ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC022681
Case Name	Albert Adams v. Davis Houk Mechanical Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Corrected Decision
Commission Decision Number	
Number of Pages of Decision	46
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Mark Lee, Kevin Morrisson
Respondent Attorney	Bruce Magnuson

DATE FILED: 4/13/2023

/s/ Deborah Baker, Commissioner

Signature

22IWCC0363

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 up causal connection, medical, TTD, prospective	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ALBERT ADAMS,

Petitioner,

vs.

NO: 20 WC 22681
22 IWCC 0363

DAVIS HOUK MECHANICAL, INC.,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein under §19(b) of the Act, and notice given to all parties, the Commission, after considering the issues of whether Petitioner's current left shoulder condition of ill-being remains causally related to the work injury, as well as entitlement to incurred medical expenses subsequent to the September 15, 2020 §12 examination report of Dr. George A. Paletta, Jr., prospective medical care, and temporary total disability benefits, and being advised of the facts and law, modifies the Decision of the Arbitrator. The Commission finds Petitioner's current left shoulder condition of ill-being is causally related to the work injury. The Commission 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 (1980).

FINDINGS OF FACT

i. Pre-accident left shoulder medical care

On November 18, 2016, Petitioner injured his left shoulder while working for another employer in Missouri. On December 12, 2016, Petitioner treated with Dr. Richard E. Hulsey with the chief complaint being his left shoulder. Dr. Hulsey examined Petitioner and found tenderness

over the glenohumeral joint posteriorly but no significant loss of function and no tenderness over the AC joint. Dr. Hulsey also noted Petitioner had good strength in the supraspinatus and infraspinatus. Dr. Hulsey reviewed an MRI which had been performed after the November 18, 2016, accident and noted moderate degenerative changes of the glenohumeral joint, moderate tendinopathy of the supraspinatus tendon and a tear of the posterior labrum with an os acromiale. Dr. Hulsey performed X-rays and found advanced osteoarthritis of the glenohumeral joint with near bone-on-bone and an inferior osteophyte off the humeral head.[1] Dr. Hulsey diagnosed osteoarthritis of the glenohumeral joint with a posterior labral tear and placed Petitioner on light duty.

On December 21, 2016, Petitioner followed up with Dr. Hulsey after undergoing a left shoulder CT scan on December 12, 2016. Dr. Hulsey noted significant arthritic changes in the left shoulder although there was small joint space remaining. Dr. Hulsey released Petitioner to full duty work, but continued treating him conservatively with a left shoulder injection on February 1, 2017, as well as physical therapy. During his last visit with Dr. Hulsey on May 10, 2017, Petitioner informed Dr. Hulsey that the injection had worn off and Petitioner complained of left shoulder soreness, occasional popping, and limited range of motion. Dr. Hulsey opined that Petitioner would require a total left shoulder arthroplasty in the future due to his underlying arthrosis. Dr. Hulsey continued Petitioner's physical therapy in order to keep his shoulder loose, but also discharged Petitioner from care at maximum medical improvement and released him to full duty.

On June 11, 2018, Petitioner suffered an unrelated right shoulder injury at work. On September 12, 2018, while treating for his right shoulder, Dr. Joseph Brunkhorst apparently examined Petitioner's left shoulder and found no evidence of a biceps tear, no tenderness to the bicipital groove and full range of motion.

ii. Stipulated accident & subsequent left shoulder medical care

Petitioner testified that he sustained a work-related left shoulder injury on April 22, 2020. On that date, his shift began at 7a.m. Petitioner alleges that at 11a.m. he lifted a 25-50 pound bundle of light gauge angle iron. He testified that he was carrying it on his left shoulder when he encountered a coworker walking down the hall. Petitioner testified that he backed up to avoid the coworker, and when he turned, the back of the bundle hit the wall and he felt a pop in his left shoulder. He testified that his shoulder hurt "like hell" and he immediately lost range of motion. Petitioner immediately reported the injury but completed his shift. He testified that he also worked the following day. Thereafter he was referred to occupational care at Carle Hospital.

The record reflects that on April 24, 2020, Petitioner visited Dr. Randy E. Cohen at Carle Hospital. Petitioner reported that he was walking downstairs carrying 30 pounds of 1 to 1-1/2 inch bent sheet metal. He reported that while turning a corner, the sheet metal hit the framing and he felt a pop and pain in his left shoulder. Petitioner reported to Dr. Cohen that he had continued working since then, but still had pain with range of motion. Petitioner informed Dr. Cohen of his

1 The December 12, 2016 note indicates that *right* shoulder X-rays were taken, but this appears to be a typographical error. A reading of the record reveals a chief complaint of the *left* shoulder, as well as references to a left shoulder injury and work restrictions imposed on the left shoulder. Accordingly, the Commission presumes the X-rays taken on this date were of the left shoulder.

prior degenerative left shoulder condition, which had been treated with an injection and physical therapy. Dr. Cohen noted that Petitioner had been working with his left shoulder condition with no reported difficulties until the instant accident date. Dr. Cohen examined Petitioner and noted left shoulder tenderness to palpation with limited external range of motion. Dr. Cohen ordered X-rays and subsequently opined that they verified Petitioner's degenerative left shoulder history. He diagnosed left shoulder pain and advanced degenerative arthritis of the left glenohumeral joint, and imposed work restrictions of 10-pounds lifting with the left arm and no overhead work. These restrictions were accommodated by Respondent.

On May 8, 2020, Petitioner followed up with Dr. Cohen, reporting that his left shoulder pain persisted. Dr. Cohen performed repeat X-rays and diagnosed a left shoulder injury, severe glenohumeral degenerative changes and questionable acromial fracture. Dr. Cohen referred Petitioner for orthopedic evaluation and continued the light duty restrictions of lifting, pushing, and pulling 10 pounds.

On May 26, 2020, Petitioner treated with Physicians' Assistant Danny McFarlin, who noted Petitioner had "no problems" before the instant accident, although Petitioner did report a few prior shoulder injuries. PA McFarlin ordered X-rays, which revealed severe arthritis of the glenohumeral joint with complete joint space loss. He diagnosed severe glenohumeral joint arthritis to the left shoulder and recommended an intraarticular injection. A left shoulder replacement was discussed. Mr. McFarlin also believed there was a chance of a rotator cuff tear. He ultimately recommended conservative treatment.

On June 5, 2020, Petitioner followed up with Dr. Cohen after undergoing an injection on June 2, 2020. Petitioner reported that after the intraarticular injection, he rolled over in bed and felt and heard a pop in his left shoulder. He informed Dr. Cohen that since then he had increasing pain and more diffuse discomfort. Dr. Cohen diagnosed severe glenohumeral arthritis in the left shoulder and aggravation of left shoulder pain on June 2, 2020. Petitioner informed Dr. Cohen that he had secured a consult with orthopedic surgeon Dr. Mark Dennis Greatting at Springfield Orthopedics on June 23, 2020. Petitioner testified that Springfield Orthopedics was closer to his home than was Carle Orthopedics. On June 16, 2020, Petitioner participated in a zoom appointment with Mr. McFarlin, and reported that the intraarticular injection had worsened his pain.

Dr. Greatting testified via deposition that his Nurse Practitioner initially met with Petitioner at Springfield Orthopedics on June 23, 2020, however this record is not contained in Dr. Greatting's office records in Petitioner's Exhibit 7. On July 16, 2020, Dr. Greatting's office performed a CT scan of Petitioner's left shoulder which revealed severe glenohumeral osteoarthritis with bone on bone articulation, several large intra-articular bodies in the subscapularis recess and an incidental note of an os acromiale.

On July 22, 2020, Petitioner was evaluated by Nurse Practitioner Mirjam Naughton at Springfield Orthopedics. Petitioner reported his pain was rated 5-8/10. Ms. Naughton opined that the July 16, 2020 CT scan was significant for severe left glenohumeral osteoarthritis with several large intraarticular bodies in the subscapularis recess. Ms. Naughton discussed treatment options with Petitioner, who opted to undergo a left total arthroplasty with Dr. Greatting.

On September 15, 2020, Dr. Paletta performed a Section 12 examination on Petitioner at Respondent's request. Petitioner described a consistent mechanism of injury. Petitioner reported ongoing left shoulder pain and limited range of motion, especially when reaching overhead or behind his body. He also denied prior left shoulder problems. Dr. Paletta reviewed the July 16, 2020 CT scan and confirmed advanced osteoarthritis of the glenohumeral joint with essentially full thickness chondral loss and bone on bone changes. Dr. Paletta noted that according to Petitioner's history, the condition was asymptomatic prior to the instant accident. Dr. Paletta ordered X-rays, finding advanced end-stage osteoarthritis of the glenohumeral joint with marked joint space narrowing, and large inferior humeral neck or goat's beard osteophyte. Dr. Paletta diagnosed end-stage osteoarthritis of the left shoulder, but opined it was not caused by Petitioner's work injury. He further opined that all diagnostic findings were longstanding and chronic and would not have occurred within 48 hours of the accident. He agreed with Springfield Orthopedics that a shoulder replacement was necessary, but reiterated that it was related to Petitioner's longstanding end-stage osteoarthritis, and that the work accident did not cause any change in the natural history of Petitioner's condition.

On November 23, 2020, Petitioner met with Dr. Greatting himself for the first time. Petitioner reported a mechanism of injury of carrying a 25-pound piece of angle iron on his left shoulder when he struck the angle iron on a pilon and felt a pop and immediate pain in his shoulder. He further reported that on the night of his accident he felt another pop while rolling over onto the shoulder in bed. He complained of pain and limited range of motion with popping in the shoulder. Petitioner indicated no left shoulder issues prior to this accident. Dr. Greatting reviewed the June 23, 2020 X-rays from his office and found severe osteoarthritis of the glenohumeral joint. He further opined that the July 16, 2020 CT scan revealed severe osteoarthritis with several large intraarticular loose bodies in the subscapularis recess. Dr. Greatting opined that these arthritic changes preexisted the injury, but noted that Petitioner indicated he was asymptomatic until the instant injury. Dr. Greatting opined that based on this history, the accident potentially exacerbated a preexisting condition and may have caused a rotator cuff tear. He opined the only real treatment would be a total shoulder arthroplasty.

On January 7, 2021, Petitioner followed up with Dr. Greatting. Petitioner reiterated that his left shoulder was asymptomatic prior to the instant accident, and that he had significant and ongoing problems of pain, weakness, and limited range of motion ever since. Dr. Greatting opined Petitioner's symptoms were related to the osteoarthritis. He reiterated his causation opinion, and opined that based on the history, the injury appeared to have exacerbated or accelerated the symptoms of Petitioner's pre-existing osteoarthritis. Dr. Greatting performed an intraarticular steroid injection and referred Petitioner for physical therapy. Dr. Greatting reiterated that the only real surgical option was a total shoulder arthroplasty.

On February 18, 2021, Petitioner followed up with Dr. Greatting. Petitioner reported no relief from the January 7, 2021 steroid injection. Dr. Greatting discussed further treatment options. Petitioner elected to undergo a series of viscosupplementation injections. Dr. Greatting informed Petitioner that if these injections did not provide improvement, a total shoulder arthroplasty may be necessary in the future. Petitioner testified that he requested a release to work the following day. He testified that he wanted to earn income but was unable to draw unemployment. Dr.

Greatting's office administered the viscosupplementation injections on three dates in March of 2021. Petitioner testified that they initially helped, but that the effects wore off after one month.

Since being released back to work, Petitioner has worked on at least three job assignments. He now works in Decatur, Illinois in a shop where he can use cranes and everything else available to move items. He is unable to pick up and throw sheet metal items onto a table. He testified that working in a shop requires less overhead work. He testified he works 8 hours per day and 40 hours per week with some overtime.

iii. Additional testimony at arbitration

Edmund Robison testified at trial on Petitioner's behalf. Mr. Robison is the Business Manager for Sheet Metal Workers Local 218. His duties include placing workers and handling their insurance and other benefits. He testified that Petitioner works whenever he is asked to work. Prior to 2020, he never had an issue with Petitioner performing any job. However, he testified that although Petitioner still accepted jobs after returning to work in February 2021, Mr. Robison had to get a doctor's release from Petitioner before he could work a job assignment. Mr. Robison testified to his belief that Petitioner "would rather be getting fixed, but he has to pay his bills and eat." Mr. Robison testified that the jobs Petitioner now performs are jobs that Mr. Robison usually has apprentices perform. He testified that a week prior to the instant trial he took another worker to the location Petitioner was working. While there, Mr. Robison observed Petitioner working in the shop, which is lighter work than fieldwork because machines do a lot of the work for you in the shop.

Jeff Addicott also testified on Petitioner's behalf. Mr. Addicott considers Petitioner a friend and socializes with him outside of work. They stay in the same motels when traveling. Mr. Addicott is a sheet metal journeyman who used to work with Petitioner "all of the time," although he testified he did not work for Respondent when Petitioner worked for Respondent. Mr. Addicott testified that Petitioner began his career as his apprentice and that Petitioner was capable of lifting heavier stuff than him. Mr. Addicott currently works with Petitioner again, but testified he now has to "baby him." Mr. Addicott testified to his belief that Petitioner is no longer capable of performing the same amount of work as he did previously. He testified Petitioner can no longer "hold or run a duct up" like Mr. Addicott can, nor can Petitioner help others without extra help or extra equipment.

Mr. Addicott testified that he works in the field while Petitioner works in the shop. He testified that in the field he gets a hand crank lift every now and then, while Petitioner gets a power lift with a crane overhead. Mr. Addicott testified that prior to working for Respondent, Petitioner would be in the field with Mr. Addicott. He testified Petitioner now complains of shoulder pain, whereas Mr. Addicott never heard such complaints from him before. Mr. Addicott testified that sheet metal workers normally have aches and pains, but Petitioner never used to complain. Now Mr. Addicott considers Petitioner to be "kind of whiny."

iv. Depositions

Dr. Mark Dennis Greatting

Dr. Greatting is a board-certified orthopedic surgeon with a specialty in hand surgery. He testified via deposition on June 14, 2021. He testified that it is common for a male of Petitioner's age, to have osteoarthritis, but noted a history of patients in the past who had pretty severe osteoarthritis but did not have a lot of symptoms. Dr. Greatting opined that a trauma such as the one sustained by Petitioner herein could aggravate an underlying degenerative condition such as shoulder osteoarthritis to the point where surgery becomes necessary. Given a history that Petitioner had minor left shoulder complaints and was working fairly consistently, then suffered an accident, then suffered more pain and loss of range of motion, then returned to work only for financial reasons, but remained symptomatic, Dr. Greatting opined that the accident in question would be an aggravating factor to the point where surgical intervention could be reasonable and necessary.

On cross examination, Dr. Greatting acknowledged that Dr. Hulsey's pre-accident treatment from December 2016 through May 2017 revealed similar symptoms, diagnostics and diagnosis as did the instant accident, and that Petitioner's marked degenerative osteoarthritic changes on December 12, 2016 suggested the degenerative process had been a longstanding process that began developing prior to the CT scan on that date. He also acknowledged a shoulder replacement was considered by Dr. Hulsey in 2017, three years prior to the instant accident. However, while Dr. Greatting acknowledged that the instant accident did not change the actual progression of Petitioner's osteoarthritis, it did exacerbate his symptoms. He opined that the necessity of Petitioner's shoulder replacement was based on his symptoms and how they affected his daily life. Dr. Greatting testified that he prefers to wait until a patient is as old as possible before performing a shoulder replacement. However, he stated if the pain is severe enough and nothing else helps, he will perform one on a younger patient.

Dr. George A. Paletta, Jr.

Dr. Paletta is a board-certified orthopedic surgeon. He testified via deposition on June 16, 2021. He performs 300 shoulder surgeries a year. He performed a Section 12 examination on Petitioner on September 15, 2020. Dr. Paletta testified that at the time of examination, Petitioner reported a consistent mechanism of injury, but specifically denied prior left shoulder issues. Dr. Paletta noted that this history was contradicted by prior medical records of Dr. Hulsey, which did reveal a history of left shoulder issues. Dr. Paletta testified his examination revealed loss of range of motion, pain, weakness, and crepitus in the left rotator cuff. He also performed X-rays which revealed advanced end-stage osteoarthritis. He testified that "end-stage" indicates that the joint is so worn out that there is really not a lot left to offer the patient other than injections or a shoulder replacement. Dr. Paletta testified that he also reviewed the July 16, 2020 CT scan, which confirmed his X-ray findings. He testified that advanced end-stage osteoarthritis means Petitioner had been undergoing a long term process over some years.

Dr. Paletta opined Petitioner's end-stage left shoulder osteoarthritis was not caused by his work injury, as this condition was too severe to have developed between April and July of 2020.

He testified that the severity of Petitioner's diagnostics corroborated the long-standing nature of his condition. Dr. Paletta opined that nothing occurred during the instant accident that could have changed or accelerated Petitioner's condition in a material way. He testified that patient symptoms will wax and wane, but that gradually the joint will wear out and cause decreased range of motion and will fail conservative care. Dr. Paletta saw no acute inflammation or bruising suggesting anything new or acute had occurred.

Dr. Paletta testified that Petitioner did require a left shoulder replacement, but opined it was not due to his work accident. He further opined that Petitioner's current condition (and more recent July 16, 2020 CT scan) were similar to the results of his December 2016 CT scan. He also noted that discussion of a shoulder replacement began with Dr. Hulsey's 2017 opinion, which pre-dated the instant accident. Dr. Paletta opined that if Petitioner had a good outcome from surgery, he could return to his pre-accident employment.

On cross examination, Dr. Paletta acknowledged that he did not review any left shoulder medical records between Dr. Hulsey's May 2017 release and the instant accident date, with the exception of a September 12, 2018 Iowa clinic record, which revealed no evidence of a biceps tear, no tenderness to the bicipital groove and full ROM. Dr. Paletta agreed that on the face of this record, Petitioner's left shoulder was doing better. Dr. Paletta testified to his familiarity with sheet metal workers and acknowledged that they perform a lot of overhead heavy activity work. He also agreed that trauma can cause existing arthritis to become more painful. However, he found it highly unlikely that the instant mechanism of injury could increase Petitioner's pain, since Petitioner did not hit his shoulder, fall on it, nor was his left arm jerked or twisted.

CONCLUSIONS OF LAW

I. Date of Accident

Initially, the Commission changes the date of accident to conform with the evidence. Throughout the trial, Petitioner alleged an accident date of April 22, 2020. This date is also noted in several medical records. However, the Commission recognizes and adheres to the stipulated accident date of April 23, 2020 contained in the Request for Hearing form. The request for hearing is binding on the parties as to the claims made therein. *Walker v. Industrial Commission*, 345 Ill. App. 3d 1084, 1088 (2004). In keeping with this precedent, the Commission changes the date of accident to the agreed upon date of April 23, 2020, which is binding on the parties.

II. Causal Connection

Determinative of this issue is whether Petitioner's April 23, 2020 work accident aggravated his pre-existing left shoulder condition. The applicable legal standard in such a case is as follows:

It is well established that an accident need not be the sole or primary cause—as long as employment is a cause—of a claimant's condition. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 205 (2003). Furthermore, an employer takes its employees as it finds them (*St. Elizabeth's Hospital v. Illinois Workers' Compensation Commission*, 371 Ill. App. 3d 882, 888 (5th Dist.

2007)), and a claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d 30, 36 (1982). As the Appellate Court held in *Schroeder v. Illinois Workers' Compensation Commission*, 2017 IL App (4th) 160192WC, the inquiry focuses on whether there has been a deterioration in the claimant's condition:

> That is, if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been. *Schroeder* at ¶ 28.

In the instant case, it is undisputed that Petitioner had significant osteoarthritis of the left glenohumeral joint prior to the April 23, 2020, accident. The evidence demonstrates that Petitioner treated with Dr. Hulsey for left shoulder soreness and popping, but on May 10, 2017, Dr. Hulsey found Petitioner had reached maximum medical improvement and released him to full duty work. Thereafter, Petitioner performed his full duties as a sheet metal worker successfully until the April 23, 2020, accident, where he injured his left shoulder while performing strenuous and heavy lifting duties. This was corroborated by the testimony of Mr. Robison, who testified that prior to the instant accident, Petitioner could be relied upon to work any job he was asked to work, but that after the instant accident, Mr. Robison had to obtain a doctor's release from Petitioner before he could work a job.

After the April 23, 2020, accident, Petitioner was no longer able to perform heavy work duties, a fact highlighted in the testimony of coworker Mr. Addicott. Mr. Addicott testified that he worked with Petitioner both before and after Petitioner's employment with Respondent. Prior to Petitioner's employment with Respondent, Petitioner was Mr. Addicott's apprentice, and they both worked in the field together where Petitioner was capable of lifting heavier items than Mr. Addicott. Petitioner and Mr. Addicott worked for different employers while Petitioner worked for Respondent, however, Petitioner now works with Mr. Addicott again. Mr. Addicott testified he now has to "baby him." Mr. Addicott does not believe Petitioner is capable of performing the same amount of work as he did before. He testified Petitioner can no longer hold or run a duct up like Mr. Addicott can, nor can he help others without the assistance of extra help or extra equipment. Additionally, Mr. Addicott testified that he still works in the field, while Petitioner now works in the shop, which is less demanding and allows Petitioner to use equipment to assist him in performing his job duties. Mr. Addicott stated that sheet metal workers normally have aches and pains, but Petitioner never used to complain. Mr. Addicott testified Petitioner now complains of shoulder pain and he now considers Petitioner to be "kind of whiny."

The Commission further observes the evidence reflects there was a significant deterioration in Petitioner's condition following the work accident. The evidence reflects that prior to the April 23, 2020, accident, Dr. Hulsey noted Petitioner would likely require a future left shoulder replacement after his November 2016 left shoulder injury. However, Petitioner treated conservatively and was released to full duty work on May 10, 2017, thereafter working full duty without evidence of any left shoulder problems. The Commission notes that up to and including Dr Hulsey's May 10, 2017, discharge date, said surgery had not been recommended. On September

12, 2018, the last medical record before the instant accident, Dr. Brunkhorst examined Petitioner's left shoulder and found no tenderness and full range of motion. In contrast, immediately after the April 23, 2020, accident, Petitioner reported pain and tenderness to Dr. Cohen who found limited range of motion and imposed light duty restrictions of lifting limitations and no overhead work with the left arm. One month after the accident, physicians at Carle Hospital discussed a left shoulder replacement with Petitioner. Two months thereafter, Dr. Greatting's office recommended the same. Petitioner's testimony. and the testimony of Mr. Robison and Mr. Addicott, support a finding that Petitioner's left shoulder condition never returned to baseline after the accident. Although Petitioner had returned to full duty work on February 19, 2021, the Commission recognizes that this was borne out of financial necessity rather than a referendum on his physical ability.

Based on the evidence contained in the record, the Commission finds Petitioner's condition of ill-being remains causally related to the April 23, 2020, stipulated work accident. While Petitioner had severe osteoarthritis in his left shoulder prior to the instant accident, Petitioner was able to perform his full duties as a sheet metal worker before the work accident. However, after the accident, Petitioner was unable to perform his work duties and his left shoulder condition never returned to baseline. Dr. Paletta acknowledged as much in his Section 12 report, noting that Petitioner's condition appeared to be asymptomatic prior to the instant accident. The Commission finds further that the work accident aggravated and accelerated Petitioner's preexisting left shoulder condition and Petitioner's left shoulder condition has deteriorated so much since the accident that he now needs a left shoulder replacement. As such, the work accident is *a* factor in Petitioner's current left shoulder condition.

III. Temporary Disability

Based on the above finding that Petitioner's left shoulder condition is causally related to the stipulated April 23, 2020, accident, the Commission awards additional temporary total disability (TTD) benefits. The disputed period of temporary total disability is October 8, 2020 through February 19, 2021, the date Petitioner was returned to full duty work. While the parties agree that Petitioner was off work from May 14, 2020 through October 7, 2020, the medical records shows that Petitioner remained off work through February 19, 2021. As such, the Commission finds Petitioner proved entitlement to the disputed TTD benefits. The parties stipulated Petitioner's average weekly wage is $1,494.80. This yields a TTD rate of $996.54. Therefore, the Commission finds Petitioner is entitled to TTD benefits of $996.54 per week for a period of 40 & 2/7ths weeks.

IV. Incurred Medical Expenses and Prospective Treatment

Based on the above finding that Petitioner's left shoulder condition is causally related to the stipulated April 23, 2020, accident, the Commission awards additional incurred medical expenses. The Arbitrator found that Respondent was only liable for medical expenses through the September 15, 2020 Section 12 examination report of Dr. Paletta. Petitioner offered into evidence medical bills for charges incurred subsequent to September 15, 2020. The Commission, finding the opinions of Dr. Paletta to be unpersuasive and unsupported by the evidence and law, finds that the medical treatment and charges for Petitioner's left shoulder condition were incurred for

treatment that was reasonable, necessary, and causally related to the April 23, 2020 work accident.

Further, as Petitioner has yet to reach maximum medical improvement, the Commission orders Respondent to provide and pay for the prospective left shoulder replacement as recommended by Dr. Greatting. The Commission finds the proposed left shoulder replacement to be reasonably required to cure or relieve Petitioner of the effects of the accidental work injury to his left shoulder that occurred on April 23, 2020.

IT IS THEREFORE FOUND BY THE COMMISSION that the date of accident for Petitioner's injury is April 23, 2020, in conformation with the stipulated date on the Request for Hearing.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner's current left shoulder condition of ill-being remains causally related to the April 23, 2020, accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 20, 2021, is hereby modified.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $996.54 per week for a period of 40 & 2/7ths weeks, from May 14, 2020 through February 19, 2021, this being the period of temporary total incapacity for work under §8(b) of the Act, and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall receive credit for temporary disability benefits paid in the amount of $20,927.13.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary and causally related medical expenses detailed in Petitioner's Exhibit 9, as provided in §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the prospective total left shoulder arthroplasty as recommended by Dr. Greatting, as provided in §8(a) 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.

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 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 by Respondent is hereby fixed at the sum of $52,400.00. 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

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

O: 7/27/22
DJB/wde
043

/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah L. Simpson*
Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC022681
Case Name	ADAMS, ALBERT v. DAVIS HOUK MECHANICAL INC
Consolidated Cases	No Consolidated Cases
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	34
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Kevin Morrisson
Respondent Attorney	Bruce Magnuson

DATE FILED: 10/20/2021

THE INTEREST RATE FOR THE WEEK OF OCTOBER 19, 2021 0.06%

/s/Edward Lee, Arbitrator

Signature

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
19(b)

Albert Adams
Employee/Petitioner

v.

Davis Houk Mechanical, Inc.
Employer/Respondent

Case # **20** WC **022681**

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 **08/16/2021**. 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, **04/22/2020**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**77,729.60**; the average weekly wage was $**1,494.80**.

On the date of accident, Petitioner was **51** years of age, ***single*** with **-0-** dependent children.

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

Respondent shall be given a credit of $**20,927.13** for TTD, $**-0-** for TPD, $**-0-** for maintenance, and $**-0-** for other benefits, for a total credit of $**20,927.13**.

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

ORDER

- The Arbitrator finds that Petitioner's condition of ill-being specifically related to the degenerative condition of the left shoulder did not arise out of and in the course of his employment. The need for medical treating, specifically a total shoulder arthroplasty, is not causally related to his work with Respondent.

- Respondent shall pay Petitioner TTD benefits for 20-6/7 weeks, commencing on 05/14/2020 through 10/07/2020, as provided in Section 8(b) of the Act. Respondent shall receive credit for $20,927.13 for TTD benefits paid.

- Respondent has paid reasonable and necessary medical services incurred through 09/15/2020 pursuant to Section 8(a) and Section 8.2 of the Act and Respondent is not liable for payment for medical services provided subsequent to 09/15/2020.

- Petitioner is not entitled to an award for prospective medical care.

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.

Edward Lee
Signature of Arbitrator

OCTOBER 20, 2021

Re: Albert Adams v. Davis Houk Mechanical, Inc., Injury No. 20-WC-022681

THE ARBITRATOR FINDS THE FOLLOWING FACTS:

The Petitioner is a journeyman sheet metal worker. He belongs to the Sheet Metal Workers Local Union 218. The Petitioner's job involves measuring, fabricating, and installing ductwork, siding, gutters, and a variety of other sheet metal materials. The Petitioner testified that most of his work is done overhead. He also testified that heavy lifting was required. The amount of lifting will depend upon the size of the job. The Petitioner noted that when he worked on the Abraham Lincoln Museum, they lifted 50 pounds all day every day overhead. He testified that all sheet metal jobs require some overhead lifting.

Petitioner testified that he previously injured his left shoulder on November 18, 2016. On that occasion, he was working in Missouri and was helping to put up siding on the outside of a building. Petitioner testified that he was carrying a piece of the siding with another worker, and he tripped and fell, and everything came down onto his left shoulder. The Petitioner felt a pop in the left shoulder. Petitioner testified he treated with Dr. Richard Hulsey for that injury. Dr. Hulsey did not perform surgery, but he did perform an injection. Petitioner testified that he treated with Dr. Hulsey until May 10, 2017. After the injection therapy, the left shoulder was much better. The Petitioner agreed that when he last saw Dr. Hulsey, he complained of being a bit sore. He testified he continued to perform the physical therapy activities, even after he was discharged, in order to keep the left shoulder limber and loose. He returned to his work as a journeyman sheet metal worker.

Petitioner also testified that he sustained a right shoulder injury on June 11, 2018. He treated with a doctor in Iowa, Joseph Brunkhorst. He was diagnosed with a high-grade partial-

thickness tear and underwent a rotator cuff repair on September 27, 2018. Dr. Brunkhorst discharged Petitioner from care on April 13, 2020, 10 days before the injury in question.

Petitioner testified that he was working in Champaign on April 22, 2020 on a school project. He stated that apartments were being built, and he went to pick up a bundle that weighed anywhere between 25 to 50 pounds, of light-gauge angle iron. He was carrying this on his shoulder, and someone was coming through the hall. Petitioner testified that he backed up to miss this other worker, and when he went to turn, the back of the bundle hit the wall, and he then felt a pop in his left shoulder. Petitioner noticed that right after the incident, his shoulder hurt "like hell," and he immediately lost range of motion. He testified that after this incident, his left shoulder was really painful, and he noticed loss of strength and loss of range of motion. He reported the incident immediately to the employer and sought treatment at the occupational medicine clinic at Carle in Urbana.

With regard to the Petitioner's previous injury of November 18, 2016, he consulted with Dr. Richard Hulsey on December 12, 2016. On that occasion, Dr. Hulsey recorded Petitioner injured his left shoulder on November 18, 2016, when he was picking up a cement corner panel that was quite heavy. The report states Petitioner complained of a sudden, sharp pain and a popping noise involving his left posterior shoulder. There was immediate discomfort. Petitioner saw a Dr. Wetzel and was placed on limited duty. Petitioner complained of pain with most any activity that required reaching or lifting. He had not noticed much crepitation or popping on a regular basis. He noted that he had had mild discomfort in that shoulder in the past, but this had not kept him from his work or personal activities (Petitioner's Exhibit 2 at 1).

Dr. Hulsey examined the Petitioner and found mild pain but no significant loss of function. There was tenderness over the glenohumeral joint, especially posteriorly. Internal

rotation was quite painful. The lift-off test was negative. There was good strength on isolated testing to both the supraspinatus and infraspinatus tendons. An outside MRI was reviewed, which revealed moderate degenerative changes of the glenohumeral joint with mild tendinopathy of the supraspinatus tendon and a tear of the posterior labrum. X-rays were taken of the right shoulder, and those revealed advanced osteoarthritis of the glenohumeral joint with near bone-on-bone and an inferior osteophyte off the humeral head (Petitioner's Exhibit 2 at 2).

Dr. Hulsey's impression was that Petitioner had osteoarthritis in the glenohumeral joint with a posterior labral tear. He noted that the arthritic changes were quite advanced. The doctor felt that the described injury most likely resulted in a tear of the posterior labrum. However, it was noted Petitioner had significant pre-existing arthritic changes that were apparently minimally symptomatic. The doctor's prognosis was guarded, due to the severity of the arthritic changes. He recommended Petitioner undergo a CT scan to evaluate the degree of arthrosis. The doctor noted that if the arthritis was truly bone-on-bone, addressing the labrum by itself would usually not provide the necessary relief. However, if there was reasonable joint space remaining, the prognosis would be improved. Petitioner was placed on work restrictions and was set to undergo a CT scan.

The Petitioner underwent a CT scan at Watson Imaging Center on February 16, 2016. The radiologist found no evidence of fracture or dislocation. He noted degenerative changes involving the acromioclavicular joint and significant narrowing of the glenohumeral joint with associated hypertrophic spurs of the glenoid fossa and inferior aspect of the humerus at the head and neck junction. There was also some vacuum phenomenon present in this joint. The final opinion by the radiologist was no acute osseous abnormality, degenerative changes of the acromioclavicular joint with narrowing and hypertrophic spurs, and marked degenerative

changes of the glenohumeral joint with significant narrowing, hypertrophic spurs, and vacuum joint phenomenon (Petitioner's Exhibit 2 at 16).

Dr. Hulsey reevaluated the Petitioner on December 12, 2016. At that time, the Petitioner continued to complain of pain, although he noted that taking Mobic had provided significant relief. He also reported some occasional light popping. Dr. Hulsey reviewed the CT scan and stated it confirmed that Petitioner had significant arthritic changes, though there was small joint space remaining. The assessment was osteoarthritis to the left shoulder with labral tearing. Dr. Hulsey noted that the arthritic changes were significant and would progress with time. He noted that injury to the posterior labrum most likely occurred at the time of the injury on November 18, 2016, but it was weakened by the chronic arthritic changes within the joint. The doctor felt that in the future, Petitioner would most likely require a joint replacement, due to his arthritic changes. The doctor noted that, given the Petitioner's age, if his pain would flare back up, he would consider arthroscopic debridement, especially of the posterior labrum. The doctor allowed the Petitioner to resume regular duty (Petitioner's Exhibit 2 at 4).

Dr. Hulsey reevaluated the Petitioner on February 1, 2017. Petitioner reported that since the prior visit, his pain had increased in the left shoulder to the point where he had difficulty with most activities that required reaching out overhead. Physical examination showed range of motion to be uncomfortable. The doctor found good strength when testing the rotator cuff tendons, but there was increasing pain. The doctor's impression remained unchanged. The doctor noted there was a combination of a posterior labral tear as well as significant arthrosis. They discussed an arthroscopic debridement of the labrum and articular surface, although this entailed a significant risk of persistent discomfort. The doctor wanted to have Petitioner undergo a fluoroscopically guided intraarticular injection. The note concludes that Petitioner "realizes

that sometime in the future he will require a joint replacement" (Petitioner's Exhibit 2 at 7).

Dr. Mohammed Paracha, the interventional pain management specialist at Dr. Hulsey's office, administered a left glenohumeral shoulder joint injection on February 1, 2017. The procedure was well tolerated, and there were no apparent complications (Petitioner's Exhibit 2 at 10).

Petitioner returned to Dr. Hulsey for follow-up on March 1, 2017. He reported significant improvement in his pain after the injection. The doctor noted that since there was a nice improvement in functions secondary to the injection, he would not recommend aggressive surgical treatment at this time. Petitioner was to continue taking medication and return in a couple of months for follow-up. The doctor noted that if the pain remained functional, Petitioner could be released at the next visit, although he obviously has longstanding changes in his shoulder, secondary to both the arthritis and the labral tear (Petitioner's Exhibit 2 at 12).

Petitioner followed up with Dr. Hulsey on May 10, 2017. On that occasion, Petitioner reported that the effects of the injection had worn off. The doctor's note recorded that Petitioner was quite sore, especially when using the arm above shoulder level. He noted occasional popping in the shoulder. Petitioner reported that he was receiving limited improvement now from the Mobic and the tramadol. Dr. Hulsey's impression remained osteoarthritis of the left shoulder with posterior labral tear. The doctor's discussion in the notes states that Petitioner's improvement from the injection apparently was short-lived. He described advanced osteoarthritis of the glenohumeral joint. He felt that the arthritic changes present would make surgical treatment highly unpredictable. The doctor further stated that with time, Petitioner would require a total shoulder replacement, relating to his underlying arthrosis and not because of the labral tear. The doctor felt there was little else to offer, other than anti-inflammatory

medications. Otherwise, Petitioner was at maximum medical improvement. He was released to full-duty work status (Petitioner's Exhibit 2 at 14).

Petitioner was working in Iowa when he sustained the injury of June 11, 2018. He began treating with Dr. Joseph A. Brunkhorst of Des Moines Orthopaedic Surgeons. He was treated for rotator cuff and labral tears. He did not receive treatment for his left shoulder with Dr. Brunkhorst (Petitioner's Exhibit 3).

Petitioner last had a telemedicine appointment with Dr. Brunkhorst on April 13, 2020. The note records that overall, Petitioner is doing very well with regard to the right shoulder. He had no concerns. Petitioner was declared at MMI, and no further follow-up was required (Petitioner's Exhibit 3 at 20).

Following the incident of April 22, 2020, Petitioner consulted with Dr. Randy Cohen at Carle's Occupational Medicine Department. This visit took place on April 24, 2020. Petitioner complained of a left shoulder pain and pop. The history section states that Petitioner is a sheet metal worker and was carrying 30 pounds of 1 to 1-1/2-inch bent sheet metal on his left shoulder. he was walking down stairs, and while turning the corner, the bunch of sheet metal hit the framing, and he felt a pop in his left shoulder. Petitioner reported that he had continued to work since that time but noticed pain with range of motion. He reported the treatment in Iowa to the right shoulder for the rotator cuff. He also noted that with regard to the left shoulder, Petitioner had issues with it in the past and had been told he had degenerative changes in that shoulder and was treated with injection and physical therapy. Dr. Cohen recorded that Petitioner continued to work with the left shoulder and had not reported difficulties until the most recent injury (Petitioner's Exhibit 6 at 4).

Dr. Cohen performed a physical examination, finding that the left shoulder revealed no

tenderness to palpation over the posterior aspect of the shoulder or over the periacromial area. Petitioner had tenderness to palpation to the posterior aspect of the shoulder and peri-acromial area. He was able to full flex, but had marked pain at 90 degrees. He was able to abduct fully, but again at 90 degrees had marked pain. x-rays were taken, which showed inferior glenohumeral spurring, both on the humeral head inferiorly and on the inferior aspect of the glenohumeral fossa. There was also marked joint space narrowing of the glenohumeral joint. Dr. Cohen assessed Petitioner with left shoulder pain and pop, rule out rotator cuff tear, and advanced degenerative arthritis of the left glenohumeral joint. In the discussion section, Dr. Cohen noted that the prior history of left shoulder pain and degeneration was clearly verified by the day's x-rays, which showed advanced glenohumeral joint degeneration with reactive bone formation. The doctor wanted to see the 2017 MRI. He put Petitioner on light-duty status on this occasion (Petitioner's Exhibit 4 at 6).

The Petitioner's light-duty restrictions were accommodated by the Respondent, and he continued to work until May 13, 2020.

Petitioner returned to Dr. Cohen for follow-up on May 8, 2020. Petitioner was noted to have persistent pain in the left shoulder. He was taking medication without relief. Repeat x-rays were taken of the left shoulder. He was assessed with left shoulder injury, severe glenohumeral degenerative changes in the left shoulder, and questionable acromial fracture. Petitioner was to be referred to orthopedics for evaluation. He remained on light-duty status (Petitioner's Exhibit 6 at 14–26).

Petitioner was evaluated at the Carle Orthopedics and Sports Medicine Department on May 26, 2020. He was evaluated by a physician's assistant, Danny McFarlin. Mr. McFarlin noted that Petitioner had been referred to the clinic by Dr. Cohen with complaints of left

shoulder pain. Petitioner reported his injury of April 22, 2020. The report states that Petitioner had had "no problems before this." He did note a history of a couple of injuries in the past, involving the shoulder. He denied the presence of any notable neck pain. Mr. McFarlin performed a physical examination and reviewed x-rays of the shoulder. The x-rays were read to show severe arthritis of the glenohumeral joint with complete joint space loss. Mr. McFarlin also noted the large, bulky spur on the underside of the humeral head, as well as small spur forming at the inferior aspect of the glenoid. His assessment was severe glenohumeral joint arthritis to the left shoulder. He ordered an intraarticular injection to be given under fluoroscopy. He noted that surgical treatment would be a shoulder replacement. He felt there was a chance there might be a rotator cuff tear. Conservative treatment was recommended, and Petitioner remained on restrictions (Petitioner's Exhibit 6 at 57–69).

Petitioner underwent a fluoroscopically guided left shoulder steroid injection at Carle Foundation Hospital on June 6, 2020. This was performed by Dr. Devarshi Desai (Petitioner's Exhibit 6).

Petitioner was reevaluated by Dr. Cohen in the Occupational Medicine Department on June 5, 2020. At that time, the chief complaints were listed as left shoulder severe degenerative glenohumeral arthritis and possible left shoulder rotator cuff tear. Dr. Cohen reviewed the notes from Mr. McFarlin. He noted that Mr. McFarlin opined that Petitioner would require shoulder replacement therapy, and the status of the rotator cuff would determine how it would be done. The note goes on to report that Tuesday night, following the intraarticular injection, Petitioner had rolled over in bed, felt and heard a loud pop in his left shoulder. Since that incident in bed, he had increasing pain in the shoulder with more diffuse discomfort. Physical examination revealed marked limitation of flexion, abduction, adduction, and cross-arm adduction. The

doctor also found limited internal and external rotation. The assessment was severe glenohumeral arthritis in the left shoulder and aggravation of left shoulder and aggravation of left shoulder pain on Tuesday night. It was noted that Petitioner lives near Springfield and has secured a consultation with Dr. Greatting at the Springfield Clinic. It was noted that Dr. Greatting is an orthopedic surgeon who specializes in shoulders. Petitioner stated he would attend his Zoom appointment with Mr. McFarlin on June 16 and was to remain on light-duty status (Petitioner's exhibit 6 at 80–92).

Petitioner participated in a telemedicine visit with Mr. McFarlin on June 16, 2020. Petitioner reported that the intraarticular injection had made the pain worse. Mr. McFarlin again noted that the x-ray showed severe degenerative arthritis of the glenohumeral joint with complete joint space loss. The plan section of the note states that Petitioner is going to see Dr. Greatting in Springfield. It was noted that Springfield was more convenient for the Petitioner, considering his place of residence. Mr. McFarlin felt that physical therapy would not be helpful for the patient. He may require an MRI to determine the status of the rotator cuff (Petitioner's Exhibit 6 at 93–113).

Petitioner testified that he initially consulted with Dr. Greatting's office in June of 2020. He did not see Dr. Greatting, but instead saw the nurse practitioner. The office note from this visit was not contained in Petitioner's Exhibit 7.

Petitioner underwent a CT scan of the left shoulder at Springfield Clinic on July 16, 2020. The radiologist found no fracture, malalignment, or bone lesion. He did find severe glenohumeral osteoarthritis with bone-on-bone articulation at the anterior/inferior joint, with a large marginal osteophyte and several adjacent large intraarticular bodies in the subscapularis recess of the glenohumeral joint. The final impression was no acute fracture or bone lesion,

severe left glenohumeral osteoarthritis with bone-on-bone articulation, and several large intraarticular bodies in the subscapularis, and an incidental note of an os acromiale (Petitioner's Exhibit 7 at 16).

Following the CT scan, Petitioner was evaluated by Nurse Practitioner Naughton at the Springfield Clinic on July 22, 2020. It was noted that Petitioner had pain, which he rates at 5 out of 10 in severity and up to 8 out of 10 with exacerbating activities. He reports no new injury. Nurse Naughton reviewed the x-rays from June 23, 2020 and noted that they were significant for severe osteoarthritic changes of the glenohumeral joint. The CT scan which was completed on July 16, 2020 was significant for severe left glenohumeral osteoarthritis with several large intraarticular bodies in the subscapularis recess (Petitioner's Exhibit 7 at 18–20). Treatment options were discussed on this occasion. The CT scan was reviewed with Petitioner. It was noted he would like to undergo a left total arthroplasty with Dr. Greatting. The procedure and risk were discussed. Petitioner remained on light duty.

Petitioner underwent an Independent Medical Evaluation with Dr. George A. Paletta, Jr. of the Orthopedic Center of St. Louis. This examination took place on September 15, 2020. Dr. Paletta took a history from the Petitioner regarding the incident of April 22, 2020. Petitioner described carrying some sheet metal angles, noting he picked up a bundle of angles and he indicated that the total bundle weighed 25 to 30 pounds. Petitioner told Dr. Paletta that he put the bundle on his left shoulder to carry it and was turning to walk down some stairs when the metal hit the wall of the stairwell. Petitioner stated that when this happened, he felt and heard a pop in the shoulder and noted the immediate onset of pain. He reported the injury but was not evaluated medically on that date (Respondent's Exhibit 1, Deposition Exhibit 2).

Dr. Paletta reviewed the Petitioner's medical records and his diagnostic testing. He noted

the results from the CT scan of July 16, 2020. These findings were found to be consistent with severe glenohumeral joint osteoarthritis. Dr. Paletta noted bone-on-bone changes with large intraarticular loose bodies, particular in the subscapularis recess. There was no evidence of any acute fractures (Respondent's Exhibit 1, Deposition Exhibit 2).

Petitioner noted that he had not undergone and surgical treatment for the left shoulder to date. He complained of ongoing pain and noted limited range of motion, especially when reaching overhead or behind his body. He denied any prior history of left shoulder problems (Respondent's Exhibit 1, Deposition Exhibit 2).

Dr. Paletta had the Petitioner undergo imaging studies at the Orthopedic Center on the date of the evaluation. The images from those x-rays revealed advanced end-stage osteoarthritis of the glenohumeral joint with marked joint space narrowing. He also noted that large inferior humeral neck or goat's beard osteophyte. There was no eccentric glenoid wear. There was good relative sphericity of the humeral head without flattening, yet there was almost complete obliteration of the joint space. He noted that the CT scan from the outside source confirmed the advanced osteoarthritis of the glenohumeral joint with essentially full-thickness chondral loss and bone-on-bone changes (Respondent's Exhibit 1, Deposition Exhibit 2).

Dr. Paletta diagnosed Petitioner with end-stage osteoarthritis to the left shoulder. He noted that this underlying condition of advanced end-stage osteoarthritis to the left shoulder was not caused by the work injury. Petitioner only noted an increase in symptoms. The doctor noted that all of the findings on diagnostic testing were longstanding, chronic changes that would not occur within 48 hours of the described injury. He felt that the condition of arthritis was clearly longstanding. He agreed that the only reasonable surgical procedure would be a left shoulder total shoulder replacement. However, the work injury did not cause any change in the natural

history of the condition. The need for a total shoulder arthroplasty would be related to the end-stage osteoarthritis, which was a longstanding pre-existing condition that was not caused by the work injury; nor was the natural history of the condition changed by the work injury (Respondent's Exhibit 1, Deposition Exhibit 2).

Petitioner first consulted with Dr. Greatting himself on November 23, 2020. Dr. Greatting recorded that Petitioner indicated he had no problems with his left shoulder prior to the alleged work injury of April 22, 2020. He again described the incident, noting that when the piece of angle iron struck a pilon, he felt a pop and immediate pain in the left shoulder. The doctor noted that again Petitioner denied any problems with his shoulder prior to that injury. He also reported the additional pop and severe pain after rolling over in bed. Petitioner made no complaints of any neck pain or numbness or tingling in the left arm. He complained of limited motion in the shoulder along with pain (Petitioner's Exhibit 7 at 21).

Dr. Greatting reviewed the June 23, 2020 x-rays and felt they showed severe osteoarthritis of the glenohumeral joint. He reviewed the images from the CT scan of July 16, 2020 and again noted severe osteoarthritis with several large intraarticular loose bodies in the subscapularis recess (Petitioner's Exhibit 7 at 21).

Dr. Greatting stated Petitioner had severe osteoarthritis in his left glenohumeral joint. He discussed with the patient that obviously these arthritic changes pre-existed the injury, but Petitioner was recorded as indicating he was completely asymptomatic prior to this injury. Dr. Greatting stated that based upon the history given, it appears that the injury potentially exacerbated a pre-existing condition in the left shoulder and may have caused a rotator cuff tear. The doctor wanted him to undergo an MRI to evaluate for a rotator cuff tear. The only real surgical treatment, based on the severity of the arthritis present, would be total shoulder

arthroplasty (Petitioner's Exhibit 7 at 21–22).

The Petitioner underwent an MRI of the left shoulder at Springfield Clinic on January 2, 2021. The radiologist found the rotator cuff to be intact with no full-thickness tear or retraction seen. There was advanced rotator cuff tendinopathy. The radiologist also found severe glenohumeral osteoarthritis with diffuse degenerative tearing of the labrum. There was also a glenohumeral joint effusion. There was no acute fracture or dislocation. The final impressions were as follows: Severe glenohumeral osteoarthritis; moderate acromioclavicular joint osteoarthritis; rotator cuff tendinopathy with no full-thickness tear or retraction seen (Petitioner's Exhibit 7 at 24–25).

Dr. Greatting reevaluated the Petitioner on January 7, 2021, following the MRI. Again, the doctor noted Petitioner denied any problems with his left shoulder prior to April 2, 2020. He complained of significant ongoing problems since that date, including pain, weakness, and decreased range of motion. The doctor noted that the diagnostic testing showed pretty severe osteoarthritis. He felt the MRI of January 4, 2021 showed severe glenohumeral joint osteoarthritis and no full-thickness rotator cuff tearing. The doctor stated he felt Petitioner's symptoms were related to the osteoarthritis in the left shoulder. Based upon the history of an asymptomatic shoulder, Dr. Greatting noted that the injury appears to have exacerbated or accelerated the symptoms of pre-existing osteoarthritis in the glenohumeral joint. The doctor decided to inject corticosteroid into the intraarticular area and recommended some physical therapy. He again discussed that the only real surgical option would be total shoulder arthroplasty. The injection was administered (Petitioner's Exhibit 7 at 26–27).

Petitioner commenced physical therapy on January 12, 2021. It was noted that the shoulder injection from January 7, 2021 had taken the edge off of the pain. Petitioner

complained of an achy and sharp pain in the shoulder. He said that motions reaching overhead and behind hurt. Driving also hurt the left shoulder. He reported that he sleeps in a chair and sleeps two to three hours at a time. The objective evaluation noted that he demonstrated pain behaviors. He was assessed, and physical therapy commenced (Petitioner's Exhibit 7 at 29–30).

Petitioner last saw Dr. Greatting himself on February 18, 2021. At that time, Dr. Greatting recorded that the Petitioner reported the injection from January 7, 2021 had given him no relief of symptoms. He continued to complain of problems with pain, weakness, and decreased range of motion in the shoulder. It was noted that Petitioner was only 51 years of age. The doctor noted Petitioner had symptomatic osteoarthritis in the left shoulder. Since he did not respond to intraarticular injection, the doctor elected to offer a series of viscosupplementation injections. The doctor noted that if these injections did not provide him improvement, sometime in the future, Petitioner may require total shoulder arthroplasty (Petitioner's Exhibit 7 at 36–37).

Dr. Greatting also allowed the Petitioner to resume work without restriction as of February 19, 2021. A health status form to that effect was issued by the doctor (Petitioner's Exhibit 7 at 38).

Petitioner underwent three viscosupplementation injections, the first on March 16, 2021, the second on March 21, 2021, and the third on March 29, 2021 (Petitioner's Exhibit 7 at 40–45).

Petitioner testified that the physical therapy he received through Springfield Clinic helped a little bit, but he was not getting back his strength and his range of motion. He stated that he asked to be released to return to work, as he wanted to earn money. He could not draw unemployment.

Petitioner testified that he has worked on at least three jobs since his return to work. He has worked in Iowa and now works at King Lar in Decatur, Illinois. He stated that he has been

working in the shop, where he can use cranes and everything else available to move items. He testified he could not pick up and throw sheet metal items on a table and he has to use a crane. Working in the shop was not really easier than what he normally does, but it requires less overhead work. He stated that the work has not been so bad and he was not doing anything overhead at this point. Petitioner testified that when he was in Iowa, he tried to do ground stuff, such as fetching items, being a fire watch and doing safety work.

Petitioner testified that after he finished his third viscosupplementation injection, those helped out quite a little bit, but then they stopped helping. He stated that a month after the injections, the effect had worn off. He testified he would like to get back to work and be out in the field.

Petitioner testified upon cross-examination that he works from a union hall and was never a permanent employee of the Respondent. The alleged incident took place around 11:00 a.m., with the shift starting at 7:00. The Petitioner testified that he completed his shift on the date of the injury. He stated that afterwards, he did not do anything. He did come in to work the next day, April 23, 2020. He did not seek medical attention until April 24, 2020. Petitioner testified that the items he was carrying were resting on his left shoulder, and that was what hit the wall when he turned. He agreed he did not strike the wall with his left shoulder; nor did he fall to the ground or otherwise strike the left shoulder in any other manner.

Petitioner testified that he had injured his left shoulder back on November 18, 2016. April 22, 2020 was not the first time he had pain in that area. Petitioner testified that he had actually fallen on November 18, 2016, because the work area was very cluttered and crowded, and he tripped over other stuff, and that is how he fell. He agreed that after the November 2016 incident, he felt a pop in the shoulder and felt immediate pain. He testified that when he treated

with Dr. Hulsey, commencing on December 12, 2016, that he recalled that he was found to have quite advanced arthritic changes in his left shoulder at that time. He testified that the injection administered by Dr. Hulsey had provided help for a very short time, and then the pain returned. He recalled telling Dr. Hulsey, at the visit of May 10, 2017, that his left shoulder was quite sore, and he also noted some occasional popping. When questioned about whether Dr. Hulsey discussed with him back in 2017 the possibility of him needing a left shoulder replacement, Petitioner testified that he believed that the doctor had discussed that with him.

Petitioner testified that when he began treating in July of 2018 in Des Moines, Iowa, only the right shoulder was involved. The focus of the care by Dr. Brunkhorst was on the right shoulder.

Petitioner testified that he was on light duty with the insured from April 25, 2020 until May 13, 2020. They had him put sealer on the ductwork, where he could use his right arm, and paint.

Petitioner testified that his current work at King Lar involves ductwork and making rebar or rebar-type fittings. The ductwork is to be used in heating and cooling applications. He testified since he had gone back to work, he has been working an eight-hour day and a full 40-hour week. He has worked some overtime.

The Petitioner placed into evidence the Deposition of Dr. Mark Greatting. Dr. Greatting testified that he told the Petitioner that he had osteoarthritis in his shoulder that pre-existed his injury. He was concerned about the possibility of a rotator cuff tear and therefore sent him for an MRI (Petitioner's Exhibit 8 at 13). Dr. Greatting testified he reviewed the MRI results and it showed severe glenohumeral joint arthritis and moderate acromioclavicular joint arthritis but no rotator cuff tear (Petitioner's Exhibit 8 at 13–14). Dr. Greatting testified that Petitioner was 51

years of age and was asked whether the osteoarthritis present would be common in someone over that age. The doctor stated that in males particularly, he will see osteoarthritis of people in their 50s and 60s. He testified he was not aware of any information that indicates specifically that an occupation is the cause of developing shoulder arthritis (Petitioner's Exhibit 8 at 14).

With regard to the Petitioner's return to work as of February 19, 2021, the doctor stated that Petitioner apparently wanted to try to go back to work and see how he would do. The doctor had no objection to that request. The doctor also testified that sometimes he will see patients that do not have a lot of symptoms in their shoulders and can have pretty severe osteoarthritis. He stated that more frequently, symptoms correlate with the severity of the arthritis (Petitioner's Exhibit 8 at 17). Dr. Greatting testified that a trauma such as described by Petitioner was something that could aggravate an underlying degenerative condition such as osteoarthritis of the shoulder. Dr. Greatting also testified such an incident could aggravate the condition to the point where a surgical intervention becomes necessary (Petitioner's Exhibit 8 at 19).

Dr. Greatting then testified he reviewed the CT scan of December 16, 2016, after the radiology report was shown to him by Petitioner's attorney. The doctor noted that the radiology report from the December 16, 2016 CT scan at Watson Imaging Center revealed arthritis in the glenohumeral joint, which was noted as marked degenerative change (Petitioner's Exhibit 8 at 20). The doctor testified that the description contained in the 2016 MRI report of the findings were very similar to what was noted presently. The doctor stated that "it sounds very similar" (Petitioner's Exhibit 8 at 21).

Dr. Greatting testified that it was his opinion within a reasonable degree of medical certainty that the accident of February 23, 2020 was an aggravating factor in the Petitioner's development of pain in his left shoulder as diagnosed by him. The doctor also testified he

believed that the accident aggravated the underlying degenerative condition to the point that surgical intervention could be possible and reasonable and necessary (Petitioner's Exhibit 8 at 25). The doctor also confirmed that until February 19th of 2021, he had the Petitioner on work restrictions or totally off of work (Petitioner's Exhibit 8 at 26).

Upon cross-examination, Dr. Greatting testified that he was now aware of the treatment rendered by Dr. Hulsey between December 12, 2016 and May 10, 2017 regarding the left shoulder. The doctor agreed that the incident as described, with the results, were similar to what occurred in April of 2020. Dr. Greatting agreed that Dr. Hulsey had diagnosed Petitioner with osteoarthritis of the glenohumeral joint (Petitioner's Exhibit 8 at 28). The doctor then testified that he had seen the CT scan results from December 16, 2016 and those showed marked degenerative change of the glenohumeral joint with significant narrowing, hypertrophic spurs, and vacuum joint phenomenon. He agreed that those findings were consistent with the CT scan that had been done at Springfield Clinic in 2020. Dr. Greatting agreed that the fact that the changes were noted to be marked on December 16, 2016, would indicate that the degenerative process had been developing for a long period of time prior to the date of the testing. He also agreed that Dr. Hulsey's final impression on May 10, 2017 was osteoarthritis of the left shoulder with a posterior labral tear. He agreed that Dr. Hulsey had discussed that Petitioner would need a total shoulder replacement relating to the underlying arthrosis in 2017. He agreed that shoulder replacement was being considered three years before April 23, 2020 (Petitioner's Exhibit 8 at 28–30).

Dr. Greatting agreed that the history he recorded, that Petitioner did not have prior left shoulder problems, was not consistent with the records from Dr. Hulsey or those from Dr. Cohen. He testified that Petitioner did not discuss the prior left shoulder treatment with him

during his consultations of 2020 (Petitioner's Exhibit 8 at 30).

Dr. Greatting testified that he agreed with the radiologist's impression that the diagnostic imaging shows severe glenohumeral osteoarthritis and there was no sign of acute fracture or dislocation in the left shoulder joint. Dr. Greatting agreed that Petitioner could not develop severe osteoarthritis between April 22, 2020 and June 23, 2020. He agreed that the osteoarthritis clearly had been developing long before the date of injury (Petitioner's Exhibit 8 at 31–32).

Dr. Greatting testified that the CT scan performed at Springfield Clinic on July 16, 2020 showed no acute fracture or bone pathology. He also agreed with the radiologist's interpretation that the left glenohumeral osteoarthritis was accompanied by bone-on-bone articulation with several large intraarticular bodies. He agreed that when osteoarthritis is described using the term "bone-on-bone," that reveals a longstanding and developing degenerative process (Petitioner's Exhibit 8 at 32). Dr. Greatting further agreed that Petitioner certainly would not have developed bone-on-bone degeneration between April 22, 2020 and July 16, 2020 (Petitioner's Exhibit 8 at 32–33).

Dr. Greatting further agreed that the incident of April 2020 exacerbated symptoms but did not change the actual progression of the osteoarthritis itself. The doctor agreed that it would be very difficult to say that the incident of April 2020 accelerated the degree of degenerative changes (Petitioner's Exhibit 8 at 35–36). The doctor agreed that there was no change to the bone itself as a result of whatever took place on April 22, 2020 (Petitioner's Exhibit 8 at 37).

At the time of his testimony, Dr. Greatting did not know the impact of the viscosupplementation, since a follow-up had not taken place. The doctor stated that whether or not Petitioner underwent a shoulder replacement or arthroplasty would be based upon the symptoms and also the Petitioner's feeling that the issue affects his life enough on a daily basis

that he wants to go forward with the arthroplasty. Dr. Greatting further testified that with regard to joint replacement, in general, he wishes to wait until someone is as old as possible, although if the pain is severe enough and nothing else works, he will then perform it at a younger age (Petitioner's Exhibit 8 at 40).

Respondent secured the Deposition of Dr. George Paletta on June 16, 2021. Dr. Paletta testified that Petitioner denied any history of prior problems to the left shoulder, noting that he specifically asked that question (Respondent's Exhibit 1 at 9).

Dr. Paletta performed a physical examination. He noted some loss of motion in all planes of the shoulder. He noted that Petitioner was able to go through a larger range of motion passively than when actively measured. The doctor also noted crepitus and some weakness of the rotator cuff. He found a loss of motion, painful rotation, crepitus, and some weakness, and some weakness of the rotator cuff (Respondent's Exhibit 1 at 11–12). The doctor found no evidence of frozen shoulder (Respondent's Exhibit 1 at 13).

Dr. Paletta testified that he reviewed plain x-rays that were taken in his office on the date of the evaluation. He found those films to reveal that Petitioner had advanced end-stage osteoarthritis. The doctor testified this meant Petitioner had marked joint space narrowing and large bone spurs that were typical of end-stage osteoarthritis of the shoulder. The doctor testified that the term "end-stage" indicates that the joint is so worn out that there is not really a lot left to offer the patient other than some injections or a shoulder replacement. At this point, there is nothing that can be done to reverse the process, and it has reached "the end of the road" (Respondent's Exhibit 1 at 14–15).

Dr. Paletta also testified that he reviewed the images from the July 16, 2020 MRI. These were the tests that were performed at Springfield Clinic. He stated that the images confirmed the

findings from the plain x-rays, revealing severe osteoarthritis of the glenohumeral joint, which means the ball-and-joint socket. There was a full-thickness loss of cartilage, which the doctor noted was what people typically refer to as bone-on-bone. This means there is really no cartilage left in the joint. He also had large osteophytes, which are also called bone spurs (Respondent's Exhibit 1 at 15–16).

Dr. Paletta testified that the findings of advanced end-stage osteoarthritis of the glenohumeral joint with the bone-on-bone findings indicated Petitioner had been undergoing a long-term process. The findings noted do not occur rapidly, except in the setting of an infected joint, which this Petitioner did not have. The findings of osteoarthritis developed over the course of years (Respondent's Exhibit 1 at 16).

Dr. Paletta testified it was his diagnosis that the Petitioner had end-stage osteoarthritis of the left shoulder. It was his opinion that this condition was not caused by the work injury, due to the fact that it could not have developed over the course of three months, absent the history of an infected shoulder, which this Petitioner did not have. Based on the severity of the imaging study findings and based upon the physical examination findings and the timetable from the injury to the diagnostic studies, the arthritis was clearly longstanding and pre-existing. It could not have developed to the point of the severity demonstrated over the course of three months (Respondent's Exhibit 1 at 17–18). Dr. Paletta was further of the opinion that nothing occurred on April 22, 2020 that would have accelerated this condition or changed the underlying condition in any material way. The incident also did not change the natural history of the end-stage osteoarthritis. Dr. Paletta testified that people with this condition will have waxing and waning periods of symptoms where there are symptoms and other times they are relatively asymptomatic. However, gradually, the joint continues to wear out. The sufferer will

progressively lose range of motion and eventually will fail other nonsurgical treatments. That is the natural history degenerative arthritis. The doctor saw nothing in the imaging studies indicating that anything acute or new happened in April of 2020. There was no evidence of fracture or breaking of one of the bone spurs. He saw no evidence of inflammation or edema that would come from a bone bruise or any type of traumatic injury to the shoulder. He saw nothing on the imaging studies that would indicate a new injury or something that was not chronic or longstanding (Respondent's Exhibit 1 at 18–20).

Dr. Paletta agreed that Petitioner would require a total shoulder arthroplasty, but it was his opinion that the need for this was not related to any effects from the reported work injury. This was due to the fact that there was an underlying condition that was longstanding, chronic, and a gradually progressive condition. He testified that the need for a shoulder replacement would be related to the underlying condition of end-stage osteoarthritis (Respondent's Exhibit 1 at 19–20).

Dr. Paletta then testified that he reviewed records from Dr. Hulsey, covering the treatment dates between December 12, 2016 through May 12, 2016. Dr. Paletta knows that the Petitioner had been diagnosed with osteoarthritis of the glenohumeral joint and that Petitioner's prognosis was guarded and that a CT scan was recommended to better evaluate the arthritis. Dr. Paletta further reviewed the radiological report from the left shoulder CT scan from December 16, 2016 and noted that it showed marked degenerative changes to he glenohumeral joint, significant narrowing, and hypertrophic spurs, which is exactly what Petitioner has going on presently. He stated that the findings were all typical of advanced or severe osteoarthritis. Based on this radiologist's description, the findings appear to be very similar to those on the current CT scan. He also noted that Dr. Hulsey told the Petitioner that in the future he would most likely

require a joint replacement due to his arthritic changes (Respondent's Exhibit 1 at 23–25). Dr. Paletta testified that his review of the additional medical records from Dr. Hulsey reinforced the opinions that he expressed, that Petitioner has a chronic longstanding condition. He also noted that these records reveal that Petitioner had previous problems with his left shoulder, despite the history provided at the time of the Independent Medical Evaluation (Respondent's Exhibit 1 at 24–27).

Dr. Paletta further testified that he has performed total shoulder arthroplasties on people who perform heavy laboring work. He testified that if Petitioner had a good outcome from the total shoulder arthroplasty, as he has a good rotator cuff, he should be able to return to working in the sheet metal trade (Respondent's Exhibit 1 at 27–28).

Upon cross-examination, Dr. Paletta agreed that he had not reviewed any additional medical records between the release by Dr. Hulsey in February 2017 and Dr. Cohen's report of April 2020. He noted that he had reviewed a record from the Iowa clinic relative to the right shoulder. He agreed that a physical examination was done on September 13, 2018 of the left shoulder, and there was no evidence of biceps tear, no tenderness to the bicipital groove, and full range of motion. The doctor agreed that on the face of that report, it would indicate that the left shoulder was doing better then (Respondent's Exhibit 1 at 30–31). Dr. Paletta agreed that regardless of causation, Petitioner may require a should replacement in the future. The doctor testified he is familiar with sheet metal workers and has a general idea of what they do. He agreed that they do a lot of overhead work, which he would consider heavy activity (Respondent's Exhibit 1 at 31–32). Dr. Paletta further agreed that it is possible for trauma to cause pre-existing osteoarthritis to become more painful. When asked whether trauma can cause pain or symptomatology to persist for a long period of time, the doctor replied that pain is a

subjective complaint. The doctor agreed that at the time of his initial assessment, he did not have any doubts about Petitioner's complaints (Respondent's Exhibit 1 at 32–33). The doctor testified further that a total shoulder replacement should be done for complaints of pain or limited function. He noted that if a patient has enough motion loss that cannot do activities of daily living or cannot do his work, that would be the reason to consider a total shoulder arthroplasty (Respondent's Exhibit 1 at 33). Dr. Paletta further testified that it was his opinion that the trauma, as described by the Petitioner, would be highly unlikely to increase the pain in the Petitioner's condition, because the Petitioner described the bundle hitting he wall and the pop in the shoulder. Dr. Paletta noted that Petitioner did not describe anything happening to the shoulder in that he did not hit the shoulder against the wall and did not fall. He also noted Petitioner did not describe his arm as being jerked, twisted, or anything else. He felt that Petitioner described an incident which increased some pain, but there was nothing that happened to the shoulder itself, in terms of direct trauma, that he would consider to have changed the natural history of the arthritic condition or affected the joint itself (Respondent's Exhibit 1 at 35).

BJM:cae (lc:X1554556)

CONCLUSIONS OF LAW:

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The Petitioner bears the burden of proving every aspect of his claim by a preponderance of the evidence.

IN REGARD TO DISPUTED ISSUE (F), THE ARBITRATOR MAKES THE FOLLOWING CONCLUSION OF LAW:

The Arbitrator concludes that Petitioner's condition of ill-being in his left shoulder, as diagnosed and treated by Dr. Mark Greatting, is not causally related to the incident of April 22, 2020.

In support of his conclusion, the Arbitrator notes the following:

When a pre-existing condition is present, a Petitioner must show that a work-related accidental injury aggravated or accelerated the pre-existing condition such that the Petitioner's current condition of ill-being can be said to have been causally connected to the work-related injury. (St. Elizabeth's Hospital v. Workers' Compensation Commission, 864 N.E.2d 266 (5th District 2007)). A Petitioner's prior condition need not be of good health prior to the accident, if a Petitioner is in a certain condition, an accident occurs, and following the accident, the Claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition, it is the resulting deterioration from whatever the previous condition had been. (Schroeder v, Illinois Workers' Compensation Commission, 4-16-0192 WC (4th District 2017)).

The Arbitrator has carefully reviewed and considered all of the medical evidence along with the testimony. The Arbitrator concludes that the preponderance of the evidence establishes that the Petitioner had a preexisting condition in the left shoulder that was not aggravated or accelerated but progressed in the normal cause for degenerative arthritis.

The Petitioner testified that he previously injured his left shoulder at work on November 18, 2016. The Petitioner testified that he was carrying a piece of siding with another worker and he tripped and fell, and everything came down onto his left shoulder. Petitioner felt a pop in that shoulder. The

medical records establish that he treated with Dr. Richard Hulsey of St. Louis commencing on December 12, 2016. Dr. Hulsey reviewed x-rays at that time which revealed advanced osteoarthritis of the glenohumeral joint with near bone-on-bone and an inferior osteophyte off of the humeral head. Dr. Hulsey at that time noted that the arthritic changes were quite advanced. His records state Petitioner had significant pre-existing arthritic changes. Dr. Hulsey's prognosis in 2016 was guarded, due to the severity of the arthritic changes.

The Arbitrator finds that Petitioner underwent a left shoulder CT scan on February 16, 2016. At that time, there was no evidence of fracture or dislocation. The radiologist noted degenerative changes of the acromioclavicular joint with significant narrowing of the glenohumeral joint, associated hypertrophic spurs of the glenoid fossa and the anterior aspect of the humerus at the head and neck junction. Dr. Hulsey reviewed this diagnostic test and recorded in his December 12, 2016 note that it confirmed Petitioner had significant arthritic changes and there was small joint space remaining. The changes were noted to be significant and the doctor stated they would progress with time. In that same office note, the Arbitrator notes that Dr. Hulsey told the Petitioner that he would most likely require a joint replacement due to his arthritic changes. Dr. Hulsey re-evaluated Petitioner on February 1, 2017, and found him to have difficulty with most activities that required reaching overhead. Physical examination showed his range of motion to be uncomfortable. The doctor's note from that date concludes that Petitioner "realizes that sometime in the future he will require a joint replacement."

The Arbitrator finds that Dr. Hulsey's note of March 1, 2017, records that the Petitioner obviously had long outstanding changes in his shoulder secondary to both arthritis and a labral tear. The last visit with Dr. Hulsey occurred on May 10, 2017. Petitioner was still symptomatic, noting that he was quite sore, especially when using the arm above shoulder level. Petitioner had received limited improvement from the medications prescribed. Dr. Hulsey's discussion section of his May 10, 2017 note describes advanced osteoarthritis of the humeral joint. The doctor further stated that, with time, Petitioner would require a total shoulder replacement relating to his underlying arthrosis and not related

to the labral tear.

The Arbitrator further finds that when Petitioner resumed treatment on April 24, 2020, it was noted that he reported having been told he had previous degenerative changes in the shoulder and Petitioner had been treated with injection and physical therapy. X-rays taken on that date again showed advanced glenohumeral joint degeneration with reactive bone formation. Dr. Randy Cohen, the occupational medicine specialist, diagnosed advanced degenerative arthritis of the left glenohumeral joint. Repeat x-rays were taken on May 8, 2020, and they again were read to show severe glenohumeral degenerative changes in the left joint and a questionable acromial fracture.

The Arbitrator finds that when Petitioner was examined at Carle Orthopedics on May 26, 2020, the physician's assistant reviewed the x-rays and read them to show severe osteoarthritis of the glenohumeral joint with complete joint loss.

Petitioner underwent a CT scan to the left shoulder on July 16, 2020, at the Springfield Clinic. There was no evidence of fracture, malalignment, or bone lesion. The Arbitrator notes there were no acute findings noted to the left shoulder on this CT scan. The Arbitrator further notes the radiologist found severe glenohumeral osteoarthritis with bone-on-bone articulation, a large marginal osteophyte, and several large adjacent intra-articular bodies in the subscapularis of the glenohumeral joint. Following this CT scan, the Arbitrator notes Petitioner was examined by a nurse practitioner at the Springfield Clinic on July 22, 2020. The CT scan was reviewed and noted to be significant for severe osteoarthritic changes in the glenohumeral joint.

The Respondent's examiner, Dr. George Paletta, also reviewed the diagnostic testing and performed his own x-rays. He found that Petitioner had advanced end-stage osteoarthritis of the glenohumeral joint with marked joint space narrowing. There was almost complete obliteration of the joint space. There was essentially full thickness chondral loss and bone-on-bone changes. Dr. Palletta diagnosed end-stage osteoarthritis to the left shoulder. The doctor noted that this was a long-standing chronic condition with changes that would not have occurred within a short time after the described

injury of April 22, 2020. He noted this condition was clearly long-standing. He found no evidence that the incident of April 22, 2020, caused any acute fracture or bone pathology and he found no evidence that the incident altered or accelerated the severe osteoarthritis. The doctor noted that the osteoarthritis clearly had been developing long before the date of the injury. He also noted that Dr. Hulsey had discussed with the Petitioner the need for a total shoulder replacement relating to this underlying arthrosis as far back as 2017.

The Arbitrator finds that while under the care of Dr. Greatting, Petitioner underwent an MRI of the left shoulder at Springfield Clinic on January 2, 2021. Again, it was found that Petitioner had severe glenohumeral osteoarthritis with diffuse degenerative tearing of the labrum. There was no acute fracture or dislocation. Dr. Greatting agreed that Petitioner had severe osteoarthritis. He determined that the symptoms were related to the osteoarthritis in the left shoulder. He treated Petitioner with intra-articular injections and viscosupplementation injections. The doctor stated that sometime in the future, the Petitioner might require a total shoulder arthroplasty.

The Arbitrator finds that Petitioner has clearly been diagnosed with a pre-existing degenerative condition that was already severely advanced as of December 2016. The Arbitrator further notes that the accident of 2016 was much more serious, in that the Petitioner actually fell and struck the left shoulder. The incident of April 22, 2020, involved items Petitioner was carrying resting on his left shoulder striking a wall. The Petitioner testified he did not strike the wall with his left shoulder, nor did he fall to the ground or otherwise strike the left shoulder in any other manner. Petitioner therefore did not sustain any direct injury to the left shoulder. He had some symptoms as a result, but there is no evidence that the underlying condition was accelerated or aggravated by the events of April 22, 2020.

The Arbitrator therefore concludes that the Petitioner has a long-standing and advanced condition of degenerative arthritis in the glenohumeral joint of his left shoulder. This was documented to be severe in 2016. The diagnostic testing does not establish that the underlying condition was aggravated or accelerated in 2020. The Arbitrator therefore finds that the Petitioner's current condition

of ill-being in the shoulder relates to his long-standing progressive condition of degenerative arthritis that has been progressing since before 2016 and the underlying condition was not fundamentally altered or aggravated by the April 22, 2020 incident.

IN REGARD TO DISPUTE ISSUE (J), THE ARBITRATOR MAKES THE FOLLOWING CONCLUSION OF LAW:

The Arbitrator concludes that the medical services provided to the Petitioner from April 24, 2020, to September 15, 2020, were reasonable and necessary and Respondent is liable for payment of these charges under Section 8.2 of the Illinois Workers' Compensation Act. The Arbitrator concludes that medical services rendered subsequent to that date are denied.

In support of this conclusion, the Arbitrator notes the following:

Petitioner had a pre-existing condition in his left shoulder which is documented by Dr. Richard Hulsey's records and the diagnostic testing results. The evidence (as incorporated in the discussion from disputed issue (F)) establishes that the condition was far advanced and the degeneration was severe over three years prior to April 22, 2020. The evidence further establishes that the left shoulder degenerative condition was not accelerated or aggravated by the incident of April 4, 2020. Dr. Hulsey informed Petitioner in 2017 that he would need a total shoulder arthroplasty. Comparison of the diagnostics from 2016, 2020, and 2021 show similar findings and no evidence that the underlying condition had been accelerated, aggravated, or altered by the April 22, 2020, incident. There is no evidence of acute injury to the left shoulder joint relating to that incident. Petitioner had a severely degenerative glenohumeral joint present on December 20, 2016, and subsequent imaging reveals the essentially same situation. The medical evidence fails to establish a change in the deterioration of the left glenohumeral joint that would be linked to the condition of April 22, 2020. The Arbitrator adopts the findings of Dr. George Paletta on this point, finding them to be more credible.

IN REGARD TO DISPUTED ISSUE (K), THE ARBITRATOR TO MAKE THE FOLLOWING CONCLUSIONS OF LAW:

The Arbitrator concludes that Petitioner is not entitled to an award for prospective medical care.

In support of this conclusion, the Arbitrator notes: The Petitioner has a severely degenerative shoulder which was documented to be present in 2016. A comparison of the diagnostic testing from 2016 and the present reveals no fundamental change in the underlying degenerative condition that was causally related to the incident of April 22, 2020. Dr. Paletta and Dr. Greatting have not identified any specific changes caused by the 2020 incident, and there is no evidence of any acute injury to the shoulder joint itself. The only finding is an increase in symptoms. The Arbitrator notes that the Petitioner did not describe an actual injury to the shoulder itself as there was no impact to the left shoulder. The items Petitioner was carrying on April 22, 2020, struck the wall, but Petitioner's shoulder was not struck by any item nor did he fall onto the left shoulder. The Petitioner requires a left shoulder arthroplasty, but the Arbitrator finds that the need for this is related to the long-standing condition documented as present in 2016 and is not necessary due to the April 22, 2020, incident. The Arbitrator has determined that the evidence shows that Petitioner needs surgery due to the progression of a long-standing chronic degenerative condition rather than any acute injury occurring on April 22, 2020.

IN REGARD TO DISPUTED ISSUE (L), THE ARBITRATOR MAKES THE FOLLOWING CONCLUSION OF LAW:

The Arbitrator concludes that Petitioner is not entitled to TTD benefits subsequent to October 7, 2020.

In support of this conclusion, the Arbitrator notes the following:

The evidence establishes that Petitioner's degenerative left shoulder condition was pre-existing and unaltered by the incident of April 22, 2020. The need for treatment and any resultant disability is found to be related to the arthritic condition that was long-standing, chronic, and progressing over time.

The evidence fails to establish that Petitioner's condition deteriorated and accelerated as a result of the incident of April 4, 2020.

The Arbitrator notes that the Petitioner is currently working and is handling his duties despite his complaints. The testimony confirms that Petitioner is performing heavy sheet metal work. The Arbitrator further finds that any need for the Petitioner to be disabled for treatment is related to the advancing degenerative condition that was pre-existing and is not related to the incident occurring at work on April 22, 2020.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC012068
Case Name	Joseph Versetto v. Perry Walker Tire Tracks USA
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	**Corrected Decision**
Commission Decision Number	[23IWCC0150]
Number of Pages of Decision	14
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	David Caplan
Respondent Attorney	Nicole Breslau

DATE FILED: 4/7/2023

/s/ Deborah Baker, 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

Joseph Versetto,

Petitioner,

vs. NO: 20 WC 012068

PR Walker,

Respondent.

CORRECTED 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 causal connection, medical expenses, prospective medical care, and temporary total disability, and being advised of the facts and law, corrects the Decision of the Arbitrator as set forth 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. Indus. Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

The Commission corrects a scrivener's error in the Arbitrator's Decision on page 9, first paragraph, line 8, to strike "not" and replace with "note."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 14, 2022, is corrected as stated herein, and is otherwise affirmed and adopted.

IT IS FURTHER ORDERED that Respondent shall pay to Petitioner temporary total disability benefits of $373.72/week for 69-3/7 weeks, commencing June 2, 2020 through September 30, 2021, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical expenses, subject to §8(a)/§8.2 of the Act, of Illinois Orthopaedic Institute, $786.00, and OCS Tinley Park Clinic, $1,641.36.

IT IS FURTHER ORDERED that Respondent shall receive a credit of 11,343.90 for medical expenses paid, $1,566.00 for an advance on permanent partial disability, and $12,976.26 for TTD paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent authorize and pay for the recommended surgical procedure, minimally invasive transforaminal lumbar interbody fusion at L4-5, as recommended by Dr. Kuo, as well as any pre- and post-surgical care deemed necessary by Dr. Kuo.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $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 7, 2023

o: 03/28/2023
DJB/ahs
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/s/ *Deborah J. Baker*
Deborah J. Baker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC012068
Case Name	VERSETTO, JOSEPH v. PR WALKER
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	David Caplan
Respondent Attorney	Nicole Breslau

DATE FILED: 1/14/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 11, 2022 0.27%

/s/ Jessica Hegarty, Arbitrator

Signature

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
ARBITRATION DECISION

JOSEPH VERSETTO
Employee/Petitioner

v.

PR WALKER
Employer/Respondent

Case # **20** WC **012068**

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 **Jessica Hegarty**, Arbitrator of the Commission, in the city of **Kankakee**, on **September 30, 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 **Prospective medical treatment pursuant to 8(a)**

FINDINGS

On **05/16/2020**, 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*** 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 $**29,150.18**; the average weekly wage was $**560.59**.

On the date of accident, Petitioner was **50** years of age, ***married*** with **0** dependent children.

Petitioner ***has not*** 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 $**12,976.26** – $11,343.90 for paid medical expenses and $1,566.00 for a PPD advance.

ORDER

- Respondent shall pay Petitioner's temporary total disability benefits of $373.72 commencing June 2, 2020 and continuing up to the date of the hearing on September 30, 2021. Respondent is entitled to a credit for $12,976.26 for TTD paid;

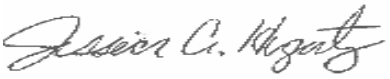
- Respondent shall pay the following outstanding medical bills: Illinois Orthopaedic Institute $786.00 and OCS Tinley Park Clinic in the amount of $1,641.36;

- Respondent shall authorize and pay for the minimally invasive transforaminal lumbar interbody fusion at L4-5 as prescribed by Dr. Kuo and any pre- and post-surgical care deemed necessary by Dr. Kuo.

In no instance shall this award be a barred to subsequent hearings or determinations of additional medical benefits or compensation of temporary or permanent disability payable if any.

The Rules regarding appeals unless a party files a Petition for Review within thirty days after receipt of this decision and perfects a review accordance with the act and rules when this decision should be entered as a decision of the commission. It is further ordered that if the commission reviews this award interest at the rate set forth at the Notice of Decision of the Arbitrator should accrue listed below to the date before date of payment however if employ appears results in either no change or decrease in award interest should not accrue.

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

JANUARY 14, 2022

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS	)	
	)	
COUNTY OF KANKAKEE	)	
JOSEPH VERSETTO,	)	
	)	
Petitioner,	)	
	)	
Vs.	)	**20 WC 012068**
	)	
PR WALKER,	)	
	)	
Respondent.	)	

ADDENDUM TO THE DECISION OF THE ARBITRATOR

STATEMENT OF FACTS

The parties stipulated that Petitioner (then 50 years old) sustained a work-related accident on May 16, 2020, resulting in left knee injuries. Respondent disputes that Petitioner injured his back in the same accident. Petitioner is seeking prospective medical care pursuant to Section 8(a) in the form of a lumbar fusion. (Arb. 1).

PETITIONER'S TESTIMONY

Petitioner testified he worked for Respondent as a tire technician, a job that required him to install new tires on automobiles and perform various mechanic services such as oil changes, engine work, and brake repair. According to the Petitioner (who is 5 foot 6 inches tall), the job for Respondent was physically strenuous, requiring him to lift tires and other objects weighing between 75 and 100 lbs. Petitioner testified he had to lift the tires above his head. (Transcript at 9-10).

Petitioner had some issues with his lumbar back before the accident at issue. He testified that while working for the City of Chicago in 2008 he was treated for right-sided lumbar issues but was released to full duty work before the accident at issue.

Regarding the undisputed accident at issue, Petitioner testified that on May 16, 2020 he was installing four (4) new tires on a car. He proceeded to put the car on a "lift" and had remove all four of the old tires from the automobile. While lifting one of the new tires, he felt excruciating pain that radiated from his lumbar back through his left buttock that extended down around his left knee. Immediately following the accident, Petitioner was unable to move. (Id. at 11-13). Four days after the accident Petitioner presented for medical treatment at which time light duty restrictions were instituted by Respondent's occupational provider, Physicians Immediate Care "PIC". He follow up at PIC on May 22 and 26 at which time his light duty restrictions were continued (Id. pgs. 14-15).

Following treatment at PIC, Petitioner began treatment with Dr. Primus and Dr. Robinson at Center for Orthopedics Sports Medicine on June 2, 2020, at which time Dr. Primus took him off work altogether. Petitioner began receiving temporary total disability as of that day. Dr. Primus eventually prescribed an arthroscopic left knee repair and referred Petitioner to Dr. Rebecca Kuo, a back specialist. Dr. Primus also prescribed therapy for Petitioner's left knee and low back. Petitioner had difficulty performing physical therapy due to his persistent low back and left knee pain. Dr. Primus prescribed a lumbar epidural injection but Petitioner declined this treatment due a bad experience while receiving a low back epidural as a result of his 2008 accident (Id. pgs. 21-22).

On August 27, 2020, Petitioner presented to Dr. Kuo who noted a history of the work accident and Petitioner's persistent complaints of low back pain radiating down the left leg to his left foot. Petitioner provided the doctor with prior MRIs. Dr. Kuo recommended a lumbar epidural injection which Petitioner declined for the same reason he declined the epidurals prescribed by Dr. Primus and Dr. Robinson. On October 1, 2020 Dr. Kuo discussed a fusion of Petitioner's L4-5 disc (Id. pgs. 22-24).

While treating with Dr. Primus, Petitioner was prescribed pain medications including Ibuprofen, gabapentin, Neurontin, and two percent solution. He was also given Mobic and Naprosyn. Petitioner treated with Dr. Primus every six weeks from his initial visit to his last visit of June 21, 2021 (Id. pgs. 25-26).

On October 26, 2020 Petitioner attended an IME with Dr. Singh at which time he complained of low back pain radiating down to his foot and left knee pain (Id. pg. 27). According to Petitioner's testimony, the examination lasted about one minute and the doctor never laid hands on him (Id. pg. 26).

On November 4, 2020, Petitioner was seen for an IME with Dr. Verma who examined his left knee, reviewed the MRI, and ultimately recommended a left knee arthroscopic procedure. (See Petitioner's Exhibit #5)

Petitioner testified he deferred the left knee surgery until he was able to deal with his low back condition.

He returned to treatment with Dr. Kuo on November 19, 2020 at which time surgery was discussed and he was sent for a second opinion with Dr. Sampat which never took place, as it was never approved by workers ' compensation (Id. pg. 29).

Regarding his current condition, Petitioner testified he experiences consistent low back radiating down his left leg to his foot and has had continued knee pain from the date of the accident to the date of the hearing. (Id. at 31). Petitioner is unable to sit more than twenty-five minutes at a time or he starts experiencing low back radiating down the left leg to his foot. His left knee hurts if he stands too long. He can walk for only five minutes before he experiences pain in his low back radiating down the left leg to his foot. When he attempts to walk on his left knee, it tends to give away. Petitioner testified in having difficulties sleeping due to pain (Id. pgs. 33-34).
On February 17, 2021 Petitioner's temporary total disability was suspended because he elected not to have the authorized left knee surgery. Petitioner has had off-work restrictions from June 2, 2020 up to the date of hearing issued by either Dr. Kuo or Dr. Primus (Id. at 35-36).

Petitioner admitted that he had treated with several doctors for his earlier injury in 2008 and was seen for an examination by Dr. Goldberg in 2016. Petitioner admitted that he refused to undergo epidural steroid injections prescribed by Dr. Robinson. Petitioner further testified that he deferred treatment on the left leg left knee until the low back surgery can be performed (Id. pgs 38-39)
Petitioner admitted on cross-examination that his examination with Dr. Singh lasted about between one to two minutes. He further testified that he had difficultly on the examination table due to low back pain (Id, pg. 43)

Petitioner testified to performing light duty work for Respondent following the date of accident of May 16, 2020 which included mopping floors, cleaning windows, and cutting grass. As he performed this work he experienced pain in his low back to the left leg around his thigh and down to his left foot. His left knee wanted to give out (Id. pg. 42).

RONALD CARTER TESTIMONY

Ronald Carter, who worked as the store manager for Respondent on the accident date, was called to testify by Respondent. Mr. Carter testified the Petitioner's work duties included repairing or changing tires, performing oil changes, and light vehicle maintenance. He testified Petitioner was required to lift between 40 and 50 pounds. Carter did not see Petitioner's work accident on May 16, 2020. On cross-examination, Mr. Carter admitted that Petitioner may have to lift up to 80 pounds (Id. pgs. 52-57).

MEDICAL RECORDS

The records from Physicians Immediate Care ("PIC") document that Petitioner was presented on three occasions to Nurse Practitioner ("NP") Jessica Morales on May 20, 2020, the Petitioner stated Petitioner "hurt his back at work on Saturday 5/16/20 lifting a tire up to install on a car". (PX4). Petitioner reported pain/pressure radiates to the buttocks, left anterior thigh, and left knee. The NP noted the injury was "work-related" with a "sudden onset". Petitioner reported having a previous low back injury last year at work doing the same job. He reported having a "bulging disc 10 years ago L5-S1 and did not have any surgery, physical therapy to resolve." (Id.). On exam, reduced range of motion in the lumbar spine, abnormal gait and posture, lumbar spasm, and tenderness to palpation particularly over L4 was noted. *(Id.).* Petitioner was diagnosed with a low back strain, left-sided sciatica, and a left knee sprain. Petitioner was fitted with a knee orthosis and instructed to wear a back brace. *(Id.).* Regarding work restrictions, Petitioner was instructed to avoid prolonged standing and kneeling, no lifting below the waist over 25 pounds, and no pushing or pulling over 25 pounds. *(Id.).*

On May 23, 2020, Petitioner followed up at PIC where NP Morales noted an increase in left low back pain radiating down the left buttock to the anterior leg and numbness and tingling in his left toes. (PX4). Petitioner reportedly had been working within his restrictions, but reported that his job duties increased his back and left knee pain. *(Id.).* He was taking over-the-counter pain medication and utilizing his knee and back brace. *(Id.).* Petitioner rated his pain as "10/10." *(Id.).* He reported standing and sitting aggravated his pain, as did walking. *(Id.).* On exam, antalgic gait was noted along with medial joint line tenderness of the left knee. *(Id.).* Of note, a positive Waddell's sign was noted on this date by NP Morales who noted back pain with axial loading and skin hypersensitive to light touch over a wide area. *(Id.).* She noted pain on the left when rotating shoulders and pelvis in tandem. *(Id.).* Reduced range of lumbar spine motion with tenderness to palpation of the left paraspinal muscles and weakness of the lower extremities, specifically 3/5 strength in the left lower extremity were noted. *(Id.).* Petitioner was unable to perform straight-leg raising at due to complaints of back pain and an inability to lay down. *(Id.).* Petitioner was diagnosed with a low back strain, left-sided sciatica, and a left knee sprain. Work restrictions were amended to no lifting, pushing, or pulling over 10 pounds. *(Id.).* Petitioner was also given Flexeril for pain. *(Id.).*

On May 26, 2020, Petitioner followed up at PIC with NP Morales who noted he continued to complain of 10/10 mid/low back radiating pain down the left buttock into his right anterior thigh along with left knee pain were noted. *(Id.).* He also complained of numbness and tingling in his left first, second, and third toes. *(Id.).* He reported an increase in pain with activity. *(Id.).* He reported a herniated disc at L5-S1 10 years prior, which was viewed on x-ray. Petitioner had undergone prior back treatment including an MRI of his lumbar spine, as well as EMG testing. *(Id.).* Petitioner stated he had been recommended for surgery, but claimed he had cancelled the same. *(Id.).* (Emphasis added). On exam, Petitioner continued to demonstrate an antalgic gait. *(Id.).* Joint line tenderness on the medial joint line of the left knee along with decreased extension of the bilateral knees was noted. *(Id.).* He denied any pain

in the right knee, but claimed he was unable to fully extend the right knee due to back pain. *(Id.)*. Positive Waddell's signs were again noted. *(Id.)*. (Emphasis added). NP Morales also noted an inconsistently reducible report of pain with stimulus bilaterally. *(Id.)*. Petitioner continued to complain of tenderness to palpation over the left, right, and midline paraspinal muscles with weakness of the lower extremity. *(Id.)*. They were unable to perform straight-leg raising due to petitioner's pain level. *(Id.)*. Petitioner's diagnoses were unchanged at that time. *(Id.)*. Petitioner's work restrictions were continued, and he was instructed to follow up on June 9, 2020. *(Id.)*. An MRI of the lumbar spine was ordered. *(Id.)*. This was Petitioner's last treatment with PIC. Petitioner then began care with Dr. Primus, Dr. Robinson, and ultimately, Dr. Kuo, who gave her evidence deposition testimony in this case.

On June 2, 2020 Petitioner presented for initial consult to the Chicago Center for Sports Medicine where Dore Robinson, DO who noted a history of lower back pain after a work-related accident in which Petitioner was changing a clients "20-inch tire which weighed 55/75 pounds". (Px3). Petitioner stated he had to "lift the tire to put the tire on the car when he felt a pop in the left knee and when he lifted it overhead he felt a pop in the low back". Petitioner complained of lumbar back pain and the inability to bend or apply any pressure along with radiating pain and left leg numbness down the anterior left thigh wrapping around to calf and first three toes. Petitioner indicated on the intake sheet that he was currently taking Naproxen 3 times per day, Mobic 3 times per day, and 2 Tylenol every 6 hours for pain. On exam, Petitioner had tenderness on palpation midline and left paraspinals. Decreased range of motion in extension, antalgic gait, and positive straight leg test. A diagnosis of lumbar radiculopathy was noted for which physical therapy and an MRI was ordered. (Id.). Petitioner was taked off of work entirely and instructed to follow-up in two weeks. (Id.).

On June 16, 2020 Petitioner underwent an MRI of his lumbar spine without contrast at Preferred Open MRI. The radiologists report noted the following:

1. L5-S1: A 3 mm right foraminal protrusion moderately narrowing the right foramen;

2. L4-L5: A disc bulge and more focal 3-4 mm left foraminal protrusion with moderate narrowing of left foramen. Mild narrowing right foramen;

3. L3-L4: A disc bulge and 3 mm left foraminal protrusion with moderate narrowing of left foramen

On July 6, 2020 Dr. Robinson noted that "since the last visit the symptoms have worsened. He states his therapist has been not listening to him and he has been doing modalities and exercises that have been exacerbating his back pain. He continues to have pain and numbness down the leg which is severe". (Id.). On exam, Petitioner had tenderness on palpation midline and left paraspinals. Decreased range of motion in extension, antalgic gait, and positive straight leg test. The doctor noted the recent lumbar MRI was significant for multilevel disc bulges from L2-S1 and loss of lordosis. A diagnosis of lumbar radiculopathy was noted. The doctor recommended the Petitioner switch to another therapy provider and consult with a pain management doctor. Off-work restrictions were continued. (Id.).

On August 27, 2020 Petitioner presented to Illinois Orthopedic Institute where Dr. Rebecca Kuo noted a history of increased back pain since May 2020 after a back injury changing tires. (Px 2). Petitioner complained of low back pain radiating into his left leg down to his foot and pain in left knee. Dr. Kuo reviewed the recent MRI noting:

> [A] rather large beginning of the left lateral recess traversing through the entire left neural foramen at L4-L5 causing significant compression of the left L4 nerve root ats well as the little bit of compression at the left L5 nerve root causing moderate severe stenosis of the left neural foramen. (Id.).

On exam, Dr. Kuo noted discomfort with range of motion particularly flexion and positive straight leg on the left. Dr. Kuo recommended a lumbar epidural steroid injection and the possibility of surgery. Petitioner followed up with Dr. Kuo on October 1, 2020, November 19, 2020, and February 11, 2021. (Id.)

On October 26, 2020 Petitioner presented to Dr. Kern Sigh at Midwest Orthopedics at Rush for a Section 9 exam at the behest of the Respondent. (Rx 2). Dr. Singh noted that Petitioner reported that "on May 16, 2020, he was repeatedly lifting 55- to 75-pound tires with 20-inch tire rims for a Silverado truck and loading them on a truck when he developed sharp low back pain". Dr. Singh further noted a previous lumbar back work injury on October 21, 2019 for which he was released to full duty MMI on October 29, 2020. An L5-S1 right disc herniation in 2008 was also reported. (Id.). Dr. Singh reviewed the June 16, 2020 lumbar MRI noting "minimal lumbar spondylosis without stenosis" and "no instability at L4-5". (Id.). The doctor diagnosed Petitioner with a lumbar muscular strain. Regarding causation, Dr. Singh opined that Petitioner sustained a "soft tissue muscular strain of the lumbar spine which has resolved and is causally connected to the date of injury May 16, 2020". (Id.). Dr. Singh noted Petitioner displayed 5/5 Waddell signs and had a normal neurological exam. (Id). In Dr. Singh's opinion, Petitioner was at MMI and could return to work without restriction. (Id).

DR. KUO TESTIMONY

Dr. Rebecca Kuo testified via evidence deposition on June 11, 2021 (Px 1). Dr. Kuo is an orthopedic spinal surgeon who has been licensed to practice in Illinois for the last 14-15 years. (Id., p. 5). licensed to practice med is a board-certified orthopedic surgeon with a subspecialty in spine surgery.

Regarding Petitioner's back injury before the accident at issue, Dr. Kuo testified that (pursuant to her review of Petitioner's prior medical records and the history she obtained) Petitioner sustained a back strain which was treated conservatively and he returned to full duty work on November 4, 2019 with no residual disability. (Id. p. 9).

Dr. Kuo further testified, "essentially he had a prior short work injury that resolved a hundred percent on its own… So it tells me that he was functioning and doing fine since he recovered from that doing his full job" until the work-related accident at issue. (Id. p. 10). At Petitioner's exam, the doctor noted a positive straight leg raise on the left side and weakness on the left which he rated four out of five. She further testified that the muscles were weak from the consistent disc herniation as seen of the MRI. (Id., pgs. 14-15). Dr. Kuo's findings on physical exam corresponded to her diagnoses of a herniation disc at L4-5 (Id. pg. 15).

Dr. Kuo testified that Petitioner's June 16, 2020 low back MRI demonstrated a herniated disc lateral recess transverse the entire neural foramen causing compression of the L4 and L5 nerve roots (Id., pg. 12-13). Dr. Kuo testified the significance of the herniation migrating into the neural foramen shows there is compression both in the lateral recess which is the edge of the canal as well as the nerve exit. requires a fusion (Id. pg. 13).

Dr. Kuo saw Petitioner again on October 6, 2020 at which time the complaints were the same and worse (Id. pg.18)

Regarding the IME report from Dr. Kern Singh, Dr. Kuo disagreed with Dr. Singh's findings of Waddell signs as her own tests did not demonstrate any presence of Waddell signs (Id. pgs 21-23). Dr. Kuo testified she found evidence of positive neurologic deficits in Petitioner where Dr. Singh found none. She further testified her opinions were diametrically opposed to those of Dr. Singh.
Dr. Kuo testified that the diagnosis of Petitioner's low back injury that of herniated disc at L4-5 was causally connected to the accident of May 16, 2020. She further testified that the lifting of the tire as described by Petitioner was an appropriate mechanism of injury for the diagnosis she had made. She also testified that Petitioner was disabled from performing his job as tire technician commencing the date of accident up to the present time. She

further testified that the disability would persist until the appropriate surgical procedure can be carried out to deal with the findings at L4-5. On cross-exam, Dr. Kuo testified that Petitioner's injuries in 2008 were on the right side while this was on the left side. Dr. Kuo further testified that she would prefer dealing with the low back first. As surgery on the left knee first would require use of crutches which would put a fair amount stress on his back.

DR. SINGH TESTIMONY

Dr. Kern Singh is a board-certified orthopedic surgeon (Rx 2 at 6). He is a board-certified orthopedic surgeon. (*Id.*). With respect to his IME report of October 26, 2020, the Petitioner presented with complaints of 10/10 low back pain. (*Id.* at 9). Dr. Singh testified that his examination of Petitioner was completely normal. *(Id.).* Petitioner had no deficits in range of motion, strength, or reflexes. *(Id.).* Petitioner was positive for five Waddell's findings. (*Id.* at 12). Dr. Singh stated that Waddell's findings should not be used as dispositive as to whether to authorize or deny treatment in a case. *(Id.).* However, they are one diagnostic tool among many, which can be used to assess the overall clinical picture of a patient. *(Id.).*

Dr. Singh testified that Petitioner's complaints of leg pain were non-anatomic. (Id. at 24). Dr. Singh testified that there could be neuro impingement at L4-5 on the left side that would cause an L-4 nerve root involvement in the case of foraminal impingement. *(Id.).* However, Dr. Singh testified that the L-4 nerve root has a "particular pattern", and that would involve quadriceps weakness and reflex change, particularly in the patellar reflex. *(Id.).* Dr. Singh testified that in Petitioner's case, none of these were present in either subjective complaints, quadriceps testing or patellar reflex testing. *(Id.).* He further testified that Petitioner did not demonstrate positive straight leg raising. *(Id.).* Dr. Kuo's records do not reflect any findings of quadriceps weakness.

Dr. Singh testified that Petitioner's MRI films of June 16, 2020 only demonstrated minimal lumbar spondylosis without stenosis and no instability at L4-5. (*Id.* at 13). Dr. Singh testified that this was significant in as much as these were normal findings that would not indicate any basis for proceeding with surgical intervention. *(Id.).* He did not see a disc herniation at L4-5 or any encroachment into the left foramina at that level. *(Id.).*

Dr. Singh testified that Petitioner suffered a lumbar muscle strain as a result of the work accident. (*Id.* at 14). It was his position that Petitioner's treatment had been excessive and prolonged in nature. (*Id.* at 15). Dr. Singh opined that a limited amount of physical therapy was reasonable and necessary to address a soft tissue sprain. *(Id.).* He testified he could not objectify Petitioner's pain complaints. *(Id.).* Dr. Singh testified petitioner had non-anatomical leg pain but a normal neurological examination and lumbar spine MRI that revealed no significant stenosis or instability. (*Id.* at 16). He testified Petitioner had reached maximum medical improvement. *(Id.).* Dr. Singh testified that he did not agree with the recommendation for a lumbar fusion given the above. *(Id.).*

Dr. Singh agreed on cross-examination that complaints of pain radiating down the left leg would be consistent with a herniated disc in L4-5 but reiterated that Petitioner had none such condition. (Id., 22-23). Dr. Singh also testified that Petitioner was at MMI as of the date of his examination (Id., p.16).

ARBITRATOR'S CONCLUSIONS

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

There is no dispute that Petitioner was working full duty for Respondent at the time of the accident in a physically demanding job that required him to regularly lift automotive tires weighing anywhere from 25 to 80 pounds. Petitioner's complaints of radicular low back pain began immediately after the accident, he was restricted from his full duty work thereafter. There were no subsequent accidents that could have caused or contributed to his symptoms. This "chain of events" evidence, standing alone, is sufficient to support a causation finding

The Arbitrator found Petitioner presented as an exceedingly credible witness whose demeanor and overall presentation during the hearing appeared forthright, honest, and genuine. Petitioner withstood a rigorous cross-

exam relatively unfazed. The Arbitrator did not find any material discrepancies in the testimony between Petitioner and Respondent's witness, Ronald Carter, a store manager trainee for Respondent on the day of the accident. The Arbitrator found Carter's testimony, if anything, helped Petitioner's case in that he corroborated much of Petitioner's testimony regarding his duties for Respondent and that Petitioner was indeed working full duty in a physically strenuous job before the undisputed lifting accident at issue. Further, Mr. Carter testified that Petitioner was required to lift heavy tires weighing 45 - 80 pounds. The Arbitrator notes that the treating medical records corroborate much of Petitioner's testimony. Accordingly, the Arbitrator gave a considerable amount of weight to Petitioner's testimony.

The treating medical records document consistent histories of acute, sudden and severe left lumbar pain following the undisputed work injury on May 16, 2020 when Petitioner was lifting a tire at work. The first recorded history, four days following the accident at Respondent's occupational provider, noted a history of Petitioner hurting "his back at work on Saturday 5/16/20 lifting a tire up to install on a car". (PX4). Petitioner complained of pain/pressure radiating to his anterior left thigh, buttocks, and left knee. The NP noted the injury was "work-related" with a "sudden onset". A diagnosis of a lumbar strain and sciatica was noted. Work restrictions were instituted. It seems to the Arbitrator that causation was clear at this point in treatment. The medical treating medical records from this point forward document consistent histories of accident that not the contemporaneous onset of low back pain with radicular symptoms following the work-related accident at issue. Petitioner's complaints of pain following the accident are consistent and well-documented. One month following the accident, a lumbar MRI was noted the presence at L5-S1 of a 3 mm right foraminal protrusion moderately narrowing the right foramen; at L4-L5 of a disc bulge and more focal 3-4 mm left foraminal protrusion with moderate narrowing of left foramen and mild narrowing right foramen. At Petitioner's initial consult with Dr. Kuo, a positive straight leg raise on the left side was noted. Dr. Kuo testified Petitioner's muscle weakness was consistent with the disc herniation as seen of the MRI. (Id., pgs. 14-15). Dr. Kuo's findings on physical exam corresponded to her diagnoses of a herniation disc at L4-5 (Id. pg. 15). Regarding Petitioner's back injury before the accident at issue, Dr. Kuo testified that (pursuant to her review of Petitioner's prior medical records and the history she obtained) Petitioner sustained a back strain which was treated conservatively and he returned to full duty work on November 4, 2019 with no residual disability. (Id. p. 9). Dr. Kuo further testified, "essentially he had a prior short work injury that resolved a hundred percent on its own… So it tells me that he was functioning and doing fine since he recovered from that doing his full job" until the work-related accident at issue. (Id. p. 10). Dr. Kuo testified that Petitioner's June 16, 2020 low back MRI demonstrated a herniated disc lateral recess transverse the entire neural foramen causing compression of the L4 and L5 nerve roots (Id., pg. 12-13). Dr. Kuo testified the significance of the herniation migrating into the neural foramen shows there is compression both in the lateral recess which is the edge of the canal as well as the nerve exit, a condition which requires surgical fusion (Id. pg. 13). The Arbitrator adopts the persuasive and well-reasoned opinions of Dr. Kuo.

Regarding the opinions of Dr. Singh, the Arbitrator accords them less weight noting opinions regarding the June 16, 2020 lumbar MRI is contradicted by the radiologist who initially interpreted the films and the opinions of Dr. Kuo. Dr. Singh's diagnosis that Petitioner suffered a mere lumbar muscular strain is contradicted by the diagnostic findings, the treating medical records and the opinions pf Dr. Kuo, Dr. Primus, and Dr. Robinson.

The Arbitrator concludes that the greater weight of the evidence support the finding that the Petitioner's lumbar condition is causally related to the accident at issue.

Assuming arguendo that Dr. Kuo's causation opinion were disregarded, there would still be enough evidence to support a finding of causation. `"Medical evidence is not an essential ingredient to support the conclusion that an industrial accident caused the disability." *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill. App. 3d 92, 96 (2004); see also *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63 (1982). A finding of causal connection can be based upon direct or circumstantial evidence and the reasonable inferences which can be drawn from such

evidence. *Id.* A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability can be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury. *Id.* at 96-97; see also *International Harvester*, 93 Ill. 2d at 63-64; *Schroeder v. Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC, ("if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration").

The Arbitrator finds the Petitioner's testimony credible, persuasive and corroborated by the treating Although Dr. Singh agreed that Petitioner was injured in the work-related accident at issue, Dr. Singh's conclusion that Petitioner suffered only a lumbar muscular strain and a left, asymptomatic, L4-L5 protrusion ignores the fact that Petitioner worked a physically demanding job, full duty, without restrictions before the accident at issue and he was unable to perform his full duty job afterwards. Moreover, Dr. Singh based his causation opinion on only one occasion where as Dr. Kuo treated Petitioner on four separate occasions in which her clinical findings, documenting consistent complaints of low back radiating down the left leg to the foot, were confirmed by diagnostic testing. Notably, Dr. Singh conceded that had there been a herniated disc at L4-5 the symptoms of radiating pain down the left leg would have been consistent with a left sided disc herniation at L4-5.

Accordingly, the Arbitrator finds the Petitioner's present condition of ill-being in his low back is causally connected the work-related injury of May 19, 2020.

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 finds that all the medical treatment rendered to the Petitioner by Center for Sports Medicine and Dr. Kuo were reasonable, necessary, and causally connected to the work-related injury of May 16, 2020. The Arbitrator further finds that the Petitioner's Exhibit #6 listing unpaid bills from the Illinois Orthopedic Institute in the amount of $786.00 and the Chicago Center for Sports Medicine in the amount of $1,641.00 are properly awardable.

K. IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?

The preponderance of evidence contained in the record supports a finding that Petitioner is entitled to prospective medical care, specifically the minimally invasive transforaminal lumbar interbody fusion, recommended by Dr. Kuo and any necessary and related pre- and/or post-surgical care deemed necessary by Dr. Kuo.

L. TTD

Based on a preponderance of the credible evidence contained in the records, the Arbitrator finds that Petitioner is entitled to payment of temporary total disability from June 2, 2020 up the date of hearing, September 30, 2021. This opinion is based on the testimony of Dr. Kuo wherein she testified that Petitioner was disabled from performing his job, as a tire technician from the date of the accident would persist until the disc herniation at L4-5 was properly treated. The Arbitrator rejects the testimony of Dr. Singh wherein he stated Petitioner was fully recovered and able to resume his job as tire technician as of the date of his evaluation