In addition, Dr. Kim's testimony was persuasive as he noted the gap in treatment, the lack of complaints with any physicians for over 8 months, and petitioner's three pre-existing knee surgeries.

Following consideration of the testimony and evidence presented, it is found by this Arbitrator that the Petitioner sustained a right knee contusion reaching MMI by January 2016 as noted by Dr. Kim. Giving petitioner a few additional weeks to completely heal the Arbitrator finds petitioner reached MMI by January 31, 2016.

J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services? K. Is Petitioner entitled to any prospective medical care?

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. The medical records entered evidence demonstrate Petitioner sustained a right knee strain reaching MMI as of January 31, 2016. All medical treatment to the right knee sprain injury provided through this date is reasonable and necessary and related. Any medical treatment to the right knee following that date is not related. No further medical care is awarded regarding petitioner's right knee.

Regarding petitioner's CRPS claim, based on the record in its entirety, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. Given the Arbitrator's finding of causation between Petitioner's December 8, 2015 work accident and her condition of ill-being regards her CRPS, Respondent is liable for reasonable and necessary medical treatment of the causally related condition.

As such, the Arbitrator orders Respondent to pay Petitioner the reasonable and necessary medical expenses incurred in connection with the care and treatment of her causally related condition pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid.

Regarding the issue of whether the Petitioner is entitled to any prospective medical care, following consideration of the testimony and evidence presented, the same is incorporated by reference, it is found that Petitioner's CRPS is causally related to her work accident and has not stabilized or otherwise reached MMI. As such, Respondent shall provide, prospective medical care as recommended by Dr. Li, including the spinal cord stimulator, prescription medication and all related necessary ancillary care. Dr. Li has diagnosed Petitioner with CRPS as a result of the December 8, 2015 work accident and has recommended a spinal cord stimulator, as well as ongoing prescription medication. (PX 5, 15). Further, Dr. Udit Patel concurred with the diagnosis of CRPS, also recommending Petitioner continue treatment with Dr. Li, to include a spinal cord stimulator. (PX 10).

O. Average Weekly Wage

The parties agree that the average weekly wage in this matter is for the Times is $397.36 but disagree as petitioner's concurrent employment. Petitioner testified she had concurrent employment at the Cora J. Pope Home, making $17 an hour and working approximately 3 hours a week. This testimony was unrebutted by any testimony.

Utilizing Petitioner's testimony, this provides an average weekly wage of $448.36. Tax records from 2019 and 2020, show wages from the Cora J. Pope Home to be $2200.82 and $2507.50 respectively which corroborate testimony of concurrent employment. Based on the same the Arbitrator finds the correct wage to be $448.36.

L. What temporary benefits are in dispute?

In order to prove entitlement to TTD benefits, a claimant must establish not only that he did not work, but that he was unable to work. *Sharwarko v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 131733WC. An employee is temporarily totally disabled from the time that an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990). Once an injured employee's physical condition stabilizes or he has reached MMI, he is no longer eligible for temporary total disability benefits. *Archer Daniels Midland Co*., 138 Ill. 2d at 118. A claimant reaches MMI when he is as far recovered or restored as the permanent character of his injury will permit. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004). Factors to be considered in determining whether a claimant has reached MMI include whether he

has been released to return to work, medical evidence, testimony concerning the claimant's injury, the extent of his injury, and whether the injury has stabilized. *Nascote Industries*, 353 Ill. App. 3d at 1072. The period of time during which a claimant is temporarily and totally disabled is a question of fact to be determined by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Archer Daniels Midland*, 138 Ill. 2d at 119-20.

Petitioner is claiming TTD benefits beginning on February 1, 2017 when Dr. Li took her off work. Petitioner was released to sedentary restrictions as of June 16, 2017. By that time, she was terminated by the Times (May 17, 2017) as her FMLA had run out. Petitioner's condition has not stabilized as additional medical care has been requested. Based on the same, TTD benefits are awarded at a rate of $264.88 (based on the average weekly wage solely attributable to The Times). Petitioner testified she did not lose time from her concurrent employment and later testified that she left her employment on her own volition. (May Tr. 6). Respondent shall receive credit for amounts paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC008996
Case Name	Johnnie Ollie v. Cook County
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0171
Number of Pages of Decision	21
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Crystal Figueroa
Respondent Attorney	James Lumene

DATE FILED: 4/14/2023

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOHNNIE OLLIE,

Petitioner,

vs. NO: 18 WC 8996

COOK COUNTY DEPARTMENT OF CORRECTIONS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of notice, causal connection, benefit rates, medical expenses, temporary benefits and permanent partial disability (PPD) benefits, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator which is attached hereto and made a part hereof.

The Commission affirms the Arbitrator's award of the reasonable, necessary and related medical charges that remained unpaid as of the date of arbitration. These charges are detailed in Petitioner's Exhibits 10 and 19-23 and total $95,135.13. The Commission additionally finds that by the parties' stipulation, Respondent is entitled to a credit under Section 8(j) of the Act in the amount of $207,652.82 for prior medical payments made.

The Commission further affirms the Arbitrator's finding that Petitioner is entitled to temporary total disability (TTD) benefits from February 15, 2018 through February 22, 2022 as well as maintenance benefits from February 23, 2022 through May 15, 2022. The Commission additionally finds that Respondent is entitled to a credit of $185,996.45 for temporary benefits previously paid to Petitioner and as stipulated to by the parties on the Request for Hearing form.

The Commission however strikes the Arbitrator's award of temporary partial disability (TPD) benefits commencing on May 16, 2022. The Commission finds that by May 16, 2022, Petitioner's work-related conditions had long stabilized, he was at maximum medical improvement (MMI) and had only been receiving maintenance benefits while undergoing the vocational rehabilitation process through May 15, 2022. Petitioner was no longer entitled to

temporary benefits once he ceased vocational rehabilitation efforts and began his new job position with the City of Chicago Department of Aviation on May 16, 2022. Based upon Petitioner's new job position, the Commission finds instead that Petitioner was entitled to wage differential benefits pursuant to Section 8(d)1 of the Act starting on May 16, 2022.

Wage differential benefits equal 66-2/3% of the difference between the average amount which Petitioner would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident. *820 ILCS 305/8(d)1*. Here, the Commission affirms the Arbitrator's finding that Petitioner's average weekly wage in the year preceding the work injury was $1,680.00, but modifies the Arbitrator's wage differential calculation to conform with the evidence submitted at arbitration.

Petitioner's Exhibit 14 demonstrates that Petitioner's rate of pay with the City of Chicago was $46,836.00 annually, or $900.69 when divided by 52 weeks, and Petitioner's Exhibit 15 – Petitioner's pay stub from the City of Chicago dated June 1, 2022 – indicates that Petitioner earned $1,951.50 in two weeks or $975.75 per week. The Commission finds that Petitioner's testimony that he earned about $46,000.00 per year and Petitioner's Exhibit 14 more accurately depict the average amount Petitioner was able to earn in his occupation with the City of Chicago, rather than the one pay stub comprising of two weeks of work with no explanation regarding overtime pay or why Petitioner worked 84 hours at regular rate. As such, the Commission finds that Petitioner's wage differential benefit totals $519.54 per week based on the $900.69 current wage and pursuant to the calculation provided in Section 8(d)1 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 15, 2022 is hereby modified as stated and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable, necessary, and related medical bills as evidenced in Petitioner's Exhibits 10 and 19-23 in the amount of $95,135.13 pursuant to Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit under Section 8(j) of the Act in the amount of $207,652.82 as stipulated by the parties. Respondent shall hold Petitioner harmless from any and all claims by any providers of the services for which Respondent is receiving this credit as provided in Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $1,120.00 per week for 209 6/7 weeks, from February 15, 2018 through February 22, 2022, that being the period of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner maintenance benefits of $1,120.00 per week for 11 5/7 weeks, from February 23, 2022 through May 15, 2022, pursuant to Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of temporary partial disability (TPD) benefits is stricken in its entirety.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit of $185,996.45 for temporary benefits previously paid to Petitioner as stipulated by the parties.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner wage differential benefits of $519.54 per week from May 16, 2022 through the date Petitioner reaches the age of 67 or five years from the date the award becomes final, whichever is later, pursuant to Section 8(d)1 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all other amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Under Section 19(f)(2) of the Act, no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

April 14, 2023

CAH/pm
O: 4/6/23
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC008996
Case Name	Johnnie Ollie v. Cook County
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Crystal Figueroa
Respondent Attorney	James Lumene

DATE FILED: 8/15/2022

/s/William McLaughlin, Arbitrator
Signature

INTEREST RATE WEEK OF AUGUST 9, 2022 3.04%

STATE OF ILLINOIS)
)SS.
COUNTY OF **Cook**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Johnnie Ollie
Employee/Petitioner

v.

Cook County
Employer/Respondent

Case #**18** WC **8996**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **William McLaughlin** Arbitrator of the Commission, in the city of **Chicago**, on **June 27, 2022** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☒ TPD ☒ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **2/2/18**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**87,360.00** the average weekly wage was $**1,680.00.**

On the date of accident, Petitioner was **39** years of age, ***married*** with **4** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0.**

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

The Arbitrator finds based upon the weight of credible evidence in this record that Petitioner is entitled to a wage differential award in the amount of **$493.90 per week from May 16, 2022 until Petitioner reaches the age of 67 or five years from the date the award becomes final,** whichever is later pursuant to Section 8(D)(1). Respondent shall pay the wage differential check directly to Petitioner's attorney's office from June 27, 2022 through June 27, 2048.

Respondent shall pay Petitioner a lump sum of $2,963.40, representing the **6-week period of TPD** from May 16, 2022 through June 27, 2022, date of trial. Payment shall be tendered directly to the Petitioner's attorney's office.

Respondent shall pay to the Petitioner reasonable, related, and necessary medical services in the amount of **$95,135.13** as provided in Sections 8(a) and 8.2 of the Act, and as is set forth below. Payment shall be tendered directly to the Petitioner's attorney's office.

Respondent shall pay Petitioner the underpayment of temporary total disability benefits of $213.33/ week for **209 weeks and 5 days**, commencing February 15, 2018 through February 22, 2022, as provided in Section 8(b) of the Act. The lump sum of $44,738.37, representing the 209 weeks and 5 days shall be paid directly to Petitioner's attorney's office.

Respondent shall pay Petitioner maintenance benefits of $1,120.00/ week for **11 weeks and 4 days**, commencing February 23, 2022 through May 15, 2022 as provided in Section 8(b) of the Act. The lump sum of $12,960.00, representing 11 weeks and 4 days shall be paid directly to Petitioner's attorney's office.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

August 15, 2022

FINDINGS OF FACT

This matter was heard pursuant to Petitioner's Request for Hearing on June 27, 2022, in the City of Chicago, Illinois before Arbitrator William McLaughlin. Petitioner filed an Application for Adjustment of Claim on March 23, 2018 alleging a February 2, 2018 date of injury. This matter was tried, and proofs were closed by Arbitrator McLaughlin on June 27, 2022.

Johnnie Ollie (hereinafter referred to as "Petitioner") testified that he was employed by both: (1) Cook County Department of Corrections (hereinafter referred to as "Respondent") and (2) Gomez Security, Inc on February 2, 2018. (T.10) The parties stipulated to an average weekly wage of $1,360.00 for Petitioner's employment with Respondent. However, Petitioner testified that he was also employed by Gomez Security, Inc on the date of the accident. *Id* Petitioner testified that he worked between 16 and 20 hours per week and was paid at a rate of $20.00 an hour with Gomez Security. *Id* Petitioner's job with Gomez Security, Inc., required him to patrol and secure certain areas that he was assigned to. (T.10-11)

On February 2, 2018, Petitioner was 39 years of age and had been employed by Respondent for 14 years. (T.12) Petitioner testified that on September 15, 2017, he sustained a work related- injury to his cervical spine, lumbar spine, bilateral legs, and bilateral hands. (T.16)

Petitioner testified that on February 2, 2018, he was working as a correction officer in the Receiving and Discharge Department and two new inmates started having an altercation. As Petitioner was trying to handcuff one of the inmates, he was attacked from behind by another inmate. Petitioner was thrown to the ground. (T.14-15) Petitioner testified that he had been involved in many altercations with inmates over the years, however none of the previous altercations were as severe as the one that occurred on February 2, 2018. (T.59)

Prior to February 2, 2018, Petitioner did have prior lumbar spine issues as he was diagnosed with a bulging disc back in 2007. However, between his occasional flare ups, Petitioner had been in normal shape and had been working full duty without any restrictions prior to the February 2, 2018 accident. (T.17) Moreover, prior to February 2, 2018, Petitioner did not seek any treatment nor take any medications for depression or PTSD. *Id*

On February 5, 2018, Petitioner presented to Advocate Medical Group complaining of neck, shoulder, lower back and hip pain. (PX1, p. 140) At that visit, Petitioner rated the pain in his neck as a 7 out of 10 and reported the pain in his lower back radiating down to his legs. *Id*.

On February 15, 2018, Petitioner was seen by Dr. Ravi Barnabas out of Rand Medical Center. (PX2, p. 26) Petitioner informed Dr. Barnabas that he was injured at work on February 2, 2018 while working in the Receiving and Discharge Department for Respondent. Petitioner reported that the accident occurred around 4:40am and that around 6:00am, while getting into his vehicle, he started experiencing lumbar pain going down his left leg. *Id*. Petitioner reported being in pain since the accident and rated the pain anywhere from a 5-7 out of 10 in the lumbar spine going down to the left leg. Dr. Barnabas noted that Petitioner was having difficulty sitting, standing, walking and sleeping since the accident. Moreover, Petitioner reported that the pain in the lumbar spine was worse when he would sit for long periods of time and that it radiated down his left leg and that his left leg tended to buckle when he would walk and had a difficult time finding the right position to sleep in. Dr. Barnabas noted that Petitioner did have an underlying condition from a bulging disc that occasionally flared up and needed occasional treatment but in no way interfered with Petitioner's ability to do his job over the period of time. (*Id*, p. 27) Additionally, Petitioner was asymptomatic at the time of his injury from his older 2007 bulging disc but as a result of this new injury sustained on February 2, 2018, this disc was

rendered symptomatic and needed treatment, and due to the precipitation of aggravation of this otherwise asymptomatic injury at the time of the accident. *Id*. After a physical examination, Dr. Barnabas diagnosed Petitioner with the following: (1) Traumatic spondylopathy lumbosacral region; (2) Lumbago; (3) Lumbar strain; (4) Lumbar contusion; and (5) Lumbar radiculitis. *Id*. As a result of the diagnoses, Dr. Barnabas ordered an MRI of the lumbar spine and a TENS unit, prescribed physical therapy, instructed Petitioner to remain off work, to continue taking the cyclobenzaprine and Norco, and provided Petitioner with Lidoderm patches. *Id*.

On February 20, 2018, Petitioner presented to Premier Physical Therapy and started his therapy sessions for the lumbar spine. (PX3) The following day, February 21, 2018, Petitioner presented to Homer Glen Imaging and underwent an MRI of the lumbar spine. (PX2, p. 37) The MRI revealed the following: (1) Multilevel spondylosis; (2) Annular bulge with superimposed posterior caudally migrated herniation at L4-5 causing moderate neural foraminal and central canal stenosis; and (3) Posterior herniated at L5-S1 contributing to mild foraminal and central canal stenosis. *Id*. On February 22, 2018, Petitioner followed up with Dr. Barnabas. (PX2, p. 29) At that visit, Dr. Barnabas reviewed Petitioner's recent MRI findings to the MRI that was done in 2007 and noted that the recent MRI showed a 13 mm disc compared to the 2007 MRI. Petitioner also reported having problems with walking and that the pain in his lumbar spine was going down his legs. As a result of the MRI findings and Petitioner's complaints, Dr. Barnabas instructed Petitioner to continue with pain management, continue with therapy, to remain off work and referred Petitioner to Dr. Sean Salehi. (PX2, p. 29)

On February 26, 2018, Petitioner presented to Dr. Salehi out of Neurological Surgery & Spine Surgery complaining of pain in his lumbar spine with radiation down the left lateral thigh. (PX5, p. 92) Petitioner informed Dr. Salehi that he had attempted physical therapy to address the lumbar spine complaints, however that caused increased pain. Following a physical examination, Dr. Salehi noted a positive straight leg raise testing on the left at 35 degrees which confirmed the presence of neural tension and neural compression. (*Id*, p. 95) Dr. Salehi also reviewed Petitioner's May 6, 2014 and February 21, 2018 lumbar spine MRI's. As a result of the MRI findings, Dr. Salehi diagnosed Petitioner with: (1) Herniated lumbar disc with radiculopathy and (2) Lumbosacral spondylosis. *Id*. Dr. Salehi noted that the herniations in the 2018 study looked more prominent and were eccentric on the left. Given the findings, Dr. Salehi recommended that Petitioner undergo 1-2 left L4-5 ESI's as well as continue physical therapy for the lumbar spine. *Id*.

Petitioner returned to Dr. Barnabas on March 1, 2018 and informed him of Dr. Salehi's recommendations. (PX2, p. 30) At that visit, Dr. Barnabas referred Petitioner to a pain specialist in order to get the ESI's. On March 8, 2018, Petitioner was seen by Dr. Julian Paskov out of Rand Medical Center and reported having difficulty with bending forward and tying his shoes, as well as, being in severe pain when changing positions from standing to sitting and reverse. (PX2, p. 38) Petitioner described the pain in his lumbar spine radiating down his legs up to the knee level and more pronounced on the left side. Petitioner also reported certain numbness that he felt more on the left side, again towards the knee level. Dr. Paskov reviewed the MRI findings and noted that at the L4-L5 and L5-S1 level, Petitioner had a 2mm and 2.8mm circumferential posterior disc building. As a result of the MRI findings, Dr. Paskov recommended administering a transforaminal epidural injection of steroids at those two levels. Petitioner followed up with Dr. Barnabas on March 22, 2018 and reported that the injections were denied by Respondent.

On March 27, 2018, Petitioner underwent a transforaminal epidural injection of steroids at L4-L5 and L5-S1 levels bilaterally, performed by Dr. Paskov. (PX2, p. 43) Petitioner's post-operative diagnoses were: (1) Low back pain and (2) Lumbar disc herniation. At Petitioner's April 5, 2018 follow up with Dr. Barnabas, Petitioner complained of severe pain and walking with an antalgic gait. (*Id,* p. 63) Petitioner also informed Dr. Barnabas of having episodes of urinary incontinence following the previous injection and that the pain was getting worse overall. As a result of the urinary issue, Dr. Barnabas diagnosed Petitioner with symptomatic urinary incontinence and instructed Petitioner to consult with a doctor regarding that issue. On April 10, 2018, Petitioner underwent a repeat bilateral L4-L5, L5-S1 transforaminal epidural steroid injection. (PX2, p. 81) Petitioner's post-operative diagnoses were: (1) Low back pain with radiculopathy and (2) Lumbar disc

herniation. At Petitioner's April 19, 2018 follow up with Dr. Barnabas, Petitioner reported severe pain and complained of numbness in both soles of his feet. (*Id*, p. 82)

On April 20, 2018, Petitioner was seen by Dr. Salehi and reported that since the last visit, he had undergone 2 injections which helped slightly with the lumbar spine pain, but he continued to have pain radiating down the left leg to the calf and tingling in the calf and foot. (PX5, p. 96) Petitioner also reported urinary hesitancy and that he had woken up three times in the midline of the night with incontinence in the past month. Given Petitioner's complaints of urinary hesitancy and few episodes of incontinence, Dr. Salehi recommended that Petitioner undergo a stat MRI of the lumbar spine. (*Id*, p. 98) Later that day, Petitioner presented to Molecular Imaging/Advantage MRI and underwent an MRI of the lumbar spine with contrast. (PX6) The MRI revealed the following: (1) At L4-L5 disc level, diffuse broad based disc bulge and central disc extrusion seen with caudal migration and left preponderance the extruded segment measures 1.2cm in length and 0.5cm in anteroposterior diameter and is resulting in mild spinal canal stenosis and moderate bilateral neural foramen stenosis more on left side; (2) At L5-S1 disc level, 0.35cm diffuse broad based disc bulge seen resulting in mild spinal canal stenosis and moderate bilateral neural foramen stenosis. Loss of lumbar lordosis most likely due to muscle spasm; (3) Grade I retrolisthesis of L5 over S1; and (4) Disc desiccation seen at L4-L5 and L5-S1 levels. *Id*

Petitioner returned to see Dr. Salehi on April 26, 2018 and complained of pain in the lumbar spine that went down the left leg to the foot with tingling in the calf and foot. (PX5, p.102) At that visit, Dr. Salehi reviewed the recent MRI study of the lumbar spine. Following a revise of the MRI, Dr. Salehi diagnosed Petitioner with the following: (1) Spondylolisthesis lumbar region; (2) Herniated lumbar disc with radiculopathy; and (3) Lumbosacral spondylosis. (*Id*, p. 104) In response to the diagnoses, Dr. Salehi recommended that Petitioner continue to undergo physical therapy 2-3 times per week as well as a caudal ESI to see if that provides him with relief. *Id*. On May 10, 2018, Petitioner was seen by Dr. Barnabas and they reviewed Dr. Salehi's recommendations. (RX2, p. 83) At that visit, Dr. Barnabas also instructed Petitioner to continue with therapy, start patches, prescribed a Pulsed Electro Magnetic Field Device and OrthoCor to help with inflammation and pain, and prescribed Tramadol. Petitioner was seen by Dr. Barnabas again on May 17, 2018. *(Id*, p. 84) On May 23, 2018, Petitioner underwent another bilateral L4-L5, L5-S1 transforaminal epidural steroid injection. (*Id*, p. 102) Petitioner's post-operative diagnosis was low back pain with multiple lumbar disc herniations. At Petitioner's June 7, 2018 follow up with Dr. Barnabas, Petitioner complained of severe pain and walked with a severe antalgic gait. (*Id*, p. 103) Petitioner reported that his leg was giving out and going weak. At that visit, Dr. Barnabas discontinued the physical therapy and ordered Petitioner to remain off work for 6 weeks.

On June 11, 2018, Petitioner was seen by Dr. Salehi and reported that he had received three caudal injections since the last visit. (PX5, p. 109) Petitioner informed Dr. Salehi that the first two injections helped somewhat, however the last injection did not help at all and in fact, worsened his pain. Petitioner rated his pain as a 8 out of 10 at that visit. Given Petitioner's ongoing pain and lack of response to conservative treatment, Dr. Salehi recommended proceeding with surgical intervention in the form of an L4-S1 transforaminal lumbar interbody fusion ("TLIF"). (*Id*, p. 111) Additionally, Dr. Salehi prescribed Mobic for provide Petitioner with some pain relief. (*Id,* p. 112)

At Petitioner's follow up appointment with Dr. Barnabas on June 14, 2018, Petitioner reported having a severe episode of post traumatic stress and anxiety when he was driving in an Uber to an appointment and when he went past the area of the accident which was the Cook County Jail and ever since, he was having nightmares about that. (PX2, p. 104) Petitioner returned to see Dr. Barnabas on June 28, 2018, and reported being (very) depressed, crying and dealing with anxiety. (*Id*, p. 105) Due to Petitioner's complaints, Dr. Barnabas ordered an ice machine, and prescribed Xanax and Prozac anti-depressant medications and some Amlodipine 10mg because Petitioner's blood pressure was running high due to the pain. Dr. Barnabas also

instructed Petitioner to remain off work for another 8 weeks. Petitioner followed up with Dr. Barnabas again on July 19, 2018. (*Id*, p. 106)

Dr. Matthew Ross- Respondent's Section 12 Examiner: On July 31, 2018, Petitioner presented to Midwest Neurosurgery & Spine Specialists and was seen by Respondent's Section-12 examiner, Dr. Matthew Ross. (RX6) After reviewing Petitioner's medical records and conducting a physical examination, Dr. Ross diagnosed Petitioner with posttraumatic low back pain with ill-defined radicular symptoms. Dr. Ross found the work injury of February 2, 2018 as the proximate cause for Petitioner's lumbar spine pain and need for treatment. In response to the diagnoses, Dr. Ross recommended additional testing before making any decision regarding surgery. Specifically, Dr. Ross recommended a discogram pain study at the L3-4, L4-5 and L5-S1 levels. Dr. Ross noted that if Petitioner were found to have discogenic pain at L4-5 and/or L5-S1 levels and if Petitioner had a negative control level, then he would be an appropriate candidate for a lumbar fusion.

At Petitioner's August 2, 2018 follow up visit, Dr. Barnabas noted that Petitioner's straight leg raise was positive, strength and reflexes were diminished, and that Petitioner was showing sensory loss in the L4-L5area and as such, Dr. Barnabas ordered a discogram prior to surgery taking place. (PX2, p. 107) Petitioner returned to see Dr. Barnabas on August 30, 2018 and Dr. Ross' IME report was reviewed at the visit. At that visit, Petitioner complained of severe pain and depression. Dr. Barnabas ordered Petitioner to continue with the OrthoCor unit, to continue with pain medications, and referred Petitioner to Dr. Samir Sharma to schedule a discogram.

On September 5, 2018, Petitioner was seen by Dr. Sharma out of Pain & Spine Institute complaining of lumbar spine pain that rated an 8 in intensity. (T.35) Petitioner reported that the pain radiated to the bilateral calf and bilateral foot and characterized the pain as intermittent, moderate in intensity, severe, aching, dull, sharp, stabbing, throbbing and tingling. Following an examination, Dr. Sharma diagnosed Petitioner with the following: (1) Low back pain; (2) Discogenic syndrome; and (3) Radicular syndrome of lower limbs. (T.36) In response to the diagnoses, Dr. Sharma prescribed Keflex 500mg and ordered a lumbar discogram. *Id* Petitioner followed up with Dr. Barnabas on September 27, 2018 and October 18, 2018. (PX2, p.109-110).

On October 18, 2018, Petitioner presented to Tinley Park Open MRI and Imaging Center and underwent a CT scan of the lumbar spine. (PX7) The CT scan revealed the following: (1) Grade 5 tearing at L5-S1; (2) Grade 5 tear at L4-5 with caudal migration; and (3) Mild multilevel spondylosis. Later that day, Petitioner presented to Center for Minimally Invasive Surgery and underwent a L3-L4 discogram. (PX8) The discogram revealed the following: (1) L4-L5 level: Demonstrated fissured disc morphology with posterior annular dye extravasation into the epidural space consistent with ruptured disc morphology; and (2) L5-S1 level: Demonstrated fissured disc morphology with posterior annular dye extravasation into the epidural space consistent with ruptured disc morphology. (PX5, p. 77) The discogram concluded that Petitioner was positive for discogenic pain at L4-S1.

Dr. Matthew Ross- 2nd IME Appointment: On November 7, 2018, Petitioner returned to see Dr. Ross. (RX7) At that visit, Dr. Ross reviewed the discogram operative report from Dr. Sharma, which noted there was 9 out of 10 pain produced at both the L4-5 and L5-S1 levels. Dr. Ross also noted that Petitioner had symptoms into his legs that suggested nerve root irritation. As such, Dr. Ross found Petitioner to be an appropriate candidate for a lumbar fusion at L4-5 and L5-S1.

Petitioner followed up with Dr. Barnabas on November 15, 2018. (PX2, p. 111) On January 3, 2019, Petitioner was seen by Dr. Barnabas and Dr. Ross' IME report was reviewed. (Id, p. 112) At that visit, Dr. Barnabas referred Petitioner to Dr. Zaki Anwar for a psychiatric evaluation due to his depression and instructed Petitioner to remain off work.

Dr. Lisa Sworowski- Respondent's Section 12 Examiner: On January 11, 2019 and January 23, 2019, Petitioner was seen by Respondent's Section 12 examiner, Dr. Lisa Sworowski out of Michigan Avenue Neuropsychologists for a psychological and neuropsychological evaluation. (PX9) After conducting various tests, including tests of cognitive functioning and tests of emotional/personality functioning, Dr. Sworowski diagnosed Petitioner with post-traumatic stress disorder and major depressive disorder. Dr. Sworowski also noted that Petitioner's diagnoses were casually related to the work incident in question. Moreover, Dr. Sworowski recommended a referral for psychiatry to prescribe and carefully monitor Petitioner's response to any medications given Petitioner's ongoing suicidal ideation and previous exacerbation of suicidal intentions with fluoxetine.

On January 24, 2019, Petitioner followed up with Dr. Barnabas. (PX2, p.113) On February 19, 2019, Petitioner was admitted to Advocate Medical Group for severe depression. (PX1, p. 146). While at Advocate Medical Group, Petitioner was diagnosed with the following: (1) Major depressive disorder recurrent severe without psychotic symptoms; (2) Other alcohol dependence; (3) Generalized anxiety disorder; (4) PTSD; (5) Social anxiety disorder; and (6) Chronic insomnia. Petitioner followed up with Dr. Barnabas on March 8, 2019 and April 24, 2019. (PX2, p.114-115) Petitioner returned to Advocate Medical Group on April 4, 2019 and reported feeling weak and was having occasional light headedness. (PX1, p. 152) Petitioner reported feeling his equilibrium was off sometimes and having to grab a wall for stability. Following a physical examination, Petitioner was diagnosed with the following: (1) Intermittent light headedness; (2) Suppurative otitis media of the right ear; and (3) Bilateral impacted cerumen. (*Id*, p. 154)

On May 7, 2019, Petitioner presented to Chicago Medical Imaging/Niles Open MRI and underwent an x ray of the chest and electrocardiogram. (PX10) On May 14, 2019, Petitioner followed up with Dr. Salehi complaining of constant pain in the lumbar spine with intermittent pain radiating down both legs, sometimes the left and sometimes the right. Petitioner rated his pain as a 8 out of 10 at that visit. Dr. Salehi diagnosed Petitioner with: (1) Spondylolisthesis lumbar region and (2) Lumbosacral spondylosis.

Lumbar Decompression and Fusion: On May 15, 2019, Petitioner presented to Center for Minimally Invasive Surgery and underwent a left transforaminal lumbar decompression and fusion. (PX8, p. 1) Petitioner's preoperative diagnosis was – mechanical back pain and lumbar radiculopathy, disc degeneration and annular tear at L4-5 and L5-S1. *Id* Petitioner followed up with Dr. Salehi two weeks post-surgery on May 29, 2019 and reported pain in the lumbar spine for which he was taking Norco and Robaxin 3 times per day. (PX5, p. 106) Dr. Salehi recommended that Petitioner continue with Norco and Robaxin, ordered a course of physical therapy 2-3 times per week for 4-6 weeks; and ordered an x-ray of the lumbar spine once therapy had been completed. (*Id*, p. 107) As per Dr. Salehi's order, Petitioner started physical therapy at American United Rehab Providers on June 10, 2019. (PX11, p. 18) On July 1, 2019, Petitioner underwent an x-ray of the lumbar spine.

At Petitioner's July 2, 2019 follow up with Dr. Salehi, Petitioner reported mild pain in the lumbar spine and rated it as a 3 out of 10. (PX5, p. 113) Petitioner also reported resolution of his leg pain and paresthesia's at that visit. Following a review of the July 1, 2019 lumbar spine x-ray, which showed no instrumentation failure from L4-S1, Dr. Salehi ordered Petitioner to continue with therapy 2-3 times per week for an additional 4-6 weeks, instructed him to remain off work and prescribed Tylenol on an as needed basis. (*Id,* p. 115) On August 2, 2019, Petitioner followed up with Dr. Salehi and reported doing well but after riding the bicycle (at therapy) for 45 minutes, he felt pain on the left side of the lumbar spine and it had been on and off since then, worse with the therapist pushing on his lumbar spine. (*Id*, p. 116) Considering Petitioner's complaints at the visit, Dr. Salehi instructed Petitioner to remain off work and ordered therapy 2-3 times per week for an additional 4 weeks. (*Id,* p. 118)

On August 22, 2019, Petitioner returned to see Dr. Barnabas and (still) reported experiencing some pain post the lumbar surgery. (PX2, p. 117) Dr. Barnabas instructed Petitioner to continue with therapy, prescribed Tramadol 50mg, ordered a urine test and instructed Petitioner to follow up with Dr. Salehi. At

Petitioner's September 3, 2019 follow up with Dr. Salehi, Petitioner reported soreness on the left side of the lumbar spine. (PX5, p. 119) Following a physical examination, Dr. Salehi instructed Petitioner to continue with physical therapy 2-3 times per week for an additional 4-6 weeks and released Petitioner back to work at a light duty capacity- no lifting over 20 pounds; no pushing/pulling over 35 pounds; no bending/twisting more than 3 times per hour; and ability to alternate sit/stand every 30-45 minutes. (*Id*, p. 121) However, Petitioner was unable to return back to work as Respondent was unable to accommodate those restrictions. Petitioner followed up with Dr. Barnabas on September 19, 2019 and October 17, 2019. (PX2, p. 118-119)

On October 29, 2019, Petitioner followed up with Dr. Salehi and reported that he continued to improve following surgery, though he was still dealing with soreness on the left side of the lumbar spine, which he rated as a 4 out of 10 on average. (PX5, p. 122) Petitioner also reported numbness in the left thigh; however, compared to preoperatively, Petitioner's leg pain significantly improved. Following a physical examination, Dr. Salehi ordered a 4-week course of work conditioning going 5 times per week. (*Id,* p. 124) At Petitioner's (next) follow up with Dr. Salehi on December 17, 2019, Petitioner reported undergoing 4 weeks of work conditioning that ended two weeks prior but that he only really did cardio exercises because any lifting of even 15 pounds caused pain in the beginning. (*Id*, p. 125) Petitioner rated his pain level as anywhere between a 4-7 out of 10. Due to continued residual lumbar spine pain, Dr. Salehi recommended an x-ray of the lumbar spine, prescribed Mobic, ordered an additional 2 weeks of work conditioning going 5 times per week as Petitioner had not started any weight training followed by a Functional Capacity Evaluation ("FCE") to determine permanent work restrictions. (*Id*, p. 127) On December 19, 2019, Petitioner followed up with Dr. Barnabas and reviewed Dr. Salehi's recommendations. (PX2, p. 120)

On January 3, 2020, Petitioner presented to Homer Glen Imaging and underwent a CR of the lumbar spine. (PX4) The CR of the lumbar spine revealed the following: There was a previous posterior and interbody fusion from the L4 through the S1 level. The fusion appeared to be solid. Mild disc space narrowing at the rest of the lumbar levels. There are no acute fractures of dislocations. There was no spondylolisthesis. There was no paraspinal lesions. There were degenerative changes of both SI joints. On January 16, 2020, Petitioner followed up with Dr. Barnabas. (PX2, p. 121)

Functional Capacity Evaluation: On January 22, 2020, Petitioner underwent an FCE at American United Rehab Providers. (PX11, p. 11) During the evaluation, Petitioner demonstrated the ability to perform 55.9% of the physical demands of his job as a correction officer. Petitioner also demonstrated the ability to perform within the light physical demand category. *Id*

Discharged from care per FCE: On January 28, 2020, Petitioner followed up with Dr. Salehi and reported continued pain in the lumbar spine, which was worse in the mornings and rated the pain as 6 out of 10 on average. (PX5, p. 89) Dr. Salehi noted that Petitioner had completed 6 weeks of work conditioning and a FCE prior to the visit and that Petitioner was taking Mobic as it helped with pain. Following a physical examination and review of the FCE report, Dr. Salehi released Petitioner back to work beginning on January 29, 2020 with the permanent restrictions outlined in the January 22, 2020 FCE report. (*Id*, p. 180) Petitioner followed up with Dr. Barnabas on January 30, 2020 and Dr. Barnabas also released him back to work per the FCE restrictions. (PX2, p. 122)

Self-Directed Job Search: Petitioner attempted to return to work for Respondent per the FCE restrictions, however Respondent was unable to find an accommodating position. Thereafter, starting on March 18, 2020, Petitioner started doing weekly (self-directed) job search logs. (PX17) Petitioner testified that he would email a copy of his job search log to Risk Management weekly. (T.50)

Vocamotive: Petitioner participated in the self-directed job searches for 66 weeks and 2 days. On June 25, 2021, Petitioner was interviewed by Mr. Joseph Belmonte out of Vocamotive for a vocational evaluation. From that time until May 15, 2022, Petitioner participated in Vocational Rehabilitation. During that

span, Petitioner was only offered 3 jobs: (1) Chicago Public School- with an annual base salary of $31,200.00; (2) Expungement Clerk with the County- with an annual base salary of $36,034.00; and (3) City of Chicago- Department of Aviation- with an annual base salary of $46,936.00. Mr. Belmonte testified that Petitioner found these three leads/positions on his own and not through Vocamotive. (T.119)

On January 6, 2022, Petitioner was seen by Dr. Kelsey Gould out of MTN ProActive Rehab LTD. (PX12) At that visit, petitioner reported that the day before, January 5, 2022, he was interviewing for a job that physically evaluated him and instructed him to lift 25 pounds and squat- Petitioner believed that he could do this because it was under his 30 pound limit- however when petitioner squatted, he started to feel a severe sharp pain in the lumbar spine and pain shooting down both legs. Petitioner rated the pain as a 9 out of 10. After a physical examination, Petitioner was diagnosed with the following: (1) Radiculopathy, lumbosacral region; (2) Strain of muscle, fascia and tendon of lower back; and (3) Traumatic spondylopathy, lumbosacral region. In response to the diagnoses, Petitioner was prescribed a durable home exercise kit and ordered to start physical therapy 3 times a week for 4 weeks and an MRI of the lumbar spine was ordered. On January 27, 2022, Petitioner presented to Chicago Medical Imaging/Niles Open MRI and underwent an MRI of the lumbar spine. (PX10). The MRI of the lumbar spine revealed the following: (1) Post-operative status; (2) Diffuse protrusion of L3-4 disc, causing mild narrowing of the central canal and neural foraminal, bilaterally; The protrusion measured approximately 3mm in size; (3) Diffuse bulge of L2-3 disc, without any significant central canal or neural foraminal narrowing; The bulge measured approximately 2mm in size; and (4) Posterior osteophytes at L4-5 and L5-S1 levels, causing mild narrowing to the neural foramina, bilateral (left more than right). However, presence of susceptibility artifacts limits evaluation in this region.

New Job/Employment: Petitioner ultimately decided to accept the position with The City of Chicago as it paid him the most out of the three and he started working on May 16, 2022. The job was within his light duty restrictions as it was sedentary work- sitting at a desk with a computer monitor. (T.51) However, the job with the City of Chicago pays Petitioner dramatically less ($48,836.00 annually or $939.15 weekly) than what he was making at the time of the accident. (PX14)

At the arbitration hearing, Petitioner testified that prior to the accident in question, he considered himself an "athlete." (T.55) Petitioner testified that he would play basketball three times a week and lift weights prior to the injury. However, since the accident took place, Petitioner testified that "it just seems like I just aged 30 years because of this accident." *Id* Petitioner testified that he notices having issues when doing things around the house such as taking a shower, washing himself, having to lay on the bed to put on socks, and having to lean against walls to do anything. (T.56) Even after the fusion, Petitioner testified that he still experiences sharp pain in his body. *Id* Even with his new employer, The City of Chicago, Petitioner testified that he is still having issues as far as with sitting and standing. (T.68-69) However, with Petitioner's current job, he is able to sit or stand and do his job so that he does not feel uncomfortable. (T.69) Petitioner also testified that he is currently seeing a therapist and takes medications such as Tylenol. (T.57-58)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Section1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim (*O'Dette v. Industrial Commission*, 79 Ill. 2d 249, 253 (1980), including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill. 2d 52, 63 (1989). Decisions of an arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1

The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788.

Petitioner's testimony is found to be credible. Additionally, the Arbitrator finds the opinions of Dr. Salehi, Dr. Barnabas, Dr. Sharma, Dr. Ross, Dr. Sworowski, and Dr. Gould credible and persuasive. However, the opinion of Respondent's witness, Ms. Michelle Bryant-Smith, is found to be not credible as Ms. Bryant-Smith was not employed by Respondent at the time of the accident and more importantly, at the time Petitioner notified Respondent about his secondary employment with Gomez Security, Inc.

In support of the Arbitrator's decision with respect to (F), Is Petitioner's current condition of ill-being related to the injury, the Arbitrator finds as follows:

A casual connection between work duties and a condition of ill-being may be established by a chain of events including claimant's ability to perform job duties before the date of the accident and inability to perform the same duties following that date. *Peabody Coal Co v. Industrial Comm'n*, 213 Ill. App.3d 64. 65 (1991). It is the function of the Commission to resolve disputed questions of fact, including those of causal connection, to draw permissible inferences and to decide which of conflicting medical views is to be accepted. *Material Service Corp. v. Industrial Comm'n*, 97 Ill. 2d 382, 387 (1983)

Based upon the evidence presented at trial, including medical opinions, and witness testimony, the Arbitrator finds that Petitioner established a causal connection between the work-related accident of February 2, 2018 and his current condition of ill- being regarding the left hip, left lower leg, left elbow, lumbar spine, depression and PTSD.

A claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill 2nd 30, 36 (1982). The law is clear that Respondent takes Petitioner as it finds him. *Baggett v. Industrial Comm'n*, 201 Ill. 2nd 187, 199 (2002). It is necessary that the claimant show that a work-related accident was a causative factor in the claimant's condition of ill-being. *Sysbro, Inc. v. Industrial Comm'n*, 207 Ill. 2nd 103, 205 (2003). It is not, however, necessary that the employee demonstrate that the injury was "the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Land Lakes Co. v. Industrial Comm'n* 359 Ill. App 3rd 582, 592 (2005). Petitioner was able to perform his regular duties for Respondent before the event of February 2, 2018. It is undisputed that Petitioner had prior lumbar spine issues. However, every treating physician and Respondent's Section-12 Examiner, Dr. Ross, found the work injury of February 2, 2018, as the proximate cause for the lumbar spine injury and need for treatment. Petitioner testified that prior to February 2, 2018, he had no prior complaints or sought medical treatment for his depression or PTSD. (T.17) Respondent's Section 12 Examiner, Dr. Sworowski diagnosed Petitioner with posttraumatic stress disorder and major depressive disorder and noted that the diagnoses were casually related to the work incident in question. (PX9)

The evidence presented at trial, including Petitioner's testimony, establishes that Petitioner was diagnosed with spondylolisthesis lumbar region and lumbosacral spondylosis, which required physical therapy, steroid injections and ultimately a left transforaminal lumbar decompression and fusion on May 15, 2019. (PX8, p. 1) Due to the severity of the lumbar spine injury, coupled with depression and PTSD, Petitioner was released back to work with permanent light duty work restrictions on January 28, 2020. (PX5, p. 180)

In support of the Arbitrator's decision with respect to (E) Average Weekly Wage, the Arbitrator finds as follows:

When the employee is working concurrently with two or more employers and the Respondent employer has 'knowledge' of such employment prior to the injury, his wages from all such employers shall be considered as if earned from the employer liable for compensation. 820 ILCS 305/10 (West 2008). In order to be defined as "employment", the Act requires the employment to be paid work. The claimant has the burden of proving, by a preponderance of the evidence, the elements of his claim, including his average weekly wage. *Sylvester v. Industrial Comm'n*, 314 Ill. App. 3d 1100, 1103, 732 N.E.2d 751, 247 Ill. Dec. 696 (2000) The Commission's determination of claimant's average weekly wage is a question of fact that a reviewing court will not disturb unless it is contrary to the manifest weight of the evidence.

The question in this case is whether the Respondent had knowledge of Petitioner's "employment" as a security guard with Gomez Security, Inc. prior to the work accident at issue. Petitioner testified that at the time of the accident, he was working for both Respondent and Gomez Security, Inc. (T.10) Petitioner testified that he worked for Gomez Security, Inc as a patrol guard, worked anywhere between 16-24 hours per week and made $20 per hour. For the year of 2018, Petitioner made $704.00 while working for Gomez Security, Inc. (PX16) Petitioner did not return to work for them following the accident. (T.11-12) *Id* Petitioner testified that he did in fact let Respondent know about his part-time position with Gomez Security, Inc. In fact, Petitioner emailed Respondent's human resources the necessary "Secondary Employment Disclosure Form" dated March 17, 2017. (PX13) Petitioner also testified communicating with a Mr. Aaron Wall from Risk Management/HR about his position with Gomez Security, Inc. (T.11) Respondent did not produce Mr. Wall at trial to testify about having knowledge of Petitioner's part-time position.

Respondent's witness, Ms. Michelle Bryant-Smith, testified that she started working for Respondent in August of 2019 and currently holds the position as Director of Risk Management. (T.73) On cross-examination, Ms. Bryant-Smith testified that she was unfamiliar with the email protocol prior to her start date with Risk Management when shown what was marked as Petitioner's exhibit number 13. Ms. Bryant-Smith testified that she had no knowledge of Petitioner's secondary employment with Gomez Security, Inc. (T.83) Moreover, after showing Ms. Bryant-Smith a copy of the email, she testified that "I just have no knowledge of this email because this is not how we currently do it." ((T.84) However, Petitioner presented conclusive proof (PX13) that he did in fact notify Respondent about his part-time position with Gomez Security, Inc. The fact that Respondent does not have a copy of that email in its database or the fact that Risk Management does not "currently do it" that way as stated by Ms. Bryant-Smith, is out of Petitioner's control. Petitioner followed Respondent's policy and protocol by submitting the Secondary Employment Disclosure Form on March 17, 2017 and that was all that was required of him.

Therefore, the Arbitrator finds that Petitioner's average weekly wage at the time of the accident should be $1,680.00, which takes into account Petitioner's part-time position with Gomez Security, Inc.

In support of the Arbitrator's decision with respect to (J) Medical, the Arbitrator finds as follows:

Under Section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers' Compensation Comm'n* 409 Ill. App. 3d 258, 267 (1st Dist., 2011). Based upon the Arbitrator's finding with respect to casual connection, reasonable and necessary treatment for the left hip, left lower leg, left elbow, lumbar spine and head through January 27, 2022 would be casually related.

Petitioner admitted PX23 with multiple balances. These bills have not been reduced to fee scheduled. Having reviewed the bill exhibits and the medical records submitted, the Arbitrator finds the following bills to be reasonable, necessary and casually connected:

Rand Medical Center: $66,194.77
STAT Anesthesia Specialists: $3,749.00
American United Rehab Providers: $8,900.00
Neurological Surgery & Spine Surgery: $448.00
Specialty Pharmaceutical: $32.16
Persistent Med/RX: $5,190.76
G&U Orthopedic: $8,470.44
Chicago Medical Imaging/Niles Open MRI: $2,150.00

The total bills awarded total **$95,135.13.** Based on the record as a whole and the Arbitrator's finding with respect to Casual Connection, the Arbitrator finds Respondent shall pay reasonable and necessary services of $**95,135.13** as detailed herein, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the Appellate Court decisions in *Mentzer v. Van Scyoc*, 233 Ill. App 3rd 438, 422 (4th District 1992) and *McMahon v. Industrial Comm'n*, 183 Ill. 2nd 499, 512 and the Commission Decision in *Spencer v. State of Illinois*, 20 IWCC 0609, which hold that an award of medical expenses is an award of compensation and must be paid to Petitioner. Respondent is ordered to make payment of the bills that have been awarded herein directly to Petitioner.

In support of the Arbitrator's decision with respect to "K", what temporary benefits are in dispute, the Arbitrator finds:

An employee is temporarily totally disabled from the time an injury incapacitates him until such time as he is as far recovered as the permanent character of the injury will permit. *Archer Daniels Midland Company v. Industrial Comm'n,* 138 Ill 2nd 107, 118 (1990); *Westin Hotel*, 372 Ill. App. 3rd, at 542. To be entitled to TTD benefits, the employee must establish not only that he did not work, but also that he is unable to work and the duration of that inability to work. *Pietrzak v. Industrial Comm'n*, 329 Ill. App 3rd 828, 832 (2002); *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission*, 236 Ill 2nd 132, 146 (2010). Once an injured employee has reached maximum medical improvement, the disabling condition has become permanent, and he or she is no longer eligible for temporary total disability benefits. *Nascote Industries v. Industrial Comm'n*, 352 Ill. App 3rd 1067, 1072 (2004). The factors to be considered in determining whether an employee has reached maximum medical improvement include a release to work, medical testimony or evidence concerning he employee's injury, and the extent of the injury. *Land & Lake Co. v. Industrial Comm'n*, 359 Ill. App. 3rd 582, 594 (2005). The Act is a remedial statute which should be liberally construed to provide financial protection for injured workers. *McAllister v. IWCC*, 2020 IL 124848.

As noted in *Walker,* the Arbitrator at trial, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. Herein, the Arbitrator was able to observe Petitioner's testimony on direct examination and under cross-examination. The Arbitrator found the testimony of Petitioner to be credible. The Arbitrator finds that Petitioner's testimony that he in fact had a second job with Gomez Security and more importantly, properly notified Respondent about this position on March 17, 2017 to be credible and persuasive. The Arbitrator was also able to observe Mr. Belmonte's testimony at trial. Mr. Belmonte testified that Petitioner was not at times "compliant or made mistakes" during his vocational rehabilitation sessions. As noted in the records, Petitioner was diagnosed with severe depression and PTSD, so it is understandable that he would at times make mistakes. Mr. Belmonte pointed out that Petitioner wrote a letter to a particular employer but referenced the wrong employer. (T.104) Mr. Belmonte also compared Petitioner to his "average" client, however Mr. Belmonte was unable to directly state how many of his "50-60" clients were diagnosed with depression or PTSD. (T.117) Thus, the Arbitrator finds that Mr. Belmonte's testimony is not found to be persuasive.

As the Arbitrator found that Petitioner had a concurrent job with Gomez Security, Inc.., and thereby making his weekly wage $1,680.00. Respondent did not pay Petitioner's full TTD benefits as Respondent

omitted to account for Gomez Security, Inc's wages. Therefore, Petitioner is also entitled to TTD underpayment from February 15, 2018 through February 22, 2022, representing 209 weeks and 5 days in the amount of $213.33 per week. The Arbitrator also finds that Petitioner is entitled to maintenance benefits from February 23, 2022 through May 15, 2022, representing 11 weeks and 4 days in the amount of $1,120.00 per week.

Respondent terminated Petitioner's TTD/maintenance benefits as of February 23, 2022 on the basis that Petitioner declined (offers of) employment opportunities. Where the claimant participates meaningfully in a job search and all prescribed vocational rehabilitation activities, and he provides unrebutted testimony that he made at least 15 job contacts per week, sufficient evidence supports a findings that the claimant's job search was in good faith despite the lack of documentary evidence to support it. *Kransky v. Cook County Juvenile Detention,* 29 ILWCLB 136 (Ill. W.C. Comm. 2021). Petitioner testified that prior to participating in the Vocational Rehabilitation Program with Vocamotive, he did weekly self-directed job search logs as evidenced by records submitted at trial. (PX17) From the time he joined Vocamotive until he started working for The City of Chicago on May 16, 2022, he was only offered three employment opportunities, which included the City of Chicago position. Petitioner testified that Mr. Belmonte, himself, instructed Petitioner to decline the other two positions (even after he accepted them) as the City of Chicago position would pay Petitioner the most annually. (T.66) Petitioner declining to accept (a less paying position with) the County or Chicago Public Schools is not a basis to terminate TTD benefits.

At the time of the accident, Petitioner was making $1,680.00 per week while being employed by Respondent and Gomez Security, Inc. After doing a self-directed job search and participating in Vocamotive, Petitioner was able to find a position with The City of Chicago that pays him $939.15 per week. Petitioner is making $740.85 less a week due to his permanent restrictions (that prevent him to doing back to his pre-injury occupation). Thus, Petitioner is entitled temporary partial disability benefits in the amount of $493.90 per week from May 16, 2022 until Petitioner reaches age 67, or five years after the wage differential award becomes final, whichever is later.

Based on the above and the Arbitrator's findings above as to causal connection in Section (F), the Arbitrator finds that Petitioner is entitled to the underpayment of temporary total disability benefits) from February 15, 2018 through February 22, 2022; temporary total disability/maintenance benefits from February 23, 2022 through May 15, 2022; and to temporary partial disability benefits from May 16, 2022 until Petitioner reaches age 67, or five years after the wage differential award becomes final, whichever is later.

In support of the Arbitrator's decision with respect to "L", what is the nature and extent of the injury, the Arbitrator finds:

In determining a PPD award. The Arbitrator is required to consider the factors and criteria set forth in Section 8.1(b) of the Act. Pursuant to Section 8.1(b) of the Act, the Arbitrator must consider the level of impairment under the AMA Guides, the occupation of the injured worker, the age of the injured worker, the future earning capacity of the injured worker and evidence of disability corroborated by the treating medical records. The Act provides that no single enumerated factor shall be the sole determinant of disability. With respect to the five factors, the Arbitrator finds:

1. *Level of Impairment under the AMA Guides*

   In this case, neither party entered an impairment rating into evidence; however, this factor alone does not preclude an award for permanent partial disability. Accordingly, the Arbitrator accords this factor no weight in determining PPD.

2. *Occupation of Petition*

   At the time of the work-related accident, Petitioner worked for Respondent for over 14 years as a correction officer and for Gomez Security, Inc. However, following the accident, Petitioner was released with permanent work restrictions, which prevented Petitioner to return to his pre-injury occupation with Respondent and Gomez Security, Inc. After years of applying for various jobs,

Petitioner was hired by The City of Chicago and started working for them on May 16, 2022, which pays him $939.15 per week. The Arbitrator accords great weight to this factor in determining PPD.

3. *Age of Petitioner*

At the time of the accident, Petitioner was 39 years of age. At the time of the hearing, Petitioner was 43 years of age. Due to Petitioner's age, he will likely experience residuals of his injury. The Arbitrator accords great weight to this factor in determining PPD.

4. *Future Earning Capacity*

Petitioner testified that he did not return to work for Respondent (nor for Gomez Security, Inc) following his release with permanent restrictions on January 28, 2020. Petitioner testified that Respondent was unable to accommodate his permanent restrictions. Starting on March 18, 2020 through June 24, 2021, Petitioner conducted his own (weekly) self-directed job searches. (PX17) Thereafter, from June 25, 2021 through May 15, 2022, Petitioner participated in a vocational rehabilitation program with Vocamotive. During that timespan, Petitioner was only offered a position with three prospective employers (i.e., County Clerk, CPS, and The City of Chicago). Ultimately, Petitioner decided to accept the position that paid him the most and that was the position with The City of Chicago. However, even that position pays Petitioner $740.85 less per week than what he was making prior to the accident. The Arbitrator accords this factor great weight in determining PPD.

5. *Evidence of Disability Corroborated by the Treating Medical records*

Petitioner completed a significant amount of medical care and treatment. Petitioner was diagnosed with spondylolisthesis lumbar region and lumbosacral spondylosis which required physical therapy, steroid injections, and ultimately a left transforaminal lumbar decompression and fusion on May 15, 2019. (PX8, p.1) Additionally, Respondent's Section 12 examiner, Dr. Sworowski diagnosed Petitioner with posttraumatic stress disorder and major depressive order, which were found to be casually related to the work incident in question. (PX9) Ultimately Petitioner underwent an FCE which released him back to work with "light" duty demand level and prevented him from going back to his pre-injury occupation. The Arbitrator accords this factor great weight in determining PPD.

After considering the above five factors and the entirety of the evidence, the Arbitrator finds based upon the weight of credible evidence in this record, that Petitioner is entitled to an award of wage differential benefits in the amount of $493.90 per week as provided in Section 8(d)1, commencing May 16, 2022 until Petitioner reaches age 67, or five years after the wage differential award becomes final, whichever is later.

The statutory language of the WCA provides that the Commission, in calculating a wage loss benefit, must determine the average amount which the claimant is able to earn in some suitable employment or business after the accident. If the claimant is not working at the time of the calculation, the Commission must rely on functional capacity and vocational expert evidence. *Stabolito v. Chicago, City of.* 29 ILWCLB 50 (Ill. W.C. Comm. 2021) In order to establish a wage differential award, Petitioner must prove two requirements: (1) Partial incapacity which prevents him from pursuing his usual and customary line of employment; and (2) An impairment of earnings. *Gallianetti v. Indust. Comm'n*., 315 Ill. App. 3d. 721, 730 (2000). As a direct result of the injuries that Petitioner sustained on February 2, 2018, the Arbitrator finds that Petitioner has sustained a partial incapacity that prevents him from pursuing his usual and customary employment, and thereby satisfying the first prong of the test. Petitioner was employed as a correctional officer for Respondent and as a security guard for Gomez Security, Inc. Petitioner's pre-injury job with Respondent was characterized as a "heavy" demand level position(s). Petitioner's valid FCE placed him in the "light" demand level. Respondent was unable to find Petitioner a position within his permanent restrictions. Respondent did not dispute any of these facts. Therefore, the Arbitrator finds that Petitioner is incapacitated from pursuing his usual and customary line of employment as a direct consequence of this work accident.

Section 8(d)(1) of the Act provided that, an injured workers must be paid an amount "equal to 66-2/3% of the difference between the average amount which he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident." 820 ILCS 305/8(d)(1) (West 2003) Evidence submitted at trial indicates that Petitioner was making $1,680.00 per week while working for both Respondent and Gomez Security, Inc, Petitioner's part-time employer. From March 28, 2020 through May 15, 2022, Petitioner applied to various prospective employers and was only offered three positions. These facts are not in dispute. Out of the three prospective positions, the job with The City of Chicago paid Petitioner the most. Again, these facts are not in dispute. Ultimately, Petitioner accepted the position with The City and started working on May 16, 2022. Accordingly, the Arbitrator finds that Petitioner secured an appropriate position making $939.15 per week based upon the evidence submitted at trial.

The Arbitrator therefore finds that Petitioner is entitled to an amount of $493.90 per week from May 16, 2022 until Petitioner reaches the age of 67 or five years from the date the award becomes final, whichever is later. The $493.90 represents 66-2/3% of the difference between $1,680.00 (what Petitioner was making at the time of the accident with Respondent and Gomez Security, Inc) and $939.15 (what Petitioner is now able to earn with The City of Chicago). Therefore, the sum of $493.90 is the awarded wage differential amount as calculated pursuant under Section 8(D)(1).

Respondent shall pay Petitioner a lump sum of $2,963.40, presenting the 6-week period from May 16, 2022 through June 27, 2022, date of trial. Further, Respondent shall pay the wage differential check directly to Petitioner's attorney's office from June 27, 2022 through June 27, 2048.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC017216
Case Name	Carolyn J. Shipley v. City of Crystal Lake
Consolidated Cases	13WC003656;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0172
Number of Pages of Decision	37
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Thomas Duda
Respondent Attorney	Patrick Jesse

DATE FILED: 4/14/2023

/s/ Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CAROLYN J. SHIPLEY,

Petitioner,

vs. NO: 12 WC 17216

CITY OF CRYSTAL LAKE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, benefit rate, temporary total disability ("TTD"), permanent partial disability, and whether the admission of Ronald Fijalkowski's testimony was in error, and being advised of the facts and law, hereby corrects the scrivener's error noted below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission, herein, corrects the scrivener's error on page 2 of the Decision. The Petitioner earned $82,273.62 in the year preceding the injury resulting in an average weekly wage of $1,582.19. This yields a TTD rate of $1,054.79, not $1,051.28 as noted in the Decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed August 1, 2022, is hereby affirmed and adopted, other than the correction of the scrivener's error noted above.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Under Section 19(f)(2) of the Act, no "county, city, town township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 14, 2023

CAH/tdm
O: 4/6/23
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC017216
Case Name	Carolyn J. Shipley v. City of Crystal Lake
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	34
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Thomas Duda
Respondent Attorney	Patrick Jesse

DATE FILED: 8/1/2022

THE INTEREST RATE FOR THE WEEK OF JULY 26, 2022 2.92%

/s/Michael Glaub, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **McHenry**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Carolyn J. Shipley
Employee/Petitioner

v.

City of Crystal Lake
Employer/Respondent

Case # **12** WC **17216**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Glaub**, Arbitrator of the Commission, in the city of **Woodstock**, on **May 5, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other: Independent Medical Exam Fee_____

FINDINGS

On **April 5, 2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**82,273.88**; the average weekly wage was $**1,582.19**.

On the date of accident, Petitioner was **43** years of age, ***single*** with **0** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $22,150.59 for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

Medical – 8(j) Credit and Reimbursement
Petitioner's medical bills with certain exceptions, were paid entirely by group health insurance. Respondent shall receive credit for $20,415.71 in group health insurance payments of Petitioner's medical bills provided that the Respondent holds the Petitioner harmless and indemnifies the Petitioner from any claim by group insurance for reimbursement of monies paid. Additionally, the Petitioner paid her own medical bills including prescription medication in the amount of $1,032.98. Respondent shall pay the sum of $1,032.98 to the Petitioner to reimburse her for out-of-pocket medical expenses incurred during the pendency of this case.

TTD
Respondent shall pay Petitioner temporary total disability benefits in the amount of $1,051.28/week for 45 weeks, because the injuries sustained by the Petitioner were causally related to Petitioner's accident and the Petitioner was totally disabled commencing 4/6/2012 through 2/13/2013, as provided in Section 8(b) of the Act. Respondent is entitled to a credit in the amount of $22,150.29 for Temporary Total Disability Benefits paid per the trial stipulation sheet.

Nature and Extent/Permanency
Respondent shall pay Petitioner permanent partial disability benefits of $695.78/week for 37.5 weeks, because the injuries sustained caused a 7.5% loss to the Petitioner of the body/person as a whole, as provided in Section 8(d)(2) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Michael Glaub **AUGUST 1, 2022**
Signature of Arbitrator

IN THE WORKERS' COMPENSATION COMMISSION OF ILLINOIS

CAROLYN J. SHIPLEY	)	
	)	**Case Nos. 12WC 17216;**
Petitioner,	)	
v.	)	
	)	**Honorable Arbitrator**
CITY OF CRYSTAL LAKE,	)	**Michael Glaub**
	)	
Respondent.	)	

MEMORANDUM DECISION OF THE ARBITRATOR

The Arbitrator makes the following Findings of Fact and Conclusions of Law on the following issues:

FINDINGS OF FACT

Petitioner claims she was injured on two separate occasions while working for the City of Crystal Lake on December 18, 2010 13WC 03656 and April 5, 2012, 12WC 17216.

Petitioner Testimony and Records

Petitioner Carolyn J. Shipley testified she was hired as a firefighter/paramedic by the City of Crystal Lake and at the time of her hire passed a fit for duty test and passed both physical and classroom training. (Arb. Tr. 9-11, 12) She stated she is about 5 foot 4. (Arb. Tr. 67) On the date of accident Petitioner was forty-three (43) years of age. (Arb. EX1 & 2; Arb. Tr. 4-8) She testified that both before December 18, 2010, and April 5, 2012, she took and passed yearly fit for duty tests performed under the supervision of Dr. Jablonowski at the Respondent's occupational health clinic as a condition of her continued employment. (Arb. Tr. 10, 50) Petitioner testified her job duties as a paramedic included ambulance maintenance (not mechanical maintenance), limited to supplies and restocking of materials in the ambulances. (Arb. Tr. 11-12)

Petitioner testified that on April 5, 2012, she was working full duty on shift assigned to Ambulance 350. (Arb. Tr. 12-13, 20) Petitioner testified she was seeing Dr. Spears for some pain issues prior to April 5, 2012, but was never taken off work. (Arb. Tr. 93) Petitioner testified she was wearing non-slick shoes and was performing restocking in the rear of the ambulance, parked inside the station house, with materials as required by her assigned duties when she fell onto the apparatus floor. (Arb. Tr. 18-19, 23, 64, 93; PX 3) She did not come into contact with any other vehicle when she fell. (Arb. Tr. 67-68) Petitioner could not recall if on April 5, 2012, the engine was parked in the apparatus room at the time of her fall. (Arb. Tr. 92-93)

The Respondent produced a co-worker who stated that he did not see the accident because he was writing on a piece of paper that he was holding against the wall. (Arb. Tr. 105-108; RX4) However, Lt. Tamason's prepared a written statement on the date of the injury. In the second sentence, Lt. Tamason states, "when this injury occurred, I was present on the apparatus floor, in the area of the incident." (RX4) The written statement indicates that Lt. Tamason was reaching

and facing the left interior wall of Ambulance 350, making a written list based upon Shipley's reading off items to confirm and add to their "need-list". According to the written statement, Shipley began to walk towards the back of the ambulance to exit, while Tamason took two (2) steps to his left. Shortly after Tamason moved to his left, he states, "I did not visually see FF/PM Shipley fall to the ground. I heard FF/PM Shipley shout out in pain. I turned around to find FF/PM Shipley in a sitting position holding her right leg." (RX4) No mention is made in the written report of any suspicions that Tamason held at the time of injury. He made absolutely no comment in the written statement made at the time of the actual incident whether or not he heard Shipley's body hit the floor.

The written statement of then Firefighter Tamason combined with the Petitioner's testimony, makes clear that Shipley was inside of Ambulance 350 and was backing toward the rear of the ambulance when she fell. It is undisputed that Shipley was clearly in the back of the ambulance moving toward the rear door while calling out items needed to restock the ambulance. When Tamason last saw the Petitioner, she was in the ambulance, when he next saw the Petitioner, she was on the concrete rubbing her right leg. The "Employee Witness Statement of Accident" also makes no reference whatsoever to the engine allegedly parked across from the rear of Ambulance 350. At the time of the injury, Tamason attributed no relevance to any other vehicle in the apparatus bay. The Arbitrator also notes that although Tamason eventually testified at hearing that there was an engine parked across from Ambulance 350 and he estimated that it was within three (3) feet of Ambulance 350, the photographs do not support that estimate. RX1, p. 11 reflects the relative position of Ambulance 350 and another vehicle. The date of that photograph is unknown. It appears to the Arbitrator that none of the photographs in RX1 were taken contemporaneously with the injury. When this Arbitrator looks at RX1, p. 11, the relative distance appears to be greater than three (3) feet; it appears more like five (5) to six (6) feet. The Arbitrator further notes that other photographs taken of the apparatus contain a tape measure documenting the distance; there is no tape measure with reference to the alleged distance between Ambulance 350 and any other vehicle. (RX1, p. 63-76) Similarly, the Arbitrator notes that photographs RX1, p.11, 15, 23 and 42, show varying distances between the vehicles and none of the photographs contain a tape measure with respect to the distance. Nor do any of the photographs portray what it would take to place an ambulance cot in or remove an ambulance cot from the particular vehicle. An ambulance cot for an adult patient must be longer than three (3) feet. The unrefuted testimony of Shipley is that the vehicles needed to be far enough apart to make room for the patient cot to be removed and re-inserted into the ambulance. (Arb. Tr. 21-23)

Petitioner testified that Respondent Exhibit 1, pages 1, 14, 35, 42, and 67 accurately depict ambulance 350 with the bumper in varying positions. (Arb. Tr. 62-63) Petitioner testified she did not know if the photographs depicted the positioning of the ambulance on April 5, 2012. (Arb. Tr. 76) Petitioner could not recall if the bumper of Ambulance 350 was metal or covered in a non-slick surface. (Arb. Tr. 63) Petitioner testified that to move the rear bumper from the down to up position it must be done manually. (Arb. Tr. 64-65)

Petitioner testified the floor of the apparatus floor is a hard surface. (Arb. Tr. 19) Petitioner testified also on the apparatus floor was another ambulance, 354, and possibly an engine. (Arb. Tr. 20-21, 66-67) She stated per the standard operating procedure the engine is parked back-to-back to ambulance 350 with enough room between the vehicles to pull the cot out. (Arb. Tr. 21-23)

Petitioner testified that when she fell, only she and her partner for that day Brian Tamason were on the apparatus floor. (Arb. Tr. 18-19, 23, 77) She stated she fell to the apparatus floor and remembered screaming out but could not recall exactly how she fell in 2012. (Arb. Tr. 23, 24, 90) She testified she immediately felt right shoulder and right foot pain and shortly thereafter neck pain. (Arb. Tr. 78) The Arbitrator notes that according to the "Employee's Statement of Incident" filled out by Deputy Chief DeRaedt, Petitioner identified the body parts that were injured as being her right foot, right shoulder and right neck. According to the Deputy Chief's report, Shipley had complaints to her neck from a previous "fire training incident". (RX5) She stated the neck pain she felt after her fall was different than any neck pain she experienced before the fall. (Arb. Tr. 81) She testified Tamason was not directly behind the ambulance when she fell and that he was not in her line of vision. (Arb. Tr. 24, 77)

On the day of hearing Petitioner was unable to recall the positioning of the rear bumper of the ambulance. (Arb. Tr. 76-77, 78) Petitioner testified she did not recall how she reported her fall to her treaters in 2012 or on injury reports completed in 2012. (Arb. Tr. 72-74) Respondent questioned Petitioner in a formal investigation on June 25, 2012. Petitioner at the outset of the interrogation explained that she was taking medication that would affect her ability to answer questions accurately. Her medications at the time of the interrogation were Tramadol, Meloxicam and occasionally Vicodin. (RX6, p. 9-12) At that investigation Petitioner testified she was working on April 5, 2012, restocking the ambulance when she fell exiting the rear of the ambulance. (RX6, p. 12-16) Petitioner testified that Ambulance 350 was parked in its usual position and that generally Engine 344 would be parked back-to-back with Ambulance 350. (RX6, p. 18-20) At her interrogation Petitioner could not recall exactly how she fell and that she could not recall if the bumper was down. (RX6, p. 22) Petitioner could not recall at her June 25, 2012, interrogation what complaints of pain she reported at the ER on the day of her accident. (RX6, p. 27-28, 29)

Petitioner testified Tamason came to her aid and called Lt. Olsen and another individual to assist. (Arb. Tr. 24) Tamason started an IV and gave her an initial dose of Fentanyl. (Arb. Tr. 26) She was then transported to the ER at Woodstock Memorial Hospital and on route received a second intravenous dose of Fentanyl. (Arb. Tr. 26-27) The Records reflects that on April 5, 2012, Petitioner received two (2) intravenous doses of Fentanyl (RX12). The records reflect x-rays were taken at Memorial Medical Center of her right foot and right shoulder. (PX5, p. 17-18).

Petitioner testified that Deputy Chief Paul DeRaedt came to the hospital and stayed in her room after treatment responsibility was transferred from the paramedics to the hospital and after she had been administered two (2) intravenous doses of Fentanyl. (Arb. Tr. 28, 91) Petitioner testified that DeRaedt asked her questions while she was in the hospital, but she could not recall what questions he asked, what her answers might have been or if she signed anything while in the hospital. (Arb. Tr. 28-29, 68) petitioner testified that she was "foggy" while in the ER and could have signed a paper that was blank, partially completed or fully completed, but the signature is very similar to her signature. (Arb. Tr. 92) She stated Respondent's Exhibit 5, appears to be her signature, but she did not recall signing anything in the hospital and that the remainder of the document was not in her handwriting. (Arb. Tr. 69-71)

Petitioner testified she was released from the hospital and instructed to follow-up with occupational health the following day. (Arb. Tr. 29) The record reflects Petitioner was seen at Centegra Occupational Health for a follow up on April 6, 2012, for a fracture of her 3rd metatarsal, right rotator cuff injury, complaint of constant right shoulder pain and complaint of right foot pain and diagnosed with a severe foot sprain of the right 1, 2, and 3 toes and severe sprain of the right shoulder, possible rotator cuff injury. (PX5, p. 009). Petitioner testified and the medical record reflects that petitioner also saw Dr. Baird on April 6, 2012, for treatment of her foot. (Arb. Tr. 29; PX4, p. 5)

Petitioner testified she treated with Dr. Baird after her April 5, 2012, for symptoms that were different from her prior treatment with Dr. Baird, including pain on the bottom of her foot, her second toe and the outer portion of her right foot. (Arb. Tr. 42-43) Petitioner testified that her heel spur and some different symptoms prior to April 5, 2012. (Arb. Tr. 43) Dr. Baird's records reflect sharp and aching pains to the foot and lower extremity with the pain greatest to the plantar aspect of the right second metatarsal phalangeal joint. Dr. Baird noted the history of accident presented on April 6, 2012, and diagnosis of ruptured ligament, sprained foot and pain in joint. (PX4, p. 5)

The Record reflects on April 10, 2012, Petitioner saw Dr. Jablonowski at Centegra Occupational Health for an injury follow-up and the physician's assessment states: "F/u severe sprain R toes 1, 2,3, severe R shoulder sprain. C/o constant R shoulder pain radiating down to R hand/ C/o constant neck head pain. C/o constant pain to the bottom of R foot." (PX5, p. 15-16) Dr. Jablonowski diagnosed Petitioner with cervical sprain, right shoulder sprain and right foot sprain, ordered MRIs and continued Petitioner's off work status. (PX5, p. 8) Petitioner received MRIs of her right shoulder, cervical spine, and right foot at Advanced Radiology Professionals on April 16, 2012. Petitioner was seen again at Centegra on April 19, 2012. (PX7, PX5, p. 12-14; PX5, p. 7, 10-11) The record reflects that Petitioner returned to Dr. Jabolonowski on April 16, 2012, with continued complaints of right shoulder, neck and right foot pain and was referred to an orthopedic surgeon, Dr. David E. Norbeck. (PX5, p. 10-11)

Petitioner testified occupational health referred her to an orthopedic surgeon and after some time work comp eventually approved her treatment with Dr. David Norbeck at Lake Cook Orthopaedics. (Arb. Tr. 29) The record reflects that Petitioner first saw Dr. Norbeck on May 4, 2012, on the referral of Dr. Spear. (PX8, p. 2) The record reflects that on May 4, 2012, petitioner reported to Dr. Norbeck that her initial complaint was right foot and right arm pain, that she initially treated at Centegra ER, then Occupational Health and with her podiatrist and that she currently was off work. Id. The record also demonstrates that Petitioner advised Dr. Norbeck of her 2010 injury diagnosis of neck sprain. Id. The record shows Dr. Norbeck diagnosed Petitioner with 1) sprain and strain of the metatarsophalangeal joint, 2) sprain and strain of the other specified sites of the shoulder and upper arm, 3) neck sprain and strain, and 4) brachial neuritis or radiculitis nos. (PX8, p. 3) The record demonstrates Dr. Norbeck recommended a Cam Walker, physical therapy and a transforaminal cervical epidural at C5-C6 to the right. Id. Dr. Norbeck, an orthopaedic surgeon practicing with Lake Cook Orthopaedics n/k/a Illinois Bone and Joint Institute, testified that when he first saw Carolyn Shipley on May 4, 2012, she told him that she had been injured at work as a firefighter/paramedic on April 5, 2012. She stated that she was in the back of an ambulance and when she was getting off the back of the ambulance, she fell to the

ground landing on her right side. Dr. Norbeck noted that although her initial complaints were pain in the foot and right shoulder, two (2) days later she advised him she started developing neck and right arm pain. (PX17, p. 6-9) Petitioner also told Dr. Norbeck that her neck pain radiated down her right arm into her bicep area and above the elbow. She indicated she was noticing tingling in the same distribution as her pain. Dr. Norbeck testified that even if her neck complaints began two (2) days after the original injury, that history of onset of pain is "very common". Dr. Norbeck stated, "People often will have an injury and then several days later start complaining of more complaints after the injury. Often times [that's] just due to swelling from the initial original injury that starts to manifest its symptoms a day or two later. So that's very common in my practice that I see that." (PX17, p.10-11)

The record reflects that Petitioner presented to NovaCare for physical therapy on May 10, 2012, then called Dr. Norbeck on May 18, 2012, reporting she was unable to continue therapy due to pain and Dr. Norbeck recommended she proceed with the epidural spinal injection ("ESI") previously prescribed for her and follow-up with him before returning to therapy. (PX10, p. 11, 15, PX8, p. 5, 23) The record demonstrates Petitioner received an ESI on May 24, 2012, and then presented for a follow-up with Dr. Norbeck on June 6, 2012, and reported the ESI provided no relief, and that she had continuing foot pain. (PX11, p. 21-22, PX8, p. 12-13, 6) The record demonstrates Dr. Norbeck examined Petitioner on June 6, 2012, and noted Petitioner had an antalgic gait, her vascular exam showed pulses 2/3 with extremities warm to the touch and mild varicosities in the lower extremities. He continued her off work restriction and referred her to a pain clinic noting a concern that Petitioner might be developing some type of regional pain disorder. (PX8, p. 6-7; PX17, p. 21-24)

Petitioner testified that she saw Dr. Norbeck until he referred her to Dr. Andrew Yu in August of 2012, for pain management of ongoing neck and shoulder pain. (Arb. Tr. 30-31) The records demonstrate that Petitioner saw Dr. Yu on August 8 2012, on a referral from Dr. Norbeck. (PX12, p. 34-35) She stated she did not see Dr. Yu for foot pain because she was seeing Dr. Baird for that condition. (Arb. Tr. 31)

Petitioner testified Dr. Yu ordered a number of tests and treatment to diagnose and treat the source of her complaints. (Arb. Tr. 32; PX19, p.14-26) The records show petitioner received right stellate ganglion nerve block on August 30, 2012 and September 14, 2012 (PX12, p. 29-30, 23), cervical epidural steroid injections on September 28, 2012 and October 29, 2012, and November 13, 2012 (PX12, p. 21-23), a right third occipital nerve and medial branch blocks of the right C3, C4 and C5 on November 26, 2012 and December 11, 2012 (PX12, p. 15-18), and a radio frequency neurotomy of the right occipital nerve on December 26, 2012 (PX12, p. 13). The record reflects that Petitioner was again seen by Dr. Yu on December 28, 2012; at that time Dr. Yu noted and advised the Petitioner there was a 60% chance for long-lasting relief of one to two years after the nerve block procedures. (PX12, p. 12) Dr. Yu performed a right subacromial bursa injection on January 11, 2013 (PX12, p. 11) a cervical epidural injection targeting the right C5 level on January 30, 2013 (PX12, p. 9), and a right suprascapular nerve block on February 13, 2013 (PX12, p. 7). The record demonstrates that after February 13, 2013, Petitioner did not treat with Dr. Yu. The February 13, 2013 Progress Note of Dr. Yu does not indicate a release from care and indicates that Petitioner was to return for further treatment, but does note that the epidural steroid injection gave petitioner some but not full long-lasting pain relief. (PX12, p. 6) Petitioner testified she

discontinued treatment with Dr. Yu after February 13, 2013, for financial reasons. (Arb. Tr. 35) She testified she continued to treat with Drs. Baird, Spears, and Yu through the beginning of 2013 and that she complied with all of the recommendations of Drs. Baird, Spears, Yu and Norbeck. (Arb. Tr. 33) Dr. Yu is a medical doctor licensed to practice in Illinois with a certification in anesthesiology and pain medicine. (PX19, p. 5-9) He is certified in anesthesiology with a subspecialty in pain medicine. (PX19, p. 6-7) He has additional qualifications with the American Board of Electrodiagnostic Medicine and recognition by the World Institute of Pain which requires both written and oral board certifications. (PX19, p. 7-8) Dr. Yu after detailing the course of his treatment with the Petitioner, stated unequivocally within a reasonable degree of medical and scientific certainty that the multiple conditions for which he was treating the Petitioner were directly causally related, or at least an exacerbation of a pre-existing condition. He went through a litany of the conditions for which he had been rendering treatment stating that the Petitioner suffered from cervical radicular pain which is "causally related". She had sympathetic-mediated pain which was causally related. She had cervical facet syndrome which is also known as whiplash syndrome which is causally related. She had cervical spinal stenosis which was exacerbated by the accident of April 5, 2012. She had rotator cuff tendinosis which was exacerbated by the injury. She suffered from suprascapular neuritis which was causally related to the injury. She had myofascial pain syndrome which was causally related or at least an exacerbation of a pre-existing condition. (PX19, p. 31-32) The records reflect an August 20, 2012 bone scan of Petitioner's ankles and feet for a history of leg pain ordered by Dr. Yu. (PX11, p. 7)

Petitioner testified that after August 30, 2012, workers' compensation no longer paid for her treatment and then terminated TTD on October 12, 2012. (Arb. Tr. 33-34, 89) After that termination Petitioner filed a grievance. (Arb. Tr. 89) After October 12, 2012, Petitioner testified she was required to purchase her group health insurance through a COBRA package, but that after February of 2013 she could no longer pay the COBRA premiums and her insurance terminated. (Arb. Tr. 33-35) After February of 2013, Petitioner did not continue treatment by any of her providers because she would be required to 100% out of pocket for services and could not afford to do this. (Arb. Tr. 35) Petitioner testified that as of her February 2013 appointment with Dr. Yu, he had not returned her to work and had not prescribed any restrictions permanent or otherwise. (Arb. Tr. 37-38, 88) Petitioner testified that the treatment provided by Dr. Yu did provide her some relief from her symptoms but that her symptoms had not completely resolved. (Arb. Tr. 38) After February of 2013 Petitioner self-treated with previously prescribed medications including Tramadol and Meloxicam and over-the-counter medication. (Arb. Tr. 38)

Petitioner testified that in 2013 she found part-time work sometime after her last appointment with Dr. Yu, but that employer did not offer group health insurance. (Arb. Tr. 36) In 2014 Petitioner secured full-time employment at Prairie Shore, as a medical assistant, and was able to secure group health insurance with that employer. (Arb. Tr. 39-40, 89) She testified that she did not return to Drs. Yu, Baird or Spears in 2014 because they were outside of her network. (Arb. Tr. 40-41) Eventually, Petitioner changed employers and group health insurance which had Dr. Baird in-network, so Petitioner re-instated her care with Dr. Baird who she continues to see today for her pre-2010 or pre-2012 issues of bunion, plantar fasciitis and heel spur in addition to have flareup of pain from her bunion, plantar fasciitis and heel spur condition as well as the outer portion of her foot, ankle and the second toe. (Arb. Tr. 41-42, 56-57) Petitioner testified that she does not currently treat with Dr. Yu because he remains out of her network. (Arb. Tr. 43)

Petitioner testified that she currently treats for her continued pain symptoms with her primary care physician Dr. Derken but did not return to Dr. Spears because he is out of her network. (Arb. Tr. 45, 59) She currently takes Meloxicam and anti-inflammatory but no other prescription pain medication, only over-the-counter medication for pain. (Arb. Tr. 46)

Petitioner testified she returned to Dr. Yu in 2020 for one visit and paid out of pocket. (Arb. Tr. 46)

Petitioner testified that she was on a performance improvement plan at the time of her April 5, 2012, accident. At that time, she had been scheduled and was planning to attend a NIPSTA class. She could not recall the specific start date set for April of 2012. (Arb. Tr. 47-48, 87-88) She stated she was not able to attend the calls because it was a requirement to be working full duty to attend. (Arb. Tr. 49)

Petitioner testified that currently she has unresolved shoulder and neck pain, which she has been able to manage since subsequent to her treatment with Dr. Yu in 2012 and 2013. (Arb. Tr. 46-47) She stated she is able to work full-time, but that her current job does not require her to do the same heavy lifting as her firefighter/paramedic position. (Arb. Tr. 47)

Petitioner testified she still has residual shoulder and neck pain. (Arb. Tr. 58) She has difficulty with overhead activities including changing a battery in a smoke detector and getting on a step stool and reaching due to pain in the right side of her neck, down her right arm and shoulder. (Arb. Tr. 50) She also had difficulty reaching up when on her hands and knees reaching up, like cleaning a bathtub because that movement causes her pain to her neck, right shoulder and right arm. (Arb. Tr. 51) Petitioner testified she continues to have some range of motion limitations with overhead reaching. (Arb. Tr. 55)

Petitioner testified she is currently employed at Palatine Animal Hospital as a receptionist and can do most of the duties required for her job and that her employer provides an accommodation when she cannot carry the bags of dog and cat foot up and down the two flights of stairs. (Arb. Tr. 52, 89) She testified her employer is able to accommodate her in her work duties, that she is able to work full-time and is not impaired in her driving. (Arb. Tr. 58) Petitioner is not required to lift animals as part of her duties with Palatine. (Arb. Tr. 89)

She stated prior to her April 5, 2012, accident she did not participate in organized sports but she attended the gym three (3) to six (6) days a week between January 1, 2012, and April 5, 2012, where she did weight training and aerobic exercise. Petitioner stated that that after April 5, 2012, she never returned to the gym. (Arb. Tr. 52) She testified that in 2012 she lived in a large house with a large yard for which she did the daily maintenance and now she lives in a townhouse with an Home Owners Association which has eliminated her need to do yard work and some of the household maintenance. (Arb. Tr. 55)

Firefighter Lieutenant Brian Tamason

Lt. Tamason testified he was working with Petitioner alone on the apparatus floor at the time of her April 5, 2012, accident. (Arb. Tr. 96) He testified he was working as a paramedic on April 5, 2012, the date of Petitioner's accident, with Petitioner on Ambulance 350. He testified that patient care area of Ambulance 350 is in the back and opens with two (2) rear doors to one big opening; there is "one big bumper with a middle section being a separate piece that does go up and down" which must be manually lifted. (Arb. Tr. 96-97, 102) He testified that on the day of Petitioner's accident, Ambulance 350 was parked back-to-back with Engine 344 on the apparatus floor of the Station, which is how the vehicles are typically parked. (Arb. Tr. 9) He testified that on the day of the accident Ambulance 350 and Engine 344 were parked three feet apart. (Arb. Tr. 99) Tamason further testified that the relative distance between Ambulance 350 and the adjacent engine was accurately depicted in RX1, p.11-15. (Arb. Tr. 97) Lt. Tamason testified that on April 5, 2012, at the time of the accident he and Petitioner were the only individuals on the apparatus floor, and he was standing at the rear of the ambulance on the apparatus floor facing a left interior wall holding a piece of paper against the interior wall and writing down the list that Firefighter Shipley was reading off to him. (Arb. Tr. 102, 104-106) He stated Petitioner was inside the ambulance reading off items that we were missing in the ambulance but that she was not restocking anything. (Arb. Tr. 111, 122) Lt. Tamason stated the floor of the ambulance is 3 to 3 and a half feet from the apparatus floor. (Arb. Tr. 123) He testified that Firefighter Shipley began to exit, and he took two steps to his left and was parallel to the ambulance facing the driver's side rear door. (Arb. Tr. 106) He testified he did not see Petitioner fall. (Arb. Tr. 106, 123) Lt. Tamason testified he did not hear a sound of a body hitting a concrete floor, but that heard Firefighter Shipley yell out in pain, turned around and saw her "sitting, holding her right leg". (Arb. Tr. 106-107) Lt. Tamason testified Petitioner stated she hurt her right leg. (Arb. Tr. 108 123) Lt. Tamason testified that he did not see any items scatter on the floor after the Petitioner's fall such as forms which might have been in her hand. (Arb. Tr. 111) Lt. Tamason consistently testified the bumper was down before and after she fell. (Arb. Tr. 108-109, 112-113) Lt. Tamason testified he the provided treatment to the Petitioner. (Arb. Tr. 110) Lt. Tamason referred to his medical report patient care report and testified Petitioner complained of right foot pain, localized pain to the right shoulder, but did not lose consciousness, denied head, neck and/or back pain and denied any other complaints at that time. (Arb. Tr. 110, RX 12) Shipley was taken by ambulance directly from the floor of the fire station to the hospital. Lt. Tamason testified he assessed Petitioner's condition, noted she did not have any bruising on her foot, and administered Fentanyl because she was showing signs and symptoms of pain. (Arb. Tr. 111, 121) He administered a second dose of Fentanyl on route to the hospital. Arb. Tr. 111-112) Lt. Tamason stated he followed all the protocols for care under the Region 9 standards as required by the City of Crystal Lake, including the assessment of a patient before the administration of Fentanyl and that the second dose of Fentanyl was the appropriate protocol under those guidelines. (Arb. Tr. 118-119) Lt. Tamason testified he completed the medical report by himself after treating Petitioner and that he included in the report everything related to Petitioner's fall and treatment. (Arb. Tr. 109-110, 116, RX 12) Lt. Tamason testified his report was a complete description of everything that happened that day, but that he failed to put in that report that he did not hear Petitioner hit the ground. (Arb. Tr. 117) Lt. Tamason testified he completed an employee witness statement on April 5, 2012, immediately after transporting Petitioner to the Hospital. (Arb. Tr. 103, 109, RX 4) Lt. Tamason took time to review each of the photographs in Respondent's Exhibit 1; then was asked "Can you tell the Court

whether or not those photographs accurately and fairly depict Ambulance 350 as it **was** on April 5, 2012" and answered, "They do". (Arb. Tr. 100) He then testified that the photographs showed the bumper on Ambulance 350 in differing positions, up and down. (Arb. Tr. 102) Lt. Tamason testified that the basis for the photographs are accurate depictions of the April 5, 2012, is that this is the normal parking arrangement, but that he did not take the pictures, does not know who made the photographs and does not know when they were taken. (Arb. Tr. 113-116) When questioned about the photograph on page 42 of Respondent's Exhibit 1 showing a bumper in an up position, he testified his statements about the photographs were limited to vehicle placement. (Arb. Tr. 115)

Battalion Chief Heidi Olsen

Chief Olsen testified that she was duty on April 5, 2012. (Arb. Tr. 125) She testified Ambulance 350 and the engines are parked with their tail boards facing each other. (Arb. Tr. 126) She testified that on April 5, 2012, she was the supervisor for both Petitioner and Brian Tamason. (Arb. Tr. 127) Chief Olsen testified that she was not on the Apparatus floor at the time of Petitioner's accident and only went to the floor after the accident when called there by Tamason. (Arb. Tr. 127-128, 132-133) She testified that when she came to the apparatus floor Petitioner was leaning on her side in between Ambulance 350 and the fire engine. (Arb. Tr. 128-129) She stated she observed the bumper of the ambulance down. (Arb. Tr. 129) She did not observe any water, debris or anything in the area and could not recall if she asked Petitioner what happened or how she fell at the time. (Arb. Tr. 129, 134, 138-139) Chief Olsen testified she completed a Supervisor's Statement of Accident stating that Petitioner was exiting the door of Ambulance 350 and slipped causing her to fall, but Chief Olson could not recall if Petitioner told her whether she slipped on the bumper. (Arb. Tr. 130) She testified she did not accompany Petitioner to the Emergency Department, rather Lt. Tamason and Firefighter Jacobowitz did. (Arb. Tr. 133) Chief Olsen testified she did not date the Supervisor's Statement of Accident. (Arb. Tr. 135-136) Chief Olsen testified she interviewed Lt. Tamason after he returned from the Emergency department to complete this form. (Arb. Tr. 136) The portion of the form related to debris and seeing Petitioner crying and moaning was based on her first-hand knowledge, but the portion stating Petitioner was "holding a stack of papers" was reported to her by Lt. Tamason in the interview. (Arb. Tr. 136-137) Chief Olsen testified she did not investigate further on what happened to the papers in Petitioner's hand. (Arb. Tr. 139) The Supervisor's Statement of Accident report states, "…found FF Shipley laying on the apparatus floor in between Ambulance 350 and Engine 344. FF Shipley was in a semi-sitting position on her right hip with her hand on the ground holding her upper body up". (RX2 & RX3) The Supervisor's Investigation of Cause lists in the section for conditions, cause of the accident "Slippery or other unsafe surface." (RX8, unnumbered page, part of Fijalkowski deposition, Dep Ex. 4) Chief Olsen testified she competed additional injury reports on April 5, 2012. (Arb. Tr. 133-134, RX 2 and 3) Chief Olson testified Petitioner was under a Performance Improvement Plan at the time of the April 5, 2012, accident, scheduled for retraining to being the following Monday. Petitioner was ready and willing to complete retraining, but Chief Olsen could not state if Petitioner's employment was in jeopardy. (Arb. Tr. 131-132, 134-135, 138)

Deputy Fire Chief Paul DeRaedt

Chief DeRaedt testified that he has been employed with Respondent for thirty-one (31) years and at the time of Petitioner's April 5, 2012, injury he was the Deputy Fire Chief. (Arb. Tr. 141) He testified he went to the emergency department and questioned Petitioner after she was transported from the Station and while she was being treated in the Emergency Department. (Arb. Tr. 142) Chief DeRaedt testified that in the Emergency Department Petitioner stated she stepped down on the moveable bumper and slipped. (Arb. Tr. 147) Chief DeRaedt testified he was not aware of what treatment Petitioner had received prior to his questioning her and further stated he was unaware that Petitioner had received two (2) doses of Fentanyl prior to arriving at the Emergency Department. (Arb. Tr. 155-157) Chief DeRaedt testified he was not a practicing paramedic at the time and Fentanyl was not a drug he had used before and that in his opinion Petitioner could have been under the effect of the Fentanyl drug when he was discussing the accident with her. (Arb. Tr. 156-157) Dr. Michael Gross specifically addressed the issue about Shipley having I.V. pain medication when she was transported to the hospital. (PX14, p. 64-65) Dr. Gross stated that number one, if you give somebody I.V. pain medication it implies very strongly that they have significant pain; paramedics do not give pain such medication to people as a general rule. Secondly, if you get I.V. pain medication, that pain medication can cause amnesia both at the time of transport by ambulance and later and it can interfere with your memory. Administration of I.V. pain medication can distract you. Dr. Gross stated, "So it's hard to rely on the history of a patient who has been give I.V. pain meds and they may not remember the sequence correctly." (PX14, p. 64)

Chief DeRaedt testified that he completed the City's Employee Statement of Incident, a form required as part of his duties, at the hospital in his own handwriting because the Petitioner was not able to write due to right hand being injured and he had the Petitioner sign the form. (Arb. Tr. 143, 148, 150, 155, RX 5) Chief DeRaedt testified Petitioner was not able to complete the form in her own handwriting. (Arb. Tr. 151, 153 154-155) He stated that the form is generally but not always completed on the day of the accident. (Arb. Tr. 148) Regarding the fact that the form specifically indicates "Employee must complete all questions in own handwriting" Chief DeRaedt testified that this was not a policy but testified that this was the only occasion in his thirty-one (31) year career that he completed this form in his own handwriting for an employee. (Arb. Tr. 152-153, RX 5)

Julie Meyer

Julie Meyer testified that she has been employed with City of Chrystal Lake as the Director of Human Resources for the last seven years. (Arb. Tr. 158) She testified that during her tenure she has been the custodian of records for the City of Chrystal Lake. (Arb. Tr. 159) Ms. Meyer testified that Respondent's Exhibit 4 was maintained in the regular course of business by The City of Chrystal Lake. (Arb. Tr. 160; RX4) Ms. Meyer testified she did not work for the City in 2012, and could not state if Respondent's Exhibit 4 was in the records of the City in 2012 and that she could not testify to the truth of any of the statements contained in Respondent's Exhibit 4. (Arb. Tr. 160-161)

Deposition Testimony

Testimony of David E. Norbeck, MD

David E. Norbeck, MD, testified by Evidence Deposition. (PX17) He testified he is a licensed orthopedic surgeon in Illinois and board certified in orthopedic surgery. (PX17, p. 5-6) He testified he has practiced orthopedics since 1989, that he currently practices with Illinois Bone and Joint and that he performed surgeries from 1989 through 2008. (PX17, p. 6-7)

Dr. Norbeck testified that based on Petitioner's history, his review of the MRIs and his exam he diagnosed Petitioner with a foot sprain, shoulder and upper arm sprain, neck sprain and cervical radiculopathy. (PX17, p. 15-16, 22, 44-45) Dr. Norbeck opined that all his diagnoses and all of Petitioner's symptoms were related to the April 5, 2012, injury, specifically that her foot being caught behind her explained the foot injury, and the fall onto her shoulder could jerk her head and neck causing irritation to the nerve and disc bulging. (PX17, p. 19, 24) Dr. Norbeck referred Petitioner to a pain specialist and opined that this referral was necessary treatment for Petitioner's condition. (PX17, p. 24) Dr. Norbeck opined that Petitioner had some type of sympathetic pain syndrome which is related to Petitioner's April 5, 2012, injury, based on his review of the Dr. Yu's treatment records, and that Dr. Yu's treatment was necessary and related to that injury. (PX17, p. 26-30)

Dr. Norbeck testified he treated Petitioner on a referral from Dr. Spears beginning May 4, 2012. (PX17, p. 8, 33) At her initial consult she brought her MRI films and provided a history of an April 5, 2012, injury when she fell to the ground landing on her right side exiting an ambulance with an initial complaint of foot and right shoulder pain and then two days after the accident some neck and right arm pain. (PX17, p. 8-9, 11, 34) Dr. Norbeck noted the patient's complaints, or new or different complaints can start days after an injury. (PX17, p. 10-11) Dr. Norbeck stated Petitioner never described the bumper to him nor if was removeable. (PX17, p. 34) Dr. Norbeck testified Petitioner reported to him she had sustained a prior injury to her neck in a training accident with the diagnosis of a neck sprain, but Dr. Norbeck did not review any medical records prior to April 5, 2012. (PX17, p. 9, 33-35)

Her complaints at the initial consult were neck pain radiating down her right arm into her biceps above the elbow, some tingling in her right arm, right anterior shoulder worse with her arm over her head, right forefoot with tingling and burning sensations localized around her second, third and fourth toes. (PX17, p. 10, 40) He stated Petitioner did not report arm pain below the biceps which he explained was expected for a higher cervical radiculopathy because those nerves do not go lower in the arm and don't go into the fingers. (PX17, p. 38-89) He stated Petitioner did not report that prior to April 5, 2012, she had any right upper extremity complaints to her shoulder. (PX17, p. 39) Dr. Norbeck testified that her foot pain did correlate to the plantar plate. (PX17, p. 41) Dr. Norbeck testified that Petitioner did not report to him that on March 30, 2012, she was prescribed Celebrex and Soma. (PX17, p. 37) He did not review the records of Dr. Burnstine and Petitioner did not report complaints made to Burnstine on December 2, 2010, related to right-sided neck pain or muscle weakness, nor that she had an EMG on May of 2011. (PX17, p. 39-40)

Dr. Norbeck testified that based on the significance of her complaints and because of her hyperesthesia or abnormal increase in sensitivity, Petitioner was having some type of nerve issue. (PX17, p. 11, 43-44) Dr. Norbeck testified he reviewed Petitioner's MRI films of her right shoulder, right foot, and cervical spine. (PX17, p. 11-12, 36, 46) The shoulder MRI showed tendinosis, a paralabral cyst, degenerative changes in her acromioclavicular joint, but no full thickness tear. (PX17, p. 11-13) The right foot MRI showed soft issue inflammation between the third and fourth metatarsals. (PX17, p. 12) The cervical MRI demonstrated some arthritis, disc degeneration at C5-6 and C6-7, disc bulging at C5-6 and C6-7 and narrowing of the hole where the nerve exists between C5 and C6. (PX17, p. 12, 36) Dr. Norbeck opined that the tingling Petitioner reported was tied to the MRI findings. (PX17, p. 12) Dr. Norbeck agreed that Petitioner's arthritis was present before the April 5, 2012, accident and that arthritis can cause inflammation absent any trauma. (PX17, p. 36-37)

Dr. Norbeck testified his examination of Petitioner, showed an antalgic gait, a diminished range of motion in her cervical spine particularly in her lateral bending, lateral rotation and extension. (PX17, p. 13) She had a positive Spurling's maneuver to the right which he testified caused her pain and tingling down into her arm when she rotated her chin to the right shoulder, which Dr. Norbeck testified is because of the narrowing of the hole where the nerve exits from the neck to the arm which is evidence of a pinched nerve. (PX17, p. 13-14) His exam also demonstrated a shoulder with positive impingement sign which is usually due to bursa inflammation. (PX17, p. 14) Dr. Norbeck noted an impingement and inflammation and hyperesthesia of the top of Petitioner's right foot, which he usually means there is some type of nerve injury. (PX17, p. 14-15)

Dr. Norbeck testified he prescribed different pain and anti-inflammatory medication, a Medrol Dosepack, a CAM walker or boot for her ankle and foot, physical therapy for her cervical area, shoulder and foot, a transforaminal cervical epidural steroid injection and ordered her to remain off work. (PX17, p. 17-18) Petitioner attended physical therapy which caused her so much pain that Dr. Norbeck ordered her to stop until after an epidural steroid injection ("ESI"); that ESI was completed on May 24, 2012. (PX17, p. 20, 45-46) He then saw Petitioner on June 6, 2012, when Petitioner reported the injection offered her no pain relief, that she now had significantly more pain in her shoulder area and that she continued to have foot pain, discoloration in her toes and needed to use the crutch in spite of wearing the CAM walker. (PX17, p. 20) His examination of Petitioner on June 6, 2012, demonstrated she still had an antalgic gait, her foot was discolored, her shoulder had more pain and a reduced range of motion, her cervical range of motion was improved and her rotator cuff showed good strength. (PX17, p. 22, 42-43) Dr. Norbeck testified that he was concerned about Petitioner's pain in spite of the epidural and he felt she was developing a pain syndrome in both her foot and upper extremity so he recommended she see a pain specialist. (PX17, p. 23-24) Dr. Norbeck explained a pain syndrome is when the nervous system can start to go haywire and the patient experiences extraordinary pain out of proportion to the x-ray findings. (PX17, p. 23) He did not see Petitioner after June 6, 2012, when he referred her to Dr. Yu. (PX17, p. 30)

Dr. Norbeck testified at his initial visit he only diagnosed Petitioner with soft tissue sprains. (PX17, p. 44) Dr. Norbeck agreed that when a patient sustains a stretched nerve the nerve as it

starts to recover will go through a period of hypersensitivity. (PX17, p. 44) Petitioner had nerve hypersensitivity which caused her to pull back right away when touched. (PX17, p. 43) Dr. Norbeck testified that he did not agree with Dr. Levin's opinion that Petitioner was malingering and testified that he never saw any evidence that Petitioner was malingering. (PX17, p. 31)
Dr. Norbeck further testified that it was imperative that Petitioner treat her developing pain syndrome quickly to avoid a chronic pain syndrome. (PX17, p. 32) Dr. Norbeck testified that an EMG in his experience is not helpful for patients with cervical radiculopathy, but he had no objection if it satisfied the requirement of an IME. (PX17, p. 25-26) Dr. Norbeck testified that Deposition Exhibit 3 was his bill and that it was paid in full. (PX17, p. 32)

Testimony of Andrew Yu, MD

Andrew Yu, MD, testified by Evidence Deposition on March 13, 2020. (PX19) He testified he is board certified in physical medicine and rehabilitation, pain medicine, Electrodiagnostic Medicine and has additional qualifications in pain medicine and that his practice involves pain management not orthopedic surgery. (PX19, p. 6-7, 47, PX20, p. 1) He was in private practice at Illinois Pain Institute with surgical procedures performed at Barrington Spine, until he moved to Advocate Good Shepherd Hospital where he currently practices. (PX19, p. 8-9) Dr. Yu testified that he is certified in IMEs. (PX19, p. 55, PX20, p. 1)

Dr. Yu treated petitioner in 2012 and 2013 and opined that Petitioner's condition was an exacerbation of a pre-existing condition or causally related to Petitioner's April 5, 2012, accident. (PX19, p. 31, 42) He specifically opined that Petitioner's cervical radicular pain, sympathetic-mediated pain and cervical facet syndrome is casually related to Petitioner's April 5, 2012, accident. (PX19, p 32, 63) He specifically opined that Petitioner's cervical spinal stenosis, cervical degenerative disc disease condition, rotator cuff tendinosis and the myofascial pain syndrome are exacerbations of Petitioner's pre-exiting condition. (PX 19, p. 69) Dr. Yu testified that Petitioner's myofascial pain was either aggravated by the April 5, 2012, accident or that it was a new condition caused by Petitioner's April 5, 2012, accident. (PX19, p. 67-68) Dr. Yu felt Petitioner could not return to her original work. (PX19, p. 24, 32)

On February 12, 2020, Dr. Yu saw petitioner for one visit and diagnosed her with degeneration of C5-C6 intervertebral disc, cervical spondylosis and right rotator cuff arthropathy all of which pre-existed her 2012 accident. (PX19, p. 51-54) Dr. Yu testified that he did not diagnose Petitioner with sympathetic-mediated pain syndrome on February 12, 2020, because he would need to see the patient for five (5) visits before that diagnosis could be made and he could not know if the sympathetic-mediate pain had resolved when he saw her on February 12, 2020. (PX19, p. 64-66)

Dr. Yu testified he treated Petitioner upon the referral of Dr. David Norbeck for her workers' compensation case and date of injury of April 5, 2012, beginning August 8, 2012, through February 13, 2013, and then on February 12, 2020. (PX19, p. 10-14, 38-39)

Dr. Yu testified Petitioner on her first visit of August 8, 2012, complained of pain in her neck with radicular symptom, right shoulder and right leg pain, mostly in her foot. (PX19, p. 14, 17) She "described it in different ways, such as constant, dull, achy, shooting, burning, stabbing",

she had symptoms of weakness and numbness and she was ambulating with a crutch and Ace bandage on her right foot. (PX19, p. 15) Dr. Yu testified he reviewed a report of a prior MRI of Petitioner's cervical spine, right foot and right shoulder which reflected a pre-existing condition. (PX19, p. 35-38) On August 8, 2012, Dr. Yu testified that his initial impression what that Petitioner did not meet the criteria for complex regional pain syndrome and ordered several procedures to treat Petitioner and to diagnosis her pain, including sympathetic nerve blocks in her right leg, two right neck stellate ganglion nerve blocks, two cervical epidural steroid injections and two cervical facet nerve blocks. (PX19, p. 18-25, 66) Dr. Yu also ordered an MRI of the cervical spine which showed spinal stenosis at C5-C6 and C6-C7. (PX19, p. 20)

Dr. Yu testified for his treatment of Petitioner he also prescribed right-sided radiofrequency ablation. (PX19, p 26), right subacromial bursa injection (PX19, p. 29), trigger point injections. (PX19, p. 29) and a fourth ESI January 30, 2013 (PX19, p. 29)

Dr. Yu determined Petitioner's pain was complex; partly sympathetic-related pain, party cervical stenosis and part cervical facets pain and diagnosed Petitioner with "cervical spinal stenosis, C5-C6, cervical degenerative disc disease, cervical radiculitis, cervical facet syndrome, cervicalgia, which is neck pain, cervical radicular symptoms, sympathetic-mediated pain, rotator cuff tendinosis, which is chronic degenerative condition, suprascapular neuritis, and myofascial pain syndrome." (PX19, p. 21, 24, 31) Dr. Yu testified that Dr. Norbeck's records disclosed a positive Spurling's sign which supports his diagnosis of cervical radiculitis. (PX19, p. 80) He saw Petitioner on January 11, 2013, and during his exam she had right shoulder pain and reduced range of motion in her right shoulder. (PX19, p. 28-29)

After 2013 Dr. Yu next saw Petitioner on February 12, 2020. (PX19, p. 38-39) He noted the range of motion in her right shoulder was quite reduced and it caused her pain at the end range of motion. (PX19, p. 39, 49-50, 63) Dr. Yu testified petitioner did not have complaints regarding foot pain in 2020, he did not diagnose her with cervical radiculopathy in 2020 and did not find rotator cuff impingement in 2020. (PX19, p. 51, 60, 62) He reviewed a cervical spine MRI of October 5, 2017 which showed some disc spur complexes at C5-C6, C6-C7 and C7-T1. (PX19, p. 40)

Dr. Yu testified that charges listed in Deposition Ex 5A and 5B are based on his care and were reasonable, necessary and customary, to either cure or relieve the symptoms of Petitioner. (PX19, p. 44)

Testimony of Michael D. Gross, MD

Michael David Gross, MD testified by evidence deposition. (PX 14 and 15) He testified he is a licensed physician and surgeon in Illinois, Iowa and Indiana and board certified by the American Board of Urgent Care. (PX14, p. 5,6; PX 16) He is board certified in urgent care medicine. (PX14, p. 74) Dr. Gross testified he has practiced in emergency medicine and has practiced in occupational medicine since 1989 treating patients with occupational injuries and has

been an instructor at Midwestern University. (PX14, p. 6-8, 78) Dr. Gross testified he has conducted IMEs since 1982. (PX14, p. 10) Dr. Gross's current practice is in Iowa working in occupational or emergency medicine with Locums Group and Wapiti staffing agencies. (PX14, p. 75-79)

Dr. Gross testified he completed an independent medical evaluation of Petitioner and for that he reviewed records of MRIs from Advanced Radiology Professionals, Medical records from Good Shepherd Hospital, Family Foot and Ankle Specialists, Centegra Health Systems, Alexander Jablonowski, MD, Nova Care Rehabilitation and Lake Cook Orthopedic Associates. (PX 14, p. 13-14) For his IME he conducted a physical examine and history of Petitioner on July 6, 2012. (PX14, p. 25, 61)

Dr. Gross opined to a reasonable degree of medical and surgical certainty, that Petitioner's cervical spine injury, the residuals of a right shoulder injury and the residuals of a new right foot injury were causally related to her April 5, 2012, accident. (PX14, p. 45-46, 55) He opined that her mild arthritis of the right foot, bunion and plantar fasciitis were pre-existing. (PX14, p. 46) Dr. Gross testified that when he examined Petitioner, she could not have returned to work as a firefighter. (PX14, p. 52) Dr. Gross opined that Petitioner's complaints were partly due to complex regional pain syndrome ("CRPS") based on the International Association of Pain Specialists criteria. (PX14, p. 38-40) Dr. Gross opined that he suspected Petitioner had CRPS in her foot based on his findings, but Petitioner required further treatment before that diagnosis could be seriously entertained. (PX14, p. 71, 80) He testified she could have CRPS and another condition. (PX14, p. 80-82) He stated that the development of left extremity symptoms was even more suspicious for CRPS because CRPS is known to switch locations away from the causative injury site. Id.

Dr. Gross took a history of Petitioner that she was 43 years-old, a firefighter paramedic, that she was taking medications for pain in her neck, right shoulder and right foot, that on April 5, 2012 she was restocking an ambulance and stepped on a movable bumper which was up which he interpreted that she fell off the bumper, but he did not have an independent recollection of what Petitioner stated in 2012. (PX14, p. 15; PX15, p. 125-126) Dr. Gross testified that it was his interpretation from Petitioner that the bumper was not in the place where Petitioner expected it to be. (PX15, p. 126-128) Dr. Gross testified Petitioner stated that when she struck the ground, she felt a tear in her right foot and greatest pain in the bottom aspect of the right metatarsal phalangeal joint or the second joint of the big toe. (PX 14, p. 15-16; PX15, p. 128-130)

Regarding Petitioner's foot condition, as part of her history Petitioner described treatment prior to her April 5, 2012, accident for a bunion and plantar fasciitis in the right foot which Dr. Gross testified is not the same place she described the work injury pain; her pain from the injury was toward the end of the toe, not the side where bunion pain would be and laterally nowhere near where plantar fasciitis pain would be. (PX 14, p. 16-18; PX15, p. 130-138) Specifically, the foot pain Petitioner reported in the ball of her foot prior to April 5, 2012, was Capsulitis, different from the pain she reported after the accident. (PX15, p. 130-133, 157-168) Dr. Gross did agree that the records reflected some discussion of potential surgery of Petitioner's partial tear of the plantar plate and some suspicion of a tear in the second metatarsal phalangeal joint prior to the April 5, 2012, injury. (PX15, p. 135, 139-140) Dr. Gross testified that a bunion disturbs the anatomy of the foot but does not usually case symptoms on the second toe. (PX15, p. 137)

Regarding Petitioner's accidents, Dr. Gross testified Petitioner also gave a history that on the day of the accident she was taken to the emergency room, received IV pain medication, x-rays of her right shoulder and right foot and was diagnosed with severe right shoulder strain, sprain of the first, second and third toes, a broken metatarsal, given a splint for her foot and crutches and was referred to an orthopedic surgeon for her shoulder and to occupational health. (PX 14, p. 18-19, 138) Petitioner also gave a history of a prior injury of hitting her head in training, which was treated conservatively. (PX14, p. 101-102) She denied any significant prior right shoulder injury. (PX14, p. 104.)

Regarding Petitioner's prior treatment, Dr. Gross did not recall in his review of records any muscle weakness. (PX14, p. 104) Dr. Gross testified that any complaints Petitioner made to Dr. Burnstine would be consistent with degenerative symptoms. (PX14, p. 105) He did not review records of Illinois Pain Institute. (PX14, p. 106)

Regarding Petitioner's cervical spine condition, Dr. Gross testified Petitioner had a cervical spine degeneration prior to her April 5, 2012, accident based on the X-rays but he was not aware if she was diagnosed with cervical spine degeneration before April 5, 2012. (PX14, p. 108, 117)

At the time of his examination, the Petitioner complained of daily neck pain and stiffness, numbness and tingling in her neck radiating to her right shoulder and to her right fingers, right shoulder and arm weakness, limited neck range of motion, shooting pains in her left forearm, trouble chewing and swallowing, numbness and tingling in her right second and third toes, pain in the ball of her foot and second, third and fourth toes and swelling in her right toes. (PX14, p. 23-24, 66)

Dr. Gross described in detail his physical examination of Petitioner with a finding of neck stiffness, cervical compression based on a Spurling's test which was positive, a finding of atrophy of the right trapezius muscle relative to the April trauma to the right shoulder, and that he did some low back testing to rule out neurological causes from the back that might affect the foot. (PX14, p. 26-31; PX15, p. 140-145, 155-156) Dr. Gross testified atrophy could develop in 30 to 60 days if completely immobilized or favoring the shoulder. (PX15, p. 156) He also found tenderness in her cervical spine indicating an acute condition rather than chronic, because Petitioner had recovered from her pre-2012 work related injuries and was working full duty. (PX14, p. 52) He testified that the hyperextension test and weakness in her triceps were objective findings so they could not be malingering. (PX14, p. 53) He testified the April 16, 2012 MRI showed disc degeneration, spondylosis with multi-level disc bulging, and central canal narrowing. (PX14, p. 48-49, PX15, p. 141-142) Dr. Gross agreed that inflamed facet joints could cause limited range of motion. (PX15, p. 143) He stated Petitioner did not have a recurrent shoulder dislocation problem. (PX15, p. 146)

Dr. Gross testified he found Petitioner had several right shoulder conditions: 1) atrophy of the right trapezius muscles which could not be attributed to anything other than the trauma from the April 5, 2012, accident; 2) tenderness in the proximal right trapezius muscle; tenderness in the biceps tendon and tenderness over the anterior and inferior aspects of the right shoulder joint. (PX14, p. 31) He testified that tendinosis was seen in the MRI. (PX14, p. 49-50, 53) Dr. Gross

stated he tested Petitioner's shoulder range of motion was reduced in the right shoulder, a supraspinatus test which was positive in the right shoulder, an active abduction test which was below normal on the right, an apprehension test which he could not complete because of Petitioner's pain; a test of the neurologic reflexes which was intact except for the triceps reflex, a pinprick examination which was diminished throughout the right upper extremity; a Phalen's test for carpal tunnel which was abnormal on the right, a dynamometer test which showed she had reduced grasp strength in the right hand; and a Tinel signs test which was normal bilaterally. (PX14, p. 30-37, PX15, p. 143, 146-147) He testified atrophy cannot be faked and that Petitioner had definite areas of tenderness in the shoulder, a positive supraspinatus test and limitation of the abduction which are all consistent with a fall injury. (PX14, p. 53-54) He stated the April 16, 2012 MRI was remarkable for Petitioner having rotator cuff signal change that would prolong healing. (PX14, p. 67)

Dr. Gross testified he examined Petitioner's right foot and ankle and noted chronic regional pain syndrome ("CRPS"). (PX14, 38-43) For this diagnosis he inspected her foot and noted her second toe was slightly diverted which he did not find relevant to the April 5, 2012, injury but to her bunion. (PX14, p. 38; PX15, p. 153) Dr. Gross testified the patient reported the diverted foot began after the April 5, 2012, accident. (PX15, p. 153) Dr. Gross testified in his opinion the diverted toe was a minor finding and related to the bunion. (PX15, p. 154-155) He found atrophy in her right foot. (PX15, p. 155) He noted she had venous congestion in the second toe which was significant to a diagnosis of CRPS because it is an objective sign of the syndrome and also abnormal blood flow in the second toe. (PX14, p. 39-40, 55-56, PX15, p. 158-160) Dr. Gross also noted diminished movement in flexion of the right toes and that Petitioner's right toes felt cooler than her left toes which is another objective sign of CRPS. (PX14, p. 40-41, 57) He also tested her right foot and ankle sensation which he noted was diminished and noted she had a restriction of the dorsiflexion of the right ankle which is seen in the MRI. (PX14, p. 43, 57) He noted she had a bona fide reaction of withdrawing her foot due to pain during the Tinel test, which Dr. Gross stated showed she was hypersensitive to percussion or tapping of her foot. (PX14, p. 44-45, PX15. P. 160) He also stated she had nerve irritation based on his Morton's sign test but found no nerve compression from that test. (PX14, p. 57, PX15, p. 160-161) Dr. Gross testified Petitioner could have very localized pressure on the nerves that could relate to CRPS and that a plantar tear is in a different area. (PX15, p. 161)

Dr. Gross opined there is a causal connection between all of his findings suggesting an acute injury from April 5, 2012. (PX14, p. 57) Dr. Gross testified that the MRI of Petitioner's foot showed no fracture but showed swelling in the third and fourth metatarsals suggesting a soft tissue injury. (PX14, p. 65-66)

Dr. Gross diagnosed Petitioner with 1) residuals of a cervical spine injury; 2) residuals of a right shoulder injury; 3) pre-existing right shoulder arthritis aggravated by the April 5, 2012, injury; 4) mild pre-existing arthritis of the right foot; 5) pre-existing bunion and plantar fasciitis. (PX14, p. 45-46)

For his report Dr. Gross reviewed the records of Dr. Baird dating back to 2008 and stated Petitioner saw him for her bunion two weeks prior to the April 5, 2012, accident. (PX14, p. 98-99) Dr. Gross did not recall having reviewed records of Dr. Spears. (PX14, p. 99-100)

Dr. Gross testified that he has treated patients with chronic pain and is familiar with the condition because of his medical legal practice in disability evaluation and that the best treatment for patients with CRPS is to get treatment with a pain specialist as soon as possible. (PX14, p. 58-59)

Dr. Gross testified Petitioner's lack of neck pain complaint at Centegra Hospital was important because it takes time for symptoms to develop and she did complain of symptoms in a couple of days which increased over the next couple of weeks which fit clearly with an April 5, 2012, injury and therefore he disagrees with Dr. Levin's opinion. (PX14, 63-64) Also, he noted that IV pain medication can distract a Patient from noting complaints because they are sedated and because the medication can cause amnesia at both the time of administration and later. (PX14, p. 64)

Dr. Gross testified Petitioner's pain response when he examined her was not unusual based on the facts of her injury. He noted many physicians interpret the heightened pain sensitivity with a minimal exam and imaging findings as malingering and that am EMG is usually normal in CRPS because it looks at the peripheral nerve used to determine candidacy for surgery, but not to diagnose a Patient's subjective symptoms or complaints. (PX 14, p. 71-73) Dr. Gross testified that an EMG may not be abnormal for some types of radiculopathy because the test is not that sensitive, it will show a benefit from surgery, but Petitioner could have numbness and tingling emanation from her neck which is not severe enough to register on an EMG, so to establish the etiology of numbness and tingling and whether it is related to the April 5, 2012 accident one must corrugate the EMG with other evidence. (PX15, p. 147-149) He disagreed with Dr. Levin that Petitioner's pain was inconsistent and out of proportion. It was not out of proportion from his exam and that he has seen a lot of CRPS cases

Dr. Gross reviewed Dr. Levin's June 4, 2012, and June 18, 2012 reports. (PX14, p. 98)

Dr. Gross testified he is not familiar with the Budapest criteria, but that there are 15 to 20 different criteria to diagnose CRPS. (PX14, p. 79) Dr. Gross diagnosed CRPS by excluding any condition that could cause Petitioner's symptoms, then finding that Petitioner's pain was out of proportion, and then other findings such as erythema, dysesthetic quality to the pain such as burning. (PX14, p. 79-80)

Dr. Gross reviewed the reports of Petitioner's MRIs but not the films. (PX14, p. 47-48, 96-97; PX15, p. 141) Dr. Gross stated that if Petitioner had a cervical degenerative condition and arthritis from the MRI findings and that is not something that would usually get worse over time and which can wax and wane. (PX15, p. 117-118)

Petitioner's inability to lift more than five (5) pounds could be a symptom of cervical radiculopathy. (PX 15, p. 118-119) He noted also from his exam some swelling or inflammation in the facet joints could be partially from arthritis but more likely was from the accident, which would not be seen on any imaging. (PX15, p. 120-121) Dr. Gross stated that a non-steroidal medication would be used to treat an acute exacerbation but not a chronic arthritis condition, Celebrex is an anti-inflammatory and Soma is a muscle relaxant. (PX15, p. 122-123) Dr. Gross

testified Petitioner did not tell him she was prescribed Celebrex or Soma in the weeks leading up to the April 5, 2012, accident. (PX15, p. 124)

Dr. Gross testified he worked on 15,000 injury cases entirely for Petitioners except one or two. (PX14, p. 84) Since 1992 he may have had 50 to 100 clients from the counsel for Petitioner. (PX14, p. 84-85) He currently gives a deposition quarterly and in 2012 gave depositions about monthly. (PX14, p. 85) Dr. Gross stated he billed $900 for review of records and the exam, $1,000 to review the IME of Dr. Levin, $1,200 per hour for his deposition. (PX14, p. 86-87) He testified he met with counsel for Petitioner for a half hour before the deposition and discussed a standard questionnaire and his qualifications; he also has a conversation with counsel regarding the cross-examination of Dr. Levin for which he wrote his second report. (PX14, p. 91-92)

He reviewed the EMG taken after his examination of Petitioner. (PX14, p. 116) He was not aware she was diagnosed with cervical spine degeneration prior to the accident. (PX14, p. 117) He agreed it can worsen over time but does not spontaneously resolve. (PX14, p. 117) Positive findings of arthritis in spine in MRI. (PX14, p. 118)

Grip test used Jamar dynamometer, most FCEs use this and he found 60 on the right and 140 on the left. (PX15, p. 151-153) She is left hand dominant. (PX15, p. 153)

Testimony of Mark Levin, MD

Mark Levin, MD, a Board-certified orthopedic surgeon, testified on two (2) separate occasions by evidence deposition. (RX 7, RX9, p. 5) Dr. Levin testified he never operated as a primary surgeon for a spine surgical case. He testified that he once performed spine surgery while in training and that he has assisted other surgeons in spine surgery. (RX7, p. 6.) Dr. Levin, however, does treat orthopaedic conditions of the cervical, thoracic and lumbar spine non-surgically. (RX7, p. 6) Levin testified that twenty percent (20%) of his practice consists of second opinion and IME Exams, ninety percent (90%) of which is for Respondents or Defendants. (RX7, p. 7-8)

Dr. Levin testified he examined Petitioner on June 4, 2012 but had no independent recollection of that exam and authored a report and two (2) addendum reports. (RX7, p. 9) Dr. Levin testified on two (2) sperate occasions – August 17, 2018, (RX 7) and March 3, 2021. (RX 9) Dr. Levin testified that a clinical assistant obtained an oral history from the Petitioner which he reviewed. (RX7, p. 11) Dr. Levin acknowledged that Petitioner saw her podiatrist, Dr. Baird, prior to the injury for a right bunion problem but that after the injury she treated with Dr. Baird for a new pain in her right foot. (RX7, p. 13)

Dr. Levin related that Carolyn Shipley reported two (2) injuries – December 18, 2010 (RX7, p. 26) and April 5, 2012, (RX7, p. 12) According to Dr. Levin, Petitioner related that on April 5, 2012, she fell out of the back of an ambulance. According to Dr. Levin, she stated that when she went into the ambulance the "removable bumper" on the rear was up. But when she came out of the ambulance, the "removable bumper" was not in place and she fell on her right side on to the concrete floor. (RX 7, p. 12) She reported that she was taken from the concrete floor by

ambulance to Centegra where she was treated. She related to him that three (3) weeks before this accident she was being treated by a podiatrist, Dr. Baird, for bunion problems. (RX7, p. 13)

At the emergency room, her right foot was splinted and an MRI was ordered for her right shoulder. The next day she reported to Centegra Occupational Health and was affirmatively treated with Robaxin and a referral for orthopaedic care. (RX7, p. 14) She chose to be treated by Dr. David Norbeck, who at that time was associated with Lake Cook Orthopaedics, n/k/a Illinois Bone and Joint. (RX7, p.14) She allegedly told Dr. Levin that an epidural steroid injection, at the request of Dr. Norbeck was performed on May 24, 2012, but that the injection made her feel worse. (RX7, p. 20-21) Dr. Levin testified that he found that complaint significant because the epidural should have made her better, or at least no change. (RX7, p. 22) Dr. Levin confirmed that EMG studies of the Petitioner's upper extremities were normal. (RX7, p. 24)

Dr. Levin related a history from the patient relating to the December 2010, injury which she described as a whiplash injury sustained while in training in an obstacle course while wearing full gear and hit her head. She received treatment at Northern Illinois Medical Center. (RX7, p. 26) Dr. Levin acknowledges that this earlier whiplash injury was to the Petitioner's cervical spine.

Dr. Levin testified that at the June 4, 2012, examination, he performed an orthopaedic evaluation. In his testimony he stated that he examined the cervical spine. He emphasized that he started the exam with the patient in a "standing position". He indicated that the Petitioner complained of pain during palpation of the left cervical paraspinal muscles, but he opined that this was "not true spasm". (RX7, p. 30) Dr. Levin claimed that Shipley "self-inflicted" a tightness on her neck. Petitioner complained of pain when Levin palpated her earlobes. Petitioner claimed that she was unable to move her neck in order to touch her chin to her chest and showed little range of motion in extension. Dr. Levin stated that in conducting these maneuvers she "remained rigid". When asked to actively turn her head right and left, she only could move it 5 degrees to the right and 5 degrees to the left. According to Dr. Levin, he observed the patient in other parts of the examination displaying a greater range of motion. (RX7, p. 31) Ironically, while Dr. Levin is ostensibly testifying regarding the subjective complaints of the Petitioner and her lack of range of motion, he himself is articulating a subjective opinion and a subjective conclusion regarding his observations. Dr. Levin became a non-medical witness when he described Petitioner's cervical range of motion when she was sent to the radiologic suite. (RX7, p. 31-32) Dr. Levin went on to describe severe complaints of pain when he palpated the trapezius. He described that the patient felt pain with "light touch" which was according to Dr. Levin, out of proportion to her anatomic condition. It is curious that Dr. Levin found this allodynia suspicious while Dr. Norbeck, the treating orthopaedic surgeon, found it credible enough to refer the Petitioner for pain management treatment. (PX 17, p. 22-25)

With respect to the right shoulder, the Petitioner showed very limited range of motion. She could forward flex only to 40 degrees on the right compared to 180 degrees on the left. With passive assistance, her range of motion on the right shoulder improved 5 degrees. Abduction was accomplished only to 45 degrees on the right as compared to 180 degrees on the left. With respect to internal rotation, the Petitioner demonstrated limited motion on the right side as compared to the left side. External rotation of the shoulders showed a range of motion of 45 degrees on the right compared to 60 degrees on the left. According to Dr. Levin, with distraction, her range of motion of the right shoulder improved. (RX7, p. 24-25) In the supine position the Petitioner could only

forward flex to 5 degrees and abduct to 5 degrees. Dr. Levin stated that active motion of the shoulders should not vary by a tremendous amount in the standing as compared to the supine position. (RX7, p. 25)

Dr. Levin took x-rays at his examination on June 4, 2012, of the Petitioner's cervical spine and her right foot. According to Dr. Levin these x-rays showed chronic cervical arthritic changes most noted at C5-C6. There was narrowing at the C5-C6 level. (RX7, p. 46) Outside x-rays dating back to April 5, 2012, were also reviewed and Dr. Levin interpreted them to show a normal glenohumeral joint and normal bony architecture. Dr. Levin interpreted MRIs taken on April 16, 2012, which were abnormal. MRI of the right shoulder showed minimal intrasubstance signal changes in the rotator cuff reflecting rotator cuff tendonitis. According to Dr. Levin the MRI did not show acute pathology from a traumatic episode. MRI of the cervical spine disclosed disc osteophyte formation at C5-C6. MRI of the right foot demonstrated edema between the third and fourth metatarsals. (RX7, p. 48-49) Dr. Levin did not provide any specific diagnosis, but instead concluded that Shipley had marked subjective complaints of pain in her neck, right shoulder, right upper extremity and right foot, which he considered out of proportion to objective findings and according to Dr. Levin, he opined there were multiple inconsistencies on clinical exam. (RX7, p. 51) Dr. Levin gave no opinion regarding causal connection whatsoever. He stated, "I did not make any opinions. I just noted inconsistencies, mechanism injury inconsistencies and again to make sure that there is no potential for any objective pathology, the last and final test would be an EMG, … ." (RX7, p. 52) The EMG was negative. (RX7, p. 57) Dr. Levin a second time, failed to give any opinion on causal connection; instead, in response to the question as to causal connection, he opined that there was no objective orthopaedic pathologic basis for the Petitioner's subjective complaints.

On cross examination, Dr. Levin admitted that he was not a pain specialist, but rather an orthopaedic surgeon and he has never written or presented on the subject of pain. (RX7, p. 60) Barrington Orthopaedics was paid for the IME I performed. (RX7, p. 61) I was retained by IRMA. (RX7, p. 62) Although Dr. Levin prepared two (2) addendum reports to his initial report of June 4, 2012, he did not re-examine Carolyn Shipley until 2021. (RX7, p. 64)

Beginning on page 76 of Respondent Exhibit 7, Dr. Levin on cross examination, repeatedly engages in narrative testimony far beyond the scope of the question asked demonstrating his commitment to discrediting the Petitioner he is examining. (RX7, p. 76-77) In the course of Dr. Levin's meandering, he states that the nerve anatomical bony structures narrowing disc space at C5-C6 are chronic and they are not an acute process. (RX7, p. 82) He goes on to describe these chronic changes on other radiological studies. However, Dr. Levin then opines that such chronic arthritic changes are not unusual for a forty-three (43) year old female. (RX7, p. 83) Dr. Levin goes on to say you can have these chronic changes for someone in their twenties. (RX7, p. 83)

Testimony of Ronald J. Fijalkowski, PhD.

Petitioner's attorney had filed a motion to exclude the testimony of Dr. Fijalkowski. the Arbitrator reserved ruling on that motion until he had the opportunity to review the Deposition. After reviewing the deposition, the Arbitrator denies petitioner's attorney Motion to Exclude and admits Rx 8 into evidence.

Dr. Fijalkowski, a biomechanical engineer, testified on behalf of the respondent. (Res. Ex. 8). Dr. Fijalkowski is employed as a senior biomechanist at ARCCA, Incorporated, an engineering consulting firm. Dr. Fijalkowski holds degrees in biomechanical engineering including a Ph.D. within that discipline. (*Id.* 5-6). Dr. Fijalkowski specializes in biomechanics or the study of how the human body responds to different forces. (*Id.* 6). At the time of his deposition, Dr. Fijalkowski had practice in this area of study for almost ten years. (*Id.* 7). Dr. Fijalkowski has testified in depositions and trials. The doctor's record of prior deposition and trial testimony was attached to the deposition transcript as exhibit 2. Dr. Fijalkowski testified that he is a consultant to the National Hockey League as well as the United States Marine Corp. Dr. Fijalkowski has also authored scholary papers and performed research on the mechanics of slips, trips and falls. (*Id.* 9-14).

Dr. Fijalkowski testified that he prepared a report regarding his findings and conclusions in this matter. Dr. Fijalkowski reviewed all of the accident reports as well as petitioner's medical records from Centegra, the MRI reports, the records of Dr. Norbeck and the IME report of Dr. Levin. (*Id.* 23-25). Dr. Fijalkowski also ordered a site inspection including photographs and measurements of the vehicles and their position on the apparatus floor. Dr. Fijalkowski testified that he had a colleague of his perform the site inspection including obtaining the measurements and the photos. (*Id.* 29-30).

Dr. Fijalkowski testified that he understood petitioner's injury as a fall onto her right flank. Dr. Fijalkowski looked at various tests conducted by his company for the maximum forces to the cervical spine. The completed tests were with the assistance of a crash test dummy. The tests were done for research purposes in October of 2006. Dr. Fijalkowski relied on prior testing with falls similar to the characteristic of petitioner's fall to the apparatus floor. Dr. Fijalkowski confirmed that the methodology for the tests had not changed since the research started. The research videos were included with the deposition transcript as Exhibit 6. (*Id.* 38-39).

Dr. Fijalkowski testified that there appeared to be two general descriptions of how petitioner's fall to the apparatus floor occurred. Dr. Filjalkowski testified that the first scenario involved petitioner slipping off the moveable bumper. The other scenario involved petitioner stepping directly down onto the apparatus floor (no slip) and falling onto her right side. (*Id.* 47-48). Dr. Fijalkowksi examined both scenarios independently. Dr. Fijalkowski concluded that there was no evidence to suggest petitioner slipped during the particular incident. Dr. Fijalkowski did to recognize any slip hazards or slippery surfaces. Dr. Fijalkowski noted that the moveable bumper was graded and promoted a full friction surface. Dr. Fijalkowsi commented that petitioner was also wearing

rubber-soled sneakers. Dr. Fijalkowski did find anything that suggested the presence of a hazardous slip condition associated with the bumper. Dr. Fijalkowski testified that he would have expected petitioner's low back to interact with the bumper step had she slipped off the step. Dr. Fijalkowski explained that a slip event would have caused petitioner's lower extremities to extend beyond her center of gravity. Dr. Fijalkowski testified that there was no evidence petitioner's back or body came in contact with the bumper. (*Id.* 48-49).

Dr. Fijalkowski also addressed the misstep scenario that petitioner described to Dr. Levin and testified to during her formal interrogation on June 25, 2012. (*Id.* 53). Dr. Fijalkowski concluded that if petitioner stepped from the ambulance and the bumper was not present, then petitioner likely experienced a forward misstep. (*Id.* 57). Dr. Fijalkowski explained that a "forward misstep" would cause an individual's horizontal movement relative to the ground to continue in the same direction. Dr. Fijalkowski concluded that petitioner would have fallen in a forward projection matter that likely would have caused her head to strike the fire engine parked behind ambulance 350. (*Id.* 57). Dr. Fijalkowski did not believe that the "forward misstep" scenario would cause petitioner to fall on her right flank or right side. *(Id.* 57).

Dr. Fijalkowski also believed that petitioner's seated position, post-accident was not consistent with a forward fall. Dr. Fijalkowski believed petitioner would have been in the prone position as opposed to a seated position had she fell. (*Id.* 58).

On cross, Dr. Fijalkowski admitted that he did not personally travel to Crystal Lake Fire Department in order to perform the biomechanical analysis. (*Id.* 66). Dr. Fijalkowski testified that there are no licensure requirements for biomechanical engineers. Dr. Fijalkowski testified that none of his peer review journal publications dealt with slip and falls. (*Id.* 67-68). Dr. Fijalkowski did not recall speaking with anyone at the Crystal Lake Fire department (*Id.* 70). Dr. Fijalkowski testified that he relied on the photographs as an approximation of how the vehicles were on the date of accident. (*Id.* 75).

Dr. Fijalkowski testified that the individual who obtained the photographs, Mr. Barnes, no longer worked for ARCCA at the time of the deposition. (*Id.* 79). Dr. Fijalkowski explained that because of the height petitioner stood at the time of the "misstep", petitioner would undergo the "forward projection model". Dr. Fijalkowski explained that as the time it takes for petitioner to fall to the ground, petitioner would also move in a horizontal direction or forward from her initial starting position (i.e. pushing of the back of the ambulance to move forward off the ambulance). (*Id.* 83).

Dr. Fijalkowski admitted that it was possible petitioner fell onto her right side. (*Id.* 86). Dr. Fijalkowski testified that he did not have a reason to disbelieve the petitioner's statements in her records. *(Id*. 87).

Dr. Fijalkowski reiterated that it was his opinion petitioner did not slip off the ambulance. Dr. Fijalkowski also did not believe either scenario regarding the misstep (bumper up or down) was plausible in explaining petitioner's fall. (*Id.* 96). Dr. Fijalkowski accepted that petitioner fell on her right side in terms of determining the causation of the injuries. However. Dr. Fijalkowski did not believe the fall onto the right side was consistent with either a misstep or a slip scenario. (*Id.* 96).

CONCLUSIONS OF LAW

I. Petitioner Proved That on April 5, 2012, She Sustained an Accident That Arose Out Of and In the Course of Her Employment – Disputed Issue C.

However, the Respondent disputes that any accident of any kind was suffered by the Petitioner on April 5, 2012. The Respondent makes that claim despite the fact that another firefighter was on the scene at the time the Petitioner fell to the apparatus floor and that witness, and his supervisors filed written reports reporting an injury on April 5, 2012, without any indication that the injury was of suspicious origin. (RX2-5) There were only two (2) witnesses to what transpired, the Petitioner and a co-worker, Brian Tamason. Firefighter Tamason on the day of the alleged injury provided the Respondent a signed statement on the very day of the accident. (RX4) In that statement, Firefighter Tamason states unequivocally that he was standing on the apparatus floor at the rear step of ambulance 350 while Firefighter Shipley was reading off items to confirm and add to their "need list". He stated unequivocally that Firefighter Shipley began to walk towards the back of the ambulance to exit while he took two (2) steps to his left. He admits that due to his change of position, "I did not visually see FFPM Shipley fall to the ground." However, he confirms that he heard Firefighter Shipley shout out "in pain". He immediately turned around to find Firefighter Shipley on the floor holding her right lower leg. (RX4) It is undisputed by both the Petitioner and Lt. Tamason that the Petitioner was inside the ambulance at the time of this incident listing paperwork items that needed to be restocked in the ambulance. It is further undisputed that Shipley called out and when Tamason turned around, she was on the floor holding her leg. It is undisputed that Shipley was taken from the apparatus floor of Station #4 by ambulance cot into an ambulance and to the emergency room where injuries were documented, and treatment rendered. Before petitioner arrived at the hospital, two (2) separate doses of Fentanyl were administered intravenously to the petitioner by an employee of the respondent.

The Arbitrator believes that these facts establish conclusively that Petitioner Shipley sustained accidental injuries from a fall while performing her duties as a paramedic. The testimony and witness statements suggest that these events occurred in a near instantaneous frame of time. In his testimony to this Arbitrator, now Lt. Tamason added for the first time that he did not hear Shipley's body hit the floor. This testimony was not in his prepared statement which he prepared as soon as Shipley was taken by ambulance to the hospital. (RX4) No mention was made by Tamason of his failure to hear Shipley's body hit the concrete. Instead, on April 5, 2012, at around 1:04 p.m., Tamason reported, "Shortly after I took this position, FF/PM Shipley began to exit. Do [sic-due) to my position I did not visually see FF/PM Shipley fall to the ground. I heard FF/PM Shipley shout out in pain. I turned around to find FF/PM Shipley in a sitting position holding her

right lower leg." This statement is more reliable than Tamason's testimony at trial ten (10) years after the event.

The Arbitrator finds that Petitioner consistently testified that she was working on April 5, 2012, restocking the ambulance when she fell exiting the rear of the ambulance in both her testimony at hearing and at her interrogation. (RX6 p. 12-16) Petitioner also consistently testified that ambulance 350 was parked in its usual position and that generally engine 344 would be parked back-to-back with ambulance 350. (RX6, p. 18-20) Petitioner testified at hearing and at her interrogation, that she could not recall exactly how she fell and that she could not recall if the bumper was down. (RX6, p. 22) The Arbitrator finds that testimony from the witnesses for the Respondent was either contradictory or based on incomplete information. Firstly, Lt. Tamason testified that he recalled Petitioner was not carrying any papers and completed his detailed report on April 5, 2012, without noting Petitioner was holding anything. Chief Olson testified that she interviewed Lt. Tamason on the day of Petitioner's accident and that he told her Petitioner was carrying paperwork, but that she saw no paper on the ground and failed to investigate this inconsistency. (Arb, Tr. 134-137). Chief DeRaedt testified that he personally completed an injury report for Petitioner in the ER, the only time in his thirty-one (31) year career, because she could not use her right hand, but that he was unaware Petitioner was left-handed and undertook no investigation as to the sedative state of Petitioner at the time. The Arbitrator believes that any efforts by the respondent to rebut the petitioner's testimony with alleged statements she may have made while she was at the Hospital and under the influence of a double dose of a fentanyl administered by an employee of the respondent are wholly improper at best.

The Arbitrator finds that Petitioner received two (2) doses of Fentanyl before arriving at the ER, that the medical testimony indicated that sedation can cause some memory loss, and that Petitioner could not recall as early as June 25, 2012, what complaints of pain she reported at the ER on the day of her accident. (Gross PX14, p. 64)

The Arbitrator finds that Petitioner was working full duty as a firefighter/paramedic on the day of the accident. The Arbitrator find that it is uncontested that Petitioner was in the ambulance prior to her fall and that no one saw the Petitioner fall. The Arbitrator finds that it is reasonable that Petitioner would not have a clear memory of her fall because she either had a whiplash type of fall when she hit the ground or because she received sedative pain medication twice within fifteen (15) minutes of her fall. The Arbitrator finds that based on the treatment Petitioner received from Lt. Tamason, Lt. Tamason had a reasonable belief that Petitioner was injured and required medical care. The Arbitrator give little weight to the evidence of Respondent's biomechanical engineer because he did not personally visit the site, the photographs which form the basis of his opinion were taken by several individuals and at different times with the vehicles in differing positions, and his opinion is based on the contradictory reports completed by Lt. Tamason and Chief Olson and the questionable report completed on behalf of Petitioner by Chief DeRaedt.

The Arbitrator give no weight to the fact that Petitioner was scheduled for training or retraining because Petitioner testified, she was ready, willing and able to complete the training and Chief Olsen testified that she did know why Petitioner was required to competed retraining.

Although both Firefighter Tamason and now Chief DeRaedt testified before this Arbitrator, the Arbitrator believes that the forms they completed on April 5, 2012, are more reliable than their conflicting testimony. Their testimony conflicted both with respect to each other and with respect to their own recollections. As will be reviewed more extensively, each witness embellished the written statement that each had filled out on the day of the injury seeking to cast a doubt on the voracity of Petitioner's claims. Petitioner's testimony is believable and is thoroughly consistent with her written injury report and to some extent, the injury report filled out by Lt. Tamason and Chief DeRaedt. Again, the Arbitrator finds that any deficiencies in Petitioner's recollection of events is due to a combination of her neck and shoulder injury combined with the administration of intravenous Fentanyl. (Unrefuted testimony of Michael Gross, M.D. – Petitioner Exhibit 14, p. 64-66)

The Arbitrator found the testimony of Petitioner Shipley credible and supported by the treating records admitted into evidence by both parties. The fact that the Petitioner was found on the floor and was taken from the floor of the apparatus bay to Woodstock Hospital where she was given treatment for documented injuries establishes the voracity of her claim. Petitioner proved by a preponderance of the evidence that she suffered an accidental injury that arose out of and in the course of her employment.

This finding is further buttressed by the contemporaneous treatment rendered to her on April 6, 2012, the day after the injury. Specific findings are contained in the records (PX5) and active treatment for documented injuries. If the Petitioner did not sustain accidental injuries on the apparatus floor, there is no explanation where they would have occurred. Again, the Arbitrator must reiterate that the Petitioner was physically taken from the apparatus floor to the hospital for treatment with no intervening stops.

The testimony of the Petitioner, the written statements of Lt. Tamason and Chief DeRaedt, as well as the treatment records contemporaneous with the alleged accident, fully establish by the preponderance of the evidence that Shipley suffered on April 5, 2012, an accidental injury that arose out of and in the course of her employment.

II. Petitioner/Firefighter Shipley Has Established by a Preponderance of Evidence That Her Current Condition of Ill Being Was Caused by the Injury of April 5, 2012 – Disputed Issue F.

The Arbitrator concludes that the Petitioner by a preponderance of evidence proved that the current condition in her right arm, neck, rotator cuff and right foot were caused in part by the injury of April 5, 2012, where she fell off the back of an ambulance. This opinion is based in part upon the unequivocal testimony of Dr. David Norbeck. (PX17, p. 17-19, 22-25) The pain specialist to whom Dr. Norbeck referred the Petitioner, Andrew Yu, M.D., also unequivocally opined that the April 5, 2012, accident aggravated the conditions in the Petitioner's right foot, right arm and neck and were the cause of her disability. Dr. Yu confirmed that the Petitioner was unable to work while she was under his medical care. (PX19, p. 26-32)

The opinions have been further supported by Michael Gross, M.D., an IME physician. The opinions of Dr. Norbeck and Dr. Yu were certain and unequivocal and were offered without reservation. Dr. Gross was equally firm in his causation opinion. (PX14, p. 54-58)

While the Arbitrator has previously in his opinion noted why he found Dr. Levin and Dr. Levin's opinions incredible, it is important to note the significant differences in objective findings in the course of examining the Petitioner by four (4) doctors who examined the Petitioner within two (2) months of each other.

Dr. Levin's first examination occurred on June 4, 2012; Dr. Levin, in that examination, found no findings of any kind whatsoever during the course of his physical examination; indeed, Dr. Levin stated that he could not make a causal connection finding one way or the other because there was nothing wrong with the Petitioner. Actually, Dr. Levin did, in fact, find significant loses of range of motion during his first examination of the Petitioner. Dr. Levin, however, discounted these observations by claiming that the Petitioner was somehow interfering with her examination. The treating doctor within two (2) days of that examination had no trouble examining a cooperative patient with severe pain symptoms, behaviors and empirical findings.

Dr. Norbeck examined the Petitioner two (2) days later and found significant physical findings. On June 6, 2012, Dr. Norbeck conducted a physical examination which disclosed that Petitioner's gait was still antalgic, meaning that she was still having pain when she walked. Her right shoulder disclosed a reduced range of motion both passively and actively because of pain. Her cervical range of motion had improved as of June 6, 2012, but her right foot revealed a venous discoloration, meaning a bluish discoloration over the **forefoot**. Dr. Norbeck personally witnessed the discoloration in the right foot. (PX17, p. 21-22) As of June 6, 2012, Dr. Norbeck assessed to the Petitioner the diagnoses of sprain of the right foot, sprain of the right shoulder, sprain of the neck and cervical radiculopathy for brachial neuritis. (PX 17, p. 22-23)

Dr. Gross examined the Petitioner on or about July 6, 2012, and generated a report that contained numerous objective findings in reference to Petitioner Shipley. (PX14, Dep. Ex 2, Medical Report dated 07/06/2012) Dr. Gross documented numerous losses of range of motion in the neck, right shoulder with atrophy of the right upper extremity and a loss of strength as demonstrated on a dynamometer. Numerous findings related to the right foot also were documented in PX14 – Dep Ex. 2, p. 5, with demonstrated atrophy of the right foot.

As indicated earlier in this opinion, Dr. Levin was highly uncooperative during cross examination and hostile. His deposition behavior combined with the significant physical findings demonstrated by three (3) doctors, two (2) of whom were treating physicians, within thirty (30) days of Dr. Levin's examination, compel this Arbitrator to credit the findings and opinions of Dr. Norbeck, Dr. Yu and Dr. Gross and to diminish and allow no credit to the opinion of Dr. Levin. The Arbitrator finds it incredible that three (3) doctors would discover significant physical findings which are similar among the three (3) of them while Dr. Levin notes no objective findings of any kind whatsoever.

The Arbitrator notes that the only evidence presented by the Respondent challenging the causal connection between the Petitioner's current condition and her accidental injury are the

multiple reports and testimony of Mark Levin, M.D. The Arbitrator would begin his analysis with the testimony rendered by Dr. Levin himself on the issue of causal connection. In his deposition, Dr. Levin expressly indicated that he did not have an opinion regarding causal connection because he found there to be no objective pathology in the Petitioner's clinical examination. (RX7, p.52-53) Dr. Levin reiterated his lack of opinion on further examination by the Respondent. Later in his testimony Dr. Levin was again queried about his opinion on causal connection; Respondent's attorney indicated he was asking the question a second time for the sake of completeness. (RX7, p. 58) Again, Dr. Levin indicated since there was no objective pathology, there was no causal connection to be determined. (RX7, p. 58-59) Dr. Levin's opinion testimony was too nuanced to the extent that his opinion is virtually non-existent.

However, for purposes of this decision, the Arbitrator will deem the overall testimony of Dr. Levin as to the lack of objective findings to be tantamount to an opinion that there is no causal connection between Petitioner's condition of health and the accident she sustained on April 5, 2012. A review of Dr. Levin's testimony through evidence deposition reflects a brittle and rehearsed recitation of the doctor's report and an extremely defensive attitude on cross examination in which Dr. Levin repeatedly refused to answer the question asked without by a simple yes or no answer.

Given this procedure, the Arbitrator finds that the Petitioner met her burden of proof by a preponderance of evidence, that her condition(s) specified by Dr. Yu in his testimony is causally connected to her April 5, 2012, injury. Dr. Yu went through one by one, each of the conditions that he felt were either directly caused by the April 5, 2012, accident or were the result of an "exacerbation" of a pre-existing condition. He listed the following conditions. These specific conditions identified by Dr. Yu as being caused by the April 5, 2012, episode were cervical radicular pain, sympathetic-mediated pain, cervical facet syndrome (whiplash syndrome), cervical spinal stenosis (aggravation of a pre-existing condition), cervical degenerative disc disease (exacerbation of a pre-existing condition), rotator cuff tendinosis and myofascial pain syndrome. (PX 19, p. 31-32)

III. Medical Expenses–Credit and Reimbursement to the Petitioner Issue J

Based upon the representations made on the record, the Request for Hearing Sheet and the testimony of the Petitioner, the majority of Petitioner's medical bills relating to this accident have been paid. Group health insurance has paid $20,415.71 of the medical expenses incurred by the Petitioner. Pursuant to 820 ILCS 305/8(j), the Respondent shall be entitled to credit for that amount paid by group health insurance; in accordance with section 8(j) the Respondent shall indemnify and hold the Petitioner harmless from any effort by group insurance to recover sums paid by group for medical bills related to the April 5, 2012, accident. The Petitioner paid out-of-pocket medical expenses totaling $1,032.98. The Respondent shall pay to the Petitioner the sum of $1,032.98 for medical expenses incurred in relation to the Petitioner's April 5, 2012, date of accident.

IV. Petitioner Proved By a Preponderance of Evidence and the Opinions of Dr. Norbeck and Dr. Yu, That She Was Temporarily, Totally Disabled Between April 6, 2012 and February 14, 2013 – Disputed Issue K.

The Petitioner established by a preponderance of the evidence that she was temporarily and totally disabled from working due to her injuries to her right arm, neck, rotator cuff and right foot between April 6, 2012 and February 14, 2013. The Petitioner has already proved that she sustained accidental injuries that arose out of and in the course of her employment when she fell off the back of an ambulance. She was treated by the Respondent's occupational medicine clinic during the first month of her disability. The occupational clinic kept her off of work during the course of their treatment. (PX3)

When it became clear to Dr. Jablonowski that the Petitioner's injuries were beyond the expertise of the Centegra Occupational Health Clinic, he recommended that the Petitioner obtain treatment from an orthopaedic surgeon. The Petitioner was referred to an orthopaedic surgeon working at Lake Cook Orthopaedics n/k/a Illinois Bone and Joint Institute with her visit on May 4, 2012. (PX8) Dr. Norbeck saw the Petitioner on two (2) occasions but ordered a significant amount of medical care. Dr. Norbeck testified that he had prescribed a number of medications including Tylenol, Norco, Meloxicam and Medrol Dose Pak. (PX17, p. 16-17) He prescribed a CAM walker. (PX17, p. 17) He prescribed physical therapy and eventually called for a transforaminal cervical epidural steroid injection. (PX17, p. 17-18) The epidural steroid injection was, in fact, performed on May 24, 2012. (PX17, p. 18-20) Dr. Norbeck indicated that while under his care the Petitioner could not work. (PX17, p. 21-25, 29, 31-32)

The Arbitrator has already found Dr. Norbeck and Dr. Yu to be credible. Dr. Yu testified unequivocally that the Petitioner was totally disabled during his treatment. (PX19, p. 24-40)

The Arbitrator therefore awards to the Petitioner temporary, total disability benefits for 45 weeks to be paid at a rate of $1,054.79 per week for the period April 6, 2012 through February 14, 2013.

The parties stipulated that the respondent paid $22,150.99 in Temporary Total Disability Benefits. (Arbitrator's exhibit 1) The respondent is entitled to a credit for the $22,150.99 that the parties stipulated was paid.

V. Nature and Extent of Injury – Issue L

The Arbitrator finds that the Petitioner has proven that she sustained a 7.5% loss to the body as a whole pursuant to the terms of section 8(d)(2). This conclusion of law is based upon the Arbitrator's application of the five (5) factors prescribed in section 8.1b of the Illinois Workers' Compensation Act ("Act").

8.1b(i) No Impairment rating was offered into evidence by either party. The Arbitrator finds that this factor weighs neither in favor of increased nor in favor of decreased permanence.

8.1(b)(ii) Nature of the petitioner's job duties. The petitioner was working as a paramedic and firefighter at the time of her accident on April 5, 2012. The Arbitrator believes that the nature of these duties are extremely physical in nature and create great stress on the body. The Arbitrator finds that this factor weighs in favor of increased permanence.

8.1(b)(iii) The Petitioner's age at the time of her injury. the petitioner was 43 years old at the time of her injury. Petitioner was in the mid portion of her natural or expected work life expectancy at the time of her injury. The petitioner will have to live residual effects of her injury longer than an older worker near retirement age but less than a worker entering the work force. The Arbitrator finds that this factor weighs slightly in favor of increased permanence.

8.1(b)(iv) Evidence of Reduced Earnings Capacity. There was no evidence introduced at trial that the injuries petitioner sustained will result in any loss to her future earnings. The Arbitrator finds that this factor weighs in favor of decreased permanence.

8.1(b)(v) Evidence of Disability Corroborated by the Treating Medical Records.

Dr. Yu's description of the Petitioner's symptoms at the time of her undergoing a radiofrequency neurotomy, establish that the Petitioner continues to suffer from pain in her neck, not well controlled with either Tramadol or Mobic as well as right shoulder pain with reduced range of motion. (PX19, p. 26-29) The Petitioner further reported tenderness over the right suprascapular nerve and tenderness over the right trapezius muscles. The right suprascapular nerve is directly underneath the right trapezius muscles. These medical problems will impair the Petitioner in her future occupations by limiting her ability to use her non-dominant right upper extremity.

In June 2012, Dr. Norbeck documented similar complaints. Dr. Norbeck expressed concern over the amount of pain that Shipley was having in spite of the epidural injections. It was Dr. Norbeck's feeling at that time, that Petitioner Shipley was developing some sort of pain syndrome both in her right foot and the right upper extremity. (PX17, p. 23) Dr. Norbeck emphasized that there are a number of "pain syndromes" in addition to chronic regional pain syndrome/reflex sympathetic dystrophy. (PX17, p. 23-24) This ongoing chronic pain will undoubtedly adversely affect this young Petitioner's ability to find and hold future employment, especially jobs that are physically demanding.

The petitioner sustained soft tissue aggravations of a pre-existing degenerative condition of spondylosis and stenosis as well as bony disc osteophytes primarily at the C5-6 and C6-7 levels. Petitioner's treatment however was all conservative in nature. This treatment included medication, physical therapy, a radiofrequency neurotomy of the occipital nerve and medial branches at C3-5. facet injections, a subacromial bursa injection and an epidural steroid injection. Petitioner did not undergo surgery, nor was any type of surgery prescribed. The Arbitrator finds that this factor weighs in favor of decreased permanence.

VI. IME Fee-Issue O

The Arbitrator is aware of no binding authority compelling a Petitioner to reimburse any expenses for any medical examination under any circumstances. The Arbitrator does not believe that the Illinois Workers' Compensation Commission has any authority under the Worker's Compensation Act to direct petitioner to reimburse the respondent for a failure to attend an Independent Medical Exam.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC003656
Case Name	Carolyn J. Shipley v. City of Crystal Lake
Consolidated Cases	12WC017216;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0173
Number of Pages of Decision	7
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Thomas Duda
Respondent Attorney	Patrick Jesse

DATE FILED: 4/14/2023

/s/ Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CAROLYN J. SHIPLEY,

Petitioner,

vs. NO: 13 WC 3656

CITY OF CRYSTAL LAKE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of permanent partial disability and being advised of the facts and law, hereby corrects the scrivener's errors noted below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Arbitrator incorrectly noted that Petitioner earned $82,000.00 in the year preceding the injury resulting in an average weekly wage ("AWW") of $1,576.92 and a temporary total disability ("TTD") rate of $1,051.28. The parties, both at arbitration and on review, stipulated that Petitioner earned $82,273.62 in the year preceding the injury resulting in an AWW of $1,582.19. This AWW results in a TTD rate of $1,054.79 instead of the $1,051.28 rate as noted in the Decision. The Commission herein corrects Page 2 of the Decision to reflect the correct AWW and TTD rate.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed August 1, 2022, is hereby affirmed and adopted, other than the correction of the scrivener's errors noted above.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Under Section 19(f)(2) of the Act, no "county, city, town township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 14, 2023

CAH/tdm
O: 4/6/23
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC003656
Case Name	Carolyn J. Shipley v. City of Crystal Lake
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	4
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Thomas Duda
Respondent Attorney	Patrick Jesse

DATE FILED: 8/1/2022

THE INTEREST RATE FOR THE WEEK OF JULY 26, 2022 2.92%

/s/Michael Glaub, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **McHenry**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Carolyn J. Shipley
Employee/Petitioner

v.

City of Crystal Lake
Employer/Respondent

Case # **13** WC **03656**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Glaub**, Arbitrator of the Commission, in the city of **Woodstock**, on **May 5, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **December 18, 2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**82,000.00**; the average weekly wage was $**1,576.92**.

On the date of accident, Petitioner was **42** years of age, ***single*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

Medical Benefits
The Arbitrator finds that Petitioner's Medical bills related to the accident date of December 18, 2010 were paid in-full.

Temporary Total Disability
Respondent shall pay Petitioner temporary total disability benefits of $1,051.28/week for a total of 0 weeks commencing, as provided in Section 8(b) of the Act.

Permanent Partial Disability: Person as a Whole
Respondent shall pay Petitioner permanent partial disability benefits of $669.64/week for 5 weeks, because of the injuries substantiated and causally related to Petitioner's cervical sprain injury of 1% loss of the person as a whole, as provide in Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

AUGUST 1, 2022

Michael Glaub
Signature of Arbitrator

IN THE WORKERS' COMPENSATION COMMISSION OF ILLINOIS

CAROLYN J. SHIPLEY	)	
	)	**Case Nos.13WC 03656**
Petitioner,	)	
v.	)	
	)	**Honorable Arbitrator**
CITY OF CRYSTAL LAKE,	)	**Michael Glaub**
	)	
Respondent.	)	

MEMORANDUM DECISION OF THE ARBITRATOR

The Arbitrator makes the following Findings of Fact and Conclusions of Law on the following issues:

Nature and Extent of Injury

Petitioner Carolyn Shipley ("Petitioner" or "Shipley") suffered an injury while pursuing an obstacle course with SCBA. The course was a maze with a lot of crawling involved. Petitioner hit her head on the ceiling of the maze and developed an acute left sided neck pain. She was wearing her helmet at the time.

Examination disclosed tenderness and pain on the left lateral aspect of the cervical spine with some degenerative disc disease changes at C5-C6 and C6-C7. She was ordered off of work until her follow up appointment.

The Petitioner was given a soft collar. Physical examination disclosed a cervical sprain and the Petitioner was released to return to work December 20, 2010. (PX5) X-rays taken at Northern Illinois Medical Center on December 19, 2010, reflected minimal reversal of the cervical lordosis and decreasing disk height at C5-6 and C6-7. There was straightening of the cervical spine and minimal reversal noted at C3-5.

Based upon the lost time and positive medical findings, some of which were pre-existing, but aggravated by trauma, the Arbitrator concludes that the Petitioner sustained a loss to the person as a whole to the extent of 1%.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC005184
Case Name	INSURANCE COMPLIANCE v. C&D RAIL SERVICES INC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0174
Number of Pages of Decision	11
Decision Issued By	Maria Portela, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	David Christensen
Respondent Attorney	

DATE FILED: 4/17/2023

/s/Maria Portela, Commissioner

Signature

Concurring In Part, Dissenting In Part : /s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
)
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS
DEPARTMENT OF INSURANCE,
INSURANCE COMPLIANCE DEPARTMENT, Case # **20WC005184**

Petitioner

v. **Chicago, IL**

C & D RAIL SERVICE, INC., and
CESAR RAMIREZ INDIVIDUALLY and as PRESIDENT,

Employers/Respondents

DECISION AND OPINION ON REVIEW

Petitioner, the Illinois Department of Insurance, Insurance Compliance Department brings this action, by and through the Office of the Illinois Attorney General, against the above captioned Respondents alleging violation of Section 4(a) of the Illinois Workers' Compensation Act ("Act") for failure to procure mandatory workers' compensation insurance. Proper and timely notice was provided to Respondents and a hearing was held before Commissioner Maria Portela in Chicago, Illinois on February 7, 2023. Petitioner was represented by the Office of the Attorney General. Respondent did not appear in person or through counsel. A record was made.

Petitioner alleged that Respondents knowingly and willfully lacked workers' compensation insurance for 1,149 days and sought the maximum fine allowed under the Act, $500.00 per day for each of the 1,149 days, between October 11, 2012 and October 24, 2012, June 19, 2014 to March 30, 2015, July 2, 2015 to July 12, 2016, October 30, 2017 to February 14, 2019 during which Respondents were engaged in an extra-hazardous enterprise and failed to provide coverage for its employees, resulting in a total fine of $574,500.00. In addition, Petitioner seeks reimbursement for the liability incurred by the Injured Workers' Benefit Fund in claim 15 WC 39341 in the amount of $2,144.63. Petitioner seeks a total award of $576,644.63

The Commission, after considering the record in its entirety and being advised of the applicable law, finds that Respondents knowingly and willfully violated Section 4(a) of the Act and Section 9100.100 of the Rules Governing Practice before the Illinois Workers' Compensation Commission (Rules) during the period in question. As a result, Respondent shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with Section 4(d) of the Act. For the following reasons, the Commission assesses a civil penalty against the Respondents under Section 4 of the Act in the sum of $576,644.63 and orders

Respondent to reimburse the Injured Workers' Benefit Fund in the amount of $2,144.63, for a total of $576,644.63.

Findings of Fact

1. Investigator Michael Cadman personally served Respondents, Cesar E. Ramirez individually and as president of C & D Rail Services Inc. with a Notice of Non-Compliance Hearing via substitute service on Cristal Muniz an adult member of the same household at 1300 Clear Spring Trail, Joliet, Illinois November 3, 2022. (Px2). The Commission notes that the Arbitration Decision in Tostado v. C & D Rail Services, Inc. 15 WC 39341 / 22IWCC0011 notes that in August 2016, Petitioner's Counsel spoke with Crystal Muniz, the secretary for Respondent, via email. (Px7, p. 8). The Arbitration decision further notes that Respondents were represented by Counsel until they withdrew on or about October 25, 2017. (Px7, p. 9). Finally, the Commission notes that Cristal Muniz signed Arbitration Exhibit 6 as secretary of C & D Rail Services. (Px7).

2. Notices of Insurance Compliance Hearing were sent to Respondents via certified mail. (Px1). The mailed notices were sent on December 16, 2022 to Respondents at 1300 Clear Spring Trail, Joliet, Illinois 60431[1]; 1124 Gael Drive, Joliet, Illinois 60435[2]; and 350 Houlbolt Rd., Suite 205 Joliet, Illinois 60435[3]. The certified mail sent to 1300 Clear Spring Trail was unclaimed despite being the address at which personal service was obtained on November 3, 2022.

3. Antonio Smith ("Smith"), an Investigator for the Illinois Department of Insurance, Insurance Compliance Department, testified at the hearing.

Smith identified Petitioner's Exhibit 3 as a Notice of Non-Compliance mailed to Respondents. The notice states that the Commission's records indicated that Respondents were not in compliance with the requirements of Section 4(1) for the periods from October 11, 2012 to October 24, 2012; June 19, 2015 to March 30, 2015, June 30, 2015 to July 12, 2016 and October 30, 2017 to February 14, 2019. The Notice includes an affidavit indicating service by mail on February 14, 2019. (Px3).

Smith identified Petitioner's Exhibit 4 as a Notice to Employer of Insurance Compliance Informal Conference mailed to Respondents. The Notice states that the Commission's records indicated that Respondents were not in compliance with the requirements of Section 4(1) of the Act for the periods from October 11, 2012 to October 24, 2012; June 19, 2014 to March 30, 2015, June 30, 2015 to July 12, 2016 and October 30, 2017 to February 14, 2019. The notice includes an affidavit indicating service by mail on February 13, 2019. (Px4).

[1] The address of personal service (Px2).
[2] The address of the registered agent (Px5), from the Secretary of State for the President (Px6, p. 14), used for service in 15WC039341 (Px7, p. 5), used by Respondent for payroll (Px7) and for Respondent's Income Taxes (Px10)
[3] The address of the President from the Secretary of State (Px5, p. 2; Px6, p. 21), used by Respondents in Arbitration Petitioner's Exhibit 6 (Px7).

Smith identified Petitioner's Exhibit 5 as an LLC File Detail Report for Respondents. The Report indicates that C & D Rail Services Incorporated was formed on January 19, 2011 and was dissolved on June 14, 2019. The report also indicates that Cesar E. Ramirez was the president and registered agent and was located at 1124 Gael Drive, Joliet Illinois 60435 and 350 Houlbolt Rd Suite 205, Joliet, Illinois 60435. (Px5).

4. In the regular course of his investigation, Smith also obtained the Articles of Incorporation and Annual Reports related to Respondent. The Articles state that Cesar E. Ramirez was the president and registered agent for C & D Rail Services Incorporated. (Px6).

5. Smith also identified Petitioner's Exhibit 7, and the Commissioner takes judicial notice of, the Commission's Award and Arbitration Decision in 15WC039341 / 22IWCC0011. In 15WC039341 / 22IWCC0011 the Commission affirmed the Arbitrator's findings that the parties were operating under the Act as employee and employer. (Px7). The Arbitrator also concluded that the Petitioner described work bringing the Respondent within the automatic coverage of Section 3 of the Act. (Px7, p. 7, 9). The Arbitrator further concluded that Respondent was uninsured on the accident date of November 3, 2015. (Px7, p. 7). The Arbitrator awarded the Petitioner medical expenses, temporary total disability benefits, permanent partial disability benefits, and additional compensation. (Px7).

6. Smith further identified Petitioner's Exhibit 7d as IWBF disbursement documents kept in the regular course of business. These documents indicate that the IWBF issued payment to Petitioner in 15WC039341 / 22IWCC0011 in the amount of $2,144.63. (Px7).

7. Smith further testified that Petitioner's Exhibit 8 was a certified finding from the Department of Self-Insurance that Respondents were not self-insured with the State of Illinois during the dates indicated and that it was the type of document requested in the ordinary course of Petitioner's investigations. The document indicates that no certificate of approval to self-insure was issued to Respondents for the periods of: October 11, 2012 through October 24, 2012; June 19, 2014 through March 30, 2015; June 30, 2015 through July 12, 2016; October 30, 2017 through February 14, 2019[4]. (Px8).

8. Smith further testified that Petitioner requested insurance information regarding the Respondents from the National Council of Compliance Insurance (NCCI) in Boca Raton, Florida. (Px9). The NCCI certified that it is the agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers. It further shows the following:

- Insured March 4, 2012 to October 10, 2012 (cancelled) (Px9, p. 2)
- Insured October 25, 2012 to October 25, 2013 (Px9, p. 2)
- Insured October 25, 2013 to June 18, 2014 (cancelled) (Px9, p. 2)
- Not Insured October 16, 2014 to March 30, 2015 (Px9, p. 1)
- Insured October 31, 2015 to July 1, 2015 (Px9, p. 2)
- Not Insured April 1, 2016 to July 12, 2016 (Px9, p. 1)

[4] **These are the dates for which penalties are being sought.**

- Insured July 13, 2016 to July 13, 2017 (Px9, p. 2)
- Insured July 13, 2017 to October 29, 2017 (cancelled) (Px9, p. 2)
- Not Insured July 14, 2018 to February 14, 2019 (Px9, p. 1)

9. Smith further testified that in the regular course of his investigation, Petitioner requested information regarding the Respondents from the Illinois Department of Revenue. Petitioner submitted Petitioner's Exhibit 10 comprised of certified records from the Department of Revenue. (Px10). These records show ongoing business activities from 2012 to 2018. (Px10). The records also show business income from 2012 as $110,969.00. (Px10, p. 23), for 2013 of $59,302.00 (Px10, p. 28), and 2014 of $80,656.00 (Px10, p. 33).

10. Smith further testified that in the regular course of his investigation, he requested information regarding the Respondents from the Illinois Department of Employment Security, a true and correct copy of which is Petitioner's Exhibit 11. These records show ongoing business activities from 2014 to 2018. (Px11). The records show a varying employee count for the periods of alleged non-compliance. (Px11).

11. Smith testified that based upon his investigation, Petitioner determined that Respondents were subject to the provisions of the Workers' Compensation Act, had employees and did not have workers' compensation insurance for the periods of:

- October 11, 2012 through October 24, 2012 – 13 days between the cancelled policy and the restarting of coverage and while not self-insured (Px9, p. 2; Px8)
- June 19, 2014 through March 30, 2015 – 285 days between the cancelled policy and the restarting of coverage and while not self-insured. (Px9, pp. 1-2; Px8)
- July 2, 2015 through July 12, 2016[5] – 377 days between the end of coverage ending on July 1, 2015 and the restart of coverage on July 13, 2016. (Px9, pp. 1-2; Px8).
- October 30, 2017 through February 14, 2019 – 473 days after the cancellation of a policy and while not self-insured. (Px9, pp. 1-2; Px8)

Conclusions of Law

The Commission first considers whether Respondents are subject to the Act. Pursuant to Section 3 of the Act, certain employers and their employees are automatically subject to the provisions of the Act if they engage in specific businesses, including: "any enterprise in which electric, gasoline or other power driven equipment is used in the operation thereof." 820 ILCS 305/3(15). The Commission finds that Respondents' business falls within 820 ILCS 305/3(15). The Commission takes judicial notice of the findings by the Arbitrator in this regard as contained in the Decision rendered in *Tostado v. C & D Rail Services, Inc.* 15 WC 39341 / 22 IWCC 0011. (Px7). Petitioner's testimony therein established that they were employed by Respondents and used air hammers to remove railroad spikes, rails and ties. (Px7, p. 9). Accordingly, the Commission finds that the work Respondents engaged in automatically subjected them to the provisions of the Illinois Workers' Compensation Act.

[5] This encompasses the date of the injury in 15WC039341, November 3, 2015.

Pursuant to Section 4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance. See 820 ILCS 305/4(a) (West 2004). Section 9100.90(a) of the Rules similarly provides that any employer subject to Section 3 of the Act shall ensure payment of compensation required by Section 4(a) of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code 9100.90(a). Section 9100.90(d)(3)(E) of the Rules similarly provides that a certification from a Commission employee "that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D). Section 9100.90(d)(3)(D) of our Rules provides that "[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D). This Commission analyzes here the culpability of Respondents and the applicability of Section 4(a). Section 4 of the Act requires that all employers of at least one employee who come within the provisions of Section 3 of the Act, and any other employer who shall elect coverage under Section 2 of the Act, provide workers' compensation insurance for the protection of their employees. 820 ILCS 305/4.

In this case, Petitioner submitted a certified finding from the Department of Self-Insurance that no certificate of approval to self-insure was issued to Respondents for the periods of October 11, 2012 through October 24, 2012; June 19, 2014 through March 30, 2015; June 30, 2015 through July 12, 2016; October 30, 2017 through February 14, 2019. (Px8). Petitioner also submitted the NCCI certification that neither Respondent filed policy information showing that Respondents were:

- Insured March 4, 2012 through October 10, 2012 (cancelled) (Px9, p. 2)
- Insured October 25, 2012 to October 25, 2013 (Px9, p. 2)
- Insured October 25, 2013 through June 18, 2014 (cancelled) (Px9, p. 2)
- Not Insured October 16, 2014 through March 30, 2015 (Px9, p. 1)
- Insured March 31, 2015 through July 1, 2015 (Px9, p. 2)
- Not Insured April 1, 2016 through July 12, 2016 (Px9, p. 1)
- Insured July 13, 2016 through July 13, 2017 (Px9, p. 2)
- Insured July 13, 2017 through October 29, 2017 (cancelled) (Px9, p. 2)
- Not Insured July 14, 2018 through February 14, 2019 (Px9, p. 1)

Further, Smith testified that based upon his investigation, Petitioner determined that Respondents did not provide workers' compensation insurance for the period for which it requested relief, from:

- October 11, 2012 through October 24, 2012 – 13 days (Px9, p. 2; Px8)
- June 19, 2014 through March 30, 2015 – 285 days (Px9, pp. 1-2; Px8)
- July 2, 2015 through July 12, 2016 – 377 days (Px9, pp. 1-2; Px8)
- October 30, 2017 through February 14, 2019 – 473 days (Px9, pp. 1-2; Px8)

Respondents did not attend the hearing and thus presented no evidence indicating that they provided workers' compensation insurance of any kind during these periods. Accordingly, the Commission concludes that Petitioner proved that Respondents failed to comply with the

legal obligations imposed by Section 4(a) of the Act from: October 11, 2012 through October 24, 2012; June 19, 2014 through March 30, 2015; July 2, 2015 through July 12, 2016; and October 30, 2017 through February 14, 2019.

Section 4(d) of the Act states in pertinent part:

> "Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this section ***, the Commission may assess a civil penalty of up to $500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this section shall be the sum of $10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this section. The liability for the assessed penalty shall be against the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this section shall be liable for the unpaid penalty or any unpaid portion of the penalty." 820 ILCS 305/4(d) (West 2004).

Section 9100.90(b) of the Rules similarly provides that penalties may be assessed for non-compliance after a reasonable notice and hearing. 50 Ill. Adm. Code 9100.90(b) (1986). Section 9100.90(c) of the Rules describes the proper notice of non-compliance to be served upon the employer and provides that the employer may request an informal conference to resolve the matter. 50 Ill. Adm. Code 9100.90(c). Section 9100.90(d) of the Rules describes the manner of notice and service for an insurance compliance hearing and the procedure for conducting the hearing. 50 Ill. Adm. Code 9100.90(d).

In the instant case, Petitioner submitted into evidence the Notice of Non-Compliance and Notice of Informal Conference mailed to Respondents in the form prescribed by the Rules and including an affidavit of service. Petitioner also submitted the notices for the February 7, 2023 insurance compliance hearing, in the form prescribed by the Rules, accompanied by signed investigative reports indicating that Respondents were personally served, as well as sent certified mail notices. The insurance compliance hearing allowed the Department of Insurance to introduce evidence and testimony, and afforded Respondents the opportunity to do the same, had any of them chosen to attend personally or through counsel. Accordingly, the Commission concludes that reasonable and proper notice and hearing was provided to Respondents.

On the merits, the Commission has considered the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3)

whether the employer had been made aware of his conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6) whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay the assessed amount. See, *e.g.*, *State of Illinois v. Murphy Container Service*, Ill. Workers' Comp. Comm'n, No. 03 INC 00155, 7 IWCC 1037 (Aug. 2, 2007).

The Commission finds that the period of time during which the Respondents violated the Act by failing to obtain workers' compensation insurance was significant. The Respondents failed to have insurance for 1,149 days, from October 11, 2012 through October 24, 2012; June 19, 2014 through March 30, 2015; July 2, 2015 through July 12, 2016; October 30, 2017 through February 14, 2019. In the *Tostado v. C & D Rail Services Inc* 15 WC 039341 / 22 IWCC 0011 decision, the claimant's unrebutted testimony established that Respondents were subject to the Act, had employees and one of Respondents' employees sustained a work injury. As Respondents failed to have workers' compensation insurance, the Injured Workers' Benefit Fund paid benefits to that petitioner as a result of the injury. Respondents were notified of their non-compliance under the Act by Petitioner and elected to not obtain workers' compensation insurance. Moreover, having reviewed the record, the Commission finds no evidence as to Respondent's inability to secure and pay for workers' compensation coverage as the Respondent had obtained insurance several times over its years of operation. The Commission finds no evidence of mitigating circumstances.

The Commission concludes that Respondents knowingly and willfully failed to comply with the Act. Based on the significant period of time that Respondents failed to comply with the Act, the Commission assesses a penalty of $574,500.00 against Respondents, C & D Rail Services Inc., and Cesar Ramirez individually and as owner. Further, pursuant to Section 9100.85(a)(1) of the Rules, the Commission is also entitled to obtain reimbursement from Respondents in the amount of $2,144.63 representing the compensation obligations paid by the Injured Workers' Benefit Fund in 15 WC 039341 / 22 IWCC 0011.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents, C & D Rail Services Inc., and Cesar Ramirez individually and as owner, pay to the Illinois Workers' Compensation Commission the sum of $576,644.63 pursuant to Section 4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission; and (2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Department of Insurance
Attn: Insurance Compliance
122 South Michigan Avenue, 19th floor
Chicago, Illinois 60603

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 17, 2023

/s/ *Maria E. Portela*
Maria E. Portela

MEP/dmm
O: 020723
49

/s/ *Marc Parker*
Marc Parker

Concurring In Part, Dissenting In Part

I respectfully dissent from the majority opinion and Order issued by my colleagues. While I agree that employers must be held accountable for failing to carry Workers' Compensation insurance required by law, I believe that the imposed maximum fine of $500.00 per day in this case, for a total of $574,500.00, is excessive. I contend that lower fines would be more appropriate, and my position is supported by Commission case law, public policy arguments and equitable grounds.

As the majority stated, historically the Insurance Compliance Division suggests that the Commission consider several factors in assessing a penalty, including: 1) the length of time in which the employer had been violating the Act; 2) the number of settled/pending workers' compensation claims against the employer; 3) whether the employer had been made aware of his conduct in the past; 4) the number of employees working for the employer; 5) the employer's ability to secure and pay for future (or recently obtained) workers' compensation insurance premiums; 6) whether the employer has shown any mitigating circumstances, such as a willingness to cooperate, comply and settle; and 7) the ability of the company to pay the assessed penalty. *State of Illinois v. Murphy Container Service, et a/.,* 2007 Ill. Wrk. Comp. LEXIS 1216, 7 IWCC 1037 (Ill. Workers' Comp. Bd. August 2, 2007).

In *Murphy,* the Commission determined that Respondents were involved in work which was extra hazardous under Section 3 of the Act, due to carriage by land and loading or unloading in connection therewith (where Respondent had at least two employees)(Section 3(3)), the operation of any warehouse or general or terminal storehouse (Section 3(4)), the involvement in handling junk and/or salvage (Section 3(8)) and the use of gasoline or other [*9] power driven equipment (Section 3(15)). *State of Illinois v. Murphy Container Service, et a/.,* 2007 Ill. Wrk. Comp. LEXIS 1216, *8-9.

Further, the employer had eight workers' compensation claims filed against them and as such, the Commission determined that Respondent was on notice of the fact it had no workers' compensation coverage for years. Although the Commission noted there was reference to a bankruptcy claim it was unclear whether the bankruptcy involved the Respondent company

and/or the individuals named in the caption. Respondents failed to appear at the hearing and the Commission imposed the maximum fine.

In the subject case, the Respondents also did not appear for the hearing. However, by not appearing an employer does not concede that they have the ability to secure and pay for future workers' compensation insurance and/or the ability to stay in business and/or the ability of the company to pay the assessed penalty. The Respondent in this case had insurance at times and was not covered intermittently. There was evidence of only one workers' compensation case filed against Respondent and the majority appears to rely heavily on only one of the seven factors listed in *Murphy*, that is the period of time during which the Respondents violated the Act by failing to obtain workers' compensation insurance. Further, the majority highlighted the highest period of income listed in Petitioner's exhibit 10 but ignores that many quarters showed little income which also appears to have been distributed among the employees listed. The evidence presented in Petitioner's exhibits 10 and 11 shows only sporadic income and varying numbers of employees, and in some instances, depending on the quarter, showing zero employees. The evidence regarding profitability is not complete and if anything, confirmed that this was a small seasonal business at best with little reported income distributed among the few employees listed in Petitioner's exhibit 11.

In another insurance non-compliance case, where an injured worker was awarded benefits against the Respondent and the Injured Workers' Benefit Fund paid on the claim, and despite Petitioner requesting the maximum fine, the Commission ordered the Respondents to pay $100/per day for every day of noncompliance with the Act, $29,900.00 plus the amount of the premium saved by Respondent's non-compliance, $2.79 per day for 299 days, or $834.21; plus the amount paid out to the injured worker by the Injured Workers' Benefit Fund, $4,803.73, for a total fine of $35,537.94. (see *Illinois Workers' Compensation Commission, Insurance Compliance Division, v. David L. Greer, Individually & President, and JW Berry, Individually & Secretary, D/B/A Big D Enterprises, Inc., D/B?A Desperado's Lounge,* 2014 Ill. Wrk. Comp. LEXIS 294, 14 IWCC 295 (Ill. Workers' Comp. Bd. April 24, 2014)). This well-reasoned realistic fine seems more likely to be collected and without forcing the individual owners of small businesses to pay for their mistakes for a lifetime.

Thus, the Commission should apply a more equitable penalty in a default judgment where no Respondent is present to provide the requisite information to establish whether or not the Respondent is a small business and information about their financial situation. Since the Respondent in *Greer* had initially entered into a voluntary agreement to pay a fine but defaulted, clearly the Commission had additional information about his business. When that information is not available, the Commission should consider all of the *Murphy* factors when assessing the penalty, including 1) the length of time in which the employer had been violating the Act; 2) the number of settled/pending workers' compensation claims against the employer; 3) whether the employer had been made aware of his conduct in the past; 4) the number of employees working for the employer; 5) the employer's ability to secure and pay for future (or recently obtained) workers' compensation insurance premiums; 6) whether the employer has shown any mitigating circumstances, such as a willingness to cooperate, comply and settle; and 7) the ability of the company to pay the assessed penalty.

Because the amount of the punitive fine imposed here is so excessively high, the fine imposed by the Commission upon this business will likely prove to be uncollectible and an unpayable debt. Such an unpayable debt can often hang like an albatross around the neck of a small business, driving it to insolvency and bankruptcy. And in certain cases, the debt could then attach to the small business owners themselves, hamstringing their ability to provide food for their families, jobs for their employees, services for their customers, a multiplier effect for the economy, and a burden upon taxpayers. While I am in no way advocating for insurance non-compliance and I agree whole-heartedly Respondent should be penalized for their knowing and willful violation of the Act, the Commission should also be cautious assuming facts not in evidence while imposing excessively high punitive fines. Thus, I dissent from the majority's imposition of a fine of $500.00 per day and would assess a fine of $100.00 per day because although the length of time of non-compliance was significant, albeit intermittent, there was only one workers' compensation claim filed during the time period in question; Respondent was made aware of his non-compliance when Petitioner sustained a work-related injury; there is sporadic evidence of the number of employees employed by Respondent, we only know in some instances that there were "employees"; there is no evidence of employer's ability to pay for and secure coverage; there is no evidence of mitigating circumstances; and there is no evidence of employer's ability to pay the assessed amount. Considering the foregoing factors in light of the evidence presented in this case, I would assess a penalty in the amount of $100.00 per day, for 1,149 days for a total penalty of $114,900.00, against Respondents C & D Rail Services, Inc., and Cesar Ramirez, individually and as owner pursuant to Section 4(d) of the Act. Further, I agree with the majority that pursuant to Section 9100.85(a)(1) of the Rules, the Commission is also entitled to obtain reimbursement from Respondents in the amount of $2,144.63 representing the compensation obligations paid by the Injured Workers' Benefit Fund in 15 WC 039341 / 22 IWCC 0011.

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC020026
Case Name	INSURANCE COMPLIANCE v. CUSTOM LANDSCAPING DESIGN & MAINTENANCE INC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0175
Number of Pages of Decision	11
Decision Issued By	Maria Portela, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	David Christensen
Respondent Attorney	

DATE FILED: 4/17/2023

/s/Maria Portela, Commissioner

Signature

Concurring In Part, Dissenting In Part: /s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
)
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS
DEPARTMENT OF INSURANCE
INSURANCE COMPLIANCE DEPARTMENT,

Case # **20 WC 020026**

Petitioner

v. **Chicago, IL**

CUSTOM LANDSCAPING DESIGN
and MAINTENANCE and NICHOLAS TAMBORSKI, individually
and as President,

Employers/Respondents

DECISION AND OPINION ON REVIEW

Petitioner, the Illinois Department of Insurance, Insurance Compliance Department brings this action, by and through the Office of the Illinois Attorney General, against the above captioned Respondents alleging violation of Section 4(a) of the Illinois Workers' Compensation Act ("Act") for failure to procure mandatory workers' compensation insurance. Proper and timely notice was provided to Respondents and a hearing was held before Commissioner Maria Portela in Chicago, Illinois on February 7, 2023. Petitioner was represented by the Office of the Attorney General. Respondent did not appear in person or through counsel. A record was made.

Petitioner alleged that Respondents knowingly and willfully lacked workers' compensation insurance for 587 days and sought the maximum fine allowed under the Act, $500.00 per day for each of the 587 days, from January 1, 2006 through August 10, 2007, during which Respondents did business and failed to provide coverage for its employees, resulting in a total fine of $293,500.00. In addition, Petitioner sought reimbursement for the liability incurred by the Injured Workers' Benefit Fund in claim 04 WC 055422 in the amount of $93,668.06. Petitioner sought a total award of $387,168.06.

The Commission, after considering the record in its entirely and being advised of the applicable law, finds that Respondents knowingly and willfully violated Section 4(a) of the Act and Section 9100.100 of the Rules Governing Practice before the Illinois Workers' Compensation Commission ("Rules") during the period in question. As a result, Respondent shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with Section 4(d) of the Act. For the following reasons, the Commission assesses a civil penalty against the Respondents under Section 4 of the Act in the sum of $293,500.00 and orders

Respondent to reimburse the Injured Workers' Benefit Fund in the amount of $93,668.06, for a total of $387,168.06.

Findings of Fact

1. Investigator Alesia Crockett personally served Respondent Nicholas Tamborski with a Notice of Non-Compliance Hearing on March 2, 2020, at 536 Harwood Court, Joliet Illinois 60432. (Px2a).

2. Investigator Alesia Crockett personally served Respondent Custom Landscaping Design and Maintenance, Inc. with a Notice of Non-Compliance Hearing on March 2, 2020, at 536 Harwood Court, Joliet Illinois 60432. (Px2b).

3. The Notices of Insurance Compliance Hearing were sent to Respondents on December 16, 2022, via certified mail to 536 Harwood Court, Joliet, Illinois 60432[1]. (Px1).

4. Antonio Smith, ("Smith") an Investigator for the Illinois Department of Insurance, Insurance Compliance Department, testified at the hearing.

Smith identified Petitioner's Exhibit 3 as Notices of Non-Compliance mailed to Respondents at 1105 Chase Trail New Lenox Illinois 60451[2] on August 14, 2007, June 5, 2008, and August 30, 2010. The Notices state that the Commissions' records indicated that Respondents were not in compliance with the requirements of Section 4(1) of the Act for the period from January 1, 2002, through May 17, 2005 and January 1, 2006 through August 10, 2007. (Px3).

Smith identified Petitioner's Exhibit 4 as Notices to Employer of Insurance Informal Conferences mailed to Respondents at 1105 Chase Trail New Lenox Illinois 60451 on August 31, 2010, and June 26, 2013. The notices state that the Commissions' records indicated that Respondents were not in compliance with the requirements of Section 4(1) of the Act for the periods beginning January 1, 2002, through May 17, 2005 and January 1, 2006 through August 10, 2007. (Px04).

Smith identified Petitioner's Exhibit 5 as an LLC File Detail Report for Respondents. The report states that Custom Landscape Design & Maintenance, Inc. was formed on March 31, 2000, and was dissolved on August 10, 2007[3]. The report states that Nick Tamborski was the president and registered agent and was located at 1105 Chase Trail New Lenox IL 60451. (Px5).

5. In the regular course of his investigation, Smith also obtained the Articles of Incorporation, the Annual Reports and the Certificate of Dissolution related to Custom Landscape Design & Maintenance Inc. The records state that Nick Tamborski was the president and registered agent for the corporation and was located at 1105 Chase Trail, New Lenox IL

[1] The address at which personal service was previously obtained. [Px2]
[2] The address provided by Respondent to the Secretary of State. [Px5 and Px6]
[3] This covers the period for which penalties are sought, from 1/1/06 to 8/10/07

60451 and 8824 W. 85th Pl. Justice Il, 60458. (Px6, p. 3-4). The records also state that the business purpose was "to provide lawn care and maintenance." (Px6, p. 2).

6. Smith also identified Petitioner's Exhibit 7, and the Commission takes judicial notice of, the Commission's Decision in 04 WC 055422, Luis Lopez v. Custom Landscaping and Design Maintenance and the IWBF. In 04 WC 055422, Respondent was represented by Steven O. Hamill, LTD. The Arbitrator found that the parties were operating under the Act as employee and employer. The Arbitrator also concluded that the Petitioner described work bringing the Respondent within the automatic coverage of Section 3 of the Act. The Arbitrator further concluded that Respondent was uninsured on the accident date of October 9, 2004. The Arbitrator awarded the Petitioner medical expenses, temporary total disability benefits, permanent partial disability benefits, and additional compensation. (Px7).

7. Smith identified Petitioner's Exhibit 7a as the Commission's Case Docket report showing the IWBF disbursement related to 04 WC 055422. These documents state that the IWBF issued payment to Petitioner in the amount of $93,668.06. (Px7a).

8. Smith further testified that Petitioner requested insurance information regarding the Respondents from the National Council of Compliance Insurance (NCCI) in Boca Raton, Florida. (Px8). The NCCI certified that it is the agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers and that Respondents were:

- Not insured between January 1, 2002 and May 15, 2005. (Px9, p. 3)
- Insured from May 18, 2005 through December 30, 2005 when it was cancelled. (Px8, p. 2 and p. 3)
- Not insured between December 31, 2005 through May 5, 2015 (Px8, pp. 1-2, 3)[4]
- Not insured between May 7, 2016 through June 1, 2016 (Px8, p. 2)
- Insured from June 2, 2016 through August 4, 2016 when it was cancelled. (Px8, p. 2)
- Not insured between August 5, 2016 through September 24, 2018 (the date of certification) (Px8, p. 2)

9. Smith further testified that Petitioner's Exhibit 9, was a certified finding from the Department of Self-Insurance that Respondents were not certified as self-insured with the State of Illinois from January 1, 2006 through August 10, 2007[5] and that it was the type of document requested in the ordinary course of Petitioner's investigations. (Px9).

10. Smith testified that based upon his investigation, the Department of Insurance determined that Respondents were required to obtain workers' compensation insurance, had employees, did not have workers' compensation insurance and were not self-insured for the period for which Petitioner requests relief, from January 1, 2006 to August 10, 2007.

[4] This covers the period for which penalties are sought, from 1/1/06 to 8/10/07
[5] This covers the period for which penalties are sought, from 1/1/06 to 8/10/07

Conclusions of Law

The Commission first considers whether Respondents are subject to the Act. Pursuant to Section 3 of the Act, certain employers and their employees are automatically subject to the provisions of the Act if they engage in specific businesses, including: "the erection, maintain, removing, remodeling, altering or demolishing of any structure" and "any enterprise in which sharp edged cutting tools, grinders or implements are used, including all enterprises which buy, sell or handle junk and salvage, demolish or reconstruct machinery." 820 ILCS 305/3(1),(8). The Commission finds that Respondents' business falls within the automatic coverage sections of the Act pursuant to Section 3(8). The Commission takes judicial notice of the findings by the Arbitrator in this regard as contained in the decision rendered in 04 WC 055422 and the stated business purpose set forth in the filings with the Secretary of State. (Px6, Px7). In the Arbitration case Petitioner's testimony established that they were employed by Respondents as a landscaper and made use of gasoline cutting tools. (Px7, p. 4). Accordingly, the Commission finds that the work in which Respondents engaged automatically subjected them to the provisions of the Illinois Workers' Compensation Act.

Pursuant to Section 4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance. *See* 820 ILCS 305/4(a). 50 Ill. Admin. Code Section 9100.90(a) similarly provides that any employer subject to section 3 of the Act shall ensure payment of compensation required by Section 4(a) of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Admin. Code 9100.90(a). Section 9100.90(d)(3)(E) of the Rules similarly provides that a certification from a Commission employee "that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D). Section 9100.90(d)(3)(D) of the Rules provides that "[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D).

This Commission analyzes here the culpability of Respondents and the applicability of Section 4(a). Section 4 of the Act requires that all employers of at least one employee who come within the provisions of Section 3 of the Act, and any other employer who shall elect coverage under Section 2 of the Act, provide workers' compensation insurance for the protection of their employees. 820 ILCS 305/4.

In the instant case, Petitioner submitted a certified finding from the Department of Self-Insurance that no certificate of approval to self-insure was issued to Respondents for the period of January 1, 2006 through August 10, 2007. Petitioner also submitted the NCCI certification that neither Respondent filed policy information showing proof of workers' compensation insurance for numerous dates including from January 1, 2006 through August 10, 2007. Smith testified that based upon his investigation, Petitioner determined that Respondents were subject to the Act, had employees and did not provide workers' compensation insurance for the period for which it requested relief, from January 1, 2006 through August 10, 2007. Respondents did not attend the hearing and thus presented no evidence indicating that they provided workers'

compensation insurance of any kind during this period. Accordingly, the Commission concludes that Petitioner proved that Respondents failed to comply with the legal obligations imposed by Section 4(a) of the Act from January 1, 2006 through August 10, 2007.

Section 4(d) of the Act states in pertinent part:

> Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section ***, the Commission may assess a civil penalty of up to $500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of $10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty.
>
> 820 ILCS 305/4(d) (West 2004).

Section 9100.90(b) of the Rules similarly provides that penalties may be assessed for non-compliance after a reasonable notice and hearing. 50 Ill. Adm. Code 9100.90(b). Section 9100.90(c) of the Rules describes the proper notice of non-compliance to be served upon the employer and provides that the employer may request an informal conference to resolve the matter. 50 Ill. Adm. Code 9100.90(c). Section 9100.90(d) of the Rules describes the manner of notice and service for an insurance compliance hearing and the procedure for conducting the hearing. 50 Ill. Adm. Code 9100.90(d).

In this case, Petitioner submitted into evidence the Notices of Non-Compliance and Notices of Informal Conference mailed to Respondents in the form prescribed by our Rules. Petitioner also submitted the notices for the February 7, 2023 insurance compliance hearing, in the form prescribed by our Rules and sent to Respondents at 536 Harwood Court, Joliet, Illinois 60432 accompanied by an affidavit of personal service signed by Investigator Alesia Crockett that Respondents were personally served on March 2, 2020 at 536 Harwood Court, Joliet Illinois 60432. The insurance compliance hearing allowed the Commission to introduce evidence and testimony, and afforded Respondents the opportunity to do the same, had any of them chosen to attend personally or through counsel. Accordingly, the Commission concludes that reasonable and proper notice and hearing was provided to Respondents.

On the merits, the Commission has considered the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3) whether the employer had been made aware of his conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6)whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay the assessed amount. See, *e.g.*, *State of Illinois v. Murphy Container Service*, Ill. Workers' Comp. Comm'n, No. 03 INC 00155, 7 IWCC 1037 (Aug. 2, 2007).

The Commission finds that the period of time during which the Respondents violated the Act by failing to obtain workers' compensation insurance was significant. The Respondents failed to have insurance for over the 587 days, from January 1, 2006 through August 10, 2007. In the Arbitration decision in case 04 WC 055422, the claimant's unrebutted testimony and the Arbitrator's Findings established that Respondents had employees. In fact, one of Respondents' employees sustained a work injury. As Respondents failed to have workers' compensation insurance, the Injured Workers' Benefit Fund paid benefits to that petitioner as a result of the injury. Respondents were notified of their non-compliance under the Act by Petitioner and elected not to obtain workers' compensation insurance. Moreover, the records entered into evidence show that Respondents obtained workers compensation insurance which was thereafter canceled. (Px8). The Respondent's prior actions of obtaining workers' compensation insurance shows the Respondents had knowledge of their duties under the Act. Having reviewed the record, the Commission finds no evidence as to Respondent's inability to secure and pay for workers' compensation coverage and no evidence of mitigating circumstances.

The Commission concludes that Respondents knowingly and willfully failed to comply with the Act. Based on the significant period of time that Respondents failed to comply with the Act, the Commission assesses a penalty of $293,500.00 against Respondents, Custom Landscaping Design and Maintenance and Nicholas Tamborski, individually and as president. Pursuant to Section 9100.85(a)(1) of the Rules, the Commission is also entitled to obtain reimbursement from Respondents in the amount of $93,668.06, representing the compensation obligations paid by the Injured Workers' Benefit Fund in 04 WC 055422.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents, Custom Landscaping Design and Maintenance and Nicholas Tamborski, individually and as president, pay to the Illinois Workers' Compensation Commission the sum of $387,168.06 pursuant to Section 4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission; and (2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Department of Insurance
Attn: Insurance Compliance

122 South Michigan Avenue, 19th floor
Chicago, Illinois 60603

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 17, 2023

/s/ *Maria E. Portela*
Maria E. Portela

MEP/dmm
O: 020723
49

/s/ *Marc Parker*
Marc Parker

Concurring In Part, Dissenting In Part

I respectfully dissent from the majority opinion and Order issued by my colleagues. While I agree that employers must be held accountable for failing to carry Workers' Compensation insurance required by law, I believe that the imposed maximum fine of $500.00 per day is excessive. I contend that lower fines would be more appropriate, and my position is supported by Commission case law, public policy arguments and equitable grounds.

As the majority stated, historically the Insurance Compliance Division suggests that the Commission consider several factors in assessing a penalty, including: 1) the length of time in which the employer had been violating the Act; 2) the number of settled/pending workers' compensation claims against the employer; 3) whether the employer had been made aware of his conduct in the past; 4) the number of employees working for the employer; 5) the employer's ability to secure and pay for future (or recently obtained) workers' compensation insurance premiums; 6) whether the employer has shown any mitigating circumstances, such as a willingness to cooperate, comply and settle; and 7) the ability of the company to pay the assessed penalty. *State of Illinois v. Murphy Container Service, et a/.,* 2007 Ill. Wrk. Comp. LEXIS 1216, 7 IWCC 1037 (Ill. Workers' Comp. Bd. August 2, 2007).

In *Murphy,* the Commission determined that Respondents were involved in work which was extra hazardous under Section 3 of the Act, due to carriage by land and loading or unloading in connection therewith (where Respondent had at least two employees)(Section 3(3)), the operation of any warehouse or general or terminal storehouse (Section 3(4)), the involvement in handling junk and/or salvage (Section 3(8)) and the use of gasoline or other [*9] power driven equipment (Section 3(15)). *State of Illinois v. Murphy Container Service, et a/.,* 2007 Ill. Wrk. Comp. LEXIS 1216, *8-9.

Further, the employer had eight workers' compensation claims filed against them and as such, the Commission determined that Respondent was on notice of the fact it had no workers'

compensation coverage for years. Although the Commission noted there was reference to a bankruptcy claim it was unclear whether the bankruptcy involved the Respondent company and/or the individuals named in the caption. Respondents failed to appear the hearing and the Commission imposed the maximum fine.

In the subject case, the Respondents also did not appear for the hearing. However, by not appearing an employer does not concede that they have the ability to secure and pay for future workers' compensation insurance and/or the ability to stay in business and/or the ability of the company to pay the assessed penalty. The Respondent in this case had insurance at times and was not covered intermittently. There was evidence presented in Petitioner's Exhibit 5, the LLC File Detail Report for Respondents that showed that the business was formed on March 31, 2000 and dissolved on August 10, 2007. Further the Articles of Incorporation stated the business purpose was "to provide lawn care and maintenance" (PX6, 2) Thus, the business appears to be seasonal and the cancellation of the workers' compensation insurance in some cases appears to be in the winter months. Although the insurance coverage was intermittent, we can infer that during the winter months, the employee(s) were not working. Other than the injured worker in the referenced case 04 WC 55422, there is no evidence that the business employed other workers. The majority's daily fine/penalty for non-compliance includes the months January, February and March 2006 and November, December, January and March in 2007 when by inference we can presume Respondent was not operating the business of providing "lawn care and maintenance" and was not servicing customers. However, I note that Respondents also failed to obtain insurance for seasonal months during that same time frame and should be held accountable for that lapse, however, without financial information about what appears to be a small business, the fines could more reasonably be assessed at $100/day for the seasonal months without insurance when the landscape business was actually operating. This fine is more reasonable since we know that the business was dissolved on August 10, 2007.

There was evidence of only one workers' compensation case filed against Respondent, however, that was not during the period for which Petitioner seeks the maximum penalty per Statute for noncompliance. It was during this earlier period that an employee was injured and the Injured Workers' Benefit Fund paid $93,668.06 in benefits for the claim that the injured worker filed at the Illinois Workers' Compensation Commission ("Commission") in case number 04 WC 055422. Thus the inference is that the business knew it was non-compliant as a result of that case.

However, there are some inconsistencies in the record indicating that there might have been some mitigating circumstance at the time of the injured workers' accident in that case. Petitioner's Exhibit 8 contains certifications from agents of the NCCI. One was signed on September 24, 2018 (PX8, p.2) and one was signed on September 17, 2007. (PX8, p. 3). Paragraph five of the September 17, 2007, certification states that NCCI records do not show policy information was filed showing proof of workers compensation insurance for the period from January 1, 2002 to May 15, 2005 for Custom Landscape Design & Maintenance which was the Respondent named in case 04 WC 055422 with the IWBF. Paragraph six of that same certification states:

> Said records of NCCI do show a policy filed showing proof of workers' compensation insurance for the period from 5/18/2004 to 5/18/2006. A

> cancellation/termination of coverage notice was also received showing a cancellation effective date of 12/30/2005 for Custom Landscape Design & Maintenance, Inc., 1105 Chase Trail, New Lenox, Illinois 60451. Said records of NCCI also do not show any policy Information filed for the period 12/31/2005 to present.

It would appear that paragraphs five and six are inconsistent. A policy was filed according to paragraph six that was in effect from May 18, 2004 to December 30, 2005. Yet paragraph five insinuates that the policy referenced in paragraph six was not made part of the NCCI business records. This discrepancy is never explained.

It is further not entirely clear from the majority opinion the reason that Petitioner was not seeking a per day penalty for insurance noncompliance during that earlier period commencing January 1, 2002 through May 17, 2005, however, I support that part of the Order that requires Respondents to reimburse the IWBF for the workers' compensation claim filed and adjudicated against Respondents but I support a lower penalty for the period that Respondent was not in compliance.

Although there was evidence of past non-compliance in this case, it would seem the seasonal nature and the unknown size of the business or financials are mitigating factors. Clearly the Commission has discretion in determining the amount of fines and penalties and as such should be based on the specific circumstances of each case. There is no information in this record regarding the number of employees Respondent Tamborski had or has in the 587 days of non-compliance for which the Commission is penalizing him.

There is Commission precedent for a lower penalty. In another insurance non-compliance case, where an injured worker was awarded benefits against the Respondent and the Injured Workers' Benefit fund paid on the claim, and despite Petitioner requesting the maximum fine, the Commission ordered the Respondents to pay $100/per day for every day of noncompliance with the Act, $29,900.00 plus the amount of the premium saved by Respondents' non-compliance, $2.79 per day for 299 days, or $834.21; plus the amount paid out to the injured worker by the Injured Workers' Benefit fund, $4,803.73, for a total fine of $35,537.94. (see *Illinois Workers' Compensation Commission, Insurance Compliance Division, v. David L. Greer, Individually & President, and JW Berry, Individually & Secretary, D/B/A Big D Enterprises, Inc., D/B?A Desperado's Lounge,* 2014 Ill. Wrk. Comp. LEXIS 294, 14 IWCC 295 (Ill. Workers' Comp. Bd. April 24, 2014)). This realistic fine seems more likely to be collected and without forcing the individual owners of small businesses to pay for their mistakes for a lifetime.

Thus, the Commission should apply a more equitable penalty in this default judgment where no Respondent is present to provide the requisite information to establish whether or not the Respondent Tamborski is still working and, if affirmative, information about his financial situation. Especially when that information is not available, the Commission should consider all of the *Murphy* factors when assessing the penalty, including 1) the length of time in which the employer had been violating the Act; 2) the number of settled/pending workers' compensation claims against the employer; 3) whether the employer had been made aware of his conduct in the past; 4) the number of employees working for the employer; 5) the employer's ability to secure

and pay for future (or recently obtained) workers' compensation insurance premiums; 6) whether the employer has shown any mitigating circumstances, such as a willingness to cooperate, comply and settle; and 7) the ability of the company to pay the assessed penalty. The Commission should apply less than the maximum fine allowed by the Statute in some cases so that there is more likelihood that the business has the financial ability to absorb the cost of the penalty and stay in business with workers' compensation insurance.

Because the amount of the punitive fine imposed here is so excessively high, and we know the named corporation was involuntarily dissolved, the fine imposed by the Commission upon this individual will likely prove to be uncollectible and an unpayable debt. Such an unpayable debt can often hang like an albatross around the neck of a small business, driving it to insolvency and bankruptcy. And in certain cases, the debt could then attach to the small business owners themselves, as in this case, and hamstringing their ability to provide food for their families, jobs for their employees, services for their customers, a multiplier effect for the economy, and a burden upon taxpayers. While I am in no way advocating for insurance non-compliance, the Commission should also be cautious assuming facts not in evidence while imposing excessively high punitive fines. Thus, I dissent from the majority's imposition of a fine of $500.00 per day and would assess a fine of $100.00 per day because although the length of time of non-compliance was 587 days, less than two years, there is evidence this was a small seasonal business, there was only one workers' compensation claim filed before the time period in question; Respondent was made aware of his non-compliance when that worker sustained a work-related injury, however, we cannot ascertain if there is still any business or any employees since the corporation was dissolved, except that NCCI confirmed policy information showed Respondent Tamborski had workers' compensation insurance for the period between June 2, 2016 and August 4, 2016. (PX8, p.2) There is no evidence of employer's ability to pay for and secure coverage; and there is no evidence of employer's ability to pay the assessed amount.

Considering the foregoing factors in light of the evidence presented in this case, I would assess a penalty in the amount of $100.00 per day, for 587 days for a total penalty of $58,700.00, against Respondents Custom Landscaping Design and Maintenance Inc., and Nicholas Tamborski, individually and as President pursuant to Section 4(d) of the Act. Further, I agree with the majority that pursuant to Section 9100.85(a)(1) of the Rules, the Commission is also entitled to obtain reimbursement from Respondents in the amount of $93,668.06 representing the compensation obligations paid by the Injured Workers' Benefit Fund in 04 WC 055422.

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC001107
Case Name	Leonel Huitron v. Illinois Transport
Consolidated Cases	21WC029100;
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	23IWCC0176
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Luis J. Magaña
Respondent Attorney	James Moran

DATE FILED: 4/17/2023

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LEONEL HUITRON,

Petitioner,

vs. NO: 21 WC 1107

ILLINOIS TRANSPORT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) of the Act having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, temporary total disability, medical expenses, and prospective care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 1, 2022 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 17, 2023

d: 04/06/23
CMD/kcb
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC001107
Case Name	Leonel Huitron v. Illinois Transport
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Luis J. Magaña
Respondent Attorney	James Moran

DATE FILED: 8/1/2022

THE INTEREST RATE FOR THE WEEK OF JULY 26, 2022 2.92%

/s/ Roma Dalal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Will**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Leonel Huitron
Employee/Petitioner

v.

Illinois Transport
Employer/Respondent

Case # **21** WC **01107**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Dalal**, Arbitrator of the Commission, in the city of **Joliet**, on **May 16, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☐ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Prospective Medical Treatment**

FINDINGS

On **9-22-2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**$21,000.00**; the average weekly wage was $**$828.25**.

On the date of accident, Petitioner was years of age, ***single*** with **3** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $ for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $.

Respondent is entitled to a credit of $ under Section 8(j) of the Act.

ORDER

Petitioner sustained a compensable September 22, 2020 injury. This condition has resolved, and Petitioner has reached MMI for the same. No further medical benefits are awarded from this injury.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

AUGUST 1, 2022

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

ILLINOIS WORKERS' COMPENSATION COMMISSION

LEONEL HUITRON,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 21 WC 01107
ILLINOIS TRANSPORT,	)	Consolidated Cases: 21 WC 29100
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on May 16, 2022 in Joliet, Illinois before Arbitrator Roma Dalal on Petitioner's Request for Hearing. Issues in dispute for Case 21 WC 01107 causal connection, disputed medical bills, and prospective medical. Issues in dispute for Case 21 WC 29100 include accident, notice, causal connection, disputed medical, TTD benefits and prospective medical. (Arb. Ex.1 and 2).

At the beginning of trial, Petitioner amended the date of accident in the second case to December 16, 2020. (T.6, Arb. Ex.2). Petitioner noted the second Application originally had a date of accident of December 28, 2020. (T.6). Petitioner later clarified the original Application stated the date of accident was December 11, 2020 not December 28, 2020 and he was amending the same to December 16, 2020. (T.7).

Petitioner testified is a native Spanish Speaker and testified via translator. (T.8).

Leonel Huitron (hereinafter referred to as the "Petitioner") worked at Illinois Transport (hereinafter referred to as the "Respondent") for approximately six years as a trailer/chassis mechanic. (T.10-11). As a mechanic, he was responsible for tasks such as repairing lights, fixing brakes, cutting steel, welding, change tires and build structures. (T.11). Petitioner indicated that he did lifting involving tires, brakes, chassis, and other structures. (T.12).

When he began his employment with Respondent, Petitioner indicated he had no prior problems with his neck or back. (T.14). On September 22, 2020, Petitioner was using a "come along" to pull two parts together on a chassis. (T.15). Petitioner described this tool as a cranking device with chains on both sides used to pull heavy objects together. (T.15). While using the come along, one side of the chain came loose and struck Petitioner in his left scapular region down towards his mid back. (T.19). The accident was reported to his supervisor, Kaedyn Urban. (T.19).

A supervisor accident report and an employee accident/injury form were filled out. (RX7, RX8).

Petitioner advised he went home, took Tylenol and iced it. The next day they have advised him not to do a lot. (T.20). Petitioner did not seek treatment because he was not advised to, and he did not ask. (T.20). Petitioner kept working and couldn't perform 100 percent of the demands of his job because of pain. (T.21). He noted for the heavy stuff he had his friends or coworkers help. (T.21). His supervisor mentioned to his coworkers they could help him with the heavy stuff. (T.21). Petitioner testified he had low back pain and worked through September, October, and November. (T.22).

Petitioner testified beginning in December he was doing most of his job by himself. (T.22). Petitioner testified he sustained another injury a week before Christmas. (T.22). He testified he was given a big order and had to change a radial tire, which was a big tire. (T.22). Petitioner noted that he believed the date was either the 15 or 16. (T.23). He was about to mount one of the tires when he felt a hard or heavy pain in his neck. (T.23). Petitioner described the tire as being very heavy and, when he went to mount the tire, he felt "heavy" pain in his neck with numbness into his arm. (T.24). When this occurred, Petitioner indicated he told his co-workers, Rigo Contreras and Daniel Florez. (T.25). Petitioner testified his supervisor was called and Mr. Urban told him to relax. (T.25). Petitioner testified he was off one day before Christmas and when he returned, he advised Respondent he could not work. (T.27-28). He was subsequently advised to go to Physicians Immediate Care. (T.28).

Petitioner testified he told Kaedyn Urban about both accidents. (T.29). Petitioner testified he told Mr. Urban in English. Mr. Urban only spoke English. (T.30). Petitioner did testify, however, that he never had a problem communicating in English with Mr. Urban. (T.31).

On November 16, 2020 the Arbitrator notes Petitioner was seen Dr. Pinto for other issues involving his left ankle. There was no mention of any other body part. (PX12, p.10).

On December 19, 2020, Petitioner presented to Dr. Juan Pinto, his primary care physician. Dr. Pinto performed a full review of symptoms and specifically noted no pain, stiffness, or issues regarding the neck. (PX12, p. 15). Petitioner testified that Dr. Pinto was not treating him for his neck or other injuries. (T.35).

Petitioner testified that he told Physicians Immediate Care about both the September 22nd and December 16th accidents. (T.29). On December 28, 2020, Petitioner was seen at Physician's Immediate Care. (T.28, PX4). The note indicated a translator was present. Petitioner stated in September there was an incident at work where a chain popped and hit him in the left back/shoulder area. Pain has gotten worse. He noted a September 28, 2020 injury. Petitioner reported it was progressively worsening since September. (PX4, p.1). Petitioner was provided medication, an MRI and prescribed physical therapy. *Id.* at 4.

On December 31, 2020, Petitioner underwent a cervical MRI which showed a left foraminal disc protrusion at C5-6 contributing to moderate left foraminal stenosis and impingement on the exiting left C6 nerve report and degenerative changes and spondylosis. (PX4, p.27).

On January 4, 2021, Petitioner followed up with Physician Immediate Care. The note states a translator was present notwithstanding the Petitioner's testimony to the contrary. (PX4, p.28). Petitioner again provided a history of an onset on September 22, 2020 and was referred to Orthopedic surgery. (PX4, p.31).

On January 7, 2021, Petitioner presented to Emediate Cure. (PX3). Petitioner presented with back pain and left shoulder pain since September. Petitioner stated a tension chain broke and hit him on back and shoulder. He told his employer and continued to work. Pain was controlled for the most part until December when he was performing another task and felt pain. He noted by December 28 it became unbearable. Petitioner was diagnosed with cervical radiculopathy and left shoulder pain. Petitioner was to undergo physical therapy. He was to return to work with right hand work only. (PX3, p.3).

Petitioner testified that Emediate Cure referred him to Dr. Templin. (T.33).

On January 8, 2021, Petitioner presented to Dr. Cary Templin at Hinsdale Orthopaedics. Petitioner was a 47-year-old male noting he had two injuries. The first injury was on September 22, 2020 where he was pulling a chain over his shoulder. The chain was released and it him in the back. At that time, he just had pain to the back side of his shoulder. (PX5, p.5). He continued to work then in December 2020 he was lifting a tire and developed neck pain. He noted the problem began after the two injuries but most notably lifting the tire. Dr. Templin diagnosed Petitioner with a cervical herniated disc with left C6 radiculopathy. The herniation was likely caused by the tire lifting. Petitioner was to undergo a left C6 transforaminal injection. If the pain continued, he would recommend a C5-6 fusion or disc replacement. He should remain off work. (PX5, p.6-7).

On January 13, 2021 Petitioner had his initial physical therapy evaluation. Petitioner presented with subacute pain. Petitioner noted he was injured on September 22, 2020. He now had left sided neck and left arm pain. Petitioner was to undergo therapy two to three times a week for six week. (PX13, p.100). Petitioner continued with therapy through January and February 2021. (PX13)

Petitioner followed up with Emediate Cure on January 14, 2021. Petitioner was waiting for approval for an injection. Petitioner was also undergoing physical therapy. Petitioner was to continue with the orthopedic and physical therapy. (PX3, p.5-6).

Petitioner followed up on February 12, 2021. Petitioner underwent one injection that gave him significant relief. He also continued to undergo physical therapy. Petitioner was now recommended a disc replacement at C5-C6. (PX5, p.15).

As of March 10, 2021 Petitioner had undergone 21 therapy visits. Petitioner was to undergo therapy three times per week for an additional six weeks. (PX6, p.6).

On March 17, 2021 Dr. Templin authored a narrative report. Petitioner reported an injury on September 22, 2020 and a second injury in December of 2020. Dr. Templin opined Petitioner was suffering from a C6 radiculopathy as a result of a C5-6 herniated disc. This caused radiating pain extending into his periscapular region and into his arm with paresthesias. The Doctor opined this was a work-related injury. Petitioner had an initial injury when he was hit in the back by a chain, however, later was lifting a tire and in the process of lifting the tire developed onset of radicular symptoms. Straining to lift such a tire would be a competent mechanism to cause a herniated disc in the cervical spine. Treatment had been reasonable and necessary to date. Dr. Templin opined he would recommend a C5-6 anterior cervical diskectomy and disk replacement. (PX8).

On March 24, 2021 Petitioner was provided a functional status report. Petitioner had undergone 25 therapy visits. Petitioner continued to have neck pain but no longer had referred symptoms into the left shoulder. Petitioner was recommended continued therapy. (PX13, p.21). Petitioner continued with physical therapy. (PX13).

Dr. Wehner examined Petitioner at Respondent's request on March 31, 2021. (RX1). She went over Petitioner's two alleged injuries on September 22, 2020 and a December injury. Dr. Wehner examined Petitioner and reviewed the medical records. Dr. Wehner opined Petitioner sustained a contusion to his back of his left shoulder area on September 22, 2020. Petitioner did not require any specific medical care and self-healed. The Doctor noted Petitioner saw Dr. Pinto on November 16, 2020 for ankle swelling with no specific injury. There was no specific etiology. She further noted that there was no mention in the PCP record of any subjective complaints of neck pain, shoulder pain or arm pain. She felt he was at maximum medical improvement and did not require any treatment as a result of that injury. She noted there was no causal relationship between the cervical complaints and the September 22, 2020 accident. He could work full duty. (RX1).

On April 9, 2021 Petitioner had undergone 4 additional visits of therapy. Petitioner was to continue with physical therapy. (PX13, p.8). On May 10, 2021 Petitioner was discharged from physical therapy for failure to progress. (PX13, p.5).

On December 11, 2021 Petitioner presented to Dr. Chintan Sampat for neck pain with numbness and tingling in the left upper extremity. Petitioner noted he was first injured on September 22, 2020 and next injured in December of 2020. Petitioner noted the injection provided him short-term relief. Dr. Sampat diagnosed Petitioner, in part, with a left-sided paracentral disc herniation at C5-C6 that corresponds with his symptoms. Dr. Sampat then indicated, "I also reviewed multiple documents, including a narrative report by Dr. Templin. I agree with Dr. Templin that the patient would benefit from C5-C6 anterior cervical discectomy with total disc arthroplasty." (PX10, p.4-6).

On August 3, 2021, Dr. Wehner issued an addendum report wherein she reviewed additional medical records. She noted there was no specific date in December when the tire lifting episode happened. She noted Dr. Templin's report of the second injury was not consistent with the records of Physicians Immediate Care or Dr. Pinto. There were four date of medical records that do not mention a December injury. Based on the same, the medical records indicate only a contusion on the September 22, 2020 date with self-resolution. There was no causation. (RX2).

Petitioner testified that his primary physician, Dr. Pinto, referred him for a second opinion with Dr. Sampat. (T.36, PX10, p.6).

On the Patient information sheet filled out by Petitioner, Petitioner noted his symptoms began in September 2020 due to a work equipment failure. (PX10, p.43). Petitioner noted he had cervical spine and left arm pain. *Id*. at 47. The patient encounter form further noted an onset of symptoms on September 22, 2020. It noted it didn't bother him right away. It was noted that the injury worsened after picking up a trailer. *Id*. at 49. Petitioner also signed a patient form, indicating that his injury occurred in September 2020. *Id* at 21.

On December 11, 2021 Petitioner presented to Dr. Chintan Sampat on December 11, 2021. Petitioner reported a September 22, 202 injury that did not bother him right away but then started having neck pain

radiating down the left upper extremity. The second injury was also noted when he lifted a heavy tire at work in December of 2020.

On January 31, 2022 Petitioner presented to Dr. Chintan Sampat. Petitioner was a 48-year-old male who presented with mild low back pian since he had a work injury on September 22, 2020. He was recently seen at Silvery Cros Emergency Department where the lumbar spine showed healing L2-L4 transverse fracture. He did not have any other injuries prior to the September 22, 2020 injury. Petitioner was recommended surgery for his cervical spine. (PX10, p.2).

Deposition Testimony

On September 21, 2021, the Parties proceeded with the deposition of Dr. Cary Templin. (PX16). Dr. Templin is board certified and predominantly works with adults with ailments of the cervical, thoracic, and lumbar spine. (PX16, p.5). Petitioner saw Petitioner twice for his cervical spine and drafted a narrative opinion. *Id*. at 6. Petitioner reported two injuries, one that occurred on September 22, 2020 when he was pulling a chain over his shoulder, and it released and hit him in the backside of his shoulder and another one in December of 2020 when he was lifting a tire. *Id*. at 8. Dr. Templin noted he did not review any medical records prior to January 2021. *Id*. at 9. Petitioner complained of neck pain extending into his left arm. *Id*. at 9. He reviewed the MRI and diagnosed Petitioner with a C5-6 herniated disc with left C6 radiculopathy, for which he recommended an injection. *Id*. at 11. Dr. Templin noted the injection gave him significant relief which helped solidify the diagnosis of left C6 radiculopathy. *Id*. at 12. Given, Petitioner's continued symptoms, he recommended a disk replacement at level of C5-6. *Id*. at 12.

Dr. Templin noted Petitioner's current condition is not related to the September 22, 2020 accident. (PX16, 14). Dr. Templin did testify that it would be related to a December injury when he was lifting a heavy semi-tire, which is certainly a competent cause of a herniated disk in the cervical spine. He opined treatment to date had been reasonable and necessary. *Id*. at 15. He further explained a C5-6-disc replacement would alleviate Petitioner's radiculopathy and allow him to return to normal function. *Id*. at 16.

On Cross-Examination, Dr. Templin noted that he did not know the exact date this happened in December. (PX16, p.20). Dr. Templin noted he did not review any medical records prior to the first examination. *Id*. Dr. Templin conceded if someone lifted a tired and herniated a disk it would be a memorable event and it would be expected a patient would mention it to their medical provider. *Id*. at 23. Dr. Templin noted he did not review the December 19, 2020 medical report with his primary physician. *Id*. at 23.

The parties proceeded with the deposition testimony of Dr. Julie Wehner on October 12, 2021. (RX3). Dr. Wehner testified she performed a Section 12 examination on March 31, 2021. Petitioner reported a September 22, 2020 injury when working on a chassis and trying to straighten the chassis when the chain broken, and it hit his upper back and left shoulder area. *Id*. at 5. He reported it to his supervisor and took two days off and gradually got better. Petitioner also stated that in December he felt a pull in his left shoulder when he was installing a tire on a trailer and using an air hammer. He advised his supervisor again he was told to take it easy. *Id*. at 6. Dr. Wehner went over the medical care and examined Petitioner. *Id*. at 7. Dr. Wehner advised Petitioner was diagnosed with a contusion for the first injury. Petitioner advised her he was told to do what he could at work with no specific limitations. Petitioner also saw his

primary care physician for routine visits on 11/16 and 12/19/20 with no mention of any neck or shoulder pain. *Id*. at 10. Dr. Wehner opined Petitioner suffered a contusion to the posterior shoulder area that self-healed. *Id*. at 11. As of March 31, 2021, Petitioner could work without restrictions in regards to the September 22, 2020 injury. She further opined Petitioner had reached maximum medical improvement for the September 22, 2020 injury. *Id*. at 13. Dr. Wehner noted there was no specific date in December and evidenced by the December 28, 2020 medical note. *Id*. at 16. Dr. Wehner conceded that she believed Petitioner was not a malingerer and motivated to work. *Id*. at 25.

At trial Petitioner testified that he continued to work for Illinois Transport throughout 2021 and into 2022. (T.39). Petitioner testified at the time of trial he experienced neck pain radiating into left arm and hand. (T. 40). He testified he wished to undergo the surgery recommended by Dr. Templin. (T. 41).

On Cross-Examination, Petitioner acknowledged that he filled out a September accident report but did not fill out any documentation at any time in December 2020. (T.47).

He further testified that the accident was the 15th or 16th of December, and he was told to go home. Then he was advised to take the weekend and came back on Monday. He stated he did not feel well but they told him to take more days off around Christmas and then come back the following Monday. (T.49). Petitioner later testified that Mr. Urban did not send him to the company clinic on December 28, but rather another safety manager.

Kaedyn Urban

Respondent called Kaedyn Urban to testify. Mr. Urban was employed by Illinois Transport in September and December of 2020 as the M and R supervisor. (T.50-51). Mr. Urban testified he no longer works with Illinois Transport and did not leave on the best terms. (T.51-53).

Mr. Urban testified he worked with Petitioner for 5 years as his direct supervisor. (T.54). Mr. Urban testified that if any incident occurred, they would have to fill out paperwork automatically. (T.54). Mr. Urban testified to Petitioner's initial September injury and the accident report he filled out. (T.55, 57). Mr. Urban testified he had a red mark that began around the shoulder blade area slanted down to his mid/low back. (T.56).

Mr. Urban further testified that Petitioner did not report any tire lifting incident in December 2020. (T.59). If another incident in December 2020 occurred, Mr. Urban testified he would have filled out a report. (T.60). He further testified he had specific instructions from his boss, Keith Manzel, to not allow Petitioner to do any lifting, tire lifting or heavy-duty work. He told the mechanics to report if Petitioner did such a thing. He was never told he was lifting or saw him lifting one. (T.60). He further advised that he observed Petitioner performing lighter job duties. (T.60). Mr. Urban testified to his knowledge no one provided Petitioner an order that involved lifting heavy tired. (T.61). Additionally, he testified he learned about the December 2020 tire lifting incident about a month ago. (T.61).

Mr. Urban further testified that in all the years he worked with Petitioner he never had a communication problem with him when it was face to face. (T.61). In his opinion Petitioner's English skills were good. (T.62).

On Cross-Examination, Mr. Urban testified that Petitioner was a good worker and never dishonest. (T.62). He was a good worker and always did what he asked him to do. (T.63). Mr. Urban testified that the only policy is that they have to fill out the reports. Then they ask the mechanics if they want to do go home to rest or go to the clinic. (T.64). He further testified that he does not recall Petitioner going to the company clinic on December 28, 2020. (T.65).

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

In this case the Arbitrator finds Petitioner's testimony does not comport with the medical evidence submitted into trial. The Arbitrator does not deem Petitioner's statement regarding the second accident credible.

WITH REGARD TO (C) WHETHER AN ACCIDENT OCCURRED THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

A decision by the Commission cannot be based upon speculation or conjecture. Deere and Company v Industrial Commission, 47 Ill.2d 144, 265 N.E. 2d 129 (1970). A petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. Illinois Institute of Technology v. Industrial Commission, 68 Ill.2d 236, 369 N.E.2d 853 (1977). Where a petitioner fails to prove by a preponderance of the evidence that there exists a causal connection between work and the alleged condition of ill-being, compensation is to be denied. Id. The facts of each case must be closely analyzed to be fair to the employee, the employer, and to the employer's workers' compensation carrier. Three "D" Discount Store v Industrial Commission, 198 Ill.App. 3d 43, 556 N.E.2d 261, 144 Ill.Dec. 794 (4th Dist. 1989).

The burden is on the Petitioner seeking an award to prove by a preponderance of credible evidence all the elements of his claim, including the requirement that the injury complained of arose out of and in the course of his or her employment. Martin vs. Industrial Commission, 91 Ill.2d 288, 63 Ill.Dec. 1, 437

N.E.2d 650 (1982). The mere existence of testimony does not require its acceptance. Smith v Industrial Commission, 98 Ill.2d 20, 455 N.E.2d 86 (1983). To argue to the contrary would require that an award be entered or affirmed whenever a claimant testified to an injury no matter how much his testimony might be contradicted by the evidence, or how evident it might be that his story is a fabricated afterthought. U.S. Steel v Industrial Commission, 8 Ill.2d 407, 134 N.E. 2d 307 (1956).

The Illinois Supreme Court has held that a claimant's testimony standing alone may be accepted for the purposes of determining whether an accident occurred. However, that testimony must be proved credible. Caterpillar Tractor vs. Industrial Commission, 83 Ill.2d 213, 413 N.E.2d 740 (1980). In addition, a claimant's testimony must be considered with all the facts and circumstances that might not justify an award. Neal vs. Industrial Commission, 141 Ill.App.3d 289, 490 N.E.2d 124 (1986). Uncorroborated testimony will support an award for benefits only if consideration of all facts and circumstances support the decision. See generally, Gallentine v. Industrial Commission, 147 Ill.Dec 353, 559 N.E.2d 526, 201 Ill.App.3d 880 (2nd Dist. 1990), *see* also Seiber v Industrial Commission, 82 Ill.2d 87, 411 N.E.2d 249 (1980), Caterpillar v Industrial Commission, 73 Ill.2d 311, 383 N.E.2d 220 (1978). It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence, and assign weight to the witness' testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v Workers' Compensation Commission, 397 Ill.App. 3d 665, 674 (2009).

The courts presume that when a person seeks treatment for an injury, he will not falsify statements to a physician from whom he expects to receive medical aid. Shell Oil Co. v. Industrial Comm'n, 2 Ill.2d 590, 592 119 N.E. 2d 224, 226 (1954).

Petitioner alleges two dates of accident, September 22, 2020 and December 16, 2020. (Arb. Ex. 1 and 2). The Arbitrator will address each one individually.

September 22, 2020

The parties stipulated Petitioner suffered a compensable accident arising out of and in and in the course of his employment on September 22, 2020. On that date, a chain broke and struck Petitioner's back. The accident was reported, accident reports were filled out, and Petitioner provided a consistent history of injury to his medical providers. Petitioner proved a compensable accident on this date.

December 16, 2020

The accident in dispute is Petitioner's alleged December 16, 2020 injury.

An injury is compensable under the Illinois Workers' Compensation Act only if it arises out of and in the course of employment. Panagos v. Industrial Commission, 177 Ill. App.3d 12, 524 N.E.2d 1018 (1988). The burden is upon the party seeking an award to prove by the preponderance of the credible evidence the elements of his claim. Peoria County Nursing Home v. Industrial Commission, 115 111.2d 524, 505 N.E.2d 1026 (1987). The burden is also upon the employee to prove that his or her injuries are causally related to the employment. New Guard v. Industrial Commission, 58 M.2d 164, 317 N.E.2d 524 (1974). Critical to the determination of the aforementioned is Petitioner's credibility.

An injury is accidental within the meaning of the Act when it is traceable to a definite time, place, and cause and occurs in the course of the employment, unexpectedly and without affirmative act or design of the employee. Mathiessen & Hageler Zinc Co. v. Industrial Board, 284 Ill. 378 (1918). The aggravation of a preexisting disease may be an accidental injury and compensable if it meets the requirements that the occurrence is traceable to a definite time, place, and cause. Riteway Plumbing v. Industrial Comm'n, 67 Ill.2d 404(1977).

In this matter, the Arbitrator finds Petitioner failed to meet his burden of proof in establishing that an accident arose of out of and in the course of his employment by Respondent on December 16, 2020. In support of this finding, the Arbitrator finds Petitioner failed to provide a consistent or credible history of when or how his alleged injury occurred. In support of this finding, the Arbitrator relies on both certified medical records that were entered into evidence at trial and Mr. Urban's testimony. Lastly, the Arbitrator notes that on the date of trial, Petitioner changed his alleged injury date.

With regard to Petitioner's medical records and treatment history, Petitioner testified he sustained a second injury on December 15 or 16 reporting the same immediately to Mr. Urban. Petitioner later saw his family practitioner, Dr. Pinto, on December 19, 2020. Dr. Pinto's records are void of any mention of any work injury. There is no record Petitioner complained of any increased neck pain. Petitioner testified by this time he was sent home as his neck pain was worsening. The Arbitrator also notes Petitioner previously advised that Dr. Pinto of neck pain and Dr. Pinto referred him to Dr. Sampat. If Petitioner had an acute injury, it would be logical for Petitioner to advise Dr. Pinto as Dr. Pinto was the one who referred him to Dr. Sampat. The Arbitrator also notes Dr. Templin testified if someone lifted a tire and herniated a disk it would be a memorable event and it would be expected a patient would mention it to their medical provider. (PX16, p.23). If this lifting incident occurred, the Arbitrator would anticipate Petitioner mentioning the same to his provider on December 19, 2020.

Petitioner testified he returned to work but then again could not do anything and was sent home again for the Christmas holiday. It was not until at least 12 days after the alleged injury, Petitioner complained of increased neck pain. Petitioner testified he was sent to the Company clinic which his corroborated by the medical record on December 28, 2020.

The medical records, however, are void of any mention of a December injury or any mention of any type of lifting injury. Rather the medical record details the September 22, 2020 injury about when the chain broke. The Arbitrator notes there is no mention of any type of tire or lifting injury anytime in the month of December on this date.

The Arbitrator notes Petitioner testified to a detailed specific accident sometime in December yet does not mention the same to any of his providers. Even when Petitioner saw Dr. Templin in January, he does not mention the date he was injured or even the timeframe, i.e., before the Christmas holiday. Again, the Arbitrator finds that a specific incident would be somewhat memorable as noted by Dr. Templin. What was memorable, what Petitioner's September 22, 2020 injury that he mentioned in detail to all of his providers.

The Arbitrator also notes both Petitioner and Mr. Urban testified to Respondent's policy that all accidents are to be reported immediately. Mr. Urban, who was terminated along with his wife when he provided two weeks' notice and testified, he does not have relationship with the Respondent and appeared to testify

pursuant to subpoena to testify Petitioner did not report the December 2020 accident. When Petitioner initially reported the September 22, 2020 injury, Mr. Urban filled out the accident report. The Arbitrator finds if Petitioner sustained a December 16, 2020 injury or an injury around that timeframe and reported the same to Mr. Urban, as he testified he did, Mr. Urban would have filled out another accident report.

In addition, Petitioner's treating physician, Dr. Templin, testified he did not review any of the medical records between the time of the December 16, 2020 alleged accident and his examination of the Petitioner on January 8, 2021. Dr. Templin could have reviewed the same and explained the inconsistences but rather he solely testified that he would have expected Petitioner to describe any incident where he might have lifted a heavy tire and herniated a cervical disc.

The medical records go into great detail regarding the September 22, 2020 injury. Based the same, the Arbitrator finds Petitioner did not sustain his burden of proof that he sustained a December 16, 2020 accident given the multiple medical histories that did not mention it but went into great detail regarding Petitioner's September 2020 accident. Lastly, Petitioner testified to three co-employees he allegedly told about his accident, but none were mentioned in the court documents, and Petitioner did not present their testimony.

Petitioner testified quite specifically as to the details of the incident at trial. The same details are lacking in the records contemporaneous with the alleged accident. It is illogical to assume that if Petitioner told all these providers of the incident, that none of them made note of it. If the Petitioner's testimony as to accident is to be believed, then the medical records and opinion he relies upon cannot be reconciled. The inconsistencies between the records and the testimony support Respondent's position on accident.

The Arbitrator finds that Petitioner's testimony is not sufficient to sustain his burden of proof, especially in light of the long-standing principle expressed in Shell Oil v. Industrial Comm'n, 2 Ill.2d 590, 602 (1954), where the Illinois Supreme Court held that contemporaneous medical records are more reliable than later testimony because "it is presumed that a person will not falsify such statements to a physician from whom he expects and hopes to receive medical aid."

Given these factors, the Arbitrator finds Petitioner failed to meet his burden in proving he suffered a specific accident arising out of and in the course of his employment on December 16, 2020. The Arbitrator specifically finds Petitioner's testimony lacked credibility as it related to the date of the alleged incident, the history to his providers, the presence of an interpreter when discussing the etiology of his neck condition with his providers, and the identity of those to whom he claims to have given notice.

WITH REGARD TO (E) WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The parties stipulated Petitioner provided timely notice on September 22, 2020. Accident reports were filled out by the Respondent and Petitioner, and Petitioner has told a consistent story regarding the date and events surrounding his accident on that date.

With regards to the December 16, 2020 accident, the Arbitrator finds Petitioner provided defective notice as of January 8, 2021. The Arbitrator, however, previously found Petitioner failed to meet his burden in

proving he suffered a specific accident arising out of and in the course of his employment on December 16, 2020. Based on the same, the Arbitrator finds this issue moot.

WITH REGARDS TO (F) WHETHER THE PETITIONER'S CURRENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO HIS INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds Petitioner suffered a shoulder/mid back injury as a result of the September 22, 2020 accident. He missed no time from work and did not seek any treatment as a result of that accident.

In so finding, the Arbitrator specifically notes that all medical providers opined Petitioner's cervical condition would not be a result of the September 22, 2020 accident.

Having found the Petitioner did not meet his burden in proving an accident on December 16, 2020, the Arbitrator finds Petitioner failed to prove his cervical condition is the result of any work-related injury.

Therefore, based upon the foregoing, the Arbitrator finds that Petitioner's condition of ill being is not causally related to his employment with Respondent.

WITH REGARDS TO (J) MEDICAL, (K) TEMPORARY TOTAL DISABILITY BENEFITS AND (O), PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Having found the Petitioner suffered a September 22, 2020 accident for which all benefits were paid and having also found the Petitioner failed to meet his burden in proving he suffered a December 16, 2020 accident, the Arbitrator finds Petitioner is not entitled to any temporary total disability benefits. The Arbitrator also finds the Petitioner is not entitled to payment of any outstanding medical bills nor prospective medical treatment.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC029100
Case Name	Leonel Huitron v. Illinois Transport
Consolidated Cases	21WC001107
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0177
Number of Pages of Decision	26
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Luis J. Magaña
Respondent Attorney	James Moran

DATE FILED: 4/17/2023

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse on Accident, Causal Connection, Medical Bills, TTD	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LEONEL HUITRON,

Petitioner,

vs. NO: 21 WC 29100

ILLINOIS TRANSPORT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) of the Act having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, temporary total disability, medical expenses, and prospective medical care, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below. The Commission further remands this case to the Arbitrator for further proceedings including a determination of permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

I. FINDINGS OF FACT

A. Background and Accidents

Petitioner has appealed two consolidated Decisions of the Arbitrator filed on August 1, 2022.

In 21 WC 1107, the parties agreed that Petitioner, a trailer and chassis mechanic for Respondent, suffered an accident when a chain broke and struck his back at work on September 22, 2020. The Arbitrator concluded that Petitioner missed no time from work, did not seek any treatment as a result of that accident, and that the expert opinions agreed that there was no causal connection between that accident and Petitioner's current condition. Accordingly, the Arbitrator awarded no benefits. The Commission affirms and adopts the Decision of the Arbitrator in 21 WC 1107 in a separate decision and opinion to be issued simultaneously with this decision.

In 21 WC 29100, Petitioner claimed that he injured himself while lifting a tire on December 16, 2020. The Arbitrator concluded that Petitioner failed to prove this second alleged accident, finding that Petitioner failed to provide a consistent or credible history of when or how his alleged injury occurred. Therefore, no benefits were awarded. For the following reasons, the Commission reverses the Decision of the Arbitrator in 21 WC 29100.

The evidence adduced at the hearing indicates the following facts. Petitioner testified through a translator that he had worked for Respondent as a trailer/chassis mechanic for approximately six years. He stated that his job duties included repairing lights, fixing brakes, cutting steel, welding, changing tires and building structures. He also stated that his job included lifting tires, brakes, chassis, bases to support the chassis, and other structures. He further stated that he worked from 10 to 12 hours daily. Petitioner testified that when he began working for Respondent, he had no prior problems with or treatment for his neck or back. On September 22, 2020, Petitioner was 46 years old.

Petitioner testified that on September 22, 2020, Petitioner was using a "come along" – a cranking device with chains on both sides – to pull two parts together on a chassis. According to Petitioner, while using the "come along," one side of the chain came loose and struck Petitioner in his left scapular region down towards his mid back. Petitioner immediately felt dizziness and pain. Petitioner stated that the accident was reported to his supervisor, Kaedyn Urban. A supervisor accident report and an employee accident/injury form were completed.

According to Petitioner, on advice from Respondent, he went home, took Tylenol and iced the affected area. He stated that the next day, Respondent advised him not to do a lot. Petitioner testified that he did not seek treatment because he was not advised to, and he did not ask because he needed to continue working to support his family. Petitioner stated that for heavy duties, he received assistance from his coworkers as advised by Mr. Urban. He stated that he had low back pain and worked through September, October, and November 2020.

Petitioner testified that in the beginning of December 2020, he was doing most of his job by himself. He stated that he sustained another injury one week before Christmas. Petitioner testified that on December 15 or 16, 2020, he was lifting and mounting a radial tire when he felt a hard or heavy pain in his neck. with numbness into his arm.[1] According to Petitioner, he told his co-workers, Rigo Contreras and Daniel Florez, that he was injured trying to change the tire. He stated that they contacted Mr. Urban, who told him to relax. Petitioner testified that he was given time off before and during Christmas, but when he returned, he advised Respondent that he could not work. He stated that Respondent directed him to go to the company doctor, Physicians Immediate Care.

Petitioner testified that he told Physicians Immediate Care about both the September 22nd and December 16th accidents. He stated that Physicians Immediate Care did not have an interpreter. He also testified that he had no problem communicating in English with Mr. Urban.

On cross-examination, Petitioner acknowledged that he filled out a September accident

[1] At the outset of the hearing, Petitioner amended his application to change the accident date from December 28, 2020 to December 16, 2020.

report and did not complete one in December 2020 but stated this was his supervisors' job. He further testified that the accident was December 15th or 16th, and that he was advised to take the weekend and came back on Monday. He stated that when he returned, he did not feel well but they told him to take more days off around Christmas and then return the following Monday. Petitioner later testified that another safety manager, not Mr. Urban, sent him to the company clinic on December 28, 2020.

Kaedyn Urban, formerly employed by Respondent in September and December 2020 as a supervisor, testified for Respondent. Mr. Urban testified that he no longer works for Respondent, appeared pursuant to subpoena, and implied that he did not leave Respondent's employ on the best of terms. He stated that Respondent's policy was that any accident was to be reported immediately and that he completed the paperwork "automatically." Mr. Urban testified regarding the September 2020 accident report. He further testified that Petitioner did not report any tire lifting incident in December 2020. He also stated that he would recall such an incident because he had specific instructions from his boss, Keith Manzel, to not allow Petitioner to do any lifting, tire lifting or heavy-duty work. Mr. Urban testified that he observed Petitioner performing lighter job duties, but not lifting heavy tires. He stated that he learned about the alleged December 2020 tire lifting incident about a month before the hearing. He agreed that he had no problem communicating with Petitioner.

On cross-examination, Mr. Urban agreed that Petitioner was a good worker and never dishonest to him. He did not recall whether Petitioner went to the company clinic on December 28, 2020.

B. Primary Care Between September and December 2020

On November 16, 2020, Petitioner was seen Dr. Juan Pinto as an established patient for left ankle pain over the prior two weeks. Dr. Pinto's examination disclosed no neck or back pain. On December 19, 2020, Petitioner was seen by Dr. Pinto for hyperlipidemia. Dr. Pinto's review of systems noted no neck pain or stiffness. Petitioner testified that Dr. Pinto was his family doctor and was not treating him for his neck or other injuries. He stated that Dr. Pinto referred him to Dr. Sampat for a second opinion regarding his neck.

C. Medical Treatment

On December 28, 2020, Petitioner was seen at Physician's Immediate Care. The note indicated that per a translator, Petitioner reported that on September 22, 2020, there was a work incident where a chain popped and hit him in the left back/shoulder area. He reported that his pain had since gotten worse and had increased to being bothersome with any movement. He also reported that his current job had a lot of vibrations and caused his left arm to feel weak. He further reported that he had been having sharp, shooting pain from his shoulder down the left arm to his hand for the last week and he has numbness in the left thumb and index finger. Petitioner rated his pain at 8/10. Following an examination on the same date, the nurse practitioner diagnosed Petitioner with cervicalgia, cervical radiculopathy, and "other muscle spasm." The nurse provided medication, ordered an MRI and prescribed physical therapy. He was released to work with lifting restrictions from December 28, 2020 through January 4, 2021.

On December 31, 2020, Petitioner underwent a cervical MRI at Future Diagnostic Group. The interpreting radiologist's impressions were of: (1) a left foraminal disc protrusion at C5-C6 contributing to moderate left foraminal stenosis and impingement on the exiting left C6 nerve root; and (2) degenerative changes and spondylosis in the remainder of the cervical spine.

On January 4, 2021, Petitioner returned to Physician Immediate Care. The note states a translator was present. Petitioner rated his pain at 5/10. After reviewing the MRI results, the nurse practitioner referred Petitioner to orthopedic surgery at Hinsdale Orthopaedics.

On January 7, 2021, Petitioner presented at Emediate Cure, complaining of back pain and left shoulder pain since September 22, 2020, when a tension chain struck his shoulder. He reported that his employer told him to continue to work. He also reported that his pain was controlled for the most part until December when he was performing another task at work and felt pain. He stated that by December 28, 2020, the pain became unbearable. Following an examination, the nurse practitioner diagnosed Petitioner with cervical radiculopathy and left shoulder pain. Petitioner was ordered to undergo physical therapy and to return to work with right hand work only.

On January 8, 2021, Petitioner presented to Dr. Cary Templin at Hinsdale Orthopaedics. Petitioner reported the September 22, 2020 injury. He also reported that he continued to work until December 2020, when he was lifting a tire and developed neck pain extending into the left arm, with numbness in the left thumb and index finger. He further reported that the problem began after the two injuries, but most notably lifting the tire. Dr. Templin diagnosed Petitioner with a cervical herniated disc with left C6 radiculopathy as a result of a work injury. He noted that the herniation was likely caused by the tire lifting. Dr. Templin recommended that Petitioner undergo a left C6 transforaminal injection. If the pain continued, he would recommend a C5-C6 fusion or disc replacement surgery. He kept Petitioner off work.

On January 13, 2021, Petitioner had his initial physical therapy evaluation at Athletico, presenting with subacute pain radiating to the left arm. Petitioner noted he was injured on September 22, 2020. On May 10, 2021, Petitioner was discharged after 30 sessions physical therapy for lack of insurance authorization and failure to progress.

On January 14, 2021, Petitioner followed up at Emediate Cure. Petitioner was waiting for approval for an injection, undergoing physical therapy, and not working per orthopedic recommendation. The nurse practitioner noted that Petitioner was to continue with the orthopedic treatment and physical therapy.

On February 12, 2021, Petitioner followed up with Dr. Templin, reporting significant relief from the injection, though he still had left arm pain extending into the fingers. He also reported he was getting stronger in physical therapy. Dr. Templin recommended a disc replacement at C5-C6.

On March 17, 2021, Dr. Templin authored a narrative report regarding Petitioner's condition (see below).

On March 31, 2021, Petitioner underwent a Section 12 examination by Dr. Julie Wehner at Respondent's request (see below).

On December 11, 2021, Petitioner presented to Dr. Chintan Sampat of Parkview Orthopaedic Group (on referral from Dr. Pinto), complaining of neck pain with numbness and tingling in the left upper extremity. Petitioner reported that he was first injured on September 22, 2020 and next injured in December of 2020 when he lifted a heavy tire at work. Petitioner also reported that an ESI provided him temporary relief. Following an examination, Dr. Sampat noted: "I also reviewed multiple documents, including a narrative report by Dr. Templin. I agree with Dr. Templin that the patient would benefit from C5-C6 anterior cervical discectomy with total disc arthroplasty." He estimated that Petitioner would reach MMI approximately three months after the surgery. He noted that Petitioner could work with a 20-pound restriction on lifting, pushing, and pulling. Petitioner's patient registration form referred only to September 20, 2020 as the date of injury. Petitioner's patient encounter form indicated the date of onset as September 20, 2020 but indicated both being struck by a chain at work and being injured at work after picking up a trailer.

On January 31, 2022, Petitioner returned to Dr. Sampat, who noted that Petitioner was recently seen at Silvery Cross Emergency Department, where the lumbar spine showed healing L2-L4 transverse fracture. The doctor noted that the fractures appeared to be healed and that no further intervention was required. Dr. Sampat noted that Petitioner was still awaiting surgical approval, but again opined that Petitioner could work with a 20-pound restriction on lifting, pushing, and pulling.

D. Section 12 Examination and Deposition Testimony by Dr. Julie Wehner

On March 31, 2021, Petitioner underwent a Section 12 examination by Dr. Julie Wehner at Respondent's request. She summarized Petitioner's reports of injuries on September 22, 2020 and in December 2020. Dr. Wehner examined Petitioner and reviewed the medical records, including the report of the cervical MRI and treatment notes from Dr. Pinto. Dr. Wehner opined Petitioner sustained a contusion to his back of his left shoulder area on September 22, 2020 which did not require any specific medical care and self-healed. The Doctor noted that there was no mention in Dr. Pinto's records of any subjective complaints of neck pain, shoulder pain or arm pain. She opined that the objective findings did not correlate with Petitioner's subjective complaints. She also opined that Petitioner's ongoing complaints have no relationship to the September 22, 2020 incident, that there was no need for specific treatment regarding that incident, and no indication for surgical intervention based on that incident. Dr. Wehner further opined that Petitioner had reached maximum medical improvement, did not require any treatment for that injury, and could return to unrestricted duty.

On August 3, 2021, Dr. Wehner issued an addendum addressing Petitioner's reported December 2020 incident. She noted there was no specific date in December when the tire lifting episode occurred. She opined that Petitioner would have been expected to report the episode to Physicians Immediate Care on December 28, 2020. Dr. Wehner noted that Dr. Templin's report of the second injury was not consistent with four treatment records from Dr. Pinto, Physicians

Immediate Care, or Emediate Cure. Accordingly, she opined that the medical facts did not support a separate injury in December 2020. She additionally opined that Petitioner's complained of neck and radicular pain in December 2020, but such complaints can occur spontaneously as part of life activities. She further opined that the onset of Petitioner's symptoms did not indicate causation due to the three-month hiatus from September 2020 and because Petitioner was able to work at full duty. Dr. Wehner concluded that the medical records indicated only a contusion on the September 22, 2020 date with self-resolution, followed by the spontaneous onset of neck pain and radiculopathy with no causal relation.

On October 12, 2021, Dr. Wehner, an orthopedic spine specialist, testified by deposition for Respondent. She generally relied on her Section 12 reports for her testimony. When asked whether the December 2020 incident was the type Petitioner would have mentioned to his medical providers in December and early January, Dr. Wehner testified: "Well, I think it would be prudent to mention that he was being treated by other providers for a medical condition and the medications he was taking for it."

On cross-examination, Dr. Wehner clarified that it was not her testimony that Petitioner had no injury to his cervical spine, but that there was no such injury on September 22, 2020, and there was no specific incident identified in December 2020 that caused the numbness and tingling in Petitioner's hand. She did not think that Petitioner was a malingerer. (25/616). She testified that Petitioner seemed motivated to work.

E. Narrative Report and Deposition Testimony by Dr. Cary Templin

On March 17, 2021, Dr. Templin authored a narrative report. The doctor summarized his treatment records and Petitioner's physical therapy records. He opined that Petitioner was suffering from a C6 radiculopathy as a result of a C5-C6 herniated disc, causing radiating pain extending into his periscapular region and into his arm with paresthesias. He also opined this was a work-related injury. He noted that Petitioner had an initial injury when he was hit in the back by a chain and later developed the onset of radicular symptoms in the process of lifting the tire. He opined that straining to lift such a tire would be a competent mechanism to cause a herniated disc in the cervical spine and led to his current condition of ill-being. He also opined that the treatment had been reasonable and necessary to date. Dr. Templin further opined that he would recommend a C5-C6 anterior cervical discectomy and disc replacement. He wrote that Petitioner would likely be able to return to full-duty work without restrictions after four weeks of post-surgical physical therapy. He added that Petitioner had been honest and truthful in his report of symptoms and showed no evidence of symptom magnification.

On September 21, 2021, Dr. Templin, a board-certified orthopedic surgeon, testified by deposition on behalf of Petitioner. Dr. Templin referred to his notes to refresh his recollection and his testimony generally was consistent with his treatment notes and narrative report. He opined that Petitioner's condition was not related to the September 22, 2020 accident. He also opined that Petitioner's condition was caused by the December 2020 accident Petitioner described to him. Dr. Templin further opined that lifting a heavy tire was certainly a competent cause of a herniated disc in the cervical spine, a diagnosis consistent with Petitioner's persistent complaints of neck and left arm pain and his MRI results. Dr. Templin testified that Petitioner's

treatment to date had been reasonable and necessary. He added that a C5-C6 disc replacement would alleviate Petitioner's radiculopathy and allow him to return to normal function. He found that Petitioner was honest and truthful in his reports of his symptoms.

On cross-examination, Dr. Templin agreed that he did not know the exact date of Petitioner's tire-lifting incident in December. He also agreed that he did not review any medical records for treatment that took place prior to his first examination on January 8, 2021. He specifically did not review the December 19, 2020 medical report with Petitioner's primary care physician. Dr. Templin further agreed that if someone lifted a tire and herniated a disk it would be a memorable event and that he would expect a patient to mention it to their medical providers. He later testified that he would expect the patient to mention the lifting incident if he was seeking treatment for this issue. On redirect examination, he testified that he would have to see Petitioner again to check his symptoms before prescribing the surgery he discussed.

F. Additional Information

Petitioner testified that he continued to work for Respondent throughout 2021 and into mid-April 2022, when he was dismissed for missing work. Petitioner stated that he experienced neck pain radiating into left arm and hand even while working light duty with restrictions. He also stated that he had very steady pain and tingling in all of his left arm, mainly in his fingers. He further experienced pain in his neck and left shoulder which recedes only with strong medication. He testified that he wished to undergo the surgery recommended by Dr. Templin.

II. CONCLUSIONS OF LAW

A. Accident

In 21 WC 29100, the Arbitrator concluded that Petitioner failed to establish that an accident occurred on December 16, 2020, finding that Petitioner failed to provide a consistent or credible history of his alleged injury. The Commission disagrees.

To obtain compensation under the Act, a claimant must show, by a preponderance of the evidence, that he suffered a disabling injury that arose out of and in the course of his employment. *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 194 (2002). A claimant's testimony about an alleged accident may be sufficient, standing alone, to justify an award, though it is not enough where a consideration of all the facts and circumstances shows the manifest weight of the evidence is against it. *Caterpillar Tractor Co. v. Industrial Comm'n*, 83 Ill. 2d 213, 218, (1980). When the Commission reviews an arbitrator's decision, it exercises original, not appellate, jurisdiction and is not bound by the arbitrator's findings, including those regarding credibility. See, *e.g.*, *Farris v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130767WC, ¶ 67; *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009).

In this case, Petitioner testified that on December 16, 2020, he suffered a cervical injury while mounting a heavy tire as part of a work order. Nothing in the record directly contradicts Petitioner's testimony on this point. The company clinic ordered an MRI which revealed a left foraminal disc protrusion at C5-C6 contributing to moderate left foraminal stenosis and

impingement on the exiting left C6 nerve root, which was diagnosed by Dr. Templin as a herniated disc shortly thereafter. Dr. Templin opined that Petitioner's condition was caused by the December 2020 accident Petitioner described to him. The Commission places greater weight on the opinion of Dr. Templin as it is supported by the objective medical evidence.

Respondent's Section 12 examiner, Dr. Wehner, admitted that Petitioner complained of neck and radicular pain in December 2020, but opined such complaints can occur spontaneously as part of life activities. However, there is no other life activity which would serve as a cause for the herniated disc suggested by the record and Dr. Wehner's opinion on this point should be considered speculative as applied to Petitioner. Moreover, Dr. Wehner asserted that Dr. Templin's report of the second injury was not consistent with four treatment records, but the January 7, 2021 note from Emediate Cure includes Petitioner's report that in December, he was performing another task at work and felt pain. In addition, when considering Petitioner's credibility, it is notable that Dr. Wehner agreed with Dr. Templin that Petitioner was not a malingerer and motivated to work, while Mr. Urban testified that Petitioner was honest. In short, Petitioner's testimony that he suffered an injury on December 16, 2020 while lifting a heavy tire for a work order is corroborated by the evidence that Petitioner was sent to the company clinic on December 28, 2020, that the MRI ordered by the clinic indicated that Petitioner had a herniated disc, the opinion of Dr. Templin that the herniated disc was not related to Petitioner's initial injury, and the opinion of Dr. Wehner that Petitioner's initial injury was a resolved contusion. Given the record in its entirety, the Commission reverses the Arbitrator's finding and concludes that Petitioner sustained an accident arising out of and in the course of his employment for Respondent on December 16, 2020 in case 21 WC 29100.

B. Notice

In 21 WC 29100, the Arbitrator concluded that Petitioner provided defective notice of the alleged December 16, 2020 accident as of January 8, 2021.

The giving of notice is a jurisdictional prerequisite to maintaining an action pursuant to the Act. *Precision Universal Joint v. Industrial Comm'n,* 205 Ill. App. 3d 1, 3 (1990). Section 6(c) of the Act provides that a claimant must give notice of an accident to his or her employer "not later than 45 days after the accident." 820 ILCS 305/6(c) (West 2022). However, a claim is barred only if no notice has been given. *Gano Electric Contracting v. Industrial Comm'n,* 260 Ill. App. 3d 92, 96 (1994). The legislature has mandated a liberal construction on the issue of notice; if some notice has been given, although inaccurate or defective, then the employer must show that it has been unduly prejudiced. *Id*.

In this case, Respondent argues in its brief that it received defective notice of the alleged December 2020 accident. Respondent makes no argument that it was unduly prejudiced or unable to properly investigate the claims against it. Accordingly, the Commission concludes that the claim is not barred by a lack of notice and affirms the findings of the Arbitrator on this issue.

C. Causal Connection

In 21 WC 29100, the Arbitrator concluded that Petitioner failed to prove an accident occurred on December 16, 2020 and thus failed to prove causal connection for his current condition of ill-being. The Commission views the record differently. In addition to finding that Petitioner sustained a work-related accident on December 16, 2020 as detailed above, the Commission further finds that Petitioner's current condition of ill-being is causally related to the accident of December 16, 2020.

In order to obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003).

In finding causal connection for Petitioner's condition of ill-being in this case, the Commission rejects Dr. Wehner's opinion that Petitioner's current condition was spontaneously caused by life activities as speculative. Dr. Templin testified that Petitioner's condition was caused by the December 2020 accident, and that lifting a heavy tire was certainly a competent cause of a herniated disk in the cervical spine, a diagnosis consistent with Petitioner's persistent complaints of neck and left arm pain and his MRI results. Accordingly, the Commission concludes that there is a causal connection between the December 16, 2020 tire lifting accident and Petitioner's current condition of ill-being.

D. Medical Expenses

In 21 WC 29100, the Arbitrator denied an award based on the lack of accident on December 16, 2020. Petitioner's medical bills exhibit indicates that the only unpaid medical provider is Dr. Sampat, while Dr. Pinto is the only paid provider whose charges were not paid by workers' compensation.

An employer is required to pay for all necessary medical, surgical, and hospital services that are reasonably required to cure or relieve the effects of an accidental injury sustained by an employee and arising out of and in the course of his employment. 820 ILCS 305/8(a) (West 2022). An employer's liability under this section of the Act is continuous so long as the medical services are required to relieve the injured employee from the effects of the injury. *Second Judicial District Elmhurst Memorial Hospital v. Industrial Comm'n*, 323 Ill. App. 3d 758, 764 (2001) (citing *Efengee Electrical Supply Co. v. Industrial Comm'n*, 36 Ill. 2d 450, 453 (1967)). However, the employee is only entitled to recover for those medical expenses which are reasonable and causally related to his industrial accident. *Second Judicial District Elmhurst Memorial Hospital*, 323 Ill. App. 3d at 764 (citing *Zarley v. Industrial Comm'n*, 84 Ill. 2d 380, 389 (1981)). The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 258, 267 (2011). If the employer fails to introduce any evidence to suggest that services rendered were not necessary or that the charges were not reasonable, an award to a claimant who presents some evidence in support of the award will be upheld. *Max*

Shepard, Inc. v. Industrial Comm'n, 348 Ill. App. 3d 893, 903 (2004); *Ingalls Memorial Hospital v. Industrial Comm'n*, 241 Ill. App. 3d 710, 718 (1993). Paid bills are presumptively reasonable. *City of Chicago v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 258, 267 (2011). Respondent raises no specific objection to Petitioner's claimed medical expenses other than it paid any medical expenses attributable to the September 22, 2020 accident and its denial that any accident occurred thereafter.

In 21 WC 29100, having found that Petitioner sustained a work accident which is causally connected to his current condition of ill-being, the Commission awards to Petitioner his necessary and reasonable medical expenses as stated in Petitioner's Exhibit 1, subject to the statutory fee schedule. The Commission also awards to Respondent a credit for sums already paid.

E. Prospective Care

The Arbitrator denied prospective care in both cases. As noted above, section 8(a) of the Act requires employers to pay all necessary medical, surgical, and hospital services that are reasonably required to cure or relieve the effects of the work-related injury. 820 ILCS 305/8(a) (West 2022). Specific procedures or treatments that have been prescribed by a medical service provider are "incurred" within the meaning of section 8(a) even if they have not been performed or paid for. *Bennett Auto Rebuilders, Inc. v. Industrial Comm'n*, 306 Ill. App. 3d 650, 655-56 (1999).

In 21 WC 29100, having found that Petitioner sustained a work accident which is causally connected to his current condition of ill-being, the Commission awards to Petitioner the C5-C6 anterior cervical discectomy and disc replacement surgery recommended by Dr. Templin, as well as any necessary and reasonable attendant care.

F. Temporary Total Disability

In 21 WC 29100, the Arbitrator denied Petitioner's claim for TTD for the period from April 15, 2022, through the hearing date of May 16, 2022. The dispositive test for awarding TTD benefits is whether the claimant has reached maximum medical improvement. *E.g.*, *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 759 (2003). Having found that Petitioner sustained a work accident which is causally connected to his current condition of ill-being, the Commission concludes that Petitioner is entitled to the requested TTD benefits because Petitioner is awaiting surgery and has not reached MMI. Accordingly, the Commission reverses the Arbitrator's denial of TTD benefits in 21 WC 29100 and awards benefits for the period from April 15, 2022 through the hearing date of May 16, 2022, a period of 4 and 4/7ths weeks.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner sustained an accident on December 16, 2020 that arose out of and occurred in the course of employment.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner's current condition of ill-being is causally related to the accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay Petitioner's reasonable and necessary as stated in Petitioner's Exhibit 1, pursuant to sections 8(a) and 8.2 of the Act. Respondent shall have credit for all amounts paid.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall authorize and pay for the C5-C6 anterior cervical discectomy and disc replacement surgery recommended by Dr. Templin, as well as any necessary and reasonable attendant care.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $552.17 per week commencing April 15, 2022 through the hearing date of May 16, 2022, a period of 4 and 4/7ths weeks, that being the period of temporary total incapacity for work under section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under section 19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed. Bond for the removal of this cause to the Circuit Court is hereby fixed at the sum of $4,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 17, 2023

d: 04/06/23
CMD/kcb
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC029100
Case Name	Leonel Huitron v. Illinois Transport
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	, Luis J. Magaña
Respondent Attorney	James Moran

DATE FILED: 8/1/2022

THE INTEREST RATE FOR THE WEEK OF JULY 26, 2022 2.92%

/s/ Roma Dalal, Arbitrator

Signature

MSTATE OF ILLINOIS)
)SS.
COUNTY OF **Will**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Leonel Huitron
Employee/Petitioner

v.

Illinois Transport
Employer/Respondent

Case # **21** WC **29100**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Roma Dalal**, Arbitrator of the Commission, in the city of **Joliet**, on **May 16, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☒ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☐ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Prospective Medical Treatment**

FINDINGS

On **12-16-2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**21,000.00**; the average weekly wage was $**828.25**.

On the date of accident, Petitioner was **46** years of age, ***single*** with **3** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $ for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $.

Respondent is entitled to a credit of $ under Section 8(j) of the Act.

ORDER

The Arbitrator finds that Petitioner did not sustain accidental injuries that arose out of and in the course of his employment on December 16, 2020. Based upon this finding, all benefits are hereby denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

AUGUST 1, 2022

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

ILLINOIS WORKERS' COMPENSATION COMMISSION

LEONEL HUITRON,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 21 WC 01107
ILLINOIS TRANSPORT,	)	Consolidated Cases: 21 WC 29100
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on May 16, 2022 in Joliet, Illinois before Arbitrator Roma Dalal on Petitioner's Request for Hearing. Issues in dispute for Case 21 WC 01107 causal connection, disputed medical bills, and prospective medical. Issues in dispute for Case 21 WC 29100 include accident, notice, causal connection, disputed medical, TTD benefits and prospective medical. (Arb. Ex.1 and 2).

At the beginning of trial, Petitioner amended the date of accident in the second case to December 16, 2020. (T.6, Arb. Ex.2). Petitioner noted the second Application originally had a date of accident of December 28, 2020. (T.6). Petitioner later clarified the original Application stated the date of accident was December 11, 2020 not December 28, 2020 and he was amending the same to December 16, 2020. (T.7).

Petitioner testified is a native Spanish Speaker and testified via translator. (T.8).

Leonel Huitron (hereinafter referred to as the "Petitioner") worked at Illinois Transport (hereinafter referred to as the "Respondent") for approximately six years as a trailer/chassis mechanic. (T.10-11). As a mechanic, he was responsible for tasks such as repairing lights, fixing brakes, cutting steel, welding, change tires and build structures. (T.11). Petitioner indicated that he did lifting involving tires, brakes, chassis, and other structures. (T.12).

When he began his employment with Respondent, Petitioner indicated he had no prior problems with his neck or back. (T.14). On September 22, 2020, Petitioner was using a "come along" to pull two parts together on a chassis. (T.15). Petitioner described this tool as a cranking device with chains on both sides used to pull heavy objects together. (T.15). While using the come along, one side of the chain came loose and struck Petitioner in his left scapular region down towards his mid back. (T.19). The accident was reported to his supervisor, Kaedyn Urban. (T.19).

A supervisor accident report and an employee accident/injury form were filled out. (RX7, RX8).

Petitioner advised he went home, took Tylenol and iced it. The next day they have advised him not to do a lot. (T.20). Petitioner did not seek treatment because he was not advised to, and he did not ask. (T.20). Petitioner kept working and couldn't perform 100 percent of the demands of his job because of pain. (T.21). He noted for the heavy stuff he had his friends or coworkers help. (T.21). His supervisor mentioned to his coworkers they could help him with the heavy stuff. (T.21). Petitioner testified he had low back pain and worked through September, October, and November. (T.22).

Petitioner testified beginning in December he was doing most of his job by himself. (T.22). Petitioner testified he sustained another injury a week before Christmas. (T.22). He testified he was given a big order and had to change a radial tire, which was a big tire. (T.22). Petitioner noted that he believed the date was either the 15 or 16. (T.23). He was about to mount one of the tires when he felt a hard or heavy pain in his neck. (T.23). Petitioner described the tire as being very heavy and, when he went to mount the tire, he felt "heavy" pain in his neck with numbness into his arm. (T.24). When this occurred, Petitioner indicated he told his co-workers, Rigo Contreras and Daniel Florez. (T.25). Petitioner testified his supervisor was called and Mr. Urban told him to relax. (T.25). Petitioner testified he was off one day before Christmas and when he returned, he advised Respondent he could not work. (T.27-28). He was subsequently advised to go to Physicians Immediate Care. (T.28).

Petitioner testified he told Kaedyn Urban about both accidents. (T.29). Petitioner testified he told Mr. Urban in English. Mr. Urban only spoke English. (T.30). Petitioner did testify, however, that he never had a problem communicating in English with Mr. Urban. (T.31).

On November 16, 2020 the Arbitrator notes Petitioner was seen Dr. Pinto for other issues involving his left ankle. There was no mention of any other body part. (PX12, p.10).

On December 19, 2020, Petitioner presented to Dr. Juan Pinto, his primary care physician. Dr. Pinto performed a full review of symptoms and specifically noted no pain, stiffness, or issues regarding the neck. (PX12, p. 15). Petitioner testified that Dr. Pinto was not treating him for his neck or other injuries. (T.35).

Petitioner testified that he told Physicians Immediate Care about both the September 22nd and December 16th accidents. (T.29). On December 28, 2020, Petitioner was seen at Physician's Immediate Care. (T.28, PX4). The note indicated a translator was present. Petitioner stated in September there was an incident at work where a chain popped and hit him in the left back/shoulder area. Pain has gotten worse. He noted a September 28, 2020 injury. Petitioner reported it was progressively worsening since September. (PX4, p.1). Petitioner was provided medication, an MRI and prescribed physical therapy. *Id.* at 4.

On December 31, 2020, Petitioner underwent a cervical MRI which showed a left foraminal disc protrusion at C5-6 contributing to moderate left foraminal stenosis and impingement on the exiting left C6 nerve report and degenerative changes and spondylosis. (PX4, p.27).

On January 4, 2021, Petitioner followed up with Physician Immediate Care. The note states a translator was present notwithstanding the Petitioner's testimony to the contrary. (PX4, p.28). Petitioner again provided a history of an onset on September 22, 2020 and was referred to Orthopedic surgery. (PX4, p.31).

On January 7, 2021, Petitioner presented to Emediate Cure. (PX3). Petitioner presented with back pain and left shoulder pain since September. Petitioner stated a tension chain broke and hit him on back and shoulder. He told his employer and continued to work. Pain was controlled for the most part until December when he was performing another task and felt pain. He noted by December 28 it became unbearable. Petitioner was diagnosed with cervical radiculopathy and left shoulder pain. Petitioner was to undergo physical therapy. He was to return to work with right hand work only. (PX3, p.3).

Petitioner testified that Emediate Cure referred him to Dr. Templin. (T.33).

On January 8, 2021, Petitioner presented to Dr. Cary Templin at Hinsdale Orthopaedics. Petitioner was a 47-year-old male noting he had two injuries. The first injury was on September 22, 2020 where he was pulling a chain over his shoulder. The chain was released and it him in the back. At that time, he just had pain to the back side of his shoulder. (PX5, p.5). He continued to work then in December 2020 he was lifting a tire and developed neck pain. He noted the problem began after the two injuries but most notably lifting the tire. Dr. Templin diagnosed Petitioner with a cervical herniated disc with left C6 radiculopathy. The herniation was likely caused by the tire lifting. Petitioner was to undergo a left C6 transforaminal injection. If the pain continued, he would recommend a C5-6 fusion or disc replacement. He should remain off work. (PX5, p.6-7).

On January 13, 2021 Petitioner had his initial physical therapy evaluation. Petitioner presented with subacute pain. Petitioner noted he was injured on September 22, 2020. He now had left sided neck and left arm pain. Petitioner was to undergo therapy two to three times a week for six week. (PX13, p.100). Petitioner continued with therapy through January and February 2021. (PX13)

Petitioner followed up with Emediate Cure on January 14, 2021. Petitioner was waiting for approval for an injection. Petitioner was also undergoing physical therapy. Petitioner was to continue with the orthopedic and physical therapy. (PX3, p.5-6).

Petitioner followed up on February 12, 2021. Petitioner underwent one injection that gave him significant relief. He also continued to undergo physical therapy. Petitioner was now recommended a disc replacement at C5-C6. (PX5, p.15).

As of March 10, 2021 Petitioner had undergone 21 therapy visits. Petitioner was to undergo therapy three times per week for an additional six weeks. (PX6, p.6).

On March 17, 2021 Dr. Templin authored a narrative report. Petitioner reported an injury on September 22, 2020 and a second injury in December of 2020. Dr. Templin opined Petitioner was suffering from a C6 radiculopathy as a result of a C5-6 herniated disc. This caused radiating pain extending into his periscapular region and into his arm with paresthesias. The Doctor opined this was a work-related injury. Petitioner had an initial injury when he was hit in the back by a chain, however, later was lifting a tire and in the process of lifting the tire developed onset of radicular symptoms. Straining to lift such a tire would be a competent mechanism to cause a herniated disc in the cervical spine. Treatment had been reasonable and necessary to date. Dr. Templin opined he would recommend a C5-6 anterior cervical diskectomy and disk replacement. (PX8).

On March 24, 2021 Petitioner was provided a functional status report. Petitioner had undergone 25 therapy visits. Petitioner continued to have neck pain but no longer had referred symptoms into the left shoulder. Petitioner was recommended continued therapy. (PX13, p.21). Petitioner continued with physical therapy. (PX13).

Dr. Wehner examined Petitioner at Respondent's request on March 31, 2021. (RX1). She went over Petitioner's two alleged injuries on September 22, 2020 and a December injury. Dr. Wehner examined Petitioner and reviewed the medical records. Dr. Wehner opined Petitioner sustained a contusion to his back of his left shoulder area on September 22, 2020. Petitioner did not require any specific medical care and self-healed. The Doctor noted Petitioner saw Dr. Pinto on November 16, 2020 for ankle swelling with no specific injury. There was no specific etiology. She further noted that there was no mention in the PCP record of any subjective complaints of neck pain, shoulder pain or arm pain. She felt he was at maximum medical improvement and did not require any treatment as a result of that injury. She noted there was no causal relationship between the cervical complaints and the September 22, 2020 accident. He could work full duty. (RX1).

On April 9, 2021 Petitioner had undergone 4 additional visits of therapy. Petitioner was to continue with physical therapy. (PX13, p.8). On May 10, 2021 Petitioner was discharged from physical therapy for failure to progress. (PX13, p.5).

On December 11, 2021 Petitioner presented to Dr. Chintan Sampat for neck pain with numbness and tingling in the left upper extremity. Petitioner noted he was first injured on September 22, 2020 and next injured in December of 2020. Petitioner noted the injection provided him short-term relief. Dr. Sampat diagnosed Petitioner, in part, with a left-sided paracentral disc herniation at C5-C6 that corresponds with his symptoms. Dr. Sampat then indicated, "I also reviewed multiple documents, including a narrative report by Dr. Templin. I agree with Dr. Templin that the patient would benefit from C5-C6 anterior cervical discectomy with total disc arthroplasty." (PX10, p.4-6).

On August 3, 2021, Dr. Wehner issued an addendum report wherein she reviewed additional medical records. She noted there was no specific date in December when the tire lifting episode happened. She noted Dr. Templin's report of the second injury was not consistent with the records of Physicians Immediate Care or Dr. Pinto. There were four date of medical records that do not mention a December injury. Based on the same, the medical records indicate only a contusion on the September 22, 2020 date with self-resolution. There was no causation. (RX2).

Petitioner testified that his primary physician, Dr. Pinto, referred him for a second opinion with Dr. Sampat. (T.36, PX10, p.6).

On the Patient information sheet filled out by Petitioner, Petitioner noted his symptoms began in September 2020 due to a work equipment failure. (PX10, p.43). Petitioner noted he had cervical spine and left arm pain. *Id*. at 47. The patient encounter form further noted an onset of symptoms on September 22, 2020. It noted it didn't bother him right away. It was noted that the injury worsened after picking up a trailer. *Id*. at 49. Petitioner also signed a patient form, indicating that his injury occurred in September 2020. *Id* at 21.

On December 11, 2021 Petitioner presented to Dr. Chintan Sampat on December 11, 2021. Petitioner reported a September 22, 202 injury that did not bother him right away but then started having neck pain

radiating down the left upper extremity. The second injury was also noted when he lifted a heavy tire at work in December of 2020.

On January 31, 2022 Petitioner presented to Dr. Chintan Sampat. Petitioner was a 48-year-old male who presented with mild low back pian since he had a work injury on September 22, 2020. He was recently seen at Silvery Cros Emergency Department where the lumbar spine showed healing L2-L4 transverse fracture. He did not have any other injuries prior to the September 22, 2020 injury. Petitioner was recommended surgery for his cervical spine. (PX10, p.2).

Deposition Testimony

On September 21, 2021, the Parties proceeded with the deposition of Dr. Cary Templin. (PX16). Dr. Templin is board certified and predominantly works with adults with ailments of the cervical, thoracic, and lumbar spine. (PX16, p.5). Petitioner saw Petitioner twice for his cervical spine and drafted a narrative opinion. *Id*. at 6. Petitioner reported two injuries, one that occurred on September 22, 2020 when he was pulling a chain over his shoulder, and it released and hit him in the backside of his shoulder and another one in December of 2020 when he was lifting a tire. *Id*. at 8. Dr. Templin noted he did not review any medical records prior to January 2021. *Id*. at 9. Petitioner complained of neck pain extending into his left arm. *Id*. at 9. He reviewed the MRI and diagnosed Petitioner with a C5-6 herniated disc with left C6 radiculopathy, for which he recommended an injection. *Id*. at 11. Dr. Templin noted the injection gave him significant relief which helped solidify the diagnosis of left C6 radiculopathy. *Id*. at 12. Given, Petitioner's continued symptoms, he recommended a disk replacement at level of C5-6. *Id*. at 12.

Dr. Templin noted Petitioner's current condition is not related to the September 22, 2020 accident. (PX16, 14). Dr. Templin did testify that it would be related to a December injury when he was lifting a heavy semi-tire, which is certainly a competent cause of a herniated disk in the cervical spine. He opined treatment to date had been reasonable and necessary. *Id*. at 15. He further explained a C5-6-disc replacement would alleviate Petitioner's radiculopathy and allow him to return to normal function. *Id*. at 16.

On Cross-Examination, Dr. Templin noted that he did not know the exact date this happened in December. (PX16, p.20). Dr. Templin noted he did not review any medical records prior to the first examination. *Id*. Dr. Templin conceded if someone lifted a tired and herniated a disk it would be a memorable event and it would be expected a patient would mention it to their medical provider. *Id*. at 23. Dr. Templin noted he did not review the December 19, 2020 medical report with his primary physician. *Id*. at 23.

The parties proceeded with the deposition testimony of Dr. Julie Wehner on October 12, 2021. (RX3). Dr. Wehner testified she performed a Section 12 examination on March 31, 2021. Petitioner reported a September 22, 2020 injury when working on a chassis and trying to straighten the chassis when the chain broken, and it hit his upper back and left shoulder area. *Id*. at 5. He reported it to his supervisor and took two days off and gradually got better. Petitioner also stated that in December he felt a pull in his left shoulder when he was installing a tire on a trailer and using an air hammer. He advised his supervisor again he was told to take it easy. *Id*. at 6. Dr. Wehner went over the medical care and examined Petitioner. *Id*. at 7. Dr. Wehner advised Petitioner was diagnosed with a contusion for the first injury. Petitioner advised her he was told to do what he could at work with no specific limitations. Petitioner also saw his

primary care physician for routine visits on 11/16 and 12/19/20 with no mention of any neck or shoulder pain. *Id*. at 10. Dr. Wehner opined Petitioner suffered a contusion to the posterior shoulder area that self-healed. *Id*. at 11. As of March 31, 2021, Petitioner could work without restrictions in regards to the September 22, 2020 injury. She further opined Petitioner had reached maximum medical improvement for the September 22, 2020 injury. *Id*. at 13. Dr. Wehner noted there was no specific date in December and evidenced by the December 28, 2020 medical note. *Id*. at 16. Dr. Wehner conceded that she believed Petitioner was not a malingerer and motivated to work. *Id*. at 25.

At trial Petitioner testified that he continued to work for Illinois Transport throughout 2021 and into 2022. (T.39). Petitioner testified at the time of trial he experienced neck pain radiating into left arm and hand. (T. 40). He testified he wished to undergo the surgery recommended by Dr. Templin. (T. 41).

On Cross-Examination, Petitioner acknowledged that he filled out a September accident report but did not fill out any documentation at any time in December 2020. (T.47).

He further testified that the accident was the 15th or 16th of December, and he was told to go home. Then he was advised to take the weekend and came back on Monday. He stated he did not feel well but they told him to take more days off around Christmas and then come back the following Monday. (T.49). Petitioner later testified that Mr. Urban did not send him to the company clinic on December 28, but rather another safety manager.

Kaedyn Urban

Respondent called Kaedyn Urban to testify. Mr. Urban was employed by Illinois Transport in September and December of 2020 as the M and R supervisor. (T.50-51). Mr. Urban testified he no longer works with Illinois Transport and did not leave on the best terms. (T.51-53).

Mr. Urban testified he worked with Petitioner for 5 years as his direct supervisor. (T.54). Mr. Urban testified that if any incident occurred, they would have to fill out paperwork automatically. (T.54). Mr. Urban testified to Petitioner's initial September injury and the accident report he filled out. (T.55, 57). Mr. Urban testified he had a red mark that began around the shoulder blade area slanted down to his mid/low back. (T.56).

Mr. Urban further testified that Petitioner did not report any tire lifting incident in December 2020. (T.59). If another incident in December 2020 occurred, Mr. Urban testified he would have filled out a report. (T.60). He further testified he had specific instructions from his boss, Keith Manzel, to not allow Petitioner to do any lifting, tire lifting or heavy-duty work. He told the mechanics to report if Petitioner did such a thing. He was never told he was lifting or saw him lifting one. (T.60). He further advised that he observed Petitioner performing lighter job duties. (T.60). Mr. Urban testified to his knowledge no one provided Petitioner an order that involved lifting heavy tired. (T.61). Additionally, he testified he learned about the December 2020 tire lifting incident about a month ago. (T.61).

Mr. Urban further testified that in all the years he worked with Petitioner he never had a communication problem with him when it was face to face. (T.61). In his opinion Petitioner's English skills were good. (T.62).

On Cross-Examination, Mr. Urban testified that Petitioner was a good worker and never dishonest. (T.62). He was a good worker and always did what he asked him to do. (T.63). Mr. Urban testified that the only policy is that they have to fill out the reports. Then they ask the mechanics if they want to do go home to rest or go to the clinic. (T.64). He further testified that he does not recall Petitioner going to the company clinic on December 28, 2020. (T.65).

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

In this case the Arbitrator finds Petitioner's testimony does not comport with the medical evidence submitted into trial. The Arbitrator does not deem Petitioner's statement regarding the second accident credible.

WITH REGARD TO (C) WHETHER AN ACCIDENT OCCURRED THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

A decision by the Commission cannot be based upon speculation or conjecture. Deere and Company v Industrial Commission, 47 Ill.2d 144, 265 N.E. 2d 129 (1970). A petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. Illinois Institute of Technology v. Industrial Commission, 68 Ill.2d 236, 369 N.E.2d 853 (1977). Where a petitioner fails to prove by a preponderance of the evidence that there exists a causal connection between work and the alleged condition of ill-being, compensation is to be denied. Id. The facts of each case must be closely analyzed to be fair to the employee, the employer, and to the employer's workers' compensation carrier. Three "D" Discount Store v Industrial Commission, 198 Ill.App. 3d 43, 556 N.E.2d 261, 144 Ill.Dec. 794 (4th Dist. 1989).

The burden is on the Petitioner seeking an award to prove by a preponderance of credible evidence all the elements of his claim, including the requirement that the injury complained of arose out of and in the course of his or her employment. Martin vs. Industrial Commission, 91 Ill.2d 288, 63 Ill.Dec. 1, 437

N.E.2d 650 (1982). The mere existence of testimony does not require its acceptance. Smith v Industrial Commission, 98 Ill.2d 20, 455 N.E.2d 86 (1983). To argue to the contrary would require that an award be entered or affirmed whenever a claimant testified to an injury no matter how much his testimony might be contradicted by the evidence, or how evident it might be that his story is a fabricated afterthought. U.S. Steel v Industrial Commission, 8 Ill.2d 407, 134 N.E. 2d 307 (1956).

The Illinois Supreme Court has held that a claimant's testimony standing alone may be accepted for the purposes of determining whether an accident occurred. However, that testimony must be proved credible. Caterpillar Tractor vs. Industrial Commission, 83 Ill.2d 213, 413 N.E.2d 740 (1980). In addition, a claimant's testimony must be considered with all the facts and circumstances that might not justify an award. Neal vs. Industrial Commission, 141 Ill.App.3d 289, 490 N.E.2d 124 (1986). Uncorroborated testimony will support an award for benefits only if consideration of all facts and circumstances support the decision. See generally, Gallentine v. Industrial Commission, 147 Ill.Dec 353, 559 N.E.2d 526, 201 Ill.App.3d 880 (2nd Dist. 1990), *see* also Seiber v Industrial Commission, 82 Ill.2d 87, 411 N.E.2d 249 (1980), Caterpillar v Industrial Commission, 73 Ill.2d 311, 383 N.E.2d 220 (1978). It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence, and assign weight to the witness' testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v Workers' Compensation Commission, 397 Ill.App. 3d 665, 674 (2009).

The courts presume that when a person seeks treatment for an injury, he will not falsify statements to a physician from whom he expects to receive medical aid. Shell Oil Co. v. Industrial Comm'n, 2 Ill.2d 590, 592 119 N.E. 2d 224, 226 (1954).

Petitioner alleges two dates of accident, September 22, 2020 and December 16, 2020. (Arb. Ex. 1 and 2). The Arbitrator will address each one individually.

September 22, 2020

The parties stipulated Petitioner suffered a compensable accident arising out of and in and in the course of his employment on September 22, 2020. On that date, a chain broke and struck Petitioner's back. The accident was reported, accident reports were filled out, and Petitioner provided a consistent history of injury to his medical providers. Petitioner proved a compensable accident on this date.

December 16, 2020

The accident in dispute is Petitioner's alleged December 16, 2020 injury.

An injury is compensable under the Illinois Workers' Compensation Act only if it arises out of and in the course of employment. Panagos v. Industrial Commission, 177 Ill. App.3d 12, 524 N.E.2d 1018 (1988). The burden is upon the party seeking an award to prove by the preponderance of the credible evidence the elements of his claim. Peoria County Nursing Home v. Industrial Commission, 115 111.2d 524, 505 N.E.2d 1026 (1987). The burden is also upon the employee to prove that his or her injuries are causally related to the employment. New Guard v. Industrial Commission, 58 M.2d 164, 317 N.E.2d 524 (1974). Critical to the determination of the aforementioned is Petitioner's credibility.

An injury is accidental within the meaning of the Act when it is traceable to a definite time, place, and cause and occurs in the course of the employment, unexpectedly and without affirmative act or design of the employee. Mathiessen & Hageler Zinc Co. v. Industrial Board, 284 Ill. 378 (1918). The aggravation of a preexisting disease may be an accidental injury and compensable if it meets the requirements that the occurrence is traceable to a definite time, place, and cause. Riteway Plumbing v. Industrial Comm'n, 67 Ill.2d 404(1977).

In this matter, the Arbitrator finds Petitioner failed to meet his burden of proof in establishing that an accident arose of out of and in the course of his employment by Respondent on December 16, 2020. In support of this finding, the Arbitrator finds Petitioner failed to provide a consistent or credible history of when or how his alleged injury occurred. In support of this finding, the Arbitrator relies on both certified medical records that were entered into evidence at trial and Mr. Urban's testimony. Lastly, the Arbitrator notes that on the date of trial, Petitioner changed his alleged injury date.

With regard to Petitioner's medical records and treatment history, Petitioner testified he sustained a second injury on December 15 or 16 reporting the same immediately to Mr. Urban. Petitioner later saw his family practitioner, Dr. Pinto, on December 19, 2020. Dr. Pinto's records are void of any mention of any work injury. There is no record Petitioner complained of any increased neck pain. Petitioner testified by this time he was sent home as his neck pain was worsening. The Arbitrator also notes Petitioner previously advised that Dr. Pinto of neck pain and Dr. Pinto referred him to Dr. Sampat. If Petitioner had an acute injury, it would be logical for Petitioner to advise Dr. Pinto as Dr. Pinto was the one who referred him to Dr. Sampat. The Arbitrator also notes Dr. Templin testified if someone lifted a tire and herniated a disk it would be a memorable event and it would be expected a patient would mention it to their medical provider. (PX16, p.23). If this lifting incident occurred, the Arbitrator would anticipate Petitioner mentioning the same to his provider on December 19, 2020.

Petitioner testified he returned to work but then again could not do anything and was sent home again for the Christmas holiday. It was not until at least 12 days after the alleged injury, Petitioner complained of increased neck pain. Petitioner testified he was sent to the Company clinic which his corroborated by the medical record on December 28, 2020.

The medical records, however, are void of any mention of a December injury or any mention of any type of lifting injury. Rather the medical record details the September 22, 2020 injury about when the chain broke. The Arbitrator notes there is no mention of any type of tire or lifting injury anytime in the month of December on this date.

The Arbitrator notes Petitioner testified to a detailed specific accident sometime in December yet does not mention the same to any of his providers. Even when Petitioner saw Dr. Templin in January, he does not mention the date he was injured or even the timeframe, i.e., before the Christmas holiday. Again, the Arbitrator finds that a specific incident would be somewhat memorable as noted by Dr. Templin. What was memorable, what Petitioner's September 22, 2020 injury that he mentioned in detail to all of his providers.

The Arbitrator also notes both Petitioner and Mr. Urban testified to Respondent's policy that all accidents are to be reported immediately. Mr. Urban, who was terminated along with his wife when he provided two weeks' notice and testified, he does not have relationship with the Respondent and appeared to testify

pursuant to subpoena to testify Petitioner did not report the December 2020 accident. When Petitioner initially reported the September 22, 2020 injury, Mr. Urban filled out the accident report. The Arbitrator finds if Petitioner sustained a December 16, 2020 injury or an injury around that timeframe and reported the same to Mr. Urban, as he testified he did, Mr. Urban would have filled out another accident report.

In addition, Petitioner's treating physician, Dr. Templin, testified he did not review any of the medical records between the time of the December 16, 2020 alleged accident and his examination of the Petitioner on January 8, 2021. Dr. Templin could have reviewed the same and explained the inconsistences but rather he solely testified that he would have expected Petitioner to describe any incident where he might have lifted a heavy tire and herniated a cervical disc.

The medical records go into great detail regarding the September 22, 2020 injury. Based the same, the Arbitrator finds Petitioner did not sustain his burden of proof that he sustained a December 16, 2020 accident given the multiple medical histories that did not mention it but went into great detail regarding Petitioner's September 2020 accident. Lastly, Petitioner testified to three co-employees he allegedly told about his accident, but none were mentioned in the court documents, and Petitioner did not present their testimony.

Petitioner testified quite specifically as to the details of the incident at trial. The same details are lacking in the records contemporaneous with the alleged accident. It is illogical to assume that if Petitioner told all these providers of the incident, that none of them made note of it. If the Petitioner's testimony as to accident is to be believed, then the medical records and opinion he relies upon cannot be reconciled. The inconsistencies between the records and the testimony support Respondent's position on accident.

The Arbitrator finds that Petitioner's testimony is not sufficient to sustain his burden of proof, especially in light of the long-standing principle expressed in Shell Oil v. Industrial Comm'n, 2 Ill.2d 590, 602 (1954), where the Illinois Supreme Court held that contemporaneous medical records are more reliable than later testimony because "it is presumed that a person will not falsify such statements to a physician from whom he expects and hopes to receive medical aid."

Given these factors, the Arbitrator finds Petitioner failed to meet his burden in proving he suffered a specific accident arising out of and in the course of his employment on December 16, 2020. The Arbitrator specifically finds Petitioner's testimony lacked credibility as it related to the date of the alleged incident, the history to his providers, the presence of an interpreter when discussing the etiology of his neck condition with his providers, and the identity of those to whom he claims to have given notice.

WITH REGARD TO (E) WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The parties stipulated Petitioner provided timely notice on September 22, 2020. Accident reports were filled out by the Respondent and Petitioner, and Petitioner has told a consistent story regarding the date and events surrounding his accident on that date.

With regards to the December 16, 2020 accident, the Arbitrator finds Petitioner provided defective notice as of January 8, 2021. The Arbitrator, however, previously found Petitioner failed to meet his burden in

proving he suffered a specific accident arising out of and in the course of his employment on December 16, 2020. Based on the same, the Arbitrator finds this issue moot.

WITH REGARDS TO (F) WHETHER THE PETITIONER'S CURRENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO HIS INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds Petitioner suffered a shoulder/mid back injury as a result of the September 22, 2020 accident. He missed no time from work and did not seek any treatment as a result of that accident.

In so finding, the Arbitrator specifically notes that all medical providers opined Petitioner's cervical condition would not be a result of the September 22, 2020 accident.

Having found the Petitioner did not meet his burden in proving an accident on December 16, 2020, the Arbitrator finds Petitioner failed to prove his cervical condition is the result of any work-related injury.

Therefore, based upon the foregoing, the Arbitrator finds that Petitioner's condition of ill being is not causally related to his employment with Respondent.

WITH REGARDS TO (J) MEDICAL, (K) TEMPORARY TOTAL DISABILITY BENEFITS AND (O), PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Having found the Petitioner suffered a September 22, 2020 accident for which all benefits were paid and having also found the Petitioner failed to meet his burden in proving he suffered a December 16, 2020 accident, the Arbitrator finds Petitioner is not entitled to any temporary total disability benefits. The Arbitrator also finds the Petitioner is not entitled to payment of any outstanding medical bills nor prospective medical treatment.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC012925
Case Name	Edward Davis v. City of Rockford
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0178
Number of Pages of Decision	20
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Joshua Rudolfi
Respondent Attorney	Kevin Luther

DATE FILED: 4/17/2023

/s/ Kathryn Doerries, Commissioner

Signature

23IWCC0178

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
X modify Section 8.1b(b), factor (v)	☐ PTD/Fatal denied
☒ Modify reduce PPD	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EDWARD DAVIS,

Petitioner,

vs. NO: 17 WC 12925

CITY OF ROCKFORD,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, medical expenses, and permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission, herein, affirms the Arbitrator's decision as to accident, causal connection, temporary total disability, and medical expenses.

The Commission, herein, affirms the Arbitrator's Section 8.1b(b) findings as to factors (i) through (iv) but modifies factor (v) and reduces the permanent partial disability award.

(v). Regarding evidence of disability corroborated by the treating medical records, as a result of the work-related accident of April 17, 2017, Petitioner was diagnosed by Dr. Vaid with acute stress reaction, potentially adding to his pre-existing condition of PTSD, depression, and anxiety. Petitioner had received medical treatment for PTSD since 1994, as a result of his service-connected condition. The W.S./Middleton V.A. records of November 20, 2017, described Petitioner's mood as nervous due to leaving the safety zone of his home. They noted Petitioner received PTSD treatment in the past which had been beneficial, but had the new traumatic event of April 17, 2017, when Petitioner was held at

gunpoint while performing work duties, resulting in a new onset of PTSD symptoms and notably triggering prior experiences. Dr. Mahoney, Respondent's examiner, diagnosed Petitioner with adjustment disturbance in the immediate aftermath which could have exacerbated his PTSD. Dr. Mahoney opined Petitioner suffered no permanent impairment, and required no additional treatment that was reasonable, necessary or causally related to the April 17, 2017, incident. He testified further treatment would be related to his pre-existing diagnoses.

Petitioner testified that at the time of the accident he was taking mood control medication, Sertraline. Petitioner was a 2-time combat veteran and was discharged from the service in 1993 and sought mental health treatment in 1994. On April 20, 2017, he was prescribed additional medications, specifically Propranolol and Gabapentin. He testified the Propranolol helped with sleep disorders and Gabapentin was for anxiety. Petitioner testified Mr. Policarpio had recommended Petitioner engage in physical activity and recommended Petitioner attend a gym to help work out some of Petitioner's aggression and burn off some of the anxiety. Petitioner testified Dr. Vaid released Petitioner from medical treatment but had indicated Petitioner would require further care for the PTSD condition. Significant weight is given to this factor.

Based on the foregoing factors, the Commission reduces the permanency award to 5% loss of Petitioner's person as a whole, 25 weeks for injuries sustained as provided in Section 8(d)(2) of the Act. Therefore, the Respondent shall pay Petitioner the sum of $510.00 for a period of 25 weeks for injuries sustained as provided in Section 8(d)(2) of the Act.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $566.66 per week for a period of 21-5/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $510.00 per week for a period of 25 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the 5% loss of use of Petitioner's person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $18,902.78 to the Department of Veterans Affairs, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 17, 2023
o-2/21/23
KAD/jsf

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

SPECIAL CONCURRING OPINION

This case was scheduled for Oral Argument on February 21, 2023, before a three-member panel of the Commission including members Kathryn A. Doerries, Maria E. Portela, and Thomas J. Tyrrell, at which time Oral Arguments were either heard, waived or denied. Subsequent to Oral Arguments and prior to the departure of member Tyrrell on March 17, 2023, a majority of the panel members reached agreement as to the results set forth in this Decision and Opinion, as evidenced by the internal Decision worksheet initialed by the entire three-member panel. However, no formal written decision was signed and issued prior to member Tyrrell's departure.

I was not a member of the panel in question at the time Oral Arguments were heard, waived or denied, and I did not participate in the agreement reached by the majority in this case. However, I have reviewed the Decision worksheet, which shows that former member Tyrrell voted with the majority in this case, and have reviewed the provisions of the Supreme Court in *Zeigler v. Industrial Commission*, 51 Ill.2d 137, 281 N.E.2d 342 (1972), which authorizes signature of a Decision by a member of the Commission who did not participate in the Decision. Accordingly, I am signing this Decision in order that it may issue.

/s/*Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC012925
Case Name	DAVIS, EDWARD v. CITY OF ROCKFORD
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Joshua Rudolfi
Respondent Attorney	Kevin Luther

DATE FILED: 6/27/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 22, 2022 2.39%

/s/Michael Glaub, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Edward Davis
Employee/Petitioner
v.
City of Rockford
Employer/Respondent

Case # **17** WC **12925**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Glaub**, Arbitrator of the Commission, in the City of **Rockford**, on **April 29, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **4/17/2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**44,200.00**; the average weekly wage was $**850.00**.

On the date of accident, Petitioner was **48** years of age, ***married*** with **1** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**2347.54** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**2347.54**.

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

Medical benefits

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $18,902.78 to the Department of Veterans Affairs, as provided in Sections 8(a) and 8.2 of the Act.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $566.66/week for 21 5/7 weeks, commencing 4/20/2017 through 9/22/2017, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $2347.54 for temporary total disability benefits that have been paid.

Permanent Partial Disability

The Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 7.5% loss of use of the Person as a Whole pursuant to §8(d)(2) of the Act. Respondent shall pay the petitioner $19,125.00 representing 37.5 weeks of compensation at a permanency rate of $510.00

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Michael Glaub **JUNE 27, 2022**

Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Edward Davis,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 17 WC 12925
	)	
City of Rockford,	)	
	)	
Respondent.	)	

STATEMENT OF FACTS

Petitioner is a 53-year-old man who worked for the City of Rockford from September 5, 2005 to August 21, 2017. Transcript of Arbitration (hereinafter referred to as "R.") at 7-8. Petitioner's position was as a "Level 1 sign and marking tech", which required him to drive around the city to maintain the 30,000 street signs up to State, Federal, and Local levels. R. at 8. Petitioner was on the streets on Rockford every day. R. at 9.

Petitioner was working for Respondent in this capacity on April 17, 2017. R. at 9. Petitioner was at the corner of Kishwaukee and Pope Street inspecting a stop sign that had been knocked down when two men approached him. R. at 9. One of the men put a gun to Petitioner's head and demanded his wallet, which Petitioner handed over. R. at 9-10. The two men then left and Petitioner went immediately to his work vehicle, driving to a safe area, and reporting the incident to his supervisor, Mr. Gerard White. R. at 10. Petitioner went to a fire station where the police were called and a police report completed. R. at 10. Petitioner completed the rest of his scheduled shift that day. R. at 10.

On April 20, 2017 Petitioner sought medical care with Dr. Khatija Vaid, a psychiatrist with the William S. Middleton Memorial Veterans Hospital. Pet. Ex. #3. Petitioner reported to Dr. Vaid that he had been held up at gunpoint and had been feeling very anxious, angry, irritable and

having lots of negative thoughts, flashbacks, and hypervigilance. *Id.* Dr. Vaid recorded that Petitioner had a history of Major Depressive Disorder but had not been seen in his clinic since June 6, 2016, nearly a year before, but had been on Sertraline 200mg (for mood) and Zolpidem 10mg (for sleep). *Id.* Dr. Vaid diagnosed Petitioner with Acute Stress Disorder and prescribed Propranolol and Gabepentin(for anxiety) along with psychotherapy with Mr. Joseph Policarpio *Id.* Petitioner was also placed off work effective April 20, 2017. Pet. Ex. #1. Petitioner began psychotherapy with Mr. Policarpio the next day, on April 21, 2017 and attended 2-3 times per week. Pet. Ex. #3.

Petitioner followed up with Dr. Vaid on April 27, 2017. *Id.* Dr. Vaid indicated that Petitioner was still suffering from anxiousness, irritability, lack of sleep, and nightmares. *Id.* Dr. Vaid increased Petitioner's Gabepentin and continued the rest of Petitioner's medication and psychotherapy. *Id.* Dr. Vaid indicated in her notes that it was hoped that Petitioner would complete care for this condition within 6 to 12 months. *Id.* Dr. Vaid again continued Petitioner off work. Pet. Ex. #1. Petitioner testified that he was receiving TTD from Respondent during this period. R. at 22. Petitioner continued psychotherapy with Mr. Policarpio during this period and was recommended to go to the gym 3-4 times per week in order to help combat the development of social and behavioral avoidance that led to further development of PTSD. Pet. Ex. #3. Petitioner testified that he did attend the gym during this period. R. at 17-18.

Petitioner followed up with Dr. Vaid on May 11, 2017. *Id*. Dr. Vaid noted that Petitioner continued to complain of anxiety, depression, nightmares, and irritability. *Id.* Dr. Vaid continued Petitioner's medication, including Gabepentin, psychotherapy, and continued Petitioner off work. *Id.* Petitioner continued his psychotherapy with Mr. Policarpio. *Id.*

Petitioner followed up with Dr. Vaid on June 16, 2017. *Id.* Dr. Vaid noted continued complaints of anxiety, depression, nightmares, and irritability. *Id.* Dr. Vaid increased Petitioner's Gabepentin from 200mg to 300mg due to continued anxiety from Petitioner's acute stress disorder. *Id.* Dr. Vaid again kept Petitioner off work for an additional 8 weeks due to continued symptons. Pet. Ex. #1. Petitioner continued psychotherapy during this time with Mr. Policarpio. Pet. Ex. #3.

On June 29, 2017, Respondent sent Petitioner for an Independent Medical Evaluation with Dr. Neil Mahoney. Resp. Ext. #4. Dr. Mahoney reviewed Petitioner's prior medical records with the VA and administered a battery of psychological tests. *Id.* Dr. Mahoney opined that Petitioner's psychological complaints at the time of the IME were not related to the work accident. Dr. Mahoney opined that Petitioner symptoms were a manifestation of his chronic, long-standing PTSD and personality traits. *Id.* Dr. Mahoney believes that Petitioner's response to the April 17, 2017 robbery could best be described as an "Adjustment Disturbance", a time limited reaction to a stressor oh any severity. Dr. Mahoney noted that believed that Petitioner's condition was motivated by secondary gain. *Id*. He believed Petitioner was at MMI as of June 29, 2017 and could return to work in a full-duty capacity. *Id.*

Petitioner again saw Dr. Vaid on August 11, 2017. Pet. Ex. #3. On that date Petitioner reported that he had begun having "movements (sic) of happiness sometimes, but I (sic) still anxious, depressed, and irritable other times." *Id.* He further noted that his memories of the robbery were "fading down", that he was becoming "less edgy", and that he was sleeping better. He reported going to the gym 2-3 times per week. *Id.* Dr. Vaid continued the Gabepentin at 300mg as it appeared to be helping. *Id.* Dr. Vaid and Mr. Policarpio authored a note that day indicating that they recommended that Petitioner be given additional time to complete his therapy before making a full duty return to work, which they projected to be completed by September 22, 2017,

with a tentative return to work date of September 25, 2017. Pet. Ex. #1. They indicated that it would be against medical advice for Petitioner to return to work prior to that date as Petitioner would not have received the full benefit of the current psychological treatment that is directly focused on handling the upcoming stresses of his position. *Id.* Petitioner continued his psychotherapy at this time. Pet. Ex. #3.

On September 8, 2017 Petitioner was discharged from psychotherapy by Mr. Policarpio. *Id.* Mr. Polipario noted that, "Veteran was initially seen for acute stress disorder which then became a new episode of his chronic PTSD. Veteran responded well to tx. Veteran is reporting improvement in mood, reduction in anxiety and fear of public places. Veteran came in today stating that he felt good enough to discontinue tx and that he had gotten out of it all that he needed. Veteran is considered to have completed tx. Pet. Ex. #3, pp. 51

Petitioner followed up with Dr. Vaid on September 22, 2017. *Id.* Dr. Vaid noted that Petitioner reported that he was at "maximum capacity" and continued Petitioner's medications. *Id.*

Petitioner testified that he did not return to work for Respondent following his release as he was terminated by letter on August 21, 2017. R. at 18, Resp. Ex. #3. Petitioner testified that during the 12 years that he worked for Respondent he never had any issues performing his full duty work, especially during the four years working as a Level 1 Sign and Marking Tech. R. at 19-20.

Petitioner testified that he served in the US Army and received psychological treatment upon his discharge in 1994 for major depression and PTSD. R. at 21. Petitioner treated through the VA System, with his last appointment prior to the work incident being June 6, 2016. Pet. Ex. #4. On that date Petitioner saw Dr. Vaid and it was noted that Petitioner was "mostly good",

motivation is good, concentration is okay, and that he was sleeping "good." *Id.* It was further noted that Petitioner's nightmares and flashbacks had been reduced "greatly". Petitioner was on Setraline and Zolpidem and his medication was continued. *Id.* The Arbitrator notes that June 6, 2016 the final mental health medical note prior to Petitioner's April 17, 2017 robbery with follow up visits occurring approximately every six months prior to that date. *See* Pet. Ex #4 and Resp. Ex. #2.

Petitioner testified that following his release from care he went to work for the VA making $8.50/hour for a Federal Work Study Program. R. at 23. When he was actually hired, he began earning $41,000 per year. R. at 24. Petitioner was not working at the time of trial due to a personal health condition and the loss of his leg due to a reaction to the COVID19 vaccine, which has left him with one leg and requiring the use of a wheelchair. R. at 24-25.

Petitioner testified that his medical bills with the VA for treatment related to this accident have not be paid. R. at 24. Petitioner continues to receive mental health treatment through the VA. R. at 26.

Dr. Neil Mahoney testified by way of evidence deposition. Resp. Ex. #4. Dr. Mahoney is a clinical psychologist who is not board certified. *Id.* at 4-5. Dr. Mahoney had Petitioner undergo two written psychological tests in conjunction with his examination. *Id.* at 62. The MMPI was administered, which Dr. Mahoney interpreted as showing intentional exaggeration. *Id.* The second test was the SIMS, which tests for malingering. *Id.* at 63. Dr. Mahoney testified that Petitioner scored a 32, with a cut off score of 14 showing malingering. *Id.* at 64. He interpreted both of these scores to be invalid. *Id.* at 65.

Dr. Mahoney testified that Petitioner's psychological issues began following his release from the military is 1994 after being diagnosed with major depression. *Id.* at 11-12. He testified

that it was not until April 23, 2015 that PTSD became part of Petitioner's record. *Id.* at 37. Dr Mahoney further explained that after reviewing the Petitioner's medical records immediately following the April 17, 2017 robbery he noted a diagnosis of "acute stress disorder." *Id.* at 42-43. Dr. Mahoney explained that acute stress disorder is "like PTSD, but it's used in the immediate aftermath of an event." *Id.* at 43. He testified that "It's a matter of time. It's true that if the symptoms you're calling acute stress disorder persist then you would replace that with the diagnosis of PTSD." *Id.*at 81. Dr. Mahoney testified that he would relate the diagnosis of acute stress reaction or adjustment disturbance to the April 17, 2017 robbery and that treatment and remaining off work for a period following the incident would have been reasonable. *Id.* at 80-81. Dr. Mahoney believes Petitioner had "an adjustment reaction" or an "acute stress reaction" following the robbery, but that Petitioner had reached MMI by the time of his examination and required no further care. *Id.* at 68.

CONCULSIONS OF LAW

1. Accident

The Arbitrator finds that Petitioner was injured in an accident that arose out of and in the course of his employment by Respondent. On April 17, 2017 Petitioner was working for Respondent as a Level 1 Sign and Marking Tech. This job required him to travel around the City of Rockford to maintain and replace the signage. While inspecting a stop sign two men approached Petitioner and robbed him at gunpoint. To obtain compensation under the Act, a claimant must show by a preponderance of the evidence that he or she has suffered a disabling injury arising out of and in the course of his or her employment. Both elements must be present at the time of the claimant's injury in order to justify compensation. IL Bell Telephone Co. v. Indust. Comm'n.,

131 Ill.2d 478, 483 (1989) Injuries sustained on an employer's premises, or at a place where the claimant might reasonably have been while performing his duties, and while a claimant is at work, are generally deemed to have been received "in the course" of the employment. Caterpillar Tractor Co. v. Indust. Comm'n., 129 Ill.2d 52, 57 (1989) Additionally, an employee who suffers a sudden, severe emotional shock traceable to a definite time, place and cause which causes psychological injury or harm has suffered an accident within the meaning of the Act, though no physical trauma or injury was sustained. Pathfinder v. Indus. Comm'n., 62 Ill. 2d 556, 563 (1976) It is undisputed that Petitioner was performing his job duties and inspecting a sign for Respondent when this occurred, thus the incident was "in the course" of Petitioner's employment with Respondent. Further, the robbery at gunpoint on April 17, 2017 is a definite time, place, and cause of Petitioner's psychological injury.

The "arising out of" prong is also met in this case. This prong refers to the origin or cause of the Petitioner's injury. There are three types of risks which an employee might be exposed to, namely" 1) risks distinctly associated with the employment; 2) risks which are personal to the employee; and 3) "neutral risks which have no particular employment or personal characteristics." Illinois Institute of Technology Research Institute v. Indus. Comm'm., 314 Ill. App. 3d 149, 162 (1st Dist. 2000). Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public. Metropolitan Water Reclamation Dist. of Greater Chicago v. IWCC, 407 Ill.App.3d 1010, 1014 (1st Dist. 2011) Such an increased risk may be qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public. *Id.* When a Petitioner is a travelling employee, "the risk of being assaulted, although one to which the general

public is exposed, was a risk to which the claimant, by virtue of his employment, was exposed to a greater degree that then general public." Potenzo v. Indus. Comm'n., 378 Ill. App. 3d 113, 119 (1st Dist. 2007) The risk of assault can be classified as a neutral risk. It is undisputed that Petitioner was required to travel around the City of Rockford to perform his job duties. Thus, by virtue of his employment by Respondent Petitioner was exposed to the risk of assault to a greater degree than the general public under the "street risk doctrine." Accordingly, the Arbitrator finds that Petitioner was injured in an accident that arose out of and in the course of his employment by Respondent.

2. Causal Connection

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to Petitioner's April 17, 2017 work accident. It is undisputed that Petitioner had a previous diagnosis of PTSD. It has long been recognized that, in pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease such that the employee's current condition of ill-being can be said to have been causally-connected to the work-related injury and not simply the result of a normal degenerative process of the pre-existing condition. Sisbro v. Indust. Comm'n., 207 Ill.2d 193, 204-5 (2003). Further, accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor in the resulting condition. *Id.* at 205. Further, proof of prior good health and change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. Land and Lakes Co. v. Indust. Comm'n., 359 Ill.App.3d 582, 593 (2d Dist. 2005).

Petitioner's medical records establish that he had a diagnosis of major depressive disorder dating back to 1994 upon being discharged from the US Army. He underwent treatment for this

condition at the VA for a number of years. In April 2015 Petitioner's medical records from the VA first note the diagnosis of PTSD. Pet. Ex. #4. The records establish that Petitioner underwent therapy and a medication regimen to bring his PTSD under control. The last time Petitioner saw his psychiatrist prior to this accident was June 6, 2016, over 10 months before. At that time Petitioner was stable and working. Between June 6, 2016 and April 17, 2017 Petitioner did not seek any treatment for a mental health condition and he was able to work full duty for Respondent as a Level 1 Sign and Marking Tech. Petitioner sought medical care three days after the April 17, 2017 assault and was diagnosed with Acute Stress Disorder. Pet. Ex. #3. Respondent's own IME doctor, Dr. Neil Mahoney, agreed with this diagnosis, and explained that acute stress disorder is "like PTSD, but it's used in the immediate aftermath of an event." *Id.* at 43. He testified that "It's a matter of time. It's true that if the symptoms you're calling acute stress disorder persist then you would replace that with the diagnosis of PTSD." *Id.*at 81. Dr. Mahoney testified that he would relate the diagnosis of acute stress reaction or adjustment disturbance to the April 17, 2017 robbery and that treatment and remaining off work for a period following the incident would have been reasonable. *Id.* at 80-81. Accordingly, from the records and opinions submitted at arbitration it is undisputed that Petitioner sustained an injury, or diagnosis of acute stress disorder, as a result of the April 17, 2017 robbery.

Further, the medical records establish that Petitioner was taking Steraline (for mood) and Zolpidem (for sleep) on that day of the robbery. However, as soon as Petitioner sought treatment with Dr. Vaid he was prescribed Propanolol and Gabepentin, both for anxiety due to his symptomology. This change in medication immediately in the aftermath of the robbery is illustrative of the fact that Petitioner's condition immediately changed. Even Dr. Mahoney

testified that Petitioner "may have had an exacerbation in the immediate aftermath." Resp. Ex. #4, pp. 74.

As there is no dispute as to Petitioner's injury, the inquiry is therefore the duration of that condition. Dr. Vaid continued Petitioner off work and on the additional medication through his release on September 22, 2017. Dr. Mahoney testified that he believed that Petitioner had returned to baseline as of his IME on June 29, 2017. Petitioner testified credibly that he continued his treatment with Dr. Vaid and Mr. Policarpio, and that this treatment helped him. R. at 16-17. The Arbitrator finds that Dr. Vaid and Mr. Policarpio's treatment notes and Petitioner's credible testimony establish that Petitioner's condition of ill-being is causally related to the April 17, 2017 assault by the preponderance of credible evidence. Petitioner's complaints following the accident remained consistent. Petitioner's treatment following the accident was consistent. Only Dr. Mahoney disagrees with Petitioner's need for care and opined that Petitioner was treating for "secondary gain". The Arbitrator does not find this persuasive. In September 2017 Petitioner indicated that he felt he had "gained as much as he could" from treatment and indicated he was willing to try to go back to work. This is not consistent with Dr. Mahoney's opinion. Further, Petitioner was only paid TTD for a short period following his assault, so his monetary motivation for remaining off work is not present.

Accordingly, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the April 17, 2017 work accident.

3. Medical Bills

The Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid all appropriate charges. As a result of the April 17, 2017 assault Petitioner required medical care in the form of psychiatric visits, psychotherapy sessions, and medication.

All of this constitutes a reasonable course of care in order to achieve maximum medical improvement. Petitioner produced evidence that Respondent has not paid for any of this treatment. Pet. Ex. #2. Accordingly, the Arbitrator awards the medical bills contained in Petitioner's Exhibit #2 to be adjudicated pursuant to the Illinois Medical Fee Schedule and payable direct to Petitioner.

4. Temporary Total Disability

The Arbitrator finds that Petitioner is entitled to TTD benefits from April 20, 2017 through September 22, 2017, a period of 21 5/7 weeks payable at the rate of $566.66 per week, less Respondent's stipulated credit of $2,347.54 for TTD already paid. Having previously found a causal connection and the opinion of Dr. Vaid more support by the evidence than the opinion of Dr. Mahoney, the Arbitrator finds that Petitioner was initially taken off work by Dr. Vaid on April 20, 2017 and remained in an off-work status until being released to full duty work effective September 22, 2017. Pet. Ex. #1. This is the proper period of TTD owed.

5. Nature and Extent

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a Leve 1 Sign and Marking Tech at the time of the accident and that he *is* able to return to work in his prior capacity as a result of said injury. The Arbitrator notes that Petitioner was restricted from working in his prior position by his treating psychiatrist due to interaction with the public. However, following his course of treatment Petitioner was returned to work without restrictions. Because of the

temporary nature of his inability to return to work full duty, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 48 years old at the time of the accident. The Arbitrator finds that the petitioner is in the later half of expected work life expectancy. The Arbitrator therefore finds that this factor weighs in favor of decreased permanence.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that there was no evidence of any decrease in the petitioner's earning capacity due to permanent medical restrictions. Therefore, the Arbitrator finds that this factor weighs in favor of decreased permanence.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner has a history of service connected PTSD, but was able to work in a full duty capacity for Respondent from September 2005 to the April 17, 2017 date of accident. Due to the accident and resulting exacerbation of his PTSD Petitioner was unable to return to work for Respondent. Petitioner's medical records indicate that following the accident he required a new course of medication and round of therapy in order to achieve maximum medical improvement. At the time of his release, Petitioner's treating psychiatrist and therapist indicated that he would still require further care for his PTSD. The Arbitrator finds that this factor weighs in favor of greater permanence.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 7.5% loss of use of the Person as a Whole pursuant to §8(d)(2) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC006818
Case Name	INSURANCE COMPLIANCE v. C&T SIDING & CONSTRUCTION
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0179
Number of Pages of Decision	4
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Kayla Koyne
Respondent Attorney	

DATE FILED: 4/17/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Illinois Department of Insurance,

Petitioner,

vs.

No. 21 WC 006818
18 INC 00089

Charles "Chad" Tarpley, Individually and as President of C&T Siding and Construction,

Respondent.

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner, Illinois Department of Insurance, brought this action against Respondent by and through the office of the Illinois Attorney General alleging violations of section 4(a) of the Illinois Workers' Compensation Act (the Act). Proper and timely notice was given to all parties. An insurance compliance hearing on the merits was held before Commissioner Stephen Mathis on September 8, 2022, in Peoria, Illinois. Respondent did not appear at the hearing despite being properly served with notice of said hearing on August 2, 2022. (Petitioner's Exhibit 1). After considering the entire record and being advised of the facts and law, the Commission finds that Respondent knowingly and willfully violated section 4(a) of the Act and shall pay a penalty of $250 per day for a total period of 2,729 days of non-compliance for failing to have workers' compensation insurance, equaling the total penalty of $682,250.

Petitioner alleges that Respondent, who was in the construction business and subject to section 3 of the Act requiring workers' compensations insurance, knowingly and willfully lacked workers' compensation insurance coverage for the periods from February 17, 2014 to April 20, 2014, from February 19, 2015 to March 8, 2016, and from April 13, 2016 to July 12, 2022, totaling 2,729 days of non-compliance.

Megan Drew, an insurance compliance investigator, testified at the hearing that she became aware of Respondent's non-compliance when an employee of Respondent, Dan Figurski, filed a workers' compensation claim with the Illinois Workers' Compensation Commission and named the

Illinois Injured Workers' Benefit Fund (IWBF) as co-Respondent due to Respondent not having insurance coverage at the time of the injury.[1] Investigator Drew further testified that in the course of her investigation, she determined that Respondent was engaged in the construction business and had more than one employee. Investigator Drew determined that Respondent was automatically subject to the provisions of sections 3 and 4 of the Act. Certified records from the National Council on Compensation Insurance (NCCI) (Petitioner's Exhibit 3) revealed that Respondent had no workers' compensation insurance for certain periods of time and did have workers' compensation insurance for other periods of time. Petitioner's Exhibit 8 details the periods of non-compliance as from February 17, 2014 to April 20, 2014, from February 19, 2015 to March 8, 2016, and from April 13, 2016 to July 12, 2022. Investigator Drew continued her investigation to determine whether Respondent was self-insured under the Act and received a certification from Maria Sarli-Dehlin of the Commission's Office of Self-Insurance Administration indicating there was no certificate of approval to self-insure issued by the Commission. (Petitioner's Exhibit 4).

The Commission concludes that Respondent knowingly and willfully violated the insurance requirements of section 4(a) of the Act. Respondent did not appear to provide any defense for the fact that Respondent operated an extra hazardous business for 2,729 days without the mandated coverage. The Commission hereby assesses a penalty of $250 per day for a total period of 2,729 days of non-compliance, equaling the total penalty of $682,250.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to the Illinois Workers' Compensation Commission the sum of $682,250 pursuant to section 4(d) of the Act and section 9100.90 of the Commission Rules. Pursuant to Commission Rule 9100.90(f), payment shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission. Payment shall be mailed or presented within 30 days after the final order of the Commission or the order of the court on review after final adjudication to:

Illinois Workers' Compensation Commission
Fiscal Department
69 W. Washington Street, Suite 900
Chicago, Illinois 60602

[1] The Commission records show the claim, which received docket number 17 WC 36721, is pending before the Commission post-arbitration, awaiting payment of benefits from IWBF.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 17, 2023

SM/sk

44

/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah L. Simpson*
Deborah L. Simpson

/s/ *Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC019033
Case Name	James Wines v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0180
Number of Pages of Decision	19
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Kayla Koyne

DATE FILED: 4/18/2023

/s/ Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAMES WINES,

Petitioner,

vs. NO: 21 WC 19033

STATE OF ILLINOIS GRAHAM CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of medical expenses, permanent partial disability (PPD) benefits and penalties and attorney's fees, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator which is attached hereto and made a part hereof.

The Commission first clarifies the amount awarded by the Arbitrator for the June 21, 2021 EMG/NCV study. The Commission affirms the Arbitrator's finding that the study was reasonable, necessary and related to the work injury and therefore awards the entire bill of $2,628.00. The Commission next modifies the Arbitrator's Decision regarding the Precision Medical Products bill. Petitioner's Exhibit 1 demonstrates only one charge of $995.01 for a pressure appliance/compression device used on September 15, 2021 – the date of Petitioner's surgery to the left upper extremity. The Commission notes the documentation attached to the bill which references the September 2021 surgery at St. Louis Spine and Orthopedic Surgery. The Commission finds this evidence sufficient to support an award of $995.01 as this bill was reasonable, necessary and related to the work injury. The Arbitrator's Decision regarding the remaining medical bills is affirmed.

The Commission further finds that penalties and attorney's fees under Sections 16, 19(k) and 19(l) are warranted in this claim. The Arbitrator had denied Petitioner's petition for penalties finding no evidence that Respondent acted in bad faith or unreasonable in investigating and defending this claim. For the following reasons, the Commission reverses the Arbitrator's Decision with respect to penalties and attorney's fees.

Section 19(l) of the Act states:

> If the employee has made written demand for payment of benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In the case of demand for payment of medical benefits under Section 8(a), the time for the employer to respond shall not commence until the expiration of the allotted 30 days specified under Section 8.2(d). In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay. *820 ILCS 305/19(l)*.

Section 19(l) of the Act additionally references Section 8.2(d) which states:

> When a patient notifies a provider that the treatment, procedure, or service being sought is for a work-related illness or injury and furnishes the provider the name and address of the responsible employer, the provider shall bill the employer or its designee directly. The employer or its designee shall make payment for treatment in accordance with the provisions of this Section directly to the provider, except that, if a provider has designated a third-party billing entity to bill on its behalf, payment shall be made directly to the billing entity. Providers shall submit bills and records in accordance with the provisions of this Section. *820 ILCS 305/8.2(d).*

Furthermore, Sections 8.2(d)(1)-(2) state:

> (1) All payments to providers for treatment provided pursuant to this Act shall be made within 30 days of receipt of the bills as long as the bill contains substantially all the required data elements necessary to adjudicate the bill.
>
> (2) If the bill does not contain substantially all the required data elements necessary to adjudicate the bill, or the claim is denied for any other reason, in whole or in part, the employer or insurer shall provide written notification to the provider in the form of an explanation of benefits explaining the basis for the denial and describing any additional necessary data elements within 30 days of receipt of the bill. *820 ILCS 305/8.2(d)(1)-(2).*

The Commission notes that although causation was ultimately not in dispute at arbitration, the primary issue leading up to arbitration had been causal connection for Petitioner's bilateral carpal and cubital tunnel syndromes allegedly resulting from his repetitive duties for Respondent. Respondent sent Petitioner for a Section 12 examination with Dr. James Emanuel on September 20, 2021. Dr. Emanuel opined that Petitioner's job duties as a correctional officer substantially aggravated and contributed to the diagnosis of bilateral carpal tunnel syndrome and cubital tunnel syndrome. On October 13, 2021, Petitioner emailed Respondent a demand for payment of medical bills.

In its response to Petitioner's penalty petition, Respondent explained that it had requested that Dr. Emanuel review a job analysis and provide an addendum report regarding causation. Dr. Emanuel provided this addendum report on June 17, 2022 wherein he maintained his original finding of causation. Respondent stated that upon receipt of Dr. Emanuel's addendum report: "Petitioner's related medical bills have been approved by CMS for payment. Tristar, Respondent's third party insurance provider, has been instructed to process outstanding medical bills in relation to this claim for payment." (Resp. Ex. 7; Respondent's Response, pg. 2).

The Commission finds no ambiguity that Respondent and its insurer were aware of the outstanding medical bills before Petitioner's October 13, 2021 written demand, and unequivocally so by June 17, 2022 – the date of Dr. Emanuel's addendum report. Petitioner's Exhibit 1 establishes that many of the bills and health insurance claim forms either referenced or were addressed to Tristar. Nevertheless, as of the July 26, 2022 arbitration date, the majority of Petitioner's medical bills remained unpaid as reflected in Respondent's Exhibit 8. The Commission finds no adequate justification for Respondent's unreasonable delay in paying the medical bills. In this instance, Section 19(l) penalties are mandatory and the Commission therefore awards the amount of $8,550.00 – representing the period between Petitioner's demand for payment and the date Respondent began payment, or 285 days x $30 per day from October 13, 2021 through July 25, 2022.

With respect to Section 19(k) penalties and Section 16 attorney's fees, the Act provides:

> In case where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award. Failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of this Act, shall be considered unreasonable delay. When determining whether this subsection (k) shall apply, the Commission shall consider whether an Arbitrator has determined that the claim is not compensable or whether the employer has made payments under Section 8(j). *820 ILCS 305/19(k)*.

According to Section 16,

> Whenever the Commission shall find that the employer, his or her agent, service company or insurance carrier has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee within the purview of the provisions of paragraph (c) of Section 4 of this Act; or has been guilty of unreasonable or vexatious delay, intentional under-payment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier. *820 ILCS 305/16*.

Our Supreme Court further instructed in *McMahan v. Indus. Comm'n*:

> In contrast to section 19(l), section 19(k) provides for substantial penalties, imposition of which are discretionary rather than mandatory. (Citation omitted). The statute is intended to address situations where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose. This is apparent in the statute's use of the terms 'vexatious,' 'intentional' and 'merely frivolous.' Section 16, which uses identical language, was intended to apply in the same circumstances. 183 Ill. 2d 499, 515 (1998).

The employer has the burden of justifying the delay. *Jacobo v. Ill. Workers' Comp. Comm'n*, 2011 IL App (3d) 100807WC. Respondent argues that its delay was reasonable and arose from its request for a job analysis from Graham Correctional Center. Respondent contends that it received the job analysis around May 12, 2022 – approximately seven months following Dr. Emanuel's September 20, 2021 Section 12 report. (Resp. Ex. 7; Respondent's Response, pg. 2). Respondent offered no explanation whatsoever for the significant delay in obtaining the subject job analysis and no explanation as to why the relevant medical bills remained unpaid as of the arbitration date despite its assertion that such payments were approved upon receipt of Dr. Emanuel's addendum report. The Commission finds Respondent's overall conduct unreasonable, vexatious and one which presented no real controversy.

In light of the forgoing, the Commission awards $26,425.87 in Section 19(k) penalties. This represents 50% of the medical bills awarded, as detailed in the Arbitrator's Decision and consistent with the Commission's modifications, less $5,155.52 in credit for the payments made by Respondent prior to arbitration. (Resp. Ex. 8). The Commission further awards $5,285.17 in Section 16 fees, or 20% of the additional compensation awarded herein.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 6, 2022 is hereby modified as stated and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay, pursuant to Sections 8(a) and 8.2 of the Act, the reasonable, necessary, and related medical bills evidenced in Petitioner's Exhibit 1 and consistent with the Commission's Decision.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner penalties pursuant to Section 19(l) of the Act in the amount of $8,550.00.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner penalties pursuant to Section 19(k) of the Act in the amount of $26,425.87.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner attorney's fees pursuant to Section 16 of the Act in the amount of $5,285.17.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all other amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

April 18, 2023

CAH/pm
O: 3/2/23
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC019033
Case Name	James Wines v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Kayla Koyne

DATE FILED: 9/6/2022

THE INTEREST RATE FOR THE WEEK OF AUGUST 30, 2022 3.23%

/s/ Dennis OBrien, Arbitrator
Signature

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

September 6, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **SANGAMON**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JAMES WINES
Employee/Petitioner

v.

STATE OF ILLINOIS – GRAHAM CORRECTIONAL CENTER
Employer/Respondent

Case # **21** WC **019033**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Dennis O'Brien**, Arbitrator of the Commission, in the city of **Springfield**, on **July 26, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **July 1, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**67,510.60**; the average weekly wage was $**1,298.28**.

On the date of accident, Petitioner was **49** years of age, ***single*** with **no** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent shall be given a credit of **all benefit time payments having been made in lieu of TTD** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of **all benefit time payment made in lieu of TTD**.

Respondent is entitled to a credit of **any amounts paid by its group health insurer** under Section 8(j) of the Act.

ORDER

The parties stipulated that Respondent is entitled to credit pursuant to §8(j) of the Act for any medical bills which had been paid by its group health insurer.

The parties further stipulated that while no temporary total disability had been paid by Respondent on account of this accident, Petitioner was not seeking temporary total disability due to repayment provisions which would exist for payment to him of benefit time for the claimed period of temporary total disability.

All of the bills for medical services in Petitioner Exhibit 1 specifically noted above are related to Petitioner's bilateral carpal and cubital tunnel syndrome injuries, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident, with the exception of the special report/forms which are not found to be reasonable and necessary to treat or cure Petitioner's injuries, and the bills apparently submitted by Precision Medical Products, Inc., which are not found to be reasonable and necessary to treat or cure Petitioner's injuries. The reasonable and necessary bills are to be paid pursuant to the Medical Fee Schedule. Respondent shall reimburse Petitioner for the $1,200.00 prepayment made to Dr. Phillips and Neurological & Diagnostic Institute.

Respondent is entitled to credit for all payments made to the medical providers prior to the date of arbitration, including those noted on Respondent Exhibit 8.

Petitioner sustained permanent partial disability to the extent of 10% loss of use of the left hand as a result of this repetitive trauma accident, 19 weeks payable at $778.97 per week, 10% loss of use of the right hand as a result of this repetitive trauma accident, 19 weeks payable at $778.97 per week, 10% loss

of use of the left arm, 25.3weeks payable at $778.97 per week, and 10% of the right arm, 25.3 weeks payable at $778.97 per week, pursuant to §8(e) of the Act.

The Arbitrator finds no evidence that Respondent acted in bad faith or unreasonably in investigating and defending this claim, and Petitioner's Petition for Penalties is therefore denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

SEPTEMBER 6, 2022

Dennis J. O'Brien

Signature of Arbitrator

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified that he was employed by the Department of Corrections, and had been so employed for 19 years. He was initially employed as a correctional officer at Vandalia Correctional Center, a medium facility. He said 100 percent of the time he worked there he was working on a housing unit, an open dorm facility where inmates were housed. He said his work at Graham Correctional Center (Graham) was also as a correctional officer, and there he spent 75 to 85 percent of his time on the wing or gallery.

Petitioner was shown Respondent's Exhibit 4, a position description for a correctional officer at Graham, and he said it was not representative of the job duties at that prison. He said employees were told what their assignment was by their shift commander, and they might work that job for years. He said there were two officers per house, one was a control officer and one was a day room officer. He said control officers would walk the wings, sign the books and go and get people if they were not reporting up.

Petitioner identified Petitioner's Exhibit 6 as a detailed job description he had written, noting it was in his handwriting.

Petitioner said that while working at Graham as a correctional officer, he began to notice symptoms in his arms and hands. He said he shook it off and kept working for five or six years, but then the prison went on administrative quarantine in March of 2022 due to the pandemic. With administrative quarantine the inmates were locked in their cells and only 10 at a time were allowed out for two hours in the morning and two hours in the afternoon per wing. He said there were 25 cells with two inmates per side, 50 inmates total per side. He said when Covid struck their work increased, due to locking and unlocking of cells. He said that as a medium security prison, the inmates did the majority of the work in terms of product moving, cleaning, and dusting. When Covid struck, they still had to do their duties, but not as much, and the correctional officers had to pick up some of that work.

Petitioner said his hands and arms got worse and it would not go away. He said he pushed through it until he could not push through it any longer, at which point he went to see his attorney, who sent him to see Dr. Bradley for a nerve conduction study. He said that after having the testing Dr. Bradley performed surgery on both of his palms and both of his elbows. He said prior to the surgeries his symptoms were excruciating, they swelled up and hurt, he would drop things, and he could not sleep. He said the surgeries improved his symptoms. He said the physical therapy and home exercises Dr. Bradley recommended also improved his condition.

Petitioner said Respondent had him examined by Dr. Emanuel. Petitioner said he cooperated in that examination.

Petitioner said that he continued to improve after Dr. Emanuel's examination and the surgeries, and he returned to his prior occupation. He said that at his attorney's request he wrote down a list of symptoms that he

still had, including tender, sensitive incisions, he had to be careful when resting his left elbow on a hard object, his right elbow was more tender and would give him a shock if put on a desktop or car window, his grip strength was not what it used to be, and he switched hands quite often when keying, doing property box searches or shakedowns. He noted that he was right handed.

Petitioner said that outside of work activities included doing mechanical work on his vehicles, hunting and fishing. He said his injuries affected those, that he had less grip strength when holding a fishing pole or a wrench, and he noticed weakness.

Petitioner said he had given his attorney's name to other correctional officers at his facility, as well as the name of Dr. Bradley.

Petitioner felt he had been helped by the treatment he received, and he felt he had a good outcome.

On cross examination Petitioner said he had no restrictions on his employment, he was working full duty. He said he was not getting any medical treatment for his ongoing symptoms and was not taking any medication for these injuries. He said his doctor did not require him to wear braces or protective devices on his arms since being released from medical care. He said he had been able to perform his work well since returning to work.

Petitioner said no complaints about his job performance had been made by his superiors.

Petitioner said the facility was still on partial administrative quarantine, with different levels of lock down depending on the level of positives. He said the warden decided what the different levels of lock down were.

Petitioner said that keying was the major increase in job duties during Covid, they went from unlocking 50 cells first thing in the morning to locking and unlocking cells 220 to 250 times a day. He said the keys they used were typical house keys. Another increase was one officer getting carts with food trays on them, 100 or so food trays, and passing them out and then collecting them. He said at times inmates would assist with the food trays, but it was usually done by the officers.

Petitioner said he was no longer assigned to housing, he is now on a transfer/writ team, taking inmates to court and doctor's appointments. He said very little keying is involved in that assignment. He said if there were no writs he might work in a tower or a housing unit, as needed.

Petitioner said he first started noticing symptoms in his hands and arms eight to nine years prior to the arbitration hearing, but he had never sought treatment prior to seeing Dr. Bradley for these symptoms. He said he did not rotate job assignments at the time the symptoms began. He said he worked seven and-a-half hour shifts. He said he did not have to take off work during Covid due to these symptoms.

Petitioner said he used wrenches, sockets, rachets and hammers when performing mechanical work, including power tools. He said he shot firearms as a hobby, but not very much lately. He said he did not mention the mechanical work or shooting firearms to Dr. Bradley or Dr. Emanuel, and neither asked. He said he did experience symptoms doing mechanical work prior to his having his surgeries, but not with shooting guns.

Petitioner testified that his attorney referred him to Dr. Bradley and even called and made his initial appointment with the doctor. Petitioner's attorney stipulated that he gave the detailed job form to Petitioner to

fill out at home and told him to give the completed form to every doctor he saw. And Petitioner said he gave it to both Dr. Bradley and Dr. Emanuel.

Petitioner testified that Dr. Bradley told him that his right ulnar nerve was scarred heavily and pulled tight, so he re-routed it to the inside of his elbow, giving it some slack.

Trevor Wright

Mr. Wright testified that he was a shift supervisor at Graham Correctional Center, and had been for a year and-a-half. He said Petitioner was a correctional officer on his day shift. He believed Petitioner was a good employee who he respected. He said nothing he had heard Petitioner testify to made him want to say it was wrong.

On cross examination Mr. Wright said Petitioner had not indicated any issues doing his job duties since returning to work from his surgeries, but Mr. Wright said that he was working second shift when Petitioner returned to work, but he did not remember Petitioner saying anything to him about it. He said Petitioner's supervisors on Petitioner's shift at that time had retired.

Mr. Wright said that to the best of his knowledge there were approximately 30 repetitive trauma claims currently pending at Graham Correctional Center.

MEDICAL EVIDENCE

Dr. Phillips saw Petitioner on June 21, 2021. Petitioner advised him that he had previously had electrodiagnostic (EDX) studies performed about 11 years earlier which probably demonstrated bilateral carpal tunnel syndrome, but Petitioner elected at that time not to have surgery. In the patient questionnaire Petitioner filled out he noted that his symptoms began ten years earlier, doing the same motion with his hand and elbows aggravated his symptoms, he worked as a correctional officer and his hobbies were hunting and fishing. He said Petitioner had been diagnosed with diabetes a year prior to seeing Dr. Phillips. Physical examination on this date revealed no Tinel signs at the elbows but positive Tinel and Phalen signs at the right carpal tunnel. Weakness was found for the right thenar group and the left ulnar intrinsics/extrinsics. EMG/NCV testing revealed severe median neuropathy across the right carpal tunnel with milder findings across the left carpal tunnel. He noted significant bilateral ulnar neuropathies across the elbows. He noted that many diabetic patients with this pattern would benefit from decompression. (PX 1 p.2,3,8,9)

Petitioner's first visit with Dr. Bradley was on July 1, 2021, with complaints of numbness, tingling and burning in his hands, right worse than left. He said he had the symptoms for two or three years and they had gradually worsened, going from intermittent to constant. Petitioner denied having any hobbies outside of work which which required the repetitive use or microtraumas to his hands. Dr. Bradley reviewed Dr. Phillips's testing records and performed a physical examination which showed no atrophy, numbness and tingling over the median nerve distribution and decreased sensation to light touch over the ulnar distribution bilaterally, with positive Tinel's signs at both wrists and elbows. Right carpal and cubital tunnel releases were recommended and scheduled. Dr. Bradley was of the opinion that Petitioner's repetitive use of his upper extremities at work over the past 18 years as a correctional office caused or was at least a precipitating factor in the development of bilateral carpal and cubital tunnel syndromes and the need for surgeries. (PX 4 p.1,2)

Dr. Bradley saw Petitioner on August 9, 2021 with complaints of increasing symptoms, right worse than left. He said he was now having difficulty sleeping and he was having difficulty grasping things. On this occasion he mentioned increases in symptoms with locking and unlocking of cell doors. (PX 4 p.4)

Dr. Bradley performed right carpal and cubital tunnel releases on August 25, 2021. (PX 4. P.6-9; PX 5 p.2-5)

Petitioner was again seen by Dr. Bradley on September 9, 2021, and reported that all of his preoperative symptoms had resolved, and that while he had very mild stiffness in his hand and elbow, those were improving on a daily basis. Physical examination of the right elbow was normal, and the only abnormalities in the right wrist was mild swelling of the palm and an incision which was healing well. Dr. Bradley said Petitioner was doing exceptionally well after the surgeries, with all of his preoperative symptoms resolved. Left carpal and cubital tunnel surgeries were planned in one to two weeks. (PX 4 p.10,11)

Dr. Bradley performed left carpal and cubital tunnel releases on September 15, 2021. (PX 4. P.12-14; PX 5 p.6-8)

Respondent had Dr. Emanuel perform a Section 12 examination on September 20, 2021. Petitioner's history to Dr. Emanuel was fairly consistent with his testimony at arbitration with a few notable exceptions. Petitioner advised Dr. Emanuel that he since Covid only two inmates were allowed out at a time, as opposed to the ten he testified were allowed out at arbitration, he said the keys they used were large, while at arbitration he said they were typical house keys, and he told Dr. Emanuel that since Covid they were were opening and closed gates and cells 20 times as much as they did before, while at arbitration he said the openings had increased from 50 times a day to 220 to 250 times per day. Dr. Emanuel saw Petitioner five days after Petitioner second set of surgeries, the left sided surgeries, and he said the right sided surgeries resolved his hand numbness and tingling and had decreased his night pain. He said the left sided numbness and tingling in his hands was gone after the surgery five days before this exam, and he no longer woke at night. Petitioner was still wearing a thumb spica splint and a bandage on the left arm from the hand to above the elbow on the date of this examination, so no physical examination of that arm was performed on this date. Examination of the right hand and elbow was normal with the exception of mild swelling over the medial aspect of the elbow which was not associated with significant tenderness. Dr. Emanuel reviewed the pre-surgical medical records. Dr. Emanuel felt that despite Petitioner's having several risk factors for the development of carpal tunnel syndrome, he felt the job activities the Petitioner described to him as a correctional officer, especially over the year and a half of increased activities of the hands due to the Covid-19 pandemic, had substantially aggravated and contributed to the diagnosis of bilateral carpal tunnel syndrome and cubital tunnel syndrome. He also felt the surgeries performed by Dr. Bradley were reasonable and appropriate. He felt Petitioner's prognosis was excellent. (RX 3 p.1-4)

Dr. Bradley saw Petitioner on October 4, 2021. Petitioner advised him that he was doing exceptionally well and that all of his preoperative symptoms had resolved following surgery. Physical examination was limited to the left wrist and hand and the only abnormality was the incision, which was healing well. Petitioner was to continue his home exercise program. He was to remain off work for one more week and then return to work without restrictions. (PX 4 p.15,16)

Petitioner was seen for the last time by Dr. Bradley on December 6, 2021. Petitioner at that time said his symptoms had significantly improved, though his 5th digit had a minor amount of numbness, and his elbow was

still sensitive to touch. He still felt some weakness in the elbow when picking up something heavy. All of his carpal tunnel symptoms had resolved. Physical examination of both wrists, hands, and elbows, were normal. Dr. Bradley's assessment on this date was that Petitioner continued to do well after his surgeries with his preoperative symptoms significantly improved. He was to continue doing his home exercise program and continue working full duty without restrictions. (PX 4 p.17-20)

ARBITRATOR CREDIBILITY ASSESSMENT

Petitioner

Petitioner appeared to answer all questions in a forthright manner. Petitioner's quantitative description of his work varied greatly from the written job duty description generated at his attorneys request (RX 6), which stated opening 50 cell doors two to six times per shift (100 – 300 openings), to what he testified to at arbitration, an increase from 50 to 220 to 250 from pre-Covid to during pandemic lock downs, to what he told Dr. Emanuel, 20 times pre-Covid openings (20 X 50 = 1,000).While this is a wide disparity, all three descriptions are at least consistently showing an increase in hand activities. There was also a discrepancy between how Petitioner described the keys he had to use to open these cells, telling Dr. Emmanuel that they were large keys, while describing them at arbitration as typical house keys. Finally, Petitioner's complaints at arbitration are in excess of the complaints he made to both Dr. Bradley and Dr. Emmanuel following the surgeries, and Petitioner did not at any time return to Dr. Bradley or any other physician complaining of an increase in symptomatology. The Arbitrator finds Petitioner to be a somewhat credible witness.

Trevor Wright

Mr. Wright appeared to answer all questions in a forthright manner. There was really little of import he testified to as he was not Petitioner's supervisor at the time Petitioner's symptoms developed, but he did note Petitioner was a good employee and nothing he testified to seemed erroneous. The Arbitrator finds Mr. Wright to be a credible witness.

CONCLUSIONS OF LAW:

The parties stipulated that Respondent is entitled to credit pursuant to §8(j) of the Act for any medical bills which had been paid by its group health insurer.

The parties further stipulated that while no temporary total disability had been paid by Respondent on account of this accident, Petitioner was not seeking temporary total disability due to repayment provisions which would exist for payment to him of benefit time for the claimed period of temporary total disability.

In support of the Arbitrator's decision relating to whether the medical services that were provided to Petitioner were reasonable and necessary as a result of the Accident of July 1, 2021, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence, above, are incorporated herein.

The findings in regard to Arbitrator's credibility assessments, above, are incorporated herein.

Petitioner introduced the medical bill of Dr. Phillips and Neurological & Diagnostic Institute for electrodiagnostic testing performed on June 21, 2021. Those bills total $2,628.00. A prepayment credit is noted to have been paid in the amount of $1,200.00. (PX 1 p.4,5)

Petitioner introduced the medical bill of Dr. Bradley and Metro East Orthopedics for surgeries and other treatment performed on Petitioner's bilateral carpal and cubital tunnels. Those bills total $22,037.25, but include six "special report/forms" which, while not explained in the records, may be for preparation of health insurance forms. It appears Petitioner may have made a payment of $50.00 on August 24, 2021, which would correspond with a special report/form issued the day prior to that payment. (PX 1 p.6-15)

Petitioner introduced the medical bill of St. Louis Spine & Orthopedic Surgery Center, where Petitioner's surgeries took place on August 25, 2021 and September 15, 2021. Those bills total $29,992.00. (PX 1 p.17,18)

Petitioner introduced the medical bill of Premier Anesthesia, LLC for medical services associated with the surgeries of August 25, 2021 and September 15, 2021. Those bills total $1,800.00. (PX 1 p.19,20)

Petitioner introduced the medical bill of ABF/ROM Care Health Services, LLC for braces and shoulder slings which were applied to Petitioner's wrists and arms immediately following the completion of each surgery. Those bills total $980.00. (PX 1 p.23,24)

Petitioner introduced bills from Precision Medical Products, Inc. which do not have sufficient explanation in the medical records. (PX 1 p.41,43)

The Arbitrator finds that all of the bills for medical services in Petitioner Exhibit 1 specifically noted above are related to Petitioner's bilateral carpal and cubital tunnel syndrome injuries, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident, with the exception of the special report/forms which are not found to be reasonable and necessary to treat or cure Petitioner's injuries, and the bills apparently submitted by Precision Medical Products, Inc., which are not found to be reasonable and necessary to treat or cure Petitioner's injuries. The reasonable and necessary bills are to be paid pursuant to the Medical Fee Schedule. Respondent shall reimburse Petitioner for the $1,200.00 prepayment made to Dr. Phillips and Neurological & Diagnostic Institute. This finding is based upon the medical records introduced into evidence and the testimony of Petitioner.

The Arbitrator further finds that Respondent is entitled to credit for all payments made to the medical providers prior to the date of arbitration, including those noted on Respondent Exhibit 8.

In support of the Arbitrator's decision relating to the nature and extent of the injury the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence, above, are incorporated herein.

The findings in regard to Arbitrator's credibility assessments, above, are incorporated herein.

The findings in regard to medical, above, are incorporated herein.

As the accident occurred after September 1, 2011, the nature and extent of the injury must be determined through the five-factor test set out in §8.1b(b) of the Act.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a correctional officer at the time of the accident and that he *is* able to return to work in his prior capacity as a result of said injury. The Arbitrator notes Petitioner was released to full duty, unrestricted work following his two surgeries, returned to full duty work and both he and his supervisor testified Petitioner was performing his normal duties. Because of his ability to perform his prior work without any difficulty or accommodations, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 49 years old at the time of the accident. Because of Petitioner's anticipated number of additional work years, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes no evidence was submitted to indicate any loss of income as a result of this accident and these injuries. Because of the lack of evidence in this regard, the Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner underwent surgical releases of both his left and his right carpal tunnels and cubital tunnels, these procedures are corroborated by the medical records. At arbitration Petitioner initially testified that he was improved following his surgeries. He then testified that at his attorney's request he wrote down a list of symptoms that he still had, including tender, sensitive incisions, his having to be careful when resting his left elbow on a hard object, his right elbow being more tender and giving him a shock if he put it on a desktop or car window, his grip strength was not what it used to be, and his switching hands quite often when keying, doing property box searches or shakedowns. Petitioner, once released from medical care with no restrictions, never returned to see Dr. Bradley or any other physician about the complaints he wrote down at the request of his attorney. Because of lack of medical corroboration of any of these post-surgical complaints, the Arbitrator therefore gives *lesser* weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 10% loss of use of the left hand as a result of a repetitive trauma accident, 19 weeks payable at $778.97 per week, 10% loss of use of the right hand as a result of a repetitive trauma accident, 19 weeks payable at $778.97 per week, 10% loss of use of the left arm, 25.3weeks payable at $778.97 per week, and 10% of the right arm, 25.3 weeks payable at $778.97 per week, pursuant to §8(e) of the Act.

In support of the Arbitrator's decision relating to whether penalties or fees be imposed upon Respondent the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence, above, are incorporated herein.

The findings in regard to Arbitrator's credibility assessments, above, are incorporated herein.

The findings in regard to medical, above, are incorporated herein.

Penalties and fees are to be assessed when delay of payment is deliberate or results from bad faith or improper purpose. Petitioner alleged a repetitive trauma injury, opening and closing cells. How repetitious this activity was and how often he was performing the job task involved, and how large the keys were which were being used were described in different ways and in different numbers at different times during the investigation process. According to documents in Respondent's possession, Respondent's timesheets and job assignments (Respondent Exhibits 5 and 6), in the 12 – 14 months prior to this accident date/manifestation date, Petitioner was working less than four days per week, a total of 198 work days in the 52 weeks prior to the accident date. While the job assignments sheet only covers March of 2020, when pandemic lockdowns began, until July 31, 2020, a period of 153 days, during that time Petitioner was off or on union time 68 days, and of the remaining 87 days, Petitioner worked in Writ, which he testified involved very little keying, 9 days; he worked in the control tower 31 days; he worked the Bus assignment 2 days; he worked Audits 1 day; and he only worked in housing, or day room, 42 days. From that evidence, questioning of a repetitive trauma injury opening cell doors in the housing unit would be reasonable. It was not until the actual day of arbitration that Petitioner testified that job assignments were changed on a regular basis. Petitioner testified that the job assignments exhibit was in fact representative of what he would have been assigned at the beginning of a shift. It would not have been unreasonable or in bad faith for Respondent to rely on those investigative findings. It should be noted that the person who may or may not have been able to rebut Petitioner's arbitration, his supervisor, no longer worked at the prison, he had retired. It would not have been unreasonable for Respondent to deny this claim based upon Petitioner's varying description of how many times per shift he would unlock cells, descriptions which varied from an increase from 50 pre-Covid to 220 to 1,000 times during Covid, depending on whether Petitioner's arbitration testimony, his history to Dr. Bradley or his history to Dr. Emanuel was consulted. Petitioner had also described to Dr. Emmanuel that the keys he would have used 1,000 times per shift were large, while at arbitration he stated they were typical house keys. It is also noted that after receiving an addendum report from Dr. Emmanuel, Respondent paid medical bills on July 25, 2022. It is unclear from the medical bills introduced into evidence whether, when, and in some cases to whom those bills were provided to Respondent.

The Arbitrator finds no evidence that Respondent acted in bad faith or unreasonably in investigating and defending this claim, and Petitioner's Petition for Penalties is therefore denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC025023
Case Name	Ricardo Castro v. FedEx
Consolidated Cases	19WC025024
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0181
Number of Pages of Decision	18
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Christopher Williams
Respondent Attorney	Diandra Abate

DATE FILED: 4/18/2023

/s/ Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RICARDO CASTRO,

Petitioner,

vs. NO: 19 WC 25023

FEDEX,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability (TTD) benefits, permanent partial disability (PPD) benefits and penalties and fees, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator which is attached hereto and made a part hereof.

The Commission additionally addresses the issue of penalties and fees raised in Petitioner's Petition for Review and Statement of Exceptions. The Commission has reviewed the evidence and finds Respondent's conduct was neither unreasonable nor vexatious especially given the significant issues in dispute related to the right shoulder. As such, Petitioner's request for penalties and fees is denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 12, 2022 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $1,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

April 18, 2023

CAH/pm
O: 4/6/23
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC025023
Case Name	Ricardo Castro v. FedEx
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Nina Mariano, Arbitrator

Petitioner Attorney	Christopher Williams
Respondent Attorney	Diandra Abate

DATE FILED: 9/12/2022

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 7, 2022 3.32%

/s/Nina Mariano, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **COOK**)

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

RICARDO CASTRO
Employee/Petitioner

v.

FEDEX
Employer/Respondent

Case # **19** WC **025023**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nina Mariano**, Arbitrator of the Commission, in the city of **Chicago**, on **3/22/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☒ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☒ What was Petitioner's age at the time of the accident?
I. ☒ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other

FINDINGS

On the date of accident, **12/12/18**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**11,476.48**; the average weekly wage was $**338.01**.

On the date of accident, Petitioner was **44** years of age, ***married*** with **2** dependent children.

Respondent ***has*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

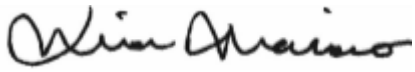
ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $319.00/week for 5 weeks, because the injuries sustained on December 12, 2018 caused 1% loss of use of man as a whole, as provided in Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

SEPTEMBER 12, 2022



Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

RICARDO CASTRO, JR.,	)	
	)	
PETITIONER,	)	
	)	
V.	)	
	)	CASE NO. 19 WC 025023
FEDEX GROUND,	)	CONSOLIDATED CASE 19 WC 025024
	)	
	)	
RESPONDENT.	)	

FINDINGS OF FACT

This matter proceeded to hearing on March 22, 2022 in Chicago, Illinois before Arbitrator Nina Mariano. Arbitrator's Exhibit "Ax" 1.

Petitioner testified that his date of birth is January 20, 1974 (T. 22-23). He testified that he was married to his wife Jennifer on December 12, 2018 (T. 23). He testified that on December 12, 2018, he had two dependent children, Cassandra and Ava (T. 23). Petitioner testified that he did not bring his marriage certificate or his children's birth certificates to hearing with him (T. 45). Petitioner testified that on December 12, 2018, he was employed by FedEx as a loader (T. 10). He had to load trailers by taking items off of a conveyor belt and a chute (T. 10). The chute was located above his head about 13 feet in the air, sent packages down toward the trailer door, and was intended to handle small packages weighing less than 80 pounds (T. 10-11). The conveyor belt was used for items weighing 80 or more pounds (T. 29). Part of Petitioner's job duties required him to lift heavy items overhead (T. 11-12). He testified that everything is overhead because he has to load items into a trailer from the floor all the way to the ceiling (T. 30). This requires the occasional use of a step ladder if you cannot reach (T. 30).

On December 12, 2018, Petitioner was loading a trailer when a printer came down the chute and struck him in his back (T. 12). Petitioner was loading a trailer and had his back turned to the chute (T. 12-13). The printer struck him in his "entire back" and was the size of a miniature fridge and weighed 90-95 pounds (T. 13). Petitioner testified that when the printer struck him in the back, he fell forward and caught himself with his right arm on the concrete floor in front of him (T. 13-14).

After being struck, Petitioner testified he experienced pain in his back and shoulder (T. 14). He testified that he notified his supervisor and sought medical attention at the company clinic, which was located on site (T. 14-15). He testified that he treated at the company clinic a few times and complained of back pain because that was his main concern as he was struck in the back (T. 16). He testified that he continued to work full duty following this accident, which included overheard lifting using his right arm (T. 16-17). While he continued to work full duty, Petitioner testified that he noticed that he still had pain. (T. 16-17). On August 22, 2019, Petitioner testified that he had really bad pain so he stopped working and notified his supervisor, Daniel Guzman and went and got ice for his shoulder (T. 17-18). Petitioner testified that in the eight months between

December 12, 2018 and August 22, 2019, his right shoulder continued to bother him and he felt tightness and occasional pulsating (T. 47). When asked why he did not get treatment during that time, he said he didn't know and that he was working full duty. (T. 45-46). He testified that prior to December 12, 2018, he had never experienced those symptoms (T. 47).

Petitioner testified that after he stopped working on August 22, 2019, he sought medical treatment with Dr. Thorsness and was taken off of work (T. 18). He testified that he chose Dr. Thorsness on his own and that he did not have an attorney when he made the appointment (T. 37). He testified that he told Dr. Thorsness about the December 12, 2018 accident and the pain he felt on August 22, 2019. (T. 38). Dr. Thorsness ordered an MRI (T. 18). He testified that he notified Respondent about his visit with Dr. Thorsness and that Respondent took his paperwork and sent him home (T. 19). Petitioner testified that he was terminated by Respondent while waiting for the MRI to be approved (T. 19-20). He learned of his termination when he received a former employee survey in his email (T. 49). Before receiving this survey, Petitioner believed he was still employed (T. 49).

Petitioner testified that he did eventually have an MRI with Dr. Thorsness on March 17, 2020 and that he followed up with Dr. Thorsness on March 30, 2020, at which time Petitioner was kept off of work and surgery for his right shoulder was recommended (T. 20). Petitioner testified that he waited so long to return to Dr. Thorsness because he was waiting on the MRI to be approved, which was eventually approved and paid for by Respondent six to seven months after it was ordered (T. 48). Petitioner testified that he continued to follow up with Dr. Thorsness and was eventually released to a ten-pound lifting restriction with no overhead work (T. 21). He testified that Respondent did not accommodate his restriction and that he has not worked since August 22, 2019 (T. 21). He testified that he has not received any payments from workers' compensation or Respondent directly (T. 21).

Petitioner testified that he was still experiencing dull pain in his right shoulder (T. 22). He testified that his shoulder impacts his ability to do activities of daily living like showering or reaching behind (T. 22). He testified that anything that requires reaching or lifting causes him to feel like his shoulder is squeezing (T. 44).

He testified that he still wants to have the surgery recommended by Dr. Thorsness (T. 22). Petitioner testified that he had a prior rotator cuff surgery on his left side, but no prior injury to his right shoulder (T. 39). He testified that prior to December 12, 2018, he had never sought medical treatment for his right shoulder or missed work as a result of his right shoulder (T. 24). He testified that before December 12, 2018, he had never been placed on work restrictions for his right shoulder (T. 24).

Petitioner testified that he reviewed Respondent's wage statement and that he believed it to be true and accurate (T. 24-25).

Petitioner testified that he previously filed a workers' compensation case in 2014 while working for UPS and received a settlement or award (T. 42). He testified that he has not filed any other civil action, but that he had filed for bankruptcy (T. 43).

Respondent introduced into evidence an Illinois Form 45 report, which is undated and unsigned, but is purported to have been prepared by Diana Head from Sedgwick (RX1). The document states that Petitioner's average weekly wage is $347.77 and under the item "What was the employee doing when the accident occurred," it states "***ENTERED AT THE REQUEST OF RISK MANAGEMENT – HIRED AN ATTORNEY. FILED A CLAIM WITH THE STATE. ***RIGHT SHOULDER" (RX1). This form also states that the accident occurred on December 12, 2018, but that it did <u>not</u> occur on the employer's premises (RX1).

Respondent introduced a wage statement, which included Petitioner's wages from April 28, 2018 through December 8, 2018 (RX2). This amounts to 33 weeks of work for which Petitioner earned a total of $11,476.48 (RX2). Petitioner earned overtime for the checks of 7/7/18 ($114.68), 9/8/18 ($77.96), and 11/24/18 ($129.54), for a total of $322.18 (RX2). After subtracting the overtime earnings, Petitioner earned $11,154.30 over his 33 weeks of work (RX2).

Respondent introduced a medical payment log, which shows payment for a March 17, 2020 MRI ($1,263.37) and a March 30, 2020 visit at Hinsdale Orthopaedic ($119.49), for total payments of $1,382.86 (RX8).

Respondent introduced Petitioner's 2018 bankruptcy petition (RX7).

Respondent also introduced Petitioner's employee file from Respondent (RX9). The employee file includes a form showing that Petitioner was last employed on September 19, 2019 and last worked on August 22, 2019 (RX9). This form states the reason for separation was "job abandonment" (RX9). The file includes reports that Petitioner was a no-call no-show on September 10 and 11, 2019 (RX9). The file also includes an employee data sheet from April 24, 2018 indicating that Jennifer Castro is Petitioner's wife (RX9).

Medical Summary

Petitioner first sought treatment with ATI Worksite Solutions on December 12, 2018 (PX1 p. 6-9). A history was provided of a "heavy NC (85+ lbs)" coming down a load chute and striking Petitioner on his left side by his ribs (PX1 p. 7). Petitioner had visible redness on his left side and mid back (PX1 p. 7). He followed up on December 18, 2018 and had bruising on his left side and discomfort of 5/10, but was able to work with discomfort (PX1 p. 6). On December 28, 2018, Petitioner reported that he no longer had discomfort or bruising on his side (PX1 p. 5).

There are treatment notes present for May 21, 2019 and May 29, 2019 at ATI Worksite Solutions which indicate complaints related to Petitioner's right ankle and foot. The notes further indicate that Petitioner's primary care provider says he has a hairline fracture on the top of his foot. These notes are unrelated to the claim at hand involving his right shoulder. In these notes, there is no mention of right shoulder pain. There were also no records from Petitioner's primary care doctor introduced into evidence.

Petitioner presented for treatment on August 22, 2019 with Dr. Robert Thorsness at Hinsdale Orthopaedics (PX2 p. 6). A history was provided that Petitioner sustained a direct blow to the posterior aspect of his right shoulder and scapula on 12/12/18 and developed mild stiffness in his right shoulder, but was managing with use of Aleve to work full duty (PX2 p. 6). Petitioner had intermittent pain since the accident with worsening pain 1-2 months ago (PX2 p. 6). He noted that pain worsens with heavy lifting. (PX2 p. 6). Petitioner described popping in his shoulder with activity (PX2 p. 6). Dr. Thorsness examined and x-rayed Petitioner (PX2 p. 8). He recommended an MRI and took Petitioner off of work (PX2 p. 8).

Petitioner had an MRI of his right shoulder on March 17, 2020, which was completed at an open MRI facility (PX3 p. 2). The images were degraded by motion; however, revealed moderate acromioclavicular osteoarthritis (PX3 p. 2). Petitioner followed up with Dr. Thorsness on March 30, 2020 following his MRI (PX2 p. 11-14). Dr. Thorsness reviewed the MRI film and found subacromial bursitis, severe AC joint arthropathy with distal clavicle osteolysis (PX2 p. 12). Dr. Thorsness pointed out that the image quality of the MRI was poor (PX2 p. 12). Dr. Thorsness recommended a right shoulder arthroscopy, debridement, subacromial decompression with acromioplasty, distal clavicle excision, and open biceps tenodesis with

possible rotator cuff repair depending on intraoperative findings (PX2 p. 13). He kept Petitioner off of work (PX2 p. 13).

Petitioner followed up on May 11, 2020 and June 22, 2020 and was awaiting the results of an IME (PX2 p. 15-21). He remained off of work (PX2 p. 21). Petitioner visited Dr. Thorsness on July 27, 2020 and reviewed the IME report with him (PX2 p. 23-25). Dr. Thorsness re-reviewed the mechanism of injury with Petitioner, which he described as being struck by a falling printer on his left posterior flank causing him to fall onto his right side, hitting his right shoulder on the lateral aspect of the arm (PX2 p. 24). Dr. Thorsness indicated that Petitioner's pre-existing condition of clavicle osteolysis was aggravated by the work accident as he had reported no pain prior to this event (PX2 p. 24). At this visit, Petitioner received an AC joint injection and returned to work with a 10-pound lifting restriction and no overhead work (PX2 p. 24-25).

Petitioner returned to Dr. Thorsness once more on September 10, 2020 and reported that his injection had helped with his symptoms, but that they were still present (PX2 p. 26). Dr. Thorsness reiterated the need for surgery and kept Petitioner on his work restrictions (PX2 p. 27).

Dr. Thorsness was deposed on July 7, 2021 (PX4). He testified that he diagnosed Petitioner with distal clavicle osteolysis and AC joint arthritis and biceps tendonitis, which was confirmed by the March 2020 MRI (PX4 p. 6-7). He testified that he restricted Petitioner from working starting with his first visit on August 22, 2019 (PX4 p. 6). He testified that he provided Petitioner with an option of cortisone injections, but that Petitioner had had those in his other shoulder in the past without relief, so Dr. Thorsness recommended surgery (PX4 p. 6-7). The surgery would consist of an acromioplasty, distal clavicle excision, an open biceps tenodesis with evaluation of the rotator cuff with possible rotator cuff repair (PX4 p. 7). Dr. Thorsness admitted that there was no obvious rotator cuff tear on the MRI image, but that the MRI image was of poor quality, so he would have to inspect the rotator cuff during surgery to cover his bases (PX4 p. 7).

Dr. Thorsness testified that he continued to restrict Petitioner from work because he was having significant pain in his arm and he wanted to fix the shoulder as soon as possible (PX4 p. 7-8). He testified that Petitioner's prognosis with surgery is very good and predicts that he would return to full duty work (PX4 p. 8). Without surgery, Petitioner will have continued pain and dysfunction in his shoulder and be limited and painful with overhead function (PX4 p. 8).

Dr. Thorsness testified that in his experience AC joint pathology, especially distal clavicle osteolysis and subsequent AC joint arthritis tend to be from overload injuries to the repetitive use injuries (PX4 p. 9-10). These patients often have no pain with AC joint arthritis, but a direct blow to the side or posterior aspect of the shoulder will drive energy through the AC joint causing it to become symptomatic (PX4 p. 10). He testified that when he clarified the accident details with Petitioner, he understood that something fell onto Petitioner and then Petitioner fell onto his right shoulder (PX4 p. 10). Dr. Thorsness testified that this can cause significant pain and inflammation within the AC joint (PX 4p. 10). He testified that if Petitioner struck the ground hard enough with his arm, the energy will transmit through the arm into the AC joint (PX4 p. 11). He testified that he suspects Petitioner had some distal clavicle osteolysis and AC joint arthritis before the accident, but that the injury exacerbated the underlying condition (PX4 p. 11).

Dr. Thorsness testified that Petitioner's presentation of initial focus on the pain to his back where he was struck was quite common (PX4 p. 12-13). He testified that other parts of the body like the elbow or shoulder can become more symptomatic and not improve over time causing them to seek treatment in a delayed fashion (PX4 p. 13). Dr. Thorsness could not conjure a more logical explanation for Petitioner's diagnoses (PX4 p. 13).

Dr. Thorsness testified that Petitioner was having significant pain at his last visit and Petitioner was given a cortisone injection that provided significant pain reduction (PX4 p. 13-14). He testified that the cortisone injection is a temporary fix that does not cure the problem (PX4 p. 14). He testified that Petitioner's need for work restrictions and the recommended treatment are related to his December 12, 2018 accident (PX4 p. 14).

On cross-examination, Dr. Thorsness testified that it is unlikely that a strike to the lower left quadrant would cause an injury in the right shoulder (PX4 p. 18). He testified that Petitioner clarified the specific nature of his accident at his July 27, 2020 visit indicating that he was struck on his left posterior flank causing him to fall onto his right side hitting his right shoulder on the lateral aspect of the arm (PX4 p. 19). He testified that it is possible that in the 8 months between the accident and the first time he saw Petitioner that something could have happened (PX4 p. 20). Dr. Thorsness testified that it was problematic and suspicious that Petitioner did not report the details of the accident at the first visit. He testified that he was not aware that Petitioner was terminated from his job or whether he reported his right shoulder injury to his employer (PX4 p. 21).

Dr. Thorsness testified that AC joint arthritis and osteolysis occur over time with micro trauma to the AC joint (PX4 p. 23-24). He testified that while he suspects Petitioner had distal clavicle osteolysis prior to the injury, he has a lot of patients who are asymptomatic until a significant trauma to that joint causing inflammation and pain (PX4 p. 24).

He testified that if the printer that struck Petitioner was big enough to knock him to the ground, that would be a competent mechanism for causing the right shoulder injury (PX4 p. 24-25). He testified that the direct blow could cause it or the falling onto his arm would create a similar mechanism of injury (PX4 p. 24-25). The significant amount of energy that needs to be transferred through the AC joint could come from a lateral blow to the side of the upper arm or a fall onto the arm itself (PX4 p. 25). He testified that continuing to work lifting heavy items, some overhead, could aggravate the condition even more and worsen his condition (PX4 p. 27).

Section 12 Exam

Respondent had Petitioner examined by Dr. Charles Bush-Joseph on May 6, 2020 (RX4). Dr. Bush-Joseph indicated that Petitioner described a work accident on December 12, 2018 wherein a 100-pound box came down a conveyor belt and struck him in the lumbar region and that he then fell forward (RX4). He indicated that Petitioner was inconsistent regarding the treatment and occurrences over the next several weeks, which were 1.5 years prior to his exam (RX4). He indicated that Petitioner developed pain over the anterior aspect of his shoulder and sought treatment with Dr. Richard Thorsness on August 22, 2019 (RX4).

Dr. Bush-Joseph reviewed Petitioner's March 17, 2020 MRI films and diagnosed Petitioner with chronic osteolysis and AC joint arthritis in his right shoulder (RX4). He administered a QuickDASH exam and Petitioner scored a 46 (RX4). On exam, Dr. Bush-Joseph found full active and passive range of motion with the right shoulder, but diffuse tenderness (RX4).

Dr. Bush-Joseph's diagnosis was AC joint osteolysis of the right shoulder, which was unrelated to the December 12, 2018 accident (RX4). He determined there was no evidence of a traumatic injury to his shoulder and that any future treatment would be unrelated to a work accident. He found that Petitioner suffered a soft tissue contusion of his lumbar spine region, for which he had reached MMI (RX4).

Dr. Bush-Joseph was deposed on September 1, 2021 (RX6). Dr. Bush-Joseph recounted the details in his report about Petitioner's reported accident (RX6 p. 12-13). He testified that Petitioner was not reliable on

his physical exam, as he was somewhat hyperactive and sore everywhere he was touched (RX6 p. 17-18). He testified that surgical treatment is reasonable for someone with Petitioner's condition (RX6 p. 22-23).

Dr. Bush-Joseph testified that viewing a video recording of Petitioner's accident would be helpful in verifying the mechanism of injury (RX6 p. 26-27). Dr. Bush-Joseph testified that he believed that Petitioner fell forward when he was struck by the box, but is not sure onto what he fell (RX6 p. 27-28).

Dr. Bush-Joseph testified that Petitioner was no longer employed by Respondent and that he knew this from his cover letter from Respondent's counsel (RX6 p. 32-33). He testified that he did not receive an accident report from Respondent to review (RX6 p. 29). He also testified that he was not provided with the company clinic's treatment records besides the initial date of treatment (RX6 p. 29). He testified that osteolysis can sometimes occur or become symptomatic with trauma (RX6 p. 30).

Dr. Bush-Joseph testified that he could not recommend treatment for Petitioner because his exam was unreliable and he had diffuse pain (RX6 p. 34-35). He testified that he knows Dr. Thorsness well and helped to train him (RX6 p. 35-36). He testified that he disagrees with Dr. Thorsness (RX6 36). Dr. Bush-Joseph stated that this is a case where two highly qualified orthopaedic surgeons have different opinions on causation and whether the Petitioner's complaints on exam are reliable (RX6 p. 41-42).

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

19 WC 025023

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124848, ¶ 34. A compensable injury occurs 'in the course of' employment when it is sustained while he performs reasonable activities in conjunction with his employment. Id.

"The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." Id. at ¶ 36. To determine whether a claimant's injury arose out of his employment, the risks to which the claimant was exposed must be categorized. Id. The three categories of risks are "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." Id. at ¶ 38. "A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." Id. at ¶ 46.

Petitioner testified that on December 12, 2018, he was struck in the back with a printer while loading a truck from work and then fell forward injuring his right shoulder. No medical records or other evidence was presented indicating the detail of Petitioner falling forward until July 27, 2020. His initial medical treatment records from the date of the accident indicate that a printer hit him in the left side of his ribs and he had back pain. He then returned on December 28, 2018 indicating the bruising on his left side and discomfort was gone and he was able to perform work without any issues. Following the December 28, 2018 visit, there is a gap in treatment until being seen again on August 22, 2019, complaining of pain to an entirely different body part than what is indicated in the initial medical records with a different history as well.

When Petitioner first sought treatment with Dr. Thorsness on August 22, 2019, he reported a direct blow to his right shoulder when he was struck in the shoulder with a printer. This contradicts his testimony at trial and the initial medical treatment records. Arbitrator finds Petitioner's testimony regarding falling forward after he was struck by the printer unreliable as it is not corroborated by the initial medical records and does not appear in the medical records until over a year and a half after the accident date. The first complaint of right shoulder pain does not appear in the medical records until August 22, 2019 even though he had sought treatment for his right foot with his primary care provider and ATI worksite solutions in May 2019. Arbitrator finds the gap in treatment for the right shoulder and inconsistent accident history reports compelling. Further, Petitioner was not able to provide an explanation for the gap in treatment.

Arbitrator finds that Petitioner was working for Respondent as a loader at the time of the accident on Respondent's property and doing activities expected of him in that position. Arbitrator finds that Petitioner suffered an accident arising out of and in the course of his employment when he was struck by the printer, injuring the left side of his back/rib area for which he suffered a contusion. Arbitrator finds that Petitioner did not suffer an injury which arose out of his employment to his right shoulder on December 12, 2018, as it is not supported by the majority of the medical records and Arbitrator finds Petitioner's testimony regarding the right shoulder injury unreliable. All claims for compensation related to Petitioner's right shoulder are denied.

19 WC 025024

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124848, ¶ 34. A compensable injury occurs 'in the course of' employment when it is sustained while he performs reasonable activities in conjunction with his employment. Id.

"The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." Id. at ¶ 36.

To determine whether a claimant's injury arose out of his employment, the risks to which the claimant was exposed must be categorized. Id. The three categories of risks are "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." Id. at ¶ 38. "A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." Id. at ¶ 46.

Petitioner testified that he worked as a loader which required him to lift heavy items overhead while loading trailers for Respondent. Petitioner alleges an August 22, 2019 work accident. On August 22, 2019, Petitioner sought treatment with Dr. Thorsness and reported a direct blow to his right shoulder on December 12, 2018. He did not report an August 22, 2019 work injury to Dr. Thorness. Dr. Thorsness diagnosed Petitioner with right shoulder pathology as a result of the trauma he reported. When testifying, Petitioner indicated that he had pain on August 22, 2019, stopped working and went to the doctor.

On July 27, 2020, Petitioner provided a new history to Dr. Thorsness where he fell onto his right shoulder on December 12, 2018. At no time was a work accident on August 22, 2019 reported to Dr. Thorsness or indicated during his testimony. During Dr. Thorsness's deposition, he did not explain that Petitioner's condition was related to repetitive trauma only that his condition stemming from a right shoulder injury on December 12, 2018, worsened leading up to August 22, 2019. Arbitrator found above that Petitioner did not suffer a right shoulder injury on December 12, 2018 which arose out of his employment.

Based on the above, Arbitrator finds that there was no work accident that arose out of Petitioner's employment on August 22, 2019 and all claims for compensation related to an alleged work accident on August 22, 2019 are denied.

D. What was the date of the accident?

19 WC 025023

Petitioner testified that he was struck with a printer on December 12, 2018. This is corroborated by the on-site medical center's records as well as the Form 45 introduced by Respondent. Arbitrator finds the date of the accident is December 12, 2018.

19 WC 025024

Arbitrator has found that Petitioner failed to prove that his condition arose out of his employment. Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

E. Was timely notice of the accident given to Respondent?

19 WC 025023

Petitioner testified that he notified his supervisor of his accident involving the printer. This follows with the record from the on-site medical facility, which contains a medical record from December 12, 2018 which identifies the accident details. The nature of being treated at Respondent's on-site medical clinic is evidence that Respondent had notice of the accident on December 12, 2018. Thus, Arbitrator finds that timely notice was provided.

19 WC 025024

Arbitrator has found that Petitioner failed to prove that his condition arose out of his employment. Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

F. Is Petitioner's current condition of ill-being causally related to the injury?

19 WC 025023

As indicated above in Section C, Arbitrator finds that Petitioner suffered a contusion to his back/left rib area when he was struck by a printer, for which he recovered and was at Maximum Medical Improvement as of December 28, 2018.

As Arbitrator found above that Petitioner failed to prove his right shoulder condition arose out of his employment, the issue of causal connection in relation to his right shoulder is moot.

19 WC 25024

Arbitrator has found that Petitioner failed to prove that his condition arose out of his employment. Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

G. What were Petitioner's earnings?

19 WC 025023

Respondent presented a wage statement for Petitioner's earnings from April 28, 2018 through December 8, 2018. No evidence of earnings after December 8, 2018 were presented. Petitioner testified that the wage statement was true and accurate. The wage statement consisted of pay for 33 weeks and after deducting the overtime payments, the total income earned over the 33 weeks was $11,154.30, which is an average of $338.01 per week. Respondent alleges that his income is $300.01. This is not reflected in the evidence as the wage statement produces an average of $338.01 and the Form 45 introduced by Respondent indicates Petitioner's average weekly wage is $347.77. Using the most reliable evidence of the wage statement, Arbitrator finds that Petitioner's average weekly wage is $338.01. Based on Petitioner's marital status and dependents, he qualifies for the minimum TTD and PPD rate of $319.00 per week.

19 WC 25024

Arbitrator has found that Petitioner failed to prove that his condition arose out of his employment. Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

H. What was Petitioner's age at the time of the accident?

19 WC 025023

Petitioner testified that he was born on January 20, 1974. On December 18, 2018, he was 44 years old. This is also corroborated by the medical records and Respondent's Form 45 exhibit. Arbitrator finds the Petitioner was 44 years old at the time of the accident.

19 WC 025024

Arbitrator has found that Petitioner failed to prove that his condition arose out of his employment. Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

I. What was Petitioner's marital status at the time of the accident?

19 WC 025023

Petitioner testified that he was married on both dates of the accident and that he had two children. The Respondent's employee file identifies Petitioner's wife as his emergency contact and as his spouse. He also testified regarding his daughters' names and birthdates. This testimony was unrebutted. For the foregoing reasons, Arbitrator finds that on the date of both accidents, Petitioner was married with two dependent children.

19 WC 25024

Arbitrator has found that Petitioner failed to prove that his condition arose out of his employment. Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

19 WC 025023

Respondent has paid all appropriate charges for all reasonable and necessary medical services. Arbitrator finds that payment of medical bills after MMI date of December 28, 2018 sought by Petitioner are denied. Further, all medical bills for Petitioner's right shoulder are denied.

19 WC 25024

Arbitrator has found that Petitioner failed to prove that his condition arose out of his employment. Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

K. Is Petitioner entitled to any prospective medical care?

19 WC 025023

Arbitrator finds that Petitioner reached MMI on December 28, 2018 for contusion to his back/left rib area. Petitioner is not entitled to any further medical care for his back/left rib area or his right shoulder, for which injury to, Arbitrator found in Section C did not arise out of his employment.

19 WC 25024

Arbitrator has found that Petitioner failed to prove that his condition arose out of his employment. Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

L. What temporary benefits are in dispute? TTD?

19 WC 025023

Petitioner was returned to work full duty following December 12, 2018 date of accident. Claim for TTD is denied based on Arbitrator finding that Petitioner failed to prove that his right shoulder condition arose out of his employment.

19 WC 25024

Arbitrator has found that Petitioner failed to prove that his condition arose out of his employment. Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

O. Other: Nature and Extent of the Injury

Parties stipulated that in the event that Arbitrator did not award prospective medical that the nature and extent of the injury would be in dispute.

Arbitrator finds that Petitioner sustained a compensable work injury to his left rib/back area on December 12, 2018 and it is related to his employment with Respondent.

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

1. **The reported level of impairment pursuant to subsection (a)**

Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. Therefore, Arbitrator gives no weight to this factor.

2. **Petitioner's occupation**

Petitioner worked as a part-time package handler for FedEx Ground and was released to return work full duty for the contusion to his back/left rib area on December 28, 2018. Arbitrator gives some weight to this factor.

3. **Petitioner's age**

Petitioner was 44 years old at the time of the accident and while he does have significant work life ahead of him, the resolved contusion to his back/left rib area should not affect his future work life. Arbitrator gives less weight to this factor.

4. Petitioner's future earning capacity

No evidence was presented that Petitioner's contusion to his back/left rib area affects his future earning capacity. Arbitrator gives no weight to this factor.

5. Evidence of disability corroborated by the treating medical records

Petitioner suffered a contusion to his back/left rib area on December 12, 2018 when he was struck by a printer. This condition resolved by December 28, 2018 when Petitioner reported that he no longer had bruising on his side or discomfort and was able to perform work without issues. Arbitrator gives greater weight to this factor.

Based on all of the above, Arbitrator awards 1% MAW for Petitioner's injury to his back/left rib area which took place on December 12, 2018.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC025024
Case Name	Ricardo Castro v. FedEx
Consolidated Cases	19WC025024;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0182
Number of Pages of Decision	18
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Christopher Williams
Respondent Attorney	Diandra Abate

DATE FILED: 4/18/2023

/s/ Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RICARDO CASTRO,

Petitioner,

vs. NO: 19 WC 25024

FEDEX,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability (TTD) benefits, permanent partial disability (PPD) benefits and penalties and fees, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission notes that Petitioner raised the issue of penalties and fees in his Petition for Review and Statement of Exceptions. This issue is moot as the Commission has affirmed the Arbitrator's Decision denying this claim.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 12, 2022 is hereby affirmed and adopted.

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

April 18, 2023

/s/ *Christopher A. Harris*
Christopher A. Harris

CAH/pm
O: 4/6/23
052

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC025024
Case Name	Ricardo Castro v. FedEx
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Nina Mariano, Arbitrator

Petitioner Attorney	Christopher Williams
Respondent Attorney	Diandra Abate

DATE FILED: 9/12/2022

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 7, 2022 3.32%

/s/Nina Mariano, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **COOK**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

RICARDO CASTRO
Employee/Petitioner

v.

FEDEX
Employer/Respondent

Case # **19** WC **025024**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nina Mariano**, Arbitrator of the Commission, in the city of **Chicago**, on **3/22/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☒ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☒ What was Petitioner's age at the time of the accident?
I. ☒ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other

FINDINGS

On the date of accident, **8/22/19**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***N/A*** given to Respondent.

Petitioner's current condition of ill-being ***N/A*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**N/A**; the average weekly wage was $**N/A**.

On the date of accident, Petitioner was **N/A** years of age, **N/A** with **N/A** dependent children.

Respondent ***N/A*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

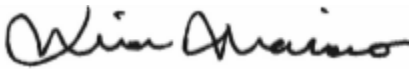
ORDER

Because the accident did not arise out of Petitioner's employment, compensation is denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

SEPTEMBER 12, 2022



Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

RICARDO CASTRO, JR.,	)	
	)	
PETITIONER,	)	
	)	
v.	)	
	)	CASE NO. 19 WC 025024
FEDEX GROUND,	)	CONSOLIDATED CASE 19 WC 025023
	)	
	)	
RESPONDENT.	)	

FINDINGS OF FACT

This matter proceeded to hearing on March 22, 2022 in Chicago, Illinois before Arbitrator Nina Mariano. Arbitrator's Exhibit "Ax" 1.

Petitioner testified that his date of birth is January 20, 1974 (T. 22-23). He testified that he was married to his wife Jennifer on December 12, 2018 (T. 23). He testified that on December 12, 2018, he had two dependent children, Cassandra and Ava (T. 23). Petitioner testified that he did not bring his marriage certificate or his children's birth certificates to hearing with him (T. 45). Petitioner testified that on December 12, 2018, he was employed by FedEx as a loader (T. 10). He had to load trailers by taking items off of a conveyor belt and a chute (T. 10). The chute was located above his head about 13 feet in the air, sent packages down toward the trailer door, and was intended to handle small packages weighing less than 80 pounds (T. 10-11). The conveyor belt was used for items weighing 80 or more pounds (T. 29). Part of Petitioner's job duties required him to lift heavy items overhead (T. 11-12). He testified that everything is overhead because he has to load items into a trailer from the floor all the way to the ceiling (T. 30). This requires the occasional use of a step ladder if you cannot reach (T. 30).

On December 12, 2018, Petitioner was loading a trailer when a printer came down the chute and struck him in his back (T. 12). Petitioner was loading a trailer and had his back turned to the chute (T. 12-13). The printer struck him in his "entire back" and was the size of a miniature fridge and weighed 90-95 pounds (T. 13). Petitioner testified that when the printer struck him in the back, he fell forward and caught himself with his right arm on the concrete floor in front of him (T. 13-14).

After being struck, Petitioner testified he experienced pain in his back and shoulder (T. 14). He testified that he notified his supervisor and sought medical attention at the company clinic, which was located on site (T. 14-15). He testified that he treated at the company clinic a few times and complained of back pain because that was his main concern as he was struck in the back (T. 16). He testified that he continued to work full duty following this accident, which included overheard lifting using his right arm (T. 16-17). While he continued to work full duty, Petitioner testified that he noticed that he still had pain. (T. 16-17). On August 22, 2019, Petitioner testified that he had really bad pain so he stopped working and notified his supervisor, Daniel

Guzman and went and got ice for his shoulder (T. 17-18). Petitioner testified that in the eight months between December 12, 2018 and August 22, 2019, his right shoulder continued to bother him and he felt tightness and occasional pulsating (T. 47). When asked why he did not get treatment during that time, he said he didn't know and that he was working full duty. (T. 45-46). He testified that prior to December 12, 2018, he had never experienced those symptoms (T. 47).

Petitioner testified that after he stopped working on August 22, 2019, he sought medical treatment with Dr. Thorsness and was taken off of work (T. 18). He testified that he chose Dr. Thorsness on his own and that he did not have an attorney when he made the appointment (T. 37). He testified that he told Dr. Thorsness about the December 12, 2018 accident and the pain he felt on August 22, 2019. (T. 38). Dr. Thorsness ordered an MRI (T. 18). He testified that he notified Respondent about his visit with Dr. Thorsness and that Respondent took his paperwork and sent him home (T. 19). Petitioner testified that he was terminated by Respondent while waiting for the MRI to be approved (T. 19-20). He learned of his termination when he received a former employee survey in his email (T. 49). Before receiving this survey, Petitioner believed he was still employed (T. 49).

Petitioner testified that he did eventually have an MRI with Dr. Thorsness on March 17, 2020 and that he followed up with Dr. Thorsness on March 30, 2020, at which time Petitioner was kept off of work and surgery for his right shoulder was recommended (T. 20). Petitioner testified that he waited so long to return to Dr. Thorsness because he was waiting on the MRI to be approved, which was eventually approved and paid for by Respondent six to seven months after it was ordered (T. 48). Petitioner testified that he continued to follow up with Dr. Thorsness and was eventually released to a ten-pound lifting restriction with no overhead work (T. 21). He testified that Respondent did not accommodate his restriction and that he has not worked since August 22, 2019 (T. 21). He testified that he has not received any payments from workers' compensation or Respondent directly (T. 21).

Petitioner testified that he was still experiencing dull pain in his right shoulder (T. 22). He testified that his shoulder impacts his ability to do activities of daily living like showering or reaching behind (T. 22). He testified that anything that requires reaching or lifting causes him to feel like his shoulder is squeezing (T. 44).

He testified that he still wants to have the surgery recommended by Dr. Thorsness (T. 22). Petitioner testified that he had a prior rotator cuff surgery on his left side, but no prior injury to his right shoulder (T. 39). He testified that prior to December 12, 2018, he had never sought medical treatment for his right shoulder or missed work as a result of his right shoulder (T. 24). He testified that before December 12, 2018, he had never been placed on work restrictions for his right shoulder (T. 24).

Petitioner testified that he reviewed Respondent's wage statement and that he believed it to be true and accurate (T. 24-25).

Petitioner testified that he previously filed a workers' compensation case in 2014 while working for UPS and received a settlement or award (T. 42). He testified that he has not filed any other civil action, but that he had filed for bankruptcy (T. 43).

Respondent introduced into evidence an Illinois Form 45 report, which is undated and unsigned, but is purported to have been prepared by Diana Head from Sedgwick (RX1). The document states that Petitioner's average weekly wage is $347.77 and under the item "What was the employee doing when the accident occurred," it states "***ENTERED AT THE REQUEST OF RISK MANAGEMENT – HIRED AN ATTORNEY. FILED A CLAIM WITH THE STATE. ***RIGHT SHOULDER" (RX1). This form also states that the accident occurred on December 12, 2018, but that it did not occur on the employer's premises (RX1).

Respondent introduced a wage statement, which included Petitioner's wages from April 28, 2018 through December 8, 2018 (RX2). This amounts to 33 weeks of work for which Petitioner earned a total of $11,476.48 (RX2). Petitioner earned overtime for the checks of 7/7/18 ($114.68), 9/8/18 ($77.96), and 11/24/18 ($129.54), for a total of $322.18 (RX2). After subtracting the overtime earnings, Petitioner earned $11,154.30 over his 33 weeks of work (RX2).

Respondent introduced a medical payment log, which shows payment for a March 17, 2020 MRI ($1,263.37) and a March 30, 2020 visit at Hinsdale Orthopaedic ($119.49), for total payments of $1,382.86 (RX8).

Respondent introduced Petitioner's 2018 bankruptcy petition (RX7).

Respondent also introduced Petitioner's employee file from Respondent (RX9). The employee file includes a form showing that Petitioner was last employed on September 19, 2019 and last worked on August 22, 2019 (RX9). This form states the reason for separation was "job abandonment" (RX9). The file includes reports that Petitioner was a no-call no-show on September 10 and 11, 2019 (RX9). The file also includes an employee data sheet from April 24, 2018 indicating that Jennifer Castro is Petitioner's wife (RX9).

Medical Summary

Petitioner first sought treatment with ATI Worksite Solutions on December 12, 2018 (PX1 p. 6-9). A history was provided of a "heavy NC (85+ lbs)" coming down a load chute and striking Petitioner on his left side by his ribs (PX1 p. 7). Petitioner had visible redness on his left side and mid back (PX1 p. 7). He followed up on December 18, 2018 and had bruising on his left side and discomfort of 5/10, but was able to work with discomfort (PX1 p. 6). On December 28, 2018, Petitioner reported that he no longer had discomfort or bruising on his side (PX1 p. 5).

There are treatment notes present for May 21, 2019 and May 29, 2019 at ATI Worksite Solutions which indicate complaints related to Petitioner's right ankle and foot. The notes further indicate that Petitioner's primary care provider says he has a hairline fracture on the top of his foot. These notes are unrelated to the claim at hand involving his right shoulder. In these notes, there is no mention of right shoulder pain. There were also no records from Petitioner's primary care doctor introduced into evidence.

Petitioner presented for treatment on August 22, 2019 with Dr. Robert Thorsness at Hinsdale Orthopaedics (PX2 p. 6). A history was provided that Petitioner sustained a direct blow to the posterior aspect of his right shoulder and scapula on 12/12/18 and developed mild stiffness in his right shoulder, but was managing with use of Aleve to work full duty (PX2 p. 6). Petitioner had intermittent pain since the accident with worsening pain 1-2 months ago (PX2 p. 6). He noted that pain worsens with heavy lifting. (PX2 p. 6). Petitioner described popping in his shoulder with activity (PX2 p. 6). Dr. Thorsness examined and x-rayed Petitioner (PX2 p. 8). He recommended an MRI and took Petitioner off of work (PX2 p. 8).

Petitioner had an MRI of his right shoulder on March 17, 2020, which was completed at an open MRI facility (PX3 p. 2). The images were degraded by motion; however, revealed moderate acromioclavicular osteoarthritis (PX3 p. 2). Petitioner followed up with Dr. Thorsness on March 30, 2020 following his MRI (PX2 p. 11-14). Dr. Thorsness reviewed the MRI film and found subacromial bursitis, severe AC joint arthropathy with distal clavicle osteolysis (PX2 p. 12). Dr. Thorsness pointed out that the image quality of the MRI was poor (PX2 p. 12). Dr. Thorsness recommended a right shoulder arthroscopy, debridement, subacromial decompression with acromioplasty, distal clavicle excision, and open biceps tenodesis with

possible rotator cuff repair depending on intraoperative findings (PX2 p. 13). He kept Petitioner off of work (PX2 p. 13).

Petitioner followed up on May 11, 2020 and June 22, 2020 and was awaiting the results of an IME (PX2 p. 15-21). He remained off of work (PX2 p. 21). Petitioner visited Dr. Thorsness on July 27, 2020 and reviewed the IME report with him (PX2 p. 23-25). Dr. Thorsness re-reviewed the mechanism of injury with Petitioner, which he described as being struck by a falling printer on his left posterior flank causing him to fall onto his right side, hitting his right shoulder on the lateral aspect of the arm (PX2 p. 24). Dr. Thorsness indicated that Petitioner's pre-existing condition of clavicle osteolysis was aggravated by the work accident as he had reported no pain prior to this event (PX2 p. 24). At this visit, Petitioner received an AC joint injection and returned to work with a 10-pound lifting restriction and no overhead work (PX2 p. 24-25).

Petitioner returned to Dr. Thorsness once more on September 10, 2020 and reported that his injection had helped with his symptoms, but that they were still present (PX2 p. 26). Dr. Thorsness reiterated the need for surgery and kept Petitioner on his work restrictions (PX2 p. 27).

Dr. Thorsness was deposed on July 7, 2021 (PX4). He testified that he diagnosed Petitioner with distal clavicle osteolysis and AC joint arthritis and biceps tendonitis, which was confirmed by the March 2020 MRI (PX4 p. 6-7). He testified that he restricted Petitioner from working starting with his first visit on August 22, 2019 (PX4 p. 6). He testified that he provided Petitioner with an option of cortisone injections, but that Petitioner had had those in his other shoulder in the past without relief, so Dr. Thorsness recommended surgery (PX4 p. 6-7). The surgery would consist of an acromioplasty, distal clavicle excision, an open biceps tenodesis with evaluation of the rotator cuff with possible rotator cuff repair (PX4 p. 7). Dr. Thorsness admitted that there was no obvious rotator cuff tear on the MRI image, but that the MRI image was of poor quality, so he would have to inspect the rotator cuff during surgery to cover his bases (PX4 p. 7).

Dr. Thorsness testified that he continued to restrict Petitioner from work because he was having significant pain in his arm and he wanted to fix the shoulder as soon as possible (PX4 p. 7-8). He testified that Petitioner's prognosis with surgery is very good and predicts that he would return to full duty work (PX4 p. 8). Without surgery, Petitioner will have continued pain and dysfunction in his shoulder and be limited and painful with overhead function (PX4 p. 8).

Dr. Thorsness testified that in his experience AC joint pathology, especially distal clavicle osteolysis and subsequent AC joint arthritis tend to be from overload injuries to the repetitive use injuries (PX4 p. 9-10). These patients often have no pain with AC joint arthritis, but a direct blow to the side or posterior aspect of the shoulder will drive energy through the AC joint causing it to become symptomatic (PX4 p. 10). He testified that when he clarified the accident details with Petitioner, he understood that something fell onto Petitioner and then Petitioner fell onto his right shoulder (PX4 p. 10). Dr. Thorsness testified that this can cause significant pain and inflammation within the AC joint (PX 4p. 10). He testified that if Petitioner struck the ground hard enough with his arm, the energy will transmit through the arm into the AC joint (PX4 p. 11). He testified that he suspects Petitioner had some distal clavicle osteolysis and AC joint arthritis before the accident, but that the injury exacerbated the underlying condition (PX4 p. 11).

Dr. Thorsness testified that Petitioner's presentation of initial focus on the pain to his back where he was struck was quite common (PX4 p. 12-13). He testified that other parts of the body like the elbow or shoulder can become more symptomatic and not improve over time causing them to seek treatment in a delayed fashion (PX4 p. 13). Dr. Thorsness could not conjure a more logical explanation for Petitioner's diagnoses (PX4 p. 13).

Dr. Thorsness testified that Petitioner was having significant pain at his last visit and Petitioner was given a cortisone injection that provided significant pain reduction (PX4 p. 13-14). He testified that the cortisone injection is a temporary fix that does not cure the problem (PX4 p. 14). He testified that Petitioner's need for work restrictions and the recommended treatment are related to his December 12, 2018 accident (PX4 p. 14).

On cross-examination, Dr. Thorsness testified that it is unlikely that a strike to the lower left quadrant would cause an injury in the right shoulder (PX4 p. 18). He testified that Petitioner clarified the specific nature of his accident at his July 27, 2020 visit indicating that he was struck on his left posterior flank causing him to fall onto his right side hitting his right shoulder on the lateral aspect of the arm (PX4 p. 19). He testified that it is possible that in the 8 months between the accident and the first time he saw Petitioner that something could have happened (PX4 p. 20). Dr. Thorsness testified that it was problematic and suspicious that Petitioner did not report the details of the accident at the first visit. He testified that he was not aware that Petitioner was terminated from his job or whether he reported his right shoulder injury to his employer (PX4 p. 21).

Dr. Thorsness testified that AC joint arthritis and osteolysis occur over time with micro trauma to the AC joint (PX4 p. 23-24). He testified that while he suspects Petitioner had distal clavicle osteolysis prior to the injury, he has a lot of patients who are asymptomatic until a significant trauma to that joint causing inflammation and pain (PX4 p. 24).

He testified that if the printer that struck Petitioner was big enough to knock him to the ground, that would be a competent mechanism for causing the right shoulder injury (PX4 p. 24-25). He testified that the direct blow could cause it or the falling onto his arm would create a similar mechanism of injury (PX4 p. 24-25). The significant amount of energy that needs to be transferred through the AC joint could come from a lateral blow to the side of the upper arm or a fall onto the arm itself (PX4 p. 25). He testified that continuing to work lifting heavy items, some overhead, could aggravate the condition even more and worsen his condition (PX4 p. 27).

Section 12 Exam

Respondent had Petitioner examined by Dr. Charles Bush-Joseph on May 6, 2020 (RX4). Dr. Bush-Joseph indicated that Petitioner described a work accident on December 12, 2018 wherein a 100-pound box came down a conveyor belt and struck him in the lumbar region and that he then fell forward (RX4). He indicated that Petitioner was inconsistent regarding the treatment and occurrences over the next several weeks, which were 1.5 years prior to his exam (RX4). He indicated that Petitioner developed pain over the anterior aspect of his shoulder and sought treatment with Dr. Richard Thorsness on August 22, 2019 (RX4).

Dr. Bush-Joseph reviewed Petitioner's March 17, 2020 MRI films and diagnosed Petitioner with chronic osteolysis and AC joint arthritis in his right shoulder (RX4). He administered a QuickDASH exam and Petitioner scored a 46 (RX4). On exam, Dr. Bush-Joseph found full active and passive range of motion with the right shoulder, but diffuse tenderness (RX4).

Dr. Bush-Joseph's diagnosis was AC joint osteolysis of the right shoulder, which was unrelated to the December 12, 2018 accident (RX4). He determined there was no evidence of a traumatic injury to his shoulder and that any future treatment would be unrelated to a work accident. He found that Petitioner suffered a soft tissue contusion of his lumbar spine region, for which he had reached MMI (RX4).

Dr. Bush-Joseph was deposed on September 1, 2021 (RX6). Dr. Bush-Joseph recounted the details in his report about Petitioner's reported accident (RX6 p. 12-13). He testified that Petitioner was not reliable on

his physical exam, as he was somewhat hyperactive and sore everywhere he was touched (RX6 p. 17-18). He testified that surgical treatment is reasonable for someone with Petitioner's condition (RX6 p. 22-23).

Dr. Bush-Joseph testified that viewing a video recording of Petitioner's accident would be helpful in verifying the mechanism of injury (RX6 p. 26-27). Dr. Bush-Joseph testified that he believed that Petitioner fell forward when he was struck by the box, but is not sure onto what he fell (RX6 p. 27-28).

Dr. Bush-Joseph testified that Petitioner was no longer employed by Respondent and that he knew this from his cover letter from Respondent's counsel (RX6 p. 32-33). He testified that he did not receive an accident report from Respondent to review (RX6 p. 29). He also testified that he was not provided with the company clinic's treatment records besides the initial date of treatment (RX6 p. 29). He testified that osteolysis can sometimes occur or become symptomatic with trauma (RX6 p. 30).

Dr. Bush-Joseph testified that he could not recommend treatment for Petitioner because his exam was unreliable and he had diffuse pain (RX6 p. 34-35). He testified that he knows Dr. Thorsness well and helped to train him (RX6 p. 35-36). He testified that he disagrees with Dr. Thorsness (RX6 36). Dr. Bush-Joseph stated that this is a case where two highly qualified orthopaedic surgeons have different opinions on causation and whether the Petitioner's complaints on exam are reliable (RX6 p. 41-42).

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

19 WC 025023

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124848, ¶ 34. A compensable injury occurs 'in the course of' employment when it is sustained while he performs reasonable activities in conjunction with his employment. Id.

"The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." Id. at ¶ 36. To determine whether a claimant's injury arose out of his employment, the risks to which the claimant was exposed must be categorized. Id. The three categories of risks are "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." Id. at ¶ 38. "A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." Id. at ¶ 46.

Petitioner testified that on December 12, 2018, he was struck in the back with a printer while loading a truck from work and then fell forward injuring his right shoulder. No medical records or other evidence was presented indicating the detail of Petitioner falling forward until July 27, 2020. His initial medical treatment records from the date of the accident indicate that a printer hit him in the left side of his ribs and he had back pain. He then returned on December 28, 2018 indicating the bruising on his left side and discomfort was gone and he was able to perform work without any issues. Following the December 28, 2018 visit, there is a gap in treatment until being seen again on August 22, 2019, complaining of pain to an entirely different body part than what is indicated in the initial medical records with a different history as well.

When Petitioner first sought treatment with Dr. Thorsness on August 22, 2019, he reported a direct blow to his right shoulder when he was struck in the shoulder with a printer. This contradicts his testimony at trial and the initial medical treatment records. Arbitrator finds Petitioner's testimony regarding falling forward after he was struck by the printer unreliable as it is not corroborated by the initial medical records and does not appear in the medical records until over a year and a half after the accident date. The first complaint of right shoulder pain does not appear in the medical records until August 22, 2019 even though he had sought treatment for his right foot with his primary care provider and ATI worksite solutions in May 2019. Arbitrator finds the gap in treatment for the right shoulder and inconsistent accident history reports compelling. Further, Petitioner was not able to provide an explanation for the gap in treatment.

Arbitrator finds that Petitioner was working for Respondent as a loader at the time of the accident on Respondent's property and doing activities expected of him in that position. Arbitrator finds that Petitioner suffered an accident arising out of and in the course of his employment when he was struck by the printer, injuring the left side of his back/rib area for which he suffered a contusion. Arbitrator finds that Petitioner did not suffer an injury which arose out of his employment to his right shoulder on December 12, 2018, as it is not supported by the majority of the medical records and Arbitrator finds Petitioner's testimony regarding the right shoulder injury unreliable. All claims for compensation related to Petitioner's right shoulder are denied.

19 WC 025024

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124848, ¶ 34. A compensable injury occurs 'in the course of' employment when it is sustained while he performs reasonable activities in conjunction with his employment. Id.

"The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." Id. at ¶ 36.

To determine whether a claimant's injury arose out of his employment, the risks to which the claimant was exposed must be categorized. Id. The three categories of risks are "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." Id. at ¶ 38. "A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." Id. at ¶ 46.

Petitioner testified that he worked as a loader which required him to lift heavy items overhead while loading trailers for Respondent. Petitioner alleges an August 22, 2019 work accident. On August 22, 2019, Petitioner sought treatment with Dr. Thorsness and reported a direct blow to his right shoulder on December 12, 2018. He did not report an August 22, 2019 work injury to Dr. Thorness. Dr. Thorsness diagnosed Petitioner with right shoulder pathology as a result of the trauma he reported. When testifying, Petitioner indicated that he had pain on August 22, 2019, stopped working and went to the doctor.

On July 27, 2020, Petitioner provided a new history to Dr. Thorsness where he fell onto his right shoulder on December 12, 2018. At no time was a work accident on August 22, 2019 reported to Dr. Thorsness or indicated during his testimony. During Dr. Thorsness's deposition, he did not explain that Petitioner's condition was related to repetitive trauma only that his condition stemming from a right shoulder injury on December 12, 2018, worsened leading up to August 22, 2019. Arbitrator found above that Petitioner did not suffer a right shoulder injury on December 12, 2018 which arose out of his employment.

Based on the above, Arbitrator finds that there was no work accident that arose out of Petitioner's employment on August 22, 2019 and all claims for compensation related to an alleged work accident on August 22, 2019 are denied.

D. What was the date of the accident?

19 WC 025023

Petitioner testified that he was struck with a printer on December 12, 2018. This is corroborated by the on-site medical center's records as well as the Form 45 introduced by Respondent. Arbitrator finds the date of the accident is December 12, 2018.

19 WC 025024

Arbitrator has found that Petitioner failed to prove that his condition arose out of his employment. Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

E. Was timely notice of the accident given to Respondent?

19 WC 025023

Petitioner testified that he notified his supervisor of his accident involving the printer. This follows with the record from the on-site medical facility, which contains a medical record from December 12, 2018 which identifies the accident details. The nature of being treated at Respondent's on-site medical clinic is evidence that Respondent had notice of the accident on December 12, 2018. Thus, Arbitrator finds that timely notice was provided.

19 WC 025024

Arbitrator has found that Petitioner failed to prove that his condition arose out of his employment. Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

F. Is Petitioner's current condition of ill-being causally related to the injury?

19 WC 025023

As indicated above in Section C, Arbitrator finds that Petitioner suffered a contusion to his back/left rib area when he was struck by a printer, for which he recovered and was at Maximum Medical Improvement as of December 28, 2018.

As Arbitrator found above that Petitioner failed to prove his right shoulder condition arose out of his employment, the issue of causal connection in relation to his right shoulder is moot.

19 WC 25024

Arbitrator has found that Petitioner failed to prove that his condition arose out of his employment. Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

G. What were Petitioner's earnings?

19 WC 025023

Respondent presented a wage statement for Petitioner's earnings from April 28, 2018 through December 8, 2018. No evidence of earnings after December 8, 2018 were presented. Petitioner testified that the wage statement was true and accurate. The wage statement consisted of pay for 33 weeks and after deducting the overtime payments, the total income earned over the 33 weeks was $11,154.30, which is an average of $338.01 per week. Respondent alleges that his income is $300.01. This is not reflected in the evidence as the wage statement produces an average of $338.01 and the Form 45 introduced by Respondent indicates Petitioner's average weekly wage is $347.77. Using the most reliable evidence of the wage statement, Arbitrator finds that Petitioner's average weekly wage is $338.01. Based on Petitioner's marital status and dependents, he qualifies for the minimum TTD and PPD rate of $319.00 per week.

19 WC 25024

Arbitrator has found that Petitioner failed to prove that his condition arose out of his employment. Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

H. What was Petitioner's age at the time of the accident?

19 WC 025023

Petitioner testified that he was born on January 20, 1974. On December 18, 2018, he was 44 years old. This is also corroborated by the medical records and Respondent's Form 45 exhibit. Arbitrator finds the Petitioner was 44 years old at the time of the accident.

19 WC 025024

Arbitrator has found that Petitioner failed to prove that his condition arose out of his employment. Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

I. What was Petitioner's marital status at the time of the accident?

19 WC 025023

Petitioner testified that he was married on both dates of the accident and that he had two children. The Respondent's employee file identifies Petitioner's wife as his emergency contact and as his spouse. He also testified regarding his daughters' names and birthdates. This testimony was unrebutted. For the foregoing reasons, Arbitrator finds that on the date of both accidents, Petitioner was married with two dependent children.

19 WC 25024

Arbitrator has found that Petitioner failed to prove that his condition arose out of his employment. Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

19 WC 025023

Respondent has paid all appropriate charges for all reasonable and necessary medical services. Arbitrator finds that payment of medical bills after MMI date of December 28, 2018 sought by Petitioner are denied. Further, all medical bills for Petitioner's right shoulder are denied.

19 WC 25024

Arbitrator has found that Petitioner failed to prove that his condition arose out of his employment. Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

K. Is Petitioner entitled to any prospective medical care?

19 WC 025023

Arbitrator finds that Petitioner reached MMI on December 28, 2018 for contusion to his back/left rib area. Petitioner is not entitled to any further medical care for his back/left rib area or his right shoulder, for which injury to, Arbitrator found in Section C did not arise out of his employment.

19 WC 25024

Arbitrator has found that Petitioner failed to prove that his condition arose out of his employment. Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

L. What temporary benefits are in dispute? TTD?

19 WC 025023

Petitioner was returned to work full duty following December 12, 2018 date of accident. Claim for TTD is denied based on Arbitrator finding that Petitioner failed to prove that his right shoulder condition arose out of his employment.

19 WC 25024

Arbitrator has found that Petitioner failed to prove that his condition arose out of his employment. Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

O. Other: Nature and Extent of the Injury

Parties stipulated that in the event that Arbitrator did not award prospective medical that the nature and extent of the injury would be in dispute.

Arbitrator finds that Petitioner sustained a compensable work injury to his left rib/back area on December 12, 2018 and it is related to his employment with Respondent.

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

1. The reported level of impairment pursuant to subsection (a)

Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. Therefore, Arbitrator gives no weight to this factor.

2. Petitioner's occupation

Petitioner worked as a part-time package handler for FedEx Ground and was released to return work full duty for the contusion to his back/left rib area on December 28, 2018. Arbitrator gives some weight to this factor.

3. Petitioner's age

Petitioner was 44 years old at the time of the accident and while he does have significant work life ahead of him, the resolved contusion to his back/left rib area should not affect his future work life. Arbitrator gives less weight to this factor.

4. Petitioner's future earning capacity

No evidence was presented that Petitioner's contusion to his back/left rib area affects his future earning capacity. Arbitrator gives no weight to this factor.

5. Evidence of disability corroborated by the treating medical records

Petitioner suffered a contusion to his back/left rib area on December 12, 2018 when he was struck by a printer. This condition resolved by December 28, 2018 when Petitioner reported that he no longer had bruising on his side or discomfort and was able to perform work without issues. Arbitrator gives greater weight to this factor.

Based on all of the above, Arbitrator awards 1% MAW for Petitioner's injury to his back/left rib area which took place on December 12, 2018.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC025189
Case Name	Lycrecia Parks v. Chicago Community Loan Fund
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0183
Number of Pages of Decision	27
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Richard Gordon
Respondent Attorney	Amy Sataloff

DATE FILED: 4/19/2023

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse Accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LYCRECIA PARKS,

Petitioner,

vs. NO: 19 WC 25189

CHICAGO COMMUNITY LOAN FUND,

Respondent.

DECISION AND OPINION ON REVIEW

This matter comes before the Commission pursuant to Petitioner's timely filed Petition for Review of the Decision of the Arbitrator. Therein, the Arbitrator calculated Petitioner's average weekly wage at $2,374.00 but denied Petitioner's claim on the threshold issue of accident, finding Petitioner's injury fell under the Section 11 exclusion. Notice having been given to all parties, the Commission, after considering the issues of whether Petitioner sustained an accidental injury arising out of and occurring in the course of her employment, whether Petitioner's current right knee condition is causally related to an April 12, 2019 work accident, and the nature and extent of any permanent disability, and being advised of the facts and law, reverses the Decision of the Arbitrator, which is attached hereto. The Commission finds Petitioner sustained an accidental injury arising out of and occurring in the course of her employment on April 12, 2019.

FINDINGS OF FACT

Petitioner is Vice President of Portfolio Management for Respondent, Chicago Community Loan Fund ("CCLF"); CCLF is a community development financial institution that provides money to investors in the neighborhood it serves. T. 8. Petitioner's job involves closing loans and then managing the loan until it matures and is repaid; Petitioner manages two groups: a team of closers and a team of asset managers. T. 18-19. T. 18-19. In addition to her office work, Petitioner performs site visits at properties where CCLF provided the loan. T. 41-42. Her direct supervisor is Robert Tucker ("Tucker"). T. 8. Petitioner has worked for Respondent since approximately 2010. T. 8.

Petitioner alleges she sustained a work-related right knee injury on April 12, 2019. Arb.'s Ex. 1. Petitioner injured her knee during a soccer game between Respondent and CNI, which is a community developer in the local area. T. 9-10, 16. Petitioner testified CCLF generally provides financing for one or two CNI developments per year. T. 16, 18. During the game, Petitioner collided with a CNI player and injured her right knee. T. 29. Petitioner was taken by a coworker to the emergency room at University of Chicago. T. 29-30. Petitioner thereafter came under the care of Dr. Brian Cole, who performed an ACL reconstruction. T. 31-32. There is no question that Petitioner's knee injury occurred during the game; rather, the parties' dispute involves whether or not the soccer game was a voluntary recreational program under Section 11. As such, our recitation of the facts will focus on the organization of and circumstances surrounding the game.

Petitioner agreed CCLF is a friendly, collegial place to work, and in the past, there have been social and team building events for CCLF staff: "So every year we do a summer outing and then we also do a holiday party which is in December, and then randomly we go out for appetizers and drinks as an office." T. 40-41. She clarified, however, that Respondent had not previously organized team building sporting events with other companies. T. 45.

The April 12, 2019 soccer game, nicknamed "The Roseland Rumble," was organized by Tucker and Jennifer Bransfield ("Bransfield") from CNI. T. 10-11. Petitioner testified she first heard about the idea from Bransfield: "…we were discussing having some kind of team building with CNI and CCLF." T. 10-11. Petitioner explained the event was "a way for us to get to know them better because we were doing transactions with them and for future transactions as well…Because we were doing business with them and we wanted to do more business with them in the Pullman area." T. 16. At that stage, the nature of the event was to be determined: "…we discussed an event, we didn't discuss what event, but an event." T. 44.

Once Tucker and Bransfield chose soccer as the event and scheduled the game, Tucker sent an email invitation to all of Respondent's employees and added the event to all employees' work calendars, including Petitioner's. T. 17. Tucker's February 14, 2019 email was admitted into evidence as Petitioner's Exhibit F; it reads as follows:

> Subject: The Roseland Rumble
> CCLF Staff:
> Our good friends and community partners at Chicago Neighborhood Initiatives (***correction: our arch nemeses at CNI***) have challenged CCLF to a soccer match at the Pullman Community Center on Friday afternoon, April 12. We have accepted this challenge. We shall defend CCLF's honor!! I will send out a calendar item, but we will head down for this highly competitive athletic show of force around 1:00 p.m. The action on the pitch will start around 2:00/2:30. Refreshments will be served after the demolition of CNI (and possibly during said demolition). More to come…
> Bob. Pet.'s Ex. F (Emphasis in original)

Petitioner testified she and two or three other employees helped to finalize planning the event, which took approximately an hour and occurred during working hours. T. 12-13. In addition,

Respondent purchased jerseys for the employees to wear. T. 21. A March 22, 2019 email from Deandre Tanner to all CCLF employees asking for everyone's size and number was also admitted into evidence:

> Subject: The Roseland Rumble
> All,
> CCLF will be ordering soccer jerseys for the big soccer game against CNI. Everyone will receive their own jersey to wear the day of the game. Please send me your jersey size and the number you would like on the back of your jersey. I need everyone to respond back to this email by the end of the day on Monday March 25th. **We shall defend CCLF's honor!!!** Pet.'s Ex. F (Emphasis in original)

Petitioner agreed the Rumble emails do not specifically state the event is mandatory or voluntary (T. 43, 45); however, it was her understanding, based on conversations with coworkers and the email communications, that attendance at and participation in the soccer match were mandatory. T. 13-14. Petitioner testified she was not the only employee who felt there was required participation in the Rumble, as multiple coworkers had shared with her that they too believed the game was mandatory. T. 28. Petitioner further explained the emails indicated that the Rumble was mandatory: "So there was in writing that everyone was playing and also it was my understanding unless you had a prior work-related event scheduled or deliverable that you had to get out prior to and everyone was attending and playing." T. 26.

Petitioner also testified she felt compelled to participate in order to avoid possible negative consequences both individually for her with Respondent and organizationally for Respondent with CNI. Petitioner was concerned refusing to play would impact her career path at Respondent: "I felt that I would be seen as not being a team player and possibly my progression in the organization wouldn't be as easy." T. 15. Petitioner further felt refusing to play would negatively affect Respondent's dealings with CNI: "That I wouldn't be seen as a team player and possibly CNI would view us as not being looking to work with them in the future." T. 17. Petitioner testified Respondent and CNI were working together on two projects at that time, and had collaborated on three or four projects prior to April 2019. T. 19-20. Petitioner explained Respondent was "constantly communicating with [CNI] about future developments in the Roseland Pullman area" and it was her understanding that the Roseland Rumble would strengthen their business relationship. T. 20-21.

On the day of the Rumble, Petitioner drove her personal vehicle from the office to the field, and Tucker asked her to give a ride to her coworkers. T. 25. Petitioner testified it was her understanding that the office closed for the event, and only those employees with prior work commitments or previously scheduled time off did not play. T. 22-23. A referee officiated the game and they kept score. T. 24. Petitioner was not aware of any employees who attended but did not play, nor of any employees who returned to the office after the game. T. 14, 25. Photographs from the Rumble were admitted as Petitioner's Exhibit E. Petitioner identified the man on the far right as Kevin Truitt. T. 43. Petitioner testified she believed Truitt participated in the soccer game. T. 44.

Robert Tucker testified on Respondent's behalf. Tucker is Respondent's Chief Operating Officer and Executive Vice President of Programs. T. 50. Tucker is second in line to the CEO and is in charge of running the office: "I'm in charge of overseeing all the programs, all the operations and things like, second in charge, if you will." T. 51. As COO he is responsible for establishing policies that promote Respondent's company culture and vision, and he is responsible for providing leadership for the company. T. 63. He is also responsible for the day-to-day administration and operational functions of the business. T. 63.

Tucker testified that Respondent has a couple dozen employees, and as of April 2019, the staff all worked in-office from 9:00 to 5:00. T. 51-52. He testified that from time to time the office participates in group recreational activities to "have fun together" and build a cohesive unit: "So we have done bowling before. We go out to dinners, we have lunches. We have had even things like game night out which is where we all get together at a function and play silly little games together, and again it's real good for team building." T. 53. Tucker stated the activities are never mandatory. T. 54. If the event occurs during business hours, an employee who did not want to attend could "just stay at work, which is completely fine, or I suppose you could take PTO, you could take vacation time." T. 54.

Tucker explained how the April 12, 2019 soccer game came about:

> …CNI which was the other organization, the other non-profit organization that does real good work primarily in the Pullman neighborhood. They do community development and they're a small lender themselves. We work with them a lot. They are a good partner of ours and they're also a client of ours, we've lent on some of their projects before. So we know them and their staff pretty well. In particular they have a general counsel COO, I think that is her job title, named Jennifer Bransfield, and she and I have been talking about this, and I know that Lycrecia Parks was also involved in some emails where we're like we should get together and do something fun; and it came about I think from some of these emails that we should do something at something called the Pullman Rec Center…it's a big rec center down in Pullman which CNI helped build, it's a phenomenal facility, and we helped fund some of that. So it's a project we lent money on, it's a great community project bringing this amazing facility to this low income neighborhood; providing recreational space, soccer field, basketball court, all these different type of things, so we said, oh, that would be a fun place to have the event because we're all involved in that project as well. T. 54-56.

Tucker agreed that one of the purposes of the Rumble was for CNI employees to better get to know Respondent's employees: "That's a benefit of it, absolutely." T. 65. Tucker further agreed it was an opportunity for Respondent's employees to enhance their relationship with CNI employees, though he disagreed that strengthening those relationships could strengthen Respondent's business relationship with CNI. T. 66-67.

Once Bransfield and Tucker had chosen the combined team building event, Tucker notified Respondent's staff that a soccer game had been scheduled: "I got the notice out…sent the notice out, saying, like hey we've been challenged by CNI, we are going to, you know, step up for CCLF

and be proud, you know, kind of fun and trying to get that spirit going for a little fun and competition." T. 56. Directed to his February 14, 2019 email, Tucker testified it was meant to be humorous:

> …I mean, this is me trying to pump up the troops, defend CCLF's honor, you know trying to people [*sic*] excited about this. Some of the wording from Sean Harden, you know, winning is not left to chance, fun things like this. I don't know if any of us were particularly soccer players, right; we had fun we ordered some jersey's [*sic*] for the event. Yeah, I think it talks about playful nature of all this, called the Roseland Rumble. T. 57.

Tucker confirmed the soccer game was placed on all employees' work calendars: "A calendar hold was sent out and people could accept or decline, yes, which I think is important; if it wasn't a hold people could decline it." T. 68. Tucker then conceded that the accept or decline option is simply a software function and not indicative of whether the event is mandatory. T. 71. As to whether he anticipated that a lot of employees would want to participate in the game, Tucker stated, "You know given past participation, I don't know that we've ever had an event where everyone participates, some people don't show up which is fine. So I figured it would be fun and I think people were kind of excited to see the center, too, which makes it all the more fun." T. 57.

Tucker testified he did not make it mandatory that all employees play in the game; he did not write an email saying it was mandatory, nor did he tell anyone it was mandatory. T. 58. Tucker did not impose a penalty for anyone who did not want to play, and he believed there were employees who came to watch but did not play. T. 58-59. There was no record kept of who did or did not play, but Tucker believed a few people stayed at the office. T. 59-61. Directed to the Rumble email statement that the office would "shut down at 1:00 p.m.," Tucker stated, "Oh, I think the idea was we were talking about getting over there. The people that were heading there were heading out at 1:00 o'clock [*sic*], that make sense, yeah, it's kind of far South if you're coming from the Loop." T. 61. Tucker testified most employees drove from the office to the Rumble or carpooled. T. 76. Tucker denied asking employees to give rides to coworkers, "but one of these emails indicated that several people were driving." T. 76.

Tucker agreed none of the emails state the event was optional, but he denied the employees might reasonably believe participation in the game was mandatory: "No, especially given the context we've always told people these are voluntary, so no, I would be shocked if someone said that." T. 72-73. Tucker then acknowledged that one of the employees asked him whether the game was mandatory: "I want to say that somebody did ask me if they wanted to attend, and my recollection is Kevin [Truitt], he's not even with us anymore, and I said no, of course you don't have to attend. I don't remember if he attended or not, or if he did he didn't play, or something like that, but these have never been mandatory." T. 73. Thereafter presented with the CCLF team photograph from the Rumble, Tucker conceded that Truitt is in the picture, though Tucker did not believe Truitt played in the game. T. 80. Tucker testified Respondent's employees would just know that participation was optional:

> Yes, especially given our past history of always telling people when asked you don't have to participate. We've never had full attendance for anything we've done

> before, I don't think; we've gone bowling before, people haven't gone bowling, people didn't turn out for the game night out, our CEO didn't even turn out for the game night out event, people know they don't have to attend, and those events are all prior to this. T. 77-78.

Deborah Sabol testified on Respondent's behalf. Sabol is Respondent's Director of Operations; her job responsibilities include Human Resources, IT, and Facility Management Administration. T. 84-85.

Sabol testified her reading of the Rumble emails was that it was not mandatory that all employees play in the game. T. 86-87. Sabol did not play in the game nor did she go to the event; instead, she stayed in the office and worked. T. 87. Sabol testified that the Rumble emails did not specifically state that was an option, but that was how prior CCLF events had been handled: "This in particular, not that I'm aware off [*sic*], but any other events that's how it would work, if you did not want to participate you could take either PTO or you could stay and work or attend the events." T. 87.

Sabol explained she planned to attend the Rumble, but she had to change her plans the morning of the game: "I was the project manager for our office space that was being redesigned and there were a number of filing cabinets that needed to be emptied so construction could happen on Monday morning. We had just received notice for that." T. 89. When Sabol received that notice, she advised Tucker that she would not be attending the Rumble. T. 89. Sabol did not know who played in the game but she was the only person in the office. T. 88. None of her coworkers returned to the office after the Rumble. T. 92.

CONCLUSIONS OF LAW

I. Accident

The Arbitrator found Petitioner was engaged in a voluntary recreational program under §11 and therefore did not sustain an accidental injury arising out of and occurring in the course of her employment. The Commission views the evidence differently.

Under Section 11, "[a]ccidental injuries incurred while participating in voluntary recreational programs including but not limited to athletic events, parties[,] and picnics do not arise out of and in the course of the employment even though the employer pays some or all of the cost thereof." *820 ILCS 305/11* (West 2010). However, "[t]his exclusion shall not apply in the event that the injured employee was ordered or assigned by his employer to participate in the program." *Id*. As such, our analysis begins with the threshold determination of whether the April 12, 2019 Rumble was voluntary.

In determining whether an activity is voluntary, "the individual facts of each recreational activity must be carefully reviewed along the following principal lines of inquiry: (1) to what extent the employer benefits from the employee's attendance at the outing; (2) to what extent the employer actively organizes and runs the recreational attendance at the event; and (3) to what extent the employer sponsors and compels attendance at the event." *Law Offices of Schooley v.*

Industrial Commission, 151 Ill. App. 3d 1069, 1073 (5th Dist. 1987), citing *Fischer v. Industrial Commission*, 142 Ill. App. 3d 298, 303 (1st Dist. 1986). "'[A]ssign' is defined as, '[t]o set apart for a particular purpose; designate,' '[t]o select for a duty or office; appoint,' or '[t]o give out as a task; allot.'" *Gooden v. Industrial Commission*, 366 Ill. App. 3d 1064, 1066 (1st Dist. 2006) (quoting the American Heritage Dictionary of the English Language 79 (1969)).

Petitioner testified she first heard about a combined CNI-CCLF team building event when she and Jennifer Bransfield, CNI's General Counsel Chief Operating Officer (T. 55), were at another function: "a way for us to get to know [CNI staff] better because we were doing transactions with them and for future transactions as well…Because we were doing business with them and we wanted to do more business with them in the Pullman area." T. 16. Thereafter, Bransfield and Tucker, Respondent's COO, decided to hold an inter-organization soccer game at Roseland Pullman Community Youth Center, a facility built from a CCLF and CNI collaboration. T. 54-56. Once a date had been chosen, Tucker, Respondent's second in command, sent an email notice adding the event to all employees calendars:

> CCLF Staff:
> Our good friends and community partners at Chicago Neighborhood Initiatives (***correction: our arch nemeses at CNI***) have challenged CCLF to a soccer match at the Pullman Community Center on Friday afternoon, April 12. We have accepted this challenge. We shall defend CCLF's honor!! I will send out a calendar item, but we will head down for this highly competitive athletic show of force around 1:00 p.m. The action on the pitch will start around 2:00/2:30. Refreshments will be served after the demolition of CNI (and possibly during said demolition). More to come…
> Bob. Pet.'s Ex. F (Emphasis in original)

The Commission observes Tucker's email does not indicate that the Rumble is mandatory; nor, however, does it indicate that the Rumble is optional or voluntary. As such, we must determine whether Petitioner reasonably believed the Rumble was mandatory.

Petitioner, whom the Commission finds credible, testified that her belief that the Rumble was mandatory was based on her conversations with coworkers as well as the emails from Tucker and Deandre Tanner. T. 13-14. Petitioner testified that prior to the Rumble, multiple coworkers had advised her they considered the Rumble to be mandatory. T. 28. Petitioner further explained the tenor of Tucker's emails indicated that the Rumble was mandatory: "So there was in writing that everyone was playing and also it was my understanding unless you had a prior work-related event scheduled or deliverable that you had to get out prior to and everyone was attending and playing." T. 26. Petitioner further explained the fact that it was a combined program with a business partner made the Rumble unique and refusing to play would negatively affect CCLF's dealings with CNI. T. 15, 17. Petitioner testified that CCLF and CNI were working together on two projects at that time, and CCLF was "constantly communicating with [CNI] about future developments in the Roseland Pullman area" and it was her understanding that the Roseland Rumble would strengthen their business relationship. T. 20-21.

The Commission finds Respondent's position that it communicated to employees that the program was voluntary is primarily predicated on past practice. Tucker conceded his email does not state whether attendance was mandatory or optional but denied anyone could conclude it was mandatory: "No, especially given the context we've always told people these are voluntary, so no, I would be shocked if someone said that." T. 72-73. Tucker testified Respondent never had full attendance at its prior group recreational activities, and Respondent's employees understand they can stay at work if they choose. T. 54, 78. The Commission emphasizes, however, that the Rumble was a combined event with a business partner and therefore inherently different than CCLF-only game nights or impromptu happy hours. To be clear, Tucker opened his February 14, 2019 email by referring to CNI as Respondent's "good friends and community partners." Pet.'s Ex. F. At trial, Tucker went a step farther and referred to CNI as a "client" of CCLF. T. 55. Moreover, the language of his email is not suggestive that participation is optional: "I will send out a calendar item, but we will head down for this highly competitive athletic show of force around 1:00 p.m." Pet.'s Ex. F. Further, while Tucker testified it was clear the event was not mandatory, he also acknowledged that Kevin Truitt asked if he had to attend. T. 73. The fact that Truitt (who attended the Rumble) had to ask whether the soccer game was mandatory suggests that it was unclear whether the Rumble was mandatory or voluntary and thus corroborates Petitioner's testimony that numerous employees considered the Rumble to be mandatory. The Commission also observes that, although Tucker believed there were employees who stayed at the office (T. 61-62), Sabol testified she was the only employee in the office, and the only reason she did not go to the Rumble was because of a last minute change in the renovation schedule. T. 88-90. In the Commission's view, the Rumble was a unique event with a business partner that CCLF hoped to do future transactions with, and as such is distinguishable from historically voluntary CCLF-only events.

The Commission further finds Petitioner's management-level position necessarily influenced her perception of the obligatory nature of the Rumble. Petitioner is the Vice President of Portfolio Management. T. 8. In that role, one of Petitioner's functions is to conduct site visits and interact with CCLF's borrowers. T. 41-42. In other words, Petitioner is the public face of CCLF's loans, and this would include site visits at the multiple CNI developments CCLF had funded in the past. T. 16, 18. In our view, given the level of client interaction inherent in Petitioner's position, Petitioner reasonably concluded her participation in the Rumble was mandatory to maintain and further CCLF's client relationship with CNI.

The Commission finds the instant case matter is similar to *Auto-Trol Technology Corp. v. Industrial Commission*, 189 Ill. App. 3d 1065 (1st Dist. 1989). In *Auto-Trol*, the claimant was injured at an inter-department picnic. The picnic was intended to address and resolve tensions between the sales personnel and the field engineers and was organized by the managers of the two departments. The claimant, a field engineer, asked his supervisor if attendance was mandatory and was told "it would serve his career very well if he attended." *Id* at 1067. The Commission found the §11 exclusion did not apply, and the Court affirmed: "The record is sufficient to allow the Commission to find that attendance was mandatory, despite the fact that [supervisor] did not give a definitive yes or no answer to the petitioner's inquiry." *Id* at 1070. While Petitioner is management and the claimant in *Auto-Trol* was not, Petitioner is likewise responding to a directive from a superior: the COO announced that Respondent and its "community partners" would be playing a soccer match on Friday, April 12, 2019, added the event to all employees' calendars, and advised the office would be shutting down at 1:00 for the event. Pet.'s Ex. F, T. 61-62. Although

the email does not definitively state the Rumble was mandatory, the Commission finds Petitioner reasonably understood the soccer game was mandatory. The Commission finds Petitioner sustained an accidental injury arising out of and occurring in the course of her employment on April 12, 2019.

II. Causal Connection

The Commission finds Petitioner's current right knee condition is causally related to the April 12, 2019 accident. On the date of the accident, Petitioner was driven to University of Chicago Medical Center, where she was evaluated in the emergency room. Petitioner complained of right knee pain with motion and weightbearing as well as instability after an incident during a soccer game "when she felt like her 'knee went right while the lower leg went left.'" Pet.'s Ex. A. After her examination was suggestive of an ACL injury, Petitioner was placed in a knee immobilizer brace, given crutches, and advised to arrange for an MRI. Pet.'s Ex. A. Petitioner thereafter came under the care of Dr. Brian Cole, who diagnosed her with an ACL rupture. Pet.'s Ex. B.

On July 16, 2016, Dr. Cole performed a right knee arthroscopic ACL reconstruction. Pet.'s Ex. C. Post-operatively, Petitioner underwent physical therapy at AthletiCo. Pet.'s Ex. D. On September 9, 2019, Petitioner was evaluated by Dr. Cole for the final time. Petitioner reported she was doing well and pleased with her progress. On examination, Dr. Cole noted Petitioner had a very mild antalgic gait, her range of motion reached terminal extension and flexion to 120 degrees, and she had no tenderness to palpation. Dr. Cole directed Petitioner to complete the remaining weeks of the physical therapy protocol, provided a knee sleeve, released her to resume full duty as of October 11, 2019, and discharged her from care. Pet.'s Ex. B.

Petitioner described her current right knee symptoms. Her right knee is stiff and weaker than her left knee. T. 36. She routinely takes road trips and "we stop more frequently than we did just for me to stretch." T. 37. She walks differently than she did prior to the injury, and she is not as confident in her knee as she was pre-injury. T. 38.

Given the medical evidence demonstrating an acute knee injury on April 12, 2019, as well as the lack of any contradictory evidence, the Commission finds the preponderance of the credible evidence establishes that Petitioner's condition is causally related to the April 12, 2019 accident.

III. Permanent Disability

Section 8.1b(b)(i) – impairment rating

Neither party submitted an impairment rating. As such, the Commission assigns no weight to this factor and will assess Petitioner's permanent disability based upon the remaining enumerated factors.

Section 8.1b(b)(ii) – occupation of the injured employee

Petitioner was a Vice President of Portfolio Management. Following treatment by Dr. Brian Cole, Petitioner was discharged from care with no restrictions, and she returned to her pre-

accident occupation. The Commission finds this factor weighs in favor of decreased permanent disability.

Section 8.1b(b)(iii) – age at the time of the injury

Petitioner was 40 years old on the date of her accidental injury. The Commission notes that due to her age, Petitioner is more likely to experience her residual complaints for an extended period. This factor weighs in favor of increased permanent disability.

Section 8.1b(b)(iv) – future earning capacity

There is no direct evidence Petitioner's work accident had an adverse impact on her future earning capacity. The Commission finds this factor weighs in favor of reduced permanent disability.

Section 8.1b(b)(v) – evidence of disability corroborated by treating medical records

Petitioner's work accident resulted in right knee surgery: on July 16, 2019, Dr. Cole performed an arthroscopic bone-tendon-bone allograft ACL reconstruction. Pet.'s Ex. C. Petitioner underwent post-operative physical therapy, and on September 9, 2019, Dr. Cole noted Petitioner was doing very well and progressing well per physical therapy protocol; Dr. Cole directed Petitioner to complete the final month of therapy and discharged her from care with instructions to remain on restricted duty until October 11, 2019. Pet.'s Ex. B.

Petitioner testified she returned to work full duty upon completion of physical therapy, but she does have residual knee complaints. She testified her right knee is stiff and weaker than her left knee. T. 36. She routinely takes road trips and "we stop more frequently than we did just for me to stretch." T. 37. She walks differently than she did prior to the injury, and she is not as confident in her knee as she was pre-injury. T. 38. The Commission finds this factor is indicative of increased permanent disability.

Based on the above, the Commission finds Petitioner sustained the 20% loss of use of the right leg.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 3, 2022 is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner sustained an accidental injury arising out of and occurring in the course of her employment on April 12, 2019, and her current right knee condition is causally related.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's average weekly wage is $2,374.00.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $813.87 per week for a period of 43 weeks, as provided in §8(e)12 of the Act, for the reason that the injuries sustained caused the 20% loss of use of the right leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $35,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 19, 2023

DJB/mck
O: 02/22/23
43

/s/ *Deborah J. Baker*

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC025189
Case Name	PARKS, LYCRECIA v. CHICAGO COMMUNITY LOAN FUND
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	David Kane, Arbitrator

Petitioner Attorney	Kevin Murphy
Respondent Attorney	Nicole McNair

DATE FILED: 1/3/2022

/s/David Kane, Arbitrator
Signature

INTEREST RATE WEEK OF DECEMBER 28, 2021 0.21%

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Lycrecia Parks
Employee/Petitioner

v.

Chicago Community Loan Fund
Employer/Respondent

Case # **19 WC 25189**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **David Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **November 23, 2021** . After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. ☐ Was there an employee-employer relationship?

C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to Respondent?

F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?

G. ☒ What were Petitioner's earnings?

H. ☐ What was Petitioner's age at the time of the accident?

I. ☐ What was Petitioner's marital status at the time of the accident?

J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD

L. ☒ What is the nature and extent of the injury?

M. ☐ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☐ Other _____

FINDINGS

On **April 12, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $ **123,448.00**; the average weekly wage was $ **2,374.00** .

On the date of accident, Petitioner was **40** years of age, ***married*** with **2** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Petitioner is denied benefits under the Illinois Workers' Compensation Act because she did not sustain an accident arising out of and in the course of her employment.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

David A. Kane

Signature of Arbitrator

January 3, 2022

STATE OF ILLINOIS)
)
COUNTY OF Cook)

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

Lycrecia Parks, Case # **19** WC **25189**
Employee/Petitioner

v. **Chicago**

Chicago Community Loan Fund,
Employers/Respondents

Findings of Facts and Conclusions of Law

I. Findings of Fact

The Petitioner, Lycrecia Parks, was employed as Vice President of Portfolio Management at Chicago Community Loan Fund (CCLF) on April 12, 2019. (Tr. 7-8). She is still employed there in the same position. (Tr. 7-8). CCLF is a community development and financial institution that employed approximately twenty people in 2019. (Tr. 8, 15). Petitioner had worked there for about nine years at the time of the accident. (Tr. 8). Her supervisor was, and still is, Robert (Bob) Tucker, COO and Executive Vice President of Programs. (Tr. 8, 11). Petitioner testified that her job involves closing loans and managing loans until they mature. (Tr. 18-19). It is a desk job and Petitioner confirmed that soccer is not part of her job. (Tr. 42). Petitioner also testified that her job does not require her to be physically fit. (Tr. 42).

Petitioner described CCLF as a friendly, collegial place to work. (Tr.

40). She agreed there is little turnover and colleagues tend to know each other well. (Tr. 40). She testified that CCLF regularly has social and team-building events like a summer outing, holiday party or getting drinks. (Tr. 40-41). Petitioner explained these events all take place during the workday and are appealing and fun events people want to attend. (Tr. 41, 46). She testified the company did not schedule work events after hours. (Tr. 46). Petitioner testified that CCLF provides summer hours, which sends people home at 1:00 p.m. on Fridays but does not affect salary. (Tr. 48).

On April 12, 2019, Petitioner participated in a soccer game at Roseland Pullman Youth Community Center. (Tr. 9-10). The game was played between CCLF employees and employees from Chicago Neighborhood Initiatives (CNI), which is an organization CCLF partners with on community projects. (Tr. 9). The game was referred to as the "Roseland Rumble." (Tr. 10). Petitioner alleges she sustained a work-related injury to her right knee during the game. (Tr. 28-29).

Petitioner testified that the soccer game was organized by Bob Tucker from CCLF and Jennifer Bransfield from CNI and that she assisted with the planning. (Tr. 10, 12). Petitioner testified that she was at an event with Jennifer Bransfield and they were discussing doing a team-building activity with CCLF and CNI. (Tr. 10-11). Petitioner testified that CCLF and CNI had recently completed a project together involving the Roseland Pullman Youth Community Center in which CCLF was the lender for the development of the center. (Tr. 18-19). She testified that CCLF and CNI work together on one or two transactions per year with CNI developing projects in the Roseland Pullman area and CCLF financing those projects, (Tr. 16-18). Petitioner testified that she felt the soccer game would strengthen the relationship between CCLF and CNI. (Tr. 20-21).

Petitioner testified that she received an email from Mr. Tucker on February 14, 2019 notifying staff that the date was set for the game. (Tr. 12; Px. F, P381). Petitioner testified she assisted with planning the event and did so during work hours, which took about 1 hour of her time total. (Tr. 13). Petitioner was cc'd on emails between Mr. Tucker and Ms. Bransfield about arranging the game. (Tr. 13). Petitioner testified that she felt the game was mandatory based on conversations and emails. (Tr. 13; See Px. F for emails). However, she admitted that none of the emails about the event use the word mandatory. (Tr. 43; Px. F). Petitioner testified that employees were required to both attend and play. (Tr. 14). Petitioner testified that the game was added to her work calendar by Mr. Tucker and she does not put personal items on her work calendar. (Tr. 17).

Petitioner testified that she felt the purpose of the game was to get to know CNI employees better because they regularly do business with them. (Tr. 16). She felt the downside to not participating in the game was not being seen as a team player. (Tr. 15, 17). Petitioner testified that CCLF purchased uniforms for the team to wear in the game (Tr. 21; See Px. E for photograph of shirts). She testified that CNI provided trophies and food following the game. (Tr. 21-22).

Petitioner testified the game was held at 1:00 p.m. on Friday, April 12, 2019 which is during a normal work day. (Tr. 22). She testified she was not required to return to work following the game. (Tr. 22). Petitioner testified that everyone who was not scheduled with another event outside of work played in the game. (Tr. 22). She testified that she was not aware of anyone who did not play simply because they did not care to play. (Tr. 22-23). Petitioner was not aware that anyone stayed back in the office during the game. (Tr. 23). Petitioner thought the office was closed for the afternoon. (Tr. 23).

Petitioner inferred from an email Mr. Tucker sent to CNI on March 25, 2019 (on which she was cc'd) that the office was closed that afternoon. (Tr. 28; Px. F, P386). Petitioner testified that she drove her own car to the event and was asked to drive co-workers. (Tr. 25). Petitioner testified that she felt the game was mandatory through communication. (Tr. 25). When asked if this was more of a feeling or something that was actually put in writing, Petitioner said, "So there was in writing that everyone was playing and also it was my understanding unless you had a prior work-related event scheduled or deliverable that you had to get out prior to and everyone was attending and playing." (Tr. 26). She testified it was acceptable to miss the game for prior events or if off work for that day. (Tr. 26). She also testified that someone physically unable to pay would not have had to participate but would have been expected to attend. (Tr. 27).

Petitioner testified that she had no issues in her right knee prior to the alleged accident. (Tr. 9). Petitioner went to the emergency room at University of Chicago Medical Center on the date of the accident. (Tr. 30; Px. A). She underwent a right knee arthroscopic bone-tendon-bone allograft reconstruction surgery by Dr. Brian Cole on July 16, 2019. (Tr. 32; Px. B). She underwent post-operative physical therapy at ATI. (Tr. 33; Px. D). Petitioner testified that she was off work for 3 to 4 weeks and received her normal salary while off work. (Tr. 33). All of Petitioner's medical bills were paid by her group health insurance policy.

Petitioner testified that her right knee is not as strong as prior to the injury. (Tr. 36). It is stiffer, especially after activity. (Tr. 36-37). She testified that she walks a little differently. (Tr. 38). She testified that she has to stop more frequently on road trips to stretch and that she is more careful on slippery or icy surfaces. (Tr. 37-38). Petitioner testified that she has no future

treatment recommended for her right knee. (Tr. 37).

Robert (Bob) Tucker testified for Respondent. (Tr. 49). He is the COO and Executive Vice President of Programs for CCLF and has been in that position for six years since he joined CCLF. (Tr. 50). He explained that his job is essentially to run the office. (Tr. 51). In April 2019, CCLF had approximately twenty employees who all worked in office on a 9:00 a.m. to 5:00 p.m. schedule. (Tr. 52). Mr. Tucker testified that soccer is not part of anyone's job at CCLF and employees very basically have to lift 5-10 lbs. to be eligible to work there in an office job position. (Tr. 52). Mr. Tucker testified that the office participates in recreational activities as a staff from time to time because they are a tight-knit group and like to support each other in their mission and be cohesive. (Tr. 53). He testified they have done bowling, dinners, lunches and game nights both during and after work. (Tr. 53-54). He testified that none of these events are ever mandatory. (Tr. 54). Mr. Tucker testified that if an employee did not want to attend a social event during work hours, they could stay at work or take PTO. (Tr. 54). He testified that CCLF has never had full attendance of all employees at social events and it is not expected and is well known that these events are voluntary. (Tr. 78).

Mr. Tucker testified that CNI and CCLF decided they should get together to do something fun because they work together a lot on projects and know each other pretty well. (Tr. 55, 67). The game was planned by Mr. Tucker, Ms. Bransfield and Petitioner. (Tr. 66-67). They decided to do it at the Roseland Pullman Youth Community Center, because both organizations were involved in building the center. (Tr. 55-56). Mr. Tucker testified that once it was decided they would hold a soccer game with CNI, he sent an email rallying his office. (Tr. 56). Mr. Tucker laughed when reviewing emails sent about the game because people were sending playful

emails about defending CCLF's honor and "winning is not left to chance." (Tr. 57, Px. F). Mr. Tucker testified that CCLF has never had an event where everyone participates, so he didn't expect full office participation, but he thought employees would think it was fun and be excited to see the center. (Tr. 57).

Mr. Tucker testified that he did not make it mandatory that all employees play in the game. (Tr. 58). He did not write an email saying it was mandatory or tell anyone it was mandatory. (Tr. 58). He sent a calendar invite to the office, which employees were free to accept or decline. (Tr. 70-71). He testified that he would be shocked if anyone felt the soccer game was mandatory as events like this have always been voluntary and this was not communicated as being mandatory. (Tr. 72).

As the game was for fun, Mr. Tucker testified that he was not concerned about not having enough people as they could have taken some of CNI's players. (Tr. 58). Mr. Tucker testified that there was no penalty for anyone who did not want to play, and he did not threaten to withhold salary from anyone who did not want to play. (Tr. 58). Mr. Tucker testified that employees drove or carpooled to the game. (Tr. 76). He did not ask any employees to drive other employees to the event. (Tr. 76). He reiterated that anyone who did not want to play could stay at work or take PTO. (Tr. 59). He testified that the office was not actually closed or locked up and any employee can access the office at any time with their key card. (Tr. 79). Mr. Tucker testified that employees could go and watch the game and he thinks some people did that. (Tr. 59). He did not keep records of who did or did not play. (Tr. 59). He thinks a couple employees did not come to the game and chose to work at the office. (Tr. 60). Mr. Tucker testified that when CCLF holds meetings or trainings that are mandatory, CCLF specifically says the

event is mandatory, like certain harassment training required by state law. (Tr. 69-70).

Mr. Tucker testified that the soccer game did not benefit CCLF's business relationship with CNI. (Tr. 82). He said that CCLF's business, as a nonprofit, doesn't work that way. (Tr. 83). The goal of the event was teambuilding between CCLF employees and having fun. (Tr. 82-83)

Deborah Sabol also testified on behalf of Respondent. (Tr. 84). She is Director of Operations at CCLF and has been there for over seven years. (Tr. 85). She is responsible for human resources, IT and facility management. (Tr. 85). She testified that CCLF has both salaried and hourly employees. (Tr. 85). Ms. Sabol testified that she was not involved in planning the April 12, 2019 soccer game. (Tr. 86). She testified that she received all of the emails that were sent to the whole office about the event. (Tr. 85-86; See Px. F for emails). Ms. Sabol testified that it was not conveyed to her that the event was mandatory. (Tr. 87). Ms. Sabol testified that she did not play in the game or attend the game. (Tr. 87). Ms. Sabol testified that she stayed in the office and worked instead of attending the game. (Tr. 87). Ms. Sabol initially accepted the calendar invite to attend the game but had to change her plans on the morning of the event and simply advised Mr. Tucker she would be staying in the office. (Tr. 89-90). Ms. Sabol wasn't sure if she would have played had she gone to the event. (Tr. 90). Ms. Sabol testified that she was under the impression she could just go and watch. (Tr. 90).

Ms. Sabol does not know if the option of staying and working was specifically conveyed to employees in regard to this event, but she testified that this was the way it always worked for any event; that you could either stay and work, attend the event or take PTO. (Tr. 87). Ms. Sabol was not told she would not receive her salary if she did not play. (Tr. 88). She was paid

for that day even though she did not play. (Tr. 88). Ms. Sabol testified that she was the only one who chose to work in the office that afternoon. (Tr. 89). She did not know if anyone was on vacation that day, but she testified there were a number of people attending conferences that day. (Tr. 89).

II. Conclusions of Law

Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

The accident on April 12, 2019 did not arise out of or in the course of Petitioner's employment with CCLF.

A claimant bears the burden of proving by a preponderance of the evidence that her injury arose out of and in the course of employment. 820 ILCS 305/2. Both elements must be present in order to justify compensation. First Cash Financial Services v. Industrial Commission, 367 Ill. App. 3d 102, 105 (2006). Arising out of the employment pertains to the origin or cause of the claimant's injury. Id., at 105. The issue in this case arises from Section 11 of the Illinois Workers' Compensation Act (the Act): "Accidental injuries incurred while participating in voluntary recreational programs including but not limited to athletic events, parties and picnics do not arise out of and in the course of the employment even though the employer pays some or all of the cost thereof. This exclusion shall not apply in the event that the injured employee was ordered or assigned by his employer to participate in the program." 820 ILCS 305/11. Under this statute, Petitioner's injuries are not compensable as she was not ordered or assigned to play in the April 12, 2019 soccer game.

In Gooden v. Indus. Comm'n, 366 Ill. App. 3d 1064 (2006), Petitioner alleged he sustained a low back injury while playing volleyball at a company picnic. The picnic took place during the first four hours of a work day and

Petitioner was given the option to attend the picnic or work. Id. at 1065. Petitioner was not ordered or assigned to attend the picnic. Id. He chose to attend rather than work the first four hours of his workday. Id. There were no repercussions for employees who chose to work instead of attending the picnic. Id. Respondent acknowledged that it encouraged employees to attend the picnic but did not mandate it. Id. at 1066. The Court held that Petitioner was not ordered or assigned to attend the picnic because Petitioner did not face the prospect of losing pay or a personal/vacation day if he chose not to attend the picnic. Id. at 1067. The Court noted that Petitioner could have simply worked the whole day if he did not want to attend the picnic. Id. Therefore, the Court held that Petitioner made a voluntary choice to attend the picnic and play volleyball and barred workers' compensation benefits. Id.

In Woodrum v. Indus. Comm'n, 365 Ill. App. 3d 561 (2003), Petitioner injured his knee playing basketball at a company picnic on a regular workday. Employees were given the option of attending the picnic or taking a personal/vacation day if they did not want to attend. Id. at 563. The Court found this injury compensable as Petitioner was assigned to attend the picnic as he would have had to lose pay or give up a personal/vacation day to not attend the picnic. Id. at 564.

In Glassie v. Papergraphics, Inc., 248 Ill. App. 3d 621 (1993), Plaintiff filed a civil complaint in Circuit Court against her employer alleging that she was burned when a portable stove erupted while attending a holiday party on the employer's premises. All employees were invited to the party, which took place on company time. Id. at 623. Attendance at the party was not mandatory and employees were not required to return to work afterwards. Id. In an attempt to have her claim fall outside of the Act, plaintiff argued her

attendance at the event was optional. Id. The defendants moved to dismiss the complaint contending that plaintiff's exclusive remedy was under the Workers' Compensation Act and the motion was granted. Id. On appeal, plaintiff argued that her attendance at the party was a voluntary recreational activity within the scope of Section 11. Id. The Appellate Court reversed the judgment of the Circuit Court and remanded the case for consideration under Section 11. Id. at 626. The Court held that the party at which plaintiff was injured was a "voluntary recreational program" within the meaning of Section 11. Id. at 625.

There is also a Rule 23 decision that can provide guidance. In Outdoor v. Ill. Workers' Comp. Comm'n, 2013 IL App (1st) 121418WC-U (2013), Petitioner was injured during a charitable bowling event sponsored by her employer. Employees were encouraged to attend but were given the option of attending the bowling event and either participating or watching or staying in the office to work. Id. at *P5-8. Petitioner testified that she attended the bowling event and participated because she felt pressure to participate because if she didn't, no one would be participating. Id. at *P13. Both the Arbitrator and the Commission denied benefits finding the event was voluntary and recreational. Id. at *P17. The Appellate Court upheld the decision as the bowling activity was an alternative to Petitioner's regular workday and Petitioner would not have suffered any repercussions had she chosen not to attend. Id. at *P27. Further, although the employer encouraged participation, it did not order attendance, so the claim was not compensable. Id.

In the case at hand, the soccer game is clearly a voluntary recreational activity under Section 11 and Petitioner was not ordered or assigned to attend by her employer. First, Petitioner was unable to establish

that she was ordered to attend the game by her employer. Petitioner testified that she "felt" the soccer game was mandatory based on "communications," but she was unable to provide anything written from her employer stating that the game was mandatory. Further, her testimony was contradicted by both Mr. Tucker and Ms. Sabol. Mr. Tucker testified that the event was not mandatory and that, like all past events held during the work day, employees could choose to stay in the office and work. The office never "closes" as it is a professional office and can always be accessed. Ms. Sabol testified that she received the same communications as Petitioner and did not get the impression that the event was mandatory and, in fact, she did not even attend the event and there were no repercussions.

Second, Petitioner was unable to establish that she was assigned to attend the game by her employer. Petitioner did not testify to any possible loss of pay for failure to attend the event. Mr. Tucker testified that he never threatened to withhold pay if people did not attend. Petitioner admitted that other people did not attend due to other commitments and were not adversely affected. She also testified that employees could attend and not play if they were unable to whereas, if playing in the game were truly mandatory, people would not have been able to opt out of playing. And, as previously noted, Ms. Sabol testified that she did not attend and chose to work in the office, so clearly the office was open and an option for anyone who chose not to attend. Ultimately, the testimony made clear that the soccer game was a fun event that would be attractive to employees who enjoyed spending time together and with colleagues at CNI, but it was not mandated or assigned to employees with no other option.

Petitioner voluntarily chose to participate in a fun soccer game event between her employer and another organization that she works with closely.

Unfortunately, she sustained an injury during this fun, voluntary event. She was unable to provide any evidence that she was ordered or assigned by her employer to attend, or specifically play in the game. Petitioner has not proven by a preponderance of the evidence that her injury arose out of and in the course of her employment with CCLF.

Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator does not reach this issue as the accident did not arise out of and in the course of Petitioner's employment with CCLF.

What were Petitioner's earnings?

In the year preceding the injury, Petitioner earned $ 123,448.00; the average weekly wage was $ 2,374.00.

What is the nature and extent of the injury?

The Arbitrator does not reach this issue as the accident did not arise out and in the course of Petitioner's employment with CCLF.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC002724
Case Name	Maria Gonzalez v. World Cleaning Services
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0184
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	David Feuer
Respondent Attorney	Emily Schlecte

DATE FILED: 4/19/2023

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify: PPD	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARIA GONZALEZ,
Petitioner,

vs. NO: 18 WC 2724

WORLD CLEANING SERVICES.,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of medical expenses and the nature and extent of the injury, and being advised of the facts of law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof.

The Commission modifies the Decision of the Arbitrator with respect to the award of permanent partial disability.

Regarding the issue of permanent partial disability, the Arbitrator concluded Petitioner was not permanently and totally disabled, but rather sustained permanent partial disability to the extent of 12.5% loss of use of the person as a whole. On review, the Commission agrees that Petitioner is not entitled to permanent total disability benefits based on the evidence submitted. However, the Commission modifies the Arbitrator's decision and finds that Petitioner is properly entitled to benefits under Section 8(d)(2) of the Act for the separate cervical spine and right shoulder injuries. The Commission further finds that Petitioner is entitled to an award under Section 8 (e) of the Act for the right elbow injury.

The five factors upon which the Commission must base its determination of the level of PPD benefits to which a claimant is entitled, include: (i) the level of impairment contained within a permanent partial disability impairment report; (ii) the claimant's occupation; (iii) the claimant's age at the time of injury; (iv) the claimant's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b(b) (West 2020). However, "[n]o single enumerated factor shall be the sole determinant of disability." *Id*. § 305/8.1b(b)(v).

Regarding factor (i) Level of Impairment, the Commission finds the Arbitrator correctly gave no weight to this factor as an impairment rating was not submitted by either party.

Regarding factor (ii) Occupation, the Commission assigns some to this factor because Petitioner's job, cleaning at a hospital was physical in nature.

Regarding factor (iii) Age, the Commission assigns some weight to this factor noting Petitioner was 59 years old and due to her age less likely to fully recover from her injuries as compared to a younger person. Further, an older person with work injuries may have a more difficult time performing their job duties or finding alternative employment.

Regarding factor (iv) Earning Capacity, the Commission assigns greater weight to this factor, noting Petitioner testified she did not return to work or attempt to return to work because she stayed home to take care of her grandson. Therefore, any decreased earning capacity was due to Petitioner's choice not to return to work.

Regarding factor (v) Disability, the Commission gives significant weight to this factor, and in doing so concludes the medical evidence and Petitioner's credible testimony support an increased PPD award that is allocated to each of the related body parts and conditions. In assessing Petitioner's disability, the Commission relies on Petitioner's credible testimony that since the accident she does not have the same quality of life and now uses both hands and arms to perform everyday tasks such as sweeping and cooking. She continues to have pain with lifting and limited motion with overhead reaching.

Regarding the right elbow, the Commission notes the medical records demonstrate Petitioner was diagnosed with and treated conservatively for the lateral epicondylitis. As such, the Commission concludes an award of 7.5% loss of use of the right arm under Section 8(e) is appropriate.

Next, regarding the right shoulder, the medical records indicate Petitioner was diagnosed with a rotator cuff tear which required surgical repair as recommended by Dr. Koutsky. However, Petitioner did not undergo surgery to repair the right shoulder. As such, the Commission concludes an award of 10% person as a whole pursuant to Section 8(d)(2) for the right rotator cuff injury is appropriate.

Finally, regarding the cervical spine, the Commission notes the medical records indicate Dr. Koutsky diagnosed right C4-5 and C5-6 radiculopathy and the extremity EMG showed nerve root irritation consistent with the MRI pathology. Dr. Koutsky prescribed an anterior cervical decompression and fusion along with a 10-pound lifting restriction pending surgery. Petitioner did not undergo the cervical spine surgery. As such, the Commission concludes an award of 10% person as a whole pursuant to Section 8(d)(2) for the cervical spine condition is appropriate.

In conclusion, the Commission modifies the Decision of the Arbitrator with respect to the issue of permanent partial disability and awards 10% person as a whole for the cervical spine condition, 10% person as a whole for the right shoulder condition and 7.5% loss of use for the right arm for the elbow condition.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated August 29, 2022, is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of $296.00/week for 50 weeks representing 10% person as a whole for the cervical spine injury under Section 8(d)(2) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of $296.00/week for 50 weeks, representing 10% person as a whole for the right shoulder injury under Section 8(d)(2) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of $296.00/week for 18.98 weeks representing 7.5% loss of use for the right arm for the elbow injury under Section 8(e) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $46,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 19, 2023
O: 04/06/23
CMD/jm
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC002724
Case Name	Maria Gonzalez v. World Cleaning Services
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	David Feuer
Respondent Attorney	Emily Schlecte

DATE FILED: 8/29/2022

THE INTEREST RATE FOR THE WEEK OF AUGUST 23, 2022 3.11%

/s/ Rachael Sinnen, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Cook**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Maria Gonzalez
Employee/Petitioner

v.

World Cleaning Services
Employer/Respondent

Case # **18** WC **2724**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **6.24.22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **9.13.17**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**24,218.25**; the average weekly wage was $**494.25**.

On the date of accident, Petitioner was **59** years of age, ***married*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$6,881.12** for TTD, $**0** for TPD, $**0** for maintenance, and $**28,243.61** for other benefits, for a total credit of **$35,124.73.**

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner directly for temporary total disability benefits of $329.50/week for 39 1/7 weeks, commencing 10.19.17 through 7.19.18, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner directly for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act: La Clinica ($11,095.00; See PX 3-4), Archer Open MRI ($3,900.00; See Px 5), Advanced Anesthesia ($1,743.00; See PX 7), Workers Comp RX Solutions ($2,437.49; See PX 8), Specialized Radiology ($165.00; See PX 9), Advanced Physical Medicine ($3,634.00; See PX 10), Prescription Partners ($953.20; See PX 11), and Advanced Surgical Group ($9,079.47; See PX 12). The Arbitrator deems medical bills from Argus Medical Supply in the amount of $9,600.00 (See PX 6) to be unreasonable and unnecessary and is thus not awarded.

Respondent will be given a credit of $6,881.12 for TTD benefits paid and $28,243.61 for medical bills paid.

The Arbitrator makes an award of 12.5% loss of use of the person as a whole under Section 8(d)(2), which corresponds to 62.5 weeks of permanent partial disability benefits at a weekly rate of $296.55. See Conclusions of Law for Arbitrator's considerations under §8.1b(b) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

AUGUST 29, 2022

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Maria Gonzalez	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 18WC2724
World Cleaning Services	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on 6.24.22 in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing. Issues in dispute include accident, causation, unpaid medical bills, temporary total disability "TTD" benefits, and the nature and the extent of the injury. Arbitrator's Exhibit "Ax" 1.

1. Petitioner's Alleged Work Accident of 9/13/17

Petitioner testified at trial with a Spanish interpreter. She stated that she worked for Respondent by cleaning hospital kitchens. (T. 8-9). Petitioner stated that her accident was on 9/13/17, and she testified,

> I was going to mop the floor, so I put water in a bucket. I went to go to wring the mop and I put it down into the bucket, and I pressed very hard to wring it inside the bucket and my arm went all the way down into the bucket, and I fell onto one knee and injured my shoulder against the bucket. The reason my arm went all the way down is that the wringer has a roller that has a spring, and the spring broke and flew off and that's why my arm went all the way down.

(T. 9) On cross examination, Petitioner also claimed to have hit her right elbow during the accident. (T. 16).

Petitioner stated that immediately after falling on one knee, she felt pain in her right shoulder and arm. Petitioner stated that she reported the injury to her supervisor. As Petitioner was already scheduled to take vacation the next day, she went on vacation hoping that the pain would wear off. However, three days later, Petitioner called the supervisor to report her ongoing pain but also her

desire to return to work. Petitioner testified that she went back and felt pain again in her arm and right shoulder, so she talked to her supervisor. Petitioner, while unsure, believed that her supervisor sent her to therapy. (T. 10).

2. Petitioner's Medical Treatment

On 10/19/17, Petitioner sought treatment with chiropractor, Hamada Yehya, and reported that on 9/13/17 she felt pain in the right elbow, right shoulder and upper trapezius while using a mop at work. (PX. 3). Petitioner was diagnosed with strains of the cervical spine, right shoulder, and right elbow. She was also diagnosed with cervical radiculopathy. (PX. 3).

On 11/1/17, Petitioner saw Dr. Koutsky and reported that while using a mop, the lever broke, and her right arm was pulled forward. (PX. 2). Petitioner also reported that she felt a sharp pain in her neck and right upper extremity because of the alleged work accident. Petitioner complained of neck and right shoulder pain. (PX. 2). Dr. Koutsky recommended physical therapy and ordered MRIs of the cervical spine and right shoulder. *Id*. Dr. Koutsky also recommended an EMG of the right upper extremity. *Id*.

A 11/17/17 cervical spine MRI revealed (1) Multilevel moderate spondylotic changes; (2) Disc bulge with superimposed, broad-based herniation at C5-6, causing moderate foraminal and central canal stenosis; (3) Posterior herniation at C6-7, causing mild neuroforaminal/central canal stenosis; and (4) Broad based posterior herniation at C4-5, causing mild to moderate foraminal/central canal stenosis. (PX. 2)

A 11/17/17 right shoulder MRI revealed (1) Distal supraspinatus (rim rent) tear; (2) Findings related to subacromial/subdeltoid bursitis; and (3) Impingement of the supraspinatus at the AC joint with moderate under surface sprain. (PX. 2)

On 11/23/17 Petitioner reported significant improvement and rated her neck and right shoulder pain 0/10. (PX. 3). Petitioner was released to a trial period of full duty. (*Id)*. Petitioner testified that she did not return to work because she had to care for her grandson. (T. 22).

On 11/27/17, Dr. Koutsky authored a report stating that Petitioner's right shoulder revealed a full-thickness tear in the distal supraspinatus, and she would likely require surgery. (PX. 2).

On 12/7/17, Dr. Koutsky recommended pain management for Petitioner's neck condition and recommended right shoulder surgery. (PX. 2).

A 12/13/17 right upper extremity EMG revealed evidence of right C5 radiculopathy with denervation. (PX. 3).

On 12/13/17, Dr. Glaser recommended a right interlaminar C6-7 injection due to neck and right shoulder pain. (PX. 3).

A 1/18/18 right elbow MRI revealed (1) Heterogeneity at the origin of the common extensor tendon, consistent with lateral epicondylitis; and (2) Moderate osteoarthritic changes. (PX. 3).

On 2/19/18, Petitioner saw Dr. Glaser and reported that her neck pain and right shoulder pain were the same. (PX. 3). She also reported 20% improvement in her neck pain after the injection. (*Id)*.

On 4/4/18, Petitioner saw Dr. Jay Levin for an Independent Medical Examination pursuant to Respondent's request. (RX. 1). Petitioner reported that on 9/13/17, a spring broke on the mop she was using which caused the handle to go down quickly and caused an injury of a jarring type of motion in the right upper extremity. (RX. 1). Petitioner reported that she felt a pull on the right side of her neck and pain in the right arm. Dr. Levin agreed with Petitioner's diagnosis of right elbow epicondylitis. *Id*. Dr. Levin recommended that Petitioner undergo updated MRIs of the right shoulder and cervical spine. *Id*. During his examination, Dr. Levin found that Petitioner had a positive Hoover's sign which is a finding of symptom magnification. (RX. 1, pgs. 39-40).

On 4/9/18, Petitioner underwent a second C6/7 interlaminar epidural steroid injection. (PX. 3). Dr. Glaser prescribed a Vasopneumatic Compression System from 4/12/18 – 5/10/18. *Id*.

A 4/23/18 right shoulder MRI revealed (1) Supraspinatus signal abnormality from tendinopathy and/or superimposed strain; and (2) Rim rent type partial undersurface tear at the anterior edge of the insertion (RX. 2).

A 4/23/18 cervical spine MRI revealed: (1) Central herniation at C4/5 with underlying bulge and disc-osteophyte complexes causing foraminal stenosis; (2) Bulging of C5/6 and C6/7 discs with disc-osteophyte complex causing foraminal stenosis; (3) Moderate spinal stenosis (partly congenital) and mild impingement on the cord. (RX. 2).

On 5/17/18, Dr. Levin reviewed Petitioner's 4/23/18 MRIs and opined that the cervical spine MRI did not show any evidence of a C4/5 right herniated nucleus pulposus which would correlate with Petitioner's IME complaints. (RX. 1). He further opined that the right shoulder MRI did not reveal any rotator cuff tear and diagnosed Petitioner with strains of the right shoulder and cervical spine. *Id*.

On 6/11/18, Petitioner underwent a third C6/7 interlaminar epidural steroid injection due to a diagnosis of cervical radiculopathy and upper extremity pain. (PX. 3). Dr. Glaser prescribed a Vasopneumatic Compression System from 6/14/18 – 7/12/18. *Id.* Petitioner testified that the injections did not help her pain. (T. 26).

On 7/19/18, Petitioner returned to Dr. Koutsky and diagnosed Petitioner with right C4/5 and C5/6 radiculopathy. (PX. 3). Dr. Koutsky noted that Petitioner's upper extremity EMG showed a pinched nerve and recommended an anterior cervical decompression and fusion. *Id.* Petitioner was released with a 10lb lifting restriction and prescription for anti-inflammatory medication and muscle relaxants. *Id*.

Petitioner went to La Clinica for physical therapy from 10/20/17 – 7/27/18. (PX. 3). At her initial evaluation, Petitioner complained of difficulty moving her right arm, bending her elbow, turning

her neck, and sleeping on her right side. *Id.* Petitioner's symptoms never changed during the course of her physical therapy treatment. *Id.*

3. <u>Testimony of Dr. Jay Levin</u>

Dr. Levin is a board-certified orthopedic surgeon. (RX. 1, p. 5-6). Dr. Levin testified that prior to a hand injury, he saw 200-250 per month and performed surgery 3 times a week. (RX. 1, p. 8-9). The majority of his practice was comprised of cervical spine injuries. (RX. 1, p. 9).

Dr. Levin performed an IME on 4/24/18 regarding Petitioner's alleged cervical spine, right shoulder, and right elbow injuries. (RX. 1). Dr. Levin reviewed Petitioner's medical records from La Clinica, including MRI images of her right shoulder, right elbow, and cervical spine. (RX. 1). Dr. Levin testified that he personally reviewed Petitioner's MRI images. (RX. 1, p. 16-17). After his review of Petitioner's medical records, diagnostic films, and his own examination, Dr. Levin diagnosed Petitioner with right elbow lateral epicondylitis and opined that this condition was related to Petitioner's alleged 9/13/17 accident. (RX. 1, p. 17). Due to the poor quality of Petitioner's MRI images, Dr. Levin recommended an updated cervical spine MRI and right shoulder MRI. (RX. 1, p. 17).

On 5/17/18, Dr. Levin authored an addendum report regarding Petitioner's right shoulder and cervical spine conditions. (RX. 1, p. 18).

Regarding the right shoulder, Dr. Levin reviewed the 4/23/18 right shoulder MRI and opined that Petitioner did not have a rotator cuff tear. (RX. 1, p. 19-20). He further opined that Petitioner had mild AC joint arthritis in the right shoulder with mild tendonitis without any evidence of significant degenerative supraspinatus or infraspinatus tendon pathology. (RX. 1, p. 20). Dr. Levin opined that Petitioner sustained, at most, a right shoulder strain as a result of the alleged 9/13/17 accident. (RX. 1, p. 21-22). Dr. Levin testified that consistent with the official disability guidelines, reasonable medical treatment for Petitioner's right shoulder strain would include 10 physical therapy visits and the initial MRI. (RX. 1, p. 21).

Dr. Levin testified that he disagreed with Dr. Koutsky's interpretation of Petitioner's right shoulder MRI. (RX. 1, p. 28-29). Specifically, Dr. Levin testified that the RIM tear noted on the radiologists' report could be consistent with degenerative changes, but he did not believe that Petitioner had a right shoulder rim tear. (RX. 1, p. 29). He further testified that Petitioner's right shoulder MRI revealed possible degenerative tearing, not a traumatic tear. *Id*. Further, Dr. Levin testified that it was not probable that Petitioner's job duties with Respondent caused degenerative micro tearing to the right shoulder. (RX. 1, pgs. 32-33).

Regarding the cervical spine, Dr. Levin reviewed Petitioner's 4/23/18 cervical spine MRI and found no evidence of any clinically significant right herniated nucleus polyposis which would correspond with Petitioner's clinical complaints at the time of his 4/4/18 evaluation. (RX. 1, p. 19-20). Dr. Levin testified that Petitioner sustained, at most, a cervical spine strain as a result of the alleged 9/13/17 accident. (RX. 1, p. 22). Dr. Levin testified that reasonable medical treatment for the cervical spine would include 10 physical therapy visits. (RX. 1, p. 25).

Dr. Levin testified at length about Petitioner's 4/23/18 cervical spine MRI findings and explained that films did not show any evidence of any clinically significant findings, including a herniated nucleus pulposus at C4/5. (RX. 1, p. 24). Dr. Levin further explained that Petitioner's MRI findings were degenerative in nature and common for anyone over 40 years old. (RX. 1, p. 24-25).

Dr. Levin testified that at the time of his 5/17/18 report, Petitioner was capable of working in a full-duty unrestricted capacity regarding the cervical spine, right shoulder, and right elbow and was at maximum medical improvement for all alleged injuries. (RX. 1, p. 26-27).

4. Petitioner's Current Condition

Petitioner testified that she cannot sweep or mop. She has difficulty to move a pot to the stove. She can't move a frying pan with her right hand. She feels pain in her neck and her upper right arm. The Arbitrator observed Petitioner lift her left arm above her head but was only able to lift her right arm just below shoulder height. Petitioner was able to put her left arm behind her back but not her right arm. (T. 12-14). Petitioner testified that she takes Ibuprofen 800mg for her pain. (T. 15). She further testified that her family doctor provides the pain medication, and she has follow-up visits every 3 months. (T. 16).

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Issue C, whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124848, ¶ 34. A compensable injury occurs 'in the course of' employment when it is sustained while he performs reasonable activities in conjunction with his employment. Id.

"The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." Id. at ¶ 36. To determine whether a claimant's injury arose out of his employment, the risks to which the claimant was exposed must be categorized. Id. The three categories of risks are "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." Id. at ¶ 38. "A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." Id. at ¶ 46.

In the case at hand, the Arbitrator acknowledges that Petitioner is a poor historian, but she is Spanish speaking, and the record is not always clear as to whether an interpreter was available. Petitioner provided a consistent history of a work accident (right arm was forcefully extended as a result of a broken mop spring) to her treating physicians and Respondent's IME. Oddly at trial, she described falling onto her knee and striking her right elbow and right shoulder during the incident. While her trial testimony is clearly a relevant expansion of the work history provided to her treaters, the Arbitrator does not find the inconsistency significant enough to defeat Petitioner's claim.

Petitioner's testimony and medical records clearly establish that she was injured on 9/13/17 while using a bucket and mop at work to clean the floors. Petitioner was exposed to a risk distinctly associated with her employment and was acting in the course of her employment.

The Arbitrator finds that Petitioner's accident of 9/13/17 arose out of and in the course of Petitioner's employment by Respondent.

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

There is nothing in the record to indicate that Petitioner was in active medical treatment for her neck, right arm, and shoulder; or that she was under any work restrictions prior to her work accident. Although medical records do not begin until 10/19/17, Petitioner testified that she reported her accident to her supervisor the day of and also reported ongoing symptoms to her supervisor after being off work for a few days. Respondent did not call any witnesses and notice was not in dispute.

Petitioner's initial treatment note describes a work accident and assesses her for strains to the cervical spine (as well as cervical radiculopathy), right shoulder, and right elbow. An MRI of the cervical spine revealed bulges/herniations at C4-5, C5-6, and C6-7 each causing varying degrees of foraminal and central canal stenosis. An EMG revealed evidence of right C5 radiculopathy with denervation. A right shoulder MRI showed impingement, bursitis, and a distal supraspinatus (rim rent) tear.

Respondent's IME, Dr. Levin, diagnosed Petitioner with right elbow lateral epicondylitis and opined that this condition was related to her 9/13/17 accident. With regards to the right shoulder, Dr. Levin requested a second MRI and upon its review, opined that Petitioner did not have a right shoulder rim tear. His diagnosis was merely a sprain. The Arbitrator finds it significant that Dr. Levin stands alone in this opinion as both radiology reports note the tear as well as Dr. Koutsky.

For the cervical spine, Dr. Levin also requested a second MRI and upon its review, opined that Petitioner's MRI findings did not correlate with Petitioner's complaints. His diagnosis was simply a sprain. This is in contrast to Drs. Koutsky and Glaser's findings, opinions, and treatment.

The Arbitrator relies on the medical records, Petitioner's testimony, and Petitioner's treaters (over the medical opinions offered by Respondent's IME) in concluding that Petitioner had a previous condition of good health, an accident, and a subsequent injury resulting in disability.

As a result, the Arbitrator finds that Petitioner's current condition of ill-being (cervical spine, right shoulder, and right elbow) is causally related to the injury.

Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Section 8(a) of the Act states a Respondent is responsible "…for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See Gallentine v. Industrial Comm'n, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

Respondent denies liability for unpaid medical bills based on the medical opinions of its Section 12 examiner. No utilization reviews were submitted into evidence. Petitioner was asked on cross examination about medical devices she was given and was specifically shown a photo of a Game Ready CT Spine Wrap (See RX5). Petitioner had no recollection of ever using such a device. (See T. 28) Looking through the medical records, documentation shows that a Game Ready was *prescribed* to Petitioner, but there is no documentation to support that she was ever given one. (See PX6).

Having found causation for Petitioner and relying of the opinions of Petitioner's treaters over those of Dr. Levin, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment.

The Arbitrator orders Respondent to pay Petitioner directly for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act: La Clinica ($11,095.00; See PX 3-4), Archer Open MRI ($3,900.00; See Px 5), Advanced Anesthesia ($1,743.00; See PX 7), Workers Comp RX Solutions ($2,437.49; See PX 8), Specialized Radiology ($165.00; See PX 9), Advanced Physical Medicine ($3,634.00; See PX

10), Prescription Partners ($953.20; See PX 11), and Advanced Surgical Group ($9,079.47; See PX 12).

The Arbitrator deems medical bills from Argus Medical Supply in the amount of $9,600.00 (See PX 6) to be unreasonable and unnecessary. Thus, said bill is not awarded.

Respondent's workers' compensation insurance carrier paid medical benefits totaling $28,243.61 as shown in RX 4 and is entitled to a credit for the same.

Issue K, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. Westin Hotel v. Indus. Comm'n, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. Archer Daniels Midland Co. v. Indus. Comm'n, 138 Ill.2d 107, 118 (1990).

Having found causation for Petitioner and relying of the opinions of Petitioner's treaters over those of Dr. Levin, Petitioner is entitled to TTD benefits. The medical records consistently document Petitioner inability to return to work. Petitioner first sought treatment on 10/19/17 and the last treatment note in evidence is from 7/19/18 when Dr. Koutsky released Petitioner with a 10lb lifting restriction. Petitioner finished physical therapy on 7/27/2018.

Based on the record as a whole, the Arbitrator finds that Respondent shall pay Petitioner directly temporary total disability benefits of $329.50/week for 39 1/7 weeks, commencing 10.19.17 through 7.19.18, as provided in Section 8(b) of the Act.

Respondent will be given a credit for $6,881.12 for TTD benefits paid.

Issue L, the nature and extent of the injury, the Arbitrator finds as follows:

Petitioner has not submitted sufficient evidence to prove that she is permanently and totally disabled under an odd lot theory but is entitled to an award under Section 8(d)(2) of the Act.

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

Under Section 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. Therefore, the Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner cleaned hospital kitchens but has not returned to work since the accident. The Arbitrator therefore gives little weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 59 years old at the time of the accident and is toward the end of her working years. The Arbitrator gives little weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes that Petitioner has not returned to work for Respondent. Petitioner did not testify to looking for work elsewhere. The Arbitrator gives little weight to this factor.

Under Section 8.1b(b)(iv), evidence of disability corroborated by the treating medical records, the Arbitrator gives significant weight to this factor. Petitioner's MRI of the cervical spine revealed bulges/herniations at C4-5, C5-6, and C6-7 each causing varying degrees of foraminal and central canal stenosis. An EMG revealed evidence of right C5 radiculopathy with denervation. A right shoulder MRI showed impingement, bursitis, and a distal supraspinatus (rim rent) tear. In addition, Petitioner was diagnosed with right elbow lateral epicondylitis. Treatment consisted of pain medication, physical therapy, and three cervical injections. Petitioner did not undergo the recommended anterior cervical decompression and fusion and was released with a 10lb lifting restriction. Petitioner demonstrated at trial her limited range of motion.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 12.5% loss of use of the person as a whole pursuant to §8d2 of the Act which corresponds to 62.5 weeks of permanent partial disability benefits at a weekly rate of $296.00.

It is so ordered:

Arbitrator Rachael Sinnen

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC028208
Case Name	Joseph Watson v. Illinois State Toll Highway Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0185
Number of Pages of Decision	19
Decision Issued By	Deborah Baker, Commissioner, Deborah Simpson, Commissioner

Petitioner Attorney	Timothy Scott
Respondent Attorney	Elaine Newquist

DATE FILED: 4/21/2023

/s/ Deborah Simpson, Commissioner

Signature

DISSENT: /s/ Deborah Baker, Commissioner

Signature

23IWCC0185

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse:	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify: medical expenses TTD	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOSEPH WATSON,

Petitioner,

vs. NO: 14 WC 28208

ILLINOIS STATE HIGHWAY AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering all issues and being advised of the facts and law, modifies the Decision of the Arbitrator as stated herein and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof.

The Commission hereby incorporates by reference the findings of fact contained in the Decision of the Arbitrator, which delineate the relevant facts and analyses. However, as it pertains to temporary total disability benefits, the Commission modifies the Decision of the Arbitrator to award temporary total disability benefits from December 5, 2013 through November 13, 2019, with the end date corresponding with Petitioner's uncompleted functional capacity evaluation (hereinafter, "FCE"). Additionally, as it pertains to medical expenses, the Commission further modifies the Decision of the Arbitrator to include the award of Dr. Sonal Patel's treatment for Petitioner's work-related conditions only.

Petitioner was employed in a mechanical and electrical position for Respondent when he suffered an electrocution injury on December 4, 2013. As a result, Petitioner alleged numerous injuries to various body parts, several but not all of which the Commission finds to be causally related to the work accident. Specifically, the Commission agrees with the determination of the Arbitrator that Petitioner's anxiety disorder, headaches, head injury, cervical injury, and right-sided hearing loss are causally related to the accident, but Petitioner's right shoulder, low back, cardiac, bilateral leg, and diabetic conditions are not.

On July 1, 2019, Dr. Hillard Slavick authored a §12 report, which corresponded with his

second independent medical examination of Petitioner performed on June 10, 2019. In this report, Dr. Slavick stated that his findings at the June 10, 2019 examination were unchanged from his prior normal examination of Petitioner on September 20, 2016 and revealed multiple subjective complaints with no objective neurologic dysfunction. Dr. Slavick opined that Petitioner's pain was purely subjective at that time and found no evidence for any loss of sensation, motor weakness, or muscle weakness. Dr. Slavick then proceeded to make the following findings: Petitioner's tremor was psychogenic and anxiety-driven; Petitioner's hearing was normal to conversation and questioning; Petitioner had no loss of coordination or slowing of movement in his limbs; The tone of Petitioner's arms and legs was normal; Petitioner had no vascular insufficiency; Petitioner had normal speech quality, loudness, and memory; and Petitioner walked completely normal without any demonstratable pain. Dr. Slavick also categorized Petitioner's headaches as anxiety-related.

Overall, Dr. Slavick opined that Petitioner had purely subjective and anxiety-driven complaints that did not correlate with his normal neurologic examination and normal mental status and memory findings. Dr. Slavick placed Petitioner at maximum medical improvement at that time and recommended an FCE. Dr. Slavick also recommended psychological therapy, which Petitioner did not ultimately receive.

Petitioner continued to treat and be kept off work after this date by his treating providers; however, the lack of any objective neurologic deficits at the time of Dr. Slavick's examination suggests that his conditions may have stabilized. Then, on November 13, 2019, Petitioner terminated a FCE due to his subjective report of increased pain. However, when Kathleen Majeski, a physical therapist at Athletico, performed an audit of this failed FCE on February 21, 2020, she determined that there were no objective findings to correlate Petitioner's perceptions to his true functional tolerance. Although it was recommended by several different providers, Petitioner never fully completed a FCE so that the Commission could be made aware of his true functional abilities. Moreover, after Dr. Slavick's independent medical examination, Petitioner's function was also affected by several non-work-related conditions, including his diabetes and peripheral neuropathy. An FCE would have been necessary to distinguish which of Petitioner's limitations corresponded with his causally related conditions and which corresponded with a non-work-related condition, which the treatment records show to also have been debilitating.

Additionally, the evidence submitted at the hearing did not show that Petitioner participated in the psychological therapy recommended by Dr. Slavick. As such, it has not been clearly established to what extent Petitioner's total inability to work is related to his causally related mental conditions versus his physical conditions.

While putting specific emphasis on Dr. Slavick's lack of objective findings and the lack of a valid FCE establishing the extent of Petitioner's true causally related physical limitations, the Commission finds that Petitioner failed to meet his burden of establishing his entitlement to temporary total disability benefits after the date of his failed FCE on November 13, 2019. As such, the Commission modifies the Decision of the Arbitrator to award temporary total disability benefits from December 5, 2013 through November 13, 2019.

As for medical expenses, the Commission agrees with the Arbitrator's award of medical expenses for Petitioner's causally related conditions and the denial of medical expenses for the

treatment Petitioner received for his non-work-related conditions, including for his right shoulder, back, heart, bilateral legs/neuropathy, and diabetes. However, the record does not support the denial of all treatment from Dr. Patel, because even though Dr. Patel treated several of Petitioner's non-work-related conditions, she also provided some treatment for his causally related conditions, including but not limited to prescribing ongoing medications for Petitioner's chronic pain and anxiety. Therefore, the Commission modifies the Decision of the Arbitrator to include the award of reasonable and necessary medical expenses related to Dr. Patel's treatment of Petitioner's work-related conditions only. Costs associated with Dr. Patel's treatment for non-work-related conditions remain denied. In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 11, 2022 is modified herein. For all other issues not specifically modified herein, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED that Respondent shall pay temporary total disability benefits of $1,226.50 per week from December 5, 2013 through November 13, 2019, which represents a period of 309 6/7 weeks, in accordance with §8(b) of the Illinois Workers' Compensation Act.

IT IS FURTHER ORDERED that Respondent is liable for all reasonable and necessary medical expenses for the treatment provided by Dr. Patel for Petitioner's causally related conditions only, including but not limited to Petitioner's chronic pain and anxiety, pursuant to §8(a) and §8.2 of the Act. Any medical expenses related to Dr. Patel's treatment of Petitioner's non-work-related conditions remain denied. The Commission otherwise affirms and adopts all other aspects of the Arbitrator's award of medical expenses.

IT IS FURTHER ORDERED that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

April 21, 2023

DLS/met
O- 2/22/23
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/s/*Deborah L. Simpson*
Deborah L. Simpson

/s/*Stephen J. Mathis*
Stephen J. Mathis

DISSENT, IN PART

I agree with the majority's decision to affirm the Arbitrator's causal connection findings and I agree with the majority's award of medical expenses for treatment by Dr. Patel. However, I disagree with the limitations on causal connection and temporary total disability (TTD) benefits only to the extent that I would have found additional conditions to be causally related and I would have extended TTD benefits through November 29, 2021, the date of the arbitration hearing.

On December 4, 2013, Petitioner sustained an undisputed and severe electrocution injury that resulted in numerous serious conditions. The majority agreed with the determination of the Arbitrator that Petitioner's anxiety disorder, *headaches*, head injury, cervical injury, and right-sided hearing loss are causally related to the accident, but Petitioner's right shoulder, low back, cardiac, bilateral leg, and diabetic conditions are not. I agree that Petitioner's right shoulder, low back, cardiac, bilateral leg, and diabetic conditions are not causally related to the undisputed accident. However, I believe that certain conditions were neither addressed by the Arbitrator nor the majority and I would have clarified the causation findings and found that Petitioner's current conditions of depression, PTSD, "chronic migraine headaches" (not just headaches), and tremors are also causally related to the work accident. I find that the majority's conclusions with respect to causal connection as well as Respondent's apparent concession that Petitioner's anxiety, depression, and PTSD are causally related to the undisputed work accident, necessitate an award of additional TTD benefits.

Dr. Patel opined that the following conditions are related to the December 4, 2013 accident: post-concussive syndrome, chronic migraine, and chronic neuropathy (which produced severe nerve pain in his feet and legs), *constant headaches*, and tremors. Dr. Patel opined further that Petitioner's pain and symptoms were severe enough to constantly interfere with his attention and concentration needed to perform even simple work tasks, and that Petitioner was incapable of even low stress jobs and unable to work due to his constant *headaches* and leg pains. Additionally, Dr. Ahmadian opined that Petitioner suffered from anxiety, depression, and PTSD and these three conditions are causally related to the electrocution work injury. Dr. Ahmadian also opined that Petitioner's chronic migraine *headaches* are causally related to the work accident and the tremors that Petitioner experienced were a direct result of the medications Petitioner was taking. Dr. Ahmadian was of the opinion that Petitioner was unable to work in any capacity as Petitioner's overall condition had worsened and was likely going to be permanent in nature. Interestingly, Dr. Slavick, Respondent's Section 12 examining physician, opined that Petitioner's anxiety caused his headaches and tremors, failing to address the fact that Petitioner did not have a significant history of anxiety prior to the undisputed work accident and that Dr. Ahmadian had already opined the anxiety was causally related to the work accident.

I find Dr. Patel's and Dr. Ahmadian's opinions to be credible and I would specifically find that Petitioner's current conditions of depression, PTSD, chronic migraine headaches, and tremors are also causally related to the work accident. Of note, the majority agrees that Petitioner's *headaches* are causally related to the undisputed work accident. Respondent has produced no credible evidence to dispute causation with respect to Petitioner's headaches and the diagnoses of anxiety, depression, and PTSD.

In light of Dr. Ahmadian and Dr. Patel's opinions that Petitioner currently suffers from conditions that require him to be off work completely, highlighting the diagnosis of *headaches* which the majority agrees is casually related, I would find that Petitioner is entitled to TTD benefits through the date of the arbitration hearing. The time during which a claimant is temporarily totally disabled is a question of fact for the Commission; and to be entitled to TTD, claimant must prove not only that he did not work but that he was unable to work. *City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (1996). The dispositive test is whether the condition has stabilized, because a claimant is entitled to TTD when a "'disabling condition is temporary and has not reached a permanent condition.'" *Manis v. Industrial Comm'n*, 230 Ill. App. 3d 657, 660 (1992). The Commission reviews the evidence to ascertain whether claimant has reached maximum medical improvement, *i.e.*, the condition has stabilized. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170, 175-76 (5th Dist. 2000).

In this case, the evidence shows Petitioner did not work and was not able to work due to suffering from chronic migraine *headaches*, tremors, anxiety, depression, and PTSD, as opined by his treating physicians who I find credible. Further, there is no evidence that Petitioner reached maximum medical improvement (MMI) with respect to having chronic migraine *headaches*, tremors, anxiety, depression, and PTSD, and Petitioner's condition had not yet stabilized as of the date of the arbitration hearing. Further, it is speculative to end TTD benefits based on the November 13, 2019 FCE that Petitioner was unable to complete as the FCE was incapable of evaluating whether and how Petitioner's chronic migraine *headaches*, anxiety, depression, PTSD, and tremors impact his functional abilities. The evidence indicates that the FCE was recommended by Dr. Slavick to evaluate Petitioner's cervical condition only.

Based on the above, I find that the additional conditions of "chromic migraine headaches" (not just headaches), depression, PTSD, and tremors are causally related to the December 4, 2013 work accident and Petitioner has been completely unable to work due to all of his conditions combined. Accordingly, I would award TTD benefits and medical expenses for treatment from December 5, 2013 through November 29, 2021, related to the following conditions: anxiety, headaches, head injury, cervical injury, right-sided hearing loss, "chromic migraine headaches" (not just headaches), depression, PTSD, and tremors.

For the reasons set forth above, I respectfully dissent.

/s/ *Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC028208
Case Name	WATSON, JOSEPH v. ILLINOIS STATE TOLL HIGHWAY AUTHORITY
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Timothy Scott
Respondent Attorney	Elaine Newquist

DATE FILED: 3/11/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 8, 2022 0.71%

/s/Frank Soto, Arbitrator

Signature

CERTIFIED as a true and correct copypursuant to
820 ILCS 305/14

March 11, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF DUPAGE)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Joseph Watson
Employee/Petitioner

v.

Illinois State Toll Highway Authority
Employer/Respondent

Case # **14WC 28208** _____

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Frank Soto**, Arbitrator of the Commission, in the city of **Wheaton**, on **November 29, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **12/04/2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is in part*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**95,667.00**; the average weekly wage was $**1,839.75**.

On the date of accident, Petitioner was **49** years of age, ***married*** with **1** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has in part*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**431,552.78** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**431,552.78**.

Respondent is entitled to a credit of $**168,364.09** under Section 8(j) of the Act.

ORDER

Respondent is liable for cervical care through December 20, 2016, care for headaches to date, for right sided hearing loss, and for anxiety including treatment for pain, pursuant to the opinions of Dr. Slavick. As such, Respondent is liable for the reasonable and necessary medical bills incurred for those treatments which also includes pain treatment provided by Marianjoy and treatment for anxiety and/or headaches and treatment provided by his primary care physician for prescribing and monitoring prescriptions for pain, anxiety and headaches including the costs for Trazode (for sleep), Topamax (for headaches), Zoloft (for depression), Baclofen (for pain), Depakote (for headaches) and Gabapentin (for nerve pain), pursuant to Sections 8.2 and 8 (a) of the Act, and subject to the fee schedule. Respondent shall hold Petitioner harmless of medical bills which Respondent claims a credit pursuant to Section 8(j) of the Act. Treatment for nonwork-related conditions including the low back, legs, right shoulder, cardiac care, and diabetes as well as any care provided by Dr. Patel are denied as not being work related, as set forth in the Conclusions of Law attached hereto and incorporated herein;

PETITIONER WAS TOTALLY DISABLED FOR A PERIOD DECEMBER 5, 2013 THROUGH JUNE 10, 2019; TEMPORARY TOTAL DISABILITY IS DUE FOR THAT PERIOD ONLY, AS SET FORTH IN THE CONCLUSIONS OF LAW ATTACHED HERETO AND INCORPORATED HEREIN.

PETITIONER IS ENTITLED TO 65% MAN AS A WHOLE IN PERMANENT PARTIAL DISABILITY, AS SET FORTH IN THE CONCLUSIONS OF LAW ATTACHED HERETO AND INCORPORATED HEREIN.

RESPONDENT SHALL HAVE A CREDIT FOR $78,846.51 IN OVERPAID TTD TO BE APPLIED TOWARD PPD AND ANY MEDICAL BILLS DUE, AS SET FORTH IN THE CONCLUSIONS OF LAW ATTACHED HERETO AND INCORPORATED HEREIN.

Respondent shall pay Petitioner compensation that has accrued from December 4, 2013 through November 29. 2021 and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

By: /o/ *Frank J. Soto* **MARCH 11, 2022**
Arbitrator

***Joseph Watson v. Illinois State Toll Highway Authority*; Case # 14 WC 28208**

Findings of Fact:

Accident: Petitioner was employed with Respondent as an electrician. On December 4, 2013 Petitioner was removing a 400-amp service when his wrench fell into the energized circuit. (T.33) Petitioner testified he was not certain what next happened. (T.34) Petitioner testified his safety glasses were destroyed and his electrical gloves were burned. (T. 37, 38). Petitioner testified the gloves absorbed most of the electricity and the rubber gloves underneath was not destroyed. (T.40). Petitioner testified energy can heat up to 160,000 degrees in the flash of a second. (T.43). Petitioner testified he suffered an arc injury based upon the burns on his gloves and face. (T. 44). Petitioner testified he remembered waking up on the emergency room and seeing his daughter. (T.35).

The emergency room records, from Good Samaritan Hospital, state 49-year old male who doesn't recall what happened but it appears there was some sort of arcing and Petitioner was thrown backwards. The records also state Petitioner denied a loss of consciousness but was disoriented for one to two minutes following the event. The records state that Petitioner had singed hairs on the top of his head and eyebrows and he reported blurred vision, ringing in his ears, headache, neck and mid-lower back pain. The exam showed no evidence of midface trauma, no evidence of intraoral trauma, pupils were equal and reactive to light, heart rate and rhythm was regular, neck was soft with minimal tenderness to palpation, the external auditory canals and tympanic membranes were clear, no evidence of intraoral trauma was noted, all compartments of the upper and lower extremities remained soft to palpation, no cyanosis or edema was noted on the extremities, gross vision was intact, Petitioner was alert with a GCS of 15. The exam also noted that Petitioner did not have any significant burns to his hands but did appear to have some minor burns to the finder tips of the left hand. Petitioner also had 1st degree burns over the right side of his face. The CT scan of the cervical spine was negative and so were the x-rays to the chest, lumbar and thoric spine. The EKG showed normal sinus rhythm and the CT scan of the brain was negative. Petitioner was diagnosed with a high-voltage electrical injury and closed head injury based upon the GSC of 15. Petitioner was admitted into the hospital for close cardiac monitoring. (Px 1).

Claimed injuries at trial: Petitioner testified after the accident he had burns on his face near his eyes, on his neck, and on his shoulders. (T.45) He had loss of hearing in his right ear. (T.46) He had pain in his head and neck. (T.47) Petitioner testified a few weeks later his right biceps ruptured and "rolled up on my arm" after he moved a propane tank in his garage. (T.49) Petitioner testified he developed headaches with pain "from the neck down to my feet." (T.50) Petitioner also testified he cannot see out of his left eye when his pain and anxiety levels are high and to developing right side "trems." (T.50, 51). Petitioner further testified to developing high blood pressure, diabetes, and neuropathy in both legs. (T.51)

Petitioner testified that he currently has chronic pain from his neck to his head, down his back, down both arms and down both legs into his feet on a daily basis. (T.60) Petitioner testified he has been directed not to

work by Drs. Ahmadian and Patel. (T.61) Petitioner testified his job, with Respondent, requires him to lift 50 – 75 lbs., and to be on call 24 hours a day. (T.63). Petitioner testified to taking multiple medications which limit his ability to drive. (T.64). Petitioner denied the ability to exercise after December 4, 2013 and that his injuries has affected his personal life. (T.67). Petitioner testified he has been able to scuba dive up to 30 feet, which helps alleviate his symptoms. (T.67-68). Petitioner lives with his wife, two daughters and a disabled brother in law (T.9-10). Petitioner testified he had a CDL until it expired in 2020. (T.73). Petitioner testified he owned a motorcycle until 2019. (T.74). Petitioner testified has no medically imposed limitations on his driving. (T.74)

Claimed treatment at trial: Petitioner testified he underwent a right biceps repair and has had no further issues with that since. (T.52). Petitioner testified to ongoing care for his neck including a surgery with Dr. Caron in 2014. (T.56). Petitioner testified the surgery alleviated hand numbness, but not all of his neck issues. (T.56) Petitioner has been treating with a neurologist, Dr. Ahmadian, since 2013. (T.52, 53) Petitioner testified Dr. Ahmadian treats him for a traumatic brain injury, tremors, chronic migraines, cervalgia, post-concussion syndrome, depression, and PTSD. (T.54-55). Petitioner testified he also currently treats with his primary care physician, Dr. Patel, for diabetes and neuropathy. (T.56-57). Petitioner testified he has been hospitalizations multiple times for pain. (T.58)

Petitioner admitted on cross he last saw Dr. Caron for his neck in 2016 and that he has not had any specific care for his neck since. (T.88). Petitioner testified to having prior hearing loss in his left ear. (T.90). Petitioner testified he has taken multiple medications, underwent Botox injections and physical therapy, and using medical marijuana for headaches. (T. 91-92). Petitioner testified he developed a tremor on his left side since June of 2017. (T.92). Petitioner testified he developed a tremor to his right hand in 2020. (T.92). Petitioner testified he started treating for leg swelling in 2016 and underwent left leg surgery in May of 2019 and right leg surgery in July of 2019. (T.93). Petitioner testified to using a cane since September of 2019. (T.93-94). Petitioner couldn't recall being in a car accident in December of 2019. (T.94).

On cross exam Petitioner admitted to qualifying for Social Security disability in 2017. (T.97). Petitioner testified to participating in two functional capacity evaluations in July and November, 2019 which he reported limitations due to balance problems, heart issues, chest pain, high blood pressure, swollen ankles, nausea, vomiting, and that he could stand only up to 10 minutes due to low back pain. (T.98-99). Petitioner testified his low back has hurt since the December 4, 2013 accident but he has not received medical treatment for his low back. (T.100). Petitioner also testified his low back pain limits his sitting ability. (T.100). Petitioner could not recall telling therapists he was not planning on returning to work. (T.100-101). Petitioner admitted he applied for his retirement pension from the State. (T.101)

Prior work/experience: Petitioner testified to prior education including classes at College of DuPage and DeVry, with 160 hours from those institutions in history and geography. (T.12) He attended trade schools for certifications in heating and air conditioning and plumbing at Environmental Technical Institute, ABC School

of Plumbing, and Trainco Industrial Training. (T.12-13). He also received certifications to work on uninterrupted power sources and in computer rooms. (T.13) At the time of the accident on December 4, 2013, Petitioner was also working for Maurer Services as an operations manager, managing personnel and overseeing their equipment and procedures. (T.15-16) He had been working there 35-40 hours per week, since 2009. (T.75) He handled the training for operating the machines, on occasion having to show workers how to do things. (T.76) He also did paperwork and managed personnel. (T.76-77)

Prior claims and injuries: Petitioner recalled a low back injury while working for Coors Distributing in 1993 (T.78), a left shoulder injury while working for Doyle Distributing settled in 1998 (T.78), a right arm injury with Respondent in 2009 (T.79), and treatment for GERD (T.81). Petitioner did not recall back pain following a car accident in 1999 (T.81) or having another car accident in 2005 (T.82). He recalled right foot surgery in 2006 (T.83), but not bilateral foot pain beginning in 2011 and reporting headaches, having high cholesterol and being recommended for diabetes screening in 2011. (T.84-85).

Past Medical Care: Petitioner's past medical records reveal care for low back pain after a car accident on July 24, 1999 and again on July 27, 2005, right heel pain diagnosed as plantar fasciitis in January, 2006 and for which a fasciotomy was performed in May, 2006, prior right knee, left shoulder and right hand surgeries. On March 3, 2011, hyperlipidemia and headaches were noted and, at that time, a diabetes screening was recommended. On October 30, 2013, hyperlipidemia and weight gain was noted. (Resp.Ex.#13)

Cervical care: Following the December 4, 2013 accident, Petitioner was diagnosed with a cervical strain. A CT scan was negative but showed mild degenerative changes. An MRI, performed December 19, 2013, showed spondylitic changes and stenosis at C4-6. Petitioner was placed in therapy but reported no improvement. Thereafter, he came under the care of Dr. Caron who performed a discectomy and fusion at C4-6 on November 24, 2014. A post-operative MRI, taken on July 13, 2015, showed only post-surgical changes. Dr. Khan provided cervical injections beginning on August 24, 2015. A repeat MRI, taken on June 7, 2016, showed only mild degenerative disc disease. Dr. Caron imposed a permanent 15 lb. lifting restriction on December 20, 2016 and discharged Petitioner from care for the cervical condition.

Petitioner underwent therapy to address headaches which included treatment to his neck at Marianjoy starting July 27, 2017. Dr. Patel documented an acute flare up of neck and head pain on November 20, 2019, without cause. Dr. Ahmadian documented increased head and neck pain after falling down stairs at home on June 25, 2020 and that Petitioner has no true signs of cervical radiculopathy since the surgery performed by Dr. Caron in 2014. Dr. Ahmadian was unaware that Dr. Caron released Petitioner to return to work for the neck in 2016 and she deferred to Dr. Caron's opinions regarding Petitioner's cervical work restrictions. Dr. Ahmadian testified she made no neurologic findings.

Dr. Slavick testified Petitioner had a cervical strain complicated by stenosis and he was unable to identify any continuing evidence of injury by the time of his September 20, 2016 exam. Dr. Slavick also was unable to

identify any objective cervical findings during his second exam of July 10, 2019. Dr. Slavick noted, at the third exam, on July 27, 2020, Petitioner did not mention any cervical complaints until asked.

Head care/headaches: Petitioner made mention of headaches as early as March of 2011, for which stress reduction and an optomology referral was made. A CT of the head following the December 4, 2013 incident was reported as negative and a repeat CT of the head was also normal. A concussion was suspected at DuPage Medical Group on December 20, 2013 with some short-term memory loss. Petitioner reported persistent dizziness and memory loss January 27, 2014. Medication was prescribed. Botox injections were considered as of July 16, 2014 but started after Petitioner's cervical surgery in January of 2015.

Petitioner underwent a CTA of the brain, on May 11, 2015, which was normal. On July 13, 2015, Petitioner underwent a brain MRI which was normal and, on August 25, 2015, Petitioner underwent an EEG which was also normal.

Petitioner was prescribed various medications including Lyrica, Elavil, Ambien, and Depakote to address the effects of the headaches. Petitioner also underwent monthly Botox injections which provided only temporary relief. Petitioner participated in a therapy program at Marianjoy in 2017. On several occasions Petitioner reported to the emergency rooms for severe headaches and received Medrol dosepaks and other medications. Petitioner also underwent trigger point injections. Petitioner reported no relief from any of these treatment modalities.

Dr. Ahmadian testified she started treating Petitioner for head and neck issues in late 2013. Her earliest diagnosis was a cervical strain, whiplash trauma, mild concussive symptoms and short-term memory loss, all of which she related to the work injury. She referred Petitioner to Dr. Caron for neck treatment including surgery. She administered Botox injections. She has diagnosed daily headaches and chronic head pain. She has kept Petitioner off all work since 2013 and completed Social Security disability forms for him in 2017. Dr. Ahmadian opined Petitioner's short-term memory loss and insomnia are getting worse and Petitioner requires daily medications, for migraines, and counseling for depression.

On cross exam Dr. Ahmadian admitted there are no objective signs of any head injury nor objective evidence of head trauma. She admitted the Botox, and later Emgality injections, administered had not worked. She admitted there are non-traumatic causes for migraines. She admitted there is no objective evidence of any memory loss or cognitive difficulties. She did not attach any credibility to a SPECT scan Petitioner had undergone. She testified there is no evidence Petitioner has seizures. She related Petitioner's tremors to pain which goes away when Petitioner is relaxed. She admitted Petitioner has no neurologic findings.

During Petitioner's second examination with Dr. Slavick on July 10, 2019 Petitioner reported undergoing treatment for pain management, anxiety and depression. Dr. Slavik noted Petitioner had no tremors at rest and demonstrated normal speech and memory. During Petitioner's third examination with Dr. Slavick on July 27, 27, 2020 Petitioner reported bilateral leg issues, pain in his neck going over his head, urinary incontinence and

episodic left hand tremors which Dr. Slavick noted were gone with distraction. Dr. Slavick related Petitioner's complaints to anxiety and he opined that Petitioner does not required memory loss medication.

Dr. Slavick was unable to identify any focal neurological deficits. Dr. Slavick opined Petitioner suffers from an anxiety disorder and Petitioner's headaches and tremors are due to his anxiety disorder, not to a neurological deficit. (Px 24, Rx 12, pgs. 56-58). Dr. Slavick also opined the anxiety disorder was related to Petitioner's December 4, 2013 work accident. (Px 24, Rx 12, pg. 74). Dr. Slavick testified that he found no evidence of any damage to the brain, spinal cord, peripheral nerve, or muscle damage. Dr. Slavick further testified that people who suffer from anxiety can develop headaches, tremors, muscle spasms and have trouble sleeping and resting. Dr. Slavick testified Petitioner's symptoms are subjective because when one has persistent neurological deficits one would expect to find some degree of loss of sensation, weakness, reflex changes but people who suffer from anxiety driven complaints, such as Petitioner, do not have any focal findings during the neurologic exam and develop depression, anxiety, trouble sleeping, tremors and muscle spasms due to the underlying anxiety or lack of sleep. (Px 24, Rx 12, pgs. 85-86). Dr. Slavick opined Petitioner reached maximum medical improvement for his work injury and agreed with Petitioner's 15 lb. lifting restriction.

Tremors: Petitioner first reported tremors as well as shaking and feeling of being off balance on June 17, 2014. A left arm tremor was mentioned February 22, 2017. During a Botox procedure June 7, 2017 Dr. Ahamadian documented that the tremors were not related to prescription medications or from seizures, and noted the tremors resolve when Petitioner's pain decreased. Dr. Slavick related them to anxiety or "white coat syndrome" which he recommended counseling.

Hearing loss: Petitioner had profound hearing loss in the left ear prior to December 4, 2013. Post-accident testing dated December 9, 2013 showed normal hearing sensitivity with mild sensorineural loss, with excellent speech discrimination in the right ear. The significant hearing loss in the left ear was noted, and Petitioner was directed to be fitted for hearing aids. These findings were repeated on May 18, 2015, and Petitioner was noted to have hearing aids as of July 20, 2015.

Low back: Petitioner first reported low back pain following a car accident in 1999. He again reported back pain following a car accident July 27, 2005. Petitioner testified since his December 4, 2013 work accident he had ongoing low back pain. The first documented mention of low back pain contained within a medical record was in the November 13, 2019 FCE. At that time, Petitioner also reported difficulties with his balance, gait, ability to sit or stand, climb stairs, crouch, crawl, or twist. On December 23, 2019, Dr. Patel noted that Petitioner was involved in a car accident but the medical records do not contain any diagnosis. Dr. Patel's medical record dated May 14, 2020 reference low back pain down the right leg for four weeks. Petitioner also reported severe pain throughout his back after falling down stairs at home in June of 2020. Dr. Ahmadian testified that she was "unaware" that Petitioner had any low back problem. Dr. Patel testified she did not know what injuries Petitioner sustained as a result of the December 23, 2019 car accident but she did testify that

Petitioner injured his low back after falling at home in June of 2020. Dr. Patel testified Petitioner underwent a MRI, at that time, which showed stenosis at L3-5 and degenerative disc disease.

Leg issues/neuropathy: Prior medical records show that Petitioner suffered from right heel pain and received treatment for plantar fasciitis in 2006 in addition to foot pain of unknown etiology in March of 2011. On February 29, 2016, Petitioner reported leg pain and swollen feet and he underwent an ultrasound which was negative for thrombosis. Petitioner was seen at Hinsdale Hospital for tibial entrapment in the left leg and peripheral neuropathy and, on May 13, 2019, he underwent left leg surgery and, on July 13, 2019, he underwent surgery for these conditions.

Dr. Ahamadian testified Petitioner had bilateral peripheral neuropathy impacting both legs but she was not sure what caused the condition. Dr. Ahamadian opined the condition was not related to Petitioner's work accident. Dr. Patel testified Petitioner has chronic leg neuropathy with severe debilitating pain in both legs and feet. Dr. Patel testified she was not sure the cause but did not believe it was related to Petitioner's Type II diabetes because "he has not had diabetes for that long." She also noted the fall at home could have caused/contributed to bilateral leg symptoms.

Right arm/shoulder: Petitioner testified he injured his bicep while picking up a propone tank at his home. (T. 49). Petitioner first reporting injuring his bicep on January 7, 2014. Petitioner told Dr. Ahmadian he sustained the injury when he became dizzy and fell backward while working out on a Stairmaster in January of 2014. Petitioner was diagnosed with a biceps tendon rupture and he underwent surgery on January 16, 2014. On May 21, 2014, the surgeon indicated Petitioner's condition was not work related.

Evidence of post-accident outside activities identified in various medical records: While Petitioner sustained his right biceps injury at home in January, 2014, per the contemporaneous medical records, he told Dr. Ahmadian he was working out at a gym in January, 2014 using a Stairmaster. Petitioner was noted to ride a motorcycle during a hearing assessment May 18, 2015. Dr. DeVore, the pain management doctor, noted Petitioner admitted riding motorcycles and operating a 22-foot boat during his March 24, 2016 evaluation. Petitioner was also noted to be using a recumbent bike two times per week at a gym in December of 2016 and Petitioner began scuba diving in mid-2019, despite being counseled against it by Dr. Ahmadian.

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706, 714 (Ill. App. 5th Dist. 1992).

With Respect to Issue (F), Whether the Petitioner's Current Condition of Ill-being is Causally Related to the Injury, the Arbitrator Finds as follows:

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease such that the employee's current

condition of ill-being can be said to have been causally-connected to the work-related injury and not simply the result of a normal degenerative process of a pre-existing condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n,* 89 Ill.2d 432, 60 Ill.Dec. 629, 433 N.E.2d 671 (1982). When an employee with a preexisting condition is injured in the course and of his employment the Commission must decide whether there was an accidental injury which arose out of the employment, whether the accidental injury aggravated or accelerated the preexisting condition or whether the preexisting condition alone was the cause of the injury. *Sisbro, Inc. Industrial Comm'n*, 207 Ill.2d 193, 278 Ill.Dec. 70,797 N.E.2d 665, (2003). Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989). "When the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 63-64 (1982).

The Arbitrator has carefully reviewed and considered all medical evidence along with all testimony finds Petitioner has proven by the preponderance of the credible evidence that his current anxiety disorder and injuries to his head, neck and right sided hearing loss are causally connected to his December 4, 2013 injury at work. The Arbitrator further finds Petitioner failed to prove by the preponderance of the evidence that his right shoulder, low back, cardiac condition, left and right legs, and diabetic conditions are causally connected to his December 4, 2013 work injury.

Petitioner was diagnosed with degenerative disc disease for which a discectomy and fusion from C4-6 was warranted in November of 2014. Petitioner was discharged from care and with a 15 lb. restriction for that condition on December 20, 2016. Follow up testing has failed to reveal any further pathology in the cervical spine. No treating or evaluating physician has made any continued objective findings relative to the cervical spine and, therefore, the Arbitrator concludes Petitioner reached maximum medical improvement for that condition as of December 20, 2016.

Petitioner reported persistent headaches since the accident, unrelieved with medications, Botox injections or therapy. All brain testing has been negative and neither Drs. Ahmadian nor Slavick identified any objective findings. Petitioner testified his headaches continue to are disabling for him. Dr. Ahmadian recommended ongoing medications and Dr. Slavick opined that Petitioner's headaches and tremors are due to his anxiety disorder and not to any neurological deficit. Dr. Slavick further opined Petitioner's anxiety disorder is related to his December 3, 2014 work accident and is the type of injury that could create an anxiety disorder. (Px 24, Rx 12, pgs. 58, 61, 74-75). Dr. Slavick recommended counseling to address Petitioner's anxiety disorder. As

such, the Arbitrator concludes Petitioner's ongoing anxiety disorder and headaches are related to his work injury as well as the ongoing need for medications and anxiety counseling. The same counseling would also address Petitioner's tremors which are related to his anxiety disorder and have no organic cause per Dr. Slavick.

Petitioner also sustained mild right neurosensory hearing loss as a result of this injury. He had hearing aids at least as of 2016. Dr. Slavick documented no inability to hear, comprehend or respond during his three exams.

With Respect to Issue (J), Whether Respondent is liable for Medical Expenses, the Arbitrator Finds as Follows:

Section 8(a) of the Act states a Respondent is responsible "…*for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury*…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See *Gallentine v. Industrial Comm'n*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

Respondent is liable for cervical care through December 20, 2016, care for headaches to date, for right sided hearing loss, and for anxiety and related pain to date pursuant to the opinions of Dr. Slavick. As such, Respondent is liable for the reasonable and necessary medical bills incurred for those treatments which also includes pain treatment provided by Marianjoy and treatment for anxiety and/or headaches provided by his primary care physician related to prescribing and monitoring prescriptions for pain, anxiety and headaches including Trazode (for sleep), Topamax (for headaches), Zoloft (for depression), Baclofen (for pain), Depakote (for headaches) and Gabapentin (for nerve pain), pursuant to Sections 8.2 and 8 (a) of the Act, subject to the fee schedule. Respondent shall hold Petitioner harmless of medical bills which Respondent claims a credit pursuant to Section 8(j) of the Act.

Treatment for nonwork-related conditions including the low back, legs, right shoulder, cardiac care, and diabetes as well as any care provided by Dr. Patel are denied as not being work related.

With respect to issue (K) whether Petitioner is entitled to TTD benefits, the Arbitrator finds as follows:

"The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, "*i.e.,* until the condition has stabilized." *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized, *i.e.,* reached MM.I. *Sunny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130028WC at 28 (June 26, 2014, Opinion Filed); *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To show entitlement to temporary total disability benefits, a claimant must prove not only that he did not work, but also that he was unable to work. *Gallentine*, 201 Ill. App. 3d at 887; *see also City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (5th Dist. 1996). A claimant's refusal of modified work within a treating physician's physical restrictions can form the basis for termination or suspension of temporary total disability benefits. *Otto*

Baum Co. v. Illinois Workers' Compensation Comm'n, 2011 IL App. (4th) 100959WC, 960 N.E.2d. 583, 355 Ill.Dec. 701.

Petitioner was released from treatment for his neck with 15 lb. lifting restriction issued by Dr. Caron on December 20, 2016. Petitioner continued to report ongoing headaches which Dr. Ahmadian opines are debilitating to Petitioner but there is no objective evidence Petitioner suffered a closed head injury. Dr. Slavick opined the headaches are caused by Petitioner's anxiety disorder which is causally related to his December 4, 2013 work injury. Dr. Slavick also agreed with Petitioner's 15 lb. lifting restriction but disagreed that the FCE properly showed Petitioner's true capabilities.

The FCE performed November 13, 2019 reflected Petitioner's complaints of nonwork-related night sweats, fever, weight gain, problems with breathing, balance, chest pain, high blood pressure, swollen ankles, nausea, and vomiting. Petitioner's standing and walking capabilities were limited by back and hip pain. Petitioner reported trouble climbing stairs and balance issues related to his legs. Petitioner claimed memory issues and trouble finding his thoughts but no such finding was identified in the medical records. Petitioner claimed he was unable to perform sedentary work and he said that did not plan to return to work in any capacity. Petitioner reported sitting issues due to back pain and headaches but was noted to sit without interruption for 2 hours and 46 minutes during testing. Petitioner admitted he never looked for work after Dr. Caron released him and applied for retirement benefits in 2020.

The Arbitrator therefore concludes Petitioner's condition stabilized as of June 10, 2019, the date of Dr. Slavick's second Section 12 examination. At that time, Dr. Slavick examination showed no focal neurological deficits, normal muscle tone in all four limbs, no loss of coordination, normal balance, no muscle atrophy, normal speech and memory skills, negative Rombers testing, and no tremors during resting. Dr. Slavick testified Petitioner's subjective complaints did not correlate with his normal neurologic exam. Dr. Slavick opined Petitioner had anxiety driven complaints and that he should undergo psychological therapy. In support of his opinion regarding Petitioner's symptoms being subjective, Dr. Slavick testified that if someone had persistent neurological symptoms, one would expect to find some degree of loss of sensation, weakness, reflex changes but people who develop anxiety driven complaints, such as Petitioner, don't have any focal findings during the neurologic exam. (Px 24, Rx 12, pgs. 86). The Arbitrator did not find that Petitioner's condition stabilized at the time of Dr. Slavick's September 20, 2016 examination because, at that time, Dr. Slavick recommended psychological therapy in addition to continuing treating with his primary care physician for medications to bring about muscle or brain relaxation and to address the headaches, neck pain and tremors. (Px 24, Rx 12, pg. 28). Petitioner did not elect to seek psychological therapy recommended by Dr. Slavick.

With respect to issue (L) the nature and extent of the injury, the Arbitrator finds the following:

The Arbitrator finds Petitioner entitled to a sum of $721.66 per week for 325 weeks, as the injury resulted in 65% man as a whole on a loss of trade basis. The Arbitrator notes Petitioner was released with a 15 lb. restriction and never looked for work. Despite his testimony at trial as to limitations in all aspects of his life after December 4, 2013, he remained active for some years after his injury, including riding a motorcycle and operating a boat. The FCE which sought to measure Petitioner's capabilities imposed restrictions predicated on multiple nonwork related conditions involving his back, legs and hips. Petitioner removed himself from the workforce and retired in 2020.

With respect to issue (N) whether Respondent entitled a credit the Arbitrator finds the following:

Petitioner was entitled to TTD at $1,226.50 for a period of 287 4/7's weeks from December 5, 2013 through June 10, 2019. Petitioner was paid $431,552.78 in TTD, thus has been overpaid by $78,846.51. This shall stand as a credit to Respondent for any PPD and medical bills due.

By: /o/ *Frank J. Soto* March 11, 2022
Arbitrator Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC006837
Case Name	Duane Wilson v. Mech-Tronics, LP
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0186
Number of Pages of Decision	32
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Eduardo Salgado
Respondent Attorney	Daniel Ugaste

DATE FILED: 4/24/2023

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify: Down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DUANE WILSON,

Petitioner,

vs. NO: 21 WC 6837

MECH-TRONICS LP.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causation, average weekly wage, benefit rate, and medical expenses both current and prospective, and being advised of the facts and law, modifies the Decision of the Arbitrator as specified below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

Petitioner worked for Respondent as a polisher/grinder of machine parts for 28 years. The Arbitrator found that Petitioner sustained his burden of proving a repetitive traumatic accident which caused the condition of ill-being of his cervical spine. In so doing, she noted Petitioner testified credibly that his job involved using various tools, including pneumatic tools, to grind and polish aluminum parts, he began experiencing symptoms while griding/polishing a part, he had not experienced such symptoms previously, he had no prior treatment for his neck, he finished his workweek, and the symptoms persisted.

On the issue of causation, the Arbitrator noted that the records and opinions of all his treating doctors, Drs. McHugh, Koutsky, Murtaza, Xia, and Neckrysh all supported Petitioner's testimony. She also interpreted the testimony of one of Respondent's witnesses, James

Williams, as corroborating Petitioner's testimony. The Arbitrator awarded Petitioner the medical expenses submitted into evidence and ordered Respondent to authorize and pay for prospective fusion surgery recommended by Dr. Saheli and Dr. Neckrysh. The Commission agrees with the findings of the Arbitrator regarding repetitive trauma accident, causation to Petitioner's condition of ill-being of his cervical spine, and her award of current and prospective medical expenses. Therefore, the Commission affirms and adopts the Decision of the Arbitrator regarding accident, causation, and medical expenses.

The Arbitrator found Petitioner's average weekly wage was $931.80. She noted that he earned $56,779.92 in gross annual earnings and $8,326.17 in overtime earnings. She also noted that Petitioner testified he earned $22.50 an hour. In addition, the Arbitrator noted that "Mr. Williams testified that there has been overtime at Respondent and that overtime was not mandatory. No contrary evidence was presented by Petitioner. Therefore, the Arbitrator finds Petitioner's average weekly wage is $931.80."

Section 10 of the Act specifically excludes overtime income in calculating average weekly wage. Judicial rulings have modified the language of the Act to include overtime earnings only if overtime was mandatory and regular. In this case, Petitioner testified his wage rate was $22.50 an hour. That translates into $900.00 per 40-hour week. Mr. Williams testified that although overtime was available for part of the time Petitioner worked, it was never mandatory. As pointed out by the Arbitrator, the evidence of Petitioner's hourly wage and that overtime was never mandatory was not rebutted by Petitioner. Therefore, the Commission finds that Petitioner's overtime income should not have been included in the calculation of average weekly wage and Petitioner's average weekly wage for the 12 months prior to the accident was $900.00.

Respondent submitted into evidence RX6, Petitioner's wage statements. That exhibit includes overtime income, as well as other compensation which should not be included in the calculation of average weekly wage under the WC Act. Respondent calculates that exhibit to come to an average weekly wage of $897.19 but it accepts the $900.00 average weekly wage because it stipulated to that amount in the stip sheet. The Commission calculates Petitioner's average weekly wage on his unrebutted testimony about his hourly wage, which is supported by the wage statement, as well as Respondent's stipulation.

In accordance with the above analysis, in the Finding section of the Decision of the Arbitrator, the Commission changes the amount the Arbitrator found to be Petitioner's average weekly wage from $931.80 to $900.00, and modifies the Arbitrator's finding that Petitioner earned in the year preceding the injury from $48,453.75 to $46,800.00, to reflect the change in average weekly wage.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 2, 2022 is hereby modified as specified above and otherwise is affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's average weekly wage for the 12 months preceding the compensable accident was $900.00.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services, as specified in Petitioner's exhibits 2 through Petitioner's exhibit 6 pursuant to §8.a, subject to the applicable medical fee schedule pursuant to § 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent authorize and pay for prospective medical treatment recommended by Dr. Saheli and Dr. Neckrysh, including anterior discectomy and fusion at the C5-6 and C6-7 level.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 24,2023
O-2/22/23
DLS/dw
046

/s/*Deborah L. Simpson*
Deborah L. Simpson

/s/*Stephen J. Mathis*
Stephen J. Mathis

/s/*Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC006837
Case Name	WILSON, DUANE v. MECH-TRONICS, LP.
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	28
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Eduardo Salgado
Respondent Attorney	Daniel Ugaste

DATE FILED: 5/2/2022

THE INTEREST RATE FOR THE WEEK OF APRIL 26, 2022 1.37%

/s/Ana Vazquez, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

DUANE WILSON
Employee/Petitioner

v.

MECH-TRONICS, LP.
Employer/Respondent

Case # **21** WC **006837**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago,** on **December 21, 2021** and **January 24, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On the date of accident, **February 1, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**48, 453.75**; the average weekly wage was $**931.80**.

On the date of accident, Petitioner was **54** years of age, ***single*** with **0** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of **$0**.

ORDER

Respondent shall pay reasonable and necessary medical services, as provided in Petitioner's Exhibit 2 through Petitioner's Exhibit 6, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and is liable for the prospective medical treatment plan recommended by Dr. Salehi and Dr. Neckrysh, including an anterior cervical discectomy and fusion at the C5-C6 and C6-C7 levels.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Ana Vazquez

Signature of Arbitrator

MAY 2, 2022

ICArbDec19(b)

FINDINGS OF FACT

At the time of arbitration, Petitioner was employed at Respondent and had been employed at Respondent for 28 years. Transcript of Evidence at Arbitration ("Tr.") at 8. Petitioner works as a grinder, polisher, and filer. Tr. at 8. Petitioner's duties involve the use of grinding wheels and pneumatic tools to grind various parts into dimension for continuous use throughout the facility. Tr. at 9. Pneumatic tools are connected to an air line. Tr. at 9. The pneumatic tools that Petitioner uses at Respondent include pencil grinders, orbital sanders, triangle sanders, different-sized hand grinders, and a grinding wheel. Tr. at 9-10, 15.

Petitioner also uses non-pneumatic tools to perform his job duties, including files and hand files. Tr. at 9, 10. Petitioner uses the pneumatic and non-pneumatic tools to grind material off of parts to create a certain surface on the parts for other procedures to be done to them. Tr. at 10. The parts are mostly aluminum, while some are copper. Tr. at 10. They very rarely work on steel parts. Tr. at 10. The parts that are worked on vary in size and weight and can be anywhere from two inches small to 48 inches long. Tr. at 11. A typical part can weigh between two to six pounds, while the heavier parts weigh between 48 pounds and 55 pounds. Tr. at 11. The 55-pound part is called an impulse part, and it is a block of aluminum with heat sink fins. Tr. at 54. It is not a common part that is worked on all the time. Tr. at 54. Petitioner testified that the part that an employee works on is determined by who is available to work on the part or their skill set, and the supervisor lets them know which part to work on. Tr. at 11, 120. Petitioner testified that there is one 30-minute lunch break and two 10-minute breaks during the workday, and the rest of the workday is spent grinding or polishing. Tr. at 12-13.

Petitioner works at a workstation. Tr. at 13. The chair at his workstation is a standard chair. Tr. at 56. Polishing, grinding, and filing of parts occurs at the workstation. Tr. at 13. Regarding his posture while at the workstation, Petitioner testified that "the majority of the time your head is bent in an awkward position. No matter if you let your chair up or let your chair down, your head is constantly bent over." Tr. at 14. Depending on the work being done on a part, "your head may be cocked to the left, it may be cocked to the right, it may be cocked forward. You may be leaning forward to look into the part to remove material from the part." Tr. at 14. Petitioner testified that his head is tilted or bent almost 100 percent of the time that he is working. Tr. at 14. When not at his work bench, Petitioner is polishing and grinding at the grinding wheel. Tr. at 15. Whether Petitioner uses the grinding wheel depends on the particular

part that is being worked on. Tr. at 16. Petitioner has been performing these job duties at Respondent for the 20-plus years he has worked there. Tr. at 16. While using the grinding wheel, Petitioner's neck is bent down because he has to look down at the wheel, and his head is cocked to the left or the right depending on the side of the part that he is grinding. Tr. at 16.

Earnings

Regarding his earnings, Petitioner testified that he made between $900 or $931.80 as compensation while working for Respondent. Tr. at 17. The $931.80 figure was an estimate. Tr. at 17. Petitioner testified that since the time of COVID, he has not worked 40 hours per week. Tr. at 60. Petitioner was paid on an hourly basis and was paid approximately $22.50 per hour in 2020. Tr. at 60-61. Petitioner testified that his hourly rate varied, but he was not sure when it varied. Tr. 61. Petitioner explained that his hourly rate varied because he received a raise and it also varied if he worked overtime. Tr. at 61.

Accident

On January 27, 2021, while working on a part using a triangle sander, Petitioner started feeling tingling on his left side. Tr. at 17. Petitioner's neck was bent over while working on the part. Tr. at 24. Petitioner continued to work throughout the day, though the sensation was bothersome. Tr. at 17. Later in the workday, Petitioner told his supervisor, James Williams, about the tingling and numbness on his left side and that his neck hurt. Tr. at 17-18. Petitioner told his supervisor that he would try to work through the discomfort "because you get aches and pain with the job…" Tr. at 18. Petitioner finished the workweek. Tr. at 18-19. The pain did not go away over the weekend and was still present on Monday when Petitioner returned to work. Tr. at 19. On Monday, when Petitioner returned to work, Petitioner tried to work through the pain and he again told his supervisor about his symptoms. Tr. at 19. Petitioner went to the nurse's station for ice, and then reported to Human Resources that he wanted to go to the clinic. Tr. at 19-20. Petitioner was sent to Concentra Medical Center ("Concentra") by Respondent. Tr. at 20. Petitioner made a formal incident report on February 2, 2021 that was made out by Mr. Williams. Tr. at 23.

Petitioner testified that the first time he experienced the tingling sensation on his left side was on January 27, 2021. Tr. at 18. He did not feel anything prior to that date. Tr. at 20. Petitioner has had prior work-related elbow injuries. Tr. at 64. Petitioner has not had any prior neck injuries, has not sought treatment for any neck injuries prior to January 27, 2021, and has

not had any diagnostic imaging done of his neck prior to January 27, 2021. Tr. at 64-65. Petitioner has not been involved in any accidents or any recreational activities since January 27, 2021. Tr. at 65. Petitioner testified that he was involved in bowling eight or nine years prior to January 27, 2021. Tr. at 67.

Summary of Medical Treatment Records

Petitioner was seen at Concentra on February 1, 2021, by Dr. Nicholas M. McHugh. Px2 at 84. Petitioner presented with complaints of pain in the neck traveling through his left shoulder to the elbow. Px2 at 82. Petitioner reported that that morning his left shoulder and neck began hurting after repetitively using power tools with his left arm. Px2 at 82. Petitioner reported that he repetitively uses power tools throughout the workday. Px2 at 82. Petitioner described the pain as dull and shooting in nature. Px2 at 82. On exam, pain was noted in adduction of the left shoulder. Px2 at 84. Limited range of motion with pain was noted on exam of Petitioner's cervical spine. Px2 at 84. Petitioner was diagnosed with a cervical muscle strain and internal impingement of the left shoulder. Px2 at 73, 75, 77, 78, 81, 86. Petitioner was provided with work restrictions, prescribed Naproxen and Cyclobenzaprine for his symptoms, and referred to physical therapy for six sessions. Px2 at 76, 78, 88.

Petitioner began physical therapy at Concentra on February 2, 2021. Px2 at 89. He reported a consistent history. Px2 at 89. Petitioner attended a total of 30 sessions of physical therapy from February 2, 2021 through May 13, 2021. Px2 at 113, 115, 120, 132, 169, 176, 182, 187, 192, 200, 207, 211, 216, 226, 231, 236, 245, 253, 255, 277, 284, 289, 294, 299, 304, 309, 321, 326, 335.

On February 3, 2021, Petitioner was again seen by Dr. McHugh. Px2 at 98. Petitioner's symptoms were unchanged. Px2 at 104. Petitioner described the pain as sharp and shooting in nature. Px2 at 104. Petitioner's diagnoses were unchanged. Px2 at 100, 101. Petitioner was prescribed Tramadol and instructed to continue taking Naproxen and Cyclobenzaprine. Px2 at 99, 101. His work restrictions were continued. Px2 at 100, 105. Petitioner returned to Dr. McHugh on February 11, 2021. Px2 at 126. Petitioner's symptoms were unchanged. Px2 at 126. On exam, a positive Neer test and a positive empty can test were noted. Px2 at 127. Petitioner continued with limited range of motion of the cervical spine, with pain. Px2 at 127. Petitioner's diagnoses were unchanged. Px2 at 127. Petitioner was prescribed methylprednisolone, and was instructed to discontinue Tramadol, Naproxen, and Cyclobenzaprine. Px2 at 127. An MRI of the

cervical spine was ordered due to Petitioner's continued left upper extremity radiculopathy and paresthesias. Px2 at 127. Petitioner's work restrictions were continued. Px2 at 128.

Petitioner underwent an MRI of his cervical spine on February 16, 2021. Px2 at 141, Px3 at 2. The MRI demonstrated (1) a minimal disk bulge at C3-4; (2) a negligible disk bulge at C4-5; (3) a minimal-mild disk bulge and associated uncovertebral osteophytes causing severe left foraminal narrowing, moderate-severe on the right, and the spinal canal minimally narrowed; (4) a minimal-mild disk bulge and associated uncovertebral osteophytes causing severe left foraminal narrowing, moderate on the right, and the spinal canal minimally narrowed; and (5) a negligible disk bulge at C7-T1. Px2 at 141.

On February 18, 2021, Petitioner followed up with Dr. McHugh. Px2 at 143. Dr. McHugh noted that Petitioner had completed five sessions of physical therapy without improvement. Px2 at 148. Petitioner's symptoms were unchanged. Px2 at 148. At this visit, Petitioner was diagnosed with (1) cervical disc disorder at the C5-C6 level with radiculopathy and (2) cervical disc disorder at the C6-C7 level with radiculopathy. Px2 at 149. Dr. McHugh referred Petitioner to a spine specialist due to Petitioner's ongoing neck pain from the cervical disc bulges with left upper extremity radiculopathy. Px2 at 144.

Petitioner was seen for consultation by Dr. Kevin Koutsky on February 24, 2021, as referred by Dr. McHugh. Px2 at 167, Px3 at 4. Petitioner reported a consistent history. Px2 at 167, Px3 at 4. On neurological exam, Dr. Koutsky noted that Petitioner had decreased pinprick sensation along the lateral border of the left forearm extending into the thumb and index when compared to the right upper extremity. Px2 at 167, Px3 at 5. Petitioner had a positive left-sided Spurling test. Px2 at 168, Px3 at 5. Dr. Koutsky also noted that Petitioner had some paracervical muscle tenderness and spasm to palpation with limited range of motion. Px2 at 168, Px3 at 5. Regarding the MRI, Dr. Koutsky noted that it revealed some age-related degenerative changes, along with disk/spur complexes at C5-6 and C6-7 contributing to central and foraminal narrowing. Px2 at 168, Px3 at 5. The foraminal narrowing was more severe on the left when compared to the right. Px2 at 168, Px3 at 5. Dr. Koutsky's assessment was that Petitioner presented with symptoms stemming from the February 1, 2021 work injury. Px2 at 168, Px3 at 5. Petitioner was to continue with physical therapy for range of motion strengthening, stabilization, and modalities. Px2 at 168, Px3 at 5. Dr. Koutsky noted that pain management was discussed, as he believed that Petitioner would benefit from a cervical injection. Px2 at 168, Px3 at 5. Dr.

Koutsky recommended that Petitioner see Dr. Murtaza at the Pain Clinic. Px2 at 168, Px3 at 5. Dr. Koutsky released Petitioner with a 10-pound lifting restriction and a 20-pound pushing and pulling restriction. Px2 at 168, Px3 at 6.

On March 23, 2021, Petitioner was seen by Dr. Sajjad Murtaza. Px2 at 205, Px3 at 8. Petitioner reported a consistent history. Px2 at 205, Px3 at 8. Dr. Murtaza noted that Petitioner's MRI revealed minimal-to-mild disk bulges with uncovertebral osteophytes causing severe left foraminal stenosis and moderate-to-severe right foraminal stenosis at the C5-C6 and C6-C7 levels. Px2 at 205, Px3 at 8. There was only minimal spinal canal stenosis at those levels. Px2 at 205, Px3 at 8. On exam, Dr. Murtaza noted positive tenderness to palpation to the left greater than the right cervical paraspinal and trapezius musculature with associated hypertonicity. Px2 at 206, Px3 at 9. He further noted that Petitioner's pain increased with extension, greater than flexion, as well as with left and right lateral bending, all of which were limited secondary to pain and stiffness. Px2 at 206, Px3 at 9. Petitioner had a positive Spurling sign on the left. Px2 at 206, Px3 at 9. Dr. Murtaza also noted that Petitioner's left upper extremity motor was mildly decreased as compared to the right with wrist extension, flexion, and fist grip. Px2 at 206, Px3 at 9. Dr. Murtaza's assessment was cervical radiculopathy on the left. Px2 at 206, Px3 at 9. Dr. Murtaza agreed with Dr. Koutsky and recommended a left C6 epidural steroid injection. Px2 at 206, Px3 at 9. Petitioner's work restrictions were unchanged. Px2 at 206, Px3 at 10.

Petitioner presented to Dr. Sean Salehi on March 25, 2021, as referred by Dr. Murtaza. Px2 at 224. Petitioner reported a consistent history. Px2 at 224. On exam, Dr. Salehi noted left paraspinal upper trapezius tenderness to palpation and a positive Spurling's test on the right. Px2 T 224. Dr. Salehi further noted decreased sensation in the left upper extremity in a non-dermatomal pattern. Px2 at 224. Dr. Salehi reviewed Petitioner's MRI and noted that it revealed C5-C6 and C6-C7 disk bulges/disk osteophyte complexes with severe left C5-C6 foraminal stenosis and severe left C6-C7 foraminal stenosis. Px2 at 224. Dr. Salehi diagnosed Petitioner with cervical foraminal stenosis. Px2 at 224. Dr. Salehi noted that Petitioner had neck pain and left radicular symptoms secondary to the described work injury, due to foraminal stenosis at C5-C6 and C6-C7. X2 at 225. Dr. Salehi recommended Petitioner undergo one to two left C5-C6 and C6-C7 epidural steroid injections, continue with physical therapy, and obtain an EMG to rule out carpal tunnel involvement and double crush syndrome. Px2 at 225. Dr. Salehi placed

Petitioner at light duty capacity with a 20-pound lifting restriction, a 35-pound pushing/pulling restriction, no overhead work, and no use of pneumatic tools. Px2 at 225.

On April 6, 2021, Petitioner followed up with Dr. Murtaza. Px2 at 244. Dr. Murtaza's assessment was left cervical radiculopathy with possible carpal tunnel syndrome. Px2 at 244. Petitioner was to continue physical therapy. Px2 at 244. Petitioner's light duty restrictions were continued. Px2 at 242. Petitioner followed up with Dr. Murtaza on April 15, 2021. Px3 at 16. Dr. Murtaza administered a cervical interlaminar epidural steroid injection with trigger point injections at C6. Px3 at 16-18. Petitioner was prescribed Ondansetron on April 15, 2021 for nausea caused by the anesthesia. Px3 at 26, Tr. at 31. Petitioner testified that he experienced nausea after the procedure and that the medication prescribed by Dr. Murtaza was helpful in managing his symptom. Tr. at 31.

Petitioner underwent an EMG exam at the Metropolitan Institute of Pain on April 19, 2021. Px2 at 263-271. Dr. Murtaza noted that Petitioner did have cervical radiculopathy, but also had signs and symptoms of median and ulnar neuropathy on the left upper extremity. Px2 at 271. Petitioner presented to Dr. Murtaza on April 20, 2021. Px2 at 275. Petitioner reported 30 percent relief following the April 15, 2021 epidural steroid injection. Px2 at 275. Dr. Murtaza noted that the preliminary results of the EMG/NCV study revealed left carpal tunnel syndrome and cervical radiculopathy. Px2 at 275. Petitioner reported continued weakness with left grip and pain mostly in the left side of his neck and upper arm. Px2 at 275. Petitioner continued to have pain when tilting his neck to the left, but not as severe as prior to the injection. Px2 at 275. Dr. Murtaza's diagnoses were cervical spine pain with radiculopathy and severe foraminal stenosis at C5-C6 and C6-C7. Petitioner's light duty restrictions were continued. Px2 at 275.

On May 6, 2021, Petitioner again saw Dr. Salehi. Px2 at 319. Petitioner reported that the injection helped about 30 percent with his pain, but he still had numbness radiating into the left upper arm with tilting his neck backwards or to the left side. Px2 at 319. Petitioner reported that the further he tilted his neck, he felt numbness down to his wrist. Px2 at 319. Petitioner did not have any neck pain, but felt stiffness in the neck on a daily basis. Px2 at 319. Petitioner also reported left grip weakness and stiffness in the second and fifth digits, and that he could not close his fist completely. Px2 at 319. Dr. Salehi reviewed the EMG of April 19, 2021 and noted that there was indication of left C6 radiculopathy, mild-to-moderate left carpal tunnel syndrome, and mild-to-moderate ulnar neuropathy. Px2 at 319. Dr. Salehi's diagnosis was cervical spondylosis

at C5-C6 and C6-C7. Px2 at 319. Dr. Salehi noted that Petitioner continued with left radicular paresthesias and left-hand grasp weakness, as well as significant foraminal stenosis on the left at C5-C6 and C6-C7 which was rendered symptomatic by the work injury. Px2 at 319. Dr. Salehi recommended surgical intervention in the form of a left C5-C7 posterior foraminotomy. Px2 at 319. Dr. Salehi noted that the mild-to-moderate left carpal tunnel syndrome and ulnar neuropathy findings could be reevaluated if Petitioner's symptoms persisted following the cervical decompression. Petitioner's light duty restrictions were continued. Px2 at 319.

Petitioner saw Dr. Harel Deutsch at Rush University Medical Center on May 7, 2021. Tr. at 34. Petitioner was at this appointment for 15 to 20 minutes. Tr. at 35. Regarding a physical examination, Petitioner testified that Dr. Deutsch only touched his shoulders, behind his neck area, and had him extend his arms out. Tr. at 35.

Petitioner returned to Dr. Murtaza on May 11, 2021. Px2 at 334. Dr. Murtaza's diagnoses were cervical spondylosis with radiculopathy and confirmed cervical radiculopathy on EMG. Px2 at 334. Dr. Murtaza transferred Petitioner's care to Dr. Salehi, as there was not much more that he could offer Petitioner at that time. Px2 at 334. Petitioner's restrictions were continued. Px2 at 334. Petitioner followed up with Dr. Salehi on May 27, 2021. Px2 at 343. Petitioner continued to complain of persistent left-sided neck pain and upper trapezius pain, which radiated into the left upper arm. Px2 at 343. Petitioner also continued to complain of ongoing paresthesias, radiating down the arm and into his wrist with certain movements of the hand. Px2 at 343. Dr. Salehi's diagnosis was cervical foraminal stenosis at C5-C6 and C6-C7. Px2 at 343. Dr. Salehi noted that he reviewed Dr. Deutsch's IME and he disagreed with Dr. Deutsch's assessment that the recommended surgery was not related to the work accident because Petitioner did not suffer a direct trauma. Px2 at 343. Dr. Salehi noted that Petitioner brought in tools that he used at work and one of the tools had an embossing stating repetitive work motion or prolonged use of the tool could result in hand, arm, and wrist injuries. Px2 at 343, Tr. at 38. Petitioner testified that he brought an orbital grinder, a pencil grinder, and a triangle grinder to this appointment, which are the tools that he regularly works with. Tr. at 37, 38. Petitioner was present as Dr. Salehi viewed the tools. Tr. at 39. Dr. Salehi noted that Petitioner had also brought in several manuals for tools that Petitioner used at work, which all reiterated that use of the tools could cause discomfort in the arms, shoulders, and hands; and that a physician should be consulted if the user experienced symptoms such as throbbing, aching, tingling or numbness, or a

burning sensation. Px2 at 343, Tr. at 38. Dr. Salehi noted that the nature of Petitioner's work of using pneumatic tools for the past 27 years rendered the foraminal stenosis at C5-C6 and C6-C7 permanently symptomatic and the need for the cervical decompression was related to the work injury. Px2 at 343. Petitioner's light duty restrictions were continued. Px2 at 343.

On June 24, 2021, Petitioner returned to Dr. Salehi. Px2 at 348. Petitioner continued to experience pain in the left side of his neck, radiating into the left trapezius and scapular region, as well as persistent tingling down the left arm to the forearm. Px2 at 348. Petitioner's diagnosis was unchanged and Dr. Salehi's surgical recommendation continued. Px2 at 348. Petitioner's work restrictions continued. Px2 at 348.

Petitioner obtained a second opinion to see if surgery was the best option for him. Tr. at 41. Petitioner presented to Dr. Tian Xia at Integrated Pain Management on July 2, 2021. Px4 at 3. Petitioner reported a consistent history. Px4 at 3. On exam of Petitioner's cervical spine, Dr. Xia noted Petitioner's range of motion was restricted due to pain. Px4 at 4. Tenderness to palpation was noted over the left lateral epicondyle. Px4 at 4. Petitioner demonstrated positive Phalen's, Tinel's and carpal tunnel compression on the left wrist. Px4 at 4. Dr. Xia's diagnoses were radiculopathy at the cervical region, pain in the left elbow, and pain in the left wrist. Px4 at 4. Dr. Xia agreed with Dr. Salehi's surgical plan and believed Petitioner's symptoms were related to his work. Px4 at 4. Petitioner was prescribed Lyrica and Tramadol. Px4 at 5. Dr. Xia recommended Petitioner obtain a second opinion from Dr. Sergey Neckrysh. Px4 at 4, Tr. at 41, 42.

Petitioner was evaluated by Dr. Neckrysh on July 15, 2021. Px5 at 2. Petitioner reported a consistent history. Px5 at 2. Dr. Neckrysh reviewed Petitioner's MRI and noted that it demonstrated multilevel degenerative changes, most pronounced at C3-C4, C5-C6, and C6-C7. Px5 at 4. Dr. Neckrysh further noted that Petitioner has bilateral foraminal stenosis, which was more pronounced on the left side and worse at the C6-C7 level. Px5 at 4. In his assessment, Dr. Neckrysh noted that Petitioner presented with symptoms of C6 and C7 radiculopathy with weakness and numbness, which failed nonoperative care. Px5 at 4. He further noted that, anatomically, Petitioner has foraminal stenosis at C5-C6 and C6-C7 on the left side, with compression of C6-C7 nerve roots, which confirms the diagnosis. Px5 at 4. Dr. Neckrysh opined that Petitioner was an excellent candidate for surgical treatment and recommended an anterior cervical discectomy and fusion at the C5-C6 and C6-C7 levels. Px5 at 4. Dr. Neckrysh noted that

Petitioner's condition was certainly causally connected to his occupational activities and Petitioner's "operating heavy machinery for the past 20-something years" was a contributing factor to the development of Petitioner's degenerative disc disease of the cervical spine resulting in foraminal stenosis. Px5 at 5. Dr. Neckrysh noted that once the nerve root is compromised within the foramen, further occupational activity can produce nerve root injury, which starts presenting with radiculopathy, which is what Petitioner described with relatively acute onset of his symptoms while at work. Px5 at 5.

On July 30, 2021, Petitioner saw Dr. Xia for follow up. Px4 at 7. Petitioner reported worsening symptoms with recent weather change. Px4 at 7. Petitioner's diagnoses were unchanged. Px4 at 8. Petitioner was prescribed Tramadol, Pregabalin, Lidozengel, and Lyrica. Px4 at 9. Petitioner testified that Dr. Xia was prescribing him medication that was helpful. Tr. at 43. Petitioner returned to Dr. Salehi on August 5, 2021. Px2 at 352. Petitioner reported continued pain on the left side of his neck. Px2 at 352. He reported pain and tingling that extended down the left arm and into the second through fourth digits. Px2 at 352. Dr. Salehi recommended a C5-C7 anterior discectomy and fusion, given the increase in neck pain and stiffness. Px2 at 352. Dr. Salehi noted that the increase in pain and stiffness indicated that the issue was also mechanical. Px2 at 352.

On August 27, 2021, Petitioner returned to Dr. Xia. Px4 at 10. Petitioner reported worsening symptoms. Px4 at 10. Petitioner's diagnoses were unchanged, and his prescriptions were refilled. Px4 at 11. Petitioner followed up with Dr. Salehi on September 16, 2021. Px2 at 357. Petitioner reported worsening symptoms, including pain radiating down to in between the shoulder blades and into the left periscapular and subscapular region. Px2 at 357. He also reported that his head felt very heavy and that his pain worsened with bending his head. Px2 at 357. Because of the pain in his head, Petitioner made his own modifications to his work equipment. Px2 at 357. Petitioner brought his apron and face shield to this appointment. Tr. at 44. Petitioner testified that he wanted to show Dr. Salehi how the face shield was placed on his head and how the apron was placed around his neck. Tr. at 44. Petitioner wanted to show Dr. Salehi the placement of the apron strap around his neck because it tended to pull down on his neck at times. Tr. at 46. The apron and the face shield Petitioner brought to Dr. Salehi were the same that he was wearing in January 2021. Tr. at 52. Petitioner also brought a copy of Respondent's job description for the position of polisher grinder for Dr. Salehi's review. Tr. at

47, Px1. Dr. Salehi noted that there was no mention in the job description of the posture necessary to perform the job or the safety equipment required to be worn. Px2 at 357. Dr. Salehi continued his surgical recommendation and kept Petitioner on light duty restrictions. Px2 at 357.

Petitioner next saw Dr. Xia on September 24, 2021. Px4 at 21. Petitioner reported weakening of his hands. Px4 at 13. Dr. Xia noted that Petitioner showed a video of Petitioner working. Px4 at 13, Tr. at 47. Petitioner testified that he thought it was important for Dr. Xia to see "actually what we do and the positions of our bodies." Tr. at 48. Petitioner's diagnoses were unchanged and his medications were refilled. Px4 at 14. Petitioner returned to Dr. Xia on October 22, 2021. Px4 at 16. His symptoms were unchanged. Px4 at 16. Petitioner's diagnoses were unchanged and his medications were refilled. Px4 at 17. On November 11, 2021, Petitioner again saw Dr. Salehi. Px2 at 361. Petitioner reported that he continued to experience pain in his neck and tingling and numbness down the left arm and into the first three digits. Px2 at 361. He also reported experiencing aching in the bilateral forearms, more in the left than the right. Px2 at 361. Petitioner further reported having a tendency of dropping items that he held with his left hand due to weakness and numbness and tingling. Px2 at 361. Dr. Salehi continued to recommend surgical intervention, which required Petitioner's complete smoking cessation, and continued Petitioner's work restrictions. Px2 at 361.

On December 3, 2021, Petitioner returned to see Dr. Xia for follow up. Px4 at 19. Dr. Xia provided Petitioner with a refill of his prescription medication. Px4 at 20. Petitioner again saw Dr. Salehi on January 6, 2022. Px2 at 362. Petitioner continued to complain of ongoing pain in the neck with radiation to the left shoulder and scapular region. Px2 at 362. He also complained of ongoing tingling into the left arm and into the first three digits of the left hand. Px2 at 362. Petitioner reported experiencing a "pulling" sensation in the left trapezius region when gripping objects at work, with the colder weather. Px2 at 362. Dr. Salehi's diagnosis remained as cervical spondylosis at C5-C7. Px2 at 362. Dr. Salehi continued to recommend a C5-C7 anterior cervical discectomy and fusion, pending complete smoking cessation. Px2 at 362. Petitioner's work restrictions continued. Px2 at 362.

Petitioner's Current Condition

Petitioner testified that he has modified his face shield and apron since the work accident. Tr. at 70. Petitioner explained that the apron was an issue because "of where it landed, the part that you put over your head, where it goes on your neck, in combination with the face shield that

[he] was wearing at the time." Tr. at 70. Petitioner described the face shield as similar to a welder's helmet. Tr. at 70. When he is not working on a piece he flips the shield up, and when he is working on a part, he flips the shield down to keep metal flakes from flying into his face. Tr. at 46, 70. Petitioner testified that at some point, and from leaning forward, the apron around his neck became too much weight for the amount of time that he was working on parts. Tr. at 70. He had to make changes to alleviate what he was feeling. Tr. at 70. He explained that the apron was compressing on his neck and that he would have to readjust the apron to get it off his neck or put rags around it to cushion his neck. Tr. at 71. He modified the apron and tapes it across his chest. Tr. at 46, 72. He also bought a basic face shield that weighs one and a half pounds and is just a band that is much lighter in weight. Tr. at 46, 72. Respondent has allowed Petitioner to work with the modified apron and face shield. Tr. at 72. Petitioner testified that he has group health insurance through Respondent, but he has not submitted any of the bills for his neck condition through the group health carrier. Tr. at 68.

Petitioner has continued to work for Respondent since January 27, 2021. Tr. at 62. Petitioner testified that since the work accident, he has noticed a change in his demeanor, temperament, and attitude. Tr. at 49. Petitioner testified that his sleep habits have changed, and described feeling "like my head is too heavy on my shoulders because it just hurts at times." Tr. at 50. Petitioner explained that he feels constant, non-stop pain. Tr. at 51. Petitioner would move forward with the treatment recommended by Dr. Salehi if it is authorized. Tr. at 51.

Testimony of James Williams

Respondent called James Williams to testify on its behalf. Tr. at 76. Mr. Williams has worked at Respondent for over 25 years and his position at the time of arbitration was Supervisor. Tr. at 77. Mr. Williams has been a Supervisor for 15 years, but has been in the Supervisor position in the deburring department for 11 years. Tr. at 77. Petitioner works in the deburring department as a polisher grinder. Tr. at 77. Mr. Williams has known Petitioner the entire 25 years that he has worked at Respondent. Tr. 80. Mr. Williams has also done work for Petitioner's mother once or twice. Tr. at 80.

Mr. Williams testified that his job duties involve scheduling jobs, trying to rotate people in the proper manner, and supervising the chem film line, Heliarc welding department, deburring department, cell department, and the spot-welding department. Tr. at 78. The deburring department is the largest. Tr. at 78. In 2020 to 2021, Mr. Williams spent 40 percent of his

workday in the deburring department. Tr. at 80, 94. Mr. Williams has personally done deburring work. Tr. at 79. Mr. Williams testified that individuals in the deburring department are rotated so that they do not get fatigued. Tr. at 102. Employees are switched to a less tedious part if the person was working on a larger, tedious part. Tr. at 103.

As a Supervisor, Mr. Williams is familiar with Petitioner's job duties. Tr. at 81. Mr. Williams identified Respondent's Exhibit 1 and Respondent's Exhibit 2 as job descriptions for the position of polisher grinder in the deburring department, created by Respondent, and the documents were accurate. Tr. at 81-83.

Mr. Williams testified that the work of a polisher grinder is not all done with pneumatic tools, and some manual tools, including hand filing tools, are needed to perform the job. Tr. at 83-84. Hand files are used to get into areas where pneumatic tools cannot get into, in order to smooth the surface of aluminum parts. Tr. at 84. Mr. Williams explained that the aluminum parts are like chassis or boxes that are supplied to Respondent's suppliers. Tr. at 84. The parts range in size from two and a half inches to seven inches and weigh between two and half pounds and five pounds. Tr. at 85. Approximately five to 16 of the smaller parts are in one lot. Tr. at 92. One lot is assigned to an employee at a time. Tr. at 93. There are parts that weigh more than five pounds, and those require four or five operations to be performed on them. Tr. at 85. Sometimes, there are larger parts, such as the impulse part. Tr. at 88-89. An impulse part is large and weighs between 20 and 25 pounds, though Mr. Williams has never weighed an impulse part. Tr. at 89, 90. Approximately eight to 10 impulse parts come through Respondent's facility in a year. Tr. at 90. The work performed on the heavier parts is done on a pedestal grinder. Tr. at 85. The pedestal grinder has a grinding wheel on one side and a nylon wheel on the other. Tr. at 85. Right-angle grinders, orbital five-inch sanders, triangle sanders, and pencil grinders are also used. Tr. at 85. Pencil grinders are similar in size to a fountain pen. Tr. at 86. These tools, except the pedestal grinder, are all used at a work bench and are pneumatic. Tr. at 86. The pedestal grinder is along the wall and is a standing machine. Tr. at 87.

Mr. Williams explained that when using the pedestal grinder, he measured the amount of pressure, using a pressure gauge, to be seven pounds when starting and then easing to four pounds. Tr. at 88, 96. If one were to push too hard, one would ruin the part. Tr. at 88, 96. Mr. Williams agreed that a different worker on a different day could apply more pressure than he did. Tr. at 97. Mr. Williams further agreed that anybody can apply a different amount of pressure. Tr.

at 98. Mr. Williams did not measure the pressure amounts of other workers. Tr. at 98. Mr. Williams agreed that it was possible that other workers were using more than seven pounds of pressure. Tr. at 98. Mr. Williams testified that there are not any regulations in the manuals or training to ensure that nobody goes beyond seven pounds of pressure. Tr. at 98. Mr. Williams testified that it was possible that Petitioner could have been applying more than seven pounds of pressure, and that Petitioner's work had been adequate and up to par with Respondent's standards. Tr. at 98-99. Mr. Williams did not measure the amount of pressure application when using pneumatic tools. Tr. at 105, 108. Mr. Williams was not trained by Respondent or certified to use the pressure gauge or to measure pressure. Tr. at 108.

Mr. Williams was shown Respondent's Exhibit 3, and he testified that the video contained in Respondent's Exhibit 3 is an accurate representation of the polisher grinder position, but does not contain everything that a polisher grinder does throughout a workday. Tr. at 89. The individual using the upright grinder in Respondent's Exhibit 3 was looking down at the distance between the wheel and the part, and Mr. Williams agreed that the individual's neck was looking down the entire time. Tr. at 101. Mr. Williams testified that there was "no way" to do the individuals' job safely without looking down at the part the entire time. Tr. at 101. Regarding pneumatic tools, Mr. Williams testified that the position of an individual's neck while working on a part depended on the part. Tr. at 101-102. It was possible that an employee could be tasked with a particular part that required the employee to look down for an extended period of time. Tr. at 102. Mr. Williams testified that the right-angle grinder was being used in the video. Tr. at 104.

Mr. Williams testified that there has been overtime at Respondent and overtime has not ever been mandatory. Tr. at 90-91. Mr. Williams testified that work in the deburring department was "assigned by the use of numbers or jobs being placed on the board." Tr. at 91. He would let the employees know what to work on. Tr. at 91. Petitioner was picking his own jobs while working in the deburring department. Tr. at 91. Petitioner worked in the deburring department until February 2, 2021. Tr. at 91. Petitioner does not share his workstation. Tr. at 92. Petitioner has a chair at his workstation, and the chair is the same type of chair for everybody in the department. Tr. at 92. Petitioner uses pneumatic tools, as well as the pedestal grinder. Tr. at 108. Mr. Williams had personally worked on a part for a 6-hour shift and he has not had any neck complaints or problems while operating any of the grinders or pneumatic tools. Tr. at 99-100.

Testimony of Eugene DeMuro

Respondent also called Mr. Eugene DeMuro to testify on its behalf. Tr. at 111. Mr. DeMuro is the President of Respondent. Tr. at 111. Mr. DeMuro has been the President since 1996 and has worked at Respondent since 1982. Tr. at 112. The deburring department at Respondent produces aircraft-related products that are 95 percent aluminum and lightweight. Tr. at 112.

As the President, Mr. DeMuro's job duties include overseeing the entire organization. Tr. at 112. Human Resources, finance, production, engineering, and quality report to him. Tr. at 112. Mr. DeMuro spends approximately 15 to 20 percent of his time involved in Human Resources. Tr. at 116. Mr. DeMuro looks at payroll on a weekly basis. Tr. at 116.

Mr. DeMuro was shown Respondent's Exhibit 6, which he identified as an ADP pay report for Petitioner. Tr. at 113. It is a document that Respondent can download from ADP for an individual or for a group. Tr. at 113, 114. Mr. DeMuro has access to ADP and has seen similar documents and has downloaded and saved them. Tr. at 113. Mr. DeMuro testified that Respondent occasionally keeps ADP pay reports. Tr. at 113. Mr. DeMuro testified that he spent approximately one percent of his time reviewing Respondent's Exhibit 6 and it was a possibility that his first time seeing Respondent's Exhibit 6 was during arbitration. Tr. at 117. Mr. DeMuro sees ADP pay reports on a regular basis. Tr. at 116. Mr. DeMuro testified that "ADP will list both the period ending date, and the following Friday is [Respondent's] pay date one week later." Tr. at 114. Mr. DeMuro testified that he saw those dates listed on Respondent's Exhibit 6, which were from January 2020 through February 2021. Tr. at 114.

The information that goes into an ADP pay report is created by or input by Respondent's payroll processing department. Tr. at 114. Mr. DeMuro explained that as Respondent processes an employee's weekly payroll, the payroll processing department inputs the hours. Tr. at 114. The rate of pay is already in the system, and when a report is retrieved the format can be selected. Tr. at 114. Respondent's Exhibit 6 is in the weekly format. Tr. at 114. The HR manager, the controller, the accounting clerk, and Mr. DeMuro have access to the pay reports. Tr. at 114. Mr. DeMuro did not generate Respondent's Exhibit 6, the Human Resources manager generated it. Tr. at 116. Mr. DeMuro testified that Respondent's Exhibit 6 was accurate, as it was not a document that could be adjusted. Tr. at 118-119.

Testimony of Leida Woodham

Respondent also called Leida Woodham to testify on its behalf. Transcript of Proceedings on Arbitration, January 24, 2022 ("Tr.2"). Ms. Woodham has been employed at Triton Health Group for six years as a vocational rehabilitation consultant. Tr.2 at 8. Her job duties include working with and helping clients to return work, performing job analyses and labor market surveys, and providing vocational testimony in social security related matters. Tr.2 at 9. Ms. Woodham prepared a job analysis, along with a report and video in this matter. Tr.2 at 9. Ms. Woodham did not meet with or consult with Petitioner in preparing her August 2021 job analysis. Tr.2 at 13. The job description was provided to her by Respondent's HR department. Tr.2 at 13. The supervisor also explained the job duties of the polisher grinder position. Tr.2 at 13. Ms. Woodham did not verify any of the listings within the job analysis with any of the on-site workers at Respondent the day that she was there. Tr.2 at 13. Ms. Woodham has not consulted with or prepared a job analysis for Respondent in the past. Tr.2 at 13. Ms. Woodham testified that there was a possibility that the job description or the job analysis report may not contain all the job descriptions that occur at Respondent. Tr.2 at 14. Ms. Woodham did not record Petitioner for her job analysis. Tr.2 at 14. None of the scenes in the recording were staged, the employees were working. Tr.2 at 14.

Evidence Deposition Testimony of Respondent's Section 12 Examiner, Dr. Harel Deutsch

Dr. Deutsch testified by way of evidence deposition on September 20, 2021. Respondent's Exhibit ("Rx") 4. Dr. Deutsch testified as to his education and credentials as a neurosurgeon, with a specialty in spine surgery. Rx4 at 6. He is also the co-Director of the Rush Spine Center and is an Associate Professor of Neurosurgery at Rush. Rx4 at 6.

Dr. Deustch saw Petitioner on May 7, 2021 at the request of a third-party vendor. Rx4 at 8-9. Dr. Deutsch took Petitioner's history. Rx4 at 9, 23. Dr. Deutsch testified that Petitioner said he worked at Respondent for 27 years and alleged that the vibration of the instruments and the repetitive work caused him to have neck pain and left arm pain. Rx4 at 9. When Dr. Deutsch took Petitioner's history, he did not come across any information with respect to cervical radiculopathy or cervical strains in Petitioner's past history. Rx4 at 24. Dr. Deutsch asked Petitioner when he first began to experience the pain associated with the February 1, 2021 visit to Concentra, and the reports were inconsistent. Rx4 at 32. Dr. Deutsch testified that Petitioner

told him that the pain began on February 1, 2021, but also told him that it was a chronic pain that occurred over a long time. Rx4 at 32.

Dr. Deutsch reviewed medical records from Concentra, Dr. Koutsky, Dr. Murtaza, and Dr. Salehi, as well as the MRI images from February 16, 2021. Rx4 at 9-10. Dr. Deutsch did not see any medical records or notes in the medical history that indicated that Petitioner had prior issues with radiculopathy before February 1, 2021. Rx4 at 24. Dr. Deutsch agreed that the first indication of cervical-related issues appeared in the Concentra record of February 1, 2021. Rx4 at 24. Dr. Deutsch testified that Concentra is an occupational health clinic that is in a good position to address occupational injuries. Rx4 at 24. Dr. Deutsch testified that Concentra's diagnosis of a cervical strain was reasonable based on the information that was provided to Concentra on February 1, 2021. Rx4 at 24. Dr. Deutsch testified that the MRI images showed some degenerative changes that would be expected given Petitioner's age, but there was no evidence of any significant trauma. Rx4 at 10-11. Dr. Deutsch explained that trauma meant "no evidence or any significant disk herniation or fracture or ligamentous injury or any other injury." Rx4 at 11. Dr. Deutsch also reviewed a job description. Rx4 at 11.

Dr. Deutsch testified that Petitioner told him that he did not have much neck pain, which he rated a 6 out of 10, and had various left hand numbness complaints. Rx4 at 2. Dr. Deutsch conducted a physical examination of Petitioner. Rx4 at 12. Petitioner appeared to be a healthy gentleman in no acute distress. Rx4 at 12. Petitioner said he had some left arm numbness when he moved his neck that was worse, some pain in rotation of his neck to the left, and a positive Sperling's test. Rx4 at 12. Dr. Deutsch explained that a Sperling's test is when one moves their head to the side in rotation, while crunching the neck down, which would recreate the pain going down the arm. Rx4 at 13. Petitioner did say that he had pain going down his arm when he performed the Sperling's test. Rx4 at 13. Dr. Deutsch also checked Petitioner for Waddell's signs, which were negative. Rx4 at 13. Otherwise, the examination was normal and Petitioner had no noted weakness in his spine. Rx4 at 12-13. Dr. Deutsch testified that the whole examination process lasted about 20 minutes. Rx4 at 46.

Following his review of Petitioner's medical records, the job description, the MRI images, and his examination, Dr. Deutsch concluded that there was no mechanism of injury for the cervical spine based on the alleged repetitive vibration of tools. Rx4 at 14. Dr. Deutsch explained that there is no such mechanism of injury for the cervical spine. Rx4 at 14. There were

also no objective findings of any injury on the MRI, and the MRI was normal. Rx4 at 14. He further explained that while the findings on exam were suggestive of radiculopathy, they did not correlate with the objective MRI findings; and therefore, there was no objective evidence of any injury. Rx4 at 14, 39. Dr. Deutsch testified that assuming Petitioner had radiculopathy at the C7 level, the condition was not causally related to Petitioner's activities at work because there was no mechanism of injury in terms of vibration causing cervical spine injury. Rx4 at 14-15. The MRI images also did not show any type of disk herniation or injury. Rx4 at 15. Dr. Deutsch testified that based on Petitioner's complaints at the time of his exam, he agreed with the finding of cervical radiculopathy and that was one of his diagnoses. Rx4 at 28.

Dr. Deutsch testified that radiculopathy "just means someone having pain down their arm." Rx4 at 29. In Petitioner's case, he was complaining of pain down the arm, but there was no particular physical exam findings that would indicate where Petitioner's pain was coming from. Rx4 at 29. Regarding foraminal stenosis, Dr. Deutsch testified that everyone that has some form of degenerative changes will also have some mild degree of foraminal stenosis. Rx4 at 29. That is what he saw. Rx4 at 29. Dr. Deutsch testified that when he reviewed the films, there was no specific foramina that was overwhelmingly narrow that would be consistent with any radiculopathy. Rx4 at 29-30.

Dr. Deutsch explained that work as a grinder and polisher with vibratory tools would not cause the type of injury Petitioner had because it is not a known cause of cervical spine injury, "it just doesn't occur." Rx4 at 15. Dr. Deutsch had not ever seen a patient that had vibration as a cause of cervical spine problems in his 20 years of practice. Rx4 at 15, 39. People can have cervical spine injuries from car accidents, falls, or other things of that nature, but using your arms cannot cause a person to have a cervical spine injury. Rx4 at 16. Other mechanisms of injury that can cause a cervical spine injury include something hitting a person's head or lifting with the head. Rx4 at 16. Dr. Deutsch explained that during those types of injuries, there is some sort of force applied to the cervical spine and head that causes movement of the head and neck versus the body. Rx4 at 23. Vibration alone is not a mechanism to produce cervical radiculopathy. Rx4 at 33.

Regarding repetitive neck motion, Dr. Deutsch testified that he could imagine that there could be repetitive neck motion that could lead to, aggravate, or accelerate cervical radiculopathy symptoms. Rx4 at 35. Dr. Deutsch explained that he had a patient that was a violin player and his

neck was in a particular position for many hours a day, and the patient developed cervical radiculopathy. Rx4 at 35. Dr. Deutsch further explained that this particular patient's neck was in a certain position and he would develop osteophytes, then he had cervical radiculopathy. Rx4 at 36. Dr. Deutsch testified that the difference between his violin-playing patient and Petitioner was that there were findings on the violin player's scans that were consistent. Rx4 at 37.

Dr. Deutsch testified that there was also no finding of any pre-existing condition, in terms of whether there was an aggravation or acceleration of an underlying condition. Rx4 at 16-17. Petitioner denied any prior history of neck problems and the cervical MRI showed mild degenerative changes with no evidence of a previous cervical condition. Rx4 at 17. Dr. Deustch testified that at the time of his examination, Petitioner was working light duty with a 20-pound lifting restriction and Dr. Deutsch believed that Petitioner could continue working in that capacity. Rx4 at 17. Dr. Deutsch also testified that at the time of his examination, he did not think that Petitioner was a good surgical candidate. Rx4 at 17. Given Petitioner's complaints, however, Dr. Deutsch opined that Petitioner could proceed with the surgery recommended by Dr. Salehi, though Dr. Deutsch felt that the chances of Petitioner improving were low. Rx4 at 17, 30.

Following Petitioner's May 7, 2021 exam, Dr. Deutsch was asked to review a Triune job analysis and video in conjunction with the instant claim. Rx4 at 18. Dr. Deutsch testified that the video showed a person holding up parts and a wheel used to grind and polish the part. Rx4 at 18. The job description indicated frequent lifting up to 10 pounds and occasional lifting of 20 to 50 pounds. Rx4 at 18. Dr. Deutsch was shown Respondent's Exhibit 2, which he identified as the Triune job analysis report that he reviewed. Rx4 at 18. Dr. Deutsch was shown Respondent's Exhibit 3, which he identified as the video that he reviewed along with the job description. Rx4 at 20. Dr. Deutsch reviewed the video within the week prior to his deposition. Rx4 at 20. Dr. Deutsch issued a second report following his review of the job description and video. Rx4 at 20.

His second report is also dated May 7, 2021, which he explained was because he copied and pasted parts from his first report and must have forgotten to change the date on the second report. Rx4 at 21. Dr. Deutsch was shown Respondent's Deposition Exhibit 3, which he identified as his most recent report based on his review of the job description and video. Rx4 at 21. Dr. Deutsch's previous opinions, including those regarding causal connection, did not change following his review of the job description and video. Rx4 at 21-22. Dr. Deutsch testified that he did not believe there was any mechanism of lifting light amounts and using vibration tools to

develop a cervical injury or cervical radiculopathy. Rx4 at 22. Dr. Deutsch testified that based on his review of the video, there would be no mechanism of injury for cervical radiculopathy and there would be no evidence that doing that particular job causes cervical radiculopathy. Rx4 at 36. Holding the neck at an angle or at an awkward angle off-center cannot alone cause an asymptomatic condition to become symptomatic. Rx4 at 37-38. Dr. Deutsch did not know the weights or sizes of any of the parts that were in the video and he was not provided with any measurements with respect to vibrations with the use of the tools being used. Rx4 at 40-41. Dr. Deutsch testified that based on what he saw in the video, the job of a polisher grinder "seems like sort of normal work that any person involved in that kind of job or factory work would do, where you're moving your neck up, and lifting up and down et cetera, and not having your neck in one position for a long time." Rx4 at 44. Dr. Deutsch further testified that based on his understanding of mechanism of injuries that he has seen over 20 years of practicing, it "seems like the kind of work that everyone would do and would not be an independent risk factor for cervical injury." Rx4 at 45. Dr. Deutsch did not ask Petitioner how long he held his neck while using the grinder wheel and relied on the video. Rx4 at 46.

Dr. Deutsch testified that it is possible to have a degenerative condition that becomes symptomatic to produce symptoms such as cervical radiculopathy. Rx4 at 30. Dr. Deutsch testified, however, that it was not possible that Petitioner had an asymptomatic condition prior to February 1, 2021, which became symptomatic due to the cervical strain. Rx4 at 30. Dr. Deutsch explained that there was no mechanism of injury to make it symptomatic, "other than, like, just by accident. It's just that particular day he had symptoms. There's no mechanism to cause an injury." Rx4 at 31. Dr. Deutsch further explained that a lot of people have radiculopathy or cervical spine issues, "they wake up from sleep one day and they have pain, but it's not necessarily caused by anything" and Petitioner could have "just had complaints of pain not related to any particular event or condition." Rx4 at 31.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the

evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. Board of Trustees v. Industrial Commission, 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders his evidence worthy of belief. It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. Petitioner was calm, composed, spoke clearly, and made normal eye contact with the Arbitrator. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

Issue C, whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

In order for a claimant to be entitled to benefits under the Act, a claimant must prove by a preponderance of the evidence that he suffered an injury that arose out of and in the course of his employment. *McAllister v. Ill. Workers' Comp. Comm'n*, *2020 IL 124848*, ¶32 (2020) citing *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). The "in the course of" element, refers to the time, place, and circumstances under which the injury occurred. *Id.* at ¶34 citing *Scheffer Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366-67 (1977). A compensable injury occurs "in the course of" employment when it is sustained while performing reasonable activities in conjunction with claimant's employment. *Id*. The "arising out of" component is primarily concerned with causal connection. *Id.* at ¶36. An injury "arises out of" a claimant's employment if it has its origin in some risk connected with or incidental to the employment so as to create a causal connection between the employment and injury. *Id*. at citing *Sisbro*, 207 Ill. 2d at 203.

Having considered all the evidence, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he did sustain an accident that arose out of and in the course of Petitioner's employment by Respondent on February 1, 2021. In support of her findings, the Arbitrator relies on Petitioner's credible testimony that (1) his duties consisted of using various tools, including pneumatic tools, to grind and polish aluminum parts, (2) on January 27, 2021, while grinding/polishing a part, Petitioner began to experience tingling and numbness on the left side of his neck, (3) he had not experienced this sensation prior to January 27, 2021; (4) he had not sought treatment for a neck injury prior to January 27, 2021; (5) he finished the workweek; and (6) when he returned to work the following Monday, February 1, 2021, the pain, numbness, and tingling were still present, he asked to go to the clinic, and he was referred to Concentra by Respondent. The Arbitrator notes that Petitioner's testimony as to his job duties as a polisher grinder is supported by the testimony of Respondent's witness, Mr. Williams, and the medical records reflect a consistent history.[1]

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. *Id.* Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Id.* "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59 (1982).

[1] The Arbitrator notes that Respondent's Exhibit 3, a disc containing three short videos, corroborates both Petitioner's and Mr. Williams' testimony regarding the description of the job duties performed by a polisher grinder and the necessity to look down at a part while it is being worked on.

Additionally, under the Act, compensable injuries may arise from a single identifiable event or be caused gradually by repetitive trauma. *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 194 (2005). "An employee who alleges injury from repetitive trauma must still meet the same standard of proof as other claimants alleging accidental injury" and "show that the injury is work related and not the result of a normal degenerative aging process." *Id.* "[T]he date of the injury in a repetitive-trauma compensation case is the date when the injury manifests itself— 'the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person.'" *Durand v. Industrial Comm'n*, 224 Ill. 2d 53,67 (2006). Further, cases involving a repetitive trauma injury typically require medical opinion evidence to establish a causal connection between the claimant's injury and his employment. *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470 (1987).

The Arbitrator finds that Petitioner's current condition of ill-being, as it relates to his cervical spine, is causally related to the February 1, 2021 accident. In so finding, the Arbitrator relies on Petitioner's credible testimony and the treatment records and opinions of Dr. McHugh, Dr. Koutsky, Dr. Murtaza, Dr. Salehi, Dr. Xia, and Dr. Nekrysh.

Petitioner credibly testified that he did not feel any symptoms prior to the work accident, had not sought treatment for cervical issues prior to the work accident, and had not had any cervical spine injuries prior to the work accident. Further, Petitioner's symptoms first manifested while operating a hand tool while at work on January 27, 2021 and his symptoms continued to progress until necessitating medical attention on February 1, 2021, with Respondent's chosen occupational health provider.

Following Petitioner's February 16, 2021 MRI, Dr. McHugh diagnosed Petitioner with cervical disc disorder at the C5-C6 and C6-C7 levels with radiculopathy and referred Petitioner to Dr. Koutsky. Dr. Koutsky interpreted the MRI as showing disc/spur complexes at C5-C6 and C6-C7 that were contributing to central and foraminal narrowing, with the foraminal narrowing more severe on the left. Px2 at 168, Px3 at 5. Dr. Koutsky's assessment was that Petitioner presented with symptoms stemming from the work injury. Px2 at 168, Px3 at 5. Dr. Koutsky referred Petitioner to Dr. Murtaza for pain management. Px2 at 168, Px3 at 5. Dr. Murtaza's interpretation of Petitioner's MRI was that it showed minimal-to-mild disc bulges with uncovertebral osteophytes causing severe left foraminal stenosis and moderate-to-severe right

foraminal stenosis at the C5-C6 and C6-C7 levels. Px2 at 205, Px3 at 8. Dr. Murtaza ultimately diagnosed Petitioner with cervical disc disorder at the C5-C6 level with radiculopathy. Dr. Salehi also interpreted Petitioner's MRI as demonstrating C5-C6 and C6-C7 disc bulges/disc osteophyte complexes with severe left C5-C6 and C6-C7 foraminal stenosis. Px2 at 224. Dr. Salehi ultimately diagnosed Petitioner with cervical foraminal stenosis at the C5-C6 and C6-C7 levels and recommended surgical intervention. Dr. Salehi opined that the nature of Petitioner's work of using pneumatic tools for 27 years rendered Petitioner's foraminal stenosis at the C5-C6 and C6-C7 levels permanently symptomatic and the need for surgical intervention was related to the work injury. Px2 at 319, 343.

Petitioner obtained a second opinion from Dr. Xia, who agreed with Dr. Salehi's surgical recommendation and opined that Petitioner's symptoms were related to his work. Dr. Xia referred Petitioner to Dr. Neckrysh, who interpreted Petitioner's MRI as demonstrating multilevel degenerative changes, most pronounced at C3-C4, C5-C6, and C6-C7, as well as bilateral foraminal stenosis, which was more pronounced on the left side and worse at the C6-C7 level. Px5 at 4. Dr. Neckrysh ultimately opined that Petitioner's condition was causally related to his occupational activities. Px5 at 5.

While the Arbitrator considers the opinions of Respondent's IME physician, Dr. Deutsch, the Arbitrator finds him to be the least credible. Most unconvincing is that Dr. Deutsch is the sole physician that opined that the MRI of February 16, 2021: (1) did not show any type of disc herniation or injury, (2) did not show any specific foramina that was overwhelmingly narrow, and (3) that the findings were normal. Rx4 at 14. Dr. Deutsch further opined that there was no mechanism of injury as vibration is not a cause of cervical spine problems, Rx4 at 15, 33,36, and he stands alone in this opinion as well.

Based on the record as a whole, including Petitioner's credible testimony, the medical records, and the medical opinions of Petitioner's treating physicians over those of Dr. Deutsch, the Arbitrator finds that Petitioner has met his burden in proving a causal connection between his February 1, 2021 injury and his current cervical spine condition of ill-being.

Issue G, as to what were Petitioner's earnings, the Arbitrator finds as follows:

Petitioner testified that he made between $900 or $931.80 as compensation while working for Respondent. He further testified that his rate of pay was $22.50 per hour. Petitioner also testified that his hourly rate varied because he received a raise and it also varied if he

worked overtime. Respondent produced documentation of wages paid to Petitioner from February 1, 2020 through February 1, 2021. Rx 6. According to Rx6, Petitioner earned $56,779.92 in gross earnings from February 1, 2020 through February 1, 2021, with $8,326.17 earned in overtime wages. Respondent's witness, Mr. Williams, testified that there has been overtime at Respondent and that overtime is not mandatory. No contrary evidence was presented by Petitioner. Therefore, the Arbitrator finds that Petitioner's average weekly wage is $931.80.

Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Consistent with the Arbitrator's prior findings regarding the issues of accident and causal connection, the Arbitrator finds that Petitioner's medical treatment has been reasonable and necessary, and that Respondent has not yet paid all appropriate charges. At arbitration, Petitioner presented the following unpaid medical bills: Concentra Medical Center ($400.37), Illinois Orthopedic Network ($200.00), Midwest Specialty Pharmacy ($1,119.00), Dr. Sergey Neckrysh ($2,000.00), Integrated Pain Management ($2,775.64), and Adco Billing Solutions ($9,248.10). As the Arbitrator has found that Petitioner's treatment has been reasonable and necessary, the Arbitrator further finds that all bills, as provided in Petitioner's Exhibits 2 through 6, are awarded and that Respondent is liable for payment of these bills, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

The Arbitrator notes that Petitioner was prescribed Ondansetron following the cervical interlaminar epidural steroid injection with trigger point injections at C6 on April 15, 2021. While Respondent submitted a utilization review ("UR") by Dr. Amit Mehta, deeming said prescription was not medically necessary, Rx5, Petitioner credibly testified that he experienced nausea following the procedure and that the Ondansetron was helpful in managing his symptoms. As such, the Arbitrator finds that the Ondansetron prescribed to Petitioner on April 15, 2021 was reasonable and necessary, and Respondent is liable for payment of same, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to prospective medical care.

Both Dr. Salehi and Dr. Neckrysh opine that Petitioner requires an anterior cervical discectomy and fusion at the C5-C6 and C6-C7 levels for his cervical spine condition. The Arbitrator notes that Respondent's IME physician, Dr. Deutsch, ultimately agreed with Petitioner's diagnosis of cervical radiculopathy and the treatment plan proposed by Dr. Salehi to address Petitioner's cervical spine condition.

Based on the record as a whole, the Arbitrator finds that Petitioner is entitled to an anterior cervical discectomy and fusion at the C5-C6 and C6-C7 levels, as recommended by Dr. Salehi and Dr. Neckrysh, which is contemplated as compensable treatment under Section 8(a) of the Act, and therefore, Respondent is responsible for authorizing and paying for same.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC036316
Case Name	Diane Cesarone v. UIC College of Nursing
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0187
Number of Pages of Decision	30
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Arnold Rubin
Respondent Attorney	John Fassola

DATE FILED: 4/24/2023

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Diane Cesarone,
Petitioner,

vs. NO: 15 WC 36316

UIC College of Nursing,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection and nature and extent August 23, 2022and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 23, 2022, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

April 24, 2023
o4/12/23
DLS/rm
046

/s/*Deborah L. Simpson*
Deborah L. Simpson

/s/*Stephen J. Mathis*
Stephen J. Mathis

/s/*Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC036316
Case Name	Diane Cesarone v. UIC College of Nursing
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	28
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Arnold Rubin
Respondent Attorney	John Fassola

DATE FILED: 8/23/2022

/s/ Raychel Wesley, Arbitrator
Signature

INTEREST RATE WEEK OF AUGUST 23, 2022 3.11%

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Diane Cesarone Case # **15WC036316**
Employee/Petitioner

v.

UIC College of Nursing
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Raychel A. Wesley**, Arbitrator of the Commission, in the city of **Chicago**, on **June 27, 2022**. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's present condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☒ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On October 8, 2015, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**89,303.16** ; the average weekly wage was **$1,717.36**.

On the date of accident, Petitioner was **59** years of age, ***married*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**-0-** for TTD, $**-0-** for TPD, $**-0-** for maintenance, and $**-0-** for other benefits, for a total credit of $**-0-**.

Respondent is entitled to a credit of $**To Be Shown** under Section 8(j) of the Act.

ORDER

- Respondent shall pay Petitioner temporary total disability benefits in the amount of **$1,144.91**/week for **27-1/7** weeks, for the period of **10/9/2015 through 4/15/2016**, which is the period for which temporary total disability benefits are due.

- Respondent shall pay Petitioner temporary partial disability benefits in the amount of **$601.12**/week for **13** weeks, for the period of **4/16/2016 through 7/15/2016**, which is the period for which temporary partial disability benefits are due.

- Respondent shall pay the medical bills submitted into evidence. The parties have agreed to determine the specific amounts of the medical bills due based on the holding of the Arbitrator. Petitioner does not waive the right to present medical bills for payment in a further proceeding if it is determined that there remain outstanding balances. Respondent has not waived its right to claim 8(j) credit. The Arbitrator awards payment of the medical bill from MCHS Hinsdale (Manor Care) in the amount of **$30,259.57** and the balance on all the other medical bills admitted into evidence. The medical bills are awarded subject to payment pursuant to Section 8(a) and the Medical Fee Schedule. The payment shall be sent directly to Petitioner's attorney in accordance with Section 7080.20 of the Rules Before the Illinois Workers' Compensation Commission. Respondent shall receive credit for any payments made by group insurance pursuant to Section 8(j).

- Respondent shall pay Petitioner the sum of **$755.22**/week for a further period of **100.2** weeks, as provided in Section 8(e)11 of the Act, because the injuries sustained to the right foot and ankle caused a **60%** loss of use to the right foot.

- Respondent shall pay Petitioner the compensation accrued from **10/8/2015** through **6/27/2022** and shall pay the remainder of the award, if any in weekly payments.

- The Arbitrator adopts the Rider to the Arbitration Decision attached hereafter.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.
STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

/s/ Raychel A. Wesley
Signature of Arbitrator

August 23, 2022

Diane Cesarone v. UIC College of Nursing
Case Number: 15 WC 36316
Date of Accident: 10/8/2015

RIDER TO THE ARBITRATION DECISION

FINDINGS OF FACT

A. Work History and Background

Petitioner testified that on October 8, 2015, she was employed as the Director of Quality Management and Patient Safety for the nurse-led clinic. She also held a clinical faculty position. She testified that her office was located at the College of Nursing on the tenth floor.

On October 8, 2015, she was scheduled to teach a course in person on the first floor of the College of Nursing. When she arrived to work on that date, one of the two elevators in the building was functioning and the other was not. She took the elevator up to her office. Then, at 9:50 a.m., she departed her office for the class which was scheduled to begin at 10:00 a.m.

As she left her office, she was carrying several file folders with reference materials and handouts. She was also carrying her textbook, some pens, her keys, a water bottle, and a notepad. She was carrying the items in both hands. When she arrived at the elevator bank, both of the elevators were malfunctioning. Therefore, she opened the stairwell door and proceeded to walk down the stairs to get to her classroom. Petitioner testified that she was trying to walk rapidly in order to start her class in a timely manner. She testified that she was not using the railings since she had items in both of her hands. She was wearing sandals, and a photograph of her sandals was admitted into evidence as Petitioner's Exhibit 23.

Petitioner initially testified that there were eleven stairs between each floor. However, she subsequently testified that there might be ten stairs from the floor to the landing, and another ten

to the next floor. Nonetheless, she noticed that she was becoming tired as she was walking down the stairs. As she was walking from the third floor to the second floor, she fell.

Petitioner agreed that there were no defects to the stairs. There were no substances on the stairs and no cracks. The lighting in the stairwell was appropriate. On cross examination, she reiterated the fact that the stairs were not broken, chipped or otherwise defective.

She agreed that she prepared an accident report stating that she did not know why she fell. She also agreed that, in her written accident report, she did not advise that she was trying to walk down the stairs rapidly, that she became winded after several flights of stairs, or that she was carrying any items in her hands.

Prior to October 8, 2015, Petitioner had possibly walked up or down the stairs from or to the 10th floor one other time. She did not have any specific recollection that she walked up the stairs. Other than using the stairs, there was no other way to access the first floor from the 10th floor when the elevators were malfunctioning.

Petitioner was about two or three steps before the 2nd floor landing when she fell. She dropped everything thing that she was holding and put her arms out in front of herself because she did not want to hit her head on the concrete landing. Petitioner could not use the railing to balance herself because her arms were full of materials that she needed to teach the class. After she fell, Petitioner checked to make sure she had not hit her head. She then rolled over and noticed extreme pain in her right ankle.

Petitioner was walking with another colleague, Dr. Susan Walsh. Dr. Walsh joined her at around the 6th floor landing. They were conversing as they descended the stairs. Dr. Walsh was a nurse. She performed a quick assessment of Petitioner and made sure she had not hit her head or was bleeding. Petitioner noticed that her right ankle was "blown up like a balloon."

Petitioner also experienced tremendous pain in her right ankle and could not flex her right ankle. Petitioner testified that the pain radiated from the outside of her ankle to the inside.

Emails from Denise Rosen dated September 2, 2015 and October 8, 2015 were admitted into evidence. (PX 25). On September 2, 2015, Ms. Rosen, the facilities manager, stated that Respondent was having problems with the elevators. (PX 25). They ordered new parts and were meeting with the repairmen to resolve the issue. (PX 25). On October 8, 2015, Ms. Rosen initially wrote that one elevator was operational. (PX 25). The email was sent at 6:46 am. (PX 25). At 7:49 am, Ms. Rosen sent a follow up email stating that both elevators were not operational and that a work order had been submitted. (PX 25).

The emails of Terri Weaver, the Dean and professor at the College of Nursing, were admitted into evidence. (PX 26). On September 10, 2015, Dr. Weaver wrote that there was a problem with the elevator and they are working on solving the problem. (PX 26). She noted that she appreciated everyone's patience, especially the people working on higher floors and stated that everyone would be getting their exercise this summer. (PX 26). On October 9, 2015, Dr. Weaver wrote that it would take two to three weeks to complete the work on the elevators. (PX 26). She noted that the nonfunctional elevators were an inconvenience. (PX 26). She recommended working on the first floor where computers were set up as an alternative to climbing the stairs to the higher floors. (PX 26). Petitioner testified that she was not able to work from the first floor. Petitioner kept a lot of resources and materials that she uses frequently in her office. -

B. Medical Treatment

As a result of the work-related accident of October 8, 2015, Petitioner sought medical treatment. Petitioner was initially examined at University of Illinois Hospital. (PX 1). The

initial history at University of Illinois Hospital was that Petitioner fell on the stairs at the College of Nursing. (PX 2). The medical records document that Petitioner was an employee of the College of Nursing and due to the elevators not working, took the stairs. (PX 2). Petitioner was given a splint for her leg and admitted to orthopedics for a consultation. (PX 2). The medical records document an assessment of trimalleolar fracture with mild lateral subluxation of the ankle. (PX 2).

Petitioner testified that the emergency room was a blur. Petitioner testified that she has been a nurse for 40 years and that at times the records do not always accurately specify what a patient may have said. Petitioner did not recall exactly what she said in the emergency room.

Petitioner underwent surgery for the ankle fracture with Dr. League at the University of Illinois on October 9, 2015. (PX 4). Petitioner underwent a right open reduction, internal fixation of the trimalleolar fracture. (PX 4). The post-operative diagnosis was right closed trimalleolar ankle fracture. (PX 4).

Petitioner remained under post-operative medical care at the University of Illinois. (PX 3). Post-operative care included physical therapy and inpatient treatment. (PX 3). Petitioner was discharged from the University of Illinois on October 15, 2015. (PX 3). Petitioner was advised to follow up with Dr. League and have no weight bearing on the right lower extremity. (PX3). She was discharged to rehabilitation. (PX 3).

Petitioner was admitted to Adventist LaGrange Hospital on October 15, 2015. (PX 5). Petitioner transferred to LaGrange Hospital because it was closer to her home. The admitting physician was Dr. Patolot. (PX 5). Petitioner was referred to LaGrange to undergo acute rehabilitation following an ORIF of the ankle. (PX 5). Petitioner's course of care consisted of rehabilitation, diagnostic tests and an x-ray of the right ankle was performed on October 16,

2015 at LaGrange. (PX 6). The x-ray revealed a trimalleolar fracture with internal fixation of the medial and lateral malleolar fractures. (PX 6). Another x-ray of the ankle was preformed on October 26, 2015 at LaGrange. (PX 6). The x-ray revealed a metallic plant and threaded screws stabilizing the distal fibula and two threaded screws stabilizing the medial malleolus. (PX 6). The bony alignment was anatomic, the ankle mortise was intact and there was minimal irregularity of the posterior malleolus compatible with a malleolar fracture. (PX 6). The fracture lines were poorly demonstrated due to the overlying cast and some interval healing. (PX 6).

Petitioner was admitted to the ICU at LaGrange Hospital from October 20, 2015 through October 29, 2015 for an unrelated condition. (PX 8). The discharge summary from LaGrange Hospital dated October 29, 2015 was admitted into evidence. (PX 8). It stated that Petitioner had a history of atrial fibrillation and a right ankle fracture. (PX 8). While in therapy, she developed a spontaneous retroperitoneal hematoma. (PX 8). The bleed stopped over time without intervention. (PX 8). Petitioner was discharged to Manor Care in Hinsdale in stable condition. (PX 8). Petitioner was advised to follow up with her primary care physician, Dr. Waldman and with Dr. Groya and Dr. Valika upon discharge. (PX 8).

Petitioner was admitted to Manor Care from October 29, 2015 through November 25, 2015. (PX 9). Petitioner was diagnosed with a nondisplaced trimalleolar fracture of the right lower leg, closed fracture with routine healing, syncope and collapse, history of falling, anemia, atrial fibrillation, major depressive disorder, hypertension, difficulty walking, muscle weakness and chronic pain. (PX 9). While at Manor Care, Petitioner participated in occupational therapy and physical therapy. (PX 9).

Petitioner was examined by Dr. Norvid, a geriatric specialist at Adventist Midwest, on October 30, 2015. (PX 10). For the ankle condition, Dr. Norvid recommended pain medication

and to follow up with orthopedics. (PX 10). Petitioner followed up with Dr. Norvid through November 19, 2015. (PX 10).

Petitioner was examined by Dr. Groya at Community Orthopedics on November 13, 2015. (PX 11). Petitioner elected to continued treatment with Dr. Groya since he was located closer to her home. Dr. Groya recommended that Petitioner shift from non-weight bearing to weight bearing physical therapy with active and passive range of motion. (PX 11). He recommended that Petitioner be discharged from Manor Care when she was independent. (PX 11). He also recommended that she follow up with him in three weeks. (PX 11).

Petitioner was discharged from Manor Care Hinsdale on November 25, 2015 by Dr. Norvid. (PX 9). Petitioner was examined by Dr. Groya on December 3, 2015 who recommended that she stop using a cast boot and begin outpatient therapy. (PX 11). Petitioner began therapy at Adventist Paulson Rehabilitation from December 8, 2015 through March 17, 2016. (PX 12).

Petitioner continued to have follow up appointments with Dr. Groya who recommended that Petitioner remain off work and continue to participate in physical therapy. (PX 11). On March 7, 2016, Dr. Groya referred Petitioner to a podiatrist. (PX 11).

Petitioner was examined by Dr. Gocke at West Suburban Podiatry on March 11, 2016. (PX 13). Dr. Gocke set forth an assessment of tibialis posterior tendinitis, pain in the limb, difficulty walking and plantar fasciitis. (PX 13). Dr. Gocke recommended supportive shoes, plantar fascia stretching, custom orthotics, ice as needed and a nail specimen to be sent to pathology. (PX 13). The pathology report set forth that Petitioner had onychomycosis, subungual pattern of growth and moderate fungal growth. (PX 14).

On April 4, 2016, Petitioner was again examined by Dr. Groya. (PX 11). He stated that Petitioner may have damaged her medial retinaculum in the original ankle fracture. (PX 11). He referred Petitioner to Dr. Pinzur. (PX11).

Petitioner was examined by Dr. Pinzur on May 31, 2016. (PX 15). Dr. Pinzur performed an x-ray of the right ankle which revealed post-surgical sequalae from an open reduction, healed fibular and medical malleolus fractures, borderline ankle valgus, and soft tissue swelling. (PX 15). He recommended a CT scan to look at the quality of healing of the lateral malleolus. (PX 15).

Petitioner underwent the CT scan at Loyola on June 20, 2016. (PX 16). The CT scan revealed post-surgical changes in fixation of the healed fibula and medial malleolus fractures with early arthritic changes of the tibotalar joint. (PX 16).

On June 29, 2016, Dr. Gocke continued to recommend supportive shoes, plantar fascia stretching, custom orthotics, ice and an airlift brace. (PX 13). Petitioner continued treating with Dr. Groya. (PX 11). His notes reflect her progress and he referred Petitioner to Rush Pain Center. (PX 11).

Petitioner returned to the medical care of Dr. League on February 10, 2017. (PX 17). Petitioner wanted to make sure that she was treated with an orthopedic surgeon who specialized in the foot and ankle. X-rays of the right ankle were taken and revealed a healed trimalleolar fracture of the right ankle with good anatomic alignments, and solid bone union and fixation of the medial malleolus. (PX 17). Dr. League advised Petitioner that she might have onset of right ankle arthritis. (PX 17). He recommended that Petitioner obtain a copy of the MRI from Loyola for him to review. (PX 17). After February 10, 2017, Dr. League left the practice at the University of Illinois.

Petitioner was examined again by Dr. Gocke on June 24, 2017 who documented ankle instability. (PX 13). He recommended supportive shoes, ice and the airsport airlift brace. (PX 13). Dr. Gocke performed an injection to the MPJ on the right foot. (PX 13).

Petitioner was examined by Dr. Kaz at University of Illinois Hospital on November 28, 2017. (PX 18). Dr. Kaz stated that the ankle fracture was well healed based on the x-rays, but recommended a CT scan to confirm whether there was a nonunion. (PX 18). He set forth that Petitioner had posterior tibial tendon insufficiency. (PX 18). Dr. Kaz recommended an MRI to evaluate the tendon and for Petitioner to obtain a custom orthotic brace to help stabilize her ankle. (PX 18).

Petitioner underwent the CT and MRI study at University of Illinois Hospital on December 15, 2017. (PX 19). The MRI study of the right ankle revealed osteochondral irregularity of the tibial plafond and no evidence of a tear involving the tibial posterior tendon. (PX 19). The CT scan of the right ankle revealed an osteochondral lesion with a large subchondral cyst of the tibial planfond, healed trimalleolar fracture, possible small intra-articular body and mild to moderate Achilles tendinosis. (PX 19).

Petitioner was last examined by Dr. Groya on December 29, 2017. (PX 11). Petitioner complained of medial arch pains. (PX 11). Dr. Groya set forth that the medial arch was collapsing, which was causing some weight bearing pain over the posterior lateral aspect of the ankle. (PX 11). X-rays revealed a talar tilt where the talar dome was impinging on the plafond and the arch was collapsing with pronation with weight bearing. (PX 11). Dr. Groya recommended an insert at the medial wedge and arch support. (PX 11). He agreed with Dr. Kaz's recommendation for a custom fitted insert. (PX 11). If the insert did not work, then Petitioner could consider surgery. (PX 11).

Petitioner continued to have follow up appointments with Dr. Gocke (PX 13) and Dr. Kaz. (PX 18). Petitioner was examined by Dr. Kaz at Illinois Bone and Joint on June 18, 2019. (PX 20). Petitioner complained of swelling and pain in the right ankle. (PX 20). He set forth an assessment of persistent right ankle pain post ORIF with right posterior tibial tendinitis. (PX 20). Dr. Kaz recommended an injection to determine if the pain was coming from arthritis or the posterior tibial tendon. (PX 20). If the injection did not provide relief, Dr. Kaz would recommend an ultrasound to evaluate the posterior tibial tendon. (PX 20). If there was relief with the injection, then the pain is coming from the ankle joint. (PX 20). Dr. Kaz performed the injection on June 18, 2020. (PX 20).

Petitioner was last examined by Dr. Gocke on December 31, 2019. (PX 13). Petitioner complained of right ankle pain and right fourth toe pain. (PX 13). He set forth an impression of tibialis posterior tendinitis, pain in the limb, difficulty walking, ankle pain and instability and hammertoe contracture of the right fourth toe. (PX 13). He noted that Petitioner had pronated foot structure with plantar fasciitis and posterior tibial tendinitis with right lateral ankle instability. (PX 13). Dr. Gocke debrided the Keratotic lesions. (PX 13). He recommended supportive foot wear, custom orthotics, ice and silicone gel toepads. (PX 13).

Petitioner was examined by Dr. Kaz on January 13, 2020. (PX 20). The injection provided about 70% relief. (PX 20). Petitioner complained of pain in the medial side of the ankle along the posterior tibial tendon. (PX 20). Petitioner wore a Richie brace. (PX 20). Dr. Kaz set forth an impression of persistent right ankle pain post ORIF with right posterior tibial tendinitis. (PX 20). He stated that based on the relief from the injection, some of the pain was coming from Petitioner's ankle joint. (PX 20). He also set forth that a significant portion of the pain was coming from the posterior tibial tendon. (PX 20). He recommended an ultrasound. (PX 20).

Dr. Kaz stated that the Richie brace or Arizona brace could be considered. (PX 20). He also discussed the possibility of a FDL transfer or subtalar fusion. (PX 20).

Petitioner testified that she underwent at least four injections to her right ankle. The injections were intended to reduce some of the inflammation in the ankle that was associated with the arthritis that developed as a result of the fracture. Petitioner testified that the relief from the injection could last anywhere from four to seven or eight months.

Petitioner underwent the ultrasound of the right ankle at Naperville Imaging on January 30, 2020. (PX 21). The ultrasound revealed right posterior tibialis insertional tendinosis with no chronic gross defects; superficial course of the right intermediate dorsal cutaneous nerve over a surgical plate long the right distal fibula with no neurogenic mass observed, and neuritis cannot be ruled out; and unremarkable right lateral ankle ligaments and peroneal tendons. (PX 21).

On February 10, 2020, Dr. Kaz noted a diagnosis of right posterior tibial tendon insufficiency. (PX 20). He discussed continued observation, a new brace or surgery. (PX 20). Petitioner did not want surgery and was not satisfied with observing the condition. (PX 20). Accordingly, Dr. Kaz recommended a new brace. (PX 20). If the brace did not work, Dr. Kaz would recommend posterior tendon debridement with FDL transfer, subtalar fusion and possible hardware removal from the right ankle. (PX 20). Petitioner continued to follow up with Dr. Kaz. (PX 20). He recommended that they continue with the bracing of the ankle. (PX 20).

Petitioner was last examined by Dr. Kaz on February 15, 2022. (PX 20). Petitioner wore an articulated AFO. (PX 20). She had pain over the antral lateral and lateral aspect of the right ankle joint with a feeling of instability. (PX 20). X-rays revealed retained hardware, post-traumatic arthritis, a valgus tilt of the talus within the mortise and some fibular impingement. (PX 20). Dr. Kaz set forth an impression of improved right posterior tibial tendinitis and right

ankle arthritis status post ORIF of an ankle fracture. (PX 20). Dr. Kaz performed a cortisone injection. (PX 20). Petitioner had slowly worsening ankle arthritis. (PX 20). Dr. Kaz recommended transitioning from her AFO to a solid AFO to give her more stability. (PX 20). If that did not help, he recommended an Arizona brace. (PX 20). He also discussed an ankle arthrodesis as a final option. (PX 20). Petitioner did not want surgical treatment and elected to continue with non-operative treatment. (PX 20).

Petitioner does not have a follow up appointment with Dr. Kaz scheduled. Since the last injection, Petitioner testified that she has some increased pain. The injections have never provided Petitioner with 100% relief.

C. Medical Opinions of Respondent's Section 12 Physician, Dr. Simon Lee

The evidence deposition of Dr. Simon Lee was completed on December 17, 2019. (RX 2). Dr. Lee is a board certified orthopedic surgeon and foot and ankle specialist. (RX 2 at 6). Dr. Lee examined Petitioner pursuant to Section 12 on August 14, 2019. (RX 2 at 11). Dr. Lee documented a history that Petitioner slipped on stairs at work and sustained a right trimalleolar ankle fracture and dislocation. (RX 2 at 13). He documented that Petition had complaints of pain in the lateral and medial side of the ankle, difficulty with weight bearing or ambulatory activities, wore a brace and was following up with pain management. (RX 2 at 15).

Dr. Lee performed a physical examination of Petitioner. (RX 2 at 17). Petitioner had decreased medial longitudinal arches bilaterally, worse on the right, sensitivity over the surgical scars, mild weakness on the right side, tenderness over the posterior tibial tendon and medial malleolus and an otherwise stable examination. (RX 2 at 17). Dr. Lee performed an x-ray of the right ankle. (RX 2 at 17). The x-ray revealed medial and lateral hardware from the fractures, which were healed, and a decreased Meary's angle at the talonavicular joint. (RX 2 at 17-18).

Dr. Lee opined that Petitioner had reached maximum medical improvement. (RX 2 at 19). Dr. Lee set forth that Petitioner had a diagnosis of ankle fracture, post-traumatic arthritis and posterior tibial tendonitis diagnosis. (RX 2 at 20). Dr. Lee used the posterior tibial tendonitis diagnosis because it had the highest impairment percentage. (RX 2 at 20). Dr. Lee found that Petitioner had a mild problem based on her diagnosis. (RX 2 at 21). For the functional history adjustment, limb questionnaire and gait derangement, Petitioner had a modifier of two. (RX 2 at 22-23). Based on the modifiers and the diagnosis, Dr. Lee set forth that Petitioner had an impairment of seven (7%) of the lower extremity. (RX 2 at 23).

Dr. Lee confirmed that a person who had reached maximum medical improvement could still require additional medical treatment. (RX 2 at 29). Petitioner stated that her right side was at about 75% function to her left side. (RX 2 at 34). Petitioner reported that she experienced daily functional limits and had difficulty with higher end activities. (RX 2 at 36). Dr. Lee set forth a diagnosis of status post right trimalleolar ankle fracture with post-traumatic arthritis of the tibiotalar joint and posterior tibial tendinopathy. (RX 2 at 39). He confirmed that Petitioner sustained three separate fractures. (RX 2 at 40). He testified that the fractures were surgically repaired with hardware, which was still in Petitioner's ankle. (RX 2 at 42). He stated that typically patients have a ten to fifteen percent chance of removing the hardware. (RX 2 at 42). Petitioner had damage to the cartilage as a result of the fracture. (RX 2 at 44).

Petitioner had loss of range of motion of the right ankle. (RX 2 at 44). She had dorsiflexion of ten degrees and plantarflexion of 45 degrees. (RX 2 at 44). This was compared to 15 degrees dorsiflexion and 50 degrees plantarflexion on the left. (RX 2 at 44). The loss of range of motion was consistent with the type of injury Petitioner sustained. (RX 2 at 45).

Petitioner had neuritis over the superficial peroneal nerve distribution. (RX 2 at 45). This was consistent with her injury. (RX 2 at 45). The posterior tibial tendinopathy was consistent with the tenderness over the distal course of the posterior tibial tendon. (RX 2 at 46).

Dr. Lee testified that in theory, Petitioner could have separate impairment ratings for each diagnosis. (RX 2 at 46). Dr. Lee testified that the post-traumatic arthritis would result in a 3% lower extremity impairment. (RX 2 at 50). He stated that impairment rating for the trimalleolar fracture would be about 6% or 7%. (RX 2 at 51). Dr. Lee testified that the current condition of ill-being in connection with Petitioner's right ankle was causally connected to the work-related accident of October 8, 2015. (RX 2 at 52). He testified that the medical care provided to Petitioner was reasonable and necessary. (RX 2 at 53). Dr. Lee testified that Petitioner had an increased calcaneal valgus on the right, which was a fallen arch. (RX 2 at 54). The fallen arch was causally connected to the accident. (RX 2 at 54).

Dr. Lee agreed that an impairment rating was one of several determinants of disability. (RX 2 at 56). Dr. Lee agreed that the problems Petitioner was experiencing with her ankle were related to the work accident. (RX 2 at 61).

D. Medical Bills

Petitioner admitted medical bills into evidence as Petitioner's Exhibit 22. In her testimony, Petitioner could not confirm which of the bills have and have not been paid. She did confirm that the bills from Manor Care are still outstanding.

The parties stipulated on the record that the Manor Care bills would be awarded, if the case were deemed compensable. The other bills would be left open for the parties to determine what bills remain outstanding for which Respondent would be responsible for payment, and which bills may have been paid through applicable group insurance, requiring reimbursement by the Respondent to the carrier, if requested.

Accordingly, the Arbitrator awards the Manor Care bills in the amount of $30,259.78, subject to appropriate fee schedule reductions. The remaining bills will be resolved pursuant to the stipulation, with the further understanding that any bills for treatment for the retroperitoneal bleed, which arose during Petitioner's course of treatment for the ankle, are not awarded.

E. Post-Accident Employment

Dr. Groya agreed that Petitioner could return to modified work on April 16, 2016. Petitioner worked half days from home for Respondent in her position as a Clinical Instructor and Director of Quality Improvement. Petitioner worked 50% of the work week. Petitioner worked at the modified job from April 16, 2016 through July 15, 2016. While she was working at the light duty position, Petitioner received payment of her salary at $815.68 per week.

For the period of October 9, 2016 through April 15, 2016, or 27 and 1/7 weeks, Petitioner did not receive any payment of temporary total disability benefits or payments from workers' compensation. Petitioner used her vacation pay, sick pay and personal time off during that period of time. Petitioner did not receive any disability payments from the State University Retirement System for her ankle injury.

In July 2016, Dr. Groya released Petitioner to return to work with the restrictions of work from home two days per week, elevate her ankle when needed and limited use or no stair climbing. After July 16, 2016, Petitioner returned to her full time job activities for Respondent. She worked at home and on the campus.

Petitioner received a promotion that went into effect on August 16, 2016. Petitioner was promoted to the Director of the Nurse led clinic. She was full time in the office as of August 16, 2016.

Petitioner is currently on long term disability for an unrelated condition which began in 2019. Petitioner testified that she would love to return to work for Respondent. Petitioner worked in her promoted job from August 16, 2016 through 2019, when she went on leave for the unrelated condition. Petitioner testified that no doctor had her on work restrictions for her right ankle during this time. Further, Petitioner does not have any work restrictions related to her right ankle condition.

Petitioner testified regarding the physical demands of her new job. Petitioner visited clinics, which involved parking and walking into the clinic. Petitioner would drive from her home to the clinic in Humboldt Park. She drove to other clinics as well. She testified that the driving caused pain in her ankle because she has to move her foot from the gas to the brake. Petitioner testified that she is not allowed to park in the patient lot. However, she received special permission to park there due to her injury. Petitioner did not have any teaching duties after 2016. Petitioner worked full time from the office.

F. Current Subjective Complaints

Petitioner wore a brace to the hearing. Petitioner was wearing an AFO, or ankle foot orthosis, brace. The brace is made of a hard plastic substance that slides into her shoe and goes under her heal. Petitioner also wears a special kind of athletic shoe so that the brace will fit into her shoe. The shoe is wider than normal. Dr. Kaz recommended an ankle foot brace. Petitioner will be picking up that brace later in the week. Petitioner has been wearing her current brace for approximately two to three years. It was recommended by Dr. Kaz.

Petitioner testified regarding her current subjective complaints. Petitioner experiences pain in her right ankle. The pain comes from under the arch of her foot to the inner side and around the ankle. Petitioner ices her ankle and sometimes uses a heating pad. She also takes

acetaminophen, commonly known as Tylenol, for the pain. Petitioner testified that her gait is different. She also has some balance issues on the right side. Petitioner's ankle occasionally gives out on her and she experiences pain, fatigue and her muscles tire easily. Petitioner uses a cane because of her balance problems and she does not want to fall again. Petitioner testified that a lot of doctors told her to use a cane if she has balance issues. Petitioner discussed her balance issues with Dr. Kaz.

Petitioner continues to drive. She uses a brace to drive. Petitioner will not be able to drive with the new brace. Petitioner testified that she only drives short distances. Petitioner is not taking any prescription medication for her right ankle condition. Petitioner also only walks short distances. She testified that standing causes a lot of pain. She tries to sit whenever she is able to.

Petitioner testified that she has daily functional limitations. Petitioner testified that instability and balance issues were the same thing in her mind.

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to "C," did an accident occur that arose out of and in the course of the Petitioner's employment with Respondent, the Arbitrator makes the following conclusions:

Petitioner testified to an injury that occurred as she was walking down the stairs of the College of Nursing. She confirmed that the stairs were not defective. They were not chipped, cracked, slippery or otherwise compromised. The lighting in the stairwell was appropriate. Therefore, under a neutral risk analysis, there was nothing about the condition of the stairs that contributed to Petitioner's fall.

However, Petitioner also testified that she fell after walking from the tenth floor to the third floor. She testified that she was required to walk the stairs because the elevators were not working. She testified that she was trying to go down the stairs rapidly in order to not be late for her teaching assignment. She testified that she was carrying items in both of her hands and was

not able to use the handrails. The Arbitrator believes that those factors contributed to an increased risk related to her employment.

As a consequence, the Arbitrator finds that Petitioner has established that her injuries arose out of her employment with the University. The Arbitrator finds Petitioner has proved the issue of Accident.

In support of the Arbitrator's decision relating to "F," whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator makes the following conclusions:

Petitioner testified that she immediately felt pain in her right ankle when she fell. She was treated at the University of Illinois Emergency Room where she was diagnosed with a fracture. She underwent surgery for the fracture consisting of an open reduction and internal fixation.

Petitioner also testified to ongoing consequences of the ankle fracture. Although not all of Petitioner's complaints were consistent with the medical records, there is no dispute that she has an ongoing condition of ill being that is causally related to her workplace accident. Therefore, the Arbitrator finds Petitioner has proved a causal connection between her current condition and the accident.

In support of the Arbitrator's decision relating to "J," whether the medical services were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator makes the following conclusions:

Petitioner admitted medical bills into evidence as Petitioner's Exhibit 22. In her testimony, Petitioner could not confirm which of the bills have and have not been paid. She did confirm that the bills from Manor Care are still outstanding.

The parties stipulated on the record that the Manor Care bills would be awarded, if the case were deemed compensable. The other bills would be left open for the parties to determine what bills remain outstanding for which Respondent would be responsible for payment, and

which bills may have been paid through applicable group insurance, requiring reimbursement by the Respondent to the carrier, if requested.

Accordingly, the Arbitrator awards the Manor Care bills in the amount of $30,259.78, subject to appropriate fee schedule reductions. The remaining bills will be resolved pursuant to stipulation, with the further understanding that any bills for treatment for the retroperitoneal bleed, which arose during Petitioner's course of treatment for the ankle, are not awarded.

Respondent's only dispute to payment of the medical bills was accident and medical causation. Having found that Petitioner sustained a compensable accident and that her current condition of ill-being in connection with her right ankle and foot was causally connected to the work-related accident, the Arbitrator finds that Respondent is liable for payment of medical bills admitted at hearing. The award of medical bills was supported by the medical evidence admitted at hearing. Respondent did not submit any medical evidence disputing that it was liable for payment of the medical bills.

The Arbitrator finds that the medical bills are subject to adjustments consistent with the provisions of the Medical Fee Schedule. 820 ILCS 305/8.2. The Arbitrator orders Respondent to calculate the exact amount of benefits owed to the medical provider pursuant to Section 8.2. Any further disputes relating to the adjustment of the bills may be addressed at further proceedings, consistent with this decision. The Arbitrator further orders Respondent to make payment of the medical bills to Petitioner's attorney pursuant to Section 7080.20 of the Rules Governing the Practice Before the Illinois Worker's Compensation Commission.

In support of the Arbitrator's decision relating to "K," temporary partial disability and temporary total disability, the Arbitrator makes the following conclusions:

The Arbitrator concludes that Petitioner is entitled to payment of temporary total disability benefits from October 9, 2015 through April 15, 2016 and temporary partial disability benefits

from April 16, 2016 through July 15, 2016. The Arbitrator relies on Petitioner's credible and unrebutted testimony and the medical records admitted into evidence. Respondent did not submit any evidence to dispute Petitioner's entitlement to payment of temporary total disability or temporary partial disability benefits. Respondent's only defense to payment of benefits is accident and medical causation. Having found that Petitioner sustained a compensable accident and that her current condition of ill-being was causally connected to the work-related accident of October 8, 2015, the Arbitrator awards Petitioner payment of temporary total disability benefits for the period of October 9, 2015 through April 15, 2016 and temporary partial disability benefits for the period of April 16, 2016 through July 15, 2016.

In *Freeman United Coal Mining Company v. Industrial Commission*, 318 Ill.App.3d 170, 741 N.E.2d 1144 (2001), the court set forth that "a claimant is entitled to TTD when a 'disabling condition is temporary and has not reached a permanent condition.'" (quoting *Manis v. Industrial Commission*, 172 Ill.Dec. 95, 595 N.E.2d 158 (1st Dist. 1992)). The dispositive test for determining whether a claimant is entitled to TTD is whether the condition has stabilized. *Id.* In *Freeman United Coal Mining Company*, the court held that the condition of the claimant's knee had not stabilized and that the petitioner was thus entitled to TTD benefits. *Id.* The court based its decision on the fact that the claimant had not been released to full-duty work and future medical care was being considered by the claimant's treating physicians. *Id.*

The medical records admitted at hearing established that Petitioner was under active medical care and unable to work from October 9, 2015 through April 15, 2016. Petitioner underwent surgery for her right ankle on October 9, 2015 and remained under active medical care including follow up appointments and therapy. Petitioner was not released to return to any work and did not work for the period of October 9, 2015 through April 15, 2016. Accordingly, Petitioner's

condition had not stabilized and she was unable to work. Based on the medical records admitted at hearing, the Arbitrator finds that Petitioner is entitled to payment of temporary total disability benefits from October 8, 2015 through April 15, 2016.

Petitioner was released to return to work by Dr. Groya with the restrictions of working from home. Respondent was able to accommodate the restrictions and Petitioner worked a half of her hours from home for the period of April 16, 2016 through July 15, 2016. During that period, she was paid her salary at a rate of $815.68 per week. Petitioner's average weekly wage was $1,717.36. Accordingly, Petitioner is entitled to 2/3's of the difference between her average weekly wage and what she earned in her work with restrictions, or $601.12 per week. Petitioner returned to work full time on July 16, 2016.

In support of the Arbitrator's decision relating to "L," what is the nature and extent of the injury, the Arbitrator makes the following conclusions:

The Arbitrator concludes that as a result of the work-related accident of October 8, 2015, Petitioner sustained permanent and partial disability to the extent of 60% loss of use of the right foot. The Arbitrator relies on the credible and unrebutted testimony of Petitioner and the medical records admitted into evidence at hearing.

The Arbitrator's finding is consistent with the factors and criteria set forth in Section 8.1(b) of the Act. Pursuant to Section 8.1(b) of the Act, the Arbitrator must consider certain factors and criteria in assessing permanent partial disability, including, the level of impairment under the AMA Guides, the occupation of the injured worker, the age of the injured worker, the future earning capacity of the injured worker and evidence of disability corroborated by the treating medical records. The Act provides that no single enumerated factor shall be the sole determinant of disability. After considering the factors, the Arbitrator finds that Petitioner is permanently

partially disabled to the extent of 60% loss of use of the right foot. With respect to the factors, the Arbitrator finds the following:

1. Level of Impairment under the AMA Guides

Respondent submitted the testimony of its Section 12 physician, Dr. Lee. Dr. Lee prepared an impairment rating. Based on the modifiers and the diagnosis, Dr. Lee set forth that Petitioner had an impairment of 7% of the lower extremity.

Dr. Lee testified that in theory, Petitioner could have separate impairment ratings for each diagnosis. Dr. Lee testified that the post-traumatic arthritis would result in a 3% lower extremity impairment. He stated that impairment rating for the trimalleolar fracture would be about 6% or 7%. Dr. Lee agreed that disability was different than impairment. Dr. Lee agreed that the problems Petitioner was experiencing with her ankle was related to the work accident. Further, Petitioner sustained multiple injuries to her right ankle. Pursuant to the impairment guide, Dr. Lee could only provide a rating for the diagnosis which had the highest impairment rating. Accordingly, the full disability and impairment of the ankle could not be assessed. Therefore, the Arbitrator accords this factor a little weight, but notes specifically based on the objective and subjective findings of the examination that the disability is much higher than the impairment.

2. Occupation of Petitioner

At the time of the work-related accident, Petitioner was employed as the Director of Quality Management and Patient Safety for the nurse led clinic and was a member of the clinical faculty. Petitioner had to stand while teaching. She also walked to the different clinics. Based on Petitioner's unrebutted and credible testimony, the Arbitrator finds that Petitioner's employment as the Director of Quality Management and Patient Safety for the nurse led clinic and member of

the clinical faculty required her to perform a lot of standing and walking. Accordingly, the Arbitrator accords great weight to this factor.

3. Age of Petitioner

At the time of the accident, Petitioner was 59. At the time of the hearing, Petitioner was 65 years old. No evidence was presented as to how Petitioner's age affected her disability. However, the Arbitrator notes that Petitioner was an older individual with multiple unrelated health concerns that could impact her ability to heal. Accordingly, the Arbitrator finds that her age increases Petitioner's disability. In support of this finding, the Arbitrator relies on the holding *Flexible Staffing Services v. Illinois Workers' Compensation Commission*, 2016 IL App (1st) 151300WC (1st Dist. 2016) (holding that the Commission can make reasonable inferences from the medical evidence as it relates to how the claimant's age affects his disability).

4. Future Earning Capacity

No evidence of whether Petitioner's future earning capacity impacted was submitted at hearing. Accordingly, the Arbitrator accords this factor no weight since there was no change in her earning ability.

5. Evidence of Disability Corroborated by the Treating Medical Records

The medical records admitted into evidence established that Petitioner sustained a trimalleolar fracture, surgical repair, post-traumatic arthritis, fallen arch and posterior tibial tendonitis. The diagnosis was confirmed by the medical records, diagnostic tests and operative report.

The medical records document Petitioner's ongoing complaints. Petitioner also testified regarding her subjective complaints. Multiple doctors, including Dr. League, Dr. Gocke, Dr. Groya and Dr. Pinzur, all documented ongoing subjective complaints. Petitioner was last

examined by Dr. Kaz. Dr. Kaz documented that Petitioner had pain over the antral lateral and lateral aspect of the right ankle joint with a feeling in instability. He recommended an AFO brace and possible surgery. Further, Dr. Lee documented that Petitioner reported about 75% function to her left side. Petitioner reported that she experienced daily functional limits and had difficulty with higher end activities. Dr. Lee found that Petitioner had decreased medial longitudinal arches bilaterally, worse on the right, sensitivity over the surgical scars, mild weakness on the right side, tenderness over the posterior tibial tendon and medial malleolus and an otherwise stable examination.

The medical records were consistent with Petitioner's testimony regarding her subjective complaints. Petitioner testified regarding her current subjective complaints. Petitioner experiences pain in her right ankle. The pain comes from under the arch of her foot to the inner side and around the ankle. Petitioner testified that her gait is different. She also has some balance issues on the right side. Petitioner's ankle occasionally gives out on her and she experiences pain, fatigue and her muscles tire easily. Petitioner uses a cane because of her balance problems and she does not want to fall again. Petitioner continues to drive. She uses a brace to drive. Petitioner will not be able to drive with the new brace. Petitioner testified that she only drives short distances. Petitioner also only walks short distances. She testified that standing causes a lot of pain so she tries to sit whenever she is able to. Petitioner testified that she has daily functional limitations.

The medical records also document objective findings. Petitioner underwent surgery and has hardware in her ankle. The diagnostic studies reveal post-traumatic arthritis and tendinosis. Further, Dr. Lee documented that Petitioner had loss of range of motion of the right ankle. She had dorsiflexion of ten degrees and plantarflexion of 45 degrees. This was compared to 15

degrees dorsiflexion and 50 degrees plantarflexion on the left. Further, Dr. Kaz has discussed the fact that surgery may be an option in the future.

The Arbitrator accords this factor great weight. The Arbitrator finds it significant that Petitioner has had consistent and significant ongoing subjective complaints, objective findings and could require additional treatment, including surgery. Based on the medical evidence and considering the above factors, the Arbitrator finds that Petitioner sustained the permanent and partial disability to the extent of 60% loss of use of the right foot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC005060
Case Name	Clyde Cooper Jr. v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0188
Number of Pages of Decision	38
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Muriel Collison
Respondent Attorney	Elizabeth Meyer

DATE FILED: 4/24/2023

/s/ Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)	☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
) SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
COUNTY OF COOK)	☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
		☐ PTD/Fatal denied
	☒ Modify up	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CLYDE COOPER,

Petitioner,

vs. NO: 12 WC 005060

CHICAGO TRANSIT AUTHORITY (CTA),

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of benefit rates, medical expenses, causal connection, temporary disability, and permanent disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission modifies the Arbitrator's Decision in regard to certain Findings of Fact and Conclusions of Law as outlined below, and modifies the award to Petitioner, awarding TTD benefits from July 29, 2008, through March 18, 2015, vacating the Arbitrator's PPD award and awarding PPD in the amount of 50% loss of use of a person under §8(d)2 to compensate Petitioner for loss of trade.

Findings of Fact

The Commission affirms and adopts paragraphs one and two of the Arbitrator's Findings of Fact. Although the Commission agrees with the Arbitrator's Findings of Fact and Conclusions of Law in part, for the sake of brevity and simplicity the Commission strikes the remainder of the Arbitrator's Decision and modifies the Arbitrator's Decision thereafter to read as follows:

Petitioner's Testimony Regarding Prior Injuries

Petitioner testified to prior injuries he had sustained. (T. 13) He injured his left ACL in high school. Petitioner testified that his coach "stretched me all the way out and stretched my ACL." "It was just stretched which is worse than a tear." (T 13-14) That was in 1983. (T. 57)

Petitioner sustained a workers' compensation injury in July 1994 after tripping over some boxes, for which he received a settlement. (T 57-58) In August 1995 he sustained an injury to his left knee. (T. 58) In September 2001, he tripped injuring his right knee and filed a workers' compensation claim. (T. 14-15, 59) Petitioner testified that he could not remember in which case he sustained either left or right leg injuries when asked to identify the body part "because I've had so many injuries (to) the right and left leg, and then this case has gone on 14 years." (T. 59) In October of 2002, he injured both legs. (T. 60) On July 20, 2005, he had an accident and received a settlement including 5% of the left leg. (T. 60-61) In August of 2006, he injured both knees and his back while working for Respondent resulting in injections and surgery on his right knee in December 2007. He was off work for 3-4 months and returned to work full duty in April of 2008 including mandatory overtime. (T. 16-19, 21) Petitioner's Exhibit 22 confirmed Petitioner agreed to settle those cases for $50,000.00 representing 2-1/2% loss of use of the left leg, 10% loss of use of the right leg and 10% loss of use of a person as a whole. (T. 17, 61) Petitioner testified he was able to do his job duties 100% during the months prior to his accident. (T 22)

Petitioner's Testimony regarding the July 28, 2008, Work Accident

Petitioner testified that on July 28, 2008, he was busting a girder at Wright College when he stepped off the scaffolding on to a canopy, which is an overhead protection device or bridge that keeps debris from falling. When he stepped onto the canopy and started to bust the girder, with a buster, a train passed by overhead causing the canopy to buckle and a steel x-bracing fell and hit his left knee. The bracing weighed at least 75-100 lbs. (T. 24-25) When the x-bracing hit his knee, he immediately fell and called out to his foreman and told him he was hurt. He was instructed to finish the job. Petitioner got up and started busting the rest of the girder supporting the buster on the right. (T. 26) Another train came from the opposite direction again causing the canopy to buckle again and the other x-bracing fell hitting his right knee. Petitioner fell and his back popped. He could not move. (T. 27)

Medical Treatment

Pertinent Pre-July 28, 2008 Accident Findings and Treatment

After a September 20, 2006, work accident Petitioner saw Dr. Joseph Tansey at Bone and Joint Physicians on September 14, 2007, to discuss his right knee MRI. (PX4, 4) He reported complaints of sharp pain in his right knee inside and outside parts of the knee, worse with activity and improved with rest, swelling, limping and decreased function. He reported a previous right medial meniscectomy done in 2003. *Id*.

On physical exam he had a popping sound that elicited with the knee with full extension.

Dr. Tansey noted the right knee MRI from November 2006 demonstrated evidence of a radial tear of the medial meniscus, however, noted that Petitioner did have the previous meniscal surgery. He had a knee joint effusion and a distal patellar tendinosis. He also noted Petitioner had moderate to advanced degenerative changes in the medial compartment of the knee and he had probable intra-condylar bodies which could be related to synovial metaplasia, osteochondromas or chondral degeneration. The diagnosis was right knee internal derangement. *Id.*

On November 28, 2007, Dr. Tansey performed a right knee arthroscopy with debridement of the meniscus and cartilage, and removal of loose body. At the follow-up visit, Dr. Tansey noted that pathology revealed the mass they removed was a pigmented villandular synovitis (PVNS) in his right knee as well. (PX4, 15)

At the office visit on September 14, 2007, Dr. Tansey also noted that Petitioner had an MRI of the lumbar spine from December of 2006 which demonstrated a shallow right foraminal disc herniation with associated spondylolysis at L4- L5 as well as L5- S1 disc desiccation. Dr. Tansey noted that the right foraminal disc herniation could be causing his symptoms down the right leg. Further, the diagnosis was listed as follows:

1. Right knee internal derangement.
2. L5-S1 HNP (herniated nucleus pulposus)
3. L4-L5 HNP (PX4, 4)

On November 19, 2007, Petitioner consulted Dr. George Charuk on referral from Dr. Tansey for his lumbar spine/low back. (PX4, 10) Dr. Charuk's Impression was right radiculitis secondary to disc herniation and he scheduled a right L4-5 interlaminar epidural steroid injection (ESI) and physical therapy with follow-up. *Id.* Petitioner underwent the ESI on December 5, 2007. (PX4, 15, 16)

On December 17, 2007, Dr. Charuk's impression was right L4 radiculitis secondary to disc herniation, spondylosis and knee pain. Petitioner described 80% relief with occasional 3-4/10 pain rating. On examination, his lumbar range of motion was to 80 degrees of flexion with minimal pain on the right. Extension was 20 degrees with pain on the right and left. (PX4, 16) On January 1, 2008, Dr. Tansey ordered an MRI for the left knee. (PX4, 17)

Results of the January 14, 2008 left knee MRI include:

1. Intact ACL graft.
2. Patellofemoral and medial femorotibial osteoarthrosis as the dominant findings. The above includes high-grade chondromalacia of the weightbearing medial femoral condyle and medial and lateral trochlea, with a combination of subchondral stress osteoedema and tiny pseudocyst formation. No displaced osteochondral body within the joint capsule.
3. Thickening of the collateral ligamentous complexes as a manifestation of remote injury. No acute collateral ligament sprain or acute meniscus macrotear.
4. Additional findings and pertinent negatives described in Findings above. (PX4, 18)

On January 14, 2008, Dr. Charuk prescribed a second ESI noting Petitioner had started physical therapy for his back. (PX4, 19) He had a mildly positive slump sign on the right and a mildly positive straight leg raise on the right. (PX4, 21) He had a right L4-L5 interlaminar ESI on January 30, 2008. (PX3, 118; PX4, 22)

Petitioner underwent a left knee MRI on January 14, 2008. (PX4, 18) The MRI showed an intact ACL graft; patellofemoral and medical femorotibial osteoarthrosis as the dominant findings. This included high-grade chondromalacia of the weight bearing medial femoral condyle and medial and lateral trochlea, with a combination of subchondral stress osteoedema and tiny pseudocyst formation; thickening of the collateral ligamentous complexes as a manifestation of remote injury. *Id.*

On January 14, 2008, Petitioner returned to Dr. Charuk. He reported 80% relief with his first ESI. His pain decreased to a 3-4 out of 10. The Impression listed "Right L4 radiculitis secondary to disc herniation and left knee pain." (PX4, 21) This was Petitioner's last treatment record with Dr. Charuk for his lumbar spine prior to the July 2008 work accident. Dr. Charuk prescribed a second ESI which was done on January 30, 2008. (PX4, 22)

On January 18, 2008, Petitioner saw Dr. Tansey for follow-up regarding left knee pain following a right knee arthroscopy on December 5, 2007. Dr. Tansey reviewed the January 14 2008, left knee MRI and diagnosed left knee degenerative joint disease (DJD) noting diffuse arthrosis in the medial and patellofemoral compartments. He offered treatment options, including operative and non-operative, and they proceeded with a conservative steroid injection. (PX4, 22)

In follow-up on March 14, 2008, Petitioner reported no pain in either knee and was able to run earlier in the month. Dr. Tansey diagnosed left knee DJD and right knee internal derangement status post arthroscopy with PVNS. Recommendations were to avoid exacerbating activities, continue home exercise program and follow up as needed for further treatment regarding the right knee or for further treatment regarding the left knee. (PX4, 23)

Medical Treatment July 28, 2008, (date of subject accident) Through September 22, 2017

The Chicago Fire Department came and removed Petitioner off the canopy with their lift. (T. 27, Petitioner's Exhibit "PX" 1) Petitioner gave a history that he was "moving off of scaffle [sic] and it shifted . . . also said he twisted his knees." (PX1, 3)

Petitioner was taken to Advocate Illinois Masonic Hospital that same day. Petitioner gave a history that he "was standing on scaffold, transferred to canopy which gave way, as patient attempting to get back onto scaffold twisted back leading to injury. Patient states he felt a sharp pain radiated from lower back to both knees." (PX2, 15) Petitioner was given pain medication and x- rays were taken. Petitioner was discharged and told to follow up with his primary doctor and an orthopedic specialist. (PX2, 16)

On July 29, 2008, Petitioner presented to Concentra Medical Center. It was noted that

Petitioner was a 41-year-old male employee of CTA West Shops who complained about his leg which was injured on July 28, 2008. Petitioner stated, "I stepped on to a canopy from the scaffold, hurt both knees & tried to keep working then picked up buster & hurt back, both knees & back." (PX3, 3)

It was further noted that Petitioner jumped off from a scaffold to the canopy about 6 feet above yesterday and the canopy buckled, and he noted pain and discomfort over both knees on the landing. Petitioner then claimed he was lifting a 50 pound buster and noted pain and discomfort over his lower back. Petitioner rated his pain as an 8 out of 10. The pain did not radiate. (PX3, 3) Past medical history included right knee medial meniscus arthroscopy in December 2007 and a left knee ACL reconstruction in 1983. Physical examination showed decreased range of motion and positive Waddell's overreaction. (PX3, 5) Petitioner was diagnosed with bilateral knee strains and a lumbar strain. Petitioner refused medication. Petitioner was given work restrictions and Petitioner stated he would follow up with his own orthopedic. (PX3, 6)

Petitioner testified he was paid TTD during this time and until February 18, 2015. (T. 29)

Petitioner followed up at Bone and Joint Physicians as he had previously treated with Dr. Tansey and Dr. Charuk as above in 2007 and 2008 most recently.

Petitioner presented to Dr. Tansey on August 15, 2008, reporting a twisting injury at work on July 28, 2008. He reported pain in both knees since the accident, more so on the left. Dr. Tansey ordered an MRI of the left knee. He instructed Petitioner to avoid exacerbating activities and continue Ibuprofen for pain. (PX4, 24)

On August 26, 2008, Petitioner started physical therapy at Ridge P.T. and attended physical therapy intermittently as prescribed through May 15, 2014. (PX8)

Petitioner saw Dr. Charuk on September 8, 2008, and reported he still had low back pain. (PX4, 25)

On September 24, 2008, Petitioner underwent an MRI of both knees and the lumbar spine. (PX5, 2-8) For the left knee, the MRI showed post-surgical changes from the previous ACL tear and osteoarthritis. (PX4, 127) The MRI of the right knee noted the possibility of a recurrent tear and osteoarthritic changes. (PX4, 128) The MRI of the lumbar spine revealed L4-L5 bulging on the right causing compression and at L5-S1, a herniation and annular tear. (PX4, 129)

On September 30, 2008, Petitioner followed up with Dr. Tansey complaining of bilateral knees and low back pain. Dr. Tansey injected steroids into both knees, referred Petitioner to Dr. Charuk for a possible round of ESIs and prescribed continuing physical therapy and continued work restrictions. (PX4, 27)

On October 31, 2008, Dr. Charuk administered a right L4-L5 Transforaminal epidural injection. (PX4, 33) Petitioner's pain was relieved by 50% from the L4-L5 Transforaminal injection. (PX4, 34) Dr. Charuk noted that he had three ESIs in the last 12 months, December

2007, January 2008 and October 31, 2008. The pain in the right lower extremity was noted to be resolved. (PX4, 34)

On November 19, 2008, a valid FCE was performed. Petitioner was found to be able to perform light to medium work and Petitioner was released back to work with the restrictions outlined in the FCE. (PX4, 132, 134)

From January 16, 2009 through February 9, 2009, Petitioner received five guided Supartz injections into both knees. (PX4, 41, 43, 45) On March 13, 2009 he reported continued left knee pain and Dr. Tansey recommended a left knee arthroscopy. (PX4, 46)

On April 8, 2009, Dr. Tansey performed a left knee arthroscopy with debridement of the meniscus and cartilage. (PX4, 153) On April 14, 2009, Petitioner returned for follow-up. The diagnosis was left knee degenerative joint disease (DJD). (PX4, 48) At the April 24, 2009 follow up the diagnosis was left knee internal derangement. (PX4, 49)

On May 22, 2009, Petitioner returned to Dr. Tansey to follow-up regarding the left knee surgery. He was diagnosed with left knee DJD and was to follow up in six weeks for consideration of possible steroid injections in both knees and told to follow up in three months. (PX4, 53)

In June 2009, Petitioner sustained a facial injury that impaired his vision. (T. 42, 43) Dr. Bergin's October 20, 2011, §12 report notes Petitioner had an open reduction internal fixation (ORIF) surgery in his mandible in 2009. (RX8, 5) The Vocamotive report notes that Petitioner appeared to have sustained injury to the left side of his face. "When asked about this, he reported that he was assaulted and struck in the face with a pipe which broke the left orbit. As a result he is able to see but has 20/60 vision which limits him from seeing small print effectively. Otherwise vision is unimpaired." (PX19, 2)

On January 20, 2010, a handwritten note in Petitioner's file states, "Work Comp would like you to address MMI." (PX4, 55) Dr. Tansey prescribed a Bionicare machine for both knees and wrote, "at this time the patient is most likely at MMI though he will need further treatment for his knees as related to the injuries sustained at work." (PX4, 57) Petitioner was to follow up for consideration of additional injections.

On June 4, 2010, Petitioner received cortisone injections into both knees. (PX4, 60)

Petitioner received five Supartz injections into the left knee from October 22, 2010, to December 3, 2010. (PX4, 66-71)

Petitioner received five Supartz injections into the right knee from April 15, 2011, through May 20, 2011. (PX4, 76-80)

On May 31, 2011, Petitioner underwent another FCE that was determined to be valid and showed that Petitioner was at a light to medium physical demand level. (PX4, 161)

On June 17, 2011, Petitioner returned to Dr. Charuk for the first time since 2008. Dr. Charuk ordered a lumbar spine MRI (PX4, 81) that was completed on July 12, 2011. Per Dr. Charuk, the MRI showed L4-L5 bilateral foraminal stenosis, right greater than left and L5-S1 disc space narrowing with desiccation, central protrusion with moderate facet arthropathy. Dr. Charuk recommended another L4-L5 epidural injection. (PX4, 83)

On December 5, 2011, Petitioner returned to Dr. Tansey with bilateral knee pain. Dr. Tansey recommended repeat MRIs. Workers' compensation approved the right knee MRI which showed a possible repeat meniscus tear in the right knee with mild chondromalacia. (PX4, 89, 93, 96, 99-101, 197) On January 13, 2012, Petitioner saw Dr. Tansey in follow-up for his right knee. He complained of increased pain, popping and catching. (PX4, 237) Dr. Tansey's diagnosis was right knee internal derangement. On January 18, 2012, surgical authorization was requested by Dr. Tansey. (PX4, 238)

On July 1, 2013, Petitioner saw Dr. Nigro for right knee pain. Review of systems was negative for numbness or tingling in the lower extremities. He recommended arthroscopic partial medial and lateral meniscectomy with chondroplasty. (PX4, 186)

Dr. Nigro examined Petitioner and authored an "Onset & Course" letter. (PX4, 228) Dr. Nigro opined that Petitioner "is not a candidate for total knee replacement at this point." A right knee partial medial meniscectomy and chondroplasty of the medial femoral condyle was recommended. Dr. Nigro, who took over for Dr. Tansey, performed the surgery on July 24, 2013. (PX4, 220-224) Dr. Nigro also handled Petitioner's post operative care. (PX4, 179-182)

On October 8, 2013, Dr. Charuk noted that Petitioner had a re-exacerbation of low back pain. (PX4, 172) Petitioner underwent an L4-L5 lumbar interlaminar injection on October 18, 2013. (PX4, 172, 199)

On March 18, 2015, Petitioner underwent his third FCE which was marked as valid. The report states that Mr. Cooper demonstrated the ability to perform within the heavy physical demand category based on the definitions developed by the U.S. Department of Labor and outlined in the Dictionary of Occupational titles. It should be noted that Mr. Cooper's job as an iron worker is classified within the heavy physical demand level. It was noted that Mr. Cooper has reached MMI of his bilateral knees and may attempt to RTW with restrictions reflected in the report. Further testing & studies to address the radicular symptoms in the right lower extremity may be warranted. (PX4, 256, 259; PX9)

The Summary/Impression section noted the following:

> He demonstrates limitations with: Occasional Squat Lifting, Occasional Power Lifting, Occasional Shoulder Lifting, Frequent Shoulder Lifting, Occasional Bilateral Carrying, Frequent Bilateral Carrying, Occasional Pushing, Occasional Pulling, Bending. Squatting, Sustained Squatting, Kneeling sustained, Kneeling Repetitive, Crawling, Stair Climbing, Ladder/Other, Static Balance, Total Standing and At One Time Standing. Frequent and longer than usual rest breaks were required after many of these tasks, due to the

increase in pain and increase in heart rate.

Limiting Factors Noted During Testing

> During this evaluation, Mr. Cooper was unable to achieve 100% of the physical demands for his job/occupation. The limiting factor(s) noted during these objective functional tests included: compensatory Techniques, Mechanical Changes, Mechanical Deficits and Substitution Patterns. It was noted that Petitioner can perform 72.3% of his job. (PX4, 256-258, 259-266, PX9)

On May 21, 2015, Dr. Bergin authored a §12 opinion at Respondent's request. It was his opinion that the Petitioner had a pre-existing lumbar condition that was neither aggravated nor exacerbated by the alleged injury. Dr. Bergin examined three lumbar spine MRI interpretations Petitioner had from December 13, 2006 which showed a shallow right foraminal disc herniation at L4-5 and disc dessication at L5-S1 with a central annular tear and from September 24, 2008, and July 12, 2011. Dr. Bergin opined that all three MRIs appear to be identical in their interpretations. Clearly treatment had been appropriate but treatment related to the lumbar spine was not causally related to the July 28, 2008, injury. Dr. Bergin opined, "[i]t is my opinion that Mr. Cooper's condition was pre-existing to the July 28, 2008, injury and that he received treatment according to the medical record at least up until January of 2008 by Dr. Charuk. The patient failed to share with me on my previous IME or in this IME that he had this treatment. It appears to me that this is intentionally done to deceive the fact that he had this pre-existing condition in recent treatment just proximate to the injury. (RX10)

On June 12, 2015, Dr. Nigro gave Petitioner a cortisone injection into the right knee. Dr. Nigro returned Petitioner to work with lifting restrictions as delineated in the March 2015 FCE. (PX4, 247-249)

On June 30, 2015, Dr. Charuk placed Petitioner on work restrictions and was waiting for approval for a right L4-L5, L5-S1 epidural steroid injection. (PX4, 251-254)

Petitioner is not working. He testified that he applied for social security disability insurance (SSDI) in 2015. He has been receiving SSDI since 2016. (T. 39)

On January 12, 2016, Dr. Nigro gave Petitioner another Cortisone injection and continued work restrictions. (PX4273-275)

Petitioner's last visit with Dr. Nigro was on September 22, 2017 (PX14) Petitioner stated that he could not seek medical treatment any longer as Respondent's workers compensation insurance carrier, Sedgwick, did not approve additional treatment. (T. 37)

Post Accident Injuries and Medical Treatment February 2018 to November 26, 2019

On or around February 9, 2018, Petitioner fractured his left leg during a physical altercation and treated with Dr. Chandler from Advocate Trinity Hospital. Dr. Chandler surgically repaired his left tibia, with placement of rods and screws. (Tr 43, PX16) On March 20, 2019, Dr. Chandler

performed a left total knee arthroplasty. (PX15, 621) Petitioner underwent post operative physical therapy through June 11, 2019. (PX17)

In 2014, Petitioner injured his finger. (T. 41)

On August 23, 2019, Petitioner was in a motor vehicle accident (MVA) and presented to Mercy Hospital with left knee pain. X-rays were negative for acute fracture and the knee joint demonstrated normal alignment with small joint effusion. (PX16, 178, 197, 201)

On November 26, 2019, Petitioner had a valid FCE that indicated he could perform 54.3% of his job, indicating his capabilities had decreased substantially from the FCE in 2015 before his post work accidents (PX9, 17-32)

Petitioner's Experts' Opinions

Dr. Richard Sherman, a board-certified orthopedic surgeon, examined Petitioner on July 17, 2012, and again on April 12, 2016 for both his bilateral knees and lumbar back complaints. Dr. Sherman noted Petitioner walked with a slight limp on his left leg at his first evaluation. Dr. Sherman reviewed the MRI films of the right knee from January of 2012 and concurred that there was a tear of the medial meniscus with degenerative arthritis in the medial compartment. He also reviewed the July 2011 MRI films of the lumbar spine and opined that the films demonstrated an L4-L5 herniated disk to the right, with neural foraminal narrowing and severe facet arthritis at the L4-L5 level bilaterally. In addition, there was a central protrusion of the L5-S1 disk, with no foraminal narrowing bilaterally. (PX11, 5)

As Petitioner was not restricted in any way with regards to his work until the injury on July 28, 2008, Dr. Sherman opined that the July 28, 2008, accident aggravated Petitioner's preexisting arthritis and internal derangement in the bilateral knees and aggravated Petitioner's disk injuries at the L4-5 and L5-S1 levels. Dr. Sherman further opined that Petitioner was unable to perform any job that would require prolonged standing, kneeling, bending, crawling, or climbing. Dr. Sherman opined that further treatment for his knees could include arthroscopic right knee surgery, knee replacement, anti-inflammatory medication, occasional steroid injections, and occasional viscosupplementation. (PX11, 5)

When Dr. Sherman examined Petitioner again on April 12, 2016, he also reviewed updated medical records and Respondent's IME reports. (PX11, 7-8) His opinions remained unchanged. (PX11, 10)

Dr. David Fletcher is a board-certified occupational medicine specialist who evaluated Petitioner on December 17, 2018. Dr. Fletcher opined that Petitioner needed a left knee replacement. He further stated that no additional treatment was needed for the right knee or the low back. (PX18, 6) In a subsequent report dated January 31, 2020, Dr. Fletcher opined that Petitioner could not return to work as an iron worker. (PX18, 3). Dr. Fletcher testified via evidence deposition on December 6, 2021, and his opinions remained unchanged. Dr. Fletcher opined that the treatment Petitioner received for both of his knees and his back was a result of the July 28,

2008, injury. (PX18, 15,16) Dr. Fletcher denied that Petitioner demonstrated any signs of symptom magnification specifying that Petitioner did not have any Waddell's signs and gave consistent valid performances in his FCEs. (PX18, 20-21)

Joseph Belmonte, a vocational counselor from Vocamotive met with Petitioner on January 15, 2020. Belmonte authored a report dated February 6, 2020, summarizing Petitioner's medical status, work history, educational and vocational status. Belmonte offered opinions regarding Petitioner's transferable skills and a guarded prognosis for employability. Belmonte offered a rehabilitation plan attached to his report. (PX19)

Respondent's Experts Opinions pursuant to Section 12

Dr. Joseph D'Silva authored four opinion letters after evaluation of Petitioner and/or review of additional records. Petitioner was first examined by Dr. D'Silva on January 26, 2011. (RX3) Petitioner gave a history of stepping onto a canopy that shifted, causing him to twist his left knee. When he returned to work, "his left knee buckled and then he injured his right knee and back." (*Id.* at 2) Dr. D'Silva opined the Petitioner's left knee condition was unrelated to the incident on July 28, 2008. Dr. D'Silva opined that Petitioner's complaints were consistent with pre-existing post-traumatic arthritis of the left knee. He wrote, "[i]f the injury of July 2008 had caused damage to the underlying bone, then the MRI would have been noteworthy for bony damage (which takes four to six months to resolve on MRI) and these MRIs were ordered less than two months from the date of injury." Dr. D'Silva opined that Petitioner was at MMI for the left knee with regard to the incident on July 28, 2008 but agreed that he would need a knee replacement for his underlying pre-existing condition. He did not have an opinion on the right knee pending review of previous x-rays and right knee arthroscopy report from 2007.
(*Id*. at 8)

On June 21, 2011, Dr. D'Silva reviewed Petitioner's first FCE. In the June 21, 2011 report, Dr. D'Silva questioned the validity of that FCE, specifically because there was no intra testing comparison to confirm validity of the individual task, i.e. hand dynamometer grip test. There was also a larger than expected variation between static testing and non-static testing. The maximum predicted heart rate of 177 never was higher than 100. All of those suggest lack of full effort. (RX4) Dr. D'Silva also opined that the left knee condition was unrelated to the injury of July 28, 2008, and that any pain or limitation in the FCE was unrelated. He had still not received the requested pre-accident records and therefore still could not offer an opinion regarding the right knee. (*Id*.)

On July 29, 2012, Dr. D'Silva provided another addendum after receiving additional records and opined that recommendations for a right knee arthroscopy and injections into both knees were not related to the July 28, 2008, incident due to the advanced degenerative changes as well as meniscal tears of the right knee prior to July 28, 2008. (RX5) Dr. D'Silva reviewed MRIs from both before and after the incident on July 28, 2008. He specifically noted Petitioner suffered from advanced degenerative arthritis of his right knee, that it was progressive, and was confirmed clinically and on multiple MRIs and clinically and in arthroscopic surgery. (*Id.* at 2) Dr. D'Silva opined:

> Recommendation for right knee arthroscopy with debridement of meniscus as well as requested Supartz injections into both knees are unrelated to his 7/28/2008 injury. This is based on but not limited to the records provided to me which demonstrated advanced degenerative changes as well as meniscal tears of his right knee prior to the injury of 7/28/2008. Arthroscopic right knee surgery in November 2007 revealed a medial meniscal tear with loose body, grade III/IV chondral changes of the medial femoral condyle, and grade II/III changes of the patellofemoral joint. These findings *are* consistent with advanced osteoarthritis.
>
> Therefore, it is my opinion that Mr. Cooper, prior to his injury of 2008, suffered from advanced degenerative arthritis of his right knee. This condition was progressive and had been confirmed not only on multiple MRIs prior to 2008, but also clinically as well as arthroscopically. It is also my opinion that he has continued to have temporary exacerbations of his right knee pain, which is consistent with the natural history of osteoarthritis. Any subsequent treatment, whether surgical or non-surgical, is unrelated to the injury of 2008. (RX5, 1, 2)

Dr. D'Silva authored a final opinion report on January 21, 2015. (RX 6) Dr. D'Silva noted that Dr. Nigro, who had taken over Dr. Tansey's practice, declared that Petitioner was at MMI on February 21, 2014 with no surgery recommended. He reported that he was ordered a brace, given a prescription for formal therapy and to get Supartz injections. Petitioner reported radicular symptoms in the left lower extremity and intermittent instability with his left knee. Dr. D'Silva noted evidence of symptom magnification in that his knee pain is reproduced with palpation of the distal tibial shaft as well as with eversion and inversion of the foot where he complained of pain at the attachment of the quadriceps tendon into the patella. He has healing scabs over his anterior left knee, which she reports occurred after he fell. He had no effusion and no increased warmth. He was ligamentously stable. There was no hip irritability and he was neurovascularly intact. There was no pain over the patellar tendon, tibial tubercle, or pes bursa or IT band consistent with advanced diffuse arthritis of the left knee.

Dr. D'Silva reviewed both the left knee MRI report from February 18, 2014 and the left knee MRI from October 6, 2014. Dr. D'Silva documents that a February 21, 2014, office note from Dr. Nigro states:

> I do not believe that arthroscopic treatment of his left knee would be likely to make his left knee much better in the absence of significant mechanical symptoms, as such I believe he is at MMI for both his knees. I recommend that he have an FCE. I believe that he has a degenerative condition in both his knees and at this point they may necessitate further for flare ups, which he can certainly come back for in the future, but I would not recommend any current acute treatment. (RX6, 3)

It appears that Dr. Nigro's February 21, 2014, office note is conspicuously missing from the record, however, the bill in Petitioner's Exhibit 4 included an office visit on February 21, 2014. (PX4, 33) The Commission finds further corroboration of this note in the referral for an FCE by Dr. Nigro. (PX4, 256) The FCE was performed on March 18, 2015, and Dr. Nigro thereafter

opined that Petitioner could work per the FCE restrictions. (PX4, 267) Further, the FCE stated that Petitioner was referred by Dr. Nigro and that he was at MMI. (PX9)

On January 21, 2015, after the FCE, Dr. D'Silva again opined Petitioner needed "no further treatment to his left knee as directly related to the July 28, 2008, injury" as Petitioner had continued ongoing left knee pain going back to an ACL construction in 1984 and the surgical report from April 8, 2009, showed advanced posttraumatic arthritis of the left knee. Also at surgery his medial meniscus pathology was addressed. Therefore, the subsequent medial meniscal tear seen on the MRI 's of February 18th, 2014, and October 6, 2014, occurred after his 2009 surgery. It was Dr. D'Silva's opinion then and still remains that as of January 26, 2011, any further treatment related to the left knee was related to his post traumatic arthritis and it is unrelated to his event of July 28th, 2008. (*Id.* at 4)

On October 20, 2011, Petitioner was seen by Dr. Christopher Bergin at the request of the Respondent to examine Petitioner's back. (RX8) Petitioner reported stepping onto a canopy that gave way, and he injured his knees and his back began to hurt. He did mention a prior injury to his low back before July 28, 2008. A portion of page six of the report appears to be missing. Dr. Bergin opined that Petitioner's condition was "just degenerative in nature," but that he would like to review prior treatment records. (*Id.* at 7)

Dr. Bergin again saw Petitioner for an IME on April 15, 2015, and he requested to see MRI films. (RX9) Dr. Bergin authored an addendum report dated May 21, 2015, where he reviewed an MRI report from December 13, 2006, which "showed a shallow right foraminal disc herniation at L4-5 and disc desiccation at L5-S1 with a central annular tear." (RX10, 1) He also reviewed an MRI from September 24, 2008, which showed bulging at L4-5 causing compression on the right lateral recess and mild right foraminal compromise. He also reviewed an MRI from July 12, 2011, with "some degenerative disc changes which are mild at L4-5 and L5-S1. There is a small disc bulge at L4-5 off to the right side creating mild foraminal stenosis. There is a central annular bulge at L5-S1 without any significant foraminal compromise." (*Id.*) It was Dr. Bergin's opinion that the three MRIs "appear to be identical in their interpretations. Clearly there were preexisting lumbar conditions to the alleged injury on July 28, 2008." (*Id.*) It was Dr. Bergin's opinion that the treatment, while appropriate, was not causally related to the injury on July 28, 2008. (*Id.* at 2) Dr. Bergin testified by evidence deposition on November 4, 2015. His opinions remained the same. (RX7)

Conclusions of Law

Petitioner's Credibility

The Commission takes note that on the day of accident, July 28, 2008, the Concentra post accident lumbar spine physical documented that Petitioner exhibited a positive Waddell's overreaction and indeterminate SLR test and consistency, which clearly gave the medical examiner pause. (PX3, 5) On January 21, 2015, Dr. D'Silva opined that Petitioner exhibited symptom magnification. (RX6, 4) On May 21, 2015, Dr. Bergin found Petitioner to have intentionally failed to share the fact that he had a pre-existing lumbar back condition having had a 2006 lumbar spine MRI and diagnosed disc herniation at L4-L5, disc dessication at L5-S1 with a central annular tear and Petitioner

had undergone lumbar epidural steroid injections as recently as January 2008, six months prior to the subject accident. In failing to disclose this diagnosis and treatment, Dr. Bergin opined Petitioner had done so to deceive the fact that he had this preexisting condition and recent treatment just proximate to the injury. (RX10,

Moreover, the Commission finds significant damage to Petitioner's credibility with his testimony that he was accidentally kicked by a neighbor causing fractures in his left leg. (T. 43) The medical records from the E.R. on February 8, 2018, are clear that the multiple fractures in his left leg were from an altercation. (PX15, 105 "Patient reports that he was in a fight with someone yesterday and was kicked in the knee…He does not want to divulge any further details of the fight.") These inconsistencies and omissions taint Petitioner's credibility. The Commission relies on the medical records and the evidence in its entirety in drawing the following conclusions.

Issue F, Whether Petitioner's Current Condition Of Ill-Being Is Causally Related To The Injury

The Commission gives Dr. Fletcher's opinion lesser weight than Dr. D'Silva's and Dr. Bergin's, given his specialty is occupational injuries, not orthopedics and there is a plethora of orthopedic treatment and opinions in this case. Further, Dr. Fletcher based his final opinions on post intervening accident restrictions, nonetheless still agreed Petitioner could work at the medium heavy physical demand level, with restrictions of no work on ladders or uneven surfaces. (PX18, 3)

The Commission notes Dr. Richard Sherman's opinions on behalf of Petitioner were given in 2012 and the second report dated April 12, 2016, was after Dr. Nigro released Petitioner at MMI. Dr. Sherman did not agree with Dr. D'Silva or Dr. Bergin on causal connection, finding the bilateral knees and low back conditions causally related, and maintained the March 2015 FCE showed Petitioner was capable of working only at the medium physical demand level versus the heavy physical demand level. The Commission notes the FCE actually stated that Petitioner could work at a heavy physical demand level but acknowledged restrictions in bending, climbing, stooping, etc.

Dr. Sherman reviewed the July 2011 lumbar spine MRI, however, based his opinions on the subject accident causing an aggravation to his preexisting lumbar spine condition because he was working before the accident. The Commission notes that Petitioner was working for only three months prior to this incident. The Commission rejects that chain of event opinion as Petitioner had a lumbar spine epidural steroid injection (ESI) in January 2008 which would have enabled him to work. Petitioner never had any back treatment after the July 2008 accident until he required another lumbar spine ESI. The Commission also rejects Dr. Sherman's causal opinion because Dr. Sherman did not compare the three lumbar spine MRIs from December 2006, September 2007 and July 2011 to explain how they differ nor did he testify. Further, Dr. Charuk treated the back condition as one and the same pre and post accident as explained below.

Left Leg

Dr. D'Silva saw Petitioner and/or reviewed medical and other records on four occasions for independent medical evaluations (IMEs) pursuant to §12 and authored four opinion reports on

January 26, 2011, June 21, 2011, July 29, 2012, and January 21, 2015. In the first report, Dr. D'Silva opined "that the claimant's present left knee condition is unrelated to the injury of 7/28/2008. This is based on the fact that his present complaints are consistent with his known posttraumatic arthritis of the left knee. If the injury of July 2008 had caused damage to the underlying bone, then the MRI would have been noteworthy for bony damage (which takes four to six months to resolve on MRI) and these MRIs were ordered less than two months from the date of injury." Dr. D'Silva further opined that in regards to the injury of July 28, 2008, he has reached maximum medical improvement, however, he does have underlying, advanced post-traumatic arthritis of the left knee, has failed conservative management and would be a candidate for left total knee replacement surgery. He recommended an updated functional capacity evaluation to determine his work capabilities at this time. (RX3, 7,8)

Dr. D'Silva further opined on January 21, 2015, after review of Petitioner's treating records, that Petitioner needs no further treatment to his left knee as directly related to the July 28, 2008, injury. "The basis for this opinion is that, as of the time of the injury according to his treating physician, he had continued ongoing left knee pain, refractory to nonoperative measures since undergoing an ACL reconstruction back in 1984. The surgery performed by Dr. Tansey in April 8, 2009, demonstrated he had already developed advanced posttraumatic arthritis of this left knee. Also at surgery, his medial meniscus pathology was addressed. Therefore, the subsequent medial meniscal tear seen on the MRIs of 2/18/14 and 10/06/14 occurred after this 2009 surgery." (RX6, 3)

Dr. D'Silva went on to opine that in his opinion Petitioner's current complaints are unrelated to the July 28, 2008, fall and are directly related to the injury in 1980s, subsequent reconstruction of his ACL in 1984, with the subsequent development of posttraumatic arthritis. His present diagnosis as it relates to the July 28, 2008, injury is healed contusion of the left knee. Dr. D'Silva opined that as he had noted in the above body of his report, Petitioner had already developed advanced posttraumatic arthritis at that time of the July 28, 2008, injury, which is directly related to his present symptomatology. "At this point in time, in light of the fact that the patient is a poor historian and demonstrates evidence of symptom magnification, I would recommend an FCE to determine his ability to perform partial limited or unrestricted duties. It is my opinion that Mr. Cooper had attained maximum medical improvement as directly related to the July 28, 2008, injury prior to his visit prior to his IME of 2011." Finally, Dr. D'Silva opined that Petitioner has no disability as it directly relates to the July 28, 2008, injury. (RX6, 4)

Dr. D'Silva also documented that Petitioner's treating doctor had opined that Petitioner was at MMI for his bilateral knees on February 21, 2014. Both Dr. D'Silva and Dr. Nigro recommended an FCE. (RX6, PX)

After the February 8, 2018, intervening accident, the x-ray diagnostic results confirmed the following:

1. Comminuted fracture of proximal to mid shaft of the tibia, at least four fracture fragments, considerable lateral angulation deformity, maximal displacement about 2.7

centimeters (cm).
2. Comminuted fracture of the tibial plateau fractures are present, lateral plateau fractures are present, lateral plateau fractures more obvious as it demonstrates up to 1.4 cm displacement.
3. Comminuted fracture of the proximal fibula separation of two 2 cm.
4. Spiral fracture of the distal fibula shaft vertical length of about 7 cm and maximal displacement of about 4 mm. (PX15, 164)

The February 9, 2018, operative procedures were listed as:

1. Open reduction internal fixation left bicondylar tibial plateau fracture.
2. Intramedullary nail fixation comminuted left tibia shaft fracture.
3. Open reduction internal fixation left displaced distal fibula fracture. (PX15, 109)

The technique portion of the operative note states, in pertinent part, "Patient has had multiple surgeries to the knee he had a lot of scar tissue and the tendon was not very mobile for a medial parapatellar arthrotomy incision and I did not want that interfering with getting the starting position of the guidewire for placement of the nail which is 1 (sic) of the critical portions of the surgery." *Id.*

The consent portion of the operative report states:

> I had a lengthy conversation with the patient, reviewing his radiographs, diagnosis and treatment options. He developed post traumatic arthritis of the left knee due to having multiple injuries most recent a year ago where he suffered multiple fractures to the left leg. **His fracture went on to heal but has accelerated his knee arthritis and he also started to develop a varus knee. The patient was given his treatment options. (emphasis added)** I recommended the above procedure risk and benefits of the procedure were discussed with the patient at great length. In my office, he made an informed decision to proceed with the above recommended procedure. Due to him having the implants for his fracture fixation in order to do the total knee replacement definitely the proximal tibial plate needed to be removed possibly the intramedullary nail. He made an informed decision to proceed with the above recommended procedure. *Id.*

The Commission finds this February 8, 2018, incident was a significant intervening accident as it relates to the acceleration of Petitioner's left knee arthritis and need for a left total knee arthroplasty.

The Commission, therefore, relies on Dr. D'Silva's January 21, 2015, note that Petitioner's treating doctor opined that Petitioner was at MMI for his left knee as it relates to the subject work accident on February 21, 2014. After the February 2018 altercation injury, Petitioner underwent a left total knee replacement surgery on March 20, 2019. (PX15, 621) Subsequently he was also involved in a motor vehicle accident on or about August 20, 2019. (PX16, 190) An x-ray of Petitioner's right knee at that time showed "postsurgical changes relating to prior tibial and distal fibular fracture fixation with rod and screws and a total left knee arthroplasty. The inferior most

superior screw is deformed, likely fractured." (PX16, 201) "Otherwise, the hardware appears intact without definite findings to suggest loosening." The Commission finds that Petitioner hurt his left knee in the motor vehicle accident in August 2019, albeit to a lesser degree, however, contributing to his present left knee condition of ill-being. (PX16, 201)

The Commission further finds that Dr. D'Silva's opinion that Petitioner's bilateral knees are unrelated to the work accident is credible, however, given the left knee had no immediate pre-accident surgery as compared to the right, the Commission finds the left knee condition is causally related until February 21, 2014, when, in Dr. Nigro's opinion, Petitioner was at MMI despite receiving Supartz injections administered thereafter. The Commission further finds that Petitioner's left knee condition was later aggravated and accelerated by the February 8, 2018, intervening accident breaking the causal connection to the Petitioner's work accident on July 28, 2008.

Right Leg

Dr. D'Silva saw Petitioner and/or reviewed medical and other records on four occasions for independent medical evaluations (IMEs) pursuant to §12 and authored four opinion reports on January 26, 2011, June 21, 2011, July 29, 2012, and January 21, 2015. Having the benefit of all the treating records, the Commission relies on Dr. D'Silva's July 29, 2012, opinion that the Petitioner's right knee condition is unrelated to the July 28, 2008, considering the fact that Petitioner underwent right knee surgery in December 2007, only seven months prior to the subject incident and he returned to work only three months prior to the subject work accident. The Commission acknowledges that Petitioner had gone back to work, however, the Commission finds that Dr. D'Silva, in revieing the treatment records, credibly notes that the medical records confirm the natural history progression of osteoarthritis.

On July 29, 2012, Dr. D'Silva opined that Petitioner's recommendation for right knee arthroscopy with debridement of the meniscus as well as requested Supartz injections into both knees are unrelated to his July 28, 2008, injury. The records demonstrated advanced degenerative changes as well as meniscal tears of his right knee prior to the injury of July 28, 2008. Petitioner's condition was progressive and had been confirmed on multiple MRIs prior to 2008, clinically and arthroscopically. He continued to have temporary exacerbations of his right knee pain, which is consistent with the natural history of osteoarthritis. Any subsequent treatment, surgical or non-surgical, is unrelated to the July 2008 injury. (RX5, 1, 2)

The Petitioner received only Supartz injections into his right knee from January 9, 2009 through February 9, 2009, more than a year after the subject incident. He then had a cortisone injection on May 22, 2009 and June 4, 2010. He had Supartz injections into the right knee from April 15, 2011 through May 20, 2011. On May 31, 2011 Petitioner underwent an FCE that was valid. The Commission finds that given his extensive pre-existing osteoarthritis, the Petitioner would have required these injections and thus are unrelated to the incident on July 28, 2008. Further, Dr. Nigro examined Petitioner and authored an "Onset & Course" letter. (PX4, 228) Dr. Nigro opined that Petitioner "is not a candidate for total knee replacement at this point." A right knee partial medial meniscectomy and chondroplasty of the medial femoral condyle was recommended. Dr. Nigro proceeded with arthroscopic right knee surgery in 2013 consisting of a

right partial medical meniscectomy and chondroplasty of the right medial femoral condyle. (PX4) The Commission finds that the right knee surgery was not causally related to the Petitioner's work accident on July 29, 2008.

Lumbar Spine

The Commission finds Dr. Bergin's opinion is more credible than Dr. Sherman's or Dr. Fletcher's opinions and comports with Dr. Charuk's treatment of Petitioner's lumbar spine condition pre and post accident. Dr. Christopher Bergin authored three reports pursuant to section 12 evaluations of Petitioner and/or records reviewed on October 20, 2011, April 15, 2015, and May 21, 2015. His May 21, 2015, report states the following:

> I reviewed an MRI of the lumbar spine from Southwest Hospital MRI from July 12, 2011. There are some degenerative disk changes which are mild L 4-5 and L5-S1. There is a small disc bulge at L4-5 off to the right side creating mild foraminal stenosis. There is central annular bulge at L5-S1 without any significant foraminal compromise. This is in agreement with the radiologist's report. I compared my interpretation and that of the radiologist with the previous MRI from September 24, 2008 from open MRI and CT center which shows bulging at L4-5 causing compression on the right lateral recess and mild right foraminal compromise. This is basically an identical appearance. Clearly there's been no progression of the degenerative process in the three years between MRIs.
>
> I reviewed my IME that was done on October 20th, 2011 where there is a reference to previous treatment in 2007 by Dr. Charuk for low back pain and right lower extremity pain for which he had epidurals in 2007 and early 2008. Dr. Gleason (performed an) IME where there was an interpretation of an MRI from National Medical Imaging on December 13, 2006, which showed a shallow right foraminal disc herniation at L4- 5 and disc desiccation at L5- S1 with a central annular tear.
>
> All three MRIs appear to be identical in their interpretations. Clearly, there were pre-existing lumbar conditions to the alleged injury on July 28, 2008.
>
> It is my opinion that Mr. Cooper 's condition was pre-existing to the July 28, 2008, injury and that he received treatment according to the medical records at least up until January 2008 by Dr. Charuk. The patient failed to share with me on my previous IME or in this IME that he had had this treatment. It appears to me that this is intentionally done to deceive the fact that he had this pre-existing condition and recent treatment just proximate to the injury. I feel that the patient at most sustained a sprain or strain to his lumbar spine and did not aggravate or accelerate the degenerative process that was pre-existing in his lumbar spine. Appropriate treatment resume therapy for his lower back 2 to 3 days for 4 to 6 weeks with return to work without restrictions from a lumbar spine standpoint. He had pre-existing degenerative disk disease at L4- L5 and L5-S1. He has low back pain and radicular symptoms pre-existing the injury with significant amounts of

> treatment including epidurals just months before the alleged injury of July 28, 2008. He can work full duty without restriction in terms of any injury that may have occurred to his low back on July 28th, 2008. He would have reached MMI 6 weeks after the alleged injury in terms of anything that might have occurred on July 28, 2008, as explained above. I feel that at most he had a sprain or strain. I do not feel the patient is in any way disabled from a lumbar spine standpoint related to the July 28, 2008, alleged injury.

The Commission further finds that Petitioner sustained a lumbar back strain resolving within 4-6 weeks pursuant to Dr. Bergin's opinion. The lumbar spine MRIs appear to show the same condition both before and after the subject accident, and he had the same treatment pre and post accident. As Dr. Charuk documented in his December 8, 2008 office note:

> Pain dropped by > 50%. He had a Functional Capacity Evaluation, which would put him at light-to-medium heavy level work. He can RTW with those restrictions. He is going to see Dr. Tansey for his knee. We will follow up on an as needed basis. At evaluation today the patient has had 3 ESIs in the last 12 months, December 2007, January 2008 and October 31, 2008. He states his visual analog scale of pain ranges from a 3/10 to a 6/10. His pain in his R LE is resolved. He has negative SLR and negative slump sign noted today.

Therefore, the Commission finds the Petitioner's lower back condition was resolved by December 8, 2008.

Issue G, Petitioner's Earnings

The Commission agrees with the Arbitrator and relies on Respondent's Exhibit 11 in determining the average weekly wage. Petitioner testified that overtime was mandatory (See T. 21) and the Commission will include overtime amounts in the calculation at the straight rate. The Commission relies on 8 pay periods (16 weeks of pay) beginning in April 2008. Although none of the pay periods are for 80 hours (40 hours per week), Petitioner did not testify that he was working 40 hours per week. He only stated that he was working "full duty" or "full time." Further, no evidence was presented in the pay information submitted by both parties to suggest what "full time" means. As a result, the Commission will not apply a calculation based on "weeks and parts thereof." Petitioner earned $18,893.15 in wages over 8 pay periods (16 weeks) which corresponds to an average weekly wage of $1,180.82, a TTD rate of $787.21, and a PPD rate at the maximum rate of $664.72.

Issue J, Whether The Medical Services That Were Provided To Petitioner Were Reasonable And Necessary And Whether Respondent Has Paid All Appropriate Charges For All Reasonable And Necessary Medical Services

As the Commission has found Petitioner's condition of ill-being for the left knee was terminated by the February 8, 2018 intervening accident, the Commission finds that Respondent shall pay all appropriate charges for all reasonable and necessary medical services through March 8, 2015, for the Petitioner's left knee treatment and through December 8, 2008 for reasonable and necessary medical bills related to Petitioner's treatment for his lumbar spine pursuant to Sections

8(a) and 8.2 of the Act. No additional bills are awarded. Respondent will receive credit for all bills paid and, per stipulation of the parties, Respondent shall pay the bills directly to the providers. (T. 4)

Issue K, Temporary Disability

Petitioner testified that he was paid TTD from the date of accident until February 18, 2015. (T. 29) Given the Commission's finding that the lumbar spine treatment was causally related to the subject work accident until December 8, 2008, and the left knee was causally related to the subject work accident until March 18, 2015, the date of the FCE and when Dr. Nigro declared Petitioner was at MMI. The Commission finds that this FCE was the last measure of Petitioner's ability to work before the intervening accident, thus the Commission finds Petitioner is entitled to TTD commencing July 29, 2008 through March 18, 2015.

Issue L, The Nature And Extent Of The Injury

The Commission finds that Petitioner is entitled to an award under §8(d)(2) for the following reasons:

The Act provides for a wage-differential award under §8(d)(1) at the time of claimant's injury:

> If, after the accidental injury has been sustained, the employee as a result thereof becomes partially incapacitated from pursuing his usual and customary line of employment, he shall, except in cases compensated under the specific schedule set forth in paragraph (e) of this Section, receive compensation for the duration of his disability, subject to the limitations as to maximum amounts fixed in paragraph (b) of this Section, equal to 66-2/3% of the difference between the average amount which he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident. 820 ILCS 305/8(d)(1) (West 2008).

In *Crittenden*, the court outlined an injured workers burden to prove entitlement to receive an award under §8(d)(1):

> To qualify for a wage differential under section 8(d)(1) of the Act (820 ILCS 305/8(d)(1) (West 2012)), a claimant must prove (1) partial incapacity which prevents him from pursuing his 'usual and customary line of employment' and (2) an impairment of earnings." *Gallianetti v. Illinois Industrial Comm'n*, 315 Ill. App. 3d 721, 730, 734 N.E.2d 482, 248 Ill. Dec. 554 (2000). In order to prove an impairment of earnings, a claimant must prove his actual earnings for a substantial period before the accident and after he returns to work, or in the event that he has not returned to work, he must prove what he is able to earn in some suitable employment. *Id. Crittenden v. Ill. Workers' Comp. Comm'n,* 2017 IL App (1st) 160002WC, P20, 73 N.E.3d 654, 659, 2017 Ill. App. LEXIS 104, *12, 411 Ill. Dec. 570, 575.

> The Commission finds that Petitioner sustained his burden of proving that he cannot work at his usual and customary line of employment, however, he has not sustained his burden of proving an impairment in earnings. To do so, Petitioner must prove a reduction in his earning capacity. Although Respondent terminated TTD benefits on February 18, 2015, Petitioner failed to prove his earning capacity because he never obtained a meeting with a vocational counselor until after he was receiving social security disability and after the intervening accident. (PX19, 7) Therefore, Petitioner had taken himself out of the job market. The Vocamotive report authored by Joe Belmonte was completed in anticipation of litigation, and dismissed Petitioner's previous employment skills as a collections clerk and return-item clerk, which would have likely broadened the scope of possible employment opportunities. By never engaging in a job search, Petitioner never established what he is capable of earning. The Commission finds a similar fact pattern in *Euclid Bev. v. Ill. Workers' Comp. Comm'n*, 2019 IL App (2d) 180090WC, 124 N.E.3d 1027, 2019 Ill. App. LEXIS 103, 429 Ill. Dec. 517. In *Euclid Beverage*, the court upheld the circuit court's setting aside the Illinois Workers' Compensation Commission's (Commission) decision to award maintenance benefits, finding that the record did not demonstrate that the claimant participated in a vocational rehabilitation program or self-directed job search between April 25, 2012, and June 8, 2015, and confirming the Commission's decision to award permanent partial disability benefits as a percentage of the person as a whole. *Id.* ¶ 1

The Commission further finds that Petitioner failed to meet his burden of proving he was permanently or totally disabled.

> An injured employee can establish his entitlement to PTD benefits under the Act in one of three ways, namely: by a preponderance of medical evidence; by showing a diligent but unsuccessful job search; or by demonstrating that, because of age, training, education, experience, and condition, there are no available jobs for a person in his circumstance. *Federal Marine Terminals, Inc. v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 1117, 1129, 864 N.E.2d 838, 309 Ill. Dec. 597 (2007). In *Ceco Corp. v. Industrial Comm'n*, 95 Ill. 2d 278, 286-87, 447 N.E.2d 842, 69 Ill. Dec. 407 (1983), the supreme court held that: "an employee is totally and permanently disabled when he 'is unable to make some contribution to the work force sufficient to justify the payment of wages.' [Citations]. The claimant [***16] need not, however, be reduced to total physical incapacity before a total permanent disability award maybe granted. [Citations]. Rather, a person is totally disabled when he is incapable of performing services except those for which there is no reasonable stable market. [Citation]. Conversely, an employee is not entitled to total and permanent disability compensation if he is qualified for and capable of obtaining gainful employment without serious risk to his health or life. [Citation]. In determining a claimant's employment potential, his age, training, education, and experience should be taken into account. *A.M. T. C. of Illinois, Inc. v. Industrial Com*. (1979), 77 Ill. 2d 482, 489, 397 N.E.2d 804, 34 Ill. Dec. 132; *E.R.*

> *Moore Co. v. Industrial Com*. (1978), 71 Ill. 2d 353, 362, 376 N.E.2d 206, 17 Ill. Dec. 207.
> In considering the propriety of a permanent and total disability award, this court has recently stated:
> 'Under *A.M. T. C*, if the claimant's disability is limited in nature so that he is not obviously unemployable, or if there is no medical evidence to support a claim of total disability, the burden is upon the claimant to establish the unavailability of employment to a person in his circumstances. However, once the employee has initially established [***17] that he falls in what has been termed the "odd-lot" category (one who, though not altogether incapacitated for work, is so handicapped that he will not be employed regularly in any well-known branch of the labor market [citation]), then the burden shifts to the employer to show that some kind of suitable work is regularly and continuously available to the claimant [citation].' [Citations]." *Prof'l Transp., Inc. v. Ill. Workers' Comp. Comm'n*, 2012 IL App (3d) 100783WC, P34, 966 N.E.2d 40, 47, 2012 Ill. App. LEXIS 33, *15-17, 358 Ill. Dec. 855, 862, 2012 WL 222456.

The Petitioner has failed to prove he is entitled to an award of permanent total disability as a result of the accident on July 28, 2008. Petitioner had no medical opinion that he could not work in some capacity as a result of this accident. Petitioner also failed to prove that given his restrictions there is no viable stable labor market and due to his age, skills, training, and work injury, he will not be employed in a well-known branch of the labor market despite the Vocamotive report that was authored after his intervening accident in 2018 and after he took himself out of the job market by his application and award of social security disability. (PX19, 7) Further, the Vocamotive report established that Petitioner had little restrictions that would prevent him from working. He had no driving limitations, was not taking medication, he had no assistive gait devices, he had sitting tolerance for approximately 30 minutes, standing of 60 minutes, he agreed with the FCE which indicated lifting capability of 55-60 pounds, he could walk for 40 minutes and up to a mile, he was a good student in high school, and was a high school graduate with approximately 1-1/2 years of college. (PX19, 2-5)

He continued to try to participate in bowling. (PX19, 6) His previous work history or background included employment in the banking industry for five to six years and he had five to six years of experience in various office duties working for a temporary employment agency, with limited payroll duties, however, Petitioner chose to present no evidence of a diligent job search. (PX19, 7) Therefore, the Commission awards Petitioner 50% loss of use of the person under §8(d)2 for loss of trade.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on April 28, 2022, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $787.21 per week for a period of 346-2/7 weeks commencing July 29, 2008, through March 18, 2015, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent shall be given a credit of $357,696.50 for TTD paid plus $7,000.00 for other

benefits, for a total credit of $364,696.50.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $664.72 (max rate) per week for a period of 250 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused 50% loss of use of the person.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay for reasonable and necessary medical treatment related to Petitioner's left leg through February 8 2018, and for Petitioner's lumbar spine commencing July 28, 2008 through December 8, 2008, pursuant to §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 24, 2023

KAD/bsd
O022323
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/s/*Kathryn A. Doerries*
Kathryn A. Doerries

s/*Maria E. Portela*
Maria E. Portela

This case was scheduled for Oral Arguments on February 23, 2023, before a three-member panel of the Commission including members Kathryn A. Doerries, Maria E. Portela and Thomas J. Tyrrell, at which time Oral Arguments were heard. Subsequent to Oral Arguments and prior to the departure of Commissioner Tyrrell on March 17, 2023, the panel members had reached agreement as to the results set forth in this decision and opinion, as evidenced by the internal Decision worksheet initialed by the entire three-member panel, but no formal written decision was signed and issued.

Although I was not a member of the panel in question at the time Oral Arguments were heard and I did not participate in the agreement reached by the panel members in this case, I have reviewed the Decision worksheet showing how Commissioner Tyrrell voted in this case, as well as the provisions of the Supreme Court in *Zeigler v. Industrial Commission*, 51 Ill.2d 342, 281 N.E.2d 342 (1972), which authorizes signature of a Decision by a member of the Commission who

did not participate in the Decision. Accordingly, I am signing this Decision in order that it may issue.

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC005060
Case Name	COOPER, CLYDE v. CHICAGO TRANSIT AUTHORITY
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Muriel Collison
Respondent Attorney	Elizabeth Meyer

DATE FILED: 4/28/2022

THE INTEREST RATE FOR THE WEEK OF APRIL 26, 2022 1.37%

/s/ Rachael Sinnen, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Cook**)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Clyde Cooper
Employee/Petitioner

v.

Chicago Transit Authority
Employer/Respondent

Case # **12** WC **005060**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **2.23.22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [ ] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [x] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [x] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [x] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [x] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On **7.28.08**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**18,893.15 /16 wks**; the average weekly wage was $**1,180.82**.

On the date of accident, Petitioner was **41** years of age, ***single*** with **2** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**357,696.50** for TTD, $**0** for TPD, $**0** for maintenance, and $**7,000.00** for other benefits, for a total credit of $**364,696.50**.

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $787.21/week for 130 2/7 weeks, commencing 7.28.08 through 1.26.11, as provided in Section 8(b) of the Act.

The Arbitrator makes an award of 15% loss of use of the left leg under Section 8(e)(12), which corresponds to 75 weeks of permanent partial disability benefits at a weekly rate of $664.72. However, Petitioner has already received a total of 25% loss of use of the left leg from prior settlements (IWCC case numbers 96WC27768, 03WC32213, and 06WC14041).

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

APRIL 28, 2022

ignature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Clyde Cooper, Jr.	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 12WC5060
Chicago Transit Authority	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on February 23, 2022, in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing. Issues in dispute include causation, average weekly wage "AWW," unpaid medical bills, temporary total disability "TTD" benefits, temporary partial disability "TPD" benefits, and the nature and extent of the injury. (Arbitrator's Exhibit "Ax" 1)

Petitioner's Job Duties

Petitioner started working for the CTA in 2004 as a Union Iron Worker. (Transcript "Tr" 9) His duties included pulling rebar, pulling girders, working on any type of steel structure that holds the Dan Ryan tracks in place. He used many tools including a buster, (a power driven, 50lb, machine held on your knee or hip to support it, used to pop off rivets) wrenches and several pneumatic tools. (Tr 10) Petitioner classified his job as very heavy. He was required to lift a minimum of 100lbs by himself and he had to be able to lift 250-300lbs together with a co-worker. He typically lifted steel girders and beams. (Tr 11) Petitioner testified that as a journeyman he made $40.25 per hour effective June 1, 2008. (Tr 12)

Petitioner's Prior Condition

Petitioner testified to prior injuries he had sustained. (Tr 13) He injured his left ACL in high school. In September 2001, he tripped injuring his right leg. (Tr 14-15) In August of 1995, he injured his left knee. (Tr 57) In October of 2002, he injured both legs. (Tr 60) In August of 2006, he injured both knees and his back while working for Respondent resulting in injections and surgery on his right knee in December 2007. He was off work for 3-4 months and returned to work full duty in April of 2008 and even worked overtime. (Tr 17-19) Petitioner testified he was able to do his job duties 100% during the months prior to his accident. (Tr 22)

Petitioner's Alleged July 28, 2008, Work Accident

On July 28, 2008, Petitioner was busting a girder at Wright College when he stepped off the scaffolding on to a canopy, which is an overhead protection device or bridge that keeps debris from falling. When he stepped onto the canopy and started to bust the girder, with a buster, a train passed by overhead causing the canopy to buckle and a steel x-bracing fell and hit his left knee. The bracing weighed at least 75-100lbs. (Tr 24-25) When the x-bracing hit his knee, he immediately fell and called out to his foreman and told him he was hurt. He was instructed to finish the job. Petitioner got up and started busting the rest of the girder supporting the buster on the right. (Tr 26) Another train came from the opposite direction again causing the canopy to buckle again and the other x-bracing fell hitting his right knee. Petitioner fell and his back popped. He could not move. (Tr 27)

Medical Treatment

Chicago Fire Department came and removed Petitioner off the canopy with their lift. (Tr 27, Petitioner's Exhibit "Pet. Ex." 1) Petitioner gave a history that he was "moving off of scaffle [sic] and it shifted . . . also said he twisted his knees." (Pet. Ex. 1, pg. 3)

Petitioner was taken to Advocate Illinois Masonic Hospital that same day. Petitioner gave a history that he "was standing on scaffold, transferred to canopy which gave way, as patient attempting to get back onto scaffold twisted back leading to injury. Patient states he felt a sharp pain radiated from lower back to both knees." (Pet. Ex. 2 pg. 15) Petitioner was given pain medication and x-rays were taken. Petitioner was discharged and told to follow up with his primary doctor and an orthopedic specialist. (Pet. Ex. 2 pg. 16)

On July 29, 2008, Petitioner presented to Concentra Medical Center. It was noted that Petitioner was a 41-year-old male employee of CTA West Shops who complained about his leg which was injured on July 28, 2008. Petitioner stated, "I stepped on to a canopy from the scaffold, hurt both knees & tried to keep working then picked up buster & hurt back, both knees & back." (Pet. Ex. 3 pg. 3) It was further noted that Petitioner jumped off from a scaffold to the canopy about 6ft above yesterday and the canopy buckled, and he noted pain discomfort over both knees on the landing. Petitioner then claimed he was lifting a 50lb buster and noted pain discomfort over his lower back. Petitioner rated his pain as an 8 out of 10. The pain did not radiate. (Pet. Ex. 3 pg. 3) Past medical history included right knee medial meniscus arthroscopy in December 2007 and a left knee ACL reconstruction in 1983. Physical examination showed decreased range of motion and positive Waddell's overreaction. (Pet. Ex. 3 pg. 5) Petitioner was diagnosed with bilateral knee strains and a lumbar strain. Petitioner refused medication. Petitioner was given work restrictions and Petitioner stated he would follow up with his own orthopedic. (Pet. Ex. 3 pg. 6)

Petitioner testified he was paid TTD during this time and until February 18, 2015. (Tr 29)

Petitioner followed up at Bone and Joint Physicians as he had previously treated with Dr. Tansey and Dr. Charuk. Prior to the instant work accident, Petitioner's last treatment record with Dr. Tansey was on March 14, 2008, for a routine follow up following a left knee steroid injection and status post right knee arthroscopy in December 2007. Petitioner denied having pain in either knee

at the time and reported being able to run. (Pet. Ex. 4 pg. 23) Petitioner's last visit with Dr. Charuk was on January 30, 2008, for an interlaminar epidural steroid injection. (Pet. Ex. 4 pg. 19)

For the case at hand, Petitioner presented to Dr. Tansey on August 15, 2008, reporting a twisting injury at work on July 28, 2008. He reported pain in both knees since the accident, more so on the left. Dr. Tansey ordered an MRI of the left knee. He instructed Petitioner to avoid exacerbating activities and continue Ibuprofen for pain. (Pet. Ex. 4 pg. 24) On August 19, 2008, a work restriction form from Sedgwick was filled out by Dr. Tansey indicating 90 days of rest. (Pet. Ex. 4 pg. 25)

On August 26, 2008, Petitioner started physical therapy at Ridge PT and attended physical therapy intermittently as prescribed from through May 15, 2014. (Pet. Ex. 8)

On September 24, 2008, Petitioner had an MRI of both knees and the lumbar spine. (Pet. Ex. 5 pg. 2-8) For the left knee, the MRI showed post-surgical changes from the previous ACL tear and osteoarthritis. (Pet. Ex. 4 pg. 127) The MRI of the right knee noted the possibility of a recurrent tear and osteoarthritic changes. (Pet. Ex. 4 pg. 128) The MRI of the lumbar revealed L4-L5 bulging on the right causing compression and at L5-S1, a herniation and annular tear. (Pet. Ex. 4 pg. 129)

On September 30, 2008, Petitioner followed up with Dr. Tansey complaining of bi-lateral knee and back pain. Dr. Tansey injected steroids into both knees, referred Petitioner to Dr. Charuk, prescribed continuing physical therapy and continued work restrictions. (Pet. Ex. 4 pg. 27)

On October 31, 2008, Dr. Charuk administered a right L4-L5 Trforaminal epidural injection. (Pet. Ex. 4 pg. 33) Petitioner's pain was relieved by 50% from the L4-L5 Trforaminal injection. (Pet. Ex. 4 Pg. 34)

On November 19, 2008, a valid FCE was performed, Petitioner was found to be able to perform light to medium work and Petitioner was released back to work with the restrictions outlined in the FCE. (Pet. Ex. 4 Pg. 132 and 34)

From January 9 through February 9, 2009, Petitioner received five guided Supartz injections into both knees. (Pet. Ex. 4 pg. 41, 43, 45)

On April 8, 2009, Dr. Tansey performed a left knee arthroscopy with debridement of the meniscus and cartilage. (Pet. Ex. 4 pg. 153)

On May 22, 2009, Petitioner returned to Dr. Tansey with bilateral knee pain and was given cortisone injections in both knees and told to follow up in three months. (Pet. Ex. 4 pg. 53)

On January 20, 2010, a handwritten note in Petitioner's file states, "Work Comp would like you to address MMI." (Pet. Ex. 4 pg. 55). Dr. Tansey prescribed a Bionicare machine for both knees and wrote, "at this time the patient is most likely at MMI though he will need further treatment for his knees as related to the injuries sustained at work." (Pet. Ex. 4 pg. 57) Petitioner was to follow up for consideration of additional injections.

June 4, 2010, Petitioner received cortisone injections into both knees. (Pet. Ex. 4 pg. 60)

Petitioner received five Supartz injections into the left knee from October 22, 2010, to December 3, 2010. (Pet. Ex. 4 pg. 66-71)

Petitioner received five Supartz injections into the right knee from April 15, 2011, through May 20, 2011. (Pet. Ex. 4 pg.76-80)

On May 31, 2011, Petitioner underwent another FCE that was determined to be valid and showed that Petitioner was at a light to medium physical demand level. (Pet. Ex. 4 pg. 161)

On June 17, 2011, Petitioner returned to Dr. Charuk for the first time since 2008. Dr. Charuk ordered an MRI (Pet. Ex. 4 pg. 81) that was completed on July 12, 2011. Per Dr. Charuk, the MRI showed L4-L5 bilateral foraminal stenosis, right greater than left and L5-S1 disc space narrowing with desiccation, central protrusion with moderate facet arthropathy. Dr. Charuk recommended a L4-L5 epidural injection. (Pet. Ex. 4 pg. 83)

On December 5, 2011, Petitioner returned to Dr. Tansey with bi-lateral knee pain who recommended repeat MRIs. Workers' compensation approved the right knee MRI which showed a possible repeat meniscus tear in the right knee with mild chondromalacia. (Pet. Ex. 4 pg. 89, 93, 96, 197)

A right knee partial medial meniscectomy and chondroplasty was recommended, approved, and completed on July 24, 2013. (Pet. Ex. 4 pg. 220-221)

Dr. Nigro who took over for Dr. Tansey and performed the surgery also handled Petitioner's post operative care (Pet. Ex. 4 pg. 179)

On October 18, 2013, Dr. Charuk gave Petitioner an L4-L5 lumbar interlaminar injection. (Pet. Ex. 4 pg. 199)

On March 18, 2015, Petitioner underwent his third FCE which was marked as valid and noted that Petitioner can perform 72.3% of his job. (Pet. Ex. 4 pg. 256-258, Pet. Ex. 9 pg. 4)

On June 15, 2015, Dr. Nigro gave Petitioner a cortisone injection into right knee. Dr. Nigro returned Petitioner to work with lifting restrictions as delineated in March 2015 FCE. (Pet. Ex. 4 pg. 247-249)

On June 30, 2015, 6/30/15, Dr. Charuk placed Petitioner on work restrictions and was waiting for approval for a right L4-L5, L5-S1 epidural steroid injection. (Pet. Ex. 4 pg. 251-254)

On January 12, 2016, Dr. Nigro gave Petitioner another Cortisone injection and continued work restrictions. (Pet. Ex. 4 pg. 273-275)

Petitioner's last visit with Dr. Nigro was on September 22, 2017 (Pet. Ex. 14). Petitioner stated that he could not seek medical treatment any longer as Respondent's workers compensation insurance carrier, Sedgwick, did not approve additional treatment. (Tr 37)

Petitioner's Injuries Post July 28, 2008, Work Accident

On or around February 9, 2018, Petitioner fractured his left leg during a physical altercation and treated with Dr. Chandler from Advocate Trinity Hospital. Dr. Chandler surgically repaired his left tibia, with placement of rods and screws. (Tr 43, Pet. Ex., 16) On March 20, 2019, Dr. Chandler performed a left total knee arthroplasty. (Pet. Ex. 15 pg. 621) Petitioner underwent post operative physical therapy through June 11, 2019. (Pet. Ex. 17)

In June 2009, Petitioner sustained a facial injury that impaired his vision. (Tr 42, 43) In 2014, Petitioner injured his finger. (Tr 41)

On August 23, 2019, Petitioner sustained a car accident and presented to Mercy Hospital with left knee pain. X-rays were negative for acute fracture and the knee joint demonstrated normal alignment with small joint effusion. (Pet. Ex. 16 pg. 178, 197, 201)

On November 26, 2019, Petitioner had a valid FCE that indicated he could perform 54.3% of his job. (Pet. Ex. 9 pg. 17)

Petitioner is not working and has been receiving SSDI since 2016. (Tr 39)

Petitioner's Independent Medical Examiners

Dr. Richard Sherman, a board-certified orthopedic surgeon, examined Petitioner on July 17, 2012, and again on April 12, 2016. Dr. Sherman examined Petitioner and noted he walks with a slight limp on his left leg. Dr. Sherman reviewed the MRI films of the right knee from January of 2012 and concurred that there was a tear of the medial meniscus with degenerative arthritis in the medial compartment. He also reviewed the July 2011 MRI films of the lumbar spine and opined that the films demonstrated an L4-L5 herniated disk to the right, with neural foraminal narrowing and severe facet arthritis at the L4-L5 level bilaterally. In addition, there was a central protrusion of the L5-S1 disk, with no foraminal narrowing bilaterally. (Pet. Ex. 11 pg. 5)

As Petitioner was not restricted in any way with regards to his work until the injury on July 28, 2008, Dr. Sherman opined that the July 28, 2008, accident aggravated Petitioner's preexisting arthritis and internal derangement in the bilateral knees and aggravated Petitioner's disk injuries at the L4-5 and L5-S1 levels. Dr. Sherman further opined that Petitioner was unable to perform any job that would require prolonged standing, kneeling, bending, crawling, or climbing. Dr. Sherman opined that further treatment for his knees could include arthroscopic right knee surgery, knee replacement, anti-inflammatory medication, occasional steroid injections, and occasional viscosupplementation. (Pet. Ex. 11 pg. 5)

When Dr. Sherman examined Petitioner again on April 12, 2016, he also reviewed updated medical records and Respondent's IME reports. (Pet. Ex. 11 pg. 7-8) His opinions remained unchanged. (Pet. Ex. 11 pg. 10)

Dr. David Fletcher is a board-certified occupational medical specialist who evaluated Petitioner on December 17, 2018. Dr. Fletcher opined that Petitioner needed a left knee replacement. He further stated that no additional treatment was needed for the right knee or the low back. (Pet. Ex. 18 pg. 6) In a subsequent report dated January 31, 2020, Dr. Fletcher opined that Petitioner could not return to work as an iron worker. (Pet. Ex. 18 pg. 3). Dr. Fletcher testified via evidence deposition on December 6, 2021, and his opinions remained unchanged. Dr. Fletcher opined that the treatment Petitioner received for both of his knees and his back was a result of the July 28, 2008, injury. (Pet. Ex. 18 Pg. 15,16) Dr. Fletcher denied that Petitioner demonstrated any signs of symptom magnification specifying that Petitioner did not have any Waddell's signs and gave consistent valid performances in his FCEs. (Pet. Ex. 18 pg. 20-21)

Respondent's Section 12 Examinations

Petitioner was examined by Dr. Benjamin Goldberg on August 28, 2008, at Respondent's request pursuant to Section 12 of the Act. Petitioner gave a history of stepping from a scaffold to a canopy when the canopy buckled. "His right knee popped and then his left knee hyperextended." He continued to work using a "buster" and his back started hurting him. Dr. Goldberg opined that Petitioner did suffer some sort of injury on July 28, 2008, had pre-existing arthritis of both his spine and his knees and recommended MRIs of both knees. (Respondent's Exhibit "R.Ex." 1, p. 1)

Petitioner was again examined by Dr. Goldberg on June 15, 2010. At that time, Dr. Goldberg felt the Petitioner's care had been reasonable and that he was at MMI. He noted Petitioner will need a knee replacement in the future on both knees but did not comment about causation for those surgeries. (R.Ex. 2)

Petitioner was examined by Dr. Joseph D'Silva on January 26, 2011. (R.Ex. 3) Petitioner gave a history of stepping onto a canopy that shifted, causing him to twist his left knee. When he returned to work, "his left knee buckled and then he injured his right knee and back." (Id at 2) Dr. D'Silva opined the Petitioner's left knee condition was unrelated to the incident on July 28, 2008. Dr. D'Silva opined that Petitioner's complaints were consistent with pre-existing post-traumatic arthritis of the left knee. He wrote, "[i]f the injury of July 2008 had caused damage to the underlying bone, then the MRI would have been noteworthy for bony damage (which takes four to six months to resolve on MRI) and these MRIs were ordered less than two months from the date of injury." Dr. D'Silva opined that Petitioner was at MMI for the left knee with regard to the incident on July 28, 2008 but agreed that he would need a knee replacement for his underlying pre-existing condition. He did not have an opinion on the right knee. (Id at 8)

On June 21,2011, Dr. D'Silva reviewed an FCE and confirmed that the left knee condition was unrelated to the injury of July 28, 2008, and that any pain or limitation in the FCE was unrelated. (R.Ex. 4)

On July 29, 2012, Dr. D'Silva provided another addendum and opined that a right knee arthroscopy and injections into both knees were not related to the July 28, 2008, incident due to the advanced degenerative changes as well as meniscal tears of the right knee prior to July 28, 2008. (R.Ex. 5) Dr. D'Silva reviewed MRIs from both before and after the incident on July 28, 2008. He specifically noted Petitioner suffered from advanced degenerative arthritis of his right knee, that it was progressive, and was confirmed clinically and on multiple MRIs and clinically in surgery. (Id at 2) Dr. D'Silva opined that any treatment for the right knee was not related to the July 28, 2008, injury.

Dr. D'Silva did one final IME on January 21, 2015. Dr. D'Silva again opined Petitioner needed "no further treatment to his left knee as directly related to the July 28, 2008, injury" as Petitioner had continued ongoing left knee pain going back to an ACL construction in 1984 and the surgical report from April 8, 2009, showed advanced posttraumatic arthritis of the left knee. Dr. D'Silva further noted that subsequent medial meniscus tears were seen on the MRIs of February 2014 and October 2014. (R.Ex. 6) The doctor opinion that any treatment after January 26, 2011, was unrelated to the event of July 28, 2008. (Id at 4)

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On October 20, 2011, Petitioner was seen by Dr. Christopher Bergin at the request of the Respondent to examine Petitioner's back. (R.Ex. 8) Petitioner reported stepping onto a canopy that gave way, and he injured his knees and his back began to hurt. He did mention a prior injury to his low back before July 28, 2008. A portion of page six of the report appears to be missing. Dr. Bergin opined that Petitioner's condition was "just degenerative in nature," but that he would like to review prior treatment records. (Id at 7)

Dr. Bergin again saw Petitioner for an IME on April 15, 2015 and requested to see MRI films. (R.Ex. 9) Dr. Bergin authored an addendum report dated May 21, 2015, where he reviewed an MRI report from December 13, 2006, which "showed a shallow right foraminal disc herniation at L4-5 and disc desiccation at L5-S1 with a central annular tear." (R.Ex. 10, p. 1) He also reviewed an MRI from September 24, 2008, which showed bulging at L4-5 causing compression on the right lateral recess and mild right foraminal compromise. He also reviewed an MRI from July 12, 2011, with "some degenerative disc changes which are mild at L4-5 and L5-S1. There is a small disc bulge at L4-5 off to the right side creating mild foraminal stenosis. There is a central annular bulge at L5-S1 without any significant foraminal compromise." (Id) It was Dr. Bergin's opinion that the three MRIs "appear to be identical in their interpretations. Clearly there were preexisting lumbar conditions to the alleged injury on July 28, 2008." (Id.) It was Dr. Bergin's opinion that the treatment, while appropriate, was not causally related to the injury on July 28, 2008. (Id at 2) Dr. Bergin testified by evidence deposition on November 4, 2015. His opinions remained the same. (R.Ex. 7)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

Petitioner testified that he injured both knees and his back in August of 2006 while working for Respondent and underwent injections and surgery on his right knee in December 2007. Petitioner's last known treatment for his back prior to the work accident was January 30, 2008, where he received an injection. (See Pet. Ex. 4 pg. 19) Petitioner's last known treatment for the knees was March 14, 2008, where Petitioner denied having pain in his knees and reported being able to run. (See Pet. Ex. 4 pg. 23) Petitioner testified that he returned to work full duty in April of 2008 (See Tr 17-19) The work accident in the case at hand occurred approximately 3 months later.

Petitioner testified that on July 28, 2008, he braced a buster against his left leg and the canopy buckled when a train rolled overhead. The x-bracing (that he estimated weighed 75-100 lbs.) hit his left knee causing him to fall. His boss said to keep working, so he used his right leg to brace the buster. The canopy buckled again when another train rolled overhead. The x-bracing hit Petitioner's right knee causing him to fall again. On the second fall, Petitioner popped his back. (See Tr 24-27)

Records from Chicago Fire Department the day of the accident indicate that Petitioner was "moving off of scaffle [sic] and it shifted . . . also said he twisted his knees." (Pet. Ex. 1, pg. 3) Records from Advocate Illinois Masonic Hospital on July 28, 2008, indicate that Petitioner "was standing on scaffold, transferred to canopy which gave way, as patient attempting to get back onto scaffold twisted back leading to injury." (See Pet. Ex. 2 pg. 15) Records from Concentra Medical Center on July 29, 2008, document that Petitioner stepped onto a canopy from the scaffold, hurt both knees, tried to keep working, picked up a buster and hurt his back and both knees. (See Pet. Ex. 3 pg. 3) None of Petitioner's initial treatment records document a fall, anything hitting Petitioner's knees nor a pop in his back.

When Petitioner presented to Dr. Tansey on August 15, 2008, he reported twisting his knees. (See Pet. Ex. 4 pg. 24) Nor Dr. Charuk nor Dr. Nigro obtain their own work history from Petitioner. (See Pet. Ex. 4 pg. 33, 228) There is no documentation of a fall, anything hitting Petitioner's knees nor a pop in his back.

When Petitioner was examined by Dr. Goldberg on August 28, 2008, Petitioner gave a history of stepping from a scaffold to a canopy when the canopy buckled. "His right knee popped and then his left knee hyperextended." He continued to work using a "buster" and his back started hurting him. (See R.Ex. 1, p. 1) No fall was recorded, nor anything hitting Petitioner's knees nor a pop in his back.

When Petitioner was examined by Dr. Joseph D'Silva on January 26, 2011, he reported stepping onto a canopy and twisted his left knee when the canopy shifted. When Petitioner returned to work, his left knee buckled, and he injured his right knee and back. (See R.Ex. 3 pg. 1-2) On October 20, 2011, Petitioner was seen by Dr. Bergin and reported stepping onto a canopy that gave way, and he injured his knees and his back began to hurt. Neither Dr. D'Silva nor Dr. Bergin documented that Petitioner fell, hit his knees nor pop his back.

In his July 17, 2012, report, Dr. Sherman documented that "Mr. Cooper was standing on a scaffold under the Dan Ryan train tracks when he stepped off the scaffold onto a canopy. The canopy buckled underneath him, and he described a twisting injury to the left knee. Specifically, he stated that his left knee 'popped'… When he returned to the scaffold, his right knee buckled because his left knee was not able to support him and he fell and sustained a twisting injury to both of his knees, and at the same time he injured his low back." (See Pet. Ex. 11 pg. 1) This is the first time, 4 years post-accident, it is indicated that Petitioner fell.

On January 31, 2020, Dr. Fletcher documented a work injury where Petitioner "stepped off a scaffold onto a canopy adjacent to the Dan Ryan train tracks while working as an iron worker. He fell and sustained a twisting injury to both knees and lower back." (See Pet. Ex. 18 pg. 1) Dr. Fletcher does not indicate that anything hit Petitioner's knees.

For Petitioner's back, the Arbitrator relies on the opinions of Dr. Bergin who had the benefit of reviewing MRIs from December 13, 2006, September 24, 2008, and July 12, 2011. Dr. Bergin opined that the three MRIs "appear to be identical in their interpretations" and opined that his back condition was not causally related to the injury on July 28, 2008. (See R.Ex. 10, p. 1) The Arbitrator finds that Petitioner failed to meet his burden in proving that his current condition of ill being for the back is causally related to his work injury on July 28, 2008.

For Petitioner's right knee, the Arbitrator relies on the opinions of Dr. D'Silva who had the benefit of reviewing MRIs and surgical report from before and after Petitioner's July 28, 2008, work injury. Dr. D'Silva opined that Petitioner has advanced, progressive degenerative arthritis of his right knee that has been confirmed clinically on multiple MRIs and clinically in surgery prior to the work accident. As such, Dr. D'Silva opined that his right knee condition was not related to the July 28, 2008, injury. (See R.Ex 5, 6). The Arbitrator finds that Petitioner failed to meet his burden in proving that his current condition of ill-being for the right knee is causally related to his work injury on July 28, 2008.

For Petitioner's left knee, the Arbitrator relies on the opinions of Dr. D'Silva who noted that the September 24, 2008, MRI did not show evidence of damage to the underlying bone and that Petitioner's need for a knee replacement was the result of his post traumatic arthritis stemming from his ACL reconstruction surgery. (See R.Ex 3, pp. 7-8) Dr. D'Silva opined on January 26, 2011, that Petitioner was at MMI for the left knee and that any further treatment was no longer related to the July 28, 2008 work injury. (See also R.Ex 6, p. 4) The Arbitrator finds that Petitioner met his burden in proving that his condition of ill-being for the left knee through MMI on January 26, 2011 is causally related to his work injury on July 28, 2008.

Issue G, Petitioner's earnings, the Arbitrator finds as follows:

The Arbitrator relies on Respondent's Exhibit 11 in determining the average weekly wage. Petitioner testified that overtime was mandatory (See Tr 21) and the Arbitrator will include overtime amounts in the calculation at the straight rate. The Arbitrator relies on 8 pay periods (16 weeks of pay) beginning in April 2008. Although none of the pay periods are for 80 hours (40 hours per week), Petitioner did not testify that he was working 40 hours per week. He only stated that he was working "full duty" or "full time." Further, no evidence was presented in the pay information submitted by both parties to suggest what "full time" means. As a result, the Arbitrator will not apply a calculation based on "weeks and parts thereof." Petitioner earned $18,893.15 in wages over 8 pay periods (16 weeks) which corresponds to an average weekly wage of $1,180.82, a TTD rate of $787.21, and a PPD rate at the maximum rate of $664.72.

Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

As the Arbitrator has found Petitioner's condition of ill-being for the left knee through MMI on January 26, 2011, to be causally related, the Arbitrator finds that Respondent has paid all appropriate charges for all reasonable and necessary medical services. No additional bills will be awarded.

Issue K, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

As the Arbitrator has found Petitioner's condition of ill-being for the left knee through MMI on January 26, 2011, to be causally related, the Arbitrator also relied on the opinions of Dr. D'Silva in finding that Petitioner's inability to work following MMI to be no longer related to the July 28, 2008, work injury. As a result, the Arbitrator awards TTD from July 29, 2008, through January 26, 2011, for a total of 130 2/7 weeks.

Issue L, the nature and extent of the injury, the Arbitrator finds as follows:

The Arbitrator has already found Petitioner's condition of ill-being for the left knee through MMI on January 26, 2011, to be causally related and relies on the opinions of Dr. D'Silva in finding that Petitioner's need for treatment or inability to work was no longer related to the July 28, 2008,

work injury. As such, the Arbitrator will award permanent partial disability benefits. As Petitioner's accident occurred before September 1, 2011, adherence to Section 8.1b(b) of the Act is not required for establishing permanent partial disability.

Petitioner underwent a left knee arthroscopy with debridement of the meniscus and cartilage on April 8, 2009. (See Pet. Ex. 4 pg. 153) Petitioner suffered two subsequent left leg injuries, one resulting in surgery, following his work accident. The Arbitrator makes an award of 15% loss of use of the left leg under Section 8(e)(12), which corresponds to 75 weeks of permanent partial disability benefits at a weekly rate of $664.72. However, Petitioner has already received a total of 25% loss of use of the left leg from prior settlements (IWCC case numbers 96WC27768, 03WC32213, and 06WC14041).

It is so ordered:

Arbitrator Rachael Sinnen

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC023743
Case Name	Roman Torres v. City of Chicago
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0189
Number of Pages of Decision	12
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	David Martay
Respondent Attorney	Stephanie Lipman

DATE FILED: 4/24/2023

/s/ Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROMAN TORRES,

Petitioner,

vs. NO: 13 WC 23743

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, benefit rates, temporary benefits, permanent partial disability (PPD) benefits and credit, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator which is attached hereto and made a part hereof.

The Arbitrator found that Petitioner was entitled to an award of maintenance benefits from October 16, 2014 through April 30, 2015. The Commission disagrees and finds that Petitioner is not entitled to an award of maintenance benefits following his full duty release to return to work without any restrictions. On October 15, 2014, Petitioner's treating physician, Dr. Singh, discharged Petitioner from treatment. Dr. Singh noted that Petitioner underwent a functional capacity evaluation (FCE) and successfully completed work conditioning, further noting that Petitioner had met his job demands and demonstrated full function with activity without resistance. Petitioner was released to full duty without any restriction by Dr. Singh effective October 20, 2014. (PX 3, RX 4). Petitioner testified that he thereafter requested a return to work for Respondent but was told "it was not in the budget." (T.19-20). He eventually returned to Respondent for work, but in a different department as of May 1, 2015. Section 8(a) of the Act states that the employer shall pay for "treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental thereto." *820 ILCS 305/8(a)*. The Commission finds that given Petitioner's full duty release without any restriction, vocational rehabilitation triggering maintenance benefits was not warranted in this case. The Commission therefore strikes the Arbitrator's award of maintenance benefits from October 16, 2014 through April 30, 2015.

The Commission next affirms the Arbitrator's PPD award of 35% pursuant to Section 8(d)2 but modifies the Arbitrator's findings with respect to the second and fourth factors under Section 8.1b of the Act. With regard to the second factor, occupation, the Arbitrator stated that Petitioner "was not able to return to work in his prior capacity as a result of said injury." (Arbitrator's Decision, pg. 7). This is a misstatement. Petitioner was released to work without restrictions. He testified at arbitration that his understanding as to why Respondent did not initially return him to work was because "it was not in the budget." (T.19-20). Petitioner in fact returned to work with Respondent on May 1, 2015. He testified that he worked for Respondent for six months and then he retired on October 31, 2015. Petitioner confirmed that he had not worked anywhere else since he retired. The Commission finds that Petitioner voluntarily removed himself from the workforce when he retired. The Commission thus modifies the Arbitrator's findings and gives this second factor lesser weight.

The Commission also modifies the Arbitrator's findings for the fourth factor. With respect to future earning capacity, the Commission notes that Petitioner was released to work full duty and returned to work for Respondent in May 2015. Petitioner's placement in a different department which paid less than the prior department was not related to any physical inability to perform his prior job duties. The Commission finds the record devoid of evidence indicating that Petitioner sustained any loss in his future earning capacity attributable to his January 7, 2013 work injury. In addition, the Commission notes that Petitioner voluntarily retired removing himself from the work force. The Commission thus modifies the Arbitrator's findings and gives this fourth factor lesser weight.

The Commission further modifies the Arbitrator's Decision to reflect the correct maximum TTD and PPD rates.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 21, 2022 is hereby modified as stated and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $1,295.47 per week for 92-2/7 weeks, from January 8, 2013 through October 15, 2014, that being the period of temporary total incapacity for work under Section 8(b) of the Act and as stipulated by the parties.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of maintenance benefits from October 16, 2014 through April 30, 2015 is stricken in its entirety.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit of $135,394.29 for temporary total disability (TTD) benefits previously paid to Petitioner as stipulated by the parties.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability (PPD) benefits of $712.55 per week for 175 weeks because the injuries sustained caused the 35% loss of the person as a whole as provided in Section 8(d)2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all other amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Under Section 19(f)(2) of the Act, no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

April 24, 2023

CAH/pm
O: 4/6/23
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC023743
Case Name	Roman Torres v. City of Chicago
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	David Martay
Respondent Attorney	Lucy Huang

DATE FILED: 7/21/2022

THE INTEREST RATE FOR THE WEEK OF JULY 19, 2022 2.91%

/s/Elaine Llerena, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **COOK**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Roman Torres
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **13** WC **023743**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **March 18, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☒ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **January 7, 2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**106,884.00**; the average weekly wage was $**2,055.46**.

On the date of accident, Petitioner was **53** years of age, ***married*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**135,394.29** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**135,394.29**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $1,320.03 per week for 92-2/7 weeks, commencing January 8, 2013, through October 15, 2014, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner maintenance benefits of $1,320.03 per week for 28-1/7 weeks, commencing October 16, 2014, through April 30, 2015, as provided in Section 8(a) of the Act.

Respondent shall pay reasonable and necessary medical services of $4,116.78 to Metro Anesthesia Consultants, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $721.66 per week for 175 weeks, because the injuries sustained caused the 35% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

JULY 21, 2022

Elaine Llerena
Signature of Arbitrator

STATEMENT OF FACTS

As of January 7, 2013, Petitioner had worked for Respondent's Department of Streets and Sanitation for 20 years (T. 9) On January 7, 2013, Petitioner's job title was ward superintendent which involved him supervising a sanitation crew daily. *Id.* Petitioner was tasked with conducting surveys, delivering garbage carts, and overseeing his crew of 28 to 30 people at a time. *Id.*

Petitioner testified that on January 7, 2013, he was delivering garbage carts and while unloading one of the garbage carts, he felt a very strong pain in his back. (T. 10) Petitioner described the garbage carts as being approximately 4 ½ feet high, but he was unsure of the exact weight. (T. 10-11) Petitioner testified that the injury happened sometime between 7:00 a.m. and 8:00 a.m. and that he reported the injury immediately to the "radioman, dispatch". (T. 12)

That same day, Petitioner reported to US Health Works and was examined by Dr. Stephen Hartsock. (PX1) Petitioner complained of low back pain, was prescribed a course of physical therapy and released to go back to work performing sitting work only. *Id.*

Petitioner returned to Dr. Hartstock on January 17, 2013, with the same low back pain complaints. *Id.* On January 25, 2013, Dr. Hartsock ordered an MRI of the lumbar spine. *Id.*

The MRI of the lumbar spine was completed on January 28, 2013, at Athletic Imaging and showed a small right lateral disc herniation at L2-L3 with mild foraminal stenosis and small to moderate right posterolateral/lateral disc herniation at L4-L5. *Id.* Petitioner returned to Dr. Hartstock on January 31, 2013, and was prescribed a Medrol dose pack, kept on work restrictions and prescribed additional physical therapy. *Id.*

On February 14, 2013, Dr. Hartstock referred Petitioner to Dr. Mehul Garala for a pain management evaluation. *Id.* Petitioner saw Dr. Garala on February 19, 2013, and was prescribed injections into his low back. (PX6) Petitioner followed up with Dr. Hartstock in February, March, and April 2013. (PX1) Dr. Hartsock kept Petitioner on restrictions and continued physical therapy. *Id.*

On May 7, 2013, Dr. Hartstock referred Petitioner again to Dr. Garala for an injection into the low back. *Id.* On May 23, 2013, Dr. Hartstock referred Petitioner for a neurosurgical evaluation. *Id.* On June 13, 2013, Dr. Hartstock again recommended another epidural state steroid injection. *Id.* Petitioner underwent the second epidural steroid injection on July 5, 2013, with Dr. Garala. (PX6)

On July 23, 2013, Petitioner reported to Dr. Beejal Amin for neurological consult at the Loyola University Medical Center who recommended ongoing care with Dr. Garala and continued Petitioner with the same light duty work restrictions. (PX2) On August 2, 2013, Petitioner reported Dr. Garala who recommended Petitioner seek treatment with Dr. Kern Singh. (PX6)

Petitioner saw Dr. Singh at Midwest Orthopedics at Rush on August 26, 2013. (PX3) On September 3, 2013, Dr. Singh performed a minimally invasive right sided L4-L5 lateral discectomy. *Id.* Petitioner received follow up medical care from Dr. Singh on September 30, 2013, and November 4, 2013. *Id.* At the recommendation of Dr. Singh, Petitioner completed at functional capacity evaluation (FCE) on November 14, 2013. *Id.* The FCE determined that Petitioner remained limited in his functional movements and found that Petitioner could lift up to 15 lbs above 12 inches occasionally and sit, stand and walk frequently where positions could be changed as needed. *Id.*

Petitioner returned to Dr. Singh on December 16, 2013, at which time he released Petitioner to return to work with no lifting over 10 lbs and ordered an updated MRI. *Id.*

Petitioner underwent the MRI on January 6, 2014, at the University of Illinois Medical Center, the results of which showed mild degenerative spondylosis of the lumbar spine. *Id.* That same day, Dr. Singh ordered a second back surgery. *Id.* On March 13, 2014, Dr. Singh recommended a lumbar fusion. *Id.*

On March 28, 2014, Dr. Singh performed minimally invasive revision L4 and L5 laminectomy with bilateral facetectomy and foraminotomy, right sided L4-5 transforaminal lumbar interbody fusion with cage instrumentation, and bilateral posterolateral spinal fusion with instrumentation at L4-5. *Id.*

Petitioner followed up with Dr. Singh on April 20, 2014, and June 2, 2014, at which time Dr. Singh ordered physical therapy and kept Petitioner off work. *Id.* On September 3, 2014, Dr. Singh ordered work conditioning followed by an FCE. *Id.* Petitioner underwent a second FCE with Athletix on September 29, 2014, that determined that Petitioner would benefit from physical therapy in preparation of release to return to work. *Id.* On October 15, 2014, Dr. Singh found that Petitioner had reached maximum medical improvement (MMI) and released Petitioner back to work. *Id.*

Petitioner testified he immediately contacted Respondent and advised them he had been released to return to work. (T. 19-20) According to Petitioner, his release to work did not fit within the department budget and there was a delay of seven months before he was brought back to work. (T. 22-23) Additionally, Petitioner testified that he received a letter from Respondent dated December 15, 2014, officially terminating his temporary total disability benefits effective December 26, 2014. (RX6) Petitioner testified he was contacted Respondent on a regular basis from October 2014 through December 2014 in an attempt to return to work. (T. 22) The Arbitrator notes the Respondent is requesting a credit for temporary total disability benefit overpayment from October 16, 2014, through December 17, 2014. (AX1)

Petitioner testified he was brought back to work on May 1, 2015 (T. 21) Petitioner testified he went in person to meet with the department commissioner in an attempt to return to work. Id. Petitioner filed a complaint against Respondent with respect to their denial of a job despite his release to return to work. (PX7) Petitioner testified that he filed a complaint with the Illinois Department of Human Rights and subsequent to filing his complaint, Petitioner was brought back to work for Respondent, but in a different position. (T. 23)

Petitioner explained that when he returned to work, he was assigned the job of an assistant general superintendent (T. 24) His new job involved him supervising the field investigative unit concerning abandoned vehicles. *Id.* Petitioner further explained that the new job was less physical since he did not have to deliver the garbage cans any longer. *Id.*

Petitioner worked as the assistant general superintendent dealing with the abandoned vehicles throughout the city for six months before he applied for and received retirement from Respondent. (T. 25) Petitioner's official retirement date was October 31, 2015. *Id.*

Since retiring, Petitioner has not worked any other jobs. *Id.* Petitioner stated that he is very limited in his physical capacity. *Id.* He is unable to run as result of his back pain. (T. 27) He has difficulty sleeping and cannot lay on his side to sleep due to the pain. *Id.* Petitioner further testified he occasionally has back spasms that reach the point where he needs his wife to help him get up off the chair or bed. *Id.* Petitioner states that his lifting is capped at 15 lbs before he notices significant pain in his low back. *Id.* At the time of hearing, Petitioner was wearing a back brace and stated that he had been prescribed the brace by his primary care physician. (T. 28) Petitioner testified that he continues to wear the back brace at least once per week. *Id.* Petitioner does not take

any prescribed medications but takes ibuprofen and testified that he continues to do at home physical therapy to reduce his back pain. (T. 29)

On cross-examination, Petitioner confirmed that after the second FCE he was released to return to work as a ward superintendent performing full duty even if the job was not offered back to him. (T. 31) Petitioner also confirmed that Dr. Singh released him to return to full duty work on October 15, 2015, because he had reached MMI. *Id.*

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Petitioner did not have any low back pain or issues prior to the January 7, 2013, work accident. There is nothing in the record to indicate that Petitioner sustained an intervening event. Petitioner testified that he continues to experience low back pain and experiences pain when he tries to lift anything more than 15 lbs. Petitioner periodically uses a back brace, takes over the counter pain medications and routinely does at home physical therapy.

Based on the above, the Arbitrator finds Petitioner has proven by a preponderance of the evidence that his current condition of ill-being as it relates to his low back injury is causally related to the January 7, 2013, work accident.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner alleges that there remains an outstanding balance to Metro Anesthesia Consultants in the amount of $4,116.78 and Equian Lien in the amount of $2,790.03. (PX4 & PX5)

Respondent denied liability regarding the unpaid medical bills from Metro Anesthesia Consultants and claims the bills have been paid and the current charges are for medically unnecessary and unreasonable treatment. Respondent submitted into evidence a Payment Report documenting the payments made on this claim. (RX1) The Payment Report details the amounts paid and not paid by Respondent. *Id.*

Based on the medical evidence presented and the Arbitrator's finding that Petitioner's current condition of ill-being is causally related to the January 7, 2013, work accident, the Arbitrator finds the treatment provided by Metro Anesthesia Consultants to be reasonable and necessary for the care and treatment of Petitioner. As such, Respondent shall pay any outstanding balances directly to Metro Anesthesia Consultants pursuant Section 8(a) and 8.2 of the Illinois Workers' Compensation Act (Act).

As to the bills from Equian Lien in the amount of $2,790.03, Respondent denied liability for the unpaid medical bills and claimed the charges for the treatment provided by this provider were medically unnecessary and unreasonable. The Arbitrator notes that Petitioner testified these charges were for treatment not related to the January 7, 2013, work injury. (T. 26)

Based on the medical evidence presented and Petitioners' testimony, the Arbitrator finds that the treatment covered by the charges from Equian Lien are for services that were medically unnecessary and unreasonable. Therefore, the Arbitrator finds that Respondent is not liable for the bills from Equian Lien.

It should be noted that Section 8.2(e) of the Act states that a provider shall not bill or otherwise attempt to recover from the employee the difference between the provider's charge and the amount paid by the employer or the insurer on a compensable injury, or for medical services or treatment determined by the Commission to be excessive or unnecessary.

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

Section 8(b) of the Act provides for the payment of temporary total disability to workers who are temporarily unable to work in any capacity as a result of a work-related injury. Generally, a claimant is entitled to temporary total disability from the date of an injury until the time he reaches MMI. *Freeman United Coal Mining Co. v. Industrial Comm'n,* 318 Ill.App.3d 170, 177, 251 Ill.Dec. 966, 741 N.E.2d 1144 (2000). A claimant reaches MMI when his condition stabilizes, that is, the condition has recovered as far as the character of the injury allows. *Id.* Once an injured employee has reached MMI, he is no longer eligible for temporary total disability benefits. *Archer Daniels Midland Co. v. Industrial Commission*, 138 Ill.2d 107 (1990).

An employee's entitlement to maintenance begins when his medical condition has stabilized, he has reached MMI, and Respondent has not brought Petitioner back to work for Respondent. Under Section 8(a) of the Act, while maintenance benefits are provided while a claimant is undergoing vocational rehabilitation, it is not restricted to just payment during vocational rehabilitation.

Petitioner credibly testified and the medical records show that Petitioner was off work from January 8, 2013, through October 15, 2014. After his release from medical care by Dr. Singh on October 15, 2014, Petitioner began contacting Respondent on a regular basis to try and return to work. Despite his seniority, Petitioner had to file a complaint with the Illinois Department of Human Rights, after which Respondent brought Petitioner back to work in a different position on May 1, 2015. Petitioner's testimony was credible and there was no evidence offered by Respondent to contest the facts on this issue.

The Arbitrator finds Petitioner has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from January 8, 2013, through October 15, 2014, and maintenance payments from October 16, 2014, through April 30, 2015, the time Petitioner was at MMI but was not provided work by Respondent despite his release to return to work.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to Section 8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors;

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of Section 8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator gives this factor no weight.

With regard to subsection (ii) of Section 8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a ward superintendent at the time of the accident and that he was not able to return to work in his prior capacity as a result of said injury. Instead, Respondent ultimately offered Petitioner a job as assistant general superintendent, which was a less physical job. The Arbitrator gives this factor considerable weight.

With regard to subsection (iii) of Section 8.1b(b), the Arbitrator notes that Petitioner was 53 years old at the time of the accident. The Arbitrator gives this factor some weight.

With regard to subsection (iv) of Section 8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that while Petitioner was provided a different position, he was paid the same salary he was paid prior to the January 7, 2013, work accident. Petitioner retired six months later. The Arbitrator gives this factor some weight.

With regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner testified that he continues to experience low back pain subsequent to his two back surgeries, the latter surgery requiring a fusion with hardware and interbody cage. Petitioner testified he has problems when he tries to lift more than 15 lbs, has pain when he tries to sleep on his side and periodically must wear a back brace. He takes over-the-counter medications and performs at home physical therapy daily to try and resolve his symptomatic pain. The Arbitrator gives this factor considerable weight.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 35% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act.

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

Respondent's request for a credit for overpayment of temporary total disability is denied since Petitioner would is entitled to maintenance payments for the same period of time for which Respondent is claiming a credit. However, the Arbitrator notes that the parties stipulated that Respondent has paid Petitioner $135,394.29 in temporary total disability benefits, for which Respondent is entitled to a credit.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC030823
Case Name	Gary Malecki v. Waste Management
Consolidated Cases	
Proceeding Type	Remand From Appellate Court Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0190
Number of Pages of Decision	6
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Matthew Coleman
Respondent Attorney	Mitzi Westerhoff

DATE FILED: 4/25/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse Accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GARY MALECKI,

Petitioner,

vs. NO: 16 WC 30823

WASTE MANAGEMENT,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the appellate court. On September 23, 2022, the appellate court filed a Rule 23 order finding against the manifest weight of the evidence the Commission's decision and the circuit court's judgement denying Petitioner's claim. The appellate court ruled:

> …the judgement of the circuit court which confirmed the Commission's decision be reversed; and the matter remanded to the Commission to enter a decision: finding that the claimant established that he sustained repetitive trauma injuries which manifested on July 6, 2016, that his current condition of ill-being is causally related to his employment with Waste as a garbage truck driver, and that he gave Waste timely notice of his work related injuries; and address the issues of the claimant's entitlement to TTD benefits, maintenance benefits, permanent disability benefits, and an award for reasonable and necessary medical expenses.
>
> Circuit Court reversed,
> Commission reversed and cause remanded with directions.

Procedurally, Petitioner alleged a repetitive trauma injury which manifested on July 6, 2016, while working for Respondent Waste Management. The Arbitrator denied the 19(b) claim, based upon a finding of no accident, failure of notice, and denied benefits. The Commission affirmed the Arbitrator's finding of failure to show accident. The Circuit Court confirmed the Commission's decision. The appellate reversed the rulings of the Circuit Court and the Commission.

In accordance with the appellate court's directions, the Commission has considered the pertinent parts of the record *de novo* to determine the benefits due to Petitioner. The Commission hereby complies with the Order of the appellate court.

Petitioner worked for Respondent for 30 years as a commercial garbage truck driver. There is no dispute as to Petitioner's schedule and work duties. His direct supervisor was called as a witness at trial and acknowledged that he collected garbage along a 75-100 stop route. Petitioner typically worked 10 to 12 hours per day. He got into and out of his truck more than 100 times per day and performed a lot of heavy pushing, pulling, and lifting.

Petitioner had a long history of low back pain that radiated into his right thigh, with treatment that extended back to 2006. Prior to July 6, 2016, he had undergone a prolonged course of treatment with Dr. Jain that included 13 injections, two nerve blocks, and four radiofrequency ablations.

Petitioner testified that his back was sore at the time he reported to work on July 6, 2016. His pain on that morning was in his lower back and radiated on the right to his knee. Midway through his route, Petitioner uploaded two yard containers filled with cardboard. Shortly thereafter he began to experience heaviness in his right foot while walking and then had trouble operating the pedals on the truck. The Commission finds that Petitioner sustained a work-related injury secondary to repetitive trauma which manifested on July 6, 2019, when he first experienced neurological symptoms in his right foot i.e., heaviness and loss of sensation, indicative of a drop foot.

The notice related evidence adduced at trial was conflicting. Petitioner testified that he completed an incident report with his district manager on July 7, 2016. The district manager denied this but acknowledged receiving an Employee Report of Injury on July 25, 2016.The appellate court noted that regardless of the conflicting evidence, Petitioner gave Respondent notice within the 45-day period. For the foregoing reasons the Commission finds Petitioner satisfied the notice requirement for reporting his injury to Respondent.

Petitioner was referred by Dr. Jain to Dr. Darwish, an orthopedic surgeon and was diagnosed with spondylolisthesis and right drop foot. Dr. Darwish performed a transforaminal lumbar interbody fusion at L4-5 and L5-S1 on August 31, 2016. Dr. Darwish testified via evidence deposition to the opinion Petitioner's degenerative spinal condition was exacerbated

and aggravated by the demands of his job and caused his right drop foot and the need for surgery. Dr. Darwish's testimony that Petitioner's treatment was reasonable and necessary was unrebutted.

Respondent's Section 12 orthopedic expert, Dr. Ghanayem did not dispute that the surgery performed by Dr. Darwish was reasonable and necessary but stated the opinion that Petitioner's drop foot was not causally connected to his work. Dr. Ghanayem's opinion that Petitioner's condition was progressive in nature and not work-related appears to be based upon the incorrect proposition that his symptoms developed when "he was simply walking back to his truck.". The Commission finds that Dr. Ghanayem's opinion on causal connection is unpersuasive and finds Petitioner proved to a preponderance of the evidence that his injury is causally connected to repetitive trauma.

Petitioner was off work for medical absence caused by his work-related injury, commencing July 19, 2016, through October 26,2017. Dr. Darwish released Petitioner on August 24, 2017, and determined that he was at MMI with permanent restrictions of no lifting over 20 pounds, and no repetitive bending or twisting, Dr. Darwish noted that Petitioner could not return to his previous position as a garbage man. The Commission finds based upon the foregoing that Petitioner is entitled to TTD benefits commencing July 19, 2016, through August 24, 2017, in the amount of $1,037.96 per week for 57 2/7 weeks; and maintenance benefits for a period of 8 6/7 weeks (August 25, 2017, through October 26, 2017) in the amount of $1,037.96 per week. Additionally, Respondent is to authorize vocational assessment pursuant to Section 8(a) of the Act and Rule 9110.10 as Petitioner is not able to return to his employment as a commercial garbage truck driver.

Petitioner received benefits of $9,604.40 under a disability policy sponsored by Respondent. The Commission finds that Respondent is entitled to a credit of $9,604.40 towards TTD benefits for the disability benefits Petitioner received.

Petitioner incurred reasonable and necessary medical expenses in the amount of $168,980.83 pursuant to the Illinois Workers' Compensation Act Medical Fee Schedule Sections 8(a) and 8.2. Additionally, Respondent is entitled to a credit of $93,527.68 pursuant to Section 8(j) of the Act for medical benefits provided to Petitioner through an employer sponsored program.

The Commission further remands this case to the Arbitrator for further proceedings for a determination of the amount of prospective medical benefits, or of compensation for permanent disability, if any pursuant to *Thomas v. Industrial Commission,* 78 Ill.2d 327 (1980).

Based on the directive from the appellate court, the Commission reverses the Arbitrator's original Decision. The Commission awards Petitioner reasonable and necessary medical services as contained in Petitioner's exhibit 9, pursuant to Sections 8(a) and 8.2 of the Act. The Commission further awards Petitioner TTD benefits from July 19, 2016, through August 24,

2017, representing 57 2/7 weeks. Furthermore, the Commission awards Petitioner maintenance benefits from August 25, 2017, through October 26, 2017, representing 8 6/7 weeks. The Commission further awards Petitioner medical expenses in the amount of $168,980.83 pursuant to Sections 8(a) and 8.2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION, that the Arbitrator's Decision (16 WC 30823) dated September 10, 2018, is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION, that Respondent shall pay to Petitioner the reasonable and necessary medical services listed in Petitioner's exhibit 9, totaling $168,980.83, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION, that Respondent shall pay to Petitioner temporary total disability benefits of $1,037.96 per week from July 19, 2016, through August 24, 2017, representing 57 2/7 weeks.

IT IS FURTHER ORDERED BY THE COMMISSION, that Respondent shall pay to Petitioner maintenance benefits of $1,037.96 per week commencing August 25, 2017, through October 26, 2017, representing 8 6/7 weeks.

IT IS FURTHER ORDERED BY THE COMMISSION, that this matter is hereby remanded to the Arbitrator for further proceedings for a determination of prospective medical benefits, or of further compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission,* 78 Ill.2d 327 (1980).

IT IS FURTHER ORDERED BY THE COMMISSION, that Respondent is to authorize a vocational assessment for Petitioner pursuant to Section 8(a) of the Act and Rule 9110.10.

IT IS FURTHER ORDERED BY THE COMMISSION, that Respondent is entitled to a credit in the amount of $93,527.68 under §8(j) of the Act; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

IT IS FURTHER ORDERED BY THE COMMISSION, that this case is remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under Section 19(n) of the Act, if any.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $73,000.00. The party commencing the proceedings for review in the Circuit Court shall filed with the Commission a Notice of Intent to File for Review in the Circuit Court.

April 25, 2023

SM/msb
44

/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah L. Simpson*
Deborah L. Simpson

/s/ *Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC010355
Case Name	Nathan Hanger v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0191
Number of Pages of Decision	10
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Jim Vainikos
Respondent Attorney	Kayla Koyne

DATE FILED: 4/25/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

NATHAN HANGER,

Petitioner,

vs. NO: 20 WC 010355

STATE OF ILLINOIS, GRAHAM CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, and nature and extent of disability, and being advised of the facts and law, affirms with the following expanded analysis the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Petitioner sustained a work-related injury on August 24, 2019, while lifting weights during a meal break at Graham Correctional Center where he was employed as a correctional officer. Institutional regulations require that officers must remain present within the center confines throughout their shift.

The Commission emphasizes that in the instant case Petitioner testified that he was a member of a specialty unit known as SORT (Special Operations Response Team). The team's mission was to intervene and restore order in volatile situations involving inmate riots, hostage situations, suicide attempts, and destruction of property. During any given duty shift the number of SORT team members present in the institution can vary in number from four members to 20.

The acceptance into the SORT unit requires special training and twice monthly re-training to maintain physical and tactical readiness. Petitioner testified that the security and safety of himself, his fellow officers, staff, and inmates depends on the physical readiness of SORT team members.

SORT team members are authorized to carry a helmet with a face shield, stab resistant vest, hand cuffs, radio, and baton. They are not armed with lethal weapons and maintain situational control with physical strength. At hearing Respondent elicited testimony from Robert Gibson, a shift supervisor at Graham CC who stated that there are officers at the facility who are overweight and not in shape. This testimony serves to further support Petitioner's need to utilize his meal breaks to maintain his physical ability to respond to special situations for the benefit of the entire correctional community.

For the foregoing reasons the Decision of the Arbitrator is hereby affirmed and adopted with additional analysis. All else is affirmed and adopted with additional analysis as stated herein.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 21, 2022 is hereby affirmed and adopted. All else is affirmed and adopted with the additional analysis as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Pursuant to Section 19(f)(1) of the Act, this decision is not subject to judicial review.

April 25, 2023

o-03/22/2023
SM/msb
44

/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah L. Simpson*
Deborah L. Simpson

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC010355
Case Name	HANGER, NATHAN v. STATE OF ILLINOIS GRAHAM CORRECTIONAL CENTER
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Jim Vainikos
Respondent Attorney	Kayla Koyne

DATE FILED: 4/21/2022

THE INTEREST RATE FOR THE WEEK OF APRIL 19, 2022 1.25%

/s/ Edward Lee, Arbitrator
Signature

CERTIFIED as a true and correct copy

pursuant to 820 ILCS 305/14

April 21, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **SANGAMON**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

NATHAN HANGER
Employee/Petitioner

v.

STATE OF ILLINOIS
GRAHAM CORRECTIONAL CENTER
Employer/Respondent

Case # **20** WC **010355**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **March 29, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **August 24, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**$52,811.72**; the average weekly wage was $**1,015.61**.

On the date of accident, Petitioner was **32** years of age, ***married*** with **3** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***hasnot*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of **$677.07**/week for **4/7** weeks, commencing **January 21, 2020** through **January 24, 2020**, as provided in Section 8(b) of the Act.

Medical benefits

Respondent shall pay reasonable and necessary medical services of **$125,223.37**, as provided in Sections 8(a) and 8.2 of the Act.

Permanent Partial Disability: Person as a whole

Respondent shall pay Petitioner permanent partial disability benefits of **$609.37**/week for **62.5** weeks, because the injuries sustained caused the **12.5% loss of the person as a whole**, as provided in Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Edward Lee
Signature of Arbitrator

APRIL 21, 2022

STATEMENT OF FACTS

On August 24, 2019, Petitioner was an employee with the State of Illinois. He had been an employee for 6 years as a correctional officer. His work shift was from 7:00am to 3:00pm. His job duties included, but were not limited to, ensuring the safety and security of the institution including all the staff and inmates. Petitioner credibly testified that the employer required that all security personnel stay on the premises of the facility throughout their shift. Petitioner also explained that he was assigned to a Special Operations Response Team (SORT) within the facility. SORT would respond to hostage situations, suicide attempts, and destruction of property among other serious situations. Members of SORT have a special uniform that includes a helmet with a spit shield, knife proof vest, a duty belt that holds handcuffs and pepper spray, a radio, and a baton. Petitioner credibly testified that correctional officers did not have this equipment as part of their uniform. In order to be a member of SORT you must complete a training course and obtain a certificate from the Academy. In order to maintain your membership in SORT, the institution had training exercises twice a month.

Petitioner explained that there are many buildings in the institution but for purposes of this case he described the multipurpose building and the vocational building. The multipurpose building has a gymnasium that includes a basketball court and a weight room with special weights that cannot be removed. This building is available to both inmates and staff. The vocational building has classrooms for the inmates, mental health services, and a weight room. The weight room in the vocational building is considered a staff only weight room. There is a sign-in sheet to keep track of the staff who uses it. The only inmates that would be in this weight room would be 2 inmates who were assigned to clean the area.

Petitioner testified that security personnel are allowed a 30-minute break during their shift. He explained that he was still on Call during his break and was expected to drop whatever he was doing to handle emergency situations.

On August 24, 2019, he was working his regular shift, and during his break he went to the staff weight room to keep in shape for his job duties on SORT. He explained that there were up to 20 members on SORT. Each one was in excellent shape in order to protect themselves and their staff from dangerous situations in the prison. While he was on break this day, he was lifting weights in an overhead press. He was lifting a 75-pound dumbbell with his left arm and he felt something pop in his left shoulder. Petitioner is right hand dominant. He had immediate pain and swelling in and around he left shoulder. Petitioner gave notice to his employer about the accident.

On August 25, 2019, Petitioner sought treatment at Fayette County Hospital. His medical history was consistent with his testimony concerning the accident. He was prescribed pain medication, and referred to his primary care physician. On August 26, 2019, Petitioner saw his PCP Dr. Siefken. His assessment was possible labrum rupture. Dr. Siefken referred Petitioner to an orthopedic physician, Dr. Frank Lee at Bonutti Clinic.

On September 3, 2019, Petitioner was seen by Dr. Lee. Dr. Lee ordered a MRI and noted that Petitioner should be on light duty at work.

On October 16, 2019, Dr. Lee read the MRI as a subscapular tear of the rotator cuff, biceps tendonitis, and impingement. Dr. Lee gave Petitioner an injection of Celestone into his left shoulder and ordered physical therapy. Petitioner continued light duty.

On November 27, 2019, Dr. Lee examined Petitioner and determined that the first injection helped his pain level for only 2 days. Dr. Lee gave him another injection but this time it was with lidocaine and Marcaine.

On January 10, 2020, Dr. Siefken ordered preoperative lab testing for the surgery that was scheduled for January 21, 2020. Dr. Lee performed the surgery at Effingham Ambulatory Surgery Center. He performed an arthroscopic repair of the left anteroinferior labrum, biceps tenodesis, and subacromial decompression.

On February 12, 2020, Petitioner had a follow up visit with Dr. Lee post status surgery. Dr. Lee ordered physical therapy to commence.

On March 11, 2020, Petitioner informed Dr. Lee that his biceps were no longer symmetrical. Dr. Lee found that Petitioner's left bicep was very tender. Dr. Lee was concerned about a possible post-surgery biceps tendon rupture and ordered a MRI.

The MRI was performed on March 27, 2020, and it showed edema. Dr. Lee saw Petitioner again on May 27, 2020. He released Petitioner to full duty work. Dr. Lee suggested that they need to watch the cramping in the biceps and discussed the possibility of revising it at some point in the future. Dr. Lee released Petitioner from care and to follow up as needed.

On July 30, 2020, Dr. Siefken examined Petitioner and diagnosed pain in the left shoulder.
Petitioner testified that was his last visit.

Petitioner testified that his own medical health insurance paid the medical bills, except for the co-pays and deductibles.

Petitioner has been working full time and full duty since July 2020. Yet, he still has continuing residual disability to his left shoulder. He has a constant achy feeling. He avoids swift motions with his arm as that action causes pain. He props up his shoulder when lying down to be able to sleep. He uses Tylenol and Ibuprofen for pain relief. Petitioner has limited range of motion especially when lifting his left arm away from the left side of his body. He is limited in reaching behind his back. He must put his belt in the loops of his pants before he puts his pants on as he cannot reach behind his back. He still follows a home exercise program and uses mobility bands to keep his shoulder from locking up. Petitioner is no longer on the SORT team.

The witness for Respondent was Major Robert Gipson. He confirmed that security personnel cannot leave the facility during their shift and that they are on Call during break. He acknowledged there was a separate staff only weight room. Major Gipson was not aware of the requirements needed to be chosen for the SORT team.

CONCLUSIONS OF LAW

"C" (Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?)

The Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of his employment. Evaluated in light of the Illinois Supreme Court's decision in McAllister v. IWCC, if the claimant's injury was caused by a risk distinctly associated with his employment, the injury arose out of the employment. A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing: (1) acts he was instructed to perform by the employer; (2) acts that he had a common-law or statutory duty to perform; or (3) acts that the employee might reasonably be expected to perform incident to his assigned duties.

In the case at hand, Petitioner was a member of a Special Operations Response Team (SORT). Inherent and incidental to his job duties, was the need to be physically fit. SORT hired and required correctional officers that were trained in dealing with dangerous and volatile situations. Lunch break was the only time during his shift that Petitioner had time to exercise. The employer provided a weightlifting room in a separate building away from the inmates for such exercise. Inmates were not allowed access to this separate weight room. The act of exercising to keep in shape for SORT must be considered incidental to his employment. A reasonable employee with such a dangerous job would and should do whatever is necessary to protect himself from harm. *Moreover, the Arbitrator finds that the Petitioner's weight lifting was not recreational, but an activity incidental to his employment.*

In addition, the employer's witness confirmed that Petitioner was on Call during his lunch break.
Therefore, the Arbitrator finds that Petitioner sustained an injury arising from and in the course of his employment.

"J" (Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?)

The Arbitrator having found for Petitioner as to accident, also finds that Respondent is liable for all related medical bills. Respondent stipulated that Petitioner's left shoulder surgery was causally connected to his injury. Thus, the Respondent must pay the reasonable and necessary medical bills totaling $125,223.37 per Sections 8(a) and 8.2 of the Act.

"K" (What temporary benefits are in disputed?)

The Arbitrator having found for Petitioner as to accident and medical, also finds that Respondent is liable to pay TTD benefits of 4/7 weeks for the time period of January 21, 2020 through January 24, 2020.

"L" (What is the nature and extent of the injury?)

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives **no** weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as **a correctional officer** at the time of the accident and that he **is** able to return to work in his prior capacity as a result of said injury. The Arbitrator notes **that Petitioner has continued his employment as a correctional officer but has not been able to return to SORT**. Because of **the loss of his position in SORT**, the Arbitrator therefore gives **greater** weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was **32** years old at the time of the accident. Because of **such a young age**, the Arbitrator therefore gives **greater** weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes **there was no change in his earnings**. The Arbitrator therefore gives **no** weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner has been working full time and full duty since July 2020. Yet, he still has continuing residual disability to his left shoulder. He has a constant achy feeling. He avoids swift motions with his arm as that action causes pain. He props up his shoulder when lying down to be able to sleep. He uses Tylenol and Ibuprofen for pain relief. Petitioner has limited range of motion especially when lifting his left arm away from the left side of his body. He is limited in reaching behind his back. He must put his belt in the loops of his pants before he puts his pants on as he cannot reach behind his back. He still follows a home exercise program and uses mobility bands to keep his shoulder from locking up. Petitioner is no longer on the SORT team. The Arbitrator therefore gives **greater** weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of **12.5% loss of use of person as a whole** pursuant to **§8(2)d** of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC031378
Case Name	Sarah Ewell v. State of Illinois - Choate Mental Health Center
Consolidated Cases	21WC017346;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0192
Number of Pages of Decision	14
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Mary Massa, Todd Schroader
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 4/26/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Sarah Ewell,

Petitioner,

vs. NO. 18WC 31378

State of Illinois/Choate Mental Health Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 13, 2022, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Pursuant to §19(f)(1) of the Act, this Decision and Opinion on Review of a claim against the State of Illinois is not subject to judicial review.

April 26, 2023

SJM/sj
o-2/22/2023
44

/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah J. Baker*
Deborah J. Baker

/s/ *Deborah L. Simpson*
Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC031378
Case Name	EWELL, SARAH v. STATE OF ILLINOIS/CHOATE MENTAL HEALTH CENTER
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Todd Schroader
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 6/13/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 7, 2022 1.71%

/s/ Linda Cantrell, Arbitrator

Signature

CERTIFIED as a true and correctcopy pursuant to 820 ILCS 305/14

June 13, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **WILLIAMSON**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

SARAH EWELL
Employee/Petitioner

v.

Case # **18** WC **031378**

Consolidated cases: _____

STATE OF ILLINOIS/CHOATE MENTAL HEALTH CENTER
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the City of **Herrin**, on **March 24, 2022**. By stipulation, the parties agree:

On the date of accident, **4/30/18**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned $**71,748.00**, and the average weekly wage was $**1,379.77**.

At the time of injury, Petitioner was **33** years of age, ***married*** with **0** dependent children.

The parties stipulate that Respondent shall pay all reasonable and causally connected medical expenses directly to the medical providers pursuant to the medical fee schedule or PPO agreement, whichever is less, and that Respondent shall receive credit for all medical bills previously paid. The parties further stipulate that all temporary total disability benefits have been paid.

Respondent shall be given a credit of $**70,970.42** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**70,970.42**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of $**790.64 (Max. rate)**/week for a period of **150** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused permanent partial disability to the extent of **27.5% loss of body as a whole related to Petitioner's lumbar spine, 1.5% loss of body as a whole related to Petitioner's cervical spine, and 1% loss of body as a whole related to Petitioner's head/post-concussive injury.**

Respondent shall pay Petitioner compensation that has accrued from **2/3/21** through **3/24/22**, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

JUNE 13, 2022

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARIBTRATION DECISION
NATURE AND EXTENT ONLY

SARAH EWELL,	)	
	)	
Employee/Petitioner,	)	
	)	
	)	**Case No.: 18-WC-031378**
v.	)	
	)	**Consolidated Case Nos.: 20-WC-016236**
	)	**21-WC-017346**
STATE OF ILLINOIS/	)	
CHOATE MENTAL HEALTH CENTER,	)	
	)	
Employer/Respondent	)	

FINDINGS OF FACTS

These claims came before Arbitrator Linda J. Cantrell for trial in Herrin on March 24, 2022. In October 2018, Petitioner filed an Application for Adjustment of Claim alleging injuries to her body as a whole as a result of a patient assault on April 30, 2018. (Case No. 18-WC-031378). On July 15, 2020, Petitioner filed an Application for Adjustment of Claim alleging injuries to her body as a whole as a result of being attacked by a patient on March 26, 2020. (Case No. 20-WC-016236). On June 10, 2021, Petitioner filed an Application for Adjustment of Claim alleging injuries to her body as a whole as a result of moving a chair, slipped and fell and hit her head on a pipe on April 15, 2021. (Case No. 21-WC-017346). The cases were consolidated on December 7, 2021.

The sole issue in dispute in Case No. 18-WC-031378 is the nature and extent of Petitioner's injuries. The parties stipulate that all temporary total disability benefits have been paid and Respondent has or will pay all medical expenses itemized in Petitioner's Group Exhibit 16 directly to the medical providers and pursuant to the Illinois medical fee schedule or PPO agreement, whichever is less. The parties stipulate that Respondent shall receive credit for all medical bills previously paid. All other issues have been stipulated. The Arbitrator has simultaneously issued separate Decisions in Case Nos. 20-WC-016236 and 21-WC-017346.

TESTIMONY

Petitioner was 33 years of age, married, with no dependent children at the time of accident. Petitioner was employed by Respondent as a Behavior Analyst and her job duties included creating behavior intervention programs for patients. On 4/30/18, Petitioner was attacked from behind by a patient who struck her in the head multiple times and knocked her to

the ground. Petitioner curled up in a ball while the patient continued to attack her. She testified she was also attacked earlier that day by another patient who pulled her backward by her ponytail. The second accident caused an immediate head injury and Petitioner had difficulty focusing. She had head and neck pain, headache, and tightness in her back. Petitioner testified she underwent a laminectomy in 2000 and discectomy at L4-5 in 2011, but she was working full duty at the time of her accident on 4/20/18.

Petitioner testified she underwent two lumbar surgeries by Dr. David Robson as a result of the 4/30/18 accident. She was released to full duty work without restrictions. Petitioner testified she continued to have pain and numbness in her legs and burning in her inner thighs. She testified that her symptoms improved following her second surgery, but her condition plateaued around January 2021 and her symptoms persist. She stated her left foot and ankle were completely numb. She currently has tingling and numbness in her left leg from her buttock to her ankle. She stated her left leg symptoms improved following her second lumbar surgery and her daily pain ranges from 2-6/10. She has persistent tingling in her right thigh, calf, and ankle. She testified her low back often feels tight with occasional burning and aching, and her low back symptoms range from 1-7/10. Petitioner is very careful with lifting, bending, and twisting, and she alters her activities to minimize symptoms. She stated she has had chronic headaches since the accident. She takes Ibuprofen or Naproxen for back and neck pain and over-the-counter pain medication 2 to 3 times per day for headaches.

Petitioner testified that prior to her second lumbar surgery in June 2020 she sustained another work-related accident. On 3/26/20, Petitioner was grabbed and pulled from behind by a patient that caused increased leg pain. She was awaiting surgery when the accident occurred, and Dr. Robson prescribed a steroid pack for pain.

Petitioner testified she sustained a third work-related injury on 4/5/21 when she was moving a chair in an office located in the basement of Respondent's facility. She struck her head on a pipe and felt immediate pain in her neck and head. She was working full duty without restrictions at the time of accident. She underwent two epidural steroid injections at C5-6 that provided relief and she returned to full duty work without restrictions. Petitioner testified she currently has tightness and achiness in her neck and shoulders that ranges from 1-6/10. She has left arm pain if she is active or sits at a computer and repetitively looks up and down. Petitioner testified she is careful not to lift too often as it increases her neck pain. Petitioner stated her chronic headaches have increased since this accident.

Petitioner testified that on 10/16/21 she voluntarily transferred employment to Vienna Correctional Center where she currently works as a Corrections Assessment Specialist. She stated she changed jobs because working with aggressive behaviors put her at too much risk for serious injury and she feared for her safety.

Petitioner walks two to three times per week for strengthening. The last time she saw Dr. Robson for her low back was in February 2021 and she has no follow up appointments with any physicians. Petitioner testified she did not receive treatment for her cervical spine following her 2018 and 2020 accidents. She does not wear any assistive devices.

On 4/30/18, Petitioner completed a Workers' Compensation Employee's Notice of Injury form in which she described her two injuries which occurred that day. (RX1) Petitioner reported a patient punched her in the right temple, top of her head, and right cheek in one accident, and she was pulled by the hair from behind by a different patient in another accident.

On 4/30/18, Petitioner's supervisor completed a Supervisor's Report of Injury or Illness. (RX1). She reported that two different patients pulled Petitioner's hair and punched her in the right temple and cheek area. It was noted there were no injuries from the hair pulling incident with slight redness to the right side of Petitioner's face.

On 4/30/18, Jordin Foster, Bethany Miles, and Paris Ferguson each completed Workers' Compensation Witness Reports. (RX1) Ms. Foster and Ms. Miles confirmed a patient pulled Petitioner's hair. Ms. Ferguson confirmed Petitioner was punched in the face, but said it was Petitioner's left side.

On 5/1/18, Petitioner provided the information used to generate Illinois Form 45: Employer's First Report of Injury. (RX1) Petitioner indicated she sustained swelling and redness to her head with neck pain after being pulled by the hair and punched on the head three times.

On 3/26/20, Petitioner completed a Workers' Compensation Employee's Notice of Injury and stated an individual pulled her from behind near her office while punching and grabbing at her. Petitioner stated she injured her lumbar and mid back and she had nerve pain in both legs, and numbness in the left leg. (RX2, PX20)

On 3/26/20, Petitioner's supervisor completed a Supervisor's Report of Injury or Illness. (RX1, PX20) Petitioner's accident was described as occurring when a female patient pulled her from behind while grabbing and punching her. (RX2, PX20)

On 3/26/20, Allana Barnett and Kelli Kern each completed Workers' Compensation Witness Reports. (RX2, PX20) Ms. Barnett and Ms. Kern both witnessed a patient with their arms wrapped around Petitioner's waist. Ms. Barnett removed the patient from Petitioner and observed Petitioner enter her office.

On 4/15/21, Petitioner completed a Workers' Compensation Employee's Notice of Injury form in which she stated she hit the top of her head on a pipe while moving to the corner computer desk which caused immediate pain to her head and neck. (RX3)

On 4/16/21, Petitioner's supervisor completed a Supervisor's Report of Injury or Illness. (RX3) She stated Petitioner hit her head on a pipe in the director's office which caused a downward compression. Petitioner received cold packs but sought medical treatment later that day due to discomfort and problems moving.

On 4/17/21, Cali Basler completed a Workers' Compensation Witness Report. (RX3). Ms. Basler indicated Petitioner bumped the front of her head or forehead region and started holding the back of her neck because of pain.

MEDICAL HISTORY

On 5/2/18, Petitioner was examined at a walk-in clinic for neck pain and headaches after being injured at work. (PX1) She was diagnosed with cervical pain and given Phenergan.

On 5/7/18, Petitioner was seen by her primary care physician Dr. Tara Robbins at SIMCA who took a history of Petitioner having her hair pulled, head jerked backwards, and hit several times by a patient at work. (PX2, p. 31) Petitioner complained of headaches, neck pain, numbness and tingling, and brain fog. She reported feeling a lot of tension in her neck and upper back with muscle spasms. It was noted Petitioner had two injections in urgent care. Dr. Robbins diagnosed neck pain causing headaches and possible concussion or post-concussive headache and brain fog. Petitioner was taken off work and referred to physical therapy.

On 5/10/18, Petitioner began physical therapy at Heartland Regional Medical Center for neck pain and pressure, headaches, and nerve pain. (PX15) Petitioner rated her pain at 6/10. She attended 12 sessions though 6/8/18.

On 5/14/18, Petitioner returned to Dr. Robbins and reported improvement in her head pressure, but continued stiffness in her neck and face with tingling in the left forearm and wrist and some in the right arm. Petitioner reported a history of lumbar issues and numbness in her left ankle, but said it was currently worse. Petitioner reported having nightmares. She was diagnosed with cervical and lumbar radiculopathy and posttraumatic stress disorder with recurrent nightmares and fear of returning to work. A cervical and lumbar MRI was ordered, and she was instructed to remain off work and continue physical therapy.

On 5/29/18, the cervical MRI was performed that revealed no evidence of cord contusion, fracture, or herniation. (PX4)

On 6/1/18, Dr. Robbins diagnosed post-concussion syndrome with daily headache, and possible combination of post-concussion syndrome and cervical muscle spasms. (PX2, p. 27) Petitioner's tingling and nightmares were noted to have improved. She was ordered to continue physical therapy and return to light duty work in three days.

On 6/11/18, a lumbar MRI was performed that revealed a protrusion at L4-5 bordering on extrusion osteophytosis foraminal encroachment and lateral recess compromised with nerve root mass effect. (PX5) Petitioner followed up with Dr. Robbins that day and reported difficulty with her left ankle, persistent headaches, spine pain and low back stiffness, left greater than right arm tingling and aching that was aggravated with typing, and right leg pain. (PX2, p. 24) Dr. Robbins recommended trigger point injections for cervical pain and post-concussion symptoms that were performed on 6/15/18. Dr. Robbins noted Petitioner's history of low back symptoms were exacerbated by her work accident.

On 7/2/18, Petitioner reported no relief from the injections. She continued to have headaches, intermittent tingling in the hands and arms with burning on the left, and left greater than right ankle pain. Additional trigger point injections were administered.

On 8/13/18, Petitioner reported fatigue, nerve pain and burning in her leg, headaches with twitching in her left eye, light and sound sensitivities, memory loss, slight galactorrhea, and pain in her epigastrium with nausea. A brain MRI was performed on 8/23/18 that was normal. (PX6) Dr. Robbins referred Petitioner to Dr. Robson for a lumbar spine consultation.

On 10/3/18, Petitioner was examined by PA-C Jayne Aschen at Dr. David Robson's office. She reported low back pain and bilateral radiating leg pain, left worse than right. (PX3). It was noted her neck pain resolved. Petitioner's history of lumbar surgeries in 2010 and 2011 was noted. Petitioner was assessed with an annular tear and protrusion at L3-4, disc protrusion at L4-5, loss of disc height at L5-S1, and cervical strain. No cervical treatment was warranted. The L3-4 and L4-5 findings were thought to be caused by the work accident. Petitioner was continued on light duty restrictions, and physical therapy and an injection at L4-5 on the left was recommended. She was prescribed Medrol Dosepak.

On 12/19/18, Petitioner returned to Dr. Robbins with continued low back pain, worse in her legs, and neck pain. (PX2) It was noted Petitioner's anxiety had worsened with nightmares of being attacked. Petitioner reported she was forgetful and had difficulty concentrating. Physical therapy was ordered.

Petitioner underwent a left L4-5 transforaminal epidural steroid injection on 1/10/19. (PX13) She returned to Dr. Robbins on 1/30/19 and reported continued back pain with a pulling sensation in her legs. (PX2) Petitioner reported no improvement with the injection.

On 2/7/19, Dr. Robson ordered an updated lumbar MRI and placed Petitioner off work. (PX3) The MRI was performed on 2/12/19 that revealed L5 was partially sacralized, postoperative changes at L4-5 with recurrent disc herniation, postoperative change on the left at L5-S1, and disc bulging at L3-4. (PX7) Dr. Robson recommended a revision laminectomy, discectomy, and fusion at L4-5. Petitioner was placed off work.

On 3/18/19, Dr. Robson performed a bilateral lumbar laminectomy, foraminotomy revision at L4-5, and resection of synovial cyst on the right, posterior spinal fusion with local autograft and spine instrumentation at L4-5. (PX12)

On 6/18/19, Petitioner reported mild left leg numbness with resolved pain. Dr. Robson ordered physical therapy. On 7/18/19, Petitioner reported cervical symptoms for which physical therapy was recommend. Petitioner remained off work.

On 8/20/19, Petitioner reported no back pain but residual numbness and tingling in her left calf and foot. (PX3) She was concerned about returning to work as it could be an aggressive environment. Dr. Robson released Petitioner to return to work on 8/26/19 with restrictions of changing positions every hour from sitting or standing to walking. (PX3, p. 43)

On 9/24/19, Dr. Robson noted Petitioner was doing quite well with an occasional back ache and improving leg numbness. Dr. Robson placed Petitioner at MMI without restrictions.

On 1/28/20, Petitioner returned to Dr. Robson with increased low back pain left greater than right, with radiating right leg pain. (PX3) No new trauma or injury was noted. A lumbar CT scan and a left L5-S1 transformational epidural steroid injection was ordered.

On 2/18/20, the lumbar CT scan was performed that revealed post-operative changes at L4-5, faint lucency surrounding the posterior aspect of the L4 pedicle screws with some loosening, and mild foraminal narrowing. L5-S1 appeared similar to the previous study. (PX9)

On 2/21/20, a lumbar MRI was performed that revealed mild stenosis at L3-4 secondary to mild diffuse disc bulging, postoperative changes at L4-5, and postoperative changes on the left at L5-S1 consistent with mild diffuse spondylosis and scarring. (PX10) Petitioner also underwent a left L5 nerve root block. (PX14)

On 3/5/20, Dr. Robson recommended a revision surgery to repair the pseudoarthrosis at L4-5 and to include L5-S1 as a contributor to Petitioner's current symptoms. (PX3) He admitted he was premature in releasing Petitioner at MMI in August 2019.

On 3/27/20, Petitioner reported to Dr. Robson she was attacked by a patient at work, and she had increasing pain. (PX17) Petitioner was prescribed Medrol Dosepak and Meloxicam. It was noted Petitioner was awaiting surgical approval.

On 6/5/20, Dr. Robson performed a complete discectomy and fusion at L4-5 and L5-S1. (PX24) On 9/2/20, Dr. Robson released Petitioner to full duty work without restrictions on 9/17/20. (PX3, p. 85). Petitioner stated her left leg symptoms were continuing to improve.

On 11/3/20, Petitioner returned to Dr. Robson's office with complaints of left anterior thigh pain and some pain in her left ankle. Radiographs showed healing without complete fusion. Petitioner was to continue working full duty.

On 2/3/21, Dr. Robson ordered a lumbar CT scan that revealed a solid fusion. He placed Petitioner at MMI and noted she had a good result with some mild ongoing left leg pain.

On 4/28/21, Petitioner returned to Dr. Robson following a new work accident. (PX19) Petitioner reported a slip and fall while in the basement which caused her to hit her head on a pipe. She had neck pain and left greater than right radiating pain, numbness, and tingling. Petitioner's prior work accidents were noted, with Dr. Robson stating her cervical treatment was minimal in the past. A cervical MRI was ordered.

On 6/2/21, Dr. Robson assessed disc bulges at C5-6 and C6-7. (PX19) A left C5-6 interlaminar epidural steroid injection was recommended which was performed by Dr. Xiaobin Yi on 6/25/21. (PX21)

On 8/11/21, a lumbar CT scan was performed that revealed postoperative changes at L4-5 and L5-S1 and mild stenosis at L3-4. (PX20) Petitioner returned to Dr. Robson the same day who noted Petitioner's complaints of low back pain and left leg radiating pain that never completely

resolved. (PX19) Dr. Robson opined the CT scan showed a solid fusion from L4 to S1 with no root impingement. Petitioner was released at MMI without restrictions.

On 8/20/21, Petitioner returned to Dr. Yi for a cervical epidural steroid injection at C5-6. (PX21) On 9/2/21, Petitioner began physical therapy for cervicalgia and attended ten sessions through 10/2/21. (PX22)

On 9/22/21, Petitioner returned to Dr. Robson and reported the two cervical injections provided significant relief. (PX19) She still had headaches but was hopeful therapy would help. Petitioner was released from care.

CONCLUSIONS OF LAW

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Neither Party submitted an AMA rating. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation**: Petitioner voluntarily transferred her employment from Choate Mental Health Center to Vienna Correctional Center in October 2021. Although Dr. Robson released Petitioner to full duty work without restrictions, Petitioner testified she transferred jobs because she feared further injury from the aggressive work environment. The Arbitrator places some weight on this factor.

(iii) **Age**: Petitioner was 33 years old at the time of her injury. She is a young individual and must live and work with her disabilities for an extended period of time. Pursuant to *Jones v. Southwest Airlines*, 16 I.W.C.C. 0137 (2016) (wherein the Commission concluded that greater weight should have been given to the fact Petitioner was younger [46 years of age] and would have to work with his disability for an extended period of time). The Arbitrator places greater weight on this factor.

(iv) **Earning Capacity**: There is no evidence of reduced earning capacity contained in the record. Petitioner voluntarily left employment with Choate Mental Health and currently works for another State of Illinois facility on a full duty basis without restrictions. The Arbitrator places some weight on this factor.

(v) **Disability**: As a result of Petitioner's accidents on 4/20/18, she sustained injury to her cervical and lumbar spine, with post-concussive symptoms included headaches, brain fog, difficulty concentrating, light sensitivity, and forgetfulness.

Petitioner's cervical MRI was normal, and she underwent trigger point injections and physical therapy for neck symptoms. Petitioner underwent an epidural steroid injection at L4-5 prior to undergoing a bilateral lumbar laminectomy, foraminotomy revision at L4-5, and resection of synovial cyst on the right, and posterior spinal fusion with local autograft and spine instrumentation at L4-5. She underwent a postoperative epidural steroid injection at L5-S1 and an L5 nerve root block that did not improve her symptoms. Dr. Robson recommended a revision and prior to surgery Petitioner sustained a second work injury on 3/26/20. Petitioner experienced an increase in symptoms and was treated with medication related to that incident. Petitioner underwent a second surgery involving a complete discectomy and fusion at L4-5 and L5-S1. She was released to full duty work without restrictions. Dr. Robson noted Petitioner had some ongoing left leg pain when he placed her at MMI. Petitioner does not wear assistive devices as a result of her injuries, and she is not under the care of any physician for her symptoms.

Petitioner testified she currently has tingling and numbness in her left leg from her buttock to her ankle. She stated her left leg symptoms improved following her second lumbar surgery and her daily pain ranges from 2-6/10. She has persistent tingling in her right thigh, calf, and ankle. She testified that her low back often feels tight with occasional burning and aching. Petitioner is very careful with lifting, bending, and twisting, and she alters her activities to minimize symptoms. She stated she has had chronic headaches since the accident. She takes Ibuprofen or Naproxen for pain and over-the-counter pain medication 2 to 3 times per day for headaches.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 27.5% loss of her body as a whole related to the lumbar spine, 1.5% loss of her body as a whole related to the cervical spine, and 1% loss of her body as a whole related to her head/post-concussive injury, as provided under Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 2/3/21 through the date of arbitration on 3/24/22, and shall pay the remainder of the award, if any, in weekly payments.

_____ _____

Arbitrator Linda J. Cantrell DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC017346
Case Name	Sarah Ewell v. State of Illinois - Choate Mental Health Center
Consolidated Cases	18WC031378;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0193
Number of Pages of Decision	14
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Mary Massa, Todd Schroader
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 4/26/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Sarah Ewell,

Petitioner,

vs. NO. 21WC 17346

State of Illinois/Choate Mental Health Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 13, 2022, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Pursuant to §19(f)(1) of the Act, this Decision and Opinion on Review of a claim against the State of Illinois is not subject to judicial review.

April 26,2023

SJM/sj
o-2/22/2023
44

/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah J. Baker*
Deborah J. Baker

/s/ *Deborah L. Simpson*
Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC017346
Case Name	EWELL, SARAH v. STATE OF ILLINOIS/CHOATE MENTAL HEALTH CENTER
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Todd Schroader
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 6/13/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 7, 2022 1.71%

/s/ Linda Cantrell, Arbitrator

Signature

CERTIFIED as a true and correctcopy pursuant to 820 ILCS 305/14

June 13, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **WILLIAMSON**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

SARAH EWELL
Employee/Petitioner

v.

Case # **21** WC **017346**

Consolidated cases: _____

STATE OF ILLINOIS/CHOATE MENTAL HEALTH CENTER
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the City of **Herrin**, on **March 24, 2022**. By stipulation, the parties agree:

On the date of accident, **4/15/21**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned $**71,748.00**, and the average weekly wage was $**1,379.77**.

At the time of injury, Petitioner was **36** years of age, ***married*** with **0** dependent children.

The parties stipulate that Respondent shall pay all reasonable and causally connected medical expenses directly to the medical providers pursuant to the medical fee schedule or PPO agreement, whichever is less, and that Respondent shall receive credit for all medical bills previously paid. The parties further stipulate that all temporary total disability benefits have been paid.

Respondent shall be given a credit of $**70,970.42** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**70,970.42**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of $**827.86**/week for a period of **37.50** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused permanent partial disability to the extent of **7.5% loss of body as a whole related to Petitioner's cervical spine.**

Respondent shall pay Petitioner compensation that has accrued from **9/22/21** through **3/24/22**, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

JUNE 13, 2022

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARIBTRATION DECISION
NATURE AND EXTENT ONLY

SARAH EWELL,	)	
	)	
Employee/Petitioner,	)	
	)	
	)	**Case No.: 21-WC-017346**
v.	)	
	)	**Consolidated Case Nos.: 18-WC-031378**
	)	**20-WC-016236**
STATE OF ILLINOIS/	)	
CHOATE MENTAL HEALTH CENTER,	)	
	)	
Employer/Respondent	)	

FINDINGS OF FACTS

These claims came before Arbitrator Linda J. Cantrell for trial in Herrin on March 24, 2022. In October 2018, Petitioner filed an Application for Adjustment of Claim alleging injuries to her body as a whole as a result of a patient assault on April 30, 2018. (Case No. 18-WC-031378). On July 15, 2020, Petitioner filed an Application for Adjustment of Claim alleging injuries to her body as a whole as a result of being attacked by a patient on March 26, 2020. (Case No. 20-WC-016236). On June 10, 2021, Petitioner filed an Application for Adjustment of Claim alleging injuries to her body as a whole as a result of moving a chair, slipped and fell and hit her head on a pipe on April 15, 2021. (Case No. 21-WC-017346). The cases were consolidated on December 7, 2021.

The sole issue in dispute in Case No. 21-WC-017346 is the nature and extent of Petitioner's injuries. The parties stipulate that all temporary total disability benefits have been paid and Respondent has or will pay all medical expenses itemized in Petitioner's Group Exhibit 23 directly to the medical providers and pursuant to the Illinois medical fee schedule or PPO agreement, whichever is less. The parties stipulate that Respondent shall receive credit for all medical bills previously paid. All other issues have been stipulated. The Arbitrator has simultaneously issued separate Decisions in Case Nos. 18-WC-031378 and 20-WC-016236.

TESTIMONY

Petitioner was 36 years of age, married, with no dependent children at the time of accident. Petitioner was employed by Respondent as a Behavior Analyst and her job duties included creating behavior intervention programs for patients. On 4/30/18, Petitioner was attacked from behind by a patient who struck her in the head multiple times and knocked her to

the ground. Petitioner curled up in a ball while the patient continued to attack her. She testified she was also attacked earlier that day by another patient who pulled her backward by her ponytail. The second accident caused an immediate head injury and Petitioner had difficulty focusing. She had head and neck pain, headache, and tightness in her back. Petitioner testified she underwent a laminectomy in 2000 and discectomy at L4-5 in 2011, but she was working full duty at the time of her accident on 4/20/18.

Petitioner testified she underwent two lumbar surgeries by Dr. David Robson as a result of the 4/30/18 accident. She was released to full duty work without restrictions. Petitioner testified she continued to have pain and numbness in her legs and burning in her inner thighs. She testified that her symptoms improved following her second surgery, but her condition plateaued around January 2021 and her symptoms persist. She stated her left foot and ankle were completely numb. She currently has tingling and numbness in her left leg from her buttock to her ankle. She stated her left leg symptoms improved following her second lumbar surgery and her daily pain ranges from 2-6/10. She has persistent tingling in her right thigh, calf, and ankle. She testified her low back often feels tight with occasional burning and aching, and her low back symptoms range from 1-7/10. Petitioner is very careful with lifting, bending, and twisting, and she alters her activities to minimize symptoms. She stated she has had chronic headaches since the accident. She takes Ibuprofen or Naproxen for back and neck pain and over-the-counter pain medication 2 to 3 times per day for headaches.

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Petitioner testified that on 10/16/21 she voluntarily transferred employment to Vienna Correctional Center where she currently works as a Corrections Assessment Specialist. She stated she changed jobs because working with aggressive behaviors put her at too much risk for serious injury and she feared for her safety.

Petitioner walks two to three times per week for strengthening. The last time she saw Dr. Robson for her low back was in February 2021 and she has no follow up appointments with any physicians. Petitioner testified she did not receive treatment for her cervical spine following her 2018 and 2020 accidents. She does not wear any assistive devices.

On 4/30/18, Petitioner completed a Workers' Compensation Employee's Notice of Injury form in which she described her two injuries which occurred that day. (RX1) Petitioner reported a patient punched her in the right temple, top of her head, and right cheek in one accident, and she was pulled by the hair from behind by a different patient in another accident.

On 4/30/18, Petitioner's supervisor completed a Supervisor's Report of Injury or Illness. (RX1). She reported that two different patients pulled Petitioner's hair and punched her in the right temple and cheek area. It was noted there were no injuries from the hair pulling incident with slight redness to the right side of Petitioner's face.

On 4/30/18, Jordin Foster, Bethany Miles, and Paris Ferguson each completed Workers' Compensation Witness Reports. (RX1) Ms. Foster and Ms. Miles confirmed a patient pulled Petitioner's hair. Ms. Ferguson confirmed Petitioner was punched in the face, but said it was Petitioner's left side.

On 5/1/18, Petitioner provided the information used to generate Illinois Form 45: Employer's First Report of Injury. (RX1) Petitioner indicated she sustained swelling and redness to her head with neck pain after being pulled by the hair and punched on the head three times.

On 3/26/20, Petitioner completed a Workers' Compensation Employee's Notice of Injury and stated an individual pulled her from behind near her office while punching and grabbing at her. Petitioner stated she injured her lumbar and mid back and she had nerve pain in both legs, and numbness in the left leg. (RX2, PX20)

On 3/26/20, Petitioner's supervisor completed a Supervisor's Report of Injury or Illness. (RX1, PX20) Petitioner's accident was described as occurring when a female patient pulled her from behind while grabbing and punching her. (RX2, PX20)

On 3/26/20, Allana Barnett and Kelli Kern each completed Workers' Compensation Witness Reports. (RX2, PX20) Ms. Barnett and Ms. Kern both witnessed a patient with their arms wrapped around Petitioner's waist. Ms. Barnett removed the patient from Petitioner and observed Petitioner enter her office.

On 4/15/21, Petitioner completed a Workers' Compensation Employee's Notice of Injury form in which she stated she hit the top of her head on a pipe while moving to the corner computer desk which caused immediate pain to her head and neck. (RX3)

On 4/16/21, Petitioner's supervisor completed a Supervisor's Report of Injury or Illness. (RX3) She stated Petitioner hit her head on a pipe in the director's office which caused a downward compression. Petitioner received cold packs but sought medical treatment later that day due to discomfort and problems moving.

On 4/17/21, Cali Basler completed a Workers' Compensation Witness Report. (RX3). Ms. Basler indicated Petitioner bumped the front of her head or forehead region and started holding the back of her neck because of pain.

MEDICAL HISTORY

On 5/2/18, Petitioner was examined at a walk-in clinic for neck pain and headaches after being injured at work. (PX1) She was diagnosed with cervical pain and given Phenergan.

On 5/7/18, Petitioner was seen by her primary care physician Dr. Tara Robbins at SIMCA who took a history of Petitioner having her hair pulled, head jerked backwards, and hit several times by a patient at work. (PX2, p. 31) Petitioner complained of headaches, neck pain, numbness and tingling, and brain fog. She reported feeling a lot of tension in her neck and upper back with muscle spasms. It was noted Petitioner had two injections in urgent care. Dr. Robbins diagnosed neck pain causing headaches and possible concussion or post-concussive headache and brain fog. Petitioner was taken off work and referred to physical therapy.

On 5/10/18, Petitioner began physical therapy at Heartland Regional Medical Center for neck pain and pressure, headaches, and nerve pain. (PX15) Petitioner rated her pain at 6/10. She attended 12 sessions through 6/8/18.

On 5/14/18, Petitioner returned to Dr. Robbins and reported improvement in her head pressure, but continued stiffness in her neck and face with tingling in the left forearm and wrist and some in the right arm. Petitioner reported a history of lumbar issues and numbness in her left ankle, but said it was currently worse. Petitioner reported having nightmares. She was diagnosed with cervical and lumbar radiculopathy and posttraumatic stress disorder with recurrent nightmares and fear of returning to work. A cervical and lumbar MRI was ordered, and she was instructed to remain off work and continue physical therapy.

On 5/29/18, the cervical MRI was performed that revealed no evidence of cord contusion, fracture, or herniation. (PX4)

On 6/1/18, Dr. Robbins diagnosed post-concussion syndrome with daily headache, and possible combination of post-concussion syndrome and cervical muscle spasms. (PX2, p. 27) Petitioner's tingling and nightmares were noted to have improved. She was ordered to continue physical therapy and return to light duty work in three days.

On 6/11/18, a lumbar MRI was performed that revealed a protrusion at L4-5 bordering on extrusion osteophytosis foraminal encroachment and lateral recess compromised with nerve root mass effect. (PX5) Petitioner followed up with Dr. Robbins that day and reported difficulty with her left ankle, persistent headaches, spine pain and low back stiffness, left greater than right arm tingling and aching that was aggravated with typing, and right leg pain. (PX2, p. 24) Dr. Robbins recommended trigger point injections for cervical pain and post-concussion symptoms that were performed on 6/15/18. Dr. Robbins noted Petitioner's history of low back symptoms were exacerbated by her work accident.

On 7/2/18, Petitioner reported no relief from the injections. She continued to have headaches, intermittent tingling in the hands and arms with burning on the left, and left greater than right ankle pain. Additional trigger point injections were administered.

On 8/13/18, Petitioner reported fatigue, nerve pain and burning in her leg, headaches with twitching in her left eye, light and sound sensitivities, memory loss, slight galactorrhea, and pain in her epigastrium with nausea. A brain MRI was performed on 8/23/18 that was normal. (PX6) Dr. Robbins referred Petitioner to Dr. Robson for a lumbar spine consultation.

On 10/3/18, Petitioner was examined by PA-C Jayne Aschen at Dr. David Robson's office. She reported low back pain and bilateral radiating leg pain, left worse than right. (PX3). It was noted her neck pain resolved. Petitioner's history of lumbar surgeries in 2010 and 2011 was noted. Petitioner was assessed with an annular tear and protrusion at L3-4, disc protrusion at L4-5, loss of disc height at L5-S1, and cervical strain. No cervical treatment was warranted. The L3-4 and L4-5 findings were thought to be caused by the work accident. Petitioner was continued on light duty restrictions, and physical therapy and an injection at L4-5 on the left was recommended. She was prescribed Medrol Dosepak.

On 12/19/18, Petitioner returned to Dr. Robbins with continued low back pain, worse in her legs, and neck pain. (PX2) It was noted Petitioner's anxiety had worsened with nightmares of being attacked. Petitioner reported she was forgetful and had difficulty concentrating. Physical therapy was ordered.

Petitioner underwent a left L4-5 transforaminal epidural steroid injection on 1/10/19. (PX13) She returned to Dr. Robbins on 1/30/19 and reported continued back pain with a pulling sensation in her legs. (PX2) Petitioner reported no improvement with the injection.

On 2/7/19, Dr. Robson ordered an updated lumbar MRI and placed Petitioner off work. (PX3) The MRI was performed on 2/12/19 that revealed L5 was partially sacralized, postoperative changes at L4-5 with recurrent disc herniation, postoperative change on the left at L5-S1, and disc bulging at L3-4. (PX7) Dr. Robson recommended a revision laminectomy, discectomy, and fusion at L4-5. Petitioner was placed off work.

On 3/18/19, Dr. Robson performed a bilateral lumbar laminectomy, foraminotomy revision at L4-5, and resection of synovial cyst on the right, posterior spinal fusion with local autograft and spine instrumentation at L4-5. (PX12)

On 6/18/19, Petitioner reported mild left leg numbness with resolved pain. Dr. Robson ordered physical therapy. On 7/18/19, Petitioner reported cervical symptoms for which physical therapy was recommend. Petitioner remained off work.

On 8/20/19, Petitioner reported no back pain but residual numbness and tingling in her left calf and foot. (PX3) She was concerned about returning to work as it could be an aggressive environment. Dr. Robson released Petitioner to return to work on 8/26/19 with restrictions of changing positions every hour from sitting or standing to walking. (PX3, p. 43)

On 9/24/19, Dr. Robson noted Petitioner was doing quite well with an occasional back ache and improving leg numbness. Dr. Robson placed Petitioner at MMI without restrictions.

On 1/28/20, Petitioner returned to Dr. Robson with increased low back pain left greater than right, with radiating right leg pain. (PX3) No new trauma or injury was noted. A lumbar CT scan and a left L5-S1 transformational epidural steroid injection was ordered.

On 2/18/20, the lumbar CT scan was performed that revealed post-operative changes at L4-5, faint lucency surrounding the posterior aspect of the L4 pedicle screws with some loosening, and mild foraminal narrowing. L5-S1 appeared similar to the previous study. (PX9)

On 2/21/20, a lumbar MRI was performed that revealed mild stenosis at L3-4 secondary to mild diffuse disc bulging, postoperative changes at L4-5, and postoperative changes on the left at L5-S1 consistent with mild diffuse spondylosis and scarring. (PX10) Petitioner also underwent a left L5 nerve root block. (PX14)

On 3/5/20, Dr. Robson recommended a revision surgery to repair the pseudoarthrosis at L4-5 and to include L5-S1 as a contributor to Petitioner's current symptoms. (PX3) He admitted he was premature in releasing Petitioner at MMI in August 2019.

On 3/27/20, Petitioner reported to Dr. Robson she was attacked by a patient at work, and she had increasing pain. (PX17) Petitioner was prescribed Medrol Dosepak and Meloxicam. It was noted Petitioner was awaiting surgical approval.

On 6/5/20, Dr. Robson performed a complete discectomy and fusion at L4-5 and L5-S1. (PX24) On 9/2/20, Dr. Robson released Petitioner to full duty work without restrictions on 9/17/20. (PX3, p. 85). Petitioner stated her left leg symptoms were continuing to improve.

On 11/3/20, Petitioner returned to Dr. Robson's office with complaints of left anterior thigh pain and some pain in her left ankle. Radiographs showed healing without complete fusion. Petitioner was to continue working full duty.

On 2/3/21, Dr. Robson ordered a lumbar CT scan that revealed a solid fusion. He placed Petitioner at MMI and noted she had a good result with some mild ongoing left leg pain.

On 4/28/21, Petitioner returned to Dr. Robson following a new work accident. (PX19) Petitioner reported a slip and fall while in the basement which caused her to hit her head on a pipe. She had neck pain and left greater than right radiating pain, numbness, and tingling. Petitioner's prior work accidents were noted, with Dr. Robson stating her cervical treatment was minimal in the past. A cervical MRI was ordered.

On 6/2/21, Dr. Robson assessed disc bulges at C5-6 and C6-7. (PX19) A left C5-6 interlaminar epidural steroid injection was recommended which was performed by Dr. Xiaobin Yi on 6/25/21. (PX21)

On 8/11/21, a lumbar CT scan was performed that revealed postoperative changes at L4-5 and L5-S1 and mild stenosis at L3-4. (PX20) Petitioner returned to Dr. Robson the same day who noted Petitioner's complaints of low back pain and left leg radiating pain that never completely

resolved. (PX19) Dr. Robson opined the CT scan showed a solid fusion from L4 to S1 with no root impingement. Petitioner was released at MMI without restrictions.

On 8/20/21, Petitioner returned to Dr. Yi for a cervical epidural steroid injection at C5-6. (PX21) On 9/2/21, Petitioner began physical therapy for cervicalgia and attended ten sessions through 10/2/21. (PX22)

On 9/22/21, Petitioner returned to Dr. Robson and reported the two cervical injections provided significant relief. (PX19) She still had headaches but was hopeful therapy would help. Petitioner was released from care.

CONCLUSIONS OF LAW

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Neither Party submitted an AMA rating. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation**: Petitioner voluntarily transferred her employment from Choate Mental Health Center to Vienna Correctional Center in October 2021. Although Dr. Robson released Petitioner to full duty work without restrictions, Petitioner testified she transferred jobs because she feared further injury from the aggressive work environment. The Arbitrator places some weight on this factor.

(iii) **Age**: Petitioner was 36 years old at the time of her injury. She is a young individual and must live and work with her disabilities for an extended period of time. Pursuant to *Jones v. Southwest Airlines*, 16 I.W.C.C. 0137 (2016) (wherein the Commission concluded that greater weight should have been given to the fact Petitioner was younger [46 years of age] and would have to work with his disability for an extended period of time). The Arbitrator places greater weight on this factor.

(iv) **Earning Capacity**: There is no evidence of reduced earning capacity contained in the record. Petitioner voluntarily left employment with Choate Mental Health and currently works for another State of Illinois facility on a full duty basis without restrictions. The Arbitrator places some weight on this factor.

(v) **Disability**: As a result of Petitioner's accident on 4/15/21, she sustained cervical disc bulges at C5-6 and C6-7. She underwent epidural steroid injections at C5-6

and ten sessions of physical therapy. Dr. Robson released Petitioner from his care on 9/22/21 without restrictions.

Petitioner testified she has tightness and achiness in her neck and shoulders that ranges from 1-6/10. She has left arm pain if she is active or sits at a computer and repetitively looks up and down. Petitioner testified she is careful not to lift too often as it increases her neck pain. She stated that her chronic headaches have increased since this accident. She takes Ibuprofen or Naproxen for pain and over-the-counter pain medication 2 to 3 times per day for headaches.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 7.5% loss of her body as a whole related to the cervical spine, as provided under Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 9/22/21 through the date of arbitration on 3/24/22, and shall pay the remainder of the award, if any, in weekly payments.

Linda J. Cantrell

_____ _____

Arbitrator Linda J. Cantrell DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC011111
Case Name	Tommie Cooper v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0194
Number of Pages of Decision	12
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Mallory Zimet, Scott Goldstein
Respondent Attorney	Andrew Zasuwa

DATE FILED: 4/26/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Tommie Cooper,

Petitioner,

vs. NO. 20WC 011111

Chicago Transit Authority,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 30, 2022 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 26, 2023

SJM/sj
o-2/22/2023
44

/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah J. Baker*
Deborah J. Baker

/s/ *Deborah L. Simpson*
Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC011111
Case Name	Cooper, Tommie v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	
Decision Type	Amended Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	Frank Kress, Scott Goldstein
Respondent Attorney	Andrew Zasuwa

DATE FILED: 6/30/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 28, 2022 2.50%

/s/ Antara Nath Rivera, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Cook**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
AMENDED ARBITRATION DECISION
NATURE AND EXTENT ONLY

Tommie Cooper
Employee/Petitioner

v.

Chicago Transit Authority
Employer/Respondent

Case # **20** WC **011111**

Consolidated cases: _____

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Antara Nath Rivera**, Arbitrator of the Commission, in the city of **Chicago**, on **March 28, 2022**. By stipulation, the parties agree:

On the date of accident, **05/07/2020**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned $**74,873.76**, and the average weekly wage was $**1,439.88**.

At the time of injury, Petitioner was **52** years of age, ***single*** with **1** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of $**45,801.85** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Respondent shall pay Petitioner PPD benefits of $836.69/week for 63.25 weeks, because the injuries sustained caused the 25% loss of use of Petitioner's left arm, as provided in Section §8(e)10 of the Act.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

JUN 30, 2022

Signature of Arbitrator

AMENDED STATEMENT OF FACTS:

Tommie Cooper ("Petitioner") is a 54-year-old male who is an employee of the Chicago Transit Authority ("CTA") ("Respondent") Petitioner testified that his job title is electrical worker. (Transcript ("T.") at 16) Petitioner testified that he was hired by Respondent in 2015. *Id.* He testified that his job duties included working on motors, rebuilding and lifting armatures, moving motors, sandblasting, lifting crates from the sandblaster, and pulling dollies. (T. 16-17) Petitioner testified that the machinery is about 1,000 pounds. (T. 17) The Position Description indicates that an electrical worker must be able to lift, carry and maneuver up to 50 pounds. (Respondent's Exhibit ("RX") 1, P. 2) Petitioner testified that while he does not work on PA and horn amplifiers, he is required to lift 50 pounds, "or more." (T. 36-37)

On May 7, 2020, Petitioner was working for, and employed by, Respondent and was 52 years old. (Arbitrator's Exhibit ("AX") 1, line 6; T. 18) Petitioner testified that, on May 7, 2020, he was working at a facility called "Chicago Transit Authority Heavy Equipment." (T. 19) Petitioner testified that in order to perform the tasks of his job he had to walk into an oven that he described as being similar to a walk-in closet that has doors which are between 6 ½ feet to 7 feet tall and made out of steel. *Id.* Petitioner testified that the doors were "pretty old" and heavy. *Id.* He further testified that the top of the doors had a latch that kept the doors from coming out. *Id.* He further testified that there are exhaust fans at the top of the oven "sucking the door in" and that "you're working against that latch and you're working against the force of the blower to keep the door from opening." (T. 19-20)

Petitioner testified that, on May 7, 2020, he pulled on the door to open it to retrieve armatures. *Id.* Petitioner testified that as he pulled on the door with his left hand, he "felt, like, a sting, like, a stretch in my forearm." (T. 20)

Petitioner testified that he reported to Concentra for an initial evaluation on the same day. (Petitioner's Exhibit ("PX") 1, P. 50; T. 21) Following his initial visit to Concentra, Petitioner opted to seek the medical care of Dr. Kenneth Schiffman of Loyola University Medical Center ("Loyola"). (PX 2, P. 6-9)

On May 13, 2020, Petitioner presented to Dr. Schiffman. *Id.* The records indicated that Petitioner was there for an evaluation of a left arm injury that had occurred the past Thursday. (PX 2, P. 6) Dr. Schiffman noted that Petitioner was at work pulling a heavy door when he felt pain at his proximal forearm and that his pain continued particularly with forearm rotation and especially active supination. (PX 2, P. 6) Dr. Schiffman recommended that Petitioner undergo an MRI of his left arm. (PX 2, P. 9)

On May 27, 2020, Petitioner returned to see Dr. Schiffman with complaints of persistent pain. (PX 2, P. 18) Dr. Schiffman reiterated Petitioner's need for the MRI stating that he was "highly suspicious for a distal biceps tendon evulsion injury" and that "because of his persistently disabling pain, an MRI is ordered." (PX 2, P. 21)

On May 28, 2020, an MRI was performed of Petitioner's left upper extremity at Loyola. (PX 2, P. 22)

On June 15, 2020, Petitioner returned to see Dr. Schiffman and review the MRI. (PX 2, P. 33) The MRI revealed a small tear at the origin of the lateral ulnar collateral ligament, mild tendinopathy of the

common extensor tendon, and no evidence of biceps tendon tear. Given the findings that seemed to rule out a tear of the biceps tendon, Dr. Schiffman recommended that Petitioner use a sling for support to rest the arm adequately with a recommended reevaluation in three weeks. (PX 2, P. 36)

On July 6, 2020, Petitioner saw Dr. Schiffman again. (PX 2, P. 46) Dr. Schiffman noted that "[t]his patient returns and states that now that his arm is been immobilized in a sling, he has some feeling of stiffness around the elbow and proximal forearm and the pain is somewhat less." *Id.* Dr. Schiffman recommended that Petitioner discontinue use of the sling and begin physical therapy to treat his condition. (PX 2, P. 48; T. 23)

On July 13, 2020, Petitioner presented to Athletico for an initial physical therapy assessment. (PX 3, P. 3; T. 23) Petitioner testified that this was the only session of physical therapy that he attended because of the pain he was experienced due to the motions the therapists made him do. (T. 23)

On July 20, 2020, Petitioner returned to see Dr. Schiffman again with ongoing complaints of pain in his left arm. (PX 2, P. 61; T. 23) Petitioner testified that Dr. Schiffman told him to cease physical therapy treatment. (T. 23) Dr. Schiffman recommended that Petitioner undergo a new MRI with a 3 Tesla magnet to determine if there was a partial distal biceps evulsion. (PX 2, P. 61)

On August 3, 2020, Petitioner testified that he underwent an MRI that utilized a 3 Tesla magnet. (T. 24)

On August 5, 2020, Petitioner saw Dr. Schiffman again. (PX 2, P. 70; T. 24) On this occasion, Dr. Schiffman noted that Petitioner had undergone repeat high resolution MRI evaluation of the left arm. (PX 2, P. 70) Dr. Schiffman reviewed the report as well as the images which confirmed no sign of distal biceps detachment. *Id.* However, Dr. Schiffman noted that Petitioner continued to experience some pain in the area of the proximal radial forearm and some pain lately at the ulnar aspect of the distal forearm. *Id.* Dr. Schiffman ordered more physical therapy. (PX 2, P. 73)

On August 26, 2020, Petitioner returned to see Dr. Schiffman. (PX 2, P. 85) On this date, Dr. Schiffman wrote that "because we have essentially ruled out a distal biceps evulsion injury, I am not certain as to why this pain has persisted for as long as it has." *Id.* Dr. Schiffman suggested to Petitioner that he see his associate, Dr. Dane Salazar, for an additional opinion. *Id.*

On September 14, 2020, Petitioner presented to Dr. Salazar. (PX 2, P. 96) Dr. Salazar noted that Petitioner is right hand dominant and diagnosed Petitioner with a left partial thickness distal biceps tear and recalcitrant biceps tendinitis. *Id.* A review of the most recent MRI revealed some thickening and some peritendinous fluid of the distal biceps, but no full thickness tearing or retraction. *Id.* Dr. Salazar indicated that he and Petitioner had a lengthy discussion regarding natural history and pathophysiology. (PX 2, P. 97) Dr. Salazar noted that Petitioner had undergone formal physical therapy, cryotherapy, activity modification, rest, and nonsteroidal anti-inflammatories. *Id.* Dr. Salazar recommended a therapeutic and diagnostic ultrasound-guided peritendinous injection of local anesthetic to the distal biceps to see if would alleviate Petitioner's his symptoms completely. *Id.* Dr. Salazar also noted that Petitioner may be a candidate for "takedown and repair" of the distal biceps. *Id.*

On October 2, 2020, Petitioner underwent the recommended ultrasound guided diagnostic injection at Loyola. (PX 2, P. 113, T. 25)

On October 12, 2020, Petitioner followed up with Dr. Salazar. (PX 2, P. 134) Dr. Salazar wrote that Petitioner had had exhaustive nonoperative treatment to include formal physical therapy, cryotherapy, activity modification, rest, nonsteroidal anti-inflammatories, and therapeutic diagnostic ultrasound guided peritendinous injection, which gave him about five hours of relief and once it wore off his pain came back. *Id.* Dr. Salazar noted that Petitioner had an MRI that demonstrated the above pathology and his symptoms had become lifestyle limiting. *Id.* For these reasons, Dr. Salazar opined that Petitioner would be an acceptable candidate for left elbow distal biceps takedown and repair and debridement. *Id.* Petitioner opted to proceed with surgical intervention. (T. 26)

On November 17, 2020, Dr. Salazar performed surgery on Petitioner's left arm at Loyola. (PX 2, P. 148-152) The operative report notes indicated that "[t]he biceps tendon was absent and was retracted proximally." (PX 2, P. 151) Dr. Salazar indicated that "[w]ith maximal supination, we had nice exposure of the radial tuberosity." *Id.* Dr. Salazar noted that he "retrieved the distal biceps tendon with finger sweep dissection proximally." *Id.* Dr. Salazar additionally noted that "[t]he tendon end was frayed and bulbous, we debrided this back to healthy tissue and sculpted the end to be bullet shaped to facilitate docking." *Id.*

On November 23, 2020, Petitioner followed up with Dr. Salazar's physician's assistant ("PA"), Bianca Federico. (PX 2, P. 248) Petitioner was prescribed an orthotic and was advised to return to the clinic in three weeks. *Id.* Petitioner testified that the orthotic was like a cast meant to keep his arm in a certain position. (T. 27)

On December 28, 2020, Petitioner again followed up with PA Federico. (PX 2, P. 255) PA Federico recommended that Petitioner could start occupational therapy for range of motion and could discontinue his [orthotic] at that time. *Id.*

On February 8, 2021, Petitioner followed up with PA Federico. (PX 2, P. 264) Petitioner testified that there were issues with authorization of his physical therapy, but he did eventually receive therapy at Gottlieb which is affiliated with Loyola. (PX 2, P. 264; T. 27-30)

On March 22, 2021, Petitioner followed up with Dr. Salazar. (PX 2, P. 406) Dr. Salazar recommended that Petitioner return to work with, no formal restrictions, as of April 5, 2020, after completing a reconditioning regimen. (PX 2, P. 406; T. 3) Petitioner testified that this was the last time he received medical treatment for his left upper extremity. (T. 30-31)

Petitioner testified that, currently, he felt his left arm was not 100%. (T. 31) He testified that he does not flex straight like he used to and is hesitant to do certain things because he wants to be careful and not tear it again. *Id.* Petitioner testified that rotating his left arm and stretching it fully is something he has more difficulty with today than before the May 7, 2020, work accident. (T. 31-32)

With regards to his job with CTA, Petitioner testified that he has been able to perform it but is just a little hesitant and is trying to be more careful. (T. 32) Petitioner testified that he also works on cars and notes difficulties with working underneath the car. He testified that shoveling snow can also be a little difficult. (T. 32-33)

Petitioner testified that prior to May 7, 2020, he injured his left shoulder and was diagnosed with a rotator cuff tear. (T. 33) He specified that the injury was to his shoulder, not his arm, and that it was not a work-related accident. *Id.* Petitioner confirmed in his testimony that he had not had any new injuries to his left arm. *Id.*

CONCLUSIONS OF LAW

The Arbitrator adopts the above Statement of Fact in support of the Conclusions of Law set forth below.

Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission,* 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and found him to be a credible witness. Petitioner was calm, well-mannered, composed, and spoke clearly. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

WITH RESPECT TO ISSUE OF NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to §8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability ("PPD") for accidental injuries occurring on or after September 1, 2011:

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

(i) the reported level of impairment pursuant to subsection (a);

(ii) the occupation of the injured employee;

(iii) the age of the employee at the time of the injury;

(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that an American Medical Association ("AMA") impairment rating was not performed in this case. As such, the Arbitrator relies on the other four factors of PPD.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as an electrical worker at the time of the accident and that he was able to return to work in his prior capacity as a result of said injury. The Arbitrator further notes that Petitioner testified that his job duties included working on motors, rebuilding and lifting armatures, moving motors, sandblasting, lifting crates from the sandblaster, and pulling dollies. (T. 16-17) The Arbitrator notes that Petitioner testified that, on May 7, 2020, he worked at a facility called "Chicago Transit Authority Heavy Equipment." (T. 19) Petitioner additionally testified that in order to perform the tasks of his job he had to walk into an oven, that he described as being similar to a walk-in closet, which had 6 ½ feet to 7 feet doors made out of steel. *Id.* The Arbitrator notes that Petitioner testified that there are exhaust fans at the top of the oven which acted like a force working against him when trying to open the doors. (T. 19-20) The Arbitrator notes that Petitioner's job description was reviewed and that Petitioner could work without limitations, or restrictions, as a result of the return-to-work examination. (P.X.1, 10) The Arbitrator places some weight on this factor.

With regard to subsection (iii) of §8.1b(b), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 52 years old at the time of the accident. The Arbitrator notes that he is roughly a decade away from the traditional retirement age and will have to work with the residuals of this injury for a shorter period-of-time. The Arbitrator places less weight on this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner has not suffered a diminution of wages as a result of his injury. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Pursuant to Section 8(d)2, Petitioner sustained a left partial thickness distal biceps tear and recalcitrant biceps tendinitis. (PX 2, P. 96) The Arbitrator notes that a review of the most recent MRI revealed some thickening and some peritendinous fluid of the distal biceps, but no full thickness tearing and no retraction. *Id.* The Arbitrator notes that on October 2, 2020, Petitioner underwent the recommended ultrasound guided diagnostic injection at Loyola. (PX 2, P. 113, T. 25) The Arbitrator notes that when this treatment, and other conservative treatment failed, Petitioner underwent a left elbow distal biceps tendon repair on November 17, 2020. The Arbitrator notes that the medical reports indicated that Petitioner's biceps tendon was absent and that the tendon ends were frayed. The Arbitrator notes that post-surgery, Petitioner's pain level decreased to 2 out of 10. (PX 2, P. 245) The Arbitrator additionally notes that Petitioner was released to work without formal restrictions, as of April 5, 2021, after he underwent a reconditioning regimen. (PX 2, P. 406)

The Arbitrator notes that Petitioner testified that his left arm was not a hundred percent. (T. 31) The Arbitrator notes that while Petitioner testified that he was working full duty for the Respondent following his release to work, he was "kind of hesitant to do certain things." (T. 31) The Arbitrator notes that the last medical visit regarding the left upper extremity is from April 6, 2021, where Concentra cleared the Petitioner for work without restrictions (PX 1, P. 30) The Arbitrator therefore gives greater weight to factor (v) of §8.1b(b)

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Respondent shall pay Petitioner PPD benefits of $836.69/week for 63.25 weeks, because the injuries sustained caused the 25% loss of use of Petitioner's left arm, as provided in Section §8(e)10 of the Act.

Antara Nath Rivera, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC002837
Case Name	James Allison v. City of Joliet
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0195
Number of Pages of Decision	12
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Brian Cichon
Respondent Attorney	Theodore Powers

DATE FILED: 4/26/2023

/s/ Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAMES ALLISON,

Petitioner,

vs. NO: 18 WC 02837

CITY OF JOLIET,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 13, 2022, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 26, 2023
o-4/18/23
KAD/jsf

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

/s/*Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC002837
Case Name	James Allison v. City of Joliet
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Brian Cichon
Respondent Attorney	Theodore Powers

DATE FILED: 7/13/2022

THE INTEREST RATE FOR THE WEEK OF JULY 12, 2022 2.68%

/s/ Roma Dalal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Will**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

James Allison
Employee/Petitioner

v.

City of Joliet
Employer/Respondent

Case # **18** WC **002837**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Roma Dalal**, Arbitrator of the Commission, in the city of **Joliet**, on **May 17, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **September 13, 2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**102,000.08**; the average weekly wage was $**1961.54**.

On the date of accident, Petitioner was **52** years of age, ***married*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent is entitled to a credit under Section 8(j) of the Act for all medical payments and medical bills paid related to said work injuries under Respondent's group insurance provided to Petitioner.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $790.64/week for 37.95 weeks, because the injuries sustained caused 15% loss of the right arm as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $790.64/week for 67.5 weeks, because the injuries sustained caused 13.5% loss, person as a whole, as provided in Section 8(d)(2) of the Act.

Respondent shall pay reasonable and necessary medical services of Hinsdale Orthopaedics, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for amounts paid.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

JULY 13, 2022

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

ILLINOIS WORKERS' COMPENSATION COMMISSION

James Allison_____,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. **18WC02837**
City of Joliet_____,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on May 17, 2022 in Joliet, Illinois before Arbitrator Roma Dalal on Petitioner's Request for Hearing. Issues in dispute include medical bills and nature and extent. (Arb. Ex. 1).

Petitioner testified he is a 57-year-old male, who lives in Joliet with his wife. He is a graduate of Joliet Catholic Academy and has taken classes at Joliet Junior College. On January 4, 1988, at the age of 22, Petitioner was hired to become a police officer by the City of Joliet. He began as a patrol officer and progressed to the position of detective which is the position that he held until his retirement on February 23, 2018. He spent the last 15 years of his career assigned as a school safety officer.

On September 13, 2017 Petitioner testified he was escorting a student down a stairway, the student pulled away from him causing Petitioner to fall. He testified he fell down the stairs with his arms extended outward. Prior to the accident, Petitioner denied prior medical problems or symptoms involving his right elbow, arm, or shoulder. He made a police report of the incident and notified his supervisors of the injury.

Initially, Petitioner did not seek medical care right away as he believed the pain would go away. As the pain did not resolve, he eventually sought treatment on December 11, 2017. On this date, he presented to MK Orthopedics and was seen by Dr. Mukund Komanduri at the request of Dr. Waszak. Petitioner was a 52-year-old male who presented with a right elbow injury. Petitioner reported the injury and complained of tenderness and pain in his left elbow with grip and strength defects. (PX1). Petitioner was placed in a hinged elbow brace, prescribed physical therapy, and was recommended an MRI. (PX1).

Petitioner underwent the MRI on December 20, 2017. The MRI revealed mild tendinosis versus strain of the common flexor tendon and a small low-grade partial thickness tear of the common extensor tendon. (PX1).

Petitioner retuned to Dr. Komanduri on December 27, 2017. The Doctor noted the MRI confirmed a lateral epicondylitis injury and a partial thickness tear of the ulnar collateral ligament. Petitioner was to continue to wear the hinged elbow brace and begin outpatient therapy. (PX1).

Petitioner subsequently transferred his care to Hinsdale Orthopedics. On September 9, 2018 Petitioner first presented to Dr. Robert Thorness for a second opinion. The Doctor went over his work injury and reviewed his MRI. He diagnosed Petitioner with medial epicondylitis. (PX2). Petitioner was recommended occupational therapy. (PX2).

Petitioner underwent occupational therapy at Hinsdale Orthopaedics from February 12, 2018 to April 26, 2018 consisting of thirty-one visits. (PX3).

Petitioner followed up with Dr. Thorsness on March 23, 2018. Petitioner underwent an injection at the medial epicondyle. Petitioner was to continue with occupational therapy. (PX2). In an April 30, 2018 follow up Petitioner noted the injection completely resolved his symptoms. Petitioner was recommended to return to work and activities as tolerated. He would return in six to eight weeks for a possible MMI. (PX2). On June 27, 2018, Petitioner advised Dr. Thorsness he still had occasional stiffness in his arm but was otherwise symptom free. Petitioner was placed at maximum medical improvement and was told to return for treatment as needed. (PX2).

Petitioner testified that his pain returned and became more intensified after his injection wore off. On September 12, 2018 Petitioner returned to Dr. Thorsness at Hinsdale Orthopaedics. Petitioner noted the pain had completely returned. His elbow pain significantly limited his daily activities and interfered with his sleep. At this point, Petitioner was recommended a right medial epicondyle debridement and flexor mass repair and in situ ulnar nerve decompression. (PX2).

On December 4, 2018, Petitioner was seen by Dr. Fernandez for an independent medical examination at Midwest Orthopaedics. (PX9, RX1). Dr. Fernandez diagnosed Petitioner with medial epicondylitis as well as right elbow cubital tunnel syndrome with instability of the ulnar nerve. He opined Petitioner's treatment to date had been reasonable and necessary and causally connected to Petitioner's injury. Dr. Fernandez agreed with the surgery being recommended. (PX9, RX1).

Petitioner followed up on December 28, 2018 with Dr. Thorsness. Petitioner was once again recommended surgery. (PX2).

On January 22, 2019, Petitioner underwent a right elbow open medial epicondylar debridement, flexor mass repair and ulnar nerve transposition. His post operative diagnosis was right elbow medial epicondylitis and ulnar neuritis. (PX2).

After surgery, Petitioner participated in physical therapy at Hinsdale Orthopaedics from February 5, 2019 to May 14, 2019, consisting of 44 visits. (PX4). While undergoing physical therapy and

during his next office visits, Petitioner noticed he had improvement in his elbow but started feeling right shoulder pain due to his right arm being immobilized. Petitioner mentioned this pain to his physical therapists and shoulder exercises began to be incorporated into his existing therapy for his elbow. (PX4).

Petitioner followed up on March 6, 2019 with Dr. Thorsness. Petitioner's range of motion had improved. Petitioner was six weeks post-surgery. He was to continue with occupational therapy and remain off work. (PX2).

On April 17, 2019, Petitioner followed up with Dr. Thorsness. Petitioner reported considerable improvement with the elbow. Petitioner also complained of right shoulder rotator cuff tendinitis. Petitioner was recommended an additional four weeks of physical therapy. With regards to his right shoulder soreness, Dr. Thorsness indicated Petitioner's shoulder pain was likely from overcompensating after surgery resulting in rotator cuff tendonitis. Petitioner was recommended physical therapy to address the rotator cuff injury as well. (PX2).

Petitioner underwent physical therapy for his shoulder from May 30, 2019 to July 5, 2019. Petitioner was discharged as of July 5, 2019. (PX5).

On May 15, 2019 Petitioner followed up with Dr. Thorsness. Petitioner stated his elbow had greatly improved, however, he continued to have shoulder pain. Petitioner was recommended an MRI. (PX2).

On May 22, 2019, Petitioner underwent an MRI of the right shoulder. The MRI revealed a near-full thickness tear of the anterior supraspinatus as well as a partial upper border partial tear of the subscapularis with severe biceps tenosynovitis and subacromial bursitis with a superior labral tear and AC joint arthropathy. (PX2).

Petitioner followed up on May 29, 2019. Petitioner continued to have shoulder pain. Petitioner underwent a cortisone injection. The Doctor also recommended continued physical therapy. Petitioner was to return in six weeks. (PX2). Petitioner followed up on July 10, 2019. Petitioner continued to complain of tightness in his shoulder. Petitioner reported significant improvement in his pain. The Doctor noted if the pain returned full surgical intervention would likely be necessary. (PX2). Petitioner followed up on August 12, 2019. Petitioner noted the injection had worn off and he had more intense pain again. Petitioner was prescribed surgery to include a right shoulder arthroscopy with debridement, subacromial decompression, rotator cuff repair and open biceps tenodesis. (PX2).

On September 20, 2019, Petitioner followed up again and was scheduled for surgery. (PX2). On September 27, 2019 Petitioner underwent a right shoulder debridement of the glenohumeral joint, labrum and subacromial space, subacromial decompression with acromioplasty, rotator cuff repair and open biceps tenodesis. Petitioner's postsurgical diagnosis was right shoulder rotator cuff tear, biceps tendonitis, and subacromial impingement with humeral head chondromalacia, type I superior labral tear. (PX2).

Petitioner started physical therapy from September 20, 2019 to March 9, 2020, consisting of 69 visits. (PX6).

Petitioner followed up on November 6, 2019 noting he was progressing. Petitioner was six weeks post-surgery. He was to begin active motion as tolerated. (PX2). Petitioner returned again on December 18, 2019. Petitioner noted improvement but still had significant pain in his trapezial area. Petitioner was to continue with physical therapy and return in six weeks.

Petitioner was last seen on March 11, 2020. Petitioner had been discharged from physical therapy and was discharged to a home exercise program. Petitioner still had not returned to higher-level activities such as golf. Petitioner could progress to normal activities and had no formal restrictions. The Doctor did caution Petitioner to keep his elbows close to his body when lifting and avoid heavy lifting away from his body in order to protect his shoulder. He was to return on a PRN basis. (PX2).

On August 25, 2020, Petitioner was seen for a second independent medical examination to address his right shoulder treatment. Dr. Balaram at Hand to Shoulder Associates examined Petitioner and had an opportunity to review his entire history and medical file. Dr. Balaram agreed Petitioner sustained a right shoulder condition while compensating for his injured elbow and that his treatment was reasonable and necessary. (PX10, RX2).

At trial, Petitioner testified he was currently not working and had retired from his police position. Petitioner also confirmed at trial that his retirement was not related to the accident, his injuries or any physical disability.

He testified as his Doctor cautioned him, he is cautious with his right arm. He noted he does not have any formal restrictions but is cautious and reluctant to attempt to perform any tasks that would require heavy or strenuous work.

Presently, Petitioner experiences stiffness, soreness, and has less strength in his right arm. Petitioner does engage in recreational activities such as bowling and golf, but these activities do not cause pain or the type of exertion that was cautioned by his doctors.

Petitioner further testified that he continues to receive billing from Hinsdale Orthopaedics for treatment he received as testified to above. (PX8).

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her

actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

In this case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. Petitioner was well mannered. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. Section 8(a) of the Act states a Respondent is responsible …"for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See Gallentine v. Industrial Comm'n, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

The Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds Respondent has not paid for said treatment.

Petitioner submitted detailed billing from Hinsdale Orthopedics that corresponds with the treatment described and submitted into evidence by Petitioner. This billing contains a balance due that should not be the responsibility of the Petitioner. Respondent shall pay reasonable and necessary medical services as billed by Hinsdale Orthopaedics for their dates of service pursuant to the workers' compensation fee schedule.

As such, the Arbitrator orders Respondent to pay Petitioner the reasonable and necessary medical expenses incurred through September 13, 2017 in connection with the care and treatment of his causally related condition pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid.

Issue L, what is the Nature and Extent of the Injury?

Consistent with the Illinois Workers' Compensation Act, the Arbitrator is to base the permanency determination on the following factors:

i. The reported level of impairment pursuant to subsection (a) (e.g., the AMA rating)
ii. The occupation of the injured employee
iii. The age of the employee at the time of the injury
iv. The employee's future earning capacity
v. Evidence of disability corroborated by the treating medical records.

With regard to subsection (i) of § 8.1b(b), the Arbitrator notes no party introduced an impairment rating at trial and as such, no weight is given to this factor.

With regard to subsection (ii) of § 8.1b(b), the Arbitrator notes that although Petitioner was released to work by his treating physician, he retired from his employment. Petitioner was advised to "be careful" with his arm. The Arbitrator does not have to analyze whether Petitioner can perform the full duties of his job as Petitioner is retired. The Arbitrator therefore gives moderate weight to this factor.

With regard to subsection (iii) of § 8.1b(b), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 52 years old at the time of the accident. Petitioner is currently 57 years old and retired from the Police force. Given the limited years left in his work life, the Arbitrator gives great weight to this factor.

With regard to subsection (iv) of § 8.1b(b), the Arbitrator concludes Petitioner is capable of working with no restrictions and has retired. Petitioner is also receiving a full retirement pension and testified he anticipates returning to work in some capacity. The Arbitrator therefore gives some weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that the treating records corroborate the testimony of the Petitioner as to the treatment received and the recovery from said treatment. The Arbitrator therefore gives greater weight to this factor.

Having considered the testimony of Petitioner and the medical records, this Arbitrator finds that Petitioner sustained work injuries that required extensive medical treatment consisting of therapy, injections, medications, diagnostic testing, and multiple surgeries. Petitioner retired during his treatment from his profession and this retirement was not related to his injuries. Though not formally restricted, Petitioner did testify that he does have some residual effects from his injuries and treatment and that he is cautious with activities in which he engages. Petitioner further testified that he does have residual stiffness and soreness and subjective loss of strength.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 15% loss of use of the right arm pursuant to §8(e)10 of the Act for the medial epicondylitis and ulnar neuritis.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 13.5% loss of use of the person as a whole pursuant to §8(d)2of the Act for the rotator cuff repair.