ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC029848
Case Name	Becky Gillespie v. Dollar General
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0054
Number of Pages of Decision	14
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Daniel Compton
Respondent Attorney	PETER SINK

DATE FILED: 2/1/2023

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

REBECCA SUE GILLESPIE,

Petitioner,

vs. NO: 19 WC 29848

DOLLAR GENERAL,

Respondent.

DECISION AND OPINION ON REVIEW

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

At the bottom of page 8, we strike the sentence, "Petitioner will stipulate that the sialoadenitis is unrelated." While we agree that the sialoadenitis is unrelated to the cervical spondylosis that became symptomatic due to the work accident, it appears that Petitioner agreed to this stipulation in her proposed decision, which is not available to the Commission on Review.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 7, 2021 is hereby affirmed and adopted with the clarification noted above.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $25,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 1, 2023

/s/ *Maria E. Portela*

SE/
O: 12/13/22
49

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC029848
Case Name	GILLESPIE, REBECCA SUE v. DOLLAR GENERAL
Consolidated Cases	No Consolidated Cases
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Daniel Compton
Respondent Attorney	Peter Sink

DATE FILED: 4/7/2021

THE INTEREST RATE FOR THE WEEK OF APRIL 6, 2021 0.03%

/s/ Paul Seal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF McHenry)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Rebecca Sue Gillespie
Employee/Petitioner

v.

Dollar General.
Employer/Respondent

Case # 19 WC 29848

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Rockford**, on **March 8, 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, **October 7, 2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $ **44,353.92**; the average weekly wage was $**852.96**.

On the date of accident, Petitioner was **55** years of age, ***married*** with **one** dependent child.

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

ORDER

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

This matter is before the Commission on Petitioner's 19(b) motion for prospective care based on Section 8 of the Act. Petitioner and Respondent disagree on whether Petitioner's current need for cervical fusion surgery is causally related to her accident. The Arbitrator finds that the Petitioner's current condition is causally related to the injury. In cases involving a pre-existing condition, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease such that the employee's current condition of ill-being can be said to be causally connected to the work-related injury. Sisbro, Inc. v. Industrial Comm'n, 207 Ill.2d 193, 204–05, 278 Ill.Dec. 70, 797 N.E.2d 665 (2003). The accidental injury need neither be the sole causative factor nor the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being. Sisbro, Inc., 207 Ill.2d at 205, 278 Ill.Dec. 70, 797 N.E.2d 665. The Petitioner has met her burden based upon the evidence provided:

Testimony of Petitioner, Rebecca Gillespie

The Arbitrator finds that the Petitioner's testimony was relevant, credible, and truthful. On October 7, 2017, the Petitioner was working at Dollar General and moving a wheeled shelving unit full of inventory consisting of multiple boxes each containing four three-liter bottles of Purex detergent. ROP at 14. The shelving unit was approximately six and a half feet high and two feet deep. ROP at 13. Because of a defective wheel, the shelving unit began to tip over onto her. As she pushed against the shelving unit to keep the boxes from falling on her, Petitioner's arms were spread wide. A box of four bottles fell from the top shelf and struck Petitioner on the chest, shoulder and base of the neck. ROP at 17-18. The boxes weigh between 30 and 50 pounds. ROP at 15.

Petitioner felt immediate pain in her neck and shoulder. She reported the injury and went to Mercy Occupational Health as instructed by her employer. ROP at 19-20. She complained of shoulder and neck pain. Petitioner had pain on top of the shoulder, behind the shoulder, and her upper arm. Soon after the accident, pain would go into the top of her forearm and sometimes into the little and ring fingers. ROP at 20-21.

The Occupational Health doctor, Dr. Sawyer, referred the Petitioner to Dr. Tarandy. Dr. Tarandy diagnosed a rotator cuff tear and performed surgery in April of 2018 after physical therapy failed to provide any long-term relief. ROP at 22. Petitioner attended physical therapy again after the surgery, but the arm pain continued to

bother her. ROP at 22-23. Dr. Tarandy eventually ordered an MRI of the cervical spine which was not done. ROP at 23.

Dr. Tarandy sent Petitioner to Dr. Izquierdo of OrthoIllinois for a second opinion. ROP at 24. Dr. Izquierdo ordered an arthrogram of the shoulder and determined that the shoulder was not the cause of her ongoing problems. He sent Petitioner to Dr. Faubel, a physiatrist with OrthoIllinois, who performed injections in her neck that offered no relief. Dr. Faubel ordered an MRI and referred the Petitioner to Dr. Stanley, a spine surgeon with OrthoIllinois. Dr. Stanley recommended fusion surgery to the cervical spine. ROP at 27. She still has symptoms in her neck, upper arm and forearm. ROP at 27; she has symptoms daily. ROP at 28. If surgery is approved she will schedule it immediately. ROP at 29. She is still on light duty. ROP at 29. She was not having any neck symptoms before the accident, and she had no neck injuries after the October, 2017 work injury. ROP at 40.

Petitioner's Exhibit 2, Mercy Health Occupational Health and PT

Though there were substantial complaints of shoulder pain, the Petitioner complained of neck and radiating pain after the injury as well. On the date of the accident, her chief complaint was shoulder pain, but it was noted that it "radiates to neck." (Pet Ex 2 at 361,371):

Progress Notes by Jeffrey Bagdon, DO at 10/7/2017 4:05 PM

Author: Jeffrey Bagdon, DO | Service: — | Author Type: Physician
Filed: 10/7/2017 5:00 PM | Encounter Date: 10/7/2017 | Status: Signed
Editor: Jeffrey Bagdon, DO (Physician)

Rebecca S Gillespie is aright handed 55 y.o. female. She presents with left shoulder pain after injury today at work. Pt stated a 3/4 full cage of supplies started falling towards her while moving it. Pt reached up to hold it back and felt a tear in shoulder with immediate pain. Pt said that a 70 lb container then fell and hit her in the chest/left shoulder. Pain is 6/10 without movement but pain increases with movement. Pt has moderate pain and has pain with moving arm. Pt denies head trauma, being knocked to the floor, weakness or paresthesia. Pt denies previous surgery to left shoulder.

Chief Complaint
Patient presents with
- Shoulder Pain

HPI

Review of Systems
Musculoskeletal:
Left shoulder pain that radiates to neck
No swelling, weakness or bruising
Painful movement of shoulder

BP 128/78 | Pulse 80 | Temp 97 °F (36.1 °C) | Resp 20 | Ht 5' 5" (1.651 m) | Wt 194 lb (88 kg) | SpO2 99% | BMI 32.28 kg/m²

Dr. Bagdon ordered x-rays of the shoulder with an indication of "posterior neck and scapular pain" (Pet Ex 2 at 358). Dr. Sawyer's report of 10-9-17 noted bilateral stiffness of her neck, pain with movement of the neck, mild tenderness of the spinous process, and moderate tenderness of the left paraspinal muscles with tightness (Pet Ex 2 at 355). Petitioner wore a sling to the appointment for arm pain and reported her neck pain as 4 of 10 and shoulder pain as 6 of 10 (Pet Ex 2 at 348). During the appointment of October 16, 2017, Petitioner reported, per Dr. Sawyer, that she had left posterior neck pain, a feeling like her left hand was weighted down, and pain shooting into the left lateral upper arm, left lateral epicondyle and into the left dorsal forearm (Pet Ex 2 at 342).

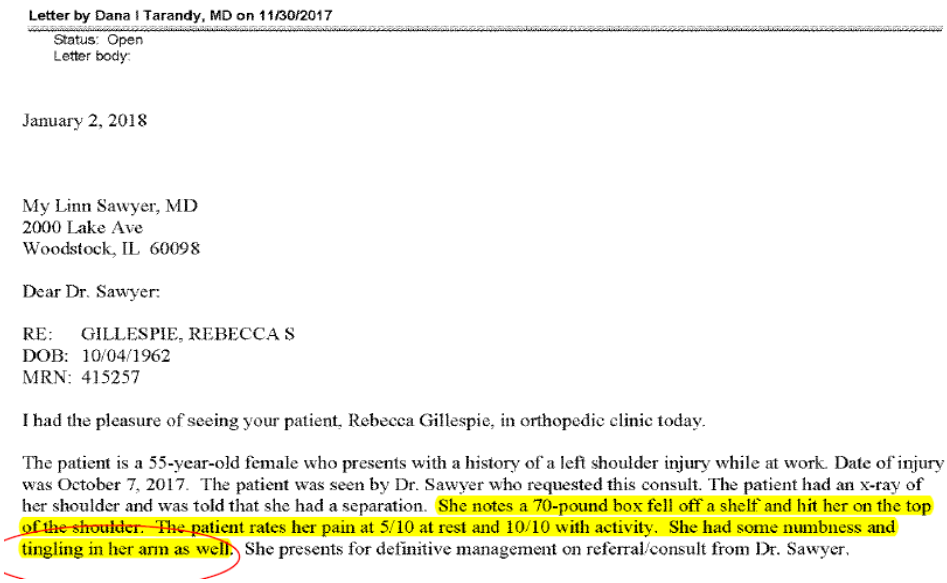
On October 23, 2017, Dr. Sawyer reported that the "left dorsal forearm is also painful is 2/10 which occurs all day at work" though she denied parathesis at the time (Pet Ex 2 at 333). Petitioner had tenderness of the left paraspinal muscles with tightness, tightness of the right paraspinal muscles, and tenderness and tightness of the

left trapezius (Pet Ex 2 at 327-328. 333). Her physical therapist noted trigger points in the upper trapezius and in her paraspinal muscles (Pet Ex 2 at 301).

Despite complaints of neck pain with shooting pain into the dorsal forearm, the Mercy physicians never followed up on these complaints, concentrating only on the shoulder complaints. Per Dr. Stanley (see infra), shoulder and neck injuries often occur in the same incident and often have overlapping symptoms.

Petitioner's Exhibit 3 Mercy Health physician records

After Dr. Sawyer referred Petitioner to Dr. Tarandy, his first report to her, on January 2, 2018, noted that Petitioner had numbness and tingling in her left arm (Pet Ex 3 at 344):[1]



Letter by Dana I Tarandy, MD on 11/30/2017

Status: Open
Letter body:

January 2, 2018

My Linn Sawyer, MD
2000 Lake Ave
Woodstock, IL 60098

Dear Dr. Sawyer:

RE: GILLESPIE, REBECCA S
DOB: 10/04/1962
MRN: 415257

I had the pleasure of seeing your patient, Rebecca Gillespie, in orthopedic clinic today.

The patient is a 55-year-old female who presents with a history of a left shoulder injury while at work. Date of injury was October 7, 2017. The patient was seen by Dr. Sawyer who requested this consult. The patient had an x-ray of her shoulder and was told that she had a separation. She notes a 70-pound box fell off a shelf and hit her on the top of the shoulder. The patient rates her pain at 5/10 at rest and 10/10 with activity. She had some numbness and tingling in her arm as well. She presents for definitive management on referral/consult from Dr. Sawyer.

After Dr. Tarandy's first report, there is no evidence that Petitioner was asked about her radiating pain, numbness, or tingling again.

His examination showed significant trapezius muscle spasm (Pet Ex 3 at 345). One of his diagnoses was trapezius strain (Pet Ex 3 at 344). Dr. Tarandy went on to perform a shoulder surgery in April of 2018 after conservative care failed (Pet Ex 3 at 245). However, Petitioner continued to report significant pain, though Dr. Tarandy never specifies its location (Pet Ex 3 at 204 (5/11/18 - 10 of 10 with activity), 190, (6/5/18 - 10 of 10 with activity), 139 (8/5/18 9 of 10 with activity)). Petitioner reported to the medical assistant that the pain radiates down to her elbow at times (Pet Ex 3 at 139):

[1] Petitioner's Exhibit 3 shows that a visit with Dr. Tarandy took place on 11/30/17 but there appears to be no note associated with that visit. The report dated January 2, the date of Petitioner's second visit, indicates that it was dictated on November 30.

Progress Notes

Progress Notes by Amanda Castaneda, MA at 8/2/2018 9:30 AM

Author: Amanda Castaneda, MA | Service: — | Author Type: Medical Assistant
Filed: 8/2/2018 10:08 AM | Encounter Date: 8/2/2018 | Status: Signed
Editor: Amanda Castaneda, MA (Medical Assistant)

Pt here for f/u left shoulder injury. **This is workmans comp with DOI October 2017.** Left shoulder arthroscopy 4/20/18. Rates pain 2/10 rest, 9/10 activity. Taking Norco only as needed for pain. Has most pain in shoulder with lifting arm. States pain radiates down elbow at times. Currently doing Physical Therapy at Mercy Woodstock twice weekly. States she would like to return to work. Will need a note today.

Dr. Tarandy recommended an MRI which was denied by Respondent (Pet Ex 3 at 97):

Progress Notes

Progress Notes by Amanda Castaneda, MA at 8/30/2018 3:45 PM

Author: Amanda Castaneda, MA | Service: — | Author Type: Medical Assistant
Filed: 8/30/2018 4:21 PM | Encounter Date: 8/30/2018 | Status: Signed
Editor: Amanda Castaneda, MA (Medical Assistant)

Pt here for f/u left shoulder pain. **This is workmans comp with DOI October 2017.** Had left shoulder arthroscopy with DOS 4/20/18. Rates pain 4/10 rest, 7/10 activity. Has most pain in shoulder with any over use of arm. Was supposed to have an MRI of neck and states workmans comp denied MRI. Was seen at Centegra Huntley ER on 8/27. States the lump in her neck has become more painful and was making it hard for her to breath. Had CT of neck. Pt needs a note for work today.

The Arbitrator finds it probable, given Dr. Stanley's testimony and the Arbitrator's review of the records, that the Mercy physicians simply thought that the shoulder surgery would address all of Petitioner's complaints and did not start to look elsewhere for a cause until it became obvious that the symptoms did not relent after the shoulder surgery. On October 25, 2018, due to her ongoing symptoms, Petitioner was referred to Dr. Izquierdo for a second opinion (Pet Ex 3 at 69).

Ortho Illinois Records

The records of Ortho Illinois were appended to Dr. Stanley's deposition as Exhibit 1. Dr. Izquierdo's first visit was on November 26, 2018 (Stanley Dep Ex 1 at 37). Similar to Dr. Tarandy's January report, Dr. Izquierdo took a history of numbness starting in the shoulder and radiating to her fingers, along with numbness, tingling and paresthesia (Stanley Dep Ex 1 at 37). Dr. Izquierdo ordered an arthrogram to determine the status of her shoulder repair (Stanley Dep Ex 1 at 39).

On Dr. Izquierdo's second visit, he reviewed the arthrogram and determined that the Petitioner's complaints were not related to a recurrent rotator cuff tear but were likely bursitis and cervicalgia with possible radiculopathy (Stanley Dep Ex 1 at 33-4). He ordered an MRI and EMG, noting that she had a positive Spurling test (Stanley Dep Ex 1 at 34):

2. Cervicalgia
IMAGING: EMG/NCS LUE (Ordered for 01/22/2019)
IMAGING: MRI Cervical Spine With Contrast, CPT 72142 (Ordered for 01/22/2019)
No Contrast. Please send a copy of CD with patient in DICOM format. Hi-Field Magnet

Notes: On exam today she has restricted range of motion in extension and left rotation with pain. And a positive Spurling. We will obtain an MRI of the patient's cervical spine to evaluate for a herniated disc. We will also order a EMG/NCS of their left upper extremity to evaluate for cervical radiculopathy. If she has a large herniated disc or positive EMG for radiculopathy we will refer her to one of my partners on the Spine Team.

On February 18, 2019, Dr. Izquierdo again recommended an MRI and an EMG, and he referred Ms. Gillespie to his partner, Dr. Faubel, for follow up on her cervical spine, noting continued positive Spurling and stiffness, numbness and tingling, weakness, and limited range of motion (Stanley Dep Ex 1 at 30-31).

Dr. Faubel saw Petitioner for her neck condition on March 4, 11, April 8, May 16 and 31 (Stanley Dep Ex 1 at 28, 23, 20, 16, 11). Dr. Faubel evaluated and treated the Petitioner for her neck pain and noted decreased sensation in the left 3rd 4th 5th digits and the medial left forearm (Stanley Dep Ex 1 at 24). He found no Waddell signs, finding no exaggerated pain behavior or pain complaints outside of an anatomic distribution (Stanley Dep Ex 1 at 24). He noted that the MRI showed foraminal disc herniation on the left at C5/6 and significant foraminal stenosis on the left at C7 (Stanley Dep Ex 1 at 25). Dr. Faubel observed that Petitioner's numbness and tingling was consistent with a C7 radiculopathy (Stanley Dep Ex 1 at 25). He prescribed physical therapy and cervical epidural steroid injections (Stanley Dep Ex 1 at 25). When the injections provided no relief, he sent her on to Dr. Stanley for a surgical evaluation (Stanley Dep Ex 1 at 11-12).

Dr. Stanley found numbness on examination at C6 on the left and a positive left Spurling maneuver (Stanley Dep Ex 1 at 9). He wanted a CT with contrast (Stanley Dep Ex 1 at 9). He followed on July 25, 2019 (Stanley Dep Ex 1 at 5). Examination showed dysesthesia left C6 C7 and intrinsic weakness (Stanley Dep Ex 1 at 5). The CT scan was positive for rotational listhesis at C7-T1, foraminal stenosis at C5/6, C6/7 and C7-T1 (Stanley Dep Ex 1 at 5). He recommended a three-level fusion (Stanley Dep Ex 1 at 6) which was denied (Stanley Dep Ex 1 at 4). By October, her radiculopathy was worsening, with numbness, tingling and weakness in the bilateral upper extremities (Stanley Dep Ex 1 at 2).

Deposition of Dr. Tom Stanley (Petitioner's Exhibit 1)

Dr. Stanley is a fellowship trained spine surgeon (Pet. Ex. 1 at 4). He testified in his deposition that when Ms. Gillespie came to see Dr. Izquierdo, she had left sided radicular symptoms (Pet. Ex. 1 at 7). It is well known that shoulder and cervical injuries can overlap, symptoms can be confused one injury with another, and that cervical and shoulder injuries often occur in conjunction with one another (Pet. Ex. 1 at 8). Her history of a box of laundry detergent falling and hitting her was a plausible mechanism by which she could extend her neck and develop cervical radiculopathy (Pet. Ex. 1 at 8). She continued to have consistent symptoms of left sided radiculopathy (Pet. Ex. 1 at 9). One of the medicines Izqierdo prescribed for serve pain was Lyrica (Pet. Ex. 1 at 9).

Dr. Stanley explained that upon seeing Ms. Gillespie, he reviewed the MRI ordered by Dr. Izquierdo (Pet. Ex. 1 at 10-11). Though he is not a spine surgeon, Dr. Izquierdo suspected a cervical injury, given the report of

radicular symptoms on the first visit and the absence of any shoulder pathology on the arthrogram (Pet. Ex. 1 at 10-11). Dr. Stanley's review of the MRI showed nerve impingement:

> Q. What did those films reveal to you as the spine surgeon?
> A. The MRI showed evidence of left-sided stenosis at three different levels in her cervical spine, at C5-6, C6-7, and C7-T1.
> Q. And was there any impingement at any of those levels?
> A. That's correct. So when I say "stenosis," I mean the space was tight enough to actually impinge on the nerve and cause radicular symptoms.
> Q. And was that impingement on the left side or the right side?
> A. On the left side.
> B.

(Pet. Ex. 1 at 11). Her subjective symptoms were consistent with the objective findings on the MRI (Pet. Ex. 1 at 13-14). The CT scan confirmed the levels at which she required surgery (Pet. Ex. 1 at 15). The work injury did not cause the degenerative findings on the studies but caused those pre-existing conditions to become aggravated (Pet. Ex. 1 at 17). Those same conditions also made her more susceptible to injury (Pet. Ex. 1 at 17). "It's the pre-existing degeneration that predisposed her to developing radiculopathy after an injury" (Pet. Ex. 1 at 17).

> Q. And did that, in your opinion, within a reasonable degree of medical certainty, did that getting hit in the shoulder and chest with the box cause, aggravate, or accelerate the conditions that you treated her for in June and July 2019, and for which you recommended surgery?
> A. Yes. The documentation and her history indicate that she developed neck symptoms immediately after that work event, and her ongoing diagnosis of cervical radiculopathy was caused by the work injury.

(Pet. Ex. 1 at 17). It is common for a traumatic event to cause someone with cervical degeneration to become permanently symptomatic (Pet. Ex. 1 at 30). That is also the basis of his disagreement with Dr. Levine (Pet. Ex. 1 at 21). Because the Petitioner had no previous symptoms, had an accident sufficient to explain the symptoms, and thereafter had neck complaints which continued, the need for surgery is related to the accident.

The Arbitrator finds that Dr. Levin was not a credible witness. Dr. Levin was willing to opine that the Petitioner's injury was solely an AC joint injury with a clavicle excision (Resp. Exh 1 at 23). However, he did not even have a copy of the operative report (Resp. Exh 1 at 23). The operative report shows a subacromial decompression, a clavicle excision, and a repair of both a subscapularis rotator cuff tear and a posterior labral tear:

Patient Name: GILLESPIE, REBECCA S
Dictating Physician: Dana I Tarandy, MD
Date of Birth: 10/04/1962
Encounter: 82000059968
Date of Service: 04/20/2018
Admission Date: 04/20/2018 04:15

OPERATIVE REPORT

PREOPERATIVE DIAGNOSES:
1. Left shoulder labral tear.
2. Impingement.
3. Acromioclavicular arthritis with subclavicular impingement.

POSTOPERATIVE DIAGNOSES:
1. Left shoulder posterior labral tear.
2. Partial thickness subscapularis tear.
3. Acromioclavicular arthritis with subclavicular impingement.
4. Impingement/bursitis.

PROCEDURES:
1. Left shoulder arthroscopy, subacromial decompression.
2. Distal clavicle excision.
3. Debridement of partial thickness subscapularis rotator cuff tear and debridement of posterior labral tear.

SURGEON:
Attending: Dana I Tarandy, MD

(Stanley Dep Exh 1 at 90). It might also be noted that Dr. Levin did not review any MRI films of the neck (Resp. Exh. 1 at 51) nor apparently the complete record of OrthoIllinois which is 119 pages (Stanley Dep Ex 1), Mercy Health Occupational Health and PT which is 375 pages (Pet. Exh 2), or Mercy Health physician records, 359 pages (Pet Exh. 3). Had he done so, Dr. Levin would have been aware of the litany of neck-related notations in the physician records outlined above. Dr. Levin's complete file appears to be 139 pages (Resp. Exh 1 at 34-5,38), 54 of which are his office records and reports and the rest a mis-ordered aggregation of work status reports and random visits to physicians. Dr. Levin's report spends four paragraphs about an emergency room visit apparently having nothing to do with this case (Levin Resp Exh. 2 at 6). If he had all of the records, he would have known that the "anterior" throat or neck pain referenced in those records was diagnosed as Sialadenitis, an inflammation and enlargement of one or more of the salivary glands:

A CT scan obtained of her clavicle and soft tissue neck reveals that she has sialoadenitis. There is no evidence of any sternoclavicular mass.

Assessment and Plan
Rebecca is a 55-year-old female who presents with:
1. Left shoulder pain, status post shoulder arthroscopy. Recommendation is to return to physical therapy.
2. Sternoclavicular pain and swelling with difficulty swallowing. Recommendation is referral to ear, nose and throat (ENT) urgently. She understood and agreed. She was given a note that she may return to work with no

Generated on 5/18/20 1:50 PM Page 97

(Pet. Exh. 3 at 97). Dr. Levin relies on the anterior neck pain and soft tissue mass in the neck to opine that Petitioner's current condition is unrelated (Resp. Exh. 1 at 74). Petitioner will stipulate that the sialoadenitis is unrelated. It also has nothing to do with the cervical spondylosis made symptomatic in this accident.

Though Dr. Levin does have difficulty answering questions (Resp. Exh. 1 at 30-72), he does admit that the complaints of pain into the dorsal forearm made by the Petitioner were an area enervated by C6 (Resp. Exh. 1 at 70-71).

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

Dr. Stanley testified that because of her condition, she requires surgery:

> Q. And, Doctor, the last -- you saw her after the CT scan; correct?
> A. Yes.
> Q. And you recommended a surgery?
> A. Yes.
> Q. And what surgery did you recommend after you looked at the CT scan and did your follow-up examination?
> A. An anterior cervical diskectomy and fusion at C5-6, C6-7, and C7-T1.
> Q. And, Doctor, within a reasonable degree of medical certainty, is that related to her work accident of October 2017?
> A. Yes.
> Q. And, Doctor, does she still need that surgery today, in your opinion?
> A. Yes.

(Pet. Ex. 1 at 18). No contrary opinions are offered by Respondent. The Arbitrator, therefore, finds that the Petitioner is entitled to the care and treatment of her cervical spine as outlined by Dr. Stanley in his deposition, as well as any related therapy and follow up care.

Medical benefits

Respondent shall authorize and pay for the cervical fusion, as prescribed by Dr. Stanley, and the attendant care, in accordance with the provisions of §8 and §8.2 of the Act and the fee schedule.

In no instance shall this award be a bar to subsequent hearing and determination of any 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.

APRIL 10, 2021

Signature of Arbitrator

ICArbDec19(b)

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC027136
Case Name	Christopher McGinness v. State of Illinois/IDNR
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0055
Number of Pages of Decision	9
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 2/3/2023

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Christopher McGinness,
Petitioner,

vs. NO: 20 WC 27136

State of Illinois/IDNR,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issue of nature and extent and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 31, 2022, is hereby affirmed and adopted.

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

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

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

February 3, 2023
o1/25/23
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC027136
Case Name	CHRISTOPHER MCGINNESS v. STATE OF ILLINOIS/IDNR
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 8/31/2022

THE INTEREST RATE FOR THE WEEK OF AUGUST 30, 2022 3.23%

/s/ Jeanne AuBuchon, Arbitrator
Signature

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

August 31, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

CHRISTOPHER MCGINNESS
Employee/Petitioner

v.

STATE OF ILLINOIS / IDNR
Employer/Respondent

Case # **20** WC **027136**

Consolidated cases: _____

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **JEANNE L. AuBUCHON**, Arbitrator of the Commission, in the city of **HERRIN, ILLINOIS**, on **APRIL 18, 2022**. By stipulation, the parties agree:

On the date of accident, **08/24/2020**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $**107,910.00**, and the average weekly wage was $**2,075.19**.

At the time of injury, Petitioner was **60** years of age, ***married*** with **2** dependent children.

Necessary medical services and temporary compensation benefits have been **or will be** provided by Respondent.

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

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of $**871.73** / week for a further period of **125** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused the 25% loss of Petitioner's body as a whole as a result of serious and permanent injuries sustained to Petitioner's lumbar spine.

Respondent shall pay Petitioner compensation that has accrued from **02/10/2022** through **04/18/2022**, and shall pay the remainder of the award, if any, in weekly payments.

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

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

AUGUST 31, 2022

Jeanne L. AuBuchon
Signature of Arbitrator

PROCEDURAL HISTORY

This matter proceeded to trial on April 18, 2022, on all disputed issues. The sole issue in dispute is the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 60 years old and employed by the Respondent as a site superintendent for the Department of Natural Resources. (AX1, T. 10) On August 24, 2020, the Petitioner was carrying a pipe on a docking system when he stepped through a gap between boards on the dock and injured his right leg, right hip, right forearm and low back. (T. 10-11) He said his forearm and hip injuries resolved. (T. 11) The Petitioner acknowledged that he had prior low back treatment in 2013 that included surgery at his L4-5 levels. (T. 12-13) He said he returned to work without restrictions and had no new injuries until the time of the accident at issue here. (T. 13-14)

On August 26, 2020, the Petitioner went to his primary care providers at Baptist Health Medical Group Family Medicine and reported right elbow, left hip and low back pain. (PX3) X-rays of the right elbow and pelvis were normal, and an X-ray of the left hip showed a possible small avulsion fracture, but a repeat X-ray on the hip did not show any acute osseous abnormality. (PX4) On September 11, 2020, after complaining of significant pain in his left hip and low back that was not improving, the Petitioner was prescribed oral steroids, sent for an MRI of his lumbar spine and a pelvic CT and referred to orthopedic surgeon Dr. Matthew Gornet, who performed the Petitioner's prior back surgery. (PX3) The CT and MRI scans were performed on September 15, 2020, with the CT scan showing a lesion on the left public ramus but no fracture or dislocation,

and the MRI showing disc bulges at L4-5 and L5-S1 and severe bilateral neural foraminal stenosis. (PX4)

The Petitioner saw Dr. Gornet on October 22, 2020, and complained of symptoms in his low back that radiated down the left buttock, hip, groin and leg that were constant, severe and made worse by bending. (PX5) Dr. Gornet compared the September 15, 2020, MRI with a prior MRI from 2013 and found that the later MRI showed a left-sided herniation and annular tear at L4-5 that had increased in size and was nearly obliterating the foramen, as well as a progression of disc pathology at L5-S1. (Id.) The Petitioner underwent epidural steroid injections from pain management specialist Dr. Helen Blake at L4-5 on November 3, 2020, and November 17, 2020, that provided only temporary relief. (PX7, PX5) Dr. Gornet ordered a new MRI that showed a central disc protrusion and annular tear at L5-S1 and a bilobar herniation with a large central component at L4-5. (PX5, PX9) Dr. Gornet recommended a fusion at L5-S1 and a disc replacement at L4-5, which he performed on February 24, 2021. (PX5) At follow-up appointments with Dr. Gornet, the Petitioner was doing well but still had some structural back pain. (Id.) He was returned to work full duty on June 7, 2021.

The Petitioner testified that before the surgery, he was in excruciating pain, would wake up in the middle of the night screaming with his left leg locked up, had trouble sitting for any periods of time and pain when he walked very much. (T. 14-15) At the time of Arbitration, the Petitioner was still experiencing burning and uncomfortableness in his low back, with sitting or riding in a car for long periods bothering him and increased symptoms when turning his body to the left and walking. (T. 18) He said he takes Aleve often and a prescription pain killer when the pain gets "really bad." (T. 18-19) He stated that his hunting hobby has been affected because he can't climb up into a deer stand or use a compound bow. (T. 19) He said he has less strength

when lifting and can't bend down to pick up things like he used to and can't bend down to put on his left sock. (T. 20, 28) On cross-examination, he said he hunted with a shotgun in 2021 and admitted that he had not tried to use a compound bow since the accident. (T. 23) He acknowledged that Dr. Gornet told him he would continue to improve with time and agreed with Dr. Gornet's assessment that he made a dramatic improvement. (T. 24)

CONCLUSION

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

(i) **Level of Impairment.** Neither party submitted an AMA rating. Therefore, the Arbitrator uses the remaining factors to evaluate the Petitioner's permanent partial disability.

(ii) **Occupation.** The Petitioner continues to work as a site superintendent with the same physical demands as before the accident that still cause him difficulty. The Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 60 years old at the time of the injury. He has several work years left during which time he will need to deal with the residual effects of the burn. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity.** There was no evidence of limitation of the Petitioner's earning capacity. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** Despite a successful surgery, the Petitioner has not been returned to his pre-accident condition and continues to suffer from the effects of his injury – burning and uncomfortableness in his low back, increased symptoms with sitting or riding in a car for long periods bothering him and increased symptoms when turning his body to the left and walking. He he takes Aleve often and a prescription pain killer when the pain gets "really bad." His hunting hobby has been affected, and he has less strength when lifting and can't bend down to pick up things like he did before the accident. The Arbitrator puts significant weight on this factor.

Based on the foregoing evidence and factors, the Arbitrator finds that the Petitioner sustained serious and permanent injuries that resulted in the 25% loss of his body as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	09WC041291
Case Name	Jeff Petermeyer v. Alberternst Construction Inc
Consolidated Cases	
Proceeding Type	Remand from Appellate Court
Decision Type	Commission Decision
Commission Decision Number	23IWCC0056
Number of Pages of Decision	5
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Keith Short
Respondent Attorney	Timothy Steil

DATE FILED: 2/3/2023

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JEEFF PETERMEYER,
Petitioner,

vs.

NOS: 09 WC 41291
18 IWCC 309

ALBERTERNST CONSTRUCTION, INC.,
Respondent.

DECISION AND OPINION ON REMAND FROM THE APPELLATE COURT

This matter comes before the Commission on remand from the Appellate Court 5th District, Workers' Compensation Division, pursuant to an Order under Supreme Court Rule 23. At arbitration, the Arbitrator denied Petitioner's request to be designated as permanently and totally disabled under the odd-lot theory of permanent disability, awarded temporary total disability/maintenance benefits, denied a wage differential in *lieu* of a loss of 50% of the person-as-a-whole permanent partial disability award, and awarded Petitioner penalties and attorney fees for non-payment of maintenance benefits. The Arbitrator denied permanent and total disability designation because he concluded that Petitioner did not conduct a sufficiently diligent job search. He denied a wage differential because he concluded that there was not sufficient evidence in the record upon which to determine a wage differential.

On review, the Commission affirmed the denial of a permanent and total disability designation, affirmed the loss of 50% of the person-as-a-whole permanent partial disability award, and vacated the Arbitrator's maintenance award and awards for penalties and attorney fees. Petitioner appealed the Commission decision and the Circuit Court of Madison County reversed the Commission's decision regarding the vacation of the maintenance award and imposition of penalties and attorney fees. On remand, the Commission complied with the order of the Circuit Court and reinstated the maintenance and penalties/fees awards. The Circuit Court confirmed that Decision of the Commission on appeal.

In the instant Order, the Appellate Court issued a mandate to the Commission in which it held:

> "We reverse the portions of the circuit court's order that reversed the Commission's denial of maintenance, penalties and fees; and that confirmed the Commission's denial of a wage differential award in favor of a person as a whole award; we reverse the Commission's decision as to that issue and remand the case to the Commission for an entry of a wage differential award; we affirm the order in all other respects. We also vacate the Commission's decision on remand that reinstated the arbitrator's award of maintenance, penalties and fees, and vacate the circuit court's order confirming the Commission's decision on remand."

In addressing the wage differential issue, the Appellate Court noted that the parties stipulated that Petitioner's pre-accident annual income was $58,234.28 or $28.00 an hour. Petitioner's vocational rehabilitation counselor testified that jobs in the light/sedentary physical demand levels, which was the physical demand level at which he was released to work, typically paid $8.25 to $10.00 an hour, though he believed Petitioner was unemployable due to his "pain problem." Respondent's vocational rehabilitation counselor conducted a labor market survey and testified that she believed Petitioner "could return to work as a manager or supervisor earning between $8.00 and $16.00 an hour, but as [she] acknowledged on cross-examination, most jobs were in the $9.00 to $10.00 range. [She] also acknowledged that she was unaware of claimant's sedentary work restrictions that had been put in place for him" by his doctor.

The Appellate Court held that the holding of the Arbitrator/Commission adopting the opinions of Respondent's vocational expert over Petitioner's vocational expert concerning the Petitioner's employability was not against the manifest weight of the evidence, that Petitioner sustained a loss of occupation as a result of his work-related injuries, that Petitioner sustained a loss of earning potential as a result of his work-related injuries, and finally that he was entitled to a wage differential award based on the prior findings. The Appellate Court provided no additional guidance on the appropriate level of a wage differential award.

In its brief, Respondent notes that the parties disagreed on the amount the wage differential should be and when the wage differential award should become effective. It cites the Commission decision in *Stabolito v City of Chicago*, 21 IWCC 19 for the proposition that the wage differential should be based on jobs for which a claimant is qualified with the highest salary and should be effective from the date that the claimant reached maximum medical improvement. In *Stabolito*, the Arbitrator indicated that Petitioner turned down a job paying $8.25 an hour based on the advice of Respondent's vocational rehabilitation counselor who believed that Petitioner could earn at least $10.00 dollars an hour. He also noted that the current minimum wage in Chicago at the time was $12.00 an hour and Petitioner testified he believed he could earn between $10.00 and $13.00 an hour.

Based on that evidence, the Arbitrator in *Stabolito* awarded the claimant a wage differential based on his ability to earn $13 an hour post-accident. However, the Arbitrator did not specify that he was using the job category with the highest salary for which he was qualified.
The Arbitrator also cited the case of *Crittenden v I.W.C.C.*, 2017 Ill. App (1st Dist., WC Div.) 160002 WC. There, the Appellate Court vacated the Commission determination of wage differential because it was based on the claimant's post-injury earning potential for the job as school bus driver when the claimant did not have a drivers' license. The Court held that "in order to calculate a wage differential award, the Commission must identify, based on the evidence in the record, an occupation that the claimant is able and qualified to perform and apply the *average wage* for that occupation and apply that average wage for that occupation to the wage differential calculation" (emphasis added).

Respondent interprets that the authority cited above requires the Commission to use the highest wage attributable to the occupations for which Petitioner is qualified to calculate the wage differential. Based on that interpretation Respondent argues the Commission should use Petitioner's post-injury earning potential of $16.00 an hour because that was the highest salary Respondent's expert opined Petitioner could earn.

The Commission concludes that Respondent's interpretation appears to be contrary to the *Crittenden* decision which specifies that the Commission must use the average wage for the occupations which a claimant is able and qualified to perform. It appears that the only information in the record upon which the Commission may calculate the wage differential is based on the information in the Appellate Court Order. The entire range of salary about which the experts testified, was between $8.25 to $16.00 an hour. The Commission declines to rely exclusively on Respondent's expert because she agreed that she was unaware of Petitioner's current restriction of sedentary work only. The Commission concludes the best post-injury potential earnings to use in the wage differential award based on the expert testimony is $10.00 an hour. Both experts opined that $10 was within a possible salary range. In addition, Respondent's expert acknowledged that in the sedentary physical demand level, most jobs Petitioner was qualified for fell into the $9.00 to $10.00 an hour range.

However, we agree with Respondent that the wage differential should commence upon Petitioner's reaching maximum medical improvement. In the instant case that would also seem appropriate because the Appellate Court reversed the prior Circuit Court order reversing the denial of maintenance. Commencement of the wage differential award upon termination of temporary total disability/maintenance benefits appears to be appropriate here.

IT IS THEREFORE ORDERED BY THE COMMISSION THAT THE COMMISSION that Respondent shall pay reasonable and necessary medical expenses of $201,839.34, as provided in §8(a) of the Act and Respondent shall be given credit of $401,639.89 in paid medical benefits, as provided in §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner a wage differential of $480.00 per week commencing on February 9, 2011 as the injuries sustained partially incapacitated him from pursuing his usual and customary line of employment and resulted in a loss of future earning potential, pursuant to §8(d)1 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that because the date of injury occurred prior to September 1, 2011, the wage differential award extends for the lifetime of Petitioner.

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

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 injuries.

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

February 3, 2023

DLS/dw
o-12/14/22
46

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC020105
Case Name	Salvador Leon v. Orange Crush, LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0057
Number of Pages of Decision	13
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Jay Johnson
Respondent Attorney	Nicholas Bigoness

DATE FILED: 2/6/2023

/s/ Kathryn Doerries, Commissioner

Signature

23IWCC0057

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SALVADOR LEON,

Petitioner,

vs. NO: 19 WC 20105

ORANGE CRUSH, LLC.,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission, herein, corrects a scrivener's error in the Arbitrator's decision, page 6, paragraph 4, sentence 10, to strike "grave", to replace with "gravel".

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,120.00 per week for a period of 33-2/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $813.87 per week for a period of 125 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the 25% loss of Petitioner's person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $7,800.00 to Guardian Anesthesia, $66,300.99 to Rush Copley, and $17,546.25 to Rush-Copley-Castle Orthopedics, as provided in Sections 8(a) and 8.2 of the Act.

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

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

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

February 6, 2023

o-1/31/23
KAD/jsf

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

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

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC020105
Case Name	LEON, SALVADOR v. ORANGE CRUSH, LLC
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Jay Johnson
Respondent Attorney	Nicholas Bigoness

DATE FILED: 4/7/2022

/s/Stephen Friedman, Arbitrator

Signature

INTEREST RATE WEEK OF APRIL 5, 2022 1.11%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Salvador Leon
Employee/Petitioner

v.

Orange Crush, LLC
Employer/Respondent

Case # **19** WC **020105**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen J. Friedman**, Arbitrator of the Commission, in the city of **Wheaton**, on **March 10, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **August 15, 2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**87,360.00**; the average weekly wage was $**1,680.00**.

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

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

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

Respondent shall be given a credit of $**9,440.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**9,440.00**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $1,120.00/week for 33 2/7 weeks, commencing 1/19/2019 through 3/18/2019, and from 1/27/2020 through 7/18/2020, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $**9,440.00** for TTD paid,

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $7,800.00 to Guardian Anesthesia, $66,300.99 to Rush Copley, and $17,546.25 to Rush Copley-Castle Orthopedics, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $813.87/week for 125 weeks, because the injuries sustained caused the 25% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

/s/ Stephen J. Friedman

Signature of Arbitrator

April 7, 2022

Statement of Facts

Petitioner Salvador Leon testified in Spanish through an interpreter. Petitioner Salvador Leon testified he worked for Respondent Orange Crush since 2009. Respondent in an asphalt and concrete construction company. Petitioner's job was to break up asphalt and concrete using a jackhammer. He worked 8 hours or more per day and used the jackhammer almost daily, 3 to 4 times per week. The jackhammer weights about 90 pounds. It is operated with air. The operator uses both hands to operate it. Petitioner demonstrated holding the jackhammer with both hands at waist level. Petitioner testified that the vibration of the jackhammer shook his arms up and down at a rapid rate.

Petitioner testified that he was using the jackhammer 10 hours per day during August 2018. He felt pain in both shoulders, especially the right. On August 15, 2018, the cement was hard. The jackhammer would just bounce back. He broke 3 bits. His hands became swollen, and he had 10/10 pain in both shoulders. He told his supervisors about the problems he was having with the jackhammer. He testified the supervisor told him his hands were swollen and to take Aleve. Petitioner testified he did not go to a doctor at that time because he thought the pain would go away, but it did not. Petitioner testified he continued to work using the jackhammer. He had pain in both shoulders and his hands were swollen. He was able to work eight-plus hours every day. Petitioner testified that he first sought medical attention from his family doctor, Dr. Trevino, on October 10, 2018.

Petitioner saw Dr. Trevino on October 10, 2018 (PX 2). The history states 3 months right shoulder pain. Patient works with a hammer compressor getting impact on shoulders. He also reported 2 week right foot contusion and 6 months right hip pain. Objective findings were right shoulder pain to mobility, right foot pain to palpation and right hip pain to mobility involving lumbar muscles. X-ray pf the right foot was negative for acute findings. The assessment was right shoulder strain, right hip strain, right foot contusion. Dr. Trevino ordered an MRI of the right shoulder (PX 2). Petitioner testified he did have anything wrong with his right foot. He testified he told Dr. Trevino about both shoulders, right worse that the left. He testified that Dr. Trevino said, "first the right one and then later the left one." The impression of the October 13, 2018 MRI of the right shoulder was a full thickness right supraspinatus tendon tear, severe tendinosis of the infraspinatus, tendinosis of the long head of the biceps and subscapularis, and joint effusion (PX 2). On October 17, 2018, Dr. Trevino noted that Petitioner's right shoulder pain was not improving and that he also complained of left shoulder pain. He recommended physical therapy and a left shoulder MRI. The October 20, 2018 left shoulder MRI impression was tendinosis with an articular surface high-grade partial thickness tear and small full thickness tear of the supraspinatus tendon (PX 2). On October 23, 2018, Dr. Trevino noted pain in both shoulders more on the right. Petitioner went to see ortho, needs surgery. His assessment was bilateral shoulder sprain (PX 2).

Petitioner testified that Dr. Trevino referred him to Dr. Saleem at Castle Orthopedics after the MRI's. Petitioner first saw Dr. Saleem on October 26, 2018. He testified that he told Dr. Saleem that he had bilateral shoulder pain and that he discussed his job duties with the doctor. Dr. Saleem's Patient Health History states that Petitioner complained of bilateral shoulder pain from constant vibrations and strains using a 90-pound jackhammer (PX 4). Petitioner reported symptoms for 2 months. Dr. Saleem examined both shoulders and reviewed MRI's. His assessment was a complete tear of the right rotator cuff and a partial tear of the left rotator cuff. He stated these injuries are caused by his repetitive use of the jackhammer at work. He recommended right shoulder surgery (PX 4).

Petitioner was seen by Dr. Charles Bush-Joseph for a Section 12 examination on November 18, 2018 (RX B).

Petitioner gave him a history of injuring his bilateral shoulders and hands after using a jackhammer for three consecutive days. Dr. Bush-Joseph's physical examination noted some low level symptom exaggeration, given the excellent muscular development of his upper extremities. He found diffuse tenderness and some subjective weakness in an otherwise negative examination. He noted the MRI of the right shoulder shows a full thickness tear which is acute in nature. The left shoulder MRI shows findings consistent with rotator cuff tendinosis, but no acute injury or trauma. His impression is repetitive overuse of the hands, resolved; rotator cuff tendinosis left shoulder, resolved; rotator cuff tear, right shoulder. He found the right shoulder condition related to the work-related injury and that the right rotator cuff repair is medically appropriate. He did not see any evidence of injury to the left shoulder. He notes Petitioner does have somewhat exaggerated findings on clinical examination (RX B).

Dr. Saleem performed right shoulder surgery on January 9, 2019. The surgery consisted of a rotator cuff repair, a subacromial decompression with distal clavicle excision and an open biceps tenodesis. Dr. Saleem's postoperative diagnosis was right rotator cuff tear, subacromial impingement, AC joint arthritis and biceps tendinopathy (PX 4). Petitioner testified that he participated in therapy over the next several months. He also followed up with Dr. Saleem or Dr. Saleem's physician assistant periodically throughout this period of time. Petitioner noted improvement.

Petitioner was reevaluated by Dr. Bush-Joseph on February 26, 2019 (RX C). Physical examination noted his postoperative right shoulder. Left shoulder reveals significant subjective ratcheting. Passively, motion is 170 degrees elevation, 95 degrees abduction and 65 degrees external rotation. There are no visible signs of atrophy on the left shoulder. Dr. Bush-Joseph diagnosed status postoperative rotator cuff tear, long head biceps tear, right shoulder; chronic degenerative impingement, left shoulder. He recommended an additional 4-6months of rehabilitation (RX C).

Dr. Saleem released Petitioner to return to work on a light duty basis effective March 19, 2019 (PX 3, PX 4). Petitioner testified respondent accommodated the light duty restrictions. Petitioner testified that he returned to light duty work for Respondent on March 19, 2019. Petitioner testified that his left shoulder continued to hurt with 10/10 pain. He could not lift it. Petitioner saw Dr. Saleem on March 21, 2019. He notes Petitioner was still having quite a bit of pain in his left shoulder. He stated that the MRI is consistent with a rotator cuff tear in his left shoulder. He stated that if the pain persists, he would recommend left shoulder rotator cuff repair (PX 4). Petitioner continued in physical therapy. On March 26, 2019, Petitioner noted he returned to work doing sweeping and mopping. He noted increased pain (PX 4). On May 9, 2019, Dr. Saleem reports Petitioner is doing well. He has problems with overhead activities and putting his hand behind his back. Dr. Saleem recommended an additional 6 weeks of therapy. He continued Petitioner's work restrictions (PX 3). On May 30, 2019, the therapist notes Petitioner did complain of increased pain in the left shoulder. On June 4, 2019, he complained of pain in both shoulders, left greater than right. On June 20, 2019, Dr. Saleem's PA continued 4 more weeks of therapy and continued the light duty work restrictions (PX 3).

On July 5, 2019, the therapist noted that Petitioner continues to complain of more discomfort in the left grater that right shoulder with overhead exercises. The July 8, 2019 notes reflect reduced strength in the left shoulder (PX 5). On July 18, 2019, Petitioner advised Dr. Saleem that he was having continued mild pain in the right shoulder. He feels that he may need to have something done for the left shoulder because he is very restricted in his activities due to left shoulder symptoms. Dr. Saleem reviewed the left shoulder MRI and interpreted it as showing essentially a full thickness of the supraspinatus with moderate retraction. He recommended left shoulder arthroscopic rotator cuff repair. He stated Petitioner should not proceed to work hardening or be

found at MMI until his left shoulder treatment was completed (PX 5). Petitioner continued with physical therapy. The July 25, 2019 notes state that they avoided exercises that irritate the left shoulder (PX 5).

Dr. Bush-Joseph testified by evidence deposition taken November 21, 2019 (RX D). He testified to his examination in November 2018. Petitioner provided a history of developing increasing shoulder and upper extremity pain in mid-August 2018. He was working on a jackhammer for three consecutive days and developed bilateral hand and upper extremity pain and swelling. He noted medical treatment in October. He noted Petitioner was a big, fit construction guy. Dr. Bush-Joseph testified to his physical examination and review of the diagnostic tests. He reviewed the images himself. He was impressed with the injury to the right shoulder, but not so much on the left. The right rotator cuff tear was related to jackhammering. The treatment was reasonable and necessary. He opined that the left shoulder MRI showed signs of chronic wear and tear. There were no signs of an acute injury. He was not sure what the radiologist report was on the left side. He does not recall what Dr. Saleem read. He diagnosed tendinosis, resolved. He agreed with the surgical repair of the right shoulder. He did not think any treatment was warranted for the left shoulder (RX D).

Dr. Bush-Joseph testified that when he performed the February 26, 2019 evaluation, Petitioner had undergone right shoulder surgery and was in a sling. He testified that his report misstated ‘restrictions on the left” which should say “right.” He did not make any specific comment on the left arm. He testified he would stand by his earlier opinion that no treatment was indicated. He testified that if Petitioner were found to have a full thickness tear in the left shoulder, he believed it happened subsequent to his November 2018 examination. It would be speculation to say that the jackhammering caused it. He testified that Petitioner had impingement in the left shoulder. It is possible that jackhammering could aggravate impingement (RX D).

Dr. Saleem performed left shoulder surgery on January 27, 2020. The surgery consisted of left rotator cuff repair, a subacromial decompression with distal clavicle excision, and a biceps tenodesis. Dr. Saleem’s postoperative diagnosis was left rotator cuff tear, impingement, AC arthritis and biceps tendinopathy. The operative report notes finding of tears of the superior subscapularis and the anterior supraspinatus (PX 7). Postoperatively, Petitioner continued with physical therapy and follow up visits with Dr. Saleem (PX 6). On March 6, 2020, Dr. Saleem took Petitioner out of the sling. He continued physical therapy. He released Petitioner to light work with lifting of 1 pound, no repetitive or forceful grasping, no overhead work. No reaching or forceful pushing/pulling (PX 6). On April 16, 2020, He increased the restrictions to 3 pounds lifting (PX 6). Dr. Saleem last saw Petitioner on May 28, 2020. Petitioner reported he is doing very well. He is not having significant pain or discomfort. Physical examination noted left shoulder range of motion of 160 degrees forward elevation, 100 degrees abduction, rotation 45 degrees, and right shoulder range of motion of 170 elevation, 120 degrees abduction, 45 degrees external rotation. Dr. Saleem recommended he continue physical therapy on his own and continue his home exercise program. He released Petitioner from his care and allowed him to return to work in a month with a restriction of no use of jackhammers. He was to follow up if symptoms returned (PX 6).

Dr. Saleem testified by evidence deposition taken June 17, 2021 (PX 1). He testified he first saw Petitioner on October 26, 2018 for pain in both shoulders. Petitioner described the pain from constant vibration and strain using a 90-pound jackhammer. He testified the MRI studies showed a full thickness rotator cuff tear in the right shoulder and a partial thickness rotator cuff tear and a small component of a full thickness tear in the left shoulder. Physical examination showed slight decrease in range of motion weakness. He had pain with impingement signs and provocative maneuvers indicative of rotator cuff symptoms. He had those finding bilaterally. Dr. Saleem diagnosed complete rotator cuff tear on the right and partial rotator cuff tear on the left.

He opined that Petitioner's bilateral shoulder pathology was related to his repetitive use of a jackhammer at work (PX 1)

Dr. Saleem testified that he performed right shoulder surgery on January 11, 2019. His surgical findings were consistent with the MRI. He testified that postoperatively Petitioner continued to complain of left shoulder pain. He recommended left shoulder surgery which was performed on January 27, 2020. He noted an obvious tear of the supraspinatus, fraying of the labrum, thickening and tendinosis of the biceps tendon and some fraying of the subscapularis. The supraspinatus was completely torn away from the bone. Dr. Saleem last saw Petitioner on May 28, 2020. He was released from care with the only restriction being no use of jackhammers (PX 1)

Dr. Saleem testified he does not believe he reviewed any records of treatment before his first visit other that the MRIs. Rotator cuff tears usually present with gradual progressive onset of pain, limited function, decreased mobility. Petitioner's right shoulder was a lot more progressed that the left shoulder. Dr. Saleem testified he forms his opinions on his own notes. The fact that Dr. Trevino did not record left shoulder complaints would not change his opinions. He does not put too much weight into that. Petitioner is right hand dominant. It is not unusual for the dominant side to show more evidence of injury in manual laborers (PX 1).

Petitioner testified that Respondent accommodated his restrictions beginning July 19, 2020. He is a laborer or assistant. The work with Respondent is seasonal. He still works for Respondent, earning the same pay as prior to the accident. Petitioner testified he has difficulty opening a bottle, raising his hands to shoulder level, or raking leaves. He continues to have pain in his shoulders, but not the same as before. The pain is now 4-5/10. He has the pain whether he is working or not. He takes Aleve daily. At work, he shovels grave or hands out construction equipment. It hurts if he has to push heavy things. Petitioner testified he has a business planting plants for gardens. He has two people who help him move items. He runs the business on weekends. He has not been back to the doctor for his shoulders.

Conclusions of Law

In support of the Arbitrator's decision with respect to (F) Causal Connection, the Arbitrator finds as follows:

A Workers' Compensation Claimant bears the burden of showing by a preponderance of credible evidence that his current condition of ill-being is causally related to the workplace injury. *Horath v. Industrial Commission*, 449 N.E.2d 1345, 1348 (Ill. 1983) citing *Rosenbaum v. Industrial Com.* (1982), 93 Ill.2d 381, 386, 67 Ill. Dec. 83, 444 N.E.2d 122). The Commission may find a causal relationship based on a medical expert's opinion that the injury "could have" or "might have" been caused by an accident. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 182, 457 N.E.2d 1222, 1226, 75 Ill. Dec. 663 (1983). However, expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's work duties and his condition of ill-being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63, 442 N.E.2d 908, 911, 66 Ill. Dec. 347 (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839, 639 N.E.2d 886, 892, 203 Ill. Dec. 327 (1994). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205 (2000). The parties have stipulated that the Petitioner's condition of ill-being in the right shoulder is causally related to the accident. Respondent has disputed the causal relationship of the left shoulder condition.

Dr. Saleem diagnosed complete rotator cuff tear on the right and partial rotator cuff tear on the left. He opined that Petitioner's bilateral shoulder pathology was related to his repetitive use of a jackhammer at work. Dr. Bush-Joseph testified that, based upon his November 2018 examination and review of records, that the left shoulder MRI shows findings consistent with rotator cuff tendinosis, but no acute injury or trauma. His impression is rotator cuff tendinosis left shoulder, resolved. He did not see any evidence of injury to the left shoulder.

It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406-07, 459 N.E.2d 963, 76 Ill. Dec. 828 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041, 721 N.E.2d 1165, 242 Ill. Dec. 634 (1999). Expert testimony shall be weighed like other evidence with its weight determined by the character, capacity, skill, and opportunities for observation, as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v. Industrial Commission*, 309 Ill. 91, 138 N.E. 211 (1923). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, 960 N.E.2d 587, 355 Ill. Dec. 705. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.*, 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87, 274 Ill. Dec. 284 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue, but may look 'behind' the opinion to examine the underlying facts.

Having heard the testimony and reviewed the evidence, the Arbitrator finds that the opinions of Dr. Saleem are more persuasive that those of Dr. Bush-Joseph. Dr. Saleem treated Petitioner from October 26, 2018 through his release from care on May 28, 2020. Not only may the Commission decide which medical view is to be accepted, it may attach greater weight to the opinion of the treating physician. *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill.2d 1, 31 Ill. Dec. 789, 394 N.E.2d 1166 (1979); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225, 168 Ill. Dec. 756, 590 N.E. 2d 78 (1992). His opinions are based upon multiple visits with Petitioner. He reviewed the MRI imaging and also observed the condition of the left shoulder during the January 2020 surgical procedure, noting the anatomic findings observed. The Arbitrator notes that his reading of the MRI studies agree with the reports of the radiologist. Dr. Bush-Joseph agrees that Petitioner did have tendinosis in the left shoulder and noted chronic wear and tear. He agreed Petitioner had impingement in the left shoulder. It is possible that jackhammering could aggravate impingement. Given the mechanism of injury, the violent vibration of a 90 pound jackhammer which required the use of both arms equally, the Arbitrator does not find the single omission of left shoulder complaints in the initial October 10, 2018 office note significant, given its inclusion in the next office visit on October 17, 2018, and in the remainder of the treating records thereafter.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that his conditions of ill-being in both the right and left shoulder are causally related to the accidental injuries sustained on August 15, 2018.

In support of the Arbitrator's decision with respect to (J) Medical, the Arbitrator finds as follows:

Under §8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers ' Compensation Commission,* 409 Ill. App. 3d 258,267 (1st Dist., 2011). Based upon the Arbitrator's finding with respect to Causal Connection, reasonable and necessary medical expenses related to treatment for both the right and left shoulders would be causally related to the accident. Petitioner submitted PX 8 with claimed unpaid bills to Guardian Anesthesia ($7,800). Rush Copley ($69,079.99) and Rush Copley-Castle Orthopedics ($17,546.25). The Arbitrator notes that the charges listed have not been reduced to fee schedule or negotiated rate. The Arbitrator also notes that the Rush Copley billing submitted totals $66,300.99, not $69,079.99, and that this sum included the charges for the October 13, 2018 MRI of the right shoulder, which service was not disputed at trial.

Having reviewed the billing and the medical exhibits submitted in this matter, the Arbitrator finds that the bills submitted are for treatment related to the Petitioner's bilateral shoulder conditions and the charges are reasonable and necessary.

Based upon the record as a whole and the Arbitrator's finding with respect to Causal Connection, the Arbitrator finds that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $7,800.00 to Guardian Anesthesia, $66,300.99 to Rush Copley, and $17,546.25 to Rush Copley-Castle Orthopedics, as provided in Sections 8(a) and 8.2 of the Act.

In support of the Arbitrator's decision with respect to (K) Temporary Compensation, the Arbitrator finds as follows:

Temporary compensation is provided for in Section 8(b) of the Workers' Compensation Act, which provides, weekly compensation shall be paid as long as the total temporary incapacity lasts, which has interpreted to mean that an employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. The dispositive test is whether the claimant's condition has stabilized, i.e., reached MMI. *Sunny Hill of Will County Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). Based upon the Arbitrator's finding with respect to Causal Connection, Petitioner did not reach MMI until he was released by Dr. Saleem with restrictions on May 28, 2020. Respondent offered work within the restrictions and Petitioner returned to work on July 19, 2020.

Based on the record as a whole and the Arbitrator's finding with respect to Causal Connection, Petitioner has proven by a preponderance of the evidence that he was entitled to temporary total disability commencing 1/19/2019 through 3/18/2019, and from 1/27/2020 through 7/18/2020,a period of 33 2/7 weeks.

In support of the Arbitrator's decision with respect to (L) Nature & Extent, the Arbitrator finds as follows:

Petitioner's date of accident is after September 1, 2011 and therefore the provisions of Section 8.1b of the Act are applicable to the assessment of partial permanent disability in this matter.

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

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a concrete laborer at the time of the accident and that he is able to return to work in his prior capacity only with Respondent's accommodation of his no jackhammer restriction as a result of said injury. The Arbitrator notes that, should Petitioner lose his job with Respondent, his alternate employment options would be limited somewhat by this restriction. Because of this, the Arbitrator therefore gives some weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 48 years old at the time of the accident. Petitioner would be expected to remain in the workforce doing physical labor for many years. Because of this, the Arbitrator therefore gives some weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner remains employed by Respondent with no loss of earnings. He is being accommodated with a no jackhammer restriction. However, the Arbitrator notes that, should Petitioner lose his job with Respondent, his alternate employment options would be limited somewhat by this restriction. Petitioner is also operating a side business on the weekends. Because of this, the Arbitrator therefore gives lesser weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner sustained right rotator cuff tear, subacromial impingement, AC joint arthritis and biceps tendinopathy and left rotator cuff tear, impingement, AC arthritis and biceps tendinopathy. He underwent surgery on his bilateral shoulders with postoperative therapy. Petitioner was released from care on May 28, 2020. He was noted to have good range of motion. He reported he was doing well with no significant pain or discomfort. He was released to return to work with the only restriction being no use of jackhammers. The Arbitrator does agree with Dr. Bush-Joseph that Petitioner's subjective complaints are magnified. His reporting of 15/10 pain is clear exaggeration. He reports 10/10 pain in his hands, yet there is no mention of hand complaint or any treatment in his entire medical record. His reported current subjective limitations do not correspond with the medical evidence or his current work duties including shoveling gravel. Because of these facts, the Arbitrator therefore gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 25% loss of use of person as a whole pursuant to §8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC018163
Case Name	Judy Pind v. State of Illinois - Choate Mental Health Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0058
Number of Pages of Decision	20
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Natalie Shasteen

DATE FILED: 2/6/2023

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Judy Pind,

Petitioner,

vs. NO: 19 WC 18163

Choate Mental Health Center,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 16, 2022, is hereby affirmed and adopted.

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

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

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

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

February 6, 2023

o1/25/23
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC018163
Case Name	PIND, JUDY v. STATE OF ILLINOIS/ CHOATE MENTAL HEALTH CENTER
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Natalie Shasteen

DATE FILED: 3/16/2022

/s/ Jeanne AuBuchon, Arbitrator

Signature

INTEREST RATE WEEK OF MARCH 15, 2022 0.82%

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

March 16, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

JUDY PIND
Employee/Petitioner

v.

CHOATE MENTAL HEALTH CENTER
Employer/Respondent

Case # **19** WC **18163**

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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Herrin**, on **October 20, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **April 29, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**27,803.82**; the average weekly wage was $**534.68**.

On the date of accident, Petitioner was **45** years of age, ***married*** with **1** dependent children.

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

Respondent shall be given a credit of $**34,534.39** for TTD, $**--** for TPD, $**--** for maintenance, and $**--** for other benefits, for a total credit of $**34,534.39**.

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

ORDER

Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's Exhibit 1, as provided in § 8(a) and § 8.2 of the Act.

Respondent shall have credit for any amounts previously paid and shall indemnify and hold Petitioner harmless from claims made by any health providers arising from the expenses for which it claims credit. Respondent shall authorize and pay for the treatment recommended by Dr. Bradley for the Petitioner's right shoulder.

Respondent shall pay Petitioner temporary total disability benefits of $356.45/week for a further period of **127 6/7** weeks, as provided in Section 8(b) of the Act.

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.

Jeanne L. AuBuchon

Signature of Arbitrator

March 16, 2022

ICArbDec19(b)

PROCEDURAL HISTORY

This matter proceeded to trial on October 20, 2021, pursuant to Sections 19(b) and 8(a) if the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) the causal connection between the accident and the Petitioner's low back and right shoulder injuries; 2) payment of medical bills related to the Petitioner's low back and right shoulder; 3) entitlement to TTD benefits from May 6, 2019, through October 20, 2021; and 4) entitlement to prospective medical care to the Petitioner's right shoulder. The parties stipulated that the Petitioner suffered a compensable injury to her cervical spine, and the Respondent agreed that it paid TTD benefits from May 6, 2019, through March 15, 2021, for the Petitioner's cervical spine condition.

FINDINGS OF FACT

The Petitioner was employed with Respondent as a tech II for a little more than two years until the time of the accident on April 29, 2019. (T. 10-11) She was 45 years old at that time. (AX1) On April 29, 2019, the Petitioner sustained accidental injuries in the course of and arising out of her employment when she was helping a patient into a bathroom stall and the patient fell, causing the Petitioner to grab the patient and lower her to the floor. (T. 13) She first felt an injury to her in her shoulder blade and later her neck and back. (T. 14)

She said she did not have shoulder pain with movement prior to this incident, but she did injure her right shoulder about a year before by lifting a 50-pound bag of goat food, for which her only treatment was an X-ray and applying ice. (T. 14-15, 29) She said that she had right shoulder pain for a couple of days then. (T. 29) She denied shoulder pain or any accidents or incidents in the months preceding the work incident. (T. 15, 29) The Petitioner's prior medical records from Rural Health showed that she complained of right shoulder pain during a routine visit on January 12, 2018, and an X-ray on January 23, 2018, showed mild AC joint osteoarthritis but was otherwise

normal. (RX6) There appeared to be no follow-up care for the Petitioner's right shoulder at that time. (Id.) On March 30, 2019, the Petitioner was seen for a right shoulder muscle strain after reporting that she hurt her right shoulder five days before while lifting a bag of goat feed. (Id.) She had limited range of motion and was prescribed a muscle relaxer and instructed to perform range of motion exercises. (Id.)

The Petitioner testified that she had low back pain dating back to a motor vehicle accident in 2001 that worsened after the work incident. (T. 15-16, 31-32) The prior medical records showed that between January 2018 and the time of the accident, the Petitioner received regular refills of hydrocodone for low back pain. (Id.) There was no other kind of treatment. (Id.) The Petitioner took FMLA leave a couple of months before the work accident for anxiety. (T. 33-34)

The Petitioner reported the accident the same day and complained of pain to the back, neck and shoulder "as time went on." (RX1) She was seen at the Respondent's on-site healthcare services where she was diagnosed with a trapezius strain, instructed to use rest, ice and heat. (Id.) Also on the day of the accident, the Petitioner went to Convenient Care Clinic (a.k.a Rural Health) complaining of upper middle back pain below her right shoulder and right shoulder pain that increased with range of motion. (PX3) She reported that after the accident, she noticed her anterior and posterior shoulder were sore and burning. (Id.) She was diagnosed with strain of muscle of the right shoulder, prescribed medication and instructed to rest and alternate ice and heat to the sore areas. (Id.) She returned to Convenient Care Clinic two more times with the same complaints and was referred to physical therapy, which she attended from May 17, 2019, through June 14, 2019, for a total of eight visits. (PX2, PX4) The Petitioner testified that the physical therapy did not help, but she felt that it made her symptoms worse. (T. 17) She reported this to the Convenient Care Clinic as well. (PX3)

The Petitioner saw Dr. Matthew Gornet, an orthopedic surgeon at The Orthopedic Center of St. Louis on June 15, 2019, and reported neck pain to the right trapezius, right shoulder with headaches on both sides and right arm to her shoulder with occasional tingling and pain to her elbow. (PX5) She also had mid-back pain more to the right scapula and low back pain to the right side. (Id.) Regarding her injuries from the motor vehicle accident, the Petitioner told Dr. Gornet that she had neck and back pain afterwards. (Id.) She said the neck pain resolved, but the low back pain had been at a chronic low level since, for which she took hydrocodone. (Id.) She said she was working full duty and had no work restrictions. (Id.)

A cervical MRI showed herniations, and lumbar X-rays showed loss of disc height at L5-S1. (Id.) Dr. Gornet proceeded to treat the Petitioner's cervical spine and recommended an MRI arthrogram of the right shoulder and an MRI of the low back in the future. (Id.) Dr. Gornet opined that the Petitioner's current symptoms – at least in their level of severity – were causally connected to her work injury. (Id.) He prescribed anti-inflammatories and muscle relaxers and gave the Petitioner light duty restrictions of no lifting greater than 10-pounds, no repetitive bending or lifting, alternating between sitting and standing as needed and no overhead work. (Id.)

On December 2, 2019, the Petitioner returned Dr. Gornet for the results of the lumbar and shoulder MRIs. (Id.) Dr. Gornet believed the Petitioner had structural disc pathology at L5-S1 and to a lesser extent at L4-5 and L3-4. (Id.) He said there were central disc protrusions at L4-5 and L5-S1 with strong suggestion of a tear at L5-S1 and bilobular herniation at L5-S1, left worse than right and significant foraminal stenosis on the left. (Id.) Dr. Gornet stated that the shoulder MRI revealed a questionable SLAP tear and some tendinopathy, for which Dr. Gornet would refer her to Dr. George Paletta, another orthopedic surgeon in his office who specializes in shoulder surgery. (Id.)

The Petitioner underwent a Section 12 examination on December 11, 2019, by Dr. Michael Nogalski, an orthopedic surgeon at Orthopedic Associates. (PX2) Dr. Nogalski reviewed medical records that included an August 15, 2008, report from Union County Hospital in which the Petitioner stated that she had shoulder problems three years prior that had become increasingly painful. (Id.) He also saw the X-ray report from January 23, 2018, took his own X-rays and conducted a physical examination. (Id.) He reported that objective findings indicated some tendinopathic issues within the rotator cuff without evidence of discrete objective injury. (Id.) He questioned the Petitioner's active motion findings and subjective complaints because the Petitioner was not providing a reproducible exam with active motion and because she did not appear to remember past issues with her shoulder, and her story changed. (Id.) He found no conclusive evidence of significant internal derangement of the right shoulder and did not believe there was a causal relationship – including contribution or aggravation – between the current objective findings and the reported accident. (Id.) He said it was reasonable that the Petitioner had some continuing subjective symptoms that predated her accident. (Id.) He believed the medical assessments had been reasonable and necessary but did not believe any specific medical treatment was necessary and felt that the Petitioner was a maximum medical improvement since her initial evaluation on April 29, 2019, could work full duty with respect to her shoulder. (Id.)

Dr. Nogalski testified consistently with his report at a deposition on March 23, 2020. (RX3) He explained that studies have shown a high incidence of labral abnormalities in asymptomatic patients in their mid 40s. (Id.) Dr. Nogalski stated that although he did not believe the Petitioner injured her shoulder – specifically the glenohumeral joint – he believed that she had symptoms in the right shoulder region from the accident and related those symptoms to her cervical

spine. (Id.) He did not believe the Petitioner had a SLAP tear, based on his physical examination. (Id.)

On January 30, 2020, the Petitioner underwent another Section 12 evaluation by Dr. Michael Chabot, who reviewed medical records and conducted a physical examination. (RX4) The Petitioner reported to him that her back complaints were chronic and predated her injury. (Id.) In her intake questionnaire, the Petitioner reported headaches, neck, shoulder and mid-back pain. (RX4, Petitioner's Deposition Exhibit 1) She did not check the box for low back pain but reported pain radiating into her legs. (Id.) Dr. Chabot noted that the Petitioner received physical therapy for her low back in April and May 2001. (RX4) An MRI from February 13, 2014, showed mild disc bulging, facet arthropathy and mild narrowing of the neural foramina at L4-5 and disc bulge and facet arthropathy at L5-S1 resulting in bilateral foraminal stenosis. (Id.) Another MRI on July 15, 2015, revealed the same bulges and facet arthropathy plus possible encroachment of the right L4 nerve root and a disc osteophyte complex at L5-S1 with encroachment of the L5 nerve root. (Id.) Dr. Chabot noted the January 23, 2018, X-ray showing osteoarthritis. (Id.) Dr. Chabot interpreted the December 2, 2019, MRI as showing disc desiccation at L3-4, L4-5 and L5-S1, where it was more advanced. (Id.) He saw: mild disc space narrowing at L3-4 and L5-S1; disc bulging at L3-4 with no neural compression: facet degeneration at L3-4 worse right than left; central disc bulging at L4-5 with no evidence of neural compression but an extruded disc herniation extending into the left lateral recess behind the body of L5; and left foraminal disc protrusion at L5-S1. (Id.)

Dr. Chabot stated that the medical records did not support that the Petitioner sustained a lumbar injury from the work accident. (Id.) He opined that her low back complaints were associated to an unrelated chronic condition and that the work accident did not aggravate or

exacerbate her low back condition. (Id.) He stated that the medical treatment had been reasonable and necessary. (Id.)

Dr. Chabot testified consistently with his report at a deposition on June 26, 2020. (RX5) He said that from his review of the records, the Petitioner did not complain of low back pain associated with the work accident until she saw Dr. Gornet. (Id.) He stated that he did not review the MRI scans from 2014 and 2015 but only the radiology reports. (Id.) He did review the scan from January 23, 2019. (Id.) He said that changes on the MRI could represent progression of degeneration of the discs. (Id.) He stated that his lumbar examination of the Petitioner was normal, and he did not see signs of aggravation of the Petitioner's low back condition. (Id.) He explained that if the degenerated discs were symptomatic, the Petitioner's complaints would have been isolated primarily to the left lower extremity and would be profound, which was not the case. (Id.) He believed the Petitioner suffered neck and right shoulder strains from the work accident. (Id.)

Dr. Gornet performed disc replacements at C5-6 and C6-7 on June 3, 2020. (Id.) The Petitioner testified that although the surgery relieved her neck pain, it did not relieve her shoulder pain. (T. 19) Dr. Gornet referred the Petitioner to Dr. Paletta. (PX5) The Petitioner said that she did not see Dr. Paletta because she did not have insurance. (T. 19) This was reflected in Dr. Gornet's records, as were continued complaints of shoulder pain throughout her treatment with Dr. Gornet. (PX5) The Petitioner acknowledged that from June 2019 through March 2021, she had no treatment to her right shoulder. (T. 36) During this time, she was seen at Convenient Care Clinic/Rural Health for chronic low back pain and was prescribed hydrocodone on a regular basis. (PX3) On June 3, 2021, Dr. Gornet found the Petitioner to be at maximum medical improvement regarding her neck and released her to full duty with no restrictions. (PX5)

On October 22, 2020, Dr. Gornet testified consistently with his reports at a deposition. (PX13) He believed that the Petitioner's low back condition easily could have been aggravated by the work accident. (Id.) He believed the Petitioner had pre-existing disc degeneration at L5-S1 and pre-existing facet changes, but her symptoms were consistent with a new injury on top of degeneration. (Id.) He explained that the incident as described by the Petitioner would have resulted in a sudden mechanical load in an awkward position that usually causes the injury. (Id.) He said he had seen the MRI report of July 15, 2015, and based his opinion of a new injury on seeing a new annular tear at L4-5 and acute or chronic disc herniation on the right side at L5-6 as well as the Petitioner's reports of an increase in complaints and the fact that she had been working full duty until the April 29, 2019, incident. (Id.)

Dr. Gornet said he placed any treatment of the Petitioner's low back on hold until her shoulder was completely addressed. (Id.) After that, he would like to reevaluate her to see if she was able to get back to her regular life or if her low back symptoms were still at an increased level. (Id.) If the latter, he would probably recommend updated diagnostics, aggressive physical therapy and/or injections. (Id.)

The Petitioner saw Dr. Matthew Bradley, an orthopedic surgeon at DB Orthopedic Institute, on March 3, 2021. (PX11) She gave a consistent history of the work accident and denied any prior history of right shoulder pain or any subsequent injury to her shoulder. (Id.) Dr. Bradley reviewed the right shoulder MRI from December 2, 2019, and performed an examination, during which he found impingement signs, positive bicep provocative tests and a positive cross-chest test. (Id.) He took X-rays that showed no significant arthritis of the glenohumeral joint but moderate degenerative disease in the AC joint. (Id.) He diagnosed a right shoulder SLAP tear with a possible rotator cuff tear, ordered an updated MRI, performed a corticosteroid injection and gave

the Petitioner work restrictions of no lifting greater than 5 pounds, no pushing or pulling greater than 10 pounds and no repetitive bending, twisting or squatting. (Id.) The Petitioner testified that the injection helped for a few days, but her symptoms returned. (T. 21-22)

Dr. Greg Cizek, a radiologist at MRI Partners of Chesterfield, performed the MRI arthrogram on June 4, 2021, and found acromioclavicular arthropathy without impingement, an intact rotator cuff with mild tendinopathy and mild posterior subluxation of the glenoid, possibly due to ligamentous laxity or prior capsular injury but without evidence of acute tear. (PX6)

The Petitioner returned to Dr. Bradley on June 17, 2021, and he recommended right shoulder labral repair, biceps tenodesis and possible rotator cuff tear repair. (PX11) He opined that the injury the Petitioner described as occurring on April 29, 2019, was causally related to her right shoulder pain and diagnosis of labral tear. (Id.) He continued work restrictions. (Id.)

Dr. Bradley testified consistently with his reports at a deposition on August 3, 2021. (PX14) He stated that the injection he performed was for both diagnostic and therapeutic purposes. (Id.) He said the fact that the Petitioner experienced temporary relief told him that her pain was coming from inside her shoulder and was not a simple strain or sprain that could be cured by the cortisone injection. (Id.) Regarding the latest MRI, he said that he did not clearly see a displaced labral tear as was seen on the prior MRI. (Id.) He explained that an acute labral tear is sharp and easy to see, but when it becomes more chronic, it is worn down and more difficult to see on an MRI. (Id.) He said his surgical recommendation did not change after the new MRI because the Petitioner continued to have a consistent physical examination, a mechanism of injury that was consistent with a labral tear, an MRI showing a labral tear and pain relief from the injection. (Id.)

Regarding his treatment notes stating that the Petitioner reported no prior right shoulder pain, Dr. Bradley stated that he had independent recollection of the Petitioner stating that she did

not have past shoulder pain of the type that she was experiencing since the work accident. (Id.) He acknowledged Dr. Nogalski's report stating that the Petitioner had X-rays of her shoulder performed January 24, 2018, after a possible shoulder injury from lifting a bag of dog food. (Id.) He said he had not reviewed those X-rays nor the radiological reports. (Id.)

Dr. Bradley disagreed with Dr. Nogalski's opinion that there were no objective findings that supported a reason for mechanical shoulder symptoms from injury and reiterated his own objective findings. (Id.) He described the tests he performed in detail. (Id.) He also disagreed that the Petitioner could work full duty and had reached maximum medical improvement with respect to her right shoulder and stated that the Petitioner continued to have pain and did not have normal function of her right shoulder. (Id.) He said he did not find that the Petitioner was faking her injury or that she was not giving good effort in his examination. (Id.) He agreed with Dr. Chabot's diagnosis of a right shoulder strain, but said that was not a complete diagnosis, noting that from Dr. Chabot's report it did not appear that he saw the MRI studies of the Petitioner's shoulder. (Id.)

At the time of arbitration, the Petitioner reported that her low back was hurting. (T. 39) She said she would take hydrocodone when her back hurt but had not taken any that day. (Id.) Records from the Convenient Care Clinic after the work accident showed that each report regarding the Petitioner's low back pain from November 20, 2020, through the last record on June 16, 2021, reflected that the Petitioner's low back was stable. (RX6)

Regarding her shoulder, the Petitioner said she was not experiencing pain in her shoulder while she testified, but she did feel pain when she moved it. (T. 40) She said she was unable to lift, push, pull or move her arm in a circular motion, such as turning potatoes or stirring batter. (T. 47)

The Petitioner testified that she wanted to have the surgery because she was tired of being broke and needed a job, but she could not physically perform a job because of her shoulder. (T. 22) She said she had secondary employment cleaning houses, which she was unable to do after the accident because of her shoulder symptoms. (T. 24) On cross-examination, she stated that she had not cleaned houses for income for about a year before the work accident. (T. 44)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below.

Issue (F): Is Petitioner's current condition of ill-being, specifically his neck injury, causally related to the accident?

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 Comm'n,* 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n,* 371 ILL. App. 3d 882, 888 (2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill. 2d 30, 36 (1982).

The doctors agreed that the Petitioner had prior back and shoulder conditions but disagreed as to whether the work accident caused or aggravated her conditions. Regarding the Petitioner's shoulder, Dr. Gornet raised the possibility of a SLAP tear, which Dr. Bradley confirmed. Dr. Chabot testified that he believed the Petitioner suffered a shoulder strain, but he did not see the MRI arthrogram. Dr. Nogalski did not believe the Petitioner had a SLAP tear based on his examination and believed the shoulder symptoms were related to the Petitioner's cervical spine.

However, that does not appear to be the case, as the Petitioner's shoulder symptoms continued after the cervical surgery relieved her neck symptoms.

Also, Dr. Bradley had additional insights that Drs. Chabot and Nogalski did not. He was able to see the progression of the Petitioner's pathology on the two MRI studies and had the benefit of having performed the injection as one of his diagnostic tools – seeing that it provided only temporary relief. From Dr. Bradley's testimony regarding comparison of the shoulder MRIs and the pathology he saw on each, it appears that the Petitioner's shoulder condition progressed from acute to chronic while waiting nearly two years for treatment of her shoulder. The Arbitrator does not find this delay in treatment detrimental to the Petitioner's case, as it is common for doctors to treat one injured body part at a time, and there was no delay after the completion of her cervical treatment.

Regarding the Petitioner's low back, Dr. Gornet believed that the work accident caused a new injury or easily caused an aggravation of her condition. Dr. Chabot believed the pathology on the MRI was due to degenerative changes. His examination was normal, and he stated that the Petitioner's symptoms were not consistent with the pathology in that she complained of right-sided symptoms when her L5-S1 herniation was left-sided. In looking at Dr. Chabot's report, the Petitioner did not report much in the way of symptoms in her low back. Also, the most recent records from Convenient Care Clinic report that after November 2020, the Petitioner's low back condition was stable.

In addition to or aside from expert medical testimony, circumstantial evidence may also be used to prove a causal nexus between an accident and the resulting injury. *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982). A chain of events which demonstrates a

previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the workers' compensation claimant's injury. *Shafer v. Illinois Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC, 976 N.E.2d 1 (2011).

As to the Petitioner's shoulder, the circumstantial evidence points to the work accident having at least aggravated a possible pre-existing shoulder condition. The Petitioner had twice experienced shoulder pain. Once in 2018 and once a month before the work accident. However, there was no indication that the problem had continued nor that the Petitioner was receiving treatment for her shoulder at the time of the work accident. She was working full duty until the accident. She consistently experienced shoulder symptoms throughout her course of treatment that did not subside after her neck surgery. To the contrary, the Petitioner was actively receiving treatment for her low back at the time of the accident and appeared to go back to baseline in 2020.

Based on all the evidence, the Arbitrator finds that the Petitioner's current shoulder condition was caused by the work accident and that the Petitioner suffered a temporary aggravation of her chronic low back condition that has since returned to baseline. Therefore, the Arbitrator finds that the Petitioner has met her burden of proof establishing causal connection between the accident and the Petitioner's right shoulder condition.

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

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const.*, 388 Ill. App. 3d 380, 383, 902 N.E.2d 1269, 1273 (2009).

Although the doctors disagreed on causation, they agreed that the medical treatment was reasonable and necessary. Based on the findings above that the Petitioner's shoulder condition was caused by the work accident and that the work accident caused a temporary aggravation of the Petitioner's pre-existing back condition, the Arbitrator finds that the medical services provided were reasonable and necessary.

The Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 1. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

Issue (K): Is Petitioner entitled to any prospective medical care?

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

The Petitioner continues to suffer subjective shoulder symptoms that correlate with her objective pathology. Conservative treatment, specifically the steroid injection, have failed. Neck surgery also did not improve the Petitioner's shoulder. Her condition has not stabilized nor otherwise reached maximum medical improvement, and Dr. Bradley has recommended surgical intervention to alleviate Petitioner's symptoms. Regarding the Petitioner's lower back, the evidence points to the Petitioner having returned to her baseline condition from before the accident.

The Arbitrator finds that the Petitioner is entitled to prospective medical care to her right shoulder as recommended by Dr. Bradley, including surgery, and the Respondent shall authorize and pay for such care.

Issue (L): What temporary benefits are in dispute? (TTD)

The parties dispute temporary total disability benefits for the period of May 6, 2019, through the date of trial on October 20, 2021. An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Id.* at 121.

The Petitioner has been unable to return to work since the accident, and the Respondent has not accommodated the light duty restrictions put in place by Dr. Bradley that continue to this date. Therefore, the Petitioner is entitled to temporary total disability benefits pursuant to Section 8(b) of the Act for 127 and 6/7 weeks, from May 6, 2019, through October 20, 2021. The Respondent shall be given credit for TTD paid in the amount of $34,534.39.

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.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC017827
Case Name	Gary Minter Jr v. State of Illinois - Chester Mental Health Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0059
Number of Pages of Decision	17
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Kenton Owens

DATE FILED: 2/6/2023

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gar Minter,
Petitioner,

vs. NO: 20 WC 17827

State of Illinois/Chester Mental Health Center,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, temporary disability and permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 18, 2022, is hereby affirmed and adopted.

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

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

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

February 6, 2023

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DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC017827
Case Name	MINTER JR, GARY v. STATE OF ILLINOIS/CHESTER MENTAL HEALTH CENTER
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Kenton Owens

DATE FILED: 3/18/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 15, 2022 0.82%

/s/ Jeanne AuBuchon, Arbitrator

Signature

CERTIFIED as a true and correct copypursuant to
820 ILCS 305/14

March 18, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

GARY MINTER, JR.
Employee/Petitioner

v.

STATE OF ILLINOIS/CHESTER MENTAL HEALTH
Employer/Respondent

Case # **20** WC **017827**

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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Herrin**, on **October 20, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **May 19, 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 $**49,159.97**; the average weekly wage was $**945.38**.

On the date of accident, Petitioner was **48** years of age, ***single*** with **0** dependent child(ren).

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

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

Respondent shall be given a credit of $**8,333.13** for TTD, $**-** for TPD, $**-** for maintenance, and any **advance in PPD** for other benefits, **including service-connected leave** for a total credit of **any benefits paid**.

Respondent is entitled to a credit of **any benefits paid** under Section 8(j) of the Act.

ORDER

Respondent shall pay the reasonable and necessary medical services of outlined in Petitioner's Exhibit 1, as provided in § 8(a) of the Act. Said payments shall be made directly to the service providers.

Respondent shall be given credit for medical benefits that have been paid through its group carrier, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in § 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $**630.25**/week for **34 1/7** weeks, for Petitioner's periods of disability from 5/21/20 through 9/9/20 (15 6/7 weeks)**,** and 4/7/21 through 9/1/21 (18 2/7 weeks), as provided in § 8(b) of the Act. Respondent shall have credit, as stated above, for the TTD and service connected time paid.

Respondent shall pay Petitioner permanent partial disability benefits of $**567.23**/week for **86** weeks, because the injuries sustained caused the **30%** loss of use of the left leg and **10%** loss of use of the right leg as provided in § 8(e)(12) of the Act.

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

MARCH 18, 2022

PROCEDURAL HISTORY

This matter proceeded to trial on October 20, 2021. The issues in dispute are: 1) the causal connection between the accident and the Petitioner's bilateral knee condition; 2) liability for medical bills; 3) entitlement to TTD benefits from May 21, 2020, through September 9, 2020, and from April 7, 2021, through September 1, 2021; and 4) the nature and extent of the Petitioner's injury. The parties stipulated that if the Arbitrator finds the Petitioner's injury to be compensable under the Act, the date of the Petitioner's maximum medical improvement would be September 1, 2021. The parties also stipulated that if there is an award of medical expenses, they will be paid directly to the providers pursuant to the fee schedule.

FINDINGS OF FACT

At the time of the accident, the Petitioner, who was 48 years old, was employed by the Respondent as a security therapy aide. (T. 12) On May 19, 2020, a staff member was being attacked by a patient. (T. 12) When he was assisting in subduing the patient, the Petitioner fell on his knees. (T. 12-13)

The following day, the Petitioner went to the emergency room at Memorial Hospital, where he gave a consistent history of the accident and complained of severe pain that improved to moderate pain, as well as loss of mobility. (PX3) He denied other injuries or history of knee problems. (Id.) X-rays were negative. (Id.) The Petitioner was diagnosed with a contusion of the left knee and discharged after having his knee wrapped and being instructed to take ibuprofen, apply ice and follow up with his primary care provider. (Id.)

The Petitioner testified that he had prior complaints of knee pain due to a long history of gout, for which he took daily medications. (T. 14) The records of the Petitioner's primary care provider, Dr. Jeffrey Ripperda at Shawnee Health Service, reflect continuing prescriptions for

gout. (RX4) On April 7, 2020, the Petitioner had a video visit with Dr. Ripperda and complained of left knee pain for about two months with clicking and feeling as if it might give out. (Id.) Dr. Ripperda wrote that the diagnosis was not entirely clear, but there were no read flags. (Id.) He prescribed an anti-inflammatory and informed the Petitioner that if it was not better in a week or two, he would consider a steroid injection. (Id.) The Petitioner denied having any prior accidents or injuries to his knees. (T. 15) He said that unlike his gout flare-ups that came and went, his knee pain after the accident was continuous, with his right knee worse than his left. (T. 15-17.) He said that he was capable of working before the accident and did not miss any work due to his left knee. (T. 44)

On May 21, 2020, the Petitioner followed up with Dr. Ripperda via telephone. (PX4) He described the incident and stated his knee pain was an "annoying ache" at that time. (Id.) He was instructed to follow up if his pain was substantial. (Id.) He saw Dr. Ripperda on May 29, 2020, and reported that the pain in his left knee "let up quite a bit," but the pain in his right was quite bad after walking down stairs, feeling a pop in his knee and feeling like his knee might give out. (Id.) Dr. Ripperda diagnosed internal derangement of the right knee and was fairly confident the Petitioner had a meniscal injury. (Id.) He prescribed medication and took the Petitioner off work for a month. (Id.) The Petitioner returned to Dr. Ripperda on June 26, 2020, and stated that he thought his knee pain was getting worse. (Id.) Dr. Ripperda performed a steroid injection to the Petitioner's right knee and continued his off-work order. (Id.)

On July 21, 2020, the Petitioner saw Dr. Wendell Becton, a sports medicine physician at The Orthopedic Center of St. Louis. (PX5) After X-rays and a physical examination, Dr. Becton diagnosed bilateral knee pain, right greater left, indicative of right knee traumatic patellofemoral pain and possible medial meniscal injuries to both knees. (Id.) He ordered MRIs, prescribed

medication and ordered the Petitioner off work. (Id.) On July 28, 2020, Dr. Becton read the MRIs as showing medial meniscal tears in both knees with moderate osteoarthritis and performed cortisone injections on both knees. (Id.) He ordered light duty restrictions for work beginning August 4, 2020, and prescribed physical therapy. (Id.)

On August 4, 2020, the Petitioner underwent a Section 12 examination by Dr. Michael Nogalski, an orthopedic surgeon at Orthopedic Associates. (RX2) At that time, the Petitioner reported that his right knee pain was worse than the left. (Id.) Dr. Nogalski obtained X-rays and conducted a physical examination. (Id.) He diagnosed bilateral knee contusions, right medial joint line pain, mild bilateral knee medial compartment osteoarthritis, joint space narrowing and likely mild patellofemoral chondromalacia. (Id.) He found that medical treatment to date had been reasonable and necessary and recommended physical therapy. (Id.) He stated that the Petitioner could reasonably work at a light duty level with no direct contact with patients one-on-one and no squatting or climbing. (Id.) He said the Petitioner did not appear to be at maximum medical improvement. (Id.) Dr. Nogalski wrote an addendum on August 10, 2020, after reviewing the MRI reports from July 28, 2020, and stated that those reports did not change his opinions. (Id.)

The Petitioner followed up with Dr. Becton on September 8, 2020, and reported that the injections gave one week of good pain relief but had no improvement since. (PX5) He said the pain was tolerable although still bothersome. (Id.) Dr. Becton stated that the meniscal tears seemed to be minimally symptomatic at that point and increased light duty activities and instructed the Petitioner to ice his knees and perform exercises. (Id.) At another follow-up on October 6, 2020, the Petitioner reported overall improvement in his pain in both knees, although he had increased pain when he attempted to run. (Id.) On November 3, 2020, the Petitioner reported increased pain from working and received injections in both knees. (Id.) At a visit on December

1, 2020, the Petitioner said his left knee was much better after the injection, and his right knee improved but he still had some pain. (Id.) The Petitioner testified that the injections provided relief for three weeks at the most. (T. 20, 39)

On December 11, 2020, Dr. Nogaliski issued another report after reviewing Dr. Becton's records, what is believed to be the right knee MRI study from July 28, 2020. (RX3) He believed the Petitioner could work full duty, that the sequela from his knee injuries had resolved, that the Petitioner was at maximum medical improvement and that he had no further recommends or treatment. (Id.) He stated that it was more likely than not that a patient with chondral tissues (sic) and abnormalities within his knees as noted in the MRI studies would reasonably have some symptoms of osteoarthritis intermittently. (Id.)

On January 5, 2021, the Petitioner reported to Dr. Becton that had not been feeling pain in either knee for the past several weeks and felt ready to return to regular duties. (PX5) Dr. Becton felt that the Petitioner reached maximum medical improvement and released him to work full duty. (Id.)

The Petitioner testified that when Dr. Becton released him to full duty, he was still experiencing pain, but it was tolerable. (T. 24) He decided to live with it in order to go back to work. (Id.) He acknowledged telling Dr. Becton that he felt better and had no pain in either knee for several weeks. (T. 39) He said the pain then became unbearable, so he returned to Dr. Ripperda, who referred him to Dr. Matthew Bradley, an orthopedic surgeon at Metro-East Orthopedics. (T. 25) The Petitioner testified that he did not suffer any new injuries since the original accident. (T. 26) Dr. Ripperda's records reflect a telephonic visit on March 19, 2021, wherein the Petitioner reported that he had a shooting pain down his left leg that was worse with standing and could not bend his knee. (PX4) He said he "never did really get better." (Id.)

On April 5, 2021, the Petitioner saw Dr. Bradley, who performed X-rays, conducted a physical examination and reviewed the MRIs from July 28, 2020. (PX7) He reported that the Petitioner likely suffered an acute medial meniscus tear on top of some underlying degenerative disease. (Id.) He did not feel that continued non-operative treatment was likely to provide the Petitioner with any kind of sustained pain relief and recommended a total knee replacement. (Id.) He believed that any kind of arthroscopic procedure would not result in any significant long-term pain relief and could potentially significantly worsen his pain, due to the degree of chondrosis present in the knee. (Id.) Dr. Bradley did not order work restrictions at that time but did order him off work on April 7, 2021. (Id.)

Dr. Bradley performed the left knee replacement on April 13, 2021, and gave the Petitioner a steroid injection in his right knee. (Id.) The Petitioner attended physical therapy from April 23, 2021, through August 23, 2021, for 41 visits, with the last 10 visits being work hardening. (PX10) On June 24, 2021, Dr. Bradley released the Petitioner to light-duty work with no inmate contact and a four-hour sedentary restriction per shift. (PX7) On August 26, 2021, Dr. Bradley released the Petitioner to full duty as of September 1, 2021. (Id.)

The Petitioner stated that the first time he saw Dr. Bradley, his left knee felt as though somebody was stabbing it with a steak knife. (T. 26) He said that since his release, the pain has been gone completely, and he has been able to work overtime, which he said he was unable to do before the surgery. (T. 29-31) He said he experiences aches and pains in the lower knee where Dr. Bradley drilled into the bone, that his left leg feels fatigues after working long hours, and he could not put weight on his left leg while kneeling. (T. 32-33) He takes over-the-counter anti-inflammatories and pain medication as needed. (T. 31)

Dr. Bradley testified consistently with his reports at a deposition on August 6, 2021. (PX12) He said the results of his initial physical examination of the Petitioner was consistent with what he saw on the MRIs and the Petitioner's description of the work incident was a mechanism that was consistent with the injury the Petitioner suffered. (Id.) He believed the work accident created a new injury and aggravated pre-existing conditions. (Id.) He said the new injury was either an acute meniscus tear or worsening of a pre-existing tear. (Id.)

Regarding the Petitioner's recurrence of symptoms after Dr. Becton released him, Dr. Bradley believed that the Petitioner was still benefiting from the injections when Dr. Becton released him, and when the injections and pain medications wore off, the inflammation and pain returned – returning him to his original condition. (Id.) He stated that the effects of an injection can last three to six months. (Id.) As to why the Petitioner's right knee was more symptomatic during Dr. Becton's treatment while the left knee was worse during his own treatment, Dr. Bradley said that if the right knee was a sprain or mild exacerbation, it may have been very painful, and the injection may have given him more relief. (Id.) He noted that on the left knee, the meniscus was pushing outside of his knee, and an injection would not have had long-lasting effects on that. (Id.)

Regarding performing knee replacement versus an arthroscopic "clean out," Dr. Bradley reiterated his opinion that the pre-existing arthritis and severe meniscus tear would prevent any kind of sustained pain relief from arthroscopy. (Id.) Dr. Bradley said that during the surgery, he found that the Petitioner's arthritis was close to "bone on bone," and that the meniscal tear extended into the root ligament, causing the meniscus to be "free floating," and no longer attached to the knee. (Id.) He believed that if the Petitioner's knee was in that condition before the work incident, he would not have been able to perform his activities without significant pain and

dysfunction in his knee. (Id.) He said a small meniscal tear can be asymptomatic or minimally symptomatic, but the tear he observed in the Petitioner's was "very symptomatic." (Id.)

Dr. Bradley gave the Petitioner an "excellent" prognosis. (Id.) He said the prosthesis should last 25 years, and the Petitioner's activities should be unlimited. (Id.) Regarding the kneeling pain, Dr. Bradley said that should go away after a year to 1½ years. (Id.)

Regarding his review of Dr. Nogalski's reports, Dr. Bradley agreed that the Petitioner would have intermittent symptoms with his arthritis. (Id.) But he disagreed with Dr. Nogalski's opinion that the sequelae from his work injuries had resolved and said that the only intermittency in relief from pain only occurred with injections, but when the medications wore off, the pain came back. (Id.) He believed the Petitioner's condition became chronic and consistent after the work injury and were "just covered up" by his non-operative treatments and injections. (Id.)

On August 9, 2021, Dr. Nogalski testified consistently with his reports. (PX5) He stated that although there is no test to determine whether a meniscal tear is degenerative or acute, a small grade area in the environment of irregular joint surfaces would lead one to believe the tear was not acute, and a large tear that was unstable would lead one to believe there was an acute injury. (Id.) He agreed that the mechanism of injury the Petitioner described could cause or aggravate a meniscal tear. (Id.)

At a deposition on September 28, 2021, Dr. Becton testified consistently with his reports. (PX13) He agreed that the mechanism of injury the Petitioner described could cause or aggravate an underlying arthritic condition. (Id.) He said the effectiveness of cortisone injections vary per individuals and can last from three days to three years. (Id.) He said that with the natural progression of the Petitioner's osteoarthritis and obesity, there was a good chance that he would

need operative intervention regardless of the work accident, but he could not say how long it would be until the Petitioner would need a total knee replacement. (Id.)

At the time of his deposition, Dr. Becton had reviewed the Petitioner's medical records from after his treatment ceased. (Id.) He agreed that it appeared that the Petitioner's symptoms increased with increased activity. (Id.) He said individuals can have an increase in symptoms without a change in pathology. (Id.) He agreed with Dr. Bradley's opinion that the work accident at least accelerated the Petitioner's need for a left knee replacement. (Id.) He also agreed with Dr. Bradley's opinion that the only thing that would definitely reduce the Petitioner's pain after non-operative treatment failed would be a total knee replacement. (Id.)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below.

Issue F: Is Petitioner's current condition of ill-being causally related to the accident?

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 Comm'n,* 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n,* 371 Ill. App. 3d 882, 888 (2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill. 2d 30, 36 (1982).

The Petitioner had pre-existing arthritis in his knees and may have had meniscal tears at the time of the accident. The doctors agreed that the Petitioner was injured in the work incident but disagreed on the severity of his injuries. Dr. Nogalski believed the Petitioner was at maximum

medical improvement as of his report of December 11, 2020. Dr. Becton released the Petitioner on January 5, 2021, after the Petitioner was pain free for several weeks. However, after learning of the return of the Petitioner's symptoms and the treatment by Dr. Bradley, Dr. Becton agreed that the work accident accelerated the Petitioner's condition. Dr. Bradley's testimony regarding the lasting effects of steroid injections being up to six months is consistent with the pattern of the Petitioner's symptoms. It is apparent that when Dr. Nogalski examined the Petitioner and when Dr. Becton released him, the Petitioner was still experiencing the therapeutic effects of the injections. He also not had been in a vigorous work environment. When he went back to full duty work, his symptoms returned. In addition, Dr. Bradley had the benefit of having seen the Petitioner's left knee from the inside. He was able to surmise that even if the Petitioner had a pre-existing meniscal tear, the work accident caused it to fully tear to the point that it was no longer attached to the knee. Dr. Nogalski conceded that a large tear that was unstable would lead one to believe there was an acute injury. Thus, the Arbitrator gives greater weight to Drs. Becton and Bradley's opinions and very little, if any, weight to Dr. Nogalski's opinions.

In addition to or aside from expert medical testimony, circumstantial evidence may also be used to prove a causal nexus between an accident and the resulting injury. *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982). A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the workers' compensation claimant's injury. *Shafer v. Illinois Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC, 976 N.E.2d 1 (2011).

About a month and a half before the work accident, the Petitioner was experiencing knee pain. Dr. Ripperda had instructed him to follow up if he was not better in a week or two. He did not return to Dr. Ripperda until after the work accident. Until that time, the Petitioner was able to work full duty with no evidence of disablement, including working overtime, which he could not do after the work accident. The circumstantial evidence supports Dr. Bradley's opinion that the accident caused an acute injury and aggravated his arthritic condition.

Therefore, the Arbitrator finds that the Petitioner has met his burden of proving by a preponderance of the evidence that the accident of May 19, 2020, was a cause of his bilateral knee condition.

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

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const*., 388 Ill. App. 3d 380, 383, 902 N.E.2d 1269, 1273 (2009).

Based on the findings above regarding causation and the opinions of Drs. Becton and Bradley that their treatment of the Petitioner's knees was reasonable and necessary and their agreement that the work accident accelerated the Petitioner's need for a knee replacement, the Arbitrator also finds that the treatment received was reasonable and necessary. The Respondent has not paid the bills for this treatment. Therefore, the Respondent is ordered to pay the medical expenses contained in Petitioner's Exhibit 1 pursuant to Section 8(a) of the Act and in accordance with medical fee schedules. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

Issue K: What temporary benefits are in dispute? (TTD)

An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

Based on the findings above and the off-work orders from the Petitioner's treating doctors, the Arbitrator finds that the Petitioner was entitled to TTD benefits from May 21, 2020, through September 9, 2020, and from April 7, 2021, through September , 2021. The Respondent is entitled to a credit for TTD paid.

Issue L: What is the nature and extent of the Petitioner's injury?

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

(i) **Level of Impairment.** No AMA impairment ratings were produced, therefore the Arbitrator gives this factor no weight.

(ii) **Occupation.** The Petitioner continues to work as a security aide for the Respondent and faces the same physical challenges as he did prior to the accident. Therefore, the Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 48 years old at the time of the injury. He has many work years left during which time he will need to deal with the residual effects of the injury. The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity.** There was no evidence of limitation of the Petitioner's earning capacity. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** The Petitioner testified that he still experiences aches, pains and fatigue in his left knee and has trouble kneeling. Dr. Bradley believed the Petitioner should regain his ability to kneel. There appears to be no problems with the Petitioner's right knee. The Arbitrator puts some weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 10 percent of the right leg and 30 percent of the left leg.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC014072
Case Name	Freddie Wood v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0060
Number of Pages of Decision	9
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Kevin Morrisson
Respondent Attorney	Elizabeth Meyer

DATE FILED: 2/7/2023

/s/ Deborah Baker, Commissioner

Signature

23IWCC0060

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

FREDDIE WOOD,

Petitioner,

vs. NO: 16 WC 14072

CHICAGO TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein, and notice given to all parties, the Commission, after considering the issues of accident, causal connection, Petitioner's entitlement to medical expenses, Petitioner's entitlement to temporary disability benefits, and Petitioner's entitlement to permanent disability benefits, and being advised of the facts and law, reverses the Decision of the Arbitrator. The Commission finds that Petitioner sustained a psychological injury on March 15, 2016 and that his current psychological condition of ill-being is causally related to the accident occurring on said date.

I. FINDINGS OF FACT

Background

Petitioner is a bus operator for Respondent and had worked in that capacity for 16 years at the time of trial. He testified that he had no anxiety or psychiatric issues prior to the instant accident.

Accident

Petitioner testified that on March 15, 2016, a man stepped in front of the bus he was operating and was hit by the bus. Petitioner testified that the light had turned green and when he

looked to the right, the man was standing at the curb. Petitioner then looked to the left and proceeded to drive forward. The man stepped into the street at that moment. Petitioner testified that he thought he hit the man, but he did not know how hard or what part of the bus hit the man. Petitioner testified that he felt horrible because "[t]he bus is so heavy and you can take someone's life. Someone could be maimed, lose their limbs, and their life can be tooken [sic]." After the accident, Petitioner's head was "banging," he was dizzy, and his legs were weak. He notified patrol of the accident but was unable to finish his route that day. Petitioner testified he had never hit someone before. Petitioner was taken by ambulance to St. Bernard's Hospital.

Surveillance video from the bus Petitioner operated on March 15, 2016 shows a man exiting the bus at a bus stop and walking toward the corner in the same direction the bus was facing. The man was wearing a hat and holding a white bag. When the traffic light turned green, Petitioner began driving the bus again and the man who had just exited the bus began to run and cross the street diagonally in a cross walk in front of the bus. At that moment, the man turned his head to see the bus coming toward him and he attempted to back up toward the curb. As the bus drove through the intersection, the man spun around, his bag went flying, and he fell onto his back as his hat fell off his head. It is unclear from the video whether the bus made contact with the man. The man then crawled over to retrieve his bag, but then leaned forward and remained on his knees for several seconds, appearing to be injured. At that time, another passenger exited the bus to help the man who had fallen. The man eventually stood up while holding his bag against his body with his left arm and began slowly walking to the sidewalk with a noticeable limp to his gait that had not been present when the man exited the bus initially. RX 1. Petitioner testified that the video was hard to watch because it brought back uncomfortable feelings of something he did not want to re-live.

Medical Care

Upon arriving at the St. Bernard Hospital emergency room on March 15, 2016, Petitioner complained of a frontal headache and indicated his pain was 9/10. Dr. Dante Pimentel performed a physical examination of Petitioner, which revealed normal results. Dr. Pimentel also noted no pertinent psychological history. Petitioner was prescribed Ibuprofen and told to follow up with his primary care physician ("PCP") within 2 days. He was diagnosed with a stress induced headache. At the time of discharge his pain was 5/10. PX 1.

On March 17, 2016, Petitioner visited Dr. Daniel G. Kelley at Integrated Behavioral Medicine and provided a consistent history of accident, indicating that after letting off passengers at a bus stop, he looked left and right when the light turned green before proceeding. As he entered the intersection, he noticed something in his peripheral on the right side. Passengers began screaming and Petitioner then saw a man walking towards the bus. Petitioner hit the brakes, but the man still hit the bus. Petitioner indicated he was "freaking out" and did not know if the man "was trying to kill himself or what." Petitioner opened the bus doors as the man rolled on the ground. Petitioner began screaming and trying to call control to secure an ambulance for the man. After the man was taken to the hospital, the police informed Petitioner that the accident was his fault. Petitioner "lost it" and began crying and hyperventilating. He had a pounding headache. Petitioner was then taken by ambulance to the St. Bernard Hospital emergency room. PX 2.

Petitioner then informed Dr. Kelley that he consulted Dr. Scott Martin at Concentra/Occupational Health Centers of Illinois, who diagnosed Petitioner with Anxiety Disorder and a Tension Headache and referred him for psychological services. Petitioner informed Dr. Kelley that he had been off work since the accident. A clinical interview was performed by Dr. Kelley on this date, which revealed Petitioner's affect was restricted and his mood appeared anxious. Dr. Kelley also noted that Petitioner's thought processes were mild to moderately disorganized. PX 2.

On March 17, 2016,[1] Dr. Kelley performed a psychological examination, including a Beck Depression Inventory and Beck Anxiety Inventory, which revealed moderate and severe levels of depressive and anxiety symptoms. Petitioner reported experiencing hyperarousal, heart racing, sweats, tremors, anxiety, dysphoria, crying, agitation, sleep disturbance, fatigue, decreased appetite, worry/negative ruminations, headaches, and nightmares that he's just killed someone. Petitioner's Minnesota Multiphasic Personality Inventory 2 Restructured Form ("MMPI-2-RF") was most notable for depressed mood, anxiety-related problems, and social disengagement. He had feelings of hopelessness/helplessness, self-doubt, and inefficacy. His Trauma Symptom Inventory revealed that his intrusive experiences, hyperarousal, anxiety, depression, defensive avoidance, and tension reduction behavior scale scores were clinically elevated. Factor scores of broader symptom domains were significant for somatization, self-disturbance and externalization in the problematic range, and PTSD was clinically elevated. Dr. Kelley diagnosed adjustment disorder with mixed anxiety and depressed mood. Due to Petitioner's significant level of emotional distress, Dr. Kelley prescribed cognitive behavioral therapy, and referred Petitioner for a psychiatric consultation to explore the possible benefit of medication intervention. Dr. Kelley also recommended Petitioner take a leave of absence from work. PX 2. Petitioner testified he underwent counseling therapy with Dr. Kelley 2-3 times per week to help with his anxiety. Petitioner's treatment continued through May 6, 2016.

On May 6, 2016, Dr. Kelley examined Petitioner, noting the mechanism of injury and the March 23, 2016 psychological exam report. He also noted Petitioner's diagnosis of adjustment disorder with mixed anxiety and depressed mood. Dr. Kelley noted that Petitioner's treatment promoted self-care and anxiety management, cognitive therapy addressed his maladaptive thoughts, and behavioral therapy promoted engagement in daily structure and behavioral goals. During treatment, Petitioner became exposed to his work setting in the form of riding on CTA buses. He reported his ability to effectively manage distress with minimal anxiety reactions, and expressed self-confidence in his ability to return to work. Dr. Kelley opined that over the course of treatment Petitioner had made significant progress in his emotional and psychological functioning. Petitioner reported a decrease in anxiety and depressive symptoms and was released to full duty with no restrictions as of May 7, 2016. However, this was conditioned on him participating in required bus re-training. Dr. Kelley terminated psychological services, but encouraged Petitioner to contact the Chicago Clinic if further assistance was needed. PX 2. Petitioner testified that he did not quite feel ready to return to work at that time, but had to due to financial reasons. Petitioner did receive short term disability benefits, but not until he had already returned to work. In 2017, Petitioner attempted to return to Dr. Kelley, but Respondent's insurance had changed by that time and Dr. Kelley did not accept Respondent's new insurance.

[1] Dr. Kelley examined Petitioner on March 17, 2016 and issued a report of his examination findings on March 23, 2016. PX 2.

Petitioner testified that while he has returned to work and is able to perform his duties, he still gets nervous at times and is unable to perform his duties at the level he had prior to the accident. He now feels anxiety when pedestrians nonchalantly walk in front of his bus.

II. CONCLUSIONS OF LAW

Accident

As it pertains to the issue of accident, the Commission views the evidence differently than does the Arbitrator. The Arbitrator found that Petitioner failed to prove an accident under the "mental/mental" theory and concluded that that Petitioner suffered a non-traumatically induced mental disability. The Arbitrator found that based on the medical evidence, testimony, and surveillance video, Petitioner had failed to prove by a preponderance of evidence that he sustained an accidental injury arising out of and in the course of his employment with Respondent.

The Illinois Supreme Court set out the requirements for a "mental-mental" claim, holding that in the absence of physical trauma or injury, a psychological injury can be compensable in cases where the claimant suffered a sudden, severe emotional shock traceable to a definite time, place, and cause. *Pathfinder Co. v. Industrial Commission*, 62 Ill. 2d 556, 563 (1976). In mental-mental cases, a claimant must be engaged in employment at the time and place of the precipitating cause of the injury and must prove that the injury occurred because of a work-related risk or because the employment placed the claimant at risk of exposure exceeding that of the general public. *Baggett v. Industrial Commission*, 201 Ill. 2d 187, 194 (2002). Whether a worker has suffered the type of emotional shock sufficient to warrant recovery should be determined by an objective, reasonable-person standard, rather than a subjective standard that considers the claimant's occupation and training. *Diaz v. Workers' Compensation Commission*, 2013 IL App (2d) 120294WC, ¶ 33 (2d Dist. 2013).

Based on the totality of the evidence and supporting case law, the Commission reverses the Decision of the Arbitrator, and finds that Petitioner has proven by a preponderance of the evidence that he sustained a compensable work accident under the "mental-mental" theory. In the instant case, Petitioner, while driving a bus for Respondent, unintentionally drove the bus toward a man who had run in front of the bus, resulting in an apparent injury to the man. The Commission finds that Petitioner experienced a sudden, severe, and emotional shock that was directly traceable to the March 15, 2016 incident, regardless of whether Petitioner actually hit the man with the bus or not. Initially, Petitioner believed that he hit the man with the bus and caused injury to the man, which any reasonable person would find objectively shocking. The Commission notes that while the surveillance video suggests the bus hit the man, it is unnecessary to make this determination in order to find this claim compensable. Petitioner's traumatic experience of seeing a man run in front of the large bus he was driving, and immediately seeing the man fall to the ground after the bus passed is not a common event for any driver. Petitioner's employment with Respondent as a bus operator placed him at risk of this type of exposure more than the general public.

Further, the evidence shows that Petitioner did in fact suffer a psychological injury as a result of the March 15, 2016 incident. Immediately after the incident, Petitioner sought emergency

room treatment and was diagnosed with a stress-induced headache. Two days later, Dr. Kelley, a licensed clinical psychologist, diagnosed Petitioner with anxiety disorder and a tension headache, secondary to the instant accident, and referred him for psychological treatment. Applying the relevant case law to the instant facts, the Commission reverses the Decision of the Arbitrator and finds Petitioner has met his burden of proving by a preponderance of the evidence that on March 15, 2016, he sustained a work-related accident that resulted in a psychological injury under the "mental-mental" theory.

Causal Connection

Having denied accident, the Arbitrator found the issue of causation to be moot. As the Commission herein has reversed the Decision of the Arbitrator and found accident, we now analyze the issue of causal connection as well.

It is well established that a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury. *International Harvester v. Illinois Workers' Compensation Commission*, 93 Ill. 2d 59, 63-64 (1982). 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).

In the instant case, Petitioner had no psychological diagnoses prior to the accident. This is supported by Dr. Kelley's initial medical record, wherein he noted Petitioner had been a CTA bus operator for 12 years, and denied any psychiatric history, or any current medication regimen. PX 2. However, the record reflects that immediately after the instant accident, Petitioner was diagnosed with a stress-induced headache and was referred for psychological services. The psychological examination performed by Dr. Kelley revealed moderate and severe levels of depressive and anxiety symptoms. Petitioner reported experiencing hyperarousal, heart racing, sweats, tremors, anxiety, dysphoria, crying, agitation, sleep disturbance, fatigue, decreased appetite, worry/negative ruminations, headaches, and nightmares that he had just killed someone. Petitioner also had feelings of hopelessness/helplessness, self-doubt, and inefficacy, and had clinically elevated PTSD. He was diagnosed with adjustment disorder with mixed anxiety and depressed mood. Due to Petitioner's significant level of emotional distress, he was prescribed cognitive behavioral therapy, referred for a psychiatric consultation, and recommended for a leave of absence from work.

The Commission finds that Petitioner's prior good health, coupled with the instant accident and his subsequent and immediate psychological disability, support a finding of causal connection between the March 15, 2016 accident and his current psychological condition under the chain of events theory.

Medical Expenses

The Commission finds the opinions and diagnoses of Petitioner's treaters to be persuasive, and that the incurred treatment expenses ($4,355.00) are reasonable and necessary to cure the effects of Petitioner's condition, which is causally related to the instant accident. The Commission

also notes that Petitioner's counsel did not object to these expenses being paid directly to the provider per the fee schedule. Trans., p.36.

Temporary Disability

Having found accident and causation, the Commission also finds Petitioner is entitled to temporary total disability benefits in relation to his claim. Petitioner's credible and unrebutted testimony supports a finding that he was temporarily and totally disabled from March 16, 2016 through May 7, 2016, a period of 7 & 4/7ths weeks at a rate of $875.64/week.

Permanent Disability

Lastly, the Commission awards Petitioner permanent partial disability benefits. We analyze these benefits pursuant to §8.1(b) of the Act.

With regard to subsection (i) of §8.1b(b), the Commission notes that neither party submitted an impairment rating, thus the Commission assigns no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Commission notes Petitioner was a CTA bus operator at the time of the March 15, 2016 accident. Subsequently he was placed off work while receiving counseling therapy, but eventually returned to full duty work on May 7, 2016. Moderate weight is assigned to this factor.

With regard to subsection (iii) of §8.1b(b), the Commission notes Petitioner was 41 years of age at the time of the accident. He potentially has a long work life ahead of him before normal retirement age. Any permanency found would decrease the substantial work-life Petitioner appears to have remaining due to his relatively young age. Moderate weight is assigned to this factor in favor of an increase in permanent disability.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earning capacity, the Commission finds no credible evidence of reduced earning capacity contained in the record. Petitioner was off work for nearly two months before he returned to full duty work. Substantial weight is assigned to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the record reflects that Petitioner continues to experience nervousness while operating a bus due to pedestrians nonchalantly walking in front of his bus. The May 7, 2016 medical record of Dr. Kelley indicated Petitioner had made significant progress in his emotional/psychological functioning. Petitioner reported a decrease in anxiety and depressive symptoms and was thus released to full duty with no restrictions. However, it was noted that he required bus re-training and was encouraged to contact the Chicago Clinic for psychological services if further assistance was needed. Petitioner testified that he did not quite feel ready to return to work at that time, but had to due to financial reasons. Petitioner also testified that in 2017 he did attempt to return to Dr. Kelley, but was unable to because Dr. Kelley did not accept Respondent's new insurance. Moderate weight is assigned to this factor.

Based on the above analysis, the Commission finds Petitioner has sustained the loss of 5% of the person-as-a-whole.

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

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner has proven he sustained a psychological injury as a result of the March 15, 2016 accident.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner's current psychological condition of ill-being is causally related to the accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $4,355.00 for medical expenses, as provided in §8(a) and subject to §8.2 of the Act. These expenses shall be paid directly to the provider per the fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $875.64 per week for a period of 7 & 4/7ths weeks, representing March 16, 2016 through May 7, 2016, that being the period of temporary total incapacity for work under §8(b).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $755.22 (maximum rate) per week for a period of 25 weeks, as provided in §8(d)(2) of the Act, for the reason that the psychological injury sustained caused a 5% loss of use of Petitioner's person as a whole.

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

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

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

February 7, 2023
O: 12/14/22
DJB/wde
043

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

/s/ *Stephen Mathis*
Stephen Mathis

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC034686
Case Name	Teresa Mroczko v. Janitorial Services Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0061
Number of Pages of Decision	4
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Anthony Ivone, Matthew Belcher
Respondent Attorney	Randall Stark

DATE FILED: 2/8/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Teresa Mroczko,

Petitioner,

vs. No. 12 WC 34686

A & R Janitorial Services, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

A petition for review has been filed by the law firm of Aleksy Belcher and notice has been given to all parties. The Commission, after considering the issues of jurisdiction, "Petition for Attorney Fees; and Approval of Settlement Contract Lump Sum Petition and Order," and being advised of the facts and law, dismisses the petition for review for lack of jurisdiction.

The petition for review follows multi-case civil litigation arising from a work injury sustained by Teresa Mroczko (Petitioner). Although a workers' compensation claim was filed on Petitioner's behalf by Aleksy Belcher, it was never tried before the Commission. Instead, multiple proceedings were brought in the circuit court, and Petitioner changed attorneys. Ultimately, Respondent, by stepping into Petitioner's shoes,[1] obtained an $850,000 settlement in a third-party action. On November 19, 2019, the parties entered into a global settlement agreement, a material part of which was an approval of a $1.00 settlement contract by the Commission.

Aleksy Belcher, as a former attorney, objected to the approval of the $1.00 settlement contract, as it sought to collect attorney fees for the workers' compensation claim. In January of 2020, Aleksy Belcher filed a petition for attorney fees, requesting an evidentiary hearing.

[1] By filing a subrogation action under section 5(b) of the Act.

Scheduling the hearing was significantly delayed due to the Covid pandemic interrupting the Commission's normal operations.

On April 27, 2021, an Arbitrator held the hearing and received evidence. On January 24, 2022, the Arbitrator approved the settlement contract and issued an accompanying order awarding zero attorney fees, explaining: "[S]ince the workers' compensation claim has settled for $1.00, there is no attorney's fee to disperse [*sic*] for settlement of the workers' compensation claim;" and "The settlement contract notes a net recovery from a third party in a civil case. This recovery is not before or under the jurisdiction of the Arbitrator." Although the Arbitrator promptly tendered the approved contract and order to the Commission staff for processing, these documents did not get entered into our e-filing system (CompFile) and emailed to Petitioner's current workers' compensation attorney and Respondent's attorney until March 21, 2022. The documents were not emailed to Aleksy Belcher because Aleksy Belcher did not claim its interest in the case in CompFile.

On July 13, 2022, Aleksy Belcher filed a petition for review stating the firm did not receive the documents until that day. Also on July 13, 2022, Aleksy Belcher filed an appearance of representative form, clarifying in a separate letter: "Please note that our firm does not currently represent the Petitioner, but are filing this appearance for the purposes of seeking review." CompFile records show Aleksy Belcher's interest in the case was recorded the same day.

The Commission finds that it lacks jurisdiction on review. After the Commission went fully paperless through CompFile on April 21, 2021, Aleksy Belcher failed to claim its interest in the case. This resulted in Aleksy Belcher not receiving the settlement contract and accompanying order for more than three months. When Aleksy Belcher belatedly claimed its interest in the case, it was recorded in CompFile the same day and the firm was added to the list of attorneys of record. The Commission finds Aleksy Belcher's petition for review was not timely filed. See *Alvarado v. Industrial Comm'n*, 216 Ill. 2d 547 (2005); *Contreras v. Industrial Comm'n*, 306 Ill. App. 3d 1071 (1999). Further, the Commission agrees with the Arbitrator that there are no workers' compensation attorney fees for the Commission to adjudicate.

IT IS THEREFORE ORDERED BY THE COMMISSION that Aleksy Belcher's petition for review is dismissed.

No bond is required for removal of this cause to the Circuit Court.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 8, 2023

SJM/sk
o-12/14/2022
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC008096
Case Name	James Bradley v. State of Illinois - Illinois State Police
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0062
Number of Pages of Decision	12
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 2/8/2023

/s/ Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
JEFFERSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAMES BRADLEY,

Petitioner,

vs. NO: 16 WC 08096

STATE OF ILLINOIS,
ILLINOIS STATE POLICE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses-including prospective medical, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 13, 2021, is hereby affirmed and adopted.

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

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

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

February 8, 2023

d-1/17/23
KAD/jsf

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

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

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC008096
Case Name	BRADLEY, JAMES v. ILLINOIS STATE POLICE
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 12/13/2021

THE INTEREST RATE FOR THE WEEK OF DECEMBER 7, 2021 0.10%

/s/ William Gallagher, Arbitrator
Signature

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

December 13, 2021

/s/ Michele Kowalski
Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

James Bradley
Employee/Petitioner

v.

Illinois State Police
Employer/Respondent

Case # 16 WC 08096

Consolidated cases: n/a

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Mt. Vernon, on October 13, 2021. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On February 24, 2016, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $98,916.00; the average weekly wage was $1,902.00.

On the date of accident, Petitioner was 45 years of age, single with 2 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00. The parties stipulated TTD benefits were paid in full.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit for amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $755.22 per week for 162.5 weeks because the injury sustained caused the 32 1/2% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

DECEMBER 13, 2021

William R. Gallagher, Arbitrator
ICArbDec p. 2

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment by Respondent on February 24, 2016. According to the Application, Petitioner sustained injuries to "Bilateral knees, Neck, Back, Left foot, Head, Body as a whole" as a result of a "Motor Vehicle Accident hit while in the vehicle on side of road" (Arbitrator's Exhibit 2). Petitioner and Respondent stipulated Petitioner sustained a work-related accident and temporary total disability benefits had been paid in full. Respondent disputed liability for various medical bills on the basis of causal relationship, the only other issue was the nature and extent of disability (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a State Trooper. On February 24, 2016, Petitioner responded to a call which involved a multiple vehicular accident on I57. When Petitioner arrived at the scene, he observed an abandoned vehicle on the inside shoulder of the highway. Petitioner was seated in his cruiser completing paperwork when his vehicle was struck from behind by another vehicle traveling at a high rate of speed. Photographs of Petitioner's cruiser were received into evidence at trial and revealed a significant amount of damage to the vehicle (Petitioner's Exhibit 25).

Petitioner initially sought treatment at the ER of Good Samaritan Hospital. At that time, Petitioner complained primarily of mid back pain. He also advised his chest hit the steering wheel at the time of impact. CT scans of Petitioner's chest were obtained which were normal. Petitioner was diagnosed with a chest contusion; however, there were several differential diagnoses including a cervical strain and head injury (Petitioner's Exhibit 3).

Petitioner was subsequently treated by Dr. Tara Robbins, who evaluated him on February 29, 2016. At that time, Petitioner complained primarily of neck and low back pain. Dr. Robbins recommended Petitioner undergo x-rays of the cervical, thoracic and lumbar spines. She diagnosed Petitioner with neck and low back pain and recommended alternative applications of cold/heat, massage and home exercises to be followed by physical therapy (Petitioner's Exhibit 4).

Dr. Robbins ordered a CT scan of Petitioner's cervical spine which was performed on March 2, 2016. According to the radiologist, the CT scan revealed a disc bulge at C6-C7 and osteophyte formations at C5-C6 and C6-C7 (Petitioner's Exhibit 5).

Dr. Robbins saw Petitioner on March 4, 2016. At that time, Petitioner continued to complain of neck and low back pain as well as thoracic pain. Dr. Robbins reviewed the CT scan and opined it revealed degenerative changes. She recommended Petitioner begin physical therapy, but declined to provide any further treatment to Petitioner because he had sustained a work-related injury (Petitioner's Exhibit 4).

Petitioner then sought treatment at Shawnee Health Center when he was evaluated by Amanda Reynolds, a Nurse Practitioner, on March 16, 2016. At that time, Petitioner complained primarily of cervical and thoracic spine pain. NP Reynolds agreed Petitioner should receive physical therapy. She subsequently ordered MRI scans of Petitioner's cervical, thoracic and lumbar spines (Petitioner's Exhibit 6).

The MRIs were performed on May 26, 2016. According to the radiologist, the MRI of Petitioner's cervical spine revealed a paracentral disc protrusion at C6-C7 and disc bulges/foraminal stenosis at C4-C5 and C5-C6. According to the radiologist, the MRI of Petitioner's thoracic spine revealed facet hypertrophy at

multiple levels, but was otherwise normal. According to the radiologist, the MRI of Petitioner's lumbar spine revealed an anterolisthesis, a central disc protrusion and foraminal stenosis at L5-S1, a foraminal disc protrusion at L3-L4 and foraminal stenosis at L4-L5 (Petitioner's Exhibit 10).

NP Reynolds referred Petitioner to Dr. Joel Ray, a neurosurgeon, who evaluated Petitioner on June 29, 2016. Dr. Ray examined Petitioner and reviewed the MRI scans of May 26, 2016. He noted Petitioner had received an extensive amount of physical therapy, but it had not significantly helped him, and Petitioner had not been able to return to work. His interpretation of the MRI scans was consistent with that of the radiologist. He recommended referral to Dr. Heidi Hunter to evaluate post-concussive syndrome, Dr. Steve Jordan for neuropsychological testing, and Kevin Griggs, for physical therapy (Petitioner's Exhibit 9).

Petitioner continued to be treated by NP Reynolds. She continued to treat Petitioner conservatively with medication and physical therapy (Petitioner's Exhibit 6).

On October 4, 2016, Petitioner was seen by Dr. Carmen Keith, for neck pain. Dr. Keith ordered an MRI of Petitioner's cervical spine which was performed that same day. He opined it revealed a paracentral disc protrusion at C6-C7, foraminal narrowing at C5-C6 and spondylosis at C4-C5, C5-C6 and C6-C7. Dr. Keith administered a trigger point injection in the cervical/trapezius area on October 24, 2016 (Petitioner's Exhibit 11).

Petitioner was again seen by Dr. Ray on October 28, 2016. He noted Petitioner had been seen and treated by various other physicians. However, he also noted he did not have a neurosurgical diagnosis of Petitioner's condition, but that Petitioner's neck pain was worsening. Dr. Ray could not predict when Petitioner would be able to return to work at full duty (Petitioner's Exhibit 9).

Because of Petitioner's continued post-traumatic headaches, he was seen by Dr. Shannon Park on December 14, 2016. In addition to the headaches, Dr. Park diagnosed Petitioner with severe anxiety and depression (Petitioner's Exhibit 12).

Petitioner was periodically seen by Dr. Ray in 2017/2018, and last saw Dr. Ray on May 28, 2018. At that time, Dr. Ray opined as to multiple diagnoses including neck pain, post-traumatic headaches, post-concussion syndrome, low and thoracic back pain, major depressive disorder and a number of others. Further, he opined Petitioner was at MMI, but would not be able to return to work to his former occupation (Petitioner's Exhibit 9).

NP Reynolds referred Petitioner to Dr. Matthew Gornet, an orthopedic surgeon, who evaluated Petitioner on June 7, 2018. When seen by Dr. Gornet, Petitioner complained primarily of neck and bilateral shoulder/trapezius pain, low back pain going into the buttocks, hips and legs. Dr. Gornet examined Petitioner, obtained x-rays of the cervical and lumbar spine and reviewed the MRIs of the cervical and lumbar spine that were performed on May 27, 2016. He opined the MRI of the cervical spine revealed disc injuries at C5-C6 and C6-C7. He opined the MRI of the lumbar spine revealed a disc injury at L5-S1. Dr. Gornet noted he would initially treat the cervical spine and ordered a new MRI scan (Petitioner's Exhibit 15).

The MRI of Petitioner's cervical spine was performed on June 7, 2018. According to the radiologist, it revealed disc protrusions at C4-C5 and C5-C6. When Dr. Gornet reviewed the MRI, he opined it revealed disc herniations at C4-C5, C5-C6 and C6-C7 (Petitioner's Exhibits 15 and 16).

Dr. Gornet referred Petitioner to Dr. Kaylea Boutwell, a pain management physician, who saw Petitioner on June 27, 2018. Dr. Boutwell examined Petitioner and reviewed the MRI of Petitioner's cervical spine of June 7, 2018. Her interpretation of the MRI was consistent with that of Dr. Gornet. Dr. Boutwell noted Petitioner was still being treated by NP Reynolds and continued to take narcotic medication. She directed Petitioner to gradually wean off the use of narcotics (Petitioner's Exhibit 17).

Dr. Boutwell again saw Petitioner on July 25, 2018, and August 30, 2018. When she saw Petitioner on August 30, 2018, she administered an epidural steroid injection on the right at C6-C7 (Petitioner's Exhibit 17).

At the direction of Respondent, Petitioner was examined by Dr. Michael Chabot, an orthopedic surgeon, on September 7, 2018. In connection with his examination of Petitioner, Dr. Chabot reviewed medical records and diagnostic studies provided to him by Respondent. Because of the extent of the treatment Petitioner had previously received, Dr. Chabot's summary of the treatment records was approximately 16 pages of his 22 page report. The diagnostic studies reviewed by Dr. Chabot included the MRI scans of May 27, 2016 (Respondent's Exhibit 2).

When seen by Dr. Chabot, Petitioner continued to complain of severe aching pain in the neck and back and an inability to perform any activity very long because it would increase his symptoms. Petitioner also advised he had not been able to return to work. Dr. Chabot opined his examination of Petitioner was "devoid of significant objective physical findings" and opined the MRI of Petitioner's cervical spine did not reveal evidence of an acute injury. He also opined Petitioner had "strong underlying psychosocial issues" which played a role in Petitioner's subjective complaints. He further opined Petitioner was at MMI and could return to work, but with a 50 pound lifting restriction (Respondent's Exhibit 2).

Dr. Gornet saw Petitioner on September 8, 2018. At that time, Petitioner continued to complain of significant neck pain/symptoms. Petitioner advised Dr. Boutwell had performed an injection on August 30, 2018, but it only provided temporary relief. Dr. Gornet recommended Petitioner undergo cervical disc replacement surgery at C3-C4, C5-C6 and C6-C7 (Petitioner's Exhibit 15).

Dr. Gornet subsequently saw Petitioner on December 6, 2018. At that time, he reviewed Dr. Chabot's report of September 7, 2018. Dr. Gornet disagreed with Dr. Chabot's interpretation of the MRI of Petitioner's cervical spine and he reaffirmed his opinion it revealed obvious disc herniations, in particular, at C5-C6 and C6-C7. Dr. Gornet also noted Petitioner had no prior significant problems with his back or neck and was working full duty without restrictions up until the accident. Dr. Gornet opined there was no other "plausible explanation" for Petitioner's current condition, other than the accident (Petitioner's Exhibit 15).

Dr. Chabot was provided with additional diagnostic studies including the MRI of Petitioner's cervical spine of June 7, 2018, and he prepared a supplemental report of December 14, 2018. He disagreed with the interpretation of the radiologist and opined it was "grossly overstated" and, when compared to the prior MRI of 2016, there were no significant changes (Respondent's Exhibit 3; Deposition Exhibit 3).

When Dr. Gornet saw Petitioner on February 14, 2019, he reaffirmed his opinion that he would treat Petitioner's cervical spine first and put the low back on hold. He opined Petitioner's best option would be for him to treat the cervical spine at C5-C6 and C6-C7 (Petitioner's Exhibit 15).

Dr. Gornet performed surgery on Petitioner's cervical spine on March 27, 2019. The procedure consisted of disc replacements at C5-C6 and C6-C7 (Petitioner's Exhibit 20).

Dr. Gornet subsequently performed surgery on Petitioner's low back on November 5, 2019. The procedure consisted of an anterior decompression and disc replacement at L5-S1 (Petitioner's Exhibit 20).

Following surgery, Petitioner continued to be treated by Dr. Gornet. When Petitioner was evaluated on February 17, 2020, he had progressed to the point to where Dr. Gornet ordered physical therapy and new MRI scans (Petitioner's Exhibit 15).

Dr. Gornet last saw Petitioner on October 19, 2020. At that time, Dr. Gornet ordered six more weeks of physical therapy and, upon Petitioner’s completion of same, he found Petitioner to be at MMI and released Petitioner to return to work without restrictions (Petitioner's Exhibit 15).

Dr. Gornet was deposed on February 7, 2019, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Gornet's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. He testified Petitioner had axial neck pain without neurological deficit, but the MRI scans revealed disc injuries at C5-C6 and C6-C7. He also testified the MRIs revealed a disc injury at L5-S1. In regard to causality, Dr. Gornet said there was a causal relationship between the accident and the condition and he diagnosed in the cervical and lumbar spine. This opinion was based, in part, on the fact Petitioner had worked as a State Trooper for 20 years without any prior significant symptoms (Petitioner's Exhibit 23; pp 11-19).

Dr. Chabot was deposed on August 19, 2020, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Chabot's testimony was consistent with his medical reports and he reaffirmed the opinions contained therein. Primarily, Dr. Chabot testified regarding his interpretation of the MRIs that had been provided to him and he opined they did not reveal any evidence of neural compression or disk herniations. Dr. Chabot diagnosed Petitioner with strain injuries to the neck, thoracic and lumbar spine. He also testified Petitioner had underlying psychosocial issues which played a role in his subjective complaints and perceived disability. He testified Petitioner's "…prognosis is not favorable to return to his prior work duties." (Respondent's Exhibit 3; pp 12-13, 18-19).

On cross-examination, Dr. Chabot agreed Petitioner was subject to a 50 pound lifting restriction. Further, he conceded this restriction was related to the accident (Respondent's Exhibit 3; pp 22-23).

At trial, Petitioner testified he had no prior significant neck or low back symptoms. Prior to the cervical disc replacement surgery, Petitioner said he experienced extreme neck and shoulder pain with tingling that went into both of his arms as well as persistent headaches. Prior to the lumbar disc replacement surgery, Petitioner experienced significant low back pain with tingling going into his legs. Following the surgeries and physical therapy, Petitioner's neck and low back conditions improved significantly. Petitioner said he was happy with the care he had received from Dr. Gornet.

Pursuant to Dr. Gornet's release for Petitioner to return to work, Petitioner returned to work for Respondent as a State Trooper on December 1, 2020. Petitioner has continued to work in that job up to and including the present. Petitioner also testified the 50 pound lifting restriction imposed by Dr. Chabot would not be compatible with his job duties.

Petitioner testified he still experiences some neck stiffness especially when riding in a car for a period of time. He also continues to experience stiffness in the low back, as well as occasional spasms, mostly on the left side. Petitioner said his current symptoms are dependent upon his level of activity. However, Petitioner agreed he got a good result from the surgeries.

Conclusions of Law

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner's current condition of ill-being is causally related to the accident of February 24, 2016.

In support of this conclusion the Arbitrator notes the following:

There was no dispute Petitioner sustained a work-related accident on February 24, 2016, when the vehicle he was seated in was struck in the rear by another vehicle traveling at a high rate of speed.

Petitioner's testimony he had no significant neck or low back symptoms prior to the accident of February 24, 2016, was unrebutted.

Prior to being treated by Dr. Gornet, Petitioner received an extensive amount of conservative treatment with little or no relief of his symptoms.

Petitioner underwent MRI scans of both the cervical and lumbar spine which, according to Dr. Gornet, revealed significant disc pathology in both the cervical and lumbar spine.

While Respondent's Section 12 examiner, Dr. Chabot, opined the diagnostic studies did not reveal any significant disc pathology, he attributed Petitioner's ongoing complaints to "underlying psychosocial issues," but still imposed a 50 pound lifting restriction on Petitioner which would not have allowed him to return to work as a State Trooper. Dr. Chabot also opined Petitioner's prognosis was not favorable for his returning to work to his prior work duties.

Subsequent to the cervical and lumbar disc replacement surgeries performed by Dr. Gornet, Petitioner was able to return to work to his regular job as a State Trooper.

Based on the preceding, the Arbitrator finds the opinion of Dr. Gornet in regard to causality to be more persuasive than that of Dr. Chabot.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

Based upon the Arbitrator's conclusion of law in disputed issue (F), the Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 32 1/2% loss of use of the person as a whole.

In support of this conclusion the Arbitrator notes the following:

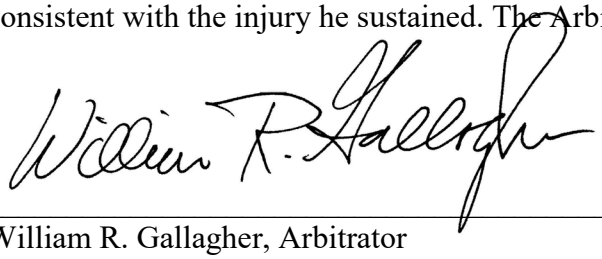
Neither Petitioner nor Respondent tendered an AMA impairment rating. The Arbitrator gives this factor no weight.

Petitioner was employed as a State Trooper and was able to return to work to that job. While he is able to perform all of his job duties, he continues to have cervical and lumbar symptoms related to his level of activity. The Arbitrator gives this factor moderate weight.

Petitioner was 45 years old at the time of the accident and 50 years old at the time of trial. Petitioner will have to live with the effects of the injury for the remainder of his working and natural life. The Arbitrator gives this factor moderate weight.

There was no evidence the injury had any effect on Petitioner's future earning capacity. The Arbitrator gives this factor moderate weight.

As a result of the accident, Petitioner sustained multiple injuries, the most significant of which were to the cervical and lumbar spine. Cervical disc replacement surgery was performed at C5-C6 and C6-C7 and lumbar disc replacement surgery was performed at L5-S1. Petitioner had a good surgical result and was able to return to work to his regular job as a State Trooper; however, Petitioner continues to have symptoms consistent with the injury he sustained. The Arbitrator gives this factor significant weight.



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC006864
Case Name	Shawn Bradbury v. Shapiro Center/State of Illinois
Consolidated Cases	18WC015162;
Proceeding Type	19(b-1) Petition Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0063
Number of Pages of Decision	3
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Lindsey Strom, Neal Strom
Respondent Attorney	Thomas Owen

DATE FILED: 2/8/2023

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SHAWN BRADBURY,

Petitioner,

vs. NO: 16 WC 6864

SHAPIRO CENTER/STATE OF ILLINOIS,

Respondent.

DECISION AND OPINION ON REVIEW

Petition for Review under §19(b-1) having been filed by both the Petitioner and Respondent herein and notice given to all parties, the Commission reverses the Arbitrator's finding that jurisdiction was proper, vacates the Decision of the Arbitrator and Remands this matter to the Arbitrator.

In order for the Commission to have jurisdiction, the parameters set forth in Section 820 ILCS 310/19(b-1) require strict compliance. While circuit courts are courts of general jurisdiction and enjoy a presumption of subject matter jurisdiction, such a presumption is not available in workers' compensation proceedings, where the court exercises special statutory jurisdiction, and strict compliance with the statute is required to vest the court with subject matter jurisdiction. *Arrington v. Industrial Comm'n*, 96 Ill.2d 505 (1983). Subject matter jurisdiction either exists or it does not, and it cannot be waived, stipulated to, or consented to by the parties. *Jones v. Industrial Comm'n*, 335 Ill.App.3d 340, 343 (2002).

The Act states, in pertinent part, as follows:

> 19(b-1) If the employee is not receiving *medical, surgical or hospital services as provided in paragraph (a) of Section 8 or compensation as provided in paragraph (b) of Section 8*, the employee, in accordance with Commission Rules, may file a petition for an emergency hearing by an Arbitrator on the issue of whether or not he is entitled to receive payment of such compensation or services as provided therein.

Emphasis added.

When this matter proceeded to hearing on September 15, 2022, the parties submitted a Request for Hearing Form. Line item #7 on the Request for Hearing Form reads: "Petitioner claims Respondent is liable for the following unpaid medical bills: *Attach a list if necessary.*" However, a list of medical bills was not attached to the form, and in the Arbitrator's Decision, the Arbitrator specifically stated "as no specific unpaid medical expenses were submitted into evidence, the Arbitrator makes no award of medical expenses." The Commission finds that Petitioner did not file the 19(b-1) Petition on the grounds that the Petitioner failed to receive medical services pursuant to Section 8(a) of the Act.

Additionally, the Petitioner did not check the box indicating that total temporary disability benefits were in dispute on the Request for Hearing form. Petitioner had been declared at maximum medical improvement by his treating physicians in 2018, and he had continued to receive indemnity payments for total temporary disability benefits through 2021. The Commission finds that Petitioner did not file the 19(b-1) Petition on the grounds that Petitioner failed to receive temporary total disability benefits pursuant to Section 8(b) of the Act.

As no premise existed on which Petitioner could properly file a Petition for Emergency Hearing pursuant to Section 820 ILCS 310/19(b-1), the Commission lacks jurisdiction. Therefore, the Commission reverses the Arbitrator's finding that jurisdiction was proper. Accordingly, the Commission vacates the Decision of the Arbitrator and remands this matter to the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's finding that jurisdiction was proper be reversed, that the Decision of the Arbitrator is vacated and that this matter is Remanded to the Arbitrator.

February 8, 2023

/s/ *Maria E. Portela*

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

MEP/dmm
O: 013123
49

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC015162
Case Name	Shawn Bradbury v. Shapiro Center / State of Illinois
Consolidated Cases	16WC006864;
Proceeding Type	19(b-1) Petition Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0064
Number of Pages of Decision	3
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Lindsey Strom, Neal Strom
Respondent Attorney	Thomas Owen

DATE FILED: 2/8/2023

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SHAWN BRADBURY,

Petitioner,

vs. NO: 18 WC 15162

SHAPIRO CENTER/STATE OF ILLINOIS,

Respondent.

DECISION AND OPINION ON REVIEW

Petition for Review under §19(b-1) having been filed by both the Petitioner and Respondent herein and notice given to all parties, the Commission reverses the Arbitrator's finding that jurisdiction was proper, vacates the Decision of the Arbitrator and Remands this matter to the Arbitrator.

In order for the Commission to have jurisdiction, the parameters set forth in Section 820 ILCS 310/19(b-1) require strict compliance. While circuit courts are courts of general jurisdiction and enjoy a presumption of subject matter jurisdiction, such a presumption is not available in workers' compensation proceedings, where the court exercises special statutory jurisdiction, and strict compliance with the statute is required to vest the court with subject matter jurisdiction. *Arrington v. Industrial Comm'n*, 96 Ill.2d 505 (1983). Subject matter jurisdiction either exists or it does not, and it cannot be waived, stipulated to, or consented to by the parties. *Jones v. Industrial Comm'n*, 335 Ill.App.3d 340, 343 (2002).

Although this matter was consolidated with case 16 WC 6864 and a Petition for Immediate Hearing was filed in that matter pursuant to 820 ILCS 310/19(b-1), no Petition for Immediate Hearing pursuant to 820 ILCS 310/19(b-1) was filed in the instant case.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator finding that jurisdiction was proper be reversed, that the Decision of the Arbitrator is vacated and that this matter is Remanded to the Arbitrator.

February 8, 2023

MEP/dmm
O: 013123
49

/s/ *Maria E. Portela*

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC007244
Case Name	Reyna Mota v. Anthony Marano Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0065
Number of Pages of Decision	20
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Crystal Figueroa
Respondent Attorney	James Holecek

DATE FILED: 2/8/2023

/s/ Kathryn Doerries, Commissioner

Signature

23IWCC0065

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

REYNA MOTA,

Petitioner,

vs. NO: 21 WC 007244

ANTHONY MARANO COMPANY,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms the Arbitrator's Statement of Facts except to correct the Arbitrator's recital of two physician scrivener's errors which is necessary to both correct the record and to avoid any confusion regarding the Petitioner's injured body parts. To be clear, Petitioner's injuries and related treatment involve solely her left hand and left wrist despite the right-sided references in the medical records (PX1, T. 239, 274) and in Petitioner's testimony. (T. 13) Petitioner testified consistent with the corrections for the office visit with Dr. Speziale on September 8, 2020, (T. 20) however, she agreed with her attorney when he asked about the left shoulder pain radiating to her right consistent with the medical records of May 21, 2020. (T. 13) The Commission notes that all other references in the medical reflect left sided symptoms, therefore, the Commission strikes the first sentence on page two, paragraph two of the Arbitrator's Decision, and substitutes the following sentence: "At Petitioner's follow up with Dr. Ayala on May 21, 2020, she described the left shoulder pain as aching in nature and the pain radiated to the left elbow and left hand" The Commission also strikes the third sentence on page three, paragraph two of the Arbitrator's Decision, and substitutes the following sentence: "At that visit, Dr. Speziale

injected 1 cc of Kenalog into Petitioner's left long finger due to the pain and swelling she was experiencing."

With regard to the Conclusions of Law, the Commission affirms the Arbitrator's causal connection conclusions with regard to Petitioner's left hand and left wrist under Section (F). However, the Commission views the evidence regarding the Petitioner's left shoulder, left hip, cervical and lumbar spine differently than the Arbitrator. On May 14, 2020, Petitioner was initially diagnosed with a sprain of the left wrist, sprain of the left shoulder and contusion of the left hand and hip and was referred to physical therapy. (PX1, T. 297) On May 21, 2020, the therapist notes that Petitioner reported her back/hip was much butter but she had pain down the arm and in the palm. (PX1, T. 282) She also saw Dr. Ayala that same day where in the history of present illness she noted her symptoms were improving with therapy but she had shoulder pain radiating to her elbow and hand. (PX1, T. 274) On May 28, 2020, the history of present illness states that Petitioner reported increased pain left beginning in her cervical neck region traveling down her left upper extremity ending at digits #3 and #4. (PX1, T. 258) Dr. Ayala referred Petitioner to neurosurgery. (PX1, T. 256)

Dr. Salehi saw Petitioner on June 11, 2020 and ordered a cervical MRI to evaluate neural compression and an EMG/NCV of the left upper extremity to evaluate for any peripheral neuropathy or carpal tunnel injury. (PX1, T. 249) Dr. Salehi re-evaluated Petitioner on July 9, 2020 and reviewed the EMG/NCV noting mild left median neuropathy and no cervical radiculopathy. Dr. Salehi referred Petitioner to Dr. Speziale, the hand specialist, for an evaluation of her symptoms awaiting results of a cervical MRI. (PX1, T. 243) On August 6, 2020, Dr. Salehi reviewed the MRI imaging of Petitioner's cervical spine. Dr. Salehi's Plan section states as follows:

> Ms. Mota was reassured that her MRI imaging of the cervical spine reveals no significant pathology and again reassured that her EMG does not demonstrate any significant abnormalities. Hence, she was advised to proceed with her appointment with Dr. Speziale as planned. She was told she does not need to see us in follow up. She may work at her current restrictions. Any future restrictions will be per Dr. Speziale. (PX1, T. 241)

At Petitioner's next visit with Dr. Ayala, the history of present illness states:

> "The patient is a 34 year old female who slipped and fell on her left hand. The accident happened three months ago period since then, she complains of numbness and tingling in the hand. Initially, she also complained of shoulder and neck pain and low back pain. She has had MRI's and has been cleared from those other injuries. She has had an EMG, which shows mild carpal tunnel syndrome."(PX1, T. 240)

Petitioner was next examined by Dr. Ryan Unger on September 21, 2020, for thoracic outlet syndrome (TOS). Dr. Unger reviewed her EMG and confirmed there were no possible findings of TOS. Dr. Unger also reviewed her cervical MRI and opined it did not reveal any significant foraminal or central stenosis which may explain 4th digit symptoms. Dr. Unger stated

that there is no diagnostic evidence thus far to explain her 4th and 5th digit numbness, however, he ordered an MRI of the thoracic outlet to rule out any potential for TOS. (PX1, T. 238) On October 19, 2020, Dr. Unger reviewed her thoracic MRI results and opined there was no evidence of TOS. He noted that her symptoms had improved and she was getting less exacerbation of her symptoms with certain positioning at the left shoulder and all the diagnostic testing so far has been negative for any sign of thoracic outlet syndrome. He referred her back to Dr. Speziale. (PX1, T. 234)

The Commission notes that the cervical and thoracic diagnostics appear to have been ordered to rule out differential diagnoses. Therefore, the Commission finds that the Petitioner's left shoulder, left hip, cervical and lumbar spine conditions, if any, resolved as October 20, 2020, and any condition of ill-being in those referenced body parts are not causally related to Petitioner's work accident. Therefore, the Commission modifies the last sentence in the second paragraph on page eight by adding the words "in her left hand and left wrist" after the word "symptoms" so the sentence now reads as follows: "The Arbitrator adopts the opinions of her treating physicians and the initial opinion of Dr. Atluri and finds Petitioner's testimony regarding her continuation of symptoms in her left hand and left wrist forthright."

The Commission further modifies the last paragraph in Section (F) on page eight, by striking the existing sentence and substituting the following two sentences: "Based upon the evidence presented at trial, including medical opinions, and witness testimony, the Arbitrator finds that Petitioner established a causal connection between the work-related accident of May 12, 2020, and her current condition of ill-being with regard to the left hand and left wrist. Petitioner's left shoulder, left hip, cervical and lumbar spine conditions are not causally related to the work accident."

With respect to medical expenses, the Commission modifies Section (J) by striking the third sentence in the first paragraph and substituting the following: "Based upon the Arbitrator's finding with respect to casual connection, review of the medical records and Petitioner's testimony regarding her medical treatment, reasonable and necessary treatment for the left wrist and left hand through December 6, 2021, would be casually related less charges for durable medical equipment (DME) and chiropractor services."

The Petitioner submitted several exhibits labeled "medical records and bills" and a separate exhibit labeled "unpaid medical bills" with a list on the cover of Exhibit ten and some supporting documents within. However, the Commission notes that the unpaid medical bills listed for 87th Street Rehab in Petitioner's Exhibit 10 has an itemized list of charges but no explanation of benefits with the submission. Chiropractor Aldin Carrion is listed as the provider at 87th St Rehab Clinic with another therapist listed as Khaled Rashad. (T. 645) Services are listed between May 19, 2021 and August 9, 2021 totaling $14,590.00 although the cover includes the amount already paid for the FCE. Further, in trying to reconcile those bills with Petitioner's Exhibit 6, the 87th Street Rehab records and bills, the Commission notes that there are narrative reports documenting Petitioner's therapy progression authored by chiropractor Carrion on June 14, 2021, July 14, 2021, and August 9, 2021, wherein it is noted that "DME was ordered for complementary therapy." (T. 574-584) The Commission further notes that Petitioner's Exhibit nine, Summerlin Medical records and bills include services that are also directly related to 87th Street Rehab DME therapy. For instance, one

page in the 87th Street Rehab record notes that Petitioner had the second surgery May 3, 2021, that her first visit was May 19, 2021 and "DME" and "Infrared" was scheduled three times per week as of May 28, 2021. (T. 549) Summerlin Medical records shows a total bill of $909.03 for lead wires, electrodes and DME set up. (T. 620-626)

Further, chiropractor Gregory Thurston performed an EMG/NCV in October 2021 as evidenced by the lien addressed to the Petitioner's attorney. (T. 589-590) The 87th Street Rehab letterhead is on the EMG/NCV report dated October 25, 2021, and the Physician is listed as chiropractor Gregory Thurston. (T. 601)

Petitioner's Exhibit 7 contains medical records and bills from American Diagnostic MRI. The medical bill contained therein confirms a left hand x-ray performed on October 26, 2021, with a balance of $250.00. The Explanation of Benefits lists chiropractor John Aikenhead as the signature of the physician and the x-ray report was signed by chiropractor Aikenhead. (T. 606-609)

The Commission finds that Respondent is not liable for any charges for durable medical equipment or chiropractor charges based upon Dr. Atluri's opinions that those services and related charges are not reasonable or medically necessary. Therefore, the Commission strikes the following provider bills from the list in paragraph two under Section (J): American Diagnostic MRI: $250, 87th Street Rehab Clinic: $16,161.18. The Commission further adds a sentence at the end of paragraph two in section (J) that reads as follows: "The Commission finds that the Petitioner's medical treatment was reasonable and appropriate through December 6, 2021, with the exception of chiropractic treatment and the durable medical equipment which are not typical treatment modalities following a carpal tunnel release and therefore are not medically necessary."

The Commission further strikes the last paragraph in Section (J) on page eight and substitutes the following: "Based on the record as a whole and the Arbitrator's finding with respect to casual connection, the Arbitrator finds Respondent shall pay reasonable and necessary services which total $40,871.55 as detailed herein, less any chiropractic and durable medical equipment charges and subject to fee schedule or contract negotiations as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive a credit for medical bills for which payments have already been made."

The Commission affirms the Arbitrator's Conclusions of Law regarding Section (K), Petitioner's award of temporary total disability benefits.

With respect to the Arbitrator's Conclusions of Law in Section (L), the nature and extent of the injury, the Commission vacates the Arbitrator's award of 3% loss of use of the person as a whole, having found those conditions resolved without any evidence of permanent partial disability.

Next, the Commission notes that the Arbitrator's analysis refers consistently to Section 8.1(b) of the Act. The Commission substitutes "8.1b(b)" for all the Arbitrator's scrivener's error references to "8.1(b)". The Commission further modifies the third paragraph on pages nine and ten of the Arbitrator's Decision by striking the second and third sentences and substituting the

following: "The August 2021 FCE report is absent from the record. Although Dr. Sclamberg assigns a permanent left hand 10 pound lifting restriction, the Commission cannot verify the basis of the restriction or the job description used by the FCE provider. The Commission, therefore, assigns lesser weight to this factor."

The Commission also strikes the 5th sentence and the last sentence in Subsection (v) of Section 8.1b(b). The Commission adds the following as the last sentence in Subsection (v): "On December 6, 2021, Dr. Sclamberg reviewed the Section 12 Opinion report (IME) authored on October 29, 2021, by Dr. Atluri. Dr. Sclamberg agreed with all of Dr. Atluri's findings except disagreed with Dr. Atluri's opinion that Petitioner had no restrictions. (T. 413) Dr. Sclamberg's physical examination of Petitioner found no thenar or hypothenar atrophy, well-healed incisions, full range of motion and 5/5 abductor pollicis brevis testing. Sensation in Petitioner's first to fifth pads and first dorsal webspace is intact. Capillary refill is less than 2 seconds. He found palpable radial pulse. Distally, neurovascularly intact. He noted that overall, Petitioner was doing well and improved from preop. She was at MMI and he recommended the 10 pound restriction based on the FCE that is not in evidence. (T. 413) Therefore, the Commission gives some weight to this factor."

The Commission, therefore, strikes the last paragraph in Section (L) and substitutes the following: After considering the above five factors and the entirety of the evidence, the Arbitrator finds Petitioner sustained injuries that caused 30% loss of use of the left hand.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on April 11, 2022, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of 3% loss of use of the person is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $370.00 (minimum rate) per week commencing June 28, 2021, through September 13, 2021, and from October 18, 2021, through November 8, 2021, for a period of 14 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $370.00 per week for a period of 57 weeks because the injuries sustained on May 12, 2020, caused 30% loss of use of the left hand (out of 190 weeks, not 205 weeks, because condition of ill-being is carpal tunnel syndrome) as provided in Section 8(e) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay medical expenses listed in Petitioner's Exhibit 10 less the chiropractic and durable medical equipment charges and subject to fee schedule as provided in Sections 8(a) and 8.2 of the Act. As stipulated by the parties, Respondent shall be credited for any and all payments made towards the total amount of medical bills.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner

interest under §19(n) of the Act, if any.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $50,830.00. 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.

February 8, 2023
KAD/bsd
O121322
42

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

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC007244
Case Name	MOTA, REYNA v. ANTHONY MARANO COMPANY
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Nina Mariano, Arbitrator

Petitioner Attorney	Haris Huskic
Respondent Attorney	James Holecek

DATE FILED: 4/11/2022

/s/Nina Mariano; Arbitrator

Signature

INTEREST RATE WEEK OF APRIL 5, 2022 1.11%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Reyna Mota
Employee/Petitioner

v.

Anthony Marano Company
Employer/Respondent

Case #**21** WC **007244**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nina Mariano** Arbitrator of the Commission, in the city of **Chicago**, on **January 25, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **5/12/2020**, 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 $**27,768.00** the average weekly wage was $**534.00.**

On the date of accident, Petitioner was **34** years of age, ***Single*** with **4** dependent children.

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

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

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

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $370.00 per week for 71.25 weeks, because the injuries sustained on May 12, 2020, caused **37.5% loss of use of the left hand** (out of 190 weeks, not 205 weeks, because condition of ill-being is carpal tunnel syndrome) as provided in Section 8(e) of the Act.

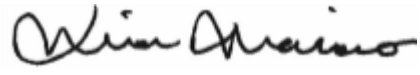
Respondent shall pay Petitioner permanent partial disability benefits of $370.00 per week for 15 weeks, because the injuries sustained on May 12, 2020, caused **3% loss of use of man as a whole** as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **$370.00** per week for **14** weeks, as provided in Section 8(a) of the Act.

Respondent shall pay to the Petitioner reasonable, related, and necessary medical services in the amount of **$40,871.55** as provided in Sections 8(a) and 8.2 of the Act. Payment shall be tendered directly to the Petitioner. As stipulated by the parties, Respondent shall be credited for any and all payments made towards the total amount of medical bills.

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

April 11, 2022

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

REYNA MOTA,	)	
	)	
PETITIONER,	)	
	)	
v.	)	
	)	CASE NO. 21 WC 007244
ANTHONY MARANO COMPANY,	)	
	)	
	)	
RESPONDENT.	)	

FINDINGS OF FACT

This matter proceeded to hearing on January 25, 2022 in Chicago, Illinois before Arbitrator Nina Mariano on Petitioner's Request for Hearing. Issues in dispute include causal connection, reasonable and necessary medical expenses, temporary total disability benefits, and nature and extent of the injury. Arbitrator's Exhibit "Ax" 1.

Reyna Mota (hereinafter referred to as "Petitioner") testified that she was employed by Anthony Marano Company (hereinafter referred to as "Respondent") on May 12, 2020. (T.8) Petitioner testified that her job duties included cutting, peeling and packing vegetables and fruits and sometimes she would be required to clean the work machines and tables using a hose. (T.8-9) Petitioner worked anywhere between 40-52 hours a week. (T.9)

On May 12, 2020, Petitioner was 34 years of age with four dependent children and had been employed by Respondent since early 2020. The parties stipulated to an average weekly wage of $534.00 and that Petitioner was single with four dependent children. (Ax. 1) Petitioner testified that on May 12, 2020, she suffered a work-related injury. (T.10) She was in the packing area and while walking to the other side of the department where they were packing celery, carrots and potatoes, she slipped and fell due to the floor being wet. *Id.* Petitioner testified that when she slipped, she fell on her left hand. *Id.* Immediately after the accident, she was sent to the floor manager to make an incident report and then sought treatment at Occupational Health Centers of Illinois. (T.10-11)

Before May 12, 2020, Petitioner did not have any complaints or seek medical treatment for either her left hand, left shoulder, back, or neck. (T.10-11) On May 12, 2020, Petitioner sought initial treatment at Occupational Health Centers of Illinois. (T.11) Petitioner complained of left wrist, left shoulder, left hand, and left hip pain. Petitioner underwent an x-ray of the left wrist at that visit. Petitioner was diagnosed with a contusion of the left hand, sprain of the left wrist, and sprain of

the left shoulder. She was also provided with an over-the counter splint and returned back to restricted light duty work.

On May 14, 2020, Petitioner followed up with Dr. Jose Ayala out of Occupational Health Centers of Illinois. (T.12) At that visit, Dr. Ayala diagnosed Petitioner with a sprain of the left wrist, sprain of the left shoulder and contusion of the left hand. Dr. Ayala released Petitioner back to work with restrictions and ordered physical therapy. Petitioner started therapy at Occupational Health Centers of Illinois on May 14, 2020. (T.13)

At Petitioner's follow up appointment with Dr. Ayala on May 21, 2020, she described the left shoulder pain as aching in nature and that the pain radiated to the right elbow and right hand. With regard to her left wrist and left hand, she described the pain as aching in nature and that the pain radiated to her left hand and left forearm. *Id*. Following the examination, Dr. Ayala ordered Petitioner to continue with therapy, wear a shoulder sling and to continue using Ibuprofen. (T.14)

Petitioner returned to see Dr. Ayala on May 28, 2020 and reported that the pain level had increased since the last clinical visit. (T.14) Petitioner reported pain beginning at the cervical spine region traveling down to the left upper extremity and ending at digits 3 and 4. Due to Petitioner's complaints, Dr. Ayala referred her to a neurosurgeon. (PX 1)

On June 11, 2020, Petitioner was seen by Dr. Sean Salehi out of Occupational Health Centers of Illinois and complained of pain in the left wrist and palm with tingling to all fingers of the left hand and with certain movements in the arm, tingling up to the neck causing left-sided neck pain. (T.15) Dr. Salehi diagnosed Petitioner with cervical radiculopathy versus carpal tunnel syndrome. He recommended that she undergo an MRI of the cervical spine to evaluate for any neural compression as well as an EMG of the left upper extremity to evaluate for any peripheral neuropathy or carpal tunnel injury. Petitioner was released back to work at that visit with restrictions of no lifting, pushing, and pulling more than 15 pounds, no use of the left arm, no overhead work, with the ability to alternate sitting and standing every 30-45 minutes. (PX 1)

On June 15, 2020, Petitioner presented to Concentra and underwent an EMG/Nerve Conduction Study with Dr. Ryan Unger. (T.16) The results of the study revealed evidence of mild left median sensory neuropathy with primarily demyelinating features. (PX 1) Petitioner returned to see Dr. Salehi on July 9, 2020 and complained of numbness in the left third through fifth digits and pain in the palm and occasionally having pain that came up to the wrist and radiating up to the forearm. At that visit, Dr. Salehi reviewed the EMG findings and recommended that Petitioner undergo a cervical spine MRI to evaluate for any foraminal stenosis and referred Petitioner to Dr. Nicholas Speziale for an evaluation of her left hand symptoms. (T.16-17)

On July 13, 2020, Petitioner underwent a cervical spine MRI. It revealed no significant foraminal stenosis at any level and demonstrated no significant abnormalities. (PX 1)

Petitioner followed up with Dr. Salehi on August 6, 2020 complaining of constant pain and numbness in her 4th and 5th digits and in the palm of the left hand and reported that any pressure into the palm caused pain. (T.17) Petitioner also reported feeling weak in her left hand and having difficulty holding something such as a gallon of milk and that she would have to help support it

with her other hand. Petitioner only complained of minor aching as it related to her neck. Dr. Salehi indicated that her cervical spine and EMG did not demonstrate any significant pathology and released Petitioner from his care and directed her to follow up with Dr. Speziale for further treatment. (PX 1)

On August 11, 2020, Petitioner presented to Dr. Speziale of Occupational Health Centers of Illinois upon referral from Dr. Salehi. (T.18) Petitioner complained of weakness in the left hand and of the sensation of swelling, especially in the long, ring, and little fingers and occasional pain in the palm. After reviewing Petitioner's EMG study and conducting a physical examination, Dr. Speziale diagnosed Petitioner with carpal tunnel syndrome of the left hand. He ordered Petitioner to wear a splint while she slept and worked and referred Petitioner to Dr. Ryan Unger as the EMG showed some evidence of an abnormal thoracic outlet exam. (T.19)

Petitioner followed up with Dr. Speziale on September 8, 2020 and complained of having pain in her palm and primarily having pain and swelling when she tried to flex the little, ring, and long fingers. (T.19) Dr. Speziale conducted a physical examination which revealed tenderness over the A1 pulley of the long and ring fingers. At that visit, Dr. Speziale injected 1 cc of Kenalog into Petitioner's right long finger due to the pain and swelling she was experiencing. (T.20)

On September 21, 2020, Petitioner presented to Dr. Unger out of Occupational Health centers of Illinois. At that visit, Petitioner complained of pain in her third, fourth and fifth digits, numbness and tingling primarily in the fourth and fifth digits. Petitioner also reported having some improvement with the Kenalog administered by Dr. Speziale, however she still had persistent numbness in her left hand. Dr. Unger ordered an MRI of the thoracic outlet to rule out any potential for thoracic outlet syndrome.

On September 29, 2020, at Petitioner's appointment with Dr. Speziale, Petitioner reported having less tenderness and pain in the long, ring, and little fingers. Dr. Speziale recommended that Petitioner undergo a thoracic spine MRI before pursuing any additional treatment for carpal tunnel.

On October 19, 2020, Dr. Unger noted that Petitioner was complaining of pain in her 3rd, 4th, and 5th digits and numbness and tingling primarily in the 4th and 5th digits in the left hand. Dr. Unger reviewed the thoracic spine MRI and found it to be unremarkable. He opined that based on her improved symptoms and negative diagnostic testing for signs of thoracic outline syndrome, he felt it highly unlikely to be a component in her case. Dr. Unger released Petitioner from his care and recommended that she follow up with Dr. Speziale to discuss further treatment.

Petitioner followed up with Dr. Speziale on October 20, 2020 and was still complaining of numbness and tingling in her left hand. (T.20-21) Based on the EMG findings of carpal tunnel syndrome, Dr. Speziale recommended that Petitioner proceed with a carpal tunnel release surgery, which she underwent on November 9, 2020 at Midwest Hand Surgery. The post-operative diagnosis was left carpal tunnel syndrome. (T.21)

Following surgery, Petitioner attended a follow up visit with Dr. Speziale on November 11, 2020 and complained of great pain in her left hand. (T.22) In response to Petitioner's complaints, Dr. Speziale prescribed Norco for her pain. On November 17, 2020, Petitioner followed up with Dr.

Speziale again and he released her back to work with no use of the left hand and prescribed therapy. *Id.*

On December 15, 2020, Dr. Speziale recorded that Petitioner was still experiencing stiffness in her left hand. Dr. Speziale recommended that Petitioner continue with therapy and return back to work with a limitation of no lifting over 1 pound with the left hand. (T.22-23)

Petitioner was seen by Dr. Speziale on January 19, 2021 and reported that since being back at work, she noticed swelling in the wrist and that it occasionally throbbed at the end of the day. (T.23) Based on Petitioner's complaints, Dr. Speziale prescribed Ibuprofen for the pain and returned Petitioner back to work with a 20 pound lifting restriction. (PX 1)

On February 16, 2021, at Petitioner's appointment with Dr. Speziale, Petitioner reported soreness and weakness in the left hand and noticed swelling at the end of the workday. Due to Petitioner's lack of strength in the left hand, Dr. Speziale prescribed additional therapy and released Petitioner back to work with no repetitive duties and no lifting more than 5 pounds.

Petitioner followed up with Dr. Speziale again on March 21, 2021 and reported that therapy was helping, however she still noticed swelling at the end of the work day. In response to Petitioner's complaints, Dr. Speziale advised Petitioner to continue with therapy, use a home TENS units and released Petitioner back to work with 10 pound restrictions. (PX 1)

On March 22, 2021, Petitioner was seen for a second opinion with Dr. Steven Sclamberg at Chicago Pain and Orthopedic Institute. (T.23) She testified that she was called by someone named Gina who worked for her attorney or doctor's office who gave her the information of where to go. (T.37-38) Petitioner complained of increased numbness and tingling as well as pain in her left hand at night and stiffness and reported that her hand felt weak. Dr. Sclamberg diagnosed Petitioner with left hand pain and numbness and ordered a left upper extremity EMG study. (T.24)

On April 13, 2021, Petitioner presented to Midwest Anesthesia and Pain Specialists and underwent an EMG study. *Id*. The EMG study revealed evidence of mild to moderate left median nerve mononeuropathy. (PX 3)

Petitioner followed up with Dr. Sclamberg on April 19, 2021 and her complaints of pain and numbness in the left hand remained unchanged. (T.25) After reviewing Petitioner's EMG study, Dr. Sclamberg diagnosed Petitioner with left carpal tunnel syndrome. Dr. Sclamberg recommended surgery in the form of a revision of the left endoscopic carpal tunnel release versus open carpal tunnel release surgery. (PX 3)

On May 3, 2021, Petitioner underwent an endoscopic carpal tunnel release for revision carpal tunnel release at Accredit Ambulatory Care. (T.25) The post-operative diagnosis was left recurrent carpal tunnel syndrome. Following surgery, Petitioner followed up with Dr. Sclamberg on May 17, 2021 and noted improvement of her pre-operative symptoms, however she still had tenderness over the volar aspect of the left wrist near the incision. Dr. Sclamberg ordered that Petitioner start physical therapy 3 times a week for the next 6 weeks and to remain off work. (T.26)

On May 19, 2021, Petitioner presented to 87th Street Rehab Clinic and started physical therapy. (T.27)

Petitioner was seen by Independent Medical Examiner Dr. Prasant Atluri of Hand to Shoulder Associates on May 28, 2021. (RX 1) Petitioner recounted history of the work accident and course of care and treatment to Dr. Atluri: she indicated that her initial left hand surgery helped and she was able to work in January 2021 with restrictions; her scar area started to get swollen and by the end of the workday her hand got cold and cramped; and, her Attorney referred her for a second opinion to see Dr. Sclamberg and he performed a revision surgery to her left hand. She reported that initially the surgery did not help, but postoperatively her symptoms are intermittent as opposed to constant. Petitioner reported ongoing complaints involving her left wrist. She reported pain at the base of her palm with swelling, weakness in her fingers and episodes of left hand numbness. She was not working at the time of the exam. (RX 1)

Dr. Atluri performed a physical examination and reviewed medical records. His diagnosis was left carpal tunnel syndrome status post endoscopic revision left carpal tunnel release. He opined that Petitioner has postsurgical changes including scarring and swelling at the base of her palm, which correlate with her reports of pain and swelling, but that some of her responses on exam do not match the objective findings. He noted that while Petitioner was worked up for cervical spine and thoracic outlet syndrome, there were no objective findings to support either diagnosis. (RX 1)

Dr. Atluri opined that Petitioner's treatment to date has been reasonable and necessary to address the injury of May 12, 2020 involving her left wrist and hand, including the revision surgery performed by Dr. Sclamberg as it improved her symptoms. He further opined that her development of symptomatic left carpal tunnel syndrome is causally related to the work injury. He was not presented with any medical records of prior treatment involving the left hand or wrist. (RX 1)

With regard to further treatment, Dr. Atluri recommended additional therapy. He opined that no further diagnostic testing, medication or durable medical equipment was medically necessary. With regard to work restrictions, he noted that he reviewed a job description which indicated that her job activities involved simple grasping and lifting up to 10 pounds and based on that, he opined that she was capable of performing her usual work activities without any specific restrictions. Dr. Atluri anticipated maximum medical improvement 4-5 months postoperatively. (RX 1)

On June 28, 2021, Dr. Sclamberg noted that Petitioner started experiencing inflammation in the left hand. Dr. Sclamberg prescribed additional therapy and Meloxicam and ordered that Petitioner remain off work. (T.27)

At Petitioner's follow up appointment with Dr. Sclamberg on August 9, 2021, Petitioner reported having episodes of pain in her left hand over the last several months. Dr. Sclamberg ordered that Petitioner proceed with a Functional Capacity Evaluation ("FCE") to assess Petitioner's functional abilities and also ordered Petitioner to remain off work. (T.28)

On August 17, 2021, Petitioner underwent the FCE at 87th Street Rehab Clinic. Based on a valid FCE, Petitioner demonstrated a light duty (10 pound lifting restriction) physical ability level. On

September 13, 2021, Dr. Sclamberg released Petitioner with permanent restrictions as per the FCE. *Id.*

Petitioner returned to see Dr. Sclamberg on October 18, 2021, complaining of ongoing pain in the left hand. (T.28) Petitioner reported being sent home from work due to unbearable pain. In response to Petitioner's complaints, Dr. Sclamberg ordered an EMG, x-ray and for Petitioner to remain off work.

On October 25, 2021, Petitioner underwent an EMG study at 87th Street Rehab Clinic. (T.29) The following day, October 26, 2021, Petitioner presented to American Diagnostic MRI and underwent an x-ray of her left hand. *Id*.

Petitioner was evaluated by IME Dr. Atluri for a second time on October 29, 2021. She reported left hand pain while undergoing therapy. After completing therapy, she returned to work in early October. She reported that her left hand is still painful and she is unable to hold things well, but she did return to her job as a packer. Dr. Atluri performed a physical exam and reviewed additional medical records. His impression was left hand pain and left carpal tunnel syndrome status post endoscopic revision left carpal tunnel release. He noted that she has ongoing complaints involving the left hand and wrist despite extensive treatment and multiple surgical procedures. Dr. Atluri opined that there are no objective findings to support her ongoing subjective complaints. While Petitioner reports persistent numbness and tingling which bothers her at night, her responses on exam and symptoms are not consistent with persistent carpal tunnel. He further opined that while Petitioner has objective findings of postsurgical scarring, her symptoms cannot be attributed to those findings. Dr. Atluri opined that her ongoing complaints are not attributable to the work injury of May 12, 2020. He further opined that no additional treatment is necessary and she can work without restrictions. MMI was achieved by September 2021. (RX 2).

On November 8, 2021, Petitioner followed up with Dr. Sclamberg. Dr. Sclamberg reviewed both the x-ray and EMG findings, which revealed mild carpal tunnel syndrome. In response to the findings, Dr. Sclamberg prescribed Meloxicam 15mg and released Petitioner back to work pursuant to the restrictions outlined in the FCE. (T.29-30)

On December 6, 2021, Dr. Sclamberg released Petitioner back to work with permanent restrictions pursuant to the FCE and placed Petitioner at maximum medical improvement. (T.30)

Petitioner testified to the effects that the work accident has had on her life. She returned to work for Respondent doing the same work but with a lifting restriction of 10 pounds. Before the accident, she could work in any area, but now there are certain areas she cannot work. She cannot work if lifting is required and if she touches frozen foods, her hand becomes swollen. (T. 30-32) She testified that where she works in the market cut portion of the building it is always cold because she deals with fresh produce, which they have to keep cold. (T.44) She has requested to move out of market cuts into a warmer area. (T. 45)

Petitioner testified that at home, she cannot clean, cook, wash or fold clothes and that the pain is constant. When she performs movements like folding a shirt, the pain gets worse. She takes over the counter pain medication which helps the pain for a few hours and then it returns. (T.30-32)

At the time of trial, Petitioner testified that her wrist and palm hurt and also the lower part of her fingers when she touches something. She also testified that if someone were to press into her wrist just below the end of the palm, that would cause a lot of pain. She also testified that she was wearing a glove because it was cold outside and the cold increases her pain. The glove was not prescribed to her by a physician (T.43-44)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009).

Arbitrator finds that Petitioner testified credibly regarding her accident, course and care of treatment and her symptoms. The medical records corroborate her testimony.

In support of the Arbitrator's decision with respect to (F), Is Petitioner's current condition of ill-being related to the injury, the Arbitrator finds as follows:

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim, O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980), including that there is some causal relationship between his employment and his injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989).

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

Petitioner was able to perform her regular duties for Respondent before the work accident of May 12, 2020. Petitioner testified that prior to May 12, 2020, she had no prior complaints or ever sought medical treatment for any of the involved body parts and no evidence was presented to the contrary at trial. The temporal relationship between the work accident and her symptoms are undeniable. The records presented at trial, including Dr. Prasant Atluri's Section 12 report, conclude that Petitioner required two left hand surgeries, including an endoscopic revision of her left carpal tunnel release due to her work-related accident. Petitioner was released with permanent restrictions based on a valid FCE report.

Arbitrator does not find Dr. Atluri's opinion with regard to the fact that after his initial evaluation, he opined that Petitioner's condition was causally related to the work accident, but after his second evaluation, opined that her condition was no longer related to the work accident, persuasive. Arbitrator adopts the opinions of her treating physicians and the initial opinion of Dr. Atluri and finds Petitioner's testimony regarding her continuation of symptoms forthright.

Based upon the evidence presented at trial, including medical opinions, and witness testimony, the Arbitrator finds that Petitioner established a causal connection between the work-related accident of May 12, 2020 and her current condition of ill-being with regard to the left hand, left wrist, left shoulder, left hip, cervical and lumbar spine.

In support of the Arbitrator's decision with respect to (J) Medical, the Arbitrator finds as follows:

Under Section 8(a) of the Act, a claimant is entitled to recover reasonable and necessary medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers' Compensation Commission*, 409 Ill. App. 3d 258, 267 (1st Dist., 2011). Based upon the Arbitrator's finding with respect to casual connection, review of the medical records and Petitioner's testimony regarding her medical treatment, reasonable and necessary treatment for the left wrist, left hand, left shoulder, left hip, cervical spine and lumbar spine through December 6, 2021 would be casually related.

Petitioner admitted into evidence multiple medical balances. (PX10) These bills have not been reduced pursuant to the Fee Schedule. Having reviewed the bill exhibits and the medical records submitted, the Arbitrator finds the following bills to be reasonable, necessary and casually connected: American Diagnostic MRI: $250.00, Chicago Pain & Orthopedic Institute: $4,040.00, Accredit Ambulatory Care: $9,582.22, Windy City Anesthesia: $292.00, MAPS: $845.17, Advanced RX Pharmacy: $9,700.98, and 87th Street Rehab Clinic: $16,161.18.

Based on the record as a whole and the Arbitrator's finding with respect to casual connection, the Arbitrator finds Respondent shall pay reasonable and necessary services which total $40,871.55 as detailed herein, and as provided in Sections 8(a) and 8.2 of the Act, directly to Petitioner. Respondent shall receive a credit for medical bills for which payments have already been made.

In support of the Arbitrator's decision with respect to "K", what temporary benefits are in dispute, the Arbitrator finds:

The Arbitrator finds that Petitioner is entitled to TTD benefits from June 28, 2021 through September 13, 2021 and from October 18, 2021 through November 8, 2021 representing 14 weeks.

Evidence admitted at trial, including Petitioner's testimony shows that Dr. Sclamberg ordered Petitioner to remain off work from June 28, 2021 through September 13, 2021 due to on-going complaints. During that period of time, Petitioner remained off work until she underwent the FCE and was released with permanent restrictions on September 13, 2021.

On October 18, 2021, Petitioner returned to see Dr. Sclamberg and reported that she was sent home from work because the pain in her hand became unbearable. At that visit, Dr. Sclamberg ordered an EMG, an x-ray and took Petitioner off work until the results of those studies came back.

Petitioner followed up with Dr. Sclamberg on November 8, 2021 and reviewed the EMG study which demonstrated mild carpal tunnel syndrome. Following that visit, Dr. Sclamberg returned Petitioner back to work per the permanent restrictions outlined in the FCE.

As Arbitrator found above that Petitioner's condition of ill-being is causally related to her work injury, Arbitrators awards TTD benefits in the amount of 14 weeks, during which time her treating physician ordered her off of work while treating for her work related injuries.

In support of the Arbitrator's decision with respect to "L", what is the nature and extent of the injury, the Arbitrator finds:

Pursuant to Section 8.1(b) of the Act, the following factors are to be considered in determining the level of permanent disability for accidental injuries occurring on or after September 1, 2011: (i) reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employees' future earning capacity; (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order. 820 ILCS 305/8.1b(b).

With regard to Subsection (i) of Section 8.1(b), Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. *See* Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. Therefore, Arbitrator gives no weight to this factor.

With regard to Subsection (ii) of Section 8.1(b), the occupation of the employee, the Arbitrator notes that at the time of the work-related accident, Petitioner worked for various departments/areas for Respondent, which included areas such as cutting, packing, and lifting. While Petitioner is still employed by Respondent, there are areas in which she cannot work

anymore due to her permanent restrictions as outlined in the FCE. Respondent did not present evidence to the contrary. Therefore, Arbitrator gives greater weight to this factor.

With regard to Subsection (iii) of Section 8.1(b), the age of the employee, Arbitrator notes that at the time of the accident, Petitioner was 34 years of age. At the time of the hearing, Petitioner was 36 years of age. Due to Petitioner's age, she will likely experience residuals of her injury for the duration of the many years of work life ahead of her. Therefore, Arbitrator gives greater weight to this factor.

With regard to Subsection (iv) of Section 8.1(b), Petitioner's future earning capacity, Arbitrator notes that the Petitioner testified that she is still employed by Respondent and there was no evidence presented indicating that she is making less than she was prior to the injury. However, Petitioner was released with permanent restrictions that would preclude her from a future job that requires lifting more than 10 pounds. Therefore, Arbitrator gives moderate weight to this factor.

With respect to Subsection (v) of Section 8.1(b), evidence of disability corroborated by treating medical records, Arbitrator considers that Petitioner completed a significant amount of medical care and treatment. On November 9, 2020, Petitioner underwent a left carpal tunnel release with a post-operative diagnosis of left carpal tunnel syndrome. On May 3, 2021, Petitioner underwent a left endoscopic carpal tunnel release revision with a post-operative diagnosis of a left recurrent carpal tunnel syndrome. Petitioner also underwent an extensive course of therapy. Due to the severity of Petitioner's injury, Petitioner was released with permanent restrictions as outlined in the valid FCE. She also testified to the pain she continues to experience in her daily life which was consistent with the complaints she reported to her medical providers. Section 12 Examiner, Dr. Atluri, also opined that Petitioner had post surgical scar tissue which contributed to her complaints. Therefore, Arbitrator gives greater weight to this factor.

After considering the above five factors and the entirety of the evidence, the Arbitrator finds Petitioner sustained 37.5% loss of use of her left hand and 3% loss of use of her person as a whole for the left shoulder, cervical, left hip and lumbar spine injuries. Permanent partial disability amount for the left hand is above the statutory 15% loss use cap due to multiple surgeries and permanent restrictions.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC002059
Case Name	David Dunham v. State of Illinois – Illinois Department of Corrections
Consolidated Cases	
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	23IWCC0066
Number of Pages of Decision	10
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Nick Schiro
Respondent Attorney	Christina Smith

DATE FILED: 2/14/2023

/s/ Thomas Tyrrell, Commissioner
Signature

DISSENT: /s/ Thomas Tyrrell, Commissioner
Signature

23IWCC0066

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

David Dunham,

Petitioner,

vs. NO: 15 WC 2059

State of Illinois / Illinois Dept. of Corrections,

Respondent.

DECISION AND OPINION PURSUANT TO SECTION 19(h)

This matter comes before the Commission on Petitioner's Petition for Review Under Section 19(h) of the Act. Commissioner Mathis conducted the hearing on December 1, 2021, in Springfield, IL, and the parties agreed to waive oral argument in this matter. The Commission, having thoroughly considered the totality of the evidence, hereby finds that Petitioner failed to meet his burden of proving his condition has materially worsened since the prior arbitration hearing. Therefore, the Commission denies Petitioner's petition.

Findings of Fact

Background

Petitioner works as a correctional officer for Respondent. On July 7, 2014, he slipped while lifting a heavy inmate who was attempting to hang himself. Petitioner injured his right foot and ankle. Petitioner filed an Application for Adjustment of Claim on January 22, 2015.

Dr. Idusuyi, Petitioner's treating physician, examined Petitioner on October 15, 2014, and diagnosed a right Stage 3 posterior tibial tendon dysfunction with a complete rupture. During the visit, Petitioner complained of swelling and a burning sensation in his right ankle and foot. He complained of pain occurring after he worked a shift and with certain activities. Petitioner reported that custom shoe inserts provided minimal relief. He identified walking, work activities, and activities of daily living ("ADLs") as aggravating factors. Petitioner told Dr. Idusuyi that his pain interfered with work, walking, and ADLs. The examination revealed that Petitioner walked with an antalgic gait and that his range of motion was limited in the right ankle and foot. There was also maximal tenderness over the medial ankle and hindfoot over the region of the posterior tibial

tendon. Dr. Idusuyi recommended Petitioner either undergo a surgical reconstruction of the posterior tibial tendon or wear an ankle orthosis. Petitioner decided to wear the ankle brace instead of proceeding with surgery at that time.

On November 17, 2016, an arbitration hearing was held in this matter. The sole disputed issue was the nature and extent of Petitioner's injury. Petitioner testified that he continued to perform his regular work duties but no longer worked overtime. He testified that he had never needed to ask for accommodations or modifications regarding his work duties. He wore the brace prescribed by Dr. Idusuyi. Petitioner testified that he felt a burning sensation that caused discomfort when he tried to run or play any sports. He testified that he had stopped playing all the sports he previously played due to his condition. He testified that he limited activities that aggravated his right ankle condition such as mushrooming in the woods. Petitioner testified that his ankle felt like it tweaked a bit when he walked up and down ravines. Petitioner testified that he took Advil occasionally due to his right ankle and foot pain. He testified that lateral movement caused pain.

Petitioner testified that at the end of each workday he felt a slight burn in his right foot. He testified that he bought shoes in a larger size to accommodate his ankle brace. He testified that he avoided weightbearing on his right foot as much as possible. Petitioner also testified that he had not yet regained full strength in the right ankle. Other than having his brace fitted, Petitioner had not returned to Dr. Idusuyi since October 15, 2014. Petitioner denied having any other problems with his right foot or any increased pain since his last visit with the doctor. After considering the evidence and relevant factors, the Arbitrator determined Petitioner proved he sustained a 15% loss of use of the right foot due to the work incident. In its June 26, 2017, Decision, the Commission modified the Arbitrator's analysis pursuant to Section 8.1(b) of the Act and otherwise affirmed the Arbitrator's nature and extent award. Petitioner filed the pending 19(h) petition on May 17, 2019. Petitioner did not indicate that he sought benefits pursuant to Section 8(a) of the Act on his petition. There is no record of Petitioner ever filing an amended petition.

December 1, 2021, 19(h) Hearing

Before any witnesses were called, Commissioner Mathis reviewed the issues in dispute with the parties. Counsel for Petitioner stated on the record that Petitioner was proceeding only pursuant to Section 19(h). (Tr. at 4). He further stated that any issues pursuant to Section 8(a) had been satisfied.

Petitioner testified that he is still employed as a correctional officer and very briefly returned to his original job once he was released from Dr. Idusuyi's care following his ankle surgery. He testified that his original job duties included: "Running the line, just being an officer, doing the count in the morning and walking the wing every half an hour to make sure nothing was going on." (Tr. at 9). Petitioner testified that his original position involved a lot of standing, walking, and navigating stairs. He testified that after his first day back at work, his job duties changed because he was placed in a vocational counselor position. Petitioner testified that this position involves signing in school lines as well as checking on the teachers and making sure the inmates are not violating any rules. He testified that this is a lighter duty position because he does not have to climb any stairs and only walks on flat surfaces.

Petitioner denied injuring his right foot or ankle since the November 2016 arbitration hearing. Petitioner testified that he underwent surgery on the right ankle on July 10, 2020, and was off work for almost a year during his recovery. Petitioner testified that he attended physical therapy for approximately three months following his surgery, and testified that he had a good result from physical therapy.

On the date of the hearing, Petitioner was 62 years old. When questioned about his current complaints, Petitioner testified: "It's just a dull pain in my foot from the back of my toes to the top of my foot…and I have no movement from side to side." (Tr. at 11). He described his pain as "[v]ery dull. It's 2 to 3. It never goes away. It's just…a different feeling." (Tr. at 11-12). Petitioner testified that this pain is constant. He testified that if he is on his feet for an extended period, his pain level might increase to 5/10. He testified that this happens once he reaches 7,000 steps on his Fitbit. Petitioner takes Tylenol for arthritis approximately two to three times per week. Petitioner testified that the only activity he can no longer participate in due to his right ankle and foot condition is golfing. He testified that "…golfing is the only thing that [he] tried and it hurts so [he] quit." (Tr. at 13). Petitioner testified that he is left-handed, so when he twists while playing golf, he twists on his right foot. He testified that any sideways movement hurts. Petitioner testified that it hurts when he jumps and kneels, but not when he squats. He testified that when he kneels, it hurts when he gets up because his toes are stiff. He runs very little and testified that it is uncomfortable to run. He testified that due to his work injury, he curbs some activities due to a fear of reinjuring his right foot.

Petitioner testified that he wears a compression sock to improve circulation in the right foot and a foot orthotic to support his arch. He testified that he has not been denied any promotions or been demoted due to his residual complaints and testified that the injury did not affect his salary. He denied experiencing any swelling of his right foot and ankle. He no longer must alter his shoes or buy a larger size. Petitioner testified that the toes on his right foot are starting to curl under. He testified that it is painful and happens three to four times a week. He described this as a sharp pain. Petitioner testified that he walks with a limp due to the work injury. Petitioner testified that he is unable to turn sharply on his right foot because he has no "…movement from side to side." (Tr. at 19). Due to the ankle surgery, he now has hardware in the top of his right foot and in his heel. He believes the constant pain he feels on the top of his toes is due to the hardware.

Petitioner testified that he discussed his complaint of his toes curling with Dr. Sullivan, his general practitioner. However, he did not discuss this complaint with Dr. Idusuyi. Petitioner testified that Dr. Sullivan told him he had nerve damage in his right foot. He testified that the brace he used to wear prevented his foot from rolling in. He agreed that his ankle no longer rolls anymore due to the fusion surgery. Petitioner testified that since his surgery, he no longer uses the ankle brace he wore during the 2016 hearing. He testified that his pain has decreased since the surgery. Petitioner also agreed that he was in a lot more pain when he testified in 2016.

Medical Treatment

Dr. Idusuyi examined Petitioner on August 8, 2018. Petitioner reported that wearing the brace helped and that he was weightbearing as tolerated in supportive shoes. Petitioner complained of increased pain and reported his right ankle felt like it was giving out. Petitioner described the

pain as sharp and reported it occurred most of the day. Aggravating factors included walking and ADLs. The examination revealed pes planovalgus deformity with a protruding bony mass on the medial aspect of the right foot approximately 2 cm large, with minimal callus over the top. The valgus hindfoot deformity was fixed. There was no tenderness to palpation over the posterior tibialis tendon. Petitioner agreed to proceed with the surgery Dr. Idusuyi recommended.

Dr. Idusuyi next examined Petitioner on July 1, 2020. Petitioner reported his pain remained unchanged. He also complained of weakness and instability while walking. Petitioner was weight-bearing and wearing a supportive shoe. After examining Petitioner, Dr. Idusuyi continued to recommend Petitioner undergo a right foot triple arthrodesis with gastrocnemius recession and hallux valgus repair. Petitioner once again agreed to proceed with the surgery. On July 10, 2020, Dr. Idusuyi performed surgery consisting of a right triple arthrodesis and right foot Silver bunionectomy. The postoperative diagnoses were stage III posterior tibial tendon dysfunction with severe planovalgus foot deformity, and hallux valgus deformity. Petitioner continued to follow up with Dr. Idusuyi each month following his surgery. In October 2020, Dr. Idusuyi prescribed physical therapy focused on gait training, range of motion, stretching, and strengthening. He placed Petitioner in a boot so he could begin weight-bearing.

In January 2021, Petitioner told Dr. Idusuyi that he was gradually increasing his activity and doing well. He reported attending physical therapy but noticed limited range of motion in the right ankle. Petitioner complained of occasional pain with increased activity as well as swelling after a long day. He denied any radiation, weakness, or numbness. Petitioner walked with a normal gait without the use of assistive devices. Range of motion was dorsiflexion of 5 degrees and plantar flexion of 20 degrees. There was no crepitus, and the alignment was satisfactory without any gross abnormalities. Dr. Idusuyi noted 5/5 strength with plantar flexion and dorsiflexion of the ankle. He told Petitioner that the limited motion he experienced with both inversion and eversion of the ankle was due to the effusion, and that Petitioner should not stress the range of motion in those planes during therapy. The doctor also recommended Petitioner use a ¼ inch heel lift for his shoe inserts for improved ambulation when Petitioner toe stepped.

In early February 2021, Petitioner returned to the doctor and reported doing well. He had been gradually increasing his activity level and reported being back to full activity, which he tolerated well. He denied any pain or discomfort in the right lower extremity as well as any radiation of symptoms. Petitioner denied ankle instability, locking, or catching and was wearing his normal shoes. He denied taking any over the counter anti-inflammatories or pain medicine. Dr. Idusuyi's examination revealed that Petitioner walked with a normal gait without use of any assistive devices. The right ankle's range of motion revealed dorsiflexion to 5 degrees and plantar flexion of 20 degrees. There was no crepitus throughout the range of motion. The doctor noted overall satisfactory alignment without any gross abnormalities and 5/5 strength with plantar flexion and dorsiflexion of the ankle. Dr. Idusuyi recommended Petitioner continue physical therapy and provided range of motion exercises for Petitioner to perform daily. He also recommended custom arch supports for Petitioner's shoes and wrote a prescription for compression stockings. Petitioner was to follow up as needed.

Petitioner's last physical therapy appointment was on March 23, 2021. Petitioner complained of continued pain and swelling in the right foot. The therapist discharged Petitioner

because Petitioner had reached a plateau. Petitioner was given a home exercise program. The therapist wrote: "Patient has improved his overall SL and bilat standing balance. Still has difficulty with inversion/eversion motions due to the nature of the surgery. Patient presents with antalgic gait due to difficulty with terminal stance into preswing. Lacks preswing." (PX 5).

Petitioner last visited Dr. Idusuyi on March 24, 2021. Petitioner was eight months post-surgery and reported that he was doing well. Petitioner complained of continued pain over the dorsal aspect of the right foot as well as increased swelling with activity. He reported tolerating physical therapy well. He also reported that he no longer wore his boot and had weaned off all assistive devices. Petitioner complained that his right ankle felt weak and unsteady and that his symptoms were exacerbated with weight-bearing activities. Dr. Idusuyi's examination revealed Petitioner walked with a slight limp without the use of any assistive devices. There was overall satisfactory alignment without any gross deformity of the right ankle. There was 1+ edema of the right foot. The doctor noted range of motion of the ankle revealed dorsiflexion of 5 degrees and plantar flexion 20 degrees. There was no crepitus throughout range of motion and no instability with inversion or eversion of the ankle. Dr. Idusuyi noted diffuse tenderness over the dorsal aspect of the midfoot and 5/5 strength with plantar flexion and dorsiflexion of the ankle. Updated x-rays showed intact hardware and mild joint space narrowing of the ankle. Dr. Idusuyi told Petitioner that there was mild arthritis of the right ankle joint. He recommended Petitioner attend work hardening and undergo a functional capacity evaluation ("FCE"). The doctor planned to place Petitioner at maximum medical improvement ("MMI") once he reviewed the FCE results. Finally, Dr. Idusuyi cleared Petitioner to return to work with sedentary restrictions on March 29, 2021. There are no subsequent medical records in evidence.

Expert Opinion

Dr. Nirain DSouza—Respondent's Section 12 Examiner

Dr. DSouza examined Petitioner at Respondent's request on April 10, 2020. Petitioner reported that he treated his condition for the prior four years by using a customized articulated foot orthosis. He reported that initially this did provide some pain control and functionality, but for the prior six months he noticed worsening pain—particularly along the medial border of the right foot. He reported he also noticed more pronation in the foot. Petitioner reported his pain was tolerable while seated but standing for extended periods or navigating stairs worsened his symptoms.

Dr. DSouza diagnosed stage III posterior tibial tendon dysfunction and opined that his current condition was causally related to the July 2014 work incident. He opined that Petitioner's medical treatment had been reasonable and necessary and opined that right foot surgery was necessary. He opined that Petitioner's prognosis following the surgery was good.

Conclusions of Law

After carefully considering the totality of the evidence, the Commission finds Petitioner failed to meet his burden of proving his disability has materially worsened since the November 2016 arbitration hearing. Therefore, the Commission denies Petitioner's 19(h) petition.

In relevant part, Section 19(h) states:

> "However, as to accidents occurring subsequent to July 1, 1955, which are covered by any agreement or award under this Act providing for compensation in installments made as a result of such accident, such agreement or award may at any time within 30 months…after such agreement or award be reviewed by the Commission at the request of either the employer or the employee on the ground that the disability of the employee has subsequently recurred, increased, diminished or ended."

Illinois courts have determined that a change in benefits is only warranted if it is proven that the change in the claimant's condition is material. *See e.g.*, *Murff v. Ill. Workers' Comp. Com.*, 2017 IL App (1st) 160005WC at ¶22. To make this determination, the Commission must consider the evidence presented in the original proceeding regarding Petitioner's condition as well as evidence of his current condition. The only changes relevant to the 19(h) analysis are those that occurred between the arbitration hearing and the 19(h) hearing.

It is undisputed that Petitioner underwent a right ankle fusion surgery after the November 2016 arbitration. However, Illinois courts have determined that a claimant's subsequent surgery by itself is insufficient evidence that the claimant's condition has materially changed. For example, in *Gay v. Indus. Com.*, 178 Ill. App. 3d 129 (1989), the claimant underwent a total knee replacement surgery after the arbitration hearing. After reviewing the evidence presented in the 19(h) hearing, the Commission determined the claimant's condition had not materially changed and denied the 19(h) petition. The Appellate Court found that the Commission's denial of the 19(h) petition was not against the manifest weight of the evidence, and stated that the claimant's complaints and symptoms during the 19(h) hearing were substantially the same as those revealed during the arbitration hearing.

The Commission has carefully reviewed the relevant evidence submitted during the November 2016 arbitration hearing as well as the evidence submitted during the 19(h) hearing. After comparing the evidence of Petitioner's disability in November 2016 with the evidence of his current level of disability, the Commission finds Petitioner's level of disability has remained essentially unchanged. This is not to say that some of Petitioner's complaints have not changed since 2016. However, the totality of the evidence supports a finding that Petitioner's overall level of disability has not materially worsened. The evidence submitted during the November 2016 arbitration reveals that Petitioner still suffered from swelling and a constant burning sensation in the right foot and ankle. Petitioner walked with a limp and had limited range of motion due to his right ankle injury. The evidence also shows that activities such as prolonged walking and standing aggravated his complaints. Petitioner wore an ankle brace during the hearing and later testified that the brace stopped his ankle from rolling inward. In November 2016, Petitioner was unable to participate in any of his normal sports due to his right ankle condition. The evidence shows that Petitioner's right ankle instability caused him to avoid weightbearing on his right foot whenever possible.

During the 19(h) hearing, Petitioner complained of a very dull, constant pain in his right

foot from the back of his toes to the top of his foot. Petitioner attributed this pain to the hardware implanted as part of the ankle fusion surgery. Petitioner continued to complain of limited range of motion in the right ankle; however, his current limitation is a result of the ankle fusion. He testified that activities such as prolonged walking or standing, as well as jumping, squatting, and kneeling aggravate his ankle condition. He testified that he runs very little due to discomfort. Petitioner testified that he uses over the counter Tylenol two to three times a week due to his right ankle pain. He testified that golf is the only activity he no longer participates in because of his ankle and foot pain. He testified that his right toes have started to curl under and that this happens three to four times a week. He described this as causing a sharp pain. Petitioner testified that he continues to walk with a limp. He testified that he no longer experiences swelling in his right ankle or foot and no longer needs the ankle brace. While Petitioner testified that his doctor told him that he had nerve damage in his right foot, this testimony is not corroborated by any evidence.

Perhaps most notably, Petitioner testified that he suffered from a lot more pain when he testified during the 2016 arbitration hearing. He also testified that he experienced a good result from his post-surgery physical therapy. After comparing Petitioner's level of disability during the 2016 arbitration hearing with his level of disability during the 19(h) hearing, it is clear that Petitioner's level of disability at most only slightly changed. Petitioner's level of disability certainly did not materially worsen. In fact, a comparison of the evidence reveals that Petitioner generally maintains the same level of functionality overall relating to the right ankle as he had in 2016. The Commission determined Petitioner sustained a 15% loss of use of the right foot due to the July 7, 2014, work incident. After carefully considering the totality of the evidence, the Commission finds Petitioner failed to meet his burden of a he sustained a material worsening of his disability regarding his right ankle and foot condition. Therefore, the Commission denies Petitioner's 19(h) petition.

As a final matter, the Commission must address Petitioner's request for mileage reimbursement relating to his office visits with Dr. Idusuyi. After reviewing the record, the Commission finds it lacks the authority to address this claim for the reimbursement of mileage. In his petition, Petitioner solely sought review pursuant to Section 19(h). Furthermore, the Commission finds that Petitioner waived any claims relating to Section 8(a) at the beginning of the December 2021 hearing. Counsel for Petitioner stated on the record that Petitioner was proceeding solely pursuant to Section 19(h). Counsel for Petitioner also stated that any claims pursuant to Section 8(a) were satisfied prior to the hearing. Thus, the Commission denies Petitioner's request for the reimbursement of accrued mileage.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Petition for Review Under Section 19(h) of the Act is hereby **denied**.

Pursuant to Section 19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review.

February 14, 2023

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

d: 12/13/22
TJT/jds
51

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

DISSENT

I respectfully dissent from the opinion of the majority and would grant Petitioner's 19(h) petition. After carefully considering the totality of the evidence, I believe Petitioner met his burden of proving his disability regarding his right ankle and foot materially increased following the November 2016 arbitration hearing.

On July 7, 2014, Petitioner sustained a significant work-related injury to his right ankle and foot. Within a few months after the incident, Dr. Idusuyi, Petitioner's treating physician, recommended Petitioner undergo surgery to reconstruct the right posterior tibial tendon. Petitioner decided not to proceed with surgery at that time and instead began wearing an ankle orthosis recommended by his doctor. During the November 17, 2016, arbitration hearing, Petitioner credibly testified regarding his chronic symptoms and pain due to his work injury. He also credibly testified regarding the ways in which his right ankle and foot injury limited or hindered his ability to engage in some of his normal activities such as running, playing sports, and mushrooming. Petitioner testified that he experienced swelling and pain, and that certain activities caused a burning sensation in his right ankle and foot. While he was able to return to his regular job, he complained that certain work activities such as prolonged walking, aggravated his symptoms. Petitioner testified that he took over the counter Advil occasionally.

During the 19(h) hearing, Petitioner testified that he no longer experiences swelling; however, he feels a constant dull pain in his foot. He also testified that his pain significantly increases on days when he has been on his feet for an extended period. Whereas he only took Advil occasionally in November 2016, he testified that he now takes Tylenol approximately two to three times a week. Petitioner's ability to engage in various sports and activities remains limited due to his pain and limited range of motion. Petitioner testified that the toes on his right foot now regularly involuntarily curl under. He testified that this new symptom is very painful and occurs approximately three to four times a week. Petitioner continues to limp and testified that the ankle fusion prevents him from turning sharply on the right foot. He also testified that he now feels

constant pain on the tops of his right toes. Petitioner believes that this new pain is due to the hardware implanted during the surgery.

Petitioner no longer has complaints regarding his work duties aggravating his residual symptoms. However, this is not due to an improvement in Petitioner's condition. Instead, Petitioner no longer works in his original position as a correctional officer that required extended walking, standing, and navigating stairs each shift. In fact, Petitioner only returned to his original position for a single day following his ankle fusion surgery. Respondent then reassigned Petitioner to his current position as a vocational counselor—a position that Petitioner described as being lighter duty because it does not require him to climb stairs and he now only walks on flat surfaces. Notably, the lighter duty position has not alleviated Petitioner's overall increased complaints of pain and discomfort since the November 2016 arbitration hearing.

I respectfully disagree with the majority's decision to deny Petitioner's 19(h) petition. The majority unduly focuses on Petitioner's agreement that during the 2016 hearing he was in a lot more pain compared to his condition during the 19(h) hearing. The majority interprets this agreement as proof that Petitioner's overall condition has not materially worsened. However, I believe the totality of the evidence proves otherwise. Petitioner's credible testimony shows that his complaints of pain and discomfort have undeniably increased. After all, Petitioner's current condition requires him to use over the counter pain medicine much more frequently than he did in November 2016. Additionally, while the fusion surgery corrected the instability in Petitioner's right ankle, it also resulted in significantly decreased range of motion in the right foot and ankle. I believe a careful review of the evidence shows that Petitioner has met his burden of proving his level of disability has materially increased since the 2016 arbitration hearing.

For the forgoing reasons, I would grant Petitioner's 19(h) petition and would award Petitioner an additional 10% loss of use of the right foot due to the increase in his level of disability. This would increase his total level of permanent disability to 25% loss of use of the right foot.

/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC023871
Case Name	Angel Rosell v. EBRO Foods Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0067
Number of Pages of Decision	23
Decision Issued By	Thomas Tyrrell, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	Julio Costa
Respondent Attorney	Nadine Neue

DATE FILED: 2/14/2023

/s/Thomas Tyrrell, Commissioner
Signature

DISSENT: /s/Kathryn Doerries, Commissioner
Signature

23IWCC0067

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Angel Rosell,

Petitioner,

vs. NO: 20 WC 023871

Ebro Foods, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, medical fee schedule, and permanent partial disability ("PPD"), and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof.

The Commission affirms the medical award of the Arbitrator, and provides additional support thereof:

1. The Arbitrator was correct to award the medical expenses for surgical services rendered by both Dr. Chahla and Mary Kathleen Walsh, PA, pursuant to Section 8(a) and 8.2 of the Act.

2. The Arbitrator was correct that the modifier 22 as explained by Dr. Chahla on August 18, 2021 illustrates the complexity of the procedure performed.

3. The Midwest Orthopedics at Rush billing statement for the services in question by Mary Kathleen Walsh, PA, also utilizes the modifier -AS, which designates her as an Allied Health Care Professional.

4. Section 8.2(a-1)(1) requires the Commission to "establish and maintain fee schedules for procedures, treatments, products, services, or supplies for hospital inpatient, hospital outpatient, emergency room, ambulatory surgical treatment centers, accredited ambulatory surgical treatment facilities, prescriptions filled and dispensed outside of a licensed pharmacy, dental services, and professional services."

5. Section 16 of the Act requires the Commission to "make and publish procedural rules and orders for carrying out the duties imposed upon it by law and for determining the extent of disability sustained, which rules and orders shall be deemed prima facie reasonable and valid."

6. The Illinois Workers' Compensation Commission Medical Fee Schedule Instructions and Guidelines for Treatment on or After 9/1/11, Section 9, provides: Allied health care professionals, such as certified registered nurse anesthetists (CRNAs), physician assistants (PAs) and nurse practitioners (NPs), are to be reimbursed at the same rate as all other health care professionals when performing, coding and billing for the same services.

7. Similarly, Rule 9110.90(j) provides: An allied health care professional, such as a certified registered nurse anesthetist (CRNA), physician assistant (PA) or nurse practitioner (NP), is to be reimbursed at the same rate as other health care professionals when the allied health care professional is performing, coding and billing for the same services as other health care professionals.

8. While Illinois Workers' Compensation Commission Medical Fee Schedule Instructions and Guidelines for Treatment on or After 9/1/11, Section 8B directs that for professional services for surgery one should "Please refer to the table, 'Payment Guide to Global Days, Multiple Procedures, Bilateral Surgeries, Assistant Surgeons, Co-Surgeons, and Team Surgery,' when determining global days and when determining which codes support applying modifiers for multiple procedures, bilateral surgeries, assistant surgeons, co-surgeons, and team surgery," Section 8F defines an assistant at surgery as "a physician who actively assists the physician in charge of a case in performing a surgical procedure." It goes on to provide guidance on modifiers -80, -81, and -82. However, in the instant matter the modifier at hand is -AS, a modifier not used by physicians, but by Allied Health Care Professionals.

9. Thus, as the Midwest Orthopedics at Rush billing statement for the services in question by Mary Kathleen Walsh, PA, also utilizes the modifier -AS, Ms. Walsh's services should be reimbursed at the same rate as all other health care professionals pursuant to the Illinois Workers' Compensation Commission Medical Fee Schedule Instructions and Guidelines for Treatment on or After 9/1/11, Section 9, and Rule 9110.90(j).

10. The Arbitrator was further correct to award the medical expenses of ATI Physical Therapy pursuant to Section 8(a) and 8.2 of the Act.

11. A careful review of the ATI Physical Therapy billing statement (PX5) and Respondent's payment summary (RX2) shows that charges in the amount of $530.28 for date of service November 12, 2020 remains unpaid by Respondent.

The Commission modifies paragraph 2 of the Order section on page 2 of the Arbitration Decision to add, "Respondent shall be entitled to a credit if any portion of said bill has previously been paid."

The Commission corrects a scrivener's error in the Arbitration Decision on page 13,

regarding Factor 3 to remove the final two words of the paragraph, "that the," and end the sentence with "weight."

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on December 20, 2021, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED that Respondent shall pay to Petitioner $91.00 for the out-of-pocket payments made to Lawndale Christian Health Center.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical expenses of $15,102.28, subject to §8(a)/§8.2 of the Act.

IT IS FURTHER ORDERED that Respondent pay to Petitioner the sum of $748.48 per week for a period of 48.375 weeks, as provided in § 8(e) of the Act, for the reason that the injury sustained caused the loss of use of 22.5% of the left leg.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $51,500.00. 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.

February 14, 2023

o: 12/13/2022
TJT/ahs
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/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

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

DISSENT

I dissent from my colleagues regarding the MOR Physician Network LLC medical bill award in both the Order and Section (J) of the Arbitrator's Conclusions of Law that addresses reasonableness and necessity of medical services.

The Arbitrator awarded directly to Petitioner "all outstanding and related medical bills in the amount of $15,102.28 as outlined in Section (J) of the Arbitrator's Conclusions of Law Section

pursuant to Sections 8(a) and 8.2 of the Act." Given the parties' stipulation that Petitioner would be reimbursed for his out of pocket expense, there were only two bills in dispute, that of MOR Physician Network and that of ATI Physical Therapy. Both bills were listed as "unpaid."

With respect to the ATI Physical Therapy bill, the Respondent stipulated that the bills were paid per the fee schedule. (ArbX1) Comparing the Petitioner's bill exhibit (PX5) to the Respondent's medical payment ledger (RX2) it appears that the entire ATI bill was paid per the fee schedule except Petitioner's Exhibit 5 shows an ATI balance of $530.28. Respondent maintains that the $530.28 is a balance bill. I concur with my colleagues' Order modification specifying that "Respondent shall be entitled to a credit if any portion of said bill has been previously paid." To the extent that I agree with the majority's modification, I would also have added, "Respondent is not responsible for any balance bill based upon Section 8.2(e-20) of the Act." Section 8.2(e-20) states:

> Upon a final award or judgment by an Arbitrator or the Commission, or a settlement agreed to by the employer and the employee, a provider may resume any and all efforts to collect payment from the employee for the services rendered to the employee and the employee shall be responsible for payment of any outstanding bills for a procedure, treatment, or service rendered by a provider as well as the interest awarded under subsection (d) of this Section. In the case of a procedure, treatment, or service deemed compensable, the provider shall not require a payment rate, excluding the interest provisions under subsection (d), greater than the lesser of the actual charge or the payment level set by the Commission in the fee schedule established in this Section. *820 ILCS 305/8.2.*

With respect to the MOR Physician Network bill, it appears that the entire bill has also been paid except for the charges submitted by the physician and the physician's assistant (PA) for services rendered on August 10, 2020, the date of Petitioner's surgery, each bill charged in the same amount of $7,286.00. (PX5, T. 844) It is noted that the physician and the PA charges share the same CPT code but different modifiers (described below). The operative report states that PA Mary Kate Walsh was present as an assistant. There is another paragraph in the operative report that describes the surgical assistant function as follows:

> The Surgical assistant was involved in all aspects of the surgery including positioning, prepping, draping, leg holding, assistance with the arthroscope, dynamic examination, and wound closure. Attending surgeon was present for all critical portions of the procedure. (PX2)

On page two of Petitioner's Exhibit 5, the operative charges reflect that there are two claim identification numbers, and both reflect the same CPT codes, 29882, with modifier 22 which is addressed in Dr. Chahla's August 20, 2020, letter. The CPT and modifier are followed by the modifier "LT" for Dr. Chahla's charges, but followed by "AS, LT" for the PA's charge, which was the exact amount of the physician/surgeon, Dr. Chahla's charge, $7,286.00.

Respondent's insurance carrier's fee schedule review (RX3), noted to be "The Hartford Medical Bill Processing Center", shows a re-evaluation process date of October 15, 2021, for Geo Zip 60304 Region: 01.

The ICD-DX1 number states S83-242A "Oth (sic) tear of medial meniscus current." The review shows a DOS on August 10, 2020, for POS, 22, Code 29882 with Modifier (MOD) 22, LT Service Description Arthroscopy K, Units 1.000, Charge 0.00 BR/Red -4,751.78, PPO/Red 0.00 Other/Red 0 Allowance 4,751.78 Reasons P12 245. This review discounted Dr. Chahla's bill to $4,751.78 citing two reasons explained in the Reason Code Reimbursement Description section: "245-The service provided was greater than that usually required for the listed procedure; P12-Workers' Compensation jurisdictional fee schedule adjustment." (RX3) Petitioner presented no evidence disputing this fee schedule reduction.

The next page of Respondent's Exhibit 3 is a medical bill review almost identical to that of Dr. Chahla's bill review, titled "The Hartford Medical Bill Processing Center 39" with same process date on October 15, 2021. However, this report reviewed PA Mary Kathleen Walsh's charges for the date of service on August 10, 2020, POS 22, Code 29882, Modifiers 22, AS, LT, Service Description Arthroscopy K, Units 1.000 Charge 0.00, BR/Red 0.00, PPO/Red 0.00, Other/Red 0.00, Allowance 0.00 Reasons 54.98. This review states: "Reason Code Reimbursement Description: 54-Multiple Physicians/Assistants are not covered in this case; 98-Assistant Surgeon Services are not warranted for this procedure." The Petitioner did not present any evidence to dispute this medical fee schedule report.

Dr. Chahla's August 18, 2020, letter (PX2) addresses the medical necessity of the surgical treatment of a meniscal root tear. In his letter he explained the reason that the procedure was billed with a modifier 22, noting, in essence, a meniscus root tear repair is different from a typical meniscus tear repair. However, he did not address why he needed an assistant surgeon or why the PA could bill for performing the same procedure at the same time, although the modifier AS is used in the codes.

Thus the dispute is compound: 1) Whether or not Assistant Surgeon Services are warranted for this procedure; and 2) Whether or not a PA should be compensated the same amount as the primary surgeon using the same CPT code as the billing surgeon, with sole modifier Assistant at Surgery (AS).

Whether AS, "Assistant at Surgery" Services Are Warranted For This Procedure

While some procedures may require a physician and an assistant, in this case The Hartford insurance carrier's bill review states an AS is not warranted for this procedure with CPT code 29882. (RX3, T. 871) Therefore, in the absence of Petitioner having compelling evidence to the contrary, the award of medical should not include the PA surgical assistant charges.

Although The Hartford is not on the list of bill review companies on the Illinois Workers' Compensation Commission (IWCC) website, the Commission notes that those companies are not endorsed by the Commission and the list is offered as a convenience. Thus, the fact that The Hartford is not on the list does not diminish the reliability of the bill review, and as such the majority should consider it as any other piece of reliable evidence.

Furthermore, in the Medical Fee Schedule section of the IWCC website, the document entitled, "IWCC Illinois Workers' Compensation Fee Schedule 2014 Payment Guide to Global Days, Multiple Procedures, Bilateral Surgeries, Assistant Surgeons, Co-Surgeons, Team Surgery, Updated January 2015", provides guidance. In that document, under "Assistant at Surgery" the codes are listed as follows:

Assistant at Surgery
0=No payment for assistant unless supporting documentation is submitted to establish medical necessity.
1=No payment for assistant at surgery
2=Assistant at surgery is payable
9=Concept does not apply

Similarly, the other categories i.e. Multiple Procedure, Bilateral Surgeries, Co-Surgeons, Team Surgery have various codes corresponding to their heading that when applied to a CPT code determine payment eligibility. The heading and codes appear as follows and go on to list pages of CPT codes that end with the code 69990.

CPT/HCPCS	GLOBAL DAYS	MULTIPLE PROC	BILATERAL SURG	ASST SURG	CO-SURG	TEAM SURG
10021	XXX	0	0	0	0	0
10022	XXX	0	0	0	0	0
10030	XXX	2	9	0	0	0
10040	10	2	0	1	0	0
10060	10	2	0	1	0	0
			***			
29882	90	3	1	1	0	0

When the CPT code used by Dr. Chahla, 29882 (PX5), is cross-referenced with the Assistant at Surgery ("ASST SURG") column, it shows the code "1". This code corresponds to "No payment for assistant at surgery." This document comports with The Hartford review and substantially supports the premise that The Hartford review report submitted in RX3 is correct contrary to the majority's conclusion.

Whether A PA Should Be Compensated The Same Amount As The Primary Surgeon Using The Same CPT Code As The Billing Surgeon, With Sole Modifier Assistant At Surgery (AS)

On its face, the description in the operative report (PX2) distinguishes the function of the surgical assistant from the function of the attending doctor, thus it is clear that the surgical assistant is not doing the same function as the surgeon, but is billing for doing the same function. To understand the distinction, a PA might use the same CPT code as a physician would for providing the same service such as when a PA stitches a patient's laceration in a physician's office. Although the physician might sign off on the office visit note, the PA has actually done the same function as the physician would have done had the physician provided the service. In the subject case, the billed function is essentially double billing.

A FAQ on the IWCC website that specifically answers, "How should Allied Health Care Professionals be paid for assisting at surgery?" reads as follows:

> Allied health care professionals use the modifier -AS to designate their assistance in a surgery. Since they do not use the -80, -81, or -82 modifiers listed in

the Instructions and Guidelines for assistance at surgery, disputes have arisen over how these professionals should be paid.

Section 9 of the Instructions and Guidelines states:

"Allied health care professionals such as certified registered nurse anesthetists (CRNAs), physician assistants (PAs) and nurse practitioners (NPs) will be reimbursed at the same rate as all other health care professionals when performing, coding and billing for the same services."
If an allied health care professional provides the same service that a physician would at surgery, then he or she is entitled to the same reimbursement as a physician. The fact that the professional is not a doctor is not a basis to reduce payment. **Any automatic coding adjustment that changes an -80 to an -81 based solely on the fact that the surgical assistant is an allied health care professional is inappropriate.**
We do understand that there might be a conflicting provision in the NCCI edits, but it is superseded by a specific rule (above) adopted by the Commission.

Conclusion: Allied health care providers should be paid as follows:

For 80: The lesser of 20% of the fee schedule amount or 20% of the primary surgeon's fee.

For 81: The lesser of 15% of the fee schedule amount or 15% of the primary surgeon's fee.

For 82: The lesser of 20% of the fee schedule amount or 20% of the primary surgeon's fee.

Notably, this FAQ provides for a discount of the AS rate. It appears the reason that the modifiers 80, 81, or 82 cannot attach, however, in this case is because those designations are for physicians acting as assistants, not for physician's assistants. Therefore, the modifier AS, absent some other way to designate a discount, results in a full charge and an obvious windfall to the surgical provider.

The majority notes the following:

"While the Illinois Workers' Compensation Commission Medical Fee Schedule Instructions and Guidelines for Treatment on or After 9/1/11, Section 8B directs that for professional services for surgery one should "Please refer to the table, 'Payment Guide to Global Days, Multiple Procedures, Bilateral Surgeries, Assistant Surgeons, Co-Surgeons, and Team Surgery,' when determining global days and when determining which codes support applying modifiers for multiple procedures, bilateral surgeries, assistant surgeons, co-surgeons, and team surgery," Section 8F defines an assistant at surgery as "a physician who actively assists the physician in charge of a case in performing a surgical procedure." It goes on to provide guidance on modifiers -80, -81, and -82. However, in the instant matter

the modifier at hand is -AS, a modifier not used by physician, but by Allied Health Care Professionals."

Relying on the Medical Fee Schedule Instructions and Rule 9110.90(j) which states, in pertinent part: "…physician assistant (PA)… is to be reimbursed at the same rate as other health care professional when the allied health care professional is performing, coding and billing for the same services as other health care professionals", the majority leaps to the conclusion the PA should be paid the same as the surgeon solely because the biller used the modifier AS and the modifiers -80-81-82 cannot be assigned to the AS designation. Absent evidence the PA in this case performed the same service as Dr. Chahla, who performed a complex meniscus root tear repair, and was present for all critical portions of the procedure per the operative report, the PA's presence and performance here do not warrant the same bill as the treating orthopedic surgeon.

Nevertheless, the majority interpreted the Allied Health Care passage to mean there should be no discount for designated modifier AS when the AS is a PA, but if the AS is a surgeon or medical doctor and one of the modifiers -80, -81, or -82 is then assigned, the assistant's bill would be less than the primary surgeon's bill.1 Thus, the majority's reasoning, that because the AS is a PA they should be paid the same as the primary surgeon, is illogical.

Based upon the afore-referenced reasons, I find The Hartford review in Respondent's Exhibit 3 should be relied upon especially in the absence of a rebuttal from Petitioner or the medical provider addressing this PA charge, which was not addressed in Dr. Chahla's letter of August 18, 2020, and I must dissent from my colleagues. The PA charge as an assistant at surgery is not warranted pursuant to the list on the IWCC website. Alternatively, at minimum, the PA charge as an AS should be less than the surgeon's charge and, as such, Respondent should not be liable for the PA's charge of $7,286.00 on date of service August 10, 2020, for performing as an assistant with limited function described in the operative report.

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

1 The Illinois Workers' Compensation Commission Medical Fee Schedule Instructions and Guidelines for Treatment on or After 9/1/11, Section 8 (F) describes Modifiers in a chart form. Below is the pertinent excerpt:

MODIFIER	AMA Description/Illinois Instructions	Payment Policy/Documentation Requirements
80 81 82	Please refer to CPT. An "assistant at surgery" is a physician who actively assists the physician in charge of a case in performing a surgical procedure. The "assistant at surgery" provides more than just ancillary services.	For 80: The lesser of 20% of the fee schedule amount or 20% of the primary surgeon's fee. For 81: The lesser of 15% of the fee schedule amount or 15% of the primary surgeon's fee. For 82: The lesser of 20% of the fee schedule amount or 20% of the primary surgeon's fee.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC023871
Case Name	ROSELL, ANGEL v. EBRO FOODS INC
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Julio Costa
Respondent Attorney	Nadine Neue

DATE FILED: 12/20/2021

/s/Joseph Amarilio, Arbitrator

Signature

INTEREST RATE WEEK OF DECEMBER 14, 2021 0.13%

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Angel Rosell
Employee/Petitioner

Case # 20 WC 023871

v.

Consolidated cases: N/A

EBRO Foods, Inc.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Joseph Amarilio, Arbitrator of the Commission, in the city of **Chicago**, on October 20, 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

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?
L. ☒ What is the nature and extent of the injury?

FINDINGS

On August 23, 2019, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$64,868.39**; the average weekly wage was **$1,247.47**.

On the date of accident, Petitioner was **50** years of age, **Married** with **1** dependent children.

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

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

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

Respondent is entitled to a credit of $N/A under Section 8(j) of the Act.

ORDER

Respondent will issue the $91.00 reimbursement to Petitioner for the out of-pocket payments made to Lawndale Christian Health Center.

Respondent shall pay directly to Petitioner all outstanding and related medical bills in the amount of $15,102.28 as outlined in Section J of Arbitrator's Conclusions of Law and pursuant to Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $748.48 per week for *48.375* weeks, because the injuries sustained caused the 22.5% loss of the left leg, as provided in Section 8(e) of the Act.

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

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

/s/ *Joseph D. Amarilio*

Signature of Arbitrator Joseph D. Amarilio **December 20, 2021**

IN THE WORKERS' COMPENSATION COMMISSION
OF THE STATE OF ILLINOIS

ARBIATRATION DECSION

ANGEL ROSELL,	)	
	)	
Petitioner,	)	
v.	)	No. 20 WC 23871
	)	
EBRO FOODS INC,	)	
	)	
Respondent.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Procedural History

Mr. Angel Resell (Petitioner) filed an Application for Claim for benefits under the Illinois Workers' Compensation Act for injuries sustained to his left knee while working as a mechanic for EBRO Foods, Inc. (Respondent) on august 23, 2019.

On October 20, 2021, after due notice and by agreement of the parties, this matter was heard before the Arbitrator in the City of Chicago and County of Cook. Petitioner testified in support of his claim for benefits under the Act. No witness testified on behalf of the Respondent. The submitted exhibits and the trial transcript of the hearing were examined by the Arbitrator.

The parties proceeded to hearing on two disputed issues: (1) whether certain medical services that were provided to Petitioner reasonable and necessary and whether the Respondent paid all appropriate charges for all reasonable and necessary medical services and (2) the nature and extent of Petitioner's injury. Arb. Ex. 1).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

II. Finding of Facts

The parties agreed that on August 23, 2019 the date in question in the instant case, the Petitioner and Respondent were operating under and subject to the Illinois Workers' Compensation Act and that there was an employee-employer relationship. The parties agreed Petitioner sustained accidental injuries on that date. The parties further agreed the Petitioner gave timely notice of an accidental injury

Petitioner was employed by EBRO Foods Inc (Respondent) as a mechanic and suffered a compensable work accident on August 23, 2019, injuring his left knee after stepping off a five-foot dock. (Transcript "TX", 12). Afterwards, Petitioner presented to Lawndale Christian Health Center (Petitioner Exhibit 1 "PX1). On January 20, 2020, Petitioner underwent an MRI of his left knee which revealed a medial meniscus tear. (PX1, 15). Given Petitioner's persistent complaints and MRI findings, he was referred for orthopedic evaluation. (PX1, 18).

On June 4, 2020, Petitioner presented to orthopedic surgeon Dr. Jorge Chahla at Midwest Orthopedics at Rush. (Petitioner Exhibit 2 "PX2", 38). Dr. Chahla recommended a repeat MRI of the left knee which confirmed a medial meniscus posterior root tear. (PX2, 32). Due to Petitioner's continuing significant pain after conservative treatment measures, Dr. Chahla recommended surgical intervention. (PX 2, p. 103)

On August 10, 2020, Petitioner underwent left knee surgery in the form of a left knee arthroscopy and medial meniscus root repair. Dr. Chahla in his operative report notes that a diagnostic arthroscopy was performed. The patellofemoral joint was inspected. The patella and the trochlea had grade II changes. The medical compartment was significant for Grade II changes along with a meniscal root tear. (PX2, 103-104).

Afterwards, Petitioner underwent physical therapy at ATI from August 25, 2020, through December 3, 2020. (Petitioner Exhibit 4 "PX4"). Petitioner testified that the physical therapy "helped, but not completely." (TX, 13). Petitioner was off work for six weeks after his surgery and returned to work light duty in September 2020.

On December 8, 2020, Petitioner was transitioned to Work Hardening at ATI, which he performed through January 6, 2021. Petitioner's job as a machine mechanic was listed as medium PDL per the DOT. (Id.) Petitioner had complaints of swelling on top of the left knee. He also complained of pain when squatting, pushing, pulling or extending the knee. (Id.) petitioner reported that he needs to lift motor/electrical parts that weigh 30-40 lbs. and 20-25 lbs. frequently at his job. (Id.)

On December 31, 2020, the ATI progress note stated Petitioner had the ability to lift floor to waist 6x55lbs; overhead lift 6x50lbs; and lift and carry 45lbs. (Px2 p.181 and Px3 p.24-25)

However, he still had difficulty balancing on his left leg. (Id.) Swelling was also noted to be present in his left knee. (Id.) Petitioner was to continue work conditioning. (Px3 p.104)

On January 6, 2021 ATI completed a discharge summary for work conditioning. (Px2 p.178 and P4 p.94) Petitioner was listed as currently functioning at Medium PDL. (Id.) He was noted to demonstrate capabilities required to return to work full duty. (Id.) Petitioner reported pain in left knee after therapy. (Id.) Petitioner was noted to still have a swollen knee. (Id.)

On January 14, 2021, Dr. Chahla placed Petitioner at maximum medical improvement (MMI) and recommended that he return to work full duty. (PX2, 9). Dr., Chahla stated that overall petitioner was doing well. (Id.) He had no swelling in the knee. (Id.) He continued to progress in physical therapy. .(Id.) Petitioner told Dr. Chahla he has not been wearing the unloader brace.(Id.) On examination there was no effusion.(Id.) Knee extension was to -2 degrees, flexion 120 on the right compared to 130 on the left.(Id.) Strength was 4+/5 with right knee extension and flexion; 5/5 on the left.(Id.) There was mild weakness with quad contraction on the right with some persistent atrophy.(Id.) There was no medial joint line tenderness, no tenderness over patella, patella tendon, or popliteal fossa and no calf swelling or tenderness.(Id.) Patient is distally neurovascularly intact.(Id.) Petitioner was returned to full duty work.(Id.)

Petitioner testified that he went back to work performing the same full duty activities as before and working the same hours. (TX, 15). However, Petitioner recalled feeling limited because of pain in his left knee. (*Id.*).

On March 11, 2021, Petitioner returned to Dr. Chahla reporting increased pain from his work duties. (PX2, 4). He was approximately 7 months status post left knee arthroscopy and meniscal root repair. (Id.) On examination there was no effusion and incisions were well healed. (Id.) Knee extension to -2 degrees and flexion to 130 degrees on the right compared to 130 on the left. (Id.) Strength is 4+/5 with knee extension and flexion on the right, 5/5 on the left. (Id.) Knees were listed to be completely stable. (Id.) There was mild weakness with quad contraction on the right with some persistent atrophy. (Id.) There was no medial joint line tenderness, no tenderness of the patella, patella tendon, or popliteal fossa and no calf swelling or tenderness. (Id.) Patient was distally neurovascularly intact. (Id.) Petitioner completed work conditioning and was feeling good. (Id.) It was noted that petitioner said he was experiencing pain with heavy work duties. (Id.) Petitioner as to continue to work full duty and continue his daily activities if no pain presented. (Id.) He was to follow up as needed. (Id.)

When asked about the duties that caused his pain flare-up, Petitioner recalled covering for another employee and pushing carts that were full of items for an entire day, hardly being able to walk afterwards. (TX, 15-16). Despite his ongoing complaints, Dr. Chahla indicated Petitioner's left knee was stable and discharged him to return as needed. Petitioner testified this was the last time he saw Dr. Chahla. (TX, 16).

Petitioner testified that sometimes after work he feels pressure in his knee and sometimes, he cannot walk and that he feels he has to go home. (T18) Petitioner testified that he would have

swelling in is knee. (T18) (T19) Petitioner testified that he cannot bend down at work to inspect the machines from underneath because he cannot put his knee down. (T25) Petitioner testified that he still has pain on the medial side of his left knee. (T26). Petitioner testified that his knee becomes swollen when he walks at work, but he is still able to complete all the duties of his full job. (T26)

At trial, Petitioner confirmed he is currently 52 years old and still works for Respondent. (TX, 17, 19). Petitioner testified his shift starts at 6:00AM and he is responsible for turning on the lights and machines, inspecting and greasing the machines, and bending over to monitor under the machines. (*Id*.). His shift usually ends around 6:30PM and routinely works around 60 hours a week; 10 hours a day Monday through Saturday and only rests on Sundays. (TX, 18). After his shifts, Petitioner's left knee swells up, limiting his ability to walk. (*Id*.). "Sometimes I feel that something is not right", Petitioner recalls feeling after spending most of his workday standing and only resting during his breaks. (TX, 18-19). When asked if he could perform his mechanic duties from a sitting position, Petitioner vehemently answered "No". (TX, 19). Petitioner testified he has been a machine mechanic for approximately 20 years and has only worked for Respondent since coming to the United States from Cuba. (TX, 20).

Petitioner testified prior to his accident, he enjoyed riding bicycles, fishing, swimming, activities that are nearby the ocean, traveling to Florida, taking walks, and dancing. (TX, 20). After his accident, Petitioner feels limited in his ability to perform those activities. Specifically, with respect to fishing, Petitioner testified he cannot fish from a boat because he cannot stand and hold a fishing pole for a very long time. (TX, 22). Petitioner confirmed he is left hand and left foot

dominant. (*Id*.). Petitioner testified he is unable to swim or ride his bike too long and recalled an incident where he came home limping after riding his bike, prompting him to never ride his bike again. (TX, 23). Petitioner testified he can no longer dance as he used to. (TX, 23). Petitioner has been married for 27 years and testified his injury has affected his ability to do activities with his family. (TX, 24). As an example, Petitioner recalled a time at a museum where his family was forced to leave him behind because he could not go up a flight of stairs. (TX, 24). With respect to his work activities, Petitioner testified he feels limited because he cannot bend over or put his knee down and is oftentimes required to bend down to inspect machines. (TX, 25). Petitioner testified he still has swelling in his left knee and pointed for the record to the medial side of his left knee. (TX, 26). Petitioner testified long walks or drives, and repetitive bending and standing to inspect machines cause his left knee to swell up.

III. Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his or her claim *O'Dette v. Industrial Commission,* 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill. 2d 52, 63 (1989). It is well established that the Act is a humane law of remedial nature and is to be

liberally construed to effect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. Every injury sustained in the course of the employee's employment, which causes a loss to the employee, should be compensable. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954). Decisions of an Arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

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

At trial, Petitioner introduced the following unpaid medical bills into evidence:

MOR Physician Network	$14,572.00
ATI Physical Therapy	$530.28
Lawndale Christian Health	$91.00 (Reimbursement)
Total Bills:	$15,193.28

The Parties stipulated Respondent will issue the $91.00 reimbursement to Petitioner for the out-of-pocket payments made to Lawndale Christian Health Center. Respondent provided no argument or defense to support non-payment of the ATI charges in the amount of $530.28 and therefore the Arbitrator finds they are obligated to pay this charge pursuant to the fee schedule. The Arbitrator notes Respondent does not dispute any of the medical treatment *per se*. Respondent does, however, argue that two charges related to procedure code "POS 22" from MOR Physician Network ($14,572.00) were deemed not appropriate and therefore not paid. (TX, 33). In support of its argument, Respondent submits a Hartford Bill Review Analysis ("EOB") that purportedly disputes

the charge as not reasonable or necessary. (Respondent Exhibit 3 "RX3"). Specifically, Respondent's EOB indicates that the POS 22 modifier was billed for a service that 1) was greater than that usually required for the listed procedure, and 2) does not warrant assistant surgeon services. (RX3, 12-13). The Arbitrator is not persuaded by this argument for several reasons. First, Respondent's EOB is an internal Hartford bill review analysis, not an opinion from a credentialed physician pursuant to a Section 12 examination or Utilization Review. Secondly, Dr. Chahla directly addresses the need for the POS 22 coding modifier in the medical records from Midwest Orthopedics at Rush. (PX2, 98-99). In his report dated August 18, 2020, Dr. Chahla details the complexity and medical necessity of surgical treatment for a meniscal root tear. Additionally, Dr. Chahla provides literature to support his credible opinion that a meniscal root repair requires 300% more surgery time than a standard meniscus repair and therefore warrants a POS 22 billing modifier. (*Id*.). Respondent did not raise any objection to the admissibility of this report into evidence and, therefore, the Arbitrator gives weight to Dr. Chahla's compelling opinion regarding the POS 22 code modifier. Finally, it is clear from Dr. Chahla's surgical authorization sheet, that he was requesting approval for surgery consisting of a Meniscus Repair vs. Meniscectomy with "possible root" repair and listed CPT codes of 29881 and 29882 associated with that outpatient procedure. (PX2, 225-226). On July 30, 2020, Respondent's claim adjuster, Amy Brown, explicitly approved this procedure via email. (PX2, 227). Given all the above, the Arbitrator finds there is more than sufficient evidence to support Respondent has not paid all reasonable and necessary medical services related to Petitioner's work accident. Accordingly, Respondent shall reimburse Petitioner $91 for the out-of-pocket payments to Lawndale Health Center and pay for the outstanding charges from ATI and MOR Physician Network as noted above.

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

Section 8.1b(b) of the Act provides that, for accidental injuries that occur on or after September 1, 2011, as here, the Commission must base its determination of the amount of PPD awarded on a consideration of the following factors: (1) the reported level of impairment containedin a physician's written impairment report prepared pursuant to AMA guidelines; (2) the injured employee's occupation; (3) the employee's age at the time of injury; (4) the employee's future earning capacity; and (5) evidence of disability corroborated by the treating medical records. 820ILCS 305/8.1b(b) (West 2012). "None of the factors set forth in section 8.1b is to be the sole determinant of the claimant's disability." *Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150311WC, ¶ 49. A determination of the extent of a claimant's disability is a question of fact, and the Commission's decision will not be set aside unless it is against the manifest weight of the evidence. *Peabody Coal Co. v. Industrial Comm'n*, 355 Ill. App. 3d 879, 883 (2005).

With respect to this issue, the Arbitrator applies the five factors as outlined in §8.1b:

1. Neither party produced an impairment rating report, so this factor is not considered.
2. Petitioner works as a machine mechanic and has worked in that role for Respondent approximately 20 years since coming to the US from Cuba. Although Petitioner continues to work for Respondent in the same capacity, he does so with significant limitations as his job requires repetitive bending and standing to inspect machines. This factor is given moderate weight.

3. Petitioner was 50 years old at the time of the injury and 52 years old at the time of hearing. The Arbitrator places significant weight on Petitioner's age as he is likely to work with a permanent partial disability for more than ten years With these years still left in the workforce and likely limited opportunities given his advanced age and physical limitations, this factor is given significant weight that the
4. There was no evidence presented of a negative impact on Petitioner's future earning capacity. This factor is given some weight as Petitioner has suffered no diminished earning capacity as a result of his accident.
5. Petitioner underwent an arthroscopic surgery to repair a meniscal root tear, a procedure Dr. Chahla credibly opined is 300% more time than a standard meniscal repair. ATI's work hardening discharge summary report from January 6, 2021, noted persistent swelling and complaints of left knee pain after therapy. Dr. Chahla's maximum medical improvement note from March 11, 2021, documented Petitioner's ongoing and increased pain from performing his work duties. This evidence of disability is corroborated by Petitioner's trial testimony, where he adamantly testified, he has ongoing pain and swelling on the medial side of his left knee.; swelling which was noted in the ATI physical discharge summary. Additionally, his left knee limitations have negatively affected his ability to perform activities he enjoyed doing pre-injury such as fishing, swimming, bicycling, boating, and dancing. This factor is given significant weight.

After weighing all five factors, the Arbitrator finds that Petitioner's injury has caused permanent partial disability to the extent of 22.5 % loss of use of his left leg.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC010878
Case Name	Sharon Guy v. CDN Logistics
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0068
Number of Pages of Decision	16
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Edward Czapla, Daniel Klein
Respondent Attorney	Victor Herrera

DATE FILED: 2/14/2023

/s/ Thomas Tyrrell, Commissioner

Signature

23IWCC0068

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Sharon Guy,

Petitioner,

vs. NO: 20 WC 010878

CDN Logistics,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causation, medical expenses, and temporary total disability ("TTD"), and penalties and fees, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

As it pertains to the issue of accident, the Commission reverses the Decision of the Arbitrator. Petitioner's testimony regarding the defective condition of the driver's seat is corroborated by Respondent's own repair order documentation. RXI. Petitioner testified she made complaints regarding the seats functioning on multiple occasions prior to reporting her injury, yet Respondent's witnesses denied same. However, the third page of RXI clearly states (with spelling errors):

- "Driver came to shop to cheack L/S Seat leaking, check bloer motor in sleeper, check roof for leaking"
- "Checked b;oer motor in sleeper all good"
- "Seat Assembly, LEAKING, REPAIRED."

This repair order opened on April 29, 2020, certainly implies that the seat assembly was repaired. The Commission gives little weight to Respondent's insistence that the seat was functioning properly given the discrepancies between the witness testimony and the repair order documentation.

Further, Petitioner gave consistent histories to every medical provider that she felt her seat caused her injury. The video of PX21 confirms the movement in the seat.

As it pertains to the issue of causal connection, the Commission finds that Petitioner's current condition of ill-being is not related to the accident. Petitioner began driving for Respondent on March 9, 2020. T.1, p. 41. She drove long-haul routes across the country. T.1, p 73-74, 76-78, 82-85. Petitioner testified she began to experience back pain on April 25, 2020, which she attributed to the seat going up and down and bouncing. T.1, p. 86, 89.

Petitioner presented to PennState Health Milton S. Hershey Medical Center on April 27, 2020 with thoracic pain for two days. PX1. She reported she was a truck driver and thinks that her seat may have contributed to her condition. When she returned to the CDN terminal in Northlake, Illinois, Respondent directed her to Concentra Medical Center on April 29, 2020. PX2. Petitioner reported pain in the thoracic and lumbar region. She attributed this to an air leak in the truck seat causing her to bounce up and down. Petitioner was diagnosed with pain in the lumbar region, thoracic back pain, and lumbar strain. She was placed on work restrictions.

Petitioner presented to Elmhurst Hospital Emergency Department on May 2, 2020. PX3. After evaluation for sudden onset of severe mid-back pain causing shortness of breath, she was diagnosed with back strain. Petitioner began treatment with Modern Pain Consultants on May 6, 2020 for evaluation and treatment of mid lumbar pain and myofascial pain since work-related injury. PX4. Petitioner reported that on this date the seat in her truck broke/was defective, causing her to bounce up and down and absorb too much impact into her lumbar spine while she was driving. Petitioner continued in treatment with Modern Pain Consultants until June 5, 2020, when she reported she was moving to North Carolina.

Petitioner did not resume treatment until August 24, 2020 at Advanced Orthopedic Center in California. PX6. Physical examination on that date was relatively unremarkable, with tenderness noted over the paracervical and lower lumbar musculature. Provocative testing was normal.

Pursuant to Section 12 of the Act, Petitioner was evaluated by Dr. Richard Emmanuel on April 5, 2021. RXO. As prior, all provocative testing was negative, with physical examination only showing slight decrease in range of motion and manifest tenderness. Dr. Emmanuel diagnosed Petitioner with age-appropriate lumbar and cervical degenerative disc disease. RXO, p. 28-29.

The Commission finds that Petitioner suffered, at most, a thoracolumbar strain which resolved by June 5, 2020. Petitioner ceased treatment June 5, 2020, and did not resume until August 24, 2020. Despite being off work, her condition was significantly worse when she resumed care in California on August 24, 2020, with upper and lower extremity radiation that was not previously present. At that time, her physical exam was fairly normal and straight leg raise test was negative. All subsequent visits were telehealth, which really limit a true examination of her condition.

This is consistent with Dr. Emmanuel's testimony:

- "Even if we were to assume that the alleged mechanism of the seat bouncing up and down did cause some degree of a small flare-up certainly, one would reasonably expect that that flare-up would have resolved itself within one to two weeks." RXN, p. 30.

- "And given her findings and the history that was provided, I would say that she would reach MMI status within two to four weeks of the date of injury." RXN, P. 84.
- "Just for the sake of argument, that she did have some bouncing mechanism to her lower back, it certainly would not cause the types of protracted duration of symptoms…Even if she did sustain a small back strain, it would not require the extent or breadth of treatment that she's undergone." RXN, p. 103.
- "…taking a hypothetical and saying that there was indeed a defect, then hypothetically it can cause a strain, which should resolve itself in two to four weeks." RXN, p. 105-106.

In sum, Dr. Emmanuel admits that if the seat was loose and/or bouncy that this could have caused a strain that would warrant four weeks of care. Consistent with this estimate, Petitioner initially ceased her treatment on June 5, 2020, approximately five (5) weeks after the date of injury.

The Commission finds that Petitioner's condition of ill-being as it related to her accident on April 25, 2020 reached maximum medical improvement on June 5, 2020. The Commission awards medical expenses through June 5, 2020. The Commission awards TTD benefits from April 30, 2020 through June 5, 2020, a period of 5-2/7 weeks.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 6, 2022, is reversed as stated herein.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical expenses incurred through June 5, 2020, subject to §8(a)/§8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner temporary total disability benefits of $691.21/week from April 30, 2020 through June 5, 2020, as provided in Section 8(b) of the Act.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $3,800.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 14, 2023

o: 12/13/2022
TJT/ahs
51

/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC010878
Case Name	GUY, SHARON v. CDN LOGISTICS
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Edward Czapla
Respondent Attorney	Victor Herrera

DATE FILED: 1/6/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 4, 2022 0.22%

/s/ Jeffrey Huebsch, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

Sharon Guy
Employee/Petitioner
v.
CDN Logistics
Employer/Respondent

Case # **20** WC **010878**

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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **April 20, 2021, August 11, 2021 and August 13, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **April 25, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

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

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, the average weekly wage was $**1,036.81**, per the Parties' stipulation.

On the date of accident, Petitioner was **43** years of age, ***single*** with **0** dependent children.

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

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

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

ORDER

Claim for compensation denied. Petitioner failed to prove that she sustained accidental injuries which arose out of and in the course of her employment by Respondent on April 25, 2020.

Petitioner's claim for penalties and attorney's fees is denied.

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

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

/S/ Jeffrey Huebsch

Signature of Arbitrator

JANUARY 6, 2022

ICArbDec19(b)

INTRODUCTION

This matter was tried on three days, as is set forth above. The case was presented as a §19(b)/8(a) proceeding.

At the first hearing, on April 20, 2021, Respondent disputed Act, Employee/Employer, Accident Arising Out Of and In The Course Of Petitioner's Employment by Respondent on April 25, 2020, Causal Connection, AWW, Incurred and Prospective Medical Expenses, TTD and Penalties. The Testimony of Petitioner was submitted at the April 20, 2021 hearing.

The case was continued for Respondent to submit the testimony of witnesses employed by Respondent and for the Parties to submit exhibits, including the evidence deposition of Respondent's Section 12 examiner, Dr. P. Richard Emmanuel, which was scheduled for May 23, 2021.

The case was again heard on August 11, 2021, at which time a record was made regarding Respondent's request for a dedimus potestatem to be issued to elicit further testimony from Dr. Emmanuel. Updated testimony from Petitioner and the testimony of two witnesses employed by Respondent was also adduced. Additionally, it was noted that Respondent no longer disputed the issues of Act, Employee-Employer and AWW.

At the final hearing on August 13, 2021, documentary exhibits were submitted.

FINDINGS OF FACT

On April 25, 2020, Petitioner was employed by Respondent as a truck driver. She resides in Los Angeles, California with her sister. She has a GED certificate and completed truck driving school in July of 2017. Petitioner has a CDL license. She worked for several other trucking companies before being hired by Respondent in March of 2020.

As a part of her being hired as a truck driver, Petitioner had to go through a road test with Mark, Respondent's safety guy. Petitioner testified that she told Mark that there was something wrong with the truck's seat during the road test. After the road test, Petitioner took the truck back to maintenance. The seat was going up and down, bouncing. Petitioner testified that maintenance lifted the seat up and she was able to leave Respondent's terminal on March 12, 2020 for her first run from Northlake to Antioch, Tennessee. PX 19 was identified as Petitioner's Events History for her runs in March and April of 2020. During her employment by Respondent, Petitioner drove one tractor, Unit CDN 054.

Petitioner went on a run to Texas around March 20 and reported to Respondent that her seat was not functioning properly. She was given the phone number of Kathy, the head of maintenance. Petitioner's return to work at Respondent was delayed by a sinus infection. Petitioner thought that Respondent was ordering a new seat, but they did not. Kathy later told Petitioner that she had not heard of any of Petitioner's complaints regarding the seat in Unit CDN 054. Petitioner testified that maintenance lifted the seat up again and acted like they fixed it.

Petitioner testified that she received treatment for the sinus infection on March 22, 2020 at a clinic in Illinois. No records regarding this treatment were submitted by the Parties.

PX 3, the records of Elmhurst Memorial Hospital, shows that Petitioner had an ECG procedure there on March 16, 2020. RX H, the records of Concentra-Franklin Park, show Petitioner was seen there for fitness for duty (RTW) on March 17, 2020. She was said to have developed chest pain on 3/16/2020 and was seen in the ER on 3/16. She was okayed to RTW. The Concentra chart references ER notes: "See ER notes. Pharyngitis? CP R/O MI. No E of PE. NAD. Cleared." (RX H, pp 87-113) No records regarding The March 2020 ER visit at Elmhurst were submitted by the Parties.

Petitioner was again found fit for duty by Concentra on 4/3/2020. She was cleared regarding hypertension. (RX H)

Petitioner thereafter went on several runs (to Virginia, to Pennsylvania, then back to Illinois; to Texas, around Texas and back to Illinois; out to and around California and, lastly, from California to Pennsylvania from April 22 through April 27, 2020. (PX 19)

Petitioner testified that, around April 25, 2020, she began experiencing back pain. She noticed the same thing on April 26. She took Extra-Strength Tylenol on 4/25, 4/26 and 4/27. Petitioner testified that the back pain was related to her truck seat, "going up and down, bouncing", if she hit a bump. There was an air leak in the seat. She had pain and stiffness in her lower back. Petitioner testified that the pain started creeping up her back to her neck. Petitioner testified that her neck was injured from the seat bouncing up and down.

On April 27, 2020, Petitioner was in Pennsylvania. She backed her truck into a stall at the Love's Truck stop. She had trouble getting out of the truck. She bought some IcyHot and applied it. The IcyHot did not help. The pain got worse. It was in the middle of her back. A Love's employee gave Petitioner a ride to the ER in Hershey, Pennsylvania.

Petitioner testified that she complained regarding the middle top of her back at the ER. Petitioner testified that she told the ER staff that her seat was bouncing, going up and down. X-rays were taken. Petitioner testified that she received a shot and was prescribed Ibuprofen and a muscle relaxer. She took an Uber back to Love's and drove her truck back to Respondent's Northlake terminal the next day.

PX 1 was the records of Penn State-Milton Hershey Medical Center. Petitioner was admitted at 1:51am on 4/27/2020 and was discharged from the ER at 4:08 am on 4/27. The diagnosis was acute backpain and hypertension. Petitioner presented with a complaint of lower thoracic back pain since 2 days ago. Her seat may have contributed to her complaints. There was no chest pain or abdominal pain. The neurologic exam was benign. Tenderness in the T-spine was noted – TTP, worse with movement. There was a workup for possible pulmonary embolism. Labs and cardiac work-up were benign. It was noted that Petitioner was not taking her blood pressure medication. Petitioner was concerned about Covid and thought that she had strained or twisted her back. There is no documentation of any injury to Petitioner's lumbar or cervical spine. A Toradol injection was given, along with topical cream and instructions to continue Tylenol or Ibuprofen, rest and apply ice or heat. (PX 1)

Petitioner testified that she reported her back pain when she got to Respondent's terminal on April 29, 2020. She told Clarence that the seat was messed up and she had gone to the ER. She told Mark that she had gone to the ER and her back was hurting really bad. Petitioner said she didn't tell Mark about the seat problems because Clarence had told Mark about them before. Clarence's testimony was not presented by either Party.

On April 29, 2020, Petitioner observed a CDN mechanic check out the seat. She videoed the inspection (or at least 16 seconds of it) on her cellphone. The video was admitted into evidence as PX 21, over the objection of Respondent.

Petitioner testified that she was sent to Concentra in Franklin Park by Respondent, for treatment. She said that she complained regarding her low back and middle back at this visit. She said that she related her back pain to the seat bouncing up and down. Treatment consisted of Ibuprofen, muscle relaxers and a recommendation for PT. Restricted work was recommended.

Petitioner did not return to work for Respondent. She was sent by Respondent to a hotel. She had excruciating pain and went to the Elmhurst Hospital ER, she believes the next day.

Both Parties submitted records from Concentra for treatment that Petitioner received on April 29, 2020 and May 1, 2020. (PX 2, RX H) They neglected to comply with SCR 138, in that Petitioner's Social Security Number was displayed numerous times. The Arbitrator redacted the SSN as best he could. The Parties are encouraged to comply with SCR 138 in the future (it's a Rule, not a suggestion) and to verify that all prohibited information was properly redacted by the Arbitrator.

The Concentra records from April 29, 2020 show that Petitioner was seen for thoracic pain, low back pain, times one week, date of injury 4/22/2020. The patient was driving a truck all month with a broken seat (air leak). She had 10/10 pain on 4/22 and 8/10 pain today. She complained of bilateral back pain with no radiation. A back strain 10 months ago was noted. Tenderness was noted in the left paraspinals. T-spine tenderness was located at T8-T10. L-spine tenderness was at L1-L3. Strength was normal. SLR was negative. The neurologic exam was normal. The cervical spine exam showed normal lordosis, no tenderness and full range of motion. The assessment was: Pain-Lumbar; Thoracic Back Pain; and Lumbar Strain. Ibuprofen, Acetaminophen, muscle relaxers, hot/cold packs and restricted work duties were recommended. The work restrictions were: 15# lifting, 25# push/pull, occasional trunk rotation. (PX 2, RX H)

The Concentra records show that Petitioner was seen there again on May 1. 2020. She was seen for a re-check for a lumbar and thoracic strain, secondary to driving a truck with a broken seat. The pain complaints were left more than right. Left Thoracic paraspinal TTP and Left Lumbar paraspinal TTP was noted. Left Lumber muscle spasm was noted. Decreased range of motion was noted. SLR testing was negative. The diagnosis was: Lumbar strain and Toracic Myofascial Pain. Cyclobenzaprine, PT and restricted work status was recommended. Lumbar X-rays showed mild L5-S1 spondylolitis. (PX 2, RX H)

Elmhurst Memorial Hospital records submitted by Petitioner show that she was seen in the ER on May 2, 2020. She was seen for shortness of breath, lumbosacral strain, thoracic spine pain and hypertension. Her primary complaint was of upper back pain since the 22nd. "Mid-upper back pain since 3/22/2020, also exertional chest pain." She is a truck driver and the pain was of sudden onset. She reported that her back pain was getting better. Examination revealed mid thoracic TTP. The 3/16/2020 ECG was compared to a study taken on 5/2/2020. The chest X-Ray revealed an enlarged heart. The diagnosis was muscular back pain. A cardiac workup was negative. Petitioner was instructed to follow up with a physician. (PX 3)

Petitioner testified that she was fired by Mark at Respondent two days after April 29, 2020, for falsifying something.

Petitioner testified that prior to April 25, 2020, she had never injured her back at work. Petitioner denied treatment for her low back prior to April 25, 2020. Prior to April 25, 2020, she did not experience symptoms in her low back and did not experience left leg radicular pain. She also denied prior neck injuries at work, prior neck treatment and prior neck symptoms before April 25, 2020.

Petitioner did not receive anything in writing regarding her termination. She filed for unemployment and that claim is on appeal.

Petitioner testified that her prior attorney, Mr. Klein, referred her to Hinsdale Modern Pain Consultants ("MPC"). This was her first choice of physicians. She was first seen at MPC on May 6, 2020. Petitioner testified that she complained of neck and back pain at that time. She related the pain to bouncing up and down of her seat. Dr. Khan took Petitioner off work and prescribed therapy. She had therapy between May 7, 2020 and June 19, 2020. The therapy did not help. Dr. Khan recommended an MRI of the low back, which was performed on May 13, 2020. Dr. Khan continued work restrictions and recommended an injection and more PT. A C-spine MRI was performed on May 29, 2020.

Petitioner relocated to North Carolina in June of 2020 and moved in with a friend. She drove to North Carolina. She later flew to California, where she now lives with her sister. In California, Petitioner began treatment with Dr. Nissanoff, in Santa Monica.

When Petitioner was first seen by Dr. Nissanoff on August 24, 2020, she complained of back and neck pain related to her truck seat. Her back pain had begun radiating down her left leg after she moved to California. Dr Nissanoff recommended injections, which were not approved. Medications and therapy ordered by Dr. Nissanoff have not helped. Dr. Nissanoff continues to recommend PT, a brace, TENS unit and medication. He has recommended an updated MRI. If this treatment was approved, Petitioner would pursue it.

Petitioner complains of left leg pain, down the "top" (anterior aspect?) of her thigh to the top of her knee. She has low back pain. She has numbness or tingling in her fingers and right shoulder, with pain running from her right shoulder to her 4th and 5th fingers.

Petitioner has received no workers' compensation benefits and no medical bills have been paid. She denied subsequent injuries to her low back or to her neck. She has not worked anywhere since being terminated by Respondent in May of 2020.

On cross-examination, Petitioner testified that she never submitted work status slips to Respondent. Petitioner agreed that the last treatment for her upper back (Thoracic Spine?) was May 6, 2020.

PX 4 was the records of Hinsdale Modern Pain Consultants. The intake sheet shows that Petitioner said she was out of breath when walking. Her injury or pain began 4-15-2020 and her pain has been present since 4/27/2020. Per Dr. Khan's 05/06/2020 report, Petitioner was seen for work-related injury, lumbar pain, myofascial pain. The injury occurred on 4/15/2020. The seat in her truck was broke/was defective, causing her to bounce up and down and absorb to (sic) much impact into her lumbar spine while she was driving. She currently reports that pain is localized to the lumbar region. Interestingly, a physical exam of the spine is not documented in PX 4 for the first date of treatment. The assessment was: work related injury; acute pain due to trauma; myofascial pain; lumbago and lumbar facet joint pain. MRI, medications and PT was recommended. Petitioner was ordered off work. The May 20, 2020 progress

note authored by Suman Shaw, NP shows that Petitioner reported 40% improvement with PT and now complained of intermittent cervical pain with bilateral shoulder radiculopathy that started 2 weeks ago and has been increasing. The last visit documented at MPC was with NP Suman Shaw on June 5, 2020. The MRI studies were reviewed and it was noted that Petitioner had moved to North Carolina and care will be transferred. Transitioning of PT to HEP, orthopedic surgery consult regarding the C-spine and a bilateral TFESI at L4-5 and L5-S1 was recommended. (PX 4)
Petitioner had PT at Team Rehabilitation from May 7, 2020 to June 19, 2020, per the orders of Dr. Khan. The treatment was addressed to her lumber spine. (PX 5)

The MRI studies ordered by Dr. Khan were done at Molecular Imaging. The Lumbar study was completed on May 13, 2020 and showed a 2.1mm annular bulge and 7.4 mm right foraminal herniation at L4-L5 and a 1.6 mm annular bulge at L5-S1. The pathology at L4-L5 was said to be consistent with a recent tear. The Cervical study was completed on May 27, 2020 and showed disc osteophytic complex findings From C2 to C7. (PX 6)

PX 7 and PX 8(Vol. I-III) were the records of Advanced Orthopedic Center, Jonathan Nissanoff, MD. Petitioner presented for treatment of low back and neck pain, per Dr. Nissanoff's initial report of August 24, 2020. The history was of an injury to the patient's neck and low back that occurred on 27 April 2020. "The patient was driving a truck when she started to have pain in her mid upper and lower back . She was driving for CDM logistics company (sic) which she had worked for the past 3 months. She describes her pain as 9 out of 10 pain aching locking numbness sharp sore stabbing throbbing tingling waking her up at night and burning. It is is (sic) and comes and goes nothing makes it better lying down and turning makes it worse. It radiates to the right shoulder and upper extremity and down her left lower extremity. …The broken seat, in her company furnished truck, caused her complaints." (PX 7) The assessment was: Chronic cervical pain and slight chronic low back pain; Radiculitis right upper extremity; Radiculitis left lower extremity. PT was recommended, along with Medrol Dosepak, epidural injection therapy with pain management consultation, along with the notation that if conservative management fails she will be indicated for decompression and possible fusion. "The repetitive driving on the broken seat caused or led to the injuries above." (PX 7)

Dr. P. Richard Emmanuel examined Petitioner in California on April 5, 2021 at the request of Respondent. Dr. Emmanuel's Evidence Deposition was taken on May 4, 2021 and was admitted into evidence as RX O. Dr. Emmanuel is a Board Certified Orthopedic Surgeon, Fellowship Trained in Spinal Surgery. The history was of an insidious onset of lower back pain that occurred while driving a truck on April 25, 2020 and later spread to her upper and lower back. Petitioner attributed the onset of her pain to a seat that was loose and gyrating and bouncing up and down. She complained of neck and low back pain. Dr. Emmanuel did not endorse causation as to the mechanism of injury and any low back or cervical spine abnormality that Petitioner exhibited. It was noted that the physical exam at the ER in Pennsylvania did not show any cervical abnormality and did not show any lumbar abnormality. It supported only a thoracic spine strain. Petitioner's complaints upon presenting to Dr. Emmanuel were related to the neck and low back, not the thoracic spine. Hypothetically, a loose seat could cause a strain, which would resolve in a short time, about 4 weeks. The neck complaints arose several weeks after the accident date and would not be related. (RX O)

At the August 11, 2021 hearing, Petitioner testified that she continued to receive medical treatment from Dr. Nissanoff. Dr. Nissanoff continues to restrict Petitioner from work. Her last visit with Dr. Nissanoff was on August 9, 2021.

Mark Dannhauser testified at the request of Respondent. He has been employed by Respondent since 2005. He was Respondent's Safety and Compliance Manager in January of 2020. He had responsibility for accident and injury investigation and orientation and training of drivers. He was familiar with Petitioner.

Dannhauser gave Petitioner her DOT road test on March 17, 2020. The test was in Unit CDN 054. A pre-trip inspection was performed and no problems with the driver's seat were observed. Dannhauser did not see any problems with the driver's seat during the six mile road test. Petitioner did not make any complaints regarding the driver's seat during the test. Dannhauser did not believe that Unit CDN 054's driver's seat was defective. The Unit's seat did not have an air leak when it was assigned to Petitioner.

On or about April 29, 2020, Petitioner reported an alleged work injury to Dannhauser. She said that her back was hurting and she thought that it was from the driver's seat. Petitioner did not report any neck injury to Dannhauser.

RX I was repair order documents for Unit 054. A repair order was opened for Unit CDN 054 on April 29, 2020. Previously, on April 13, 2020 and April 1, 2020, repair orders for the fifth wheel and a code regeneration were made on Unit CDN 054. These actions were documented on Repair Order Detail forms that were generated by Dannhauser on 8/10/2021. The repair order for April 29, 2020 was for "L/S Seat leaking, bloer (sic) motor in sleeper, check roof for leaking." According to Dannhauser, There was nothing wrong with the seat. The blower motor was repaired and no roof leak was found. The Repair Order Detail (#72343) was opened 4/29/2020 and closed 5/5/2020. It states "Checked b;oer (sic) motor in sleeper all good." Labor Mechanic 1235 "Seat Assembly, LEAKING, REPAIRED" – 1 hour labor. The associated Work Order references RO# 72343 and indicates one hour work performed, "Tighten Blowgun Fitting, Fixed Blower motor, Advised & checked roof leak." It is signed by Lorenzo Cano and identifies a Date Completed of 4-30-2020. The form carries Respondent's logo (CDN Logistics, Inc.) and carries the title Custom Companies Work Order. (RX I)

Dannhauser identified another Repair Order regarding Unit CDN 054 as RX J. This shows an express assessment-"Customer states the driver's seat is having issues, check operation." "Checked seat operations, checked all locks and all locks functioning correctly. All bushings and seat pivots not loose and no unusual wear. Tested all seat functions and all working properly took pictures and sent them to Ken." This was apparently a no charge seat operations check. (RX J) This procedure was a double check of the seat function.

RX K was an email from Daniel Salazar, Maintenance Supervisor (email dsalazar@customco.com) at Custom Companies (a Company affiliated with Respondent and mentioned above in RX I) to Dannhauser (email mdann@customco.com) stating that he was the one that inspected the seat and found no problem with the seat or its operation. Dannhauser requested this information and received it via Respondent's email.

Dannhauser testified that Unit CDN 054 was in service before it was assigned to Petitioner and there hadn't been any reports of prior seat problems or defects. No mechanic who inspected the seat in connection with this workers' compensation case has reported that the seat is defective or had an air leak. No mechanic that has inspected the seat has recommended that it be replaced. The seat remains in the truck and the truck is still in service. No subsequently assigned driver has reported problems with the driver's seat of Unit CDN 054. Dannhauser drove Unit CDN 054 after the alleged work accident (Between May of 2020 and June of 2020) and observed that there were no issues with the seat. No

bouncing up and down. No wobbling side to side. He does not believe that the seat was defective. He does not believe that it had an air leak. If the seat was defective, it would have been replaced.

Respondent also presented the testimony of Lorenzo Cano a Diesel Mechanic for CDN Logistics. He has been so employed for 4 years. Cano is Mechanic Number 1235. He prepared the 4/29/2020 Work Order document set forth in RX I. He prepared the Repair Order set forth at page 3 of RX I. He was aware that the driver of Unit CDN 054 had complained of an air leak from the driver's seat. Cano inspected the seat and there was no leak. There was a leak in the blow gun (a device used to blow debris out of the truck cabin). The blow gun and the air ride seat are on separate air lines. A leak in one does not affect the other. The seat airbag and the valve controlling the seat air line were functioning normally. There were no problems with the seat. The seat was not bouncing up and down. It was not wobbling side to side. There was no air leak. Cano did not know that Petitioner videoed part of his inspection of the seat in Unit CDN 054 on 4/29/2020. He did not consent to his being videoed. Cano personally sat in the seat and it was functioning normally.

On cross-examination, Cano testified that he did not prepare the Repair Order set forth on page 3 of RX I. He prepared the Work Order set forth on page 4 of RX I. Cano Tesified that he was the mechanic depicted on PX 21. Petitioner was there for the inspection and she was complaining of a defective seat. Cano did not tell Petitioner that the seat was leaking. The seat performance showed on PX 21 was normal. It was functioning. There was no problem with the seat. Cano did not find any defect with the seat.

Subsequent to Mr. Cano's testimony, Petitioner testified in rebuttal. Petitioner testified that Cano was the mechanic on PX 21. "I told him about the seat. It's still doing the same thing, jumping up and down. When I go over a bump, it jumps up and down. …and he said it's an air leak." Petitioner testified that Cano was referring to the seat when he said that there was an air leak.

Cano was recalled and testified that when he talked with Petitioner and referred to an air leak, he was speaking of the blowgun.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d).

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between her employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989)

Decisions of an arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR FINDS:

Petitioner failed to prove that she sustained accidental injuries which arose out of and in the course of her employment by Respondent on April 25, 2020.

Petitioner's entire claim is premised upon the driver's seat in Unit CDN 054 being defective and broken. The Arbitrator finds that the driver's seat in Unit CDN 054 was not defective and not broken in March and April of 2020. Petitioner's testimony regarding any defective condition of the driver's seat is simply not corroborated. To the extent that Petitioner's testimony conflicts with that of Dannhauser and Cano, the Arbitrator believes Dannhauser and Cano.

Petitioner's testimony just does not add up. First, Petitioner testified that she noticed something wrong with the driver's seat in Unit CDN 054 during the road test. This testimony was disputed by that of Dannhauser. Petitioner did not introduce any records from "maintenance" that supports her claim that the seat was "lifted up" so that she was able to leave on her first run. Likewise, Petitioner did not provide any testimony or maintenance records to corroborate her contact with "Kathy" from maintenance in March of 2020 regarding the seat and any subsequent "lift" of the seat by maintenance. PX 21, the video of a portion of the seat inspection (16 seconds!) does not persuade the Arbitrator that the seat was defective. Cano is moving the seat around when it is unoccupied. If a driver's weight was on the seat, it is doubtful that Cano would have been able to move it at all.

Trucking companies make money by having their trucks in service and on the road. If there was a defect in the seat, they would fix it so that the truck would stay in service and not have to come back for repairs. Having considered Cano's testimony, if the seat was defective, he would have remembered it and would have documented the repair in such a way that the Work Order and Repair Order Detail of 4/29/2020 and 5/5/2020 were consistent. The blowgun needed a fitting tightened. There was nothing wrong with the seat and no seat repair was done. Dannhauser's testimony was that there were no complaints regarding the seat by drivers that drove CDN 054 before or after Petitioner drove it and he personally and did not observe any problem with the seat. The Arbitrator believes this testimony.

There was no defect in the seat in Unit CDN 054 in March and April of 2020. The seat was not broken in March and April of 2020. If there was no defect and the seat was not broken, Petitioner's claim that she sustained accidental injuries which arose out of and in the course of her employment by Respondent on April 25, 2020 fails.

Accordingly, the Claim for Compensation is denied.

WITH RESPECT TO ISSUE (F), IS PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, AND ISSUE (L), WHAT AMOUNT OF COMPENSATION

IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS:

As the Arbitrator has found that Petitioner failed to prove that she sustained accidental injuries, arising out of and in the course of his employment by Respondent on April 25, 2020, the Arbitrator needs not decide these issues.

Regarding the issue of causation, neck complaints were not documented until May 20, 2020, some 3 weeks after Petitioner drove Unit CDN 054. There is no causal connection between Petitioner's work activities for Respondent and any condition of ill-being regarding her cervical spine.

WITH RESPECT TO ISSUE M, SHOULD PENALTIES OR FEES BE IMPOSED UPON RESPONDENT?, THE ARBITRATOR FINDS:

As the Arbitrator has found that Petitioner's claim for compensation is denied, Petitioner's claim for Penalties and Attorney's fees is denied as well.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC026617
Case Name	George Barrer v. City of Elgin
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0069
Number of Pages of Decision	11
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Russell Haugen
Respondent Attorney	Fred Beer

DATE FILED: 2/14/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

George Barrer,

Petitioner,

vs. NO. 13WC 26617

City of Elgin,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 24, 2022 is hereby affirmed and adopted.

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

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

No bond is required for removal of this cause to the Circuit Court.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 14, 2023

SJM/sj
o-12/14/2022
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC026617
Case Name	BARRER, GEORGE v. CITY OF ELGIN
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Russell Haugen
Respondent Attorney	Fred Beer

DATE FILED: 3/24/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 22, 2022 0.87%

/s/Gerald Granada, Arbitrator

Signature

23IWCC0069

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

GEORGE BARRER
Employee/Petitioner

v.

CITY OF ELGIN
Employer/Respondent

Case # **13** WC **026617**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Wheaton, IL**, on **February 9, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **5/24/2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**53,040.00**; the average weekly wage was $**1,020.00**.

On the date of accident, Petitioner was **59** years of age, ***married*** with **0** dependent children.

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

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

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

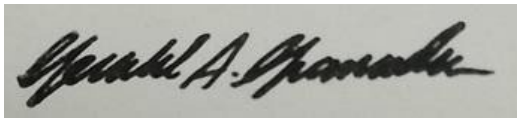
Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

- Respondent shall pay reasonable and necessary medical services totaling $75,864.06 as set forth in Petitioner's Exhibit 8, to the Petitioner, as provided in Sections 8(a) and 8.2 of the Act and subject to the medical fee schedule.
- Respondent shall pay Petitioner temporary total disability benefits of $680.00/week for 18 4/7 weeks, commencing 5/29/13 through 6/2/13 and 9/23/13 through 1/26/14, as provided in Section 8(b) of the Act.
- Respondent shall pay Petitioner permanent partial disability benefits of $612.00/week for 100 weeks, because the injuries sustained caused the 20% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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



MARCH 24, 2022

Signature of **Arbitrator Gerald Granada**

FINDINGS OF FACT

This case involves Petitioner George Barrer who alleges to have sustained injuries while working for Respondent City of Elgin on May 24, 2013. Respondent disputes Petitioner's claims, with the issues being: 1) accident; 2) causation; 3) medical expenses; 4) TTD; and 5) nature and extent.

Petitioner testified that he was employed by Respondent as a land management grounds worker when he had two work injuries on April 5, 2010 and May 24, 2013. His job duties involved maintaining ball parks/fields at various parks. His job required some lifting and the use of tools that included: hand held sprayers, weed-whackers, hedge trimmers, and driving a gator/golf cart-like utility vehicle. He mowed lawns with a 15-foot lawn mower. In the winter months, he drove a snow plow truck.

Pre-Accident Facts

Petitioner reported that he sustained an accident at work while lifting bags of weed killer from his truck on April 5, 2010. (RX 10) Petitioner prepared an accident report on April 6, 2010.

On April 6, 2010, Petitioner sought treatment at Sherman Hospital Immediate Care. At that time, Petitioner reported a left shoulder injury at work when he was lifting 50 lb. bags on April 5, 2010. Petitioner was diagnosed with shoulder tendonitis and was instructed to follow up in three days. Petitioner continued to follow up at Sherman Hospital. (PX 3) On April 30, 2010, Petitioner underwent an MRI of his left shoulder that revealed tears involving the subscapularis and supraspinatus tendons consistent with a labral tear. (PX 4)

On May 13, 2010, Dr. Gitelis evaluated the Petitioner. Dr. Gitelis noted Petitioner reported pain in his left shoulder. Petitioner indicated that this was a work injury but was not sure when it occurred. Dr. Gitelis reviewed the recent MRI and confirmed that Petitioner had a near complete tear of the subscapularis tendon in the left shoulder. Dr. Gitelis recommended operative intervention.

On June 14, 2010, Petitioner underwent a left shoulder arthroscopy with extensive debridement of an inflammatory synovitis; subacromial decompression with acromioplasty and removal of the subacromial spur; a biceps tenotomy; and debridement of grade 4 arthritic changes to the humeral head. The postoperative diagnosis was subacromial spurring; grade 4 arthritic changes to the humeral head with grade 3 changes to the glenoid; a type 2 labrum anterior to posterior lesion; inflammatory synovitis; and a tear of the muscular tendinous junction of the rotator cuff. (PX 4) Petitioner then underwent post-surgical rehabilitation.

On October 28, 2010, Petitioner was re-evaluated by Dr. Gitelis. On exam, Petitioner had full forward flexion and full abduction. Petitioner noted that his pain was much improved. Petitioner was recommended to finish his therapy and undergo an FCE. On November 3, 2010, Petitioner underwent a FCE at Sherman Health that showed Petitioner met the requirements of the LIGHT physical demand level for floor to waist lifting, waist to overhead lifting, and right/left carrying. He also met the requirements of the MEDIUM physical demand level for front carrying. On November 30, 2010, Petitioner returned to Dr. Gitelis, who felt that Petitioner was unable to return to his prior job due to the FCE results. Dr. Gitelis discussed the possibility of a total shoulder replacement to address Petitioner's pain complaints; however, Dr. Gitelis indicated that Petitioner should address his return-to-work status instead of proceeding with surgery. (PX 4)

On December 17, 2010, Petitioner was evaluated by Dr. Gregory Nicholson at the request of Respondent pursuant to Section 12 of the Act. At that time, Petitioner presented with minimal pain complaints and near normal range of motion. Dr. Nicholson opined that Petitioner could return to full duty work. Dr. Nicholson further opined that Petitioner was not a good surgical candidate for a shoulder replacement due to his minimal pain and full range of motion. (RX 5)

On January 4, 2011, Petitioner returned to Dr. Gitelis. At that time, Petitioner reported that his left shoulder pain had improved. On examination, he had 150 degrees of forward flexion and 140 degrees of abduction. Dr. Gitelis advised Petitioner that he could return to his job activities but there were some limitations with lifting activities. Petitioner was instructed to follow up on an as needed basis. No additional treatment was recommended. (PX 4)

Petitioner testified that he was able to work without incident from January 2011 until May 24, 2013. During this period, Petitioner did not have any problems completing his duties in the parks department for Respondent which included mowing, plowing, and maintaining the baseball fields. Petitioner further testified that he did not seek any medical treatment for his left shoulder or left arm after his release from Dr. Gitelis in January 2011 until the May 2013 accident.

Post-Accident Facts

Petitioner testified that on May 24, 2013, he was assigned to spray weeds in a 1/3-mile area. He had to use a two-gallon and three-gallon pump sprayer to apply the weed killer. Petitioner had to hold the pump sprayer with his left hand and had to pump the sprayer with his left hand as well. He further testified that he had to pump up the sprayer approximately 20 times throughout the day. At the end of his shift, his left arm was sore. He testified that the next morning he could not lift his left arm above his shoulder. When he went into work the following Monday on May 29, 2013, Petitioner completed an Employee's Injury/Illness Report. In the report, Petitioner indicated that he injured his left shoulder on May 24, 2013, while "spraying roundup 5 hr. with a 3 gal & 2 gal sprayer." Petitioner indicated that the time of injury was "all day" and that he sought treatment at Sherman Occupational. Petitioner's supervisor completed Part B of the form. Petitioner's supervisor indicated that the accident occurred on May 24, 2013 during the course of the day. He further indicated that Petitioner stated that he was carrying and pumping the sprayers which aggravated his shoulder. (PX 1)

On May 29, 2013, Petitioner was evaluated by Dr. Thompson at Sherman Hospital. At that time, Petitioner reported that he was working on May 24, 2013 carrying a sprayer in this left hand for about 5 hours and that he developed increasing pain in his left shoulder during the weekend. Petitioner's diagnosis was left shoulder pain and he was referred to Dr. Gitelis. Petitioner was put on light-duty work restrictions. (PX 3)

On June 4, 2013, Petitioner was evaluated by Dr. Michael Gitelis at Midwest Bone & Joint Institute. At that time, Petitioner reported left shoulder pain since May 24, 2013, when he was spraying round-up from 5-gallon and 3-gallon containers for five hours. Petitioner further reported that he could not lift his arm and his shoulder has been popping since May 24, 2013. Dr. Gitelis recommended an MRI of the left shoulder and diagnosed a rotator cuff sprain. Petitioner was instructed to follow up after the MRI. The June 6, 2013 MRI revealed a focal full-thickness tear at the distal insertion of the supraspinatus tendon, most likely a rim rent tear. It was also noted that there was an abnormal appearance of the biceps tendon which was likely torn and retracted. On June 13, 2013, Petitioner returned to Dr. Gitelis, who confirmed that the MRI showed a rotator cuff tear. Dr. Gitelis indicated that Petitioner's options were a total shoulder replacement, or a staged rotator fix and then the total shoulder replacement. He advised Petitioner that he would contact him after reviewing things further and discussing the options with Dr. Seeds. On July 11, 2013, Petitioner returned to Dr. Gitelis, who at that time recommended that Petitioner proceed with a total shoulder arthroplasty. (PX 4)

On September 23, 2013, Petitioner underwent a left total shoulder replacement with Dr. Seeds and Dr. Gitelis. The preoperative and postoperative diagnosis was left shoulder arthritis. (PX 5)

On October 9, 2013, at the recommendation of Dr. Gitelis, Petitioner underwent an initial evaluation at ATI Physical Therapy. Petitioner underwent a course of formal therapy for six weeks to address his functional impairments of decreased range of motion, weakness, swelling, pain and need for assistive device. Between October 9, 2013 and January 20, 2014, Petitioner attended 44 sessions of therapy. At the time he was discharged, Petitioner reported some stiffness but he had completed all of his goals. (PX 5, PX 7)

Petitioner continued to follow up with Dr. Gitelis on a monthly basis following the left shoulder replacement. At his visit on February 25, 2014, Petitioner reported that he was doing quite well. On examination, he had full forward flexion and full abduction. Dr. Gitelis indicated that Petitioner could return to his full job description and to return in three to four months for updated x-rays. (PX 5, PX 6)

On November 15, 2015, Petitioner was evaluated by Dr. Kevin Walsh at the request of Respondent pursuant to Sect. 12 of the Act. Petitioner reported no pain in his left shoulder. Dr. Walsh opined that the April 2010 accident did not cause Petitioner's left shoulder pathology and it did not aggravate any pre-existing osteoarthritis in Petitioner's left shoulder. Dr. Walsh further opined that the use of the weed sprayer in 2013 did not cause or aggravate Petitioner's left shoulder osteoarthritic disease. He indicated that Petitioner's AMA impairment rating was 14% of the upper extremity but that it was not related to the 2013 incident. (RX 2)

Petitioner further testified that he was off work from May 29, 2013 through June 2, 2013 and September 23, 2013 through January 26, 2014. He subsequently returned to his job and continued working there until he was terminated in approximately 2017. Petitioner further testified that he had another incident with his left shoulder at work in July 2016 involving a playground. Thereafter, he sought treatment with Dr. Gitelis to make sure that the shoulder replacement was not affected. Petitioner testified that there were no issues with the replacement.

Petitioner testified that he has not sustained any injuries or traumas to his left shoulder other than the incident in July 2016 at work. Petitioner further testified that he currently does not have any pain in the left shoulder. He testified that he has learned how to live with his limitations. He does not do heavy yard work and he does not lift anything over his head with his left arm. He further testified that he photographs as a hobby and his left shoulder injury required him to upgrade his equipment. His old equipment was too heavy to hold in his left arm so he had to purchase carbon fiber equipment, including a tripod to hold the lens.

Dr. Michael Gitelis testified via evidence deposition on May 21, 2019. Dr. Gitelis is a board-certified orthopedic surgeon and medical innovator. Dr. Gitelis testified at great length regarding the care and treatment he performed for Petitioner from 2010 through 2016. Dr. Gitelis testified that all the treatment he recommended and performed for Petitioner was reasonable and necessary to treat Petitioner's left shoulder condition of ill being. Dr. Gitelis further testified that the activities of using the pump sprayer at work on May 24, 2013 was an exacerbating cause to his left shoulder pre-existing condition which led to the need for the total shoulder replacement. (PX 2)

Dr. Gregory Nicholson testified via evidence deposition on April 10, 2019. Dr. Nicholson is a board-certified orthopedic surgeon at Midwest Orthopaedics at Rush. He testified regarding his exam of Petitioner which took place on December 17, 2010 and the report which was generated thereafter. (RX 5) Dr. Nicholson testified that Petitioner essentially had a normal exam and did not have any pain. He further testified that the symptoms that Petitioner developed from a work-related aggravation had been relieved by the June 14, 2010 surgery. He further testified that he could return to work full duty and that he was not a candidate for a total shoulder replacement. (RX 9)

Dr. Kevin Walsh testified via evidence deposition on May 3, 2016. Dr. Walsh is a board-certified orthopedic surgeon with DuPage Medical Group. He testified that he took the AMA Guides course but that he is not

certified at providing AMA ratings. He testified regarding the exam he took of Petitioner on November 10, 2015 and the subsequent report he authored on November 15, 2015. Dr. Walsh testified that Petitioner sustained a left shoulder sprain as a result of the April 5, 2010 accident but that it had no effect on the osteoarthritic disease in Petitioner's left shoulder. He further testified that Petitioner did not sustain any type of work injury on May 24, 2013. He testified that Petitioner was simply performing work which caused pain in his arthritic shoulder which could have occurred at home. He further testified that Petitioner's impairment rating was 14% of the upper extremity. (RX 2)

CONCLUSIONS OF LAW

1. With regard to the issue of accident, the Arbitrator finds that Petitioner has met his burden of proof. In support of this finding, the Arbitrator relies on the Petitioner's credible, unrebutted testimony and the preponderance of the medical evidence. The evidence shows that Petitioner sustained an injury to his shoulder on May 24, 2013. Petitioner completed an injury report which indicated that he sustained a left shoulder injury after using a pump sprayer for five hours. Petitioner testified that he carried and pumped a pump sprayer with his left arm. Petitioner further testified that his left shoulder was sore by the end of the day and that he was not able to lift his arm the following morning. The history Petitioner provided to all his medical providers following this activity was consistent with his testimony and the additional supporting evidence. There was no evidence offered to rebut Petitioner's account of the events related to this issue. Given these facts, the Arbitrator concludes that Petitioner sustained an accidental injury on May 24, 2013, that arose out of and in the course of his employment with Respondent.

2. Consistent with the Arbitrator's conclusions above, the Arbitrator further finds that Petitioner has met his burden of proof regarding the issue of causation. In support of this finding, the Arbitrator relies on the Petitioner's credible testimony and the preponderance of evidence. Respondent disputes this issue based on the opinions of its IME doctor. Dr. Walsh believed that Petitioner did not sustain any type of work injury on May 24, 2013 and points to the Petitioner's pre-existing arthritis as the cause of his current condition of ill-being. The Arbitrator finds persuasive the opinions of Petitioner's treating physician, Dr. Gitelis, who had the benefit of caring for Petitioner prior to and after his May 24, 2013 accident. Dr. Gitelis opined that the Petitioner's work activities from May 24, 2013 aggravated Petitioner's pre-existing arthritis, which led to the need for a total shoulder replacement. Respondent's IME Dr. Nicholson confirmed that Petitioner did not need a total shoulder replacement when he evaluated Petitioner on December 17, 2010 - which supports Petitioner's testimony that he was able to return to work following his April 5, 2010 accident without any problems or any medical treatment after his release from care on January 4, 2011 until his May 23, 2013 accident. Petitioner credibly testified and the medical evidence shows that he had increased shoulder problems following the May 24, 2013 accident that led to an uninterrupted course of treatment to address his left shoulder condition beginning on May 29, 2013, and eventually resulting in a left shoulder replacement on September 23, 2013. There was no evidence that Petitioner ever complained of pain in his left shoulder while performing activities outside of work at any point prior or after the May 24, 2013 accident. Petitioner further testified that although he had a work incident involving his left shoulder in July, 2016, that incident did not affect his left shoulder replacement. Based on these facts, the Arbitrator concludes that Petitioner's current condition of ill-being in his left shoulder and his need for left shoulder replacement is causally related to his May 24, 2013 work accident.

3. Consistent with the Arbitrator's conclusions above, the Arbitrator further finds that the Petitioner's medical expenses related to his left shoulder condition have been reasonable and necessary in addressing his work-related shoulder condition. As such, the Arbitrator awards the Petitioner the medical expenses set forth in Petitioner's Exhibit 8, subject to the Fee Schedule.

4. Based on the Arbitrator's conclusions above, the Arbitrator further finds that Petitioner was temporarily totally disabled from May 29, 2013 through June 2, 2013 and September 23, 2013 through January 26, 2014. This finding is supported by Petitioner's unrebutted testimony and the medical evidence. Therefore, the Arbitrator awards Petitioner TTD benefits for these periods.

5. Regarding the issue of the nature and extent of the Petitioner's injuries, the Arbitrator applies the factors set forth in Section 8.1b of the Act and notes the following: (i) Dr. Walsh provided an impairment rating of 14% of the upper extremity and the Arbitrator gives considerable weight to this factor; (ii) Petitioner was a maintenance worker and was ultimately released to return to work without restrictions following this accident - a factor to which the Arbitrator gives significant weight; (iii) Petitioner was 59 years old at the time of injury - a factor to which the Arbitrator gives some weight; (iv) there was no evidence of future earnings due to this injury, and the Arbitrator gives no weight to this factor; (v) there was evidence of disability which show that the Petitioner sustained an injury to his left shoulder resulting in an aggravation of his pre-existing arthritic left shoulder condition which required shoulder surgery involving a total left shoulder replacement, resulting in an excellent recovery with only minor complaints following his surgery - the Arbitrator gives great weight to this factor. Based on the factors above, the Arbitrator concludes the injuries sustained by Petitioner caused a 20% loss of use of the person as a result of the May 24, 2013 work incident.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC023859
Case Name	Stacey Ramsey v. State of Illinois - SIU Carbondale
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0070
Number of Pages of Decision	10
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Nicole Werner

DATE FILED: 2/15/2023

/s/ Thomas Tyrrell, Commissioner

Signature

23IWCC0070

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stacey Ramsey,

Petitioner,

vs. NO: 20 WC 23859

Southern Illinois University Carbondale,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issue of permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator and corrects a scrivener's error. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission solely seeks to correct a clerical error in the Decision. On page four (4) of the Decision, the Arbitrator mistakenly wrote that Petitioner sustained injuries that resulted in the 35% loss of his **right** leg. This is a clerical error. The Commission thus modifies the above-referenced sentence to read as follows:

> Based on the foregoing evidence and factors, the Arbitrator finds that the Petitioner sustained serious and permanent injuries that resulted in the 35% loss of his **left** leg and 8% loss of his body as a whole for his low back.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on May 31, 2022, is modified as stated herein.

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

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review.

February 15, 2023

d: 1/17/23
TJT/jds
51

/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC023859
Case Name	RAMSEY, STACEY v. SOUTHERN ILLINOIS UNIVERSITY CARBONDALE
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Nicole Werner

DATE FILED: 5/31/2022

THE INTEREST RATE FOR THE WEEK OF MAY 24, 2022 1.53%

/s/ Jeanne AuBuchon, Arbitrator
Signature

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

May 31, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

STACEY RAMSEY
Employee/Petitioner

v.

SOUTHERN ILLINOIS UNIVERSITY CARBONDALE
Employer/Respondent

Case # **20** WC **023859**

Consolidated cases: _____

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Herrin**, on **January 20, 2022**. By stipulation, the parties agree:

On the date of accident, **8/7/20**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $**50,988.63**, and the average weekly wage was $**980.55**.

At the time of injury, Petitioner was **54** years of age, ***married*** with **0** dependent children.

Necessary medical services and temporary compensation benefits have been **or will be** provided by Respondent.

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

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of $**588.33**/week for a further period of **115.25** weeks, as provided in Section **8(e) and 8(d)2** of the Act, because the injuries sustained caused the **35% loss of Petitioner's left leg as a result of serious and permanent injuries sustained to Petitioner's left knee and the 8% loss of Petitioner's body as a whole as a result of serious and permanent injuries sustained to Petitioner's lumbar spine.**

Respondent shall pay Petitioner compensation that has accrued from **9/23/21** through **1/20/22**, and shall pay the remainder of the award, if any, in weekly payments.

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

MAY 31, 2022

PROCEDURAL HISTORY

This matter proceeded to trial on January 20, 2022, on all disputed issues. The sole issue in dispute is the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

The Petitioner was employed by the Respondent as a maintenance laborer when, on August 7, 2020, he stepped into a ditch while on a plumbing dig, and his foot slipped into a hole, twisting his left knee, left leg and lower back. (T. 11) He was 54 years old at the time. (AX1) The Petitioner acknowledged having prior knee treatment, including injections, more than a year before the accident, but was having no knee pain at the time of the accident. (T. 12) He also had a history of low back pain but was not experiencing low back pain on the day of the accident. (T. 12-13) He had received injections at L4-5 in the past. (PX6)

On August 10, 2020, the Petitioner went to the Respondent's Student Health Service for treatment and was given medication. (PX3) He returned to work, but his symptoms increased, so he sought treatment from Dr. Matthew Bradley, an orthopedic surgeon at D.B. Orthopedic Institute. (PX4) An MRI of the Petitioner's left knee showed multiple loose bodies in the posterior aspect of the knee, abnormal medial meniscus with blunting of the posterior edges, severe loss of cartilage over the medial and lateral compartment and a chronic tear of the ACL. (PX4, PX5) Dr. Bradley performed an articular corticosteroid injection that failed to provide relief. (PX4)

Dr. Bradley performed a total left knee arthroplasty on February 9, 2021. (PX4, PX8) The Petitioner underwent physical therapy at Athletico from February 22, 2021, through May 18, 2021, for a total of 34 visits. (PX7) A Functional Status report on May 18, 2021, stated that the Petitioner made great progress, with great range of motion and full strength. (Id.) The Petitioner reported

some tightness/soreness in his knee but nothing too painful or sharp. (Id.) Dr. Bradley released the Petitioner to return to work on June 1, 2021, without restrictions. (PX4) On July 8, 2021, the Petitioner reported to Dr. Bradley that he had some mild anterior knee pain with going up or down steps and some swelling that improved with rest and elevation. (Id.) Dr. Bradley informed the Petitioner that it could take up to a year for his pain to resolve after arthroplasty and instructed him to wear a knee brace when walking an extensive amount. (Id.) Dr. Bradley found the Petitioner to be at maximum medical improvement. (Id.)

The Petitioner testified that prior to the surgery, he had buckling in his knee, pain and grinding, and it felt like his knee was going to become dislocated. (T. 15) He said that after the surgery, he experienced improvement, but still has steady popping and occasional soreness and swelling. (T. 19) He said prolonged standing and walking up and down stairs, inclines and declines irritates his knee the most. (Id.)

For his low back symptoms, the Petitioner saw Dr. Matthew Gornet, an orthopedic surgeon at The Orthopedic Center of St. Louis. (PX6) An MRI showed a central disc annular tear at L5-S1. (Id.) Dr. Gornet prescribed physical therapy and an epidural injection. (Id.) The Petitioner underwent physical therapy at Athletico from December 2, 2020, through February 3, 2021, for a total of 16 visits. (PX7) On his last treatment note, the Petitioner reported that his low back pain was staying at a low level, and stiffness was his main concern at that time. (Id.) The Petitioner received a left L5-S1 epidural steroid injection on December 8, 2020, from Dr. Helen Blake, a pain management specialist at St. Louis Spine & Orthopedic. (PX9)

The Petitioner testified that the injection helped for a short period, and physical therapy "helped some." (T. 18) He still had pain in his low back on the left side that radiated into his hip. (T. 20) He rated his pain at 3/10 on a good day and 7/10 on a bad day. (Id.) He said bending over

for long periods of time causes muscle spasms and pain in his back. (Id.) He said he was taking Tylenol and Meloxicam. (T. 21)

The Petitioner testified that his symptoms have caused him to avoid walking on inclines and declines. (T. 21-22) He said pain in his low back and left leg wakes him up at night. (T. 22) He had been working full duty since his release by Dr. Bradley. (T. 23)

CONCLUSION

Issue 10: What is the nature and extent of the Petitioner's injury?

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

(i) **Level of Impairment.** Neither party submitted an AMA rating. Therefore, the Arbitrator uses the remaining factors to evaluate the Petitioner's permanent partial disability.

(ii) **Occupation.** The Petitioner continues to work full duty as a maintenance laborer for the Respondent and has the same physical demands. The Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 54 years old at the time of the injury. He has several work years left, during which time he will need to deal with the residual effects of his injuries. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity.** There was no evidence of limitation of the Petitioner's earning capacity. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** The Petitioner continues to suffer from pain and stiffness in his knee, as well as and pain that radiates and spasms in his low back, despite the improvements from treatment. He has had to modify his activities and continues to take medication. The Arbitrator puts significant weight on this factor.

Based on the foregoing evidence and factors, the Arbitrator finds that the Petitioner sustained serious and permanent injuries that resulted in the 35% loss of his right leg and 8% loss of his body as a whole for his low back.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC018670
Case Name	John Carroll v. State of Illinois- Illinois State Police
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0071
Number of Pages of Decision	10
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Kayla Koyne

DATE FILED: 2/15/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

John Carroll,

Petitioner,

vs. NO. 20WC 18670

Illinois State Police,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by both parties herein and notice given, the Commission, after considering the issue of nature and extent and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 6, 2022 is hereby affirmed and adopted.

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

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

Pursuant to §19(f)(1) of the Act, this Decision and Opinion on Review of a claim against the State of Illinois is not subject to judicial review.

February 15, 2023

SJM/sj
o-1/25/2023
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC018670
Case Name	CARROLL, JOHN v. ILLINOIS STATE POLICE
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Joseph L. Moore

DATE FILED: 6/6/2022

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

/s/ Kurt Carlson, Arbitrator
Signature

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

June 6, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

☐ 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

John Carroll
Employee/Petitioner

Case # **20** WC **18670**

v.

Illinois State Police
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Peoria**, on **03-22-22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **02-24-20**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**114,537.00**; the average weekly wage was $**2,202.63**.

On the date of accident, Petitioner was **50** years of age, ***single*** with **1** dependent children.

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

Respondent ***agrees to pay*** all reasonable and necessary unpaid medical services.

Respondent shall be given an 8(j) credit for medical bills paid by Petitioner's group health insurance.

ORDER

Per the wage statement admitted in Respondent's Exhibit 1, the Petitioner earned $114,537.00 in the 52 weeks before the accident, giving him an AWW of $2,202.63.

Respondent shall pay Petitioner permanent partial disability benefits of $836.69 a week (max. rate) for 43 weeks, because the injuries sustained caused the 20% loss of use of the right leg, as provided in Section 8(e) of the Act.

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

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

Kurt A. Carlson

Kurt A. Carlson

JUNE 6, 2022

Findings of Fact

At the time of the Petitioner's 2/24/20 accident he was 50 years old, single, with one dependent child. The Petitioner currently lives in Wyoming, IL. Petitioner has a Bachelor of Arts from Monmouth College.

On 2/24/20 the Petitioner was employed as a trooper with the State of Illinois Police Department. Petitioner was a trooper with the State Police for 25 years.

The Petitioner testified that on 2/24/20 as he was getting into his police vehicle that he injured his right knee. The Petitioner's police vehicle was a 4x4 crew cab Ford F-150. The Petitioner testified that the truck itself did not have running boards. When getting into his truck, the Petitioner felt a sharp pain in his right knee. The Petitioner provided notice to his employer.

The Petitioner initially presented for medical care at Unity Point Clinic Orthopedics on 2/27/20. The Petitioner provided Dr. Bokewitz a history of getting into his work truck that did not have running boards and as he did so he felt a sharp pain in his right knee. An examination of the Petitioner's right knee was conducted. Subsequently at this visit the Petitioner underwent an aspiration into his right knee joint as well as a Kenalog injection. The Petitioner was to follow up in several weeks. (PX 2, p 5-8)

Petitioner testified that his pain initially was acute. As the weeks went on after the accident his knee pain would depend on his activity level and what he was doing each day. The injection provided the Petitioner with some relief. Although the Petitioner continued to notice swelling and pain. Petitioner tried using a cryo-cuff and ice.

The Petitioner then followed up at Unity Point Health on 5/22/20. The Petitioner continued to complain of aching, sharp, throbbing and shooting pain at a level of 5/10 in the right knee. At this time the Petitioner's treating physicians ordered an MRI of the right knee as well as an additional injection. (PX 2, p 16-18)

On 5/27/20 Dr. Bockewitz performed a Kenalog injection into the Petitioner's right knee. (PX 2, p 22-23)

On 5/28/20 the Petitioner underwent an MRI of the right knee without contrast. This study was conducted at Unity Point Methodist. The MRI revealed tricompartmental chondromalacia, complex medial meniscus tear with medial meniscus volume loss, moderate effusion with synovitis, and a grade I MCL sprain with MCL bursitis. (PX 3, p 6) Following the MRI the Petitioner was referred by his primary care physician's office to Dr. Brent Johnson at Midwest Orthopedic Center in Peoria.

The Petitioner initially presented to Dr. Johnson at Midwest Orthopedic Center on 6/17/20. The Petitioner again provided a consistent history regarding his 2/24/20 accident. Dr. Johnson performed a physical examination as well as reviewed x-rays and the Petitioner's right knee MRI. Dr. Johnson diagnosed the Petitioner with an acute medial meniscus tear. Dr. Johnson

opined that the Petitioner had failed non-operative measures and as a result recommended the Petitioner undergo a right knee arthroscopy with partial medial meniscectomy. (PX 4, p 5-6)

The Petitioner was then seen for pre-op clearance by his primary care physician's office on 9/14/20. (PX 8)

On 9/24/20 the Petitioner underwent right knee surgery with Dr. Brent Johnson. Preoperative diagnosis was a right medial meniscus tear. Postoperative diagnosis was right knee medial meniscus tear, with grade III chondral defect, medial femoral condyle and trochlea. Dr. Johnson performed a right knee arthroscopy with a partial medial meniscectomy, and a chondroplasty of the medial femoral condyle and trochlea. (PX 5, p 7-8)

The Petitioner initially followed up with Dr. Johnson's office after surgery on 9/28/20 and was seen by Dr. Johnson's Physician's Assistant Benjamin Holman. At that time the Petitioner's pain was well controlled and he was ambulating without assistance. The Petitioner was instructed that he may weight bear as tolerated and will work with therapy on range of motion and strengthening. The Petitioner was to follow up in six weeks. (PX 4, p 20)

The Petitioner began physical therapy at Physical Therapy and Rehab Specialists on 9/29/20. (PX 6, p 101) Petitioner did notice a benefit from physical therapy, although Petitioner continued to remain symptomatic.

The Petitioner followed up with Midwest Orthopedic Center on 11/16/20. The Petitioner was again seen by PA Holman. The Petitioner was making progress but noted he had continued swelling after a long day of activity. The Petitioner rated his pain at a 3-4/10. The Petitioner had been taking Ibuprofen without satisfactory improvement. Mild effusion was noted on examination along with mild quadriceps atrophy. PA Holman noted the Petitioner continued to have inflammation and effusion that has not been relieved with oral anti-inflammatories. It was decided to proceed with an aspiration and injection. 20 ml of serous fluid was aspirated and the Petitioner's right knee was subsequently injected with Cortisone. The Petitioner was to continue physical therapy. The Petitioner was allowed to return to work without restrictions and was to follow up in six weeks. (PX 4, p 17-18)

The Petitioner was then seen by PA Holman on 12/28/20. The Petitioner did have improvement in his swelling and pain but he continued to have complaints of pain with direct pressure down on the knee. The Petitioner indicated he was improving with therapy but had not returned to all of his desired activities yet. PA Holman noted the Petitioner had continued complaints of soft tissue agitation over the anterior aspect of the knee at the portals. The Petitioner was prescribed Voltaren gel and was instructed to use knee pads as needed. The Petitioner was to continue with therapy and a home exercise program and was instructed to follow up as needed. (PX 4, p 41) The Petitioner testified that up to 12/28/20, following his surgery that he had not actually been seen by Dr. Johnson and that all of his postoperative follow up appointments up through 12/28/20 were with PA Holman.

Petitioner testified that his knee never got back to where it was before the accident. Petitioner has to power through and suffer the pain when he wants to increase his activity level. Petitioner testified that he has never been symptom free since the accident.

In addition to working as a trooper, the Petitioner is also a referee for high school basketball and football games. Petitioner testified that he was able to return to refereeing after the accident but had a lot of pain and swelling with his knee once he returned.

The Petitioner continued in physical therapy through 2/5/21. At the Petitioner's final physical therapy visit he continued to report pain between 3-4/10 with running. The Petitioner reported continued problems with joint swelling as well as decreased participation in desired recreational activities. The Petitioner met 3/4 of his goals for physical therapy. The one goal not met was that the Petitioner was not able to perform stair climbing with pain or limitations. (PX 6, p 11-15)

Due to his ongoing complaints the Petitioner followed up with Dr. Johnson's office on 2/10/21. At this time the Petitioner was able to visit with Dr. Johnson personally. The Petitioner described a recurrence of his right knee pain and symptoms, specifically over the anteromedial aspect of the knee around the patella. The Petitioner described trying to return to officiated basketball games but was having pain similar to what he experienced before his surgery. The Petitioner had also described flare ups in his knee pain while working around his farming equipment and had previously had the cortisone injection in November of 2020 with good benefit. The Petitioner has also tried wearing a knee brace while officiating games but that has not provided much benefit. Dr. Johnson opined that the Petitioner's ongoing pain was being caused by articular defects of the medial aspect of the knee. Dr. Johnson's medical opinion was that the Petitioner was an acceptable candidate for viscosupplementation injections. The court notes that viscosupplementation injections are essentially a precursor to the need for a total knee replacement in the future. Dr. Johnson also recommended the Petitioner be fit for a medial unloader brace. The Petitioner was released from care and could follow up with Dr. Johnson's office as needed. (PX 4, p 36-38)

Petitioner retired form the State Police as of 12/31/20. He still referee's games but has struggles with this activity. Petitioner testified that sitting at trial his knee felt pretty good. However, with increased activity he has ongoing problems. Petitioner will have increased symptoms if he climbs a ladder, stands on a roof, or goes hiking. Petitioner can no longer jog which has caused him to put on weight. Petitioner is a hunter but can no longer go very far into the woods because of his knee. Petitioner has had to give up water skiing. Petitioner can no longer play basketball, something he did before the accident on Tuesday nights.

Petitioner also testified regarding his concerns if he were still a State trooper. Petitioner does not believe he would be able to handle a foot pursuit. Petitioner described difficulty with performing semi-truck inspections, which required climbing up and down the truck. Petitioner also testified his knee has affected his sex life with his wife.

Conclusions of Law

Average Weekly Wage:

The Respondent admitted the Petitioners wage information in Respondent's Exhibit 1. Per the wage statement admitted, the Petitioner earned a base wage of $114,537.00 in the 52 weeks before the accident. As such, the Arbitrator finds that pursuant to Section 10 of the Act the Petitioner has an AWW of $2,202.63. Petitioner's testimony regarding overtime was imprecise.

Nature and Extent:

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

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as an Illinois State Police officer at the time of the accident and that he is able to return to work in his prior capacity as a result of said injury. However, the Petitioner did note ongoing issues with regard to his right knee while performing his job duties, including running and chasing suspects. Because of this, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 50 years old at the time of the accident. Because of this, the Petitioner has an approximate 17 years of his work life expectancy wherein he will have to endure the ongoing issues that he currently suffers from relative to his right knee. The Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes the Petitioner has not suffered any loss of future earnings capacity. The Arbitrator therefore gives lesser weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes the Petitioner's testimony has been entirely consistent throughout his case and his subjective complaints at the time of trial are consistent with the complaints he expressed in his final visits to Midwest Orthopedic Center and Dr. Johnson as well as the physical therapy notes admitted into evidence. The Arbitrator finds the Petitioner to be a credible individual. The Arbitrator therefore gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 20% loss of use of the right leg pursuant to §8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC008090
Case Name	Peter Tropp v. State of Illinois Long Term Care
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0072
Number of Pages of Decision	10
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Jason Esmond
Respondent Attorney	Dan Kallio

DATE FILED: 2/16/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Peter Tropp,

Petitioner,

vs. NO. 19WC008090

State of Illinois Long Term Care,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, causal connection, permanent disability, temporary disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 22, 2022 is hereby affirmed and adopted.

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

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

Pursuant to §19(f)(1) of the Act, this Decision and Opinion on Review of a claim against the State of Illinois is not subject to judicial review.

February 16, 2023

SJM/sj
o-1/11/2023
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC008090
Case Name	TROPP, PETER v. STATE OF ILLINOIS LONG TERM CARE
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Jason Esmond
Respondent Attorney	Dan Kallio

DATE FILED: 6/22/2022

/s/Michael Glaub, Arbitrator

Signature

INTEREST RATE WEEK OF JUNE 22, 2022 2.39%

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

June 22, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Peter Tropp
Employee/Petitioner

v.

State of IL Long Term Care
Employer/Respondent

Case # **19 WC 8090**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Glaub**, Arbitrator of the Commission, in the city of **Rockford**, on **April 26, 2022.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **January 2, 2019,** Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner did not sustain an accident that arose out of and in the course of employment.

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

In the year preceding the Petitioner's injury, Petitioner's average weekly wage was **$1,653.00.**

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

ORDER

Petitioner failed to prove he sustained an accident that arose out of his employment on January 2, 2019.

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

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

Michael Glaub

Signature of Arbitrator

June 22, 2022

ICArbDec

STATEMENT OF FACTS

The parties appeared for hearing on April 26, 2022, before Arbitrator Glaub under the Illinois Workers' Compensation Act. The parties stipulated that Petitioner was an employee of Respondent on January 2, 2019. The parties stipulated that notice had been provided within the time limits of the Act regrading his January 2, 2019, injury. The parties stipulated that Petitioner's average weekly wage relative to his January 2, 2019, injury was $1,653.00. The parties further stipulated that Petitioner was 62 years of age, married, with 0 dependent children at the time of his January 2, 2019, injury.

Petitioner testified that he has worked for Respondent, the State of Illinois – Bureau of Long-Term Care, for approximately 21 years. His title was, and is, Health Facilities Surveillance Nurse. In that position, Petitioner performs annual surveys of supportive living centers. He makes sure that residents at the facilities are being taken care of. He also performs "DON" screens, evaluations to determine if individuals are eligible for services at such supportive living centers. He testified that he has worked in that same position since he began working for Respondent in 2001. Petitioner testified that around this time, he would be in the office approximately three days a week and in the field two days a week. On days he was in the field, he would sometimes come into the office as well.

On January 2, 2019, Petitioner slipped on ice on a sidewalk outside of the office building in which Respondent's office is located. Petitioner testified that his office was on the third floor of the building in which he was testifying. He fell on the corner of Chestnut and Wyman Streets, on the sidewalk, when on his way to his car to move it. The Supervisor's Report of Injury or Illness, completed by Lori Wojciechowski, Petitioner's supervisor, noted that he had fallen on the sidewalk on the corner of Wyman and Chestnut. It noted that Petitioner was moving his car from a timed parking location. (Rx. 2). The report noted that the sidewalk was icy. Petitioner testified to the office-wide practice of moving one's car every 2 hours as no parking is provided by Respondent. Petitioner testified that when he started working for Respondent in 2001, parking was provided. After a few years, that was taken away and employees were told they would have to find their own parking. He noted he had three co-workers and a supervisor that worked in the same office with Petitioner. He noted that everyone in the office, including his supervisor, moved their cars every two hours. They had been doing this practice for 12-15 years as of January 2, 2019. He noted there was no written policy regarding moving their cares, but it was how things had been done for over 12 years.

After falling, Petitioner tried to get up but could not. He felt significant pain in his right ankle and an ambulance was called. He was transported to Rockford Memorial Hospital. (Px. 1). The ER notes indicate he had slipped on ice while moving his car as required. (Px. 1). X-rays revealed a tri-malleolar fracture of the right ankle with lateral and posterior displacement. He was to be scheduled for outpatient surgery and was instructed to elevate his leg to alleviate swelling. (Px. 1).

On January 4, 2019, Petitioner had a preoperative examination at OSF Rock Cut, and was scheduled for surgery. (Px. 2). He underwent open reduction and internal fixation of the right tri-malleolar ankle fracture

with Dr. Zlowodzki on January 10, 2019. (Px. 3). Petitioner was seen in follow up with Dr. Zlowodzki on January 25, 2019. Staples were removed and additional x-rays taken. Petitioner was to continue only toe-touch weightbearing and advised to follow up on February 26, 2019. (Px. 3). On February 26, 2019, Petitioner was allowed to bear weight as tolerated, first in a CAM boot and then to wean out. The retained hardware was intact and in good alignment and it was noted he could return to light duty work on March 7, 2019. (Px. 3). Petitioner did return to work on March 7, 2019. He testified he was not paid temporary total disability benefits while off work. Petitioner used his sick and vacation time. He had applied for disability benefits through SERS but had returned to work before a decision was made on those benefits. Petitioner was released to full duty on March 25, 2019. (Px. 4). Petitioner followed up with Dr. Zlowodzki on April 16, 2019, at which time x-rays indicated that the fibular fracture had not completely healed. On July 26, 2019, Dr. Zlowodzki noted a right distal fibular nonunion, but minimally symptomatic. Petitioner was noted to be walking without assistive device or pain on September 3, 2019. (Px. 3). On December 10, 2019, x-rays continued to demonstrate the fracture site at the distal fibula with callus formation, but a visible fracture site. He was assessed with an asymptomatic right distal fibular nonunion and was advised to follow up as needed. (Px. 3). Petitioner testified that he had not required additional care after December 10, 2019, for his right ankle.

Petitioner testified that his ankle hurts when the weather is damp or cold. If he attempts to climb a ladder or walk too long, he has pain. If he walks for long, he has an aching type of pain the next day and will use a topical cream on his ankle that does help with the pain. He has continued to work his regular job and has not lost time from work due to his injury since March 6, 2019.

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON THE DISPUTED ISSUES

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

It is not disputed that the petitioner fell on January 2, 2019, while moving his car on the sidewalk on the corner of Wyman and Chestnut in Rockford. It is not disputed that the petitioner was in the process of moving his car from one municipal parking lot to a separate municipal parking lot. All of the municipal lots in the area of the State of Illinois building in Rockford are free to park but have restrictions as to how long a car can be parked in that lot. The Municipal lot directly across the street from the state of Illinois Building has a 2-hour time limit. There is also paid parking available also in close proximity to the State of Illinois Building. The private paid parking lots do not have any time limits.

The Arbitrator finds that the petitioner made a choice to park in the free public lots that would require him to move his car within the course of the day. The petitioner chose not to pay to park in the private lots in the same proximity as the free public lots. The Arbitrator finds that this choice solely benefited himself.

The Arbitrator finds the petitioner was not engaged in any activities to the benefit of his employer when he was injured. The Arbitrator finds that at the time of the injury the petitioner was engaged in an activity that was purely personal to himself and for his own benefit.

Petitioner's attorney argues that the petitioner's activities when he was injured could also fall within the Personal Comfort Doctrine. However, the Arbitrator does not believe the petitioner's activities fall within this doctrine.

Generally speaking, the personal comfort doctrine concerns activities associated with the needs of the human body such as obtaining water, going to the washroom etc. The Arbitrator does not believe that any of the petitioner's activities involved the personal comfort doctrine. Instead, the petitioner's activities at the time of the injury were for the sole purpose of saving money on parking.

The Arbitrator notes that on occasion the petitioner works away from the State of Illinois Building. During the portion of those aspects of his job duties the petitioner would be considered a travelling employee. If the petitioner had injured himself while moving his car in his scope of performing his job duties away from the State of Illinois Building, the Arbitrator believes this accident would be compensable. However, the petitioner had returned from his duties away from the State of Illinois Building. Further the petitioner was working back in the State of Illinois Building prior to leaving the building and injuring his ankle. Had the petitioner chosen instead to park in the private paid parking lots near the State of Illinois Building, he would have not been outside to move his car at the time of the accident, and therefore, he would not have been injured.

Based on all of the above, the Arbitrator finds that the petitioner failed to prove he sustained an accident that arose out of his employment on January 2, 2019.
.

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

The Arbitrator finds that this issue is moot based on his finding that the petitioner failed to prove an accident arising out of his employment January 2, 2019.

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 this issue is moot based on his finding that the petitioner failed to prove an accident arising out of his employment January 2, 2019.

K. What temporary benefits are in dispute?

The Arbitrator finds that this issue is moot based on his finding that the petitioner failed to prove an accident arising out of his employment January 2, 2019.

L. What is the nature and extent of the injury?

The Arbitrator finds that this issue is moot based on his finding that the petitioner failed to prove an accident arising out of his employment January 2, 2019.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC031878
Case Name	James Cheatham v. Illinois Department of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0073
Number of Pages of Decision	12
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Nicole Werner

DATE FILED: 2/21/2023

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

James Cheatham,

Petitioner,

vs. NO: 19 WC 031878

Illinois Department of Transportation,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of nature and extent, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 6, 2022 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $65,900.00. 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.

February 21, 2023

o011723

MEP/ypv

049

/s/ *Maria E. Portela*

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC031878
Case Name	James Cheatham v. Illinois Department of Transportation
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Nicole Werner

DATE FILED: 9/6/2022

THE INTEREST RATE FOR THE WEEK OF AUGUST 30, 2022 3.23%

/s/ Edward Lee, Arbitrator
Signature

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

September 6, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

James Cheatham
Employee/Petitioner

v.

Illinois Department of Transportation
Employer/Respondent

Case # **19** WC **31878**

Consolidated cases: _____

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Herrin**, on **August 4, 2022**. By stipulation, the parties agree:

On the date of accident, **5/30/19**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $**63,381.60**, and the average weekly wage was $**1,218.88**.

At the time of injury, Petitioner was **47** years of age, ***married*** with **2** dependent children.

Necessary medical services and temporary compensation benefits have been **or will be** provided by Respondent.

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

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of $**731.33**/week for a further period of 90 weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused the 18% loss of Petitioner's body as a whole as a result of serious and permanent injuries sustained to Petitioner's neck and left shoulder.

Respondent shall pay Petitioner compensation that has accrued from **12/7/20** through **8/4/22**, and shall pay the remainder of the award, if any, in weekly payments.

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

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

SEPTEMBER 6, 2022

Edward Lee_____
Signature of Arbitrator

FINDINGS OF FACT

This matter came before an Arbitrator appointed by the Commission on Petitioner's motion for hearing. The sole issue in dispute is the nature and extent of Petitioner's injuries. (AX1; T.4)

Petitioner has been employed as a highway maintainer for the Illinois Department of Transportation for nine years. (T.7-8) The parties stipulated Petitioner sustained accidental injuries on May 30, 2019, when while working on the drill rig, lifting metal rods, and placing them back on the truck, he injured his neck. (T.8) Petitioner testified he had no neck injuries or treatment prior to May 30, 2019. *Id.*

Following the injury, Petitioner presented to Workcare West. (PX3, 6/5/19) Family Nurse Practitioner Mindy Dudenbostel took his history, noting on May 30, 2019, Petitioner was lifting metal rods, which were 10 feet long and 100 pounds, and augers, which were 75 pounds. *Id.* He had lifted 100 feet of both the metal rods and augers back on the drill rig when towards the end of his work, his left shoulder popped. *Id.* He reported he did not think much of it at the time and tried to "tough" it out over the last six days. *Id.* His pain worsened on June 1, 2019 and his left hand began to go numb. *Id.* FNP Dudenbostel noted his primary pain was located in the left shoulder which has been constant since the accident. *Id.* Physical examination revealed pain on motion over the bicipital groove and over the infraspinatus. *Id.* Pain to palpation was present over the bicipital groove and infraspinatus as well. *Id.* His range of motion was limited and he had positive Empty Can, Full Can, Dropping sign, and Speed tests for pain. *Id.* X-rays were negative for fracture or dislocation. *Id.* He was diagnosed to have a strain of the muscles, fascia and tendons at the left shoulder and upper arm level. *Id.* FNP Dudenbostel noted his diagnosis was not yet clear and further testing may be necessary. *Id.* He was referred to physical or occupational therapy, put on restricted duty, and instructed to take ibuprofen, acetaminophen, and ice for pain. *Id.*

Petitioner presented to Rehab Unlimited on June 10, 2019 for a therapy evaluation. (PX14, 6/10/19) He continued therapy for the next ten days without significant relief. (PX14, 6/10/19 – 6/20/19)

Petitioner returned to Workcare West on June 12, 2019 with continued symptoms. (PX3, 6/12/19) He reported the pain and numbness in his arm had worsened since his last visit and was constant. *Id.* He had been evaluated by occupational therapy but had not had treatment. *Id.* Examination revealed pain on motion over the bicep and deltoid, pain to palpation over the bicep, deltoid, and trapezius, and limited range of motion and strength. *Id.* It was noted his diagnosis was still not clear. *Id.* He was to use icing, ibuprofen, and occupational therapy. *Id.* He was prescribed Cyclobenzaprine and continued on restricted duty. *Id.*

Petitioner returned to Workcare West on June 25, 2019. (PX3, 6/25/19) He continued to have pain in his left shoulder and numbness into his left hand. *Id.* Examination revealed pain with motion over the bicep and deltoid, pain to palpation over the bicep, deltoid, and trapezius, and limited range of motion and strength. *Id.* Positive O'Brien, Speed, Full Can, and Empty Can tests were noted. *Id.* Petitioner remained on restricted duty and was to continue taking ibuprofen

for pain. *Id.* He was told to discontinue occupational therapy as it was not helping. *Id.* He was additionally ordered a left shoulder MRI and instructed to follow up for review. *Id.*

Petitioner received a left shoulder MRI on July 9, 2019 and returned to Workcare West the following day. (PX4; PX3, 7/10/19) He was assessed by the radiologist and FNP Dudenbostel to have supraspinatus tendinopathy. *Id.* He was kept on restricted duty and referred to an orthopedist for further evaluation. *Id.*

On August 12, 2019, Petitioner presented to Dr. George Paletta for evaluation. (PX5, 8/12/19) Dr. Paletta took his history, noting his symptoms began after he was lifting and loading heavy steel rods and augers which he had to push forward to load onto a truck. *Id.* Petitioner had attended six visits to therapy with no relief. *Id.* Dr. Paletta noted he had an MRI which demonstrated no significant shoulder pathology other than supraspinatus tendinopathy. *Id.* Petitioner had no history of previous neck or shoulder complaints. *Id.* At the time of evaluation, Petitioner complained of pain at the neck, the shoulder, and all the way down his left arm with numbness and tingling into his hand, with constant numbness in his thumb and first finger. *Id.* Physical examination revealed significantly limited range of motion of the cervical spine, especially with extension and rotation. *Id.* He had dramatically positive Spurling's test on the left. *Id.* He had good overall range of motion in the shoulder. *Id* .O'Brien's testing revealed pain thumb down and thumb up. *Id.* X-rays of the shoulder revealed some degenerative changes at the AC joint. *Id.* Dr. Paletta assessed Petitioner to have left shoulder pain, left upper extremity radiculopathy, and probable cervical disc pathology. *Id.* He recommended he start a twelve day Prednisone taper to reduce his nerve root irritation as well as a cervical MRI. *Id.* Pending the results, he noted he may require evaluation with a cervical spine specialist. *Id.* Dr. Paletta believed his left upper extremity symptoms were causally related to his work activities in May 2019. *Id.* He continued his light duty restrictions with no lifting more than twenty-five pounds. *Id.*

Petitioner received a cervical MRI on August 30, 2019 which Dr. Paletta reviewed on September 10, 2019. (PX6; PX5, 9/10/19) Dr. Paletta appreciated a large left foraminal disc extrusion at C5-6 with right lateral recess foraminal protrusion and left greater than right foraminal stenosis, a C4-5 circumferential disc bulge with bilateral foraminal protrusions and severe bilateral foraminal stenosis, and a small C2-3 disc bulge. *Id.* He noted the MRI confirmed his clinical suspicion of cervical disc pathology and strongly recommended consultation with a cervical spine specialist, specifically Dr. Matthew Gornet. *Id.*

On October 3, 2019, Petitioner presented to Dr. Gornet for evaluation. (PX7, 10/3/19) Dr. Gornet took his history, noting he was lifting 100 pounds rods and augers when he felt a pop in his shoulder region. *Id.* At the time of evaluation, Petitioner complained of left shoulder pain which radiated into his arm and scapula with numbness and tingling which radiated into the base of his neck. *Id.* He did not recall any previous problems of significance with his neck or shoulder. *Id.* His symptoms were constant and worsened with turning and rotating his head to the left or with extension. *Id.* Physical examination revealed pain in his left shoulder radiating to his left trapezius, to the base of his neck, and down his left arm into his dorsal forearm and hand. *Id.* Sensation was decreased in the C6 dermatome on the left. *Id.* X-rays revealed some loss of disc

height at C4-5. *Id.* Dr. Gornet reviewed his recent cervical MRI and appreciated disc osteophyte and acute on chronic herniation at C4-5 and C5-6 and a massive piece of disc material in the left foramen, which was causing severe foraminal narrowing. *Id.* Dr. Gornet believed he aggravated his underlying condition in his cervical spine and produced new disc herniations at C4-5 and C5-6. *Id.* He recommended a single steroid injection on the left at C5-6. *Id.* If he did not improve, he noted he would move forward with disc replacements at C4-5 and C5-6 given his motor weakness. *Id.* Dr. Gornet believed his symptoms were causally related to his work injury as described. *Id.* He kept him on light duty restrictions, prescribed Meloxicam and Cyclobenzaprine, and referred him to Dr. Helen Blake for the injection. *Id.*

Petitioner received an epidural steroid injection at C5-6 on October 15, 2019 and returned to Dr. Gornet on October 31, 2019. (PX8; PX9; PX7, 10/31/19) The injection did not provide any sustained relief. (PX7, 10/31/19) Dr. Gornet found he had significant weakness at 4 to 4-/5 in his biceps and wrist dorsiflexion with decreased sensation at C6 on the left. *Id.* He found Petitioner was getting atrophy and believed they needed to move forward rapidly with surgery given his increase in symptoms. *Id.*

Petitioner presented to Integrated Health of Southern Illinois on November 6, 2019 for a pre-operative examination and was cleared for surgery. (PX12)

On November 20, 2019, Dr. Gornet performed a two level disc replacement at C4-5 and C5-6. (PX7; PX11) Intraoperatively, Dr. Gornet identified a left sided foraminal herniation and small right-sided protrusion at C5-6 and a more significant left-sided herniation and severe bilateral foraminal narrowing at C4-5, left greater than right. *Id.*

Petitioner returned to Dr. Gornet for a post-operative follow up on December 5, 2019. (PX7, 12/5/19) Petitioner reported he already felt improvement in his neck pain, headaches, and left shoulder and arm pain. *Id.* X-rays revealed good positioning of his devices with his superior component at C5-6 slightly proud, but was unchanged from intraoperative findings. *Id.* Dr. Gornet recommended he transition to a soft collar, to follow up in four weeks, and to remain off work. *Id.*

On January 9, 2020, he returned to Dr. Gornet and reported continued improvement. (PX7, 1/9/20) He had weaned out of his collars. *Id.* X-rays revealed good position of his devices. *Id.* Petitioner was to continue to convalesce and to begin mild home exercise. *Id.* Dr. Gornet noted he continued to have some mild left hand numbness, but was overall pleased with his outcome. *Id.* He was kept off work until follow up. *Id.*

Petitioner returned to Dr. Gornet on March 2, 2020. (PX7, 3/2/20) He continued to do well but had some pain with increased activities, which was noted as normal. *Id.* Dr. Gornet reviewed his CT scan which was performed before the visit and appreciated no evidence of resorption zones, lucency, or subsidence. *Id.* Petitioner was given a prescription for physical therapy three times per week and instructed to return back to work full duty no restrictions on May 1, 2020. *Id.* He was to follow up in mid-June. *Id.*

Petitioner attended physical therapy from March 4, 2020 through May 13, 2020. (PX14) He returned to Dr. Gornet on June 25, 2020. (PX7, 6/25/20) Dr. Gornet noted he returned to work full duty on May 1, 2020. *Id.* X-rays revealed excellent positioning of his devices with good motion on flexion and extension. *Id.* Petitioner reported that his neck was doing very well, but he continued to have some numbness and tingling in his hands, left greater than right. *Id.* Dr. Gornet believed his description of numbness was more in a carpal tunnel distribution, but noted he had fairly severe foraminal compression before surgery. *Id.* Dr. Gornet recommended he receive nerve function studies and referred him to Dr. Phillips. *Id.* He was to continue working full duty. *Id.*

On September 17, 2020, Petitioner returned to Dr. Gornet. (PX7, 9/17/20) Petitioner continued to work full duty. *Id.* Dr. Gornet noted his referral for nerve studies was denied, but they would continue to request the studies. *Id.* He recommended Petitioner continue to work full duty and to follow up in two months' time. *Id.*

On October 13, 2020, Petitioner had the recommended nerve conduction studies completed by Dr. Phillips. (PX15) Dr. Phillips found moderate bilateral carpal tunnel syndrome, left ulnar neuropathy, mild right ulnar neuropathies, and mild chronic bilateral C5 and C6 radiculopathies consistent with residual from previously more severe involvement. *Id.* He did not believe there was active cervical radiculopathy. *Id.* Dr. Phillips noted that while his hand numbness could have a component of residual C6 radiculopathy, he suspected the distal entrapment neuropathies were playing a substantive role and further evaluation was reasonable. *Id.*

On December 7, 2020, Petitioner returned to Dr. Gornet for review. (PX7, 12/7/20) Dr. Gornet reviewed the nerve function studies and noted there was no active cervical radiculopathy. *Id.* Dr. Gornet believed he had some mild residual nerve damage from his original problem as well as continued carpal tunnel. *Id.* Updated x-rays and CT scans showed good positioning of his devices with excellent motion on flexion and extension with no evidence of lucency or major facet changes. *Id.* At that time, from a cervical spine standpoint, Dr. Gornet believed Petitioner was at maximal medical improvement. *Id.* He noted he would defer to a hand specialist on whether or not he has further residual or carpal tunnel. *Id.* Petitioner was to either follow up as needed or on a long-term basis in one year. *Id.*

Petitioner returned to Dr. Gornet on November 15, 2021. (PX7, 11/15/21) Dr. Gornet found he continued to do well. *Id.* He had not had his carpal tunnel release yet. *Id.* Petitioner had occasional stiffness with prolonged positions, but was overall very pleased. *Id.* He noted his next follow up would be in one years' time. *Id.*

At the time of Arbitration, Petitioner testified that while he had improvement from surgery and subsequent physical therapy, he continued to have some symptoms. (T.11) He continues to have soreness in his neck which is brought on by mowing, working overhead, yard work, sports, and lifting. (T.11-12) When he moves his head side to side, he has extreme pain. (T.12) He takes Advil, Tylenol, and Motrin to help alleviate his pain. *Id.* He now cannot mow at work more than 15 minutes without having to take a break. *Id.* Petitioner is unable to participate

in his hobbies of water skiing, wake boarding, and barefoot skiing due to his symptoms. (T.13) Prior to his injury, he was a competitive water skier and wake boarder. *Id.* He additionally had to stop running heavy equipment at his in-law's family farm. *Id.* Petitioner's sleep has been affected by his continued symptoms, as he cannot get comfortable and does not get more than two hours of sleep at a time. (T.14)

On cross-examination, Petitioner testified he takes over the counter medication daily for his symptoms. (T.16) When asked if he was able to perform his job satisfactorily, he testified he could perform his job with pain. *Id.* He stated he either pushes through the pain or takes medicine to get through the day. *Id.*

CONCLUSIONS OF LAW

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

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

i. **Level of Impairment**: Neither party submitted an AMA rating. Therefore, the Arbitrator gives no weight to this factor.

ii. **Occupation**: Petitioner has returned to work full duty with Respondent. (T.16) Although he is working full duty, Petitioner testified he performs the job with pain and takes medication daily for his symptoms. (T.16) He additionally has to take breaks every 15 minutes while mowing due to his pain. (T.12) The Arbitrator places some weight on this factor.

iii. **Age**: Petitioner was 47 years old at the time of his injury. (AX1) He is a younger individual and must live and work with his disability for an extended period of time. The Arbitrator places greater weight on this factor.

iv. **Earning Capacity**: There is no direct evidence of reduced earning capacity contained in the record. The Arbitrator places little weight on this factor.

v. **Disability**: As a result of his accidental injury, Petitioner has continued to suffer from painful symptoms in his neck. (PX7; T.11-12) Petitioner underwent significant treatment for his neck, left shoulder, and arm including physical therapy, injections, imaging studies, nerve conduction studies, medication, and eventually surgery in the form of a two level cervical disc replacement. (PX3; PX5; PX7; PX8; PX11; PX14; PX15). Despite some improvement from treatment, Petitioner testified he continues to have neck pain. (T.11-12) Petitioner takes Advil, Tylenol, and Motrin on a daily basis for his continued symptoms.

(T.12, 16) His hobbies of water skiing, water boarding, and barefoot skiing have been very adversely affected, as he used to compete in these sports and can no longer participate. (T.13) He can no longer run heavy equipment on his family's farm. *Id.* Petitioner testified his sleep has been affected by his lasting symptoms and sleeps no longer than two hours at a time. (T.14) Therefore, the Arbitrator places substantial weight on this factor.

The Arbitrator therefore finds that Petitioner sustained serious and permanent injuries that resulted in the 18% loss of his body as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC024675
Case Name	Brittany Mauerman v. Blain's Farm & Fleet
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0074
Number of Pages of Decision	11
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Tracy Jones, Stephanie Seibold
Respondent Attorney	Daniel Egan

DATE FILED: 2/21/2023

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRITTANY MAUERMAN,

Petitioner,

vs. NO: 19 WC 24675

BLAIN'S FARM & FLEET,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability (TTD) benefits and permanent partial disability (PPD) benefits, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 31, 2022 is hereby affirmed and adopted.

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

February 21, 2023

CAH/pm
d: 2/16/23
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC024675
Case Name	MAUERMAN, BRITTANY v. BLAIN'S FARM & FLEET
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Stephanie Seibold
Respondent Attorney	Daniel Egan

DATE FILED: 5/31/2022

THE INTEREST RATE FOR THE WEEK OF MAY 24, 2022 1.53%

/s/ Paul Seal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Brittany Mauerman
Employee/Petitioner

v.

Blain's Farm & Fleet
Employer/Respondent

Case # **19** WC **24675**

Consolidated cases: _____

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

DISPUTED ISSUES

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

FINDINGS

On **7/17/2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

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

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**16,769.48**; the average weekly wage was $**322.49**.

On the date of accident, Petitioner was **29** years of age, ***single*** with **3** dependent children.

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

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

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

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

ORDER

Petitioner failed to prove that she sustained accidental injuries that arose out of and in the course of her employment. Petitioner failed to prove her condition of ill-being is causally related to the claimed accident. Petitioner's claim for compensation is denied.

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

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

_____ **MAY 31, 2022**

Signature of Arbitrator

FINDINGS OF FACTS

Petitioner testified that she began working for Respondent in January, 2019. (Transcript, hereinafter "T." p. 28) Petitioner testified that she was instructed to immediately report any incident at work, no matter how big or small. (T. p. 28) Petitioner testified she did not report her claimed accident of July 17, 2019 on that day. (T. p. 29)

Petitioner testified that on July 17, 2019, she was working in the paint department. She testified that she was stacking one gallon paint cans from pallets to shelves. (T. pp. 11-12) Petitioner testified that she was constantly stepping onto a pile of pallets to get the boxes off to put the product on the shelf. Petitioner testified that as she got down to the last couple of boxes, she moved them off the pallet and she felt that she stepped off wrong on the way to the area that she was putting the boxes. (T. p. 12) Petitioner testified that she was holding a box with four one gallon cans of paint as she did this. (T. p. 13)

Petitioner testified that she had symptoms in her right knee after doing this. She felt a tingling on the inner side of her knee. (T. p. 14) This happened at about 3:00 PM, near the end of her shift. (T. p. 14) Petitioner testified she asked a co-worker to see if there was any pain medicine because she was feeling worse. The tingling was turning to slight pain. Despite these symptoms, Petitioner testified she was able to walk okay. (T. p. 15) Surveillance video (Rx 5) confirms that Petitioner walked without any apparent limp or difficulty as she left work that day.

Petitioner testified that after work, she went home, and then she went to the store to get some things for her kids. At this time, she began to have more pain and she could not stand. (T. p. 17)

Petitioner presented to the Emergency Room at Swedish American Hospital. (T. p. 17, Px 1). The records reflect that she presented to the Emergency Room at 2145 (9:45 PM) and was discharged at 2335 (11:35 PM) She reported that she began having right lower extremity pain that day, gradual onset. The pain would radiate up her leg at times. She denied any falls, injuries or trauma to the leg. There was no swelling to the leg. (Px 1) She had a positive history for chronic right sided low back pain without sciatica in May 2017. (Px 1) The record reflects that while at work she started to feel a dull pain behind her knee that increased in intensity and spread to the thigh and lower back.

Physical exam did show tenderness to the right posterior calf and knee, She underwent Doppler testing on the right which was negative for DVT. (Px 1) Petitioner denied undergoing an ultrasound test at Swedish American; "they didn't do anything at Swede's." (T. p. 33)

She was diagnosed with non specific lower extremity pain. There was no edema, rash, ecchymosis or erythema. She was recommended conservative care and close follow up. (Px 1)

There is nothing in the record that attributes her condition to stepping funny off of anything. There is nothing in the record that indicates any type of orthopedic injury.

After her discharge from Swedish American, Petitioner testified she went home. (T. p. 34) However at 4:30 in the morning, Petitioner testified she went to Javon Bea Mercy Hospital. (T. p. 34, Px 2) Petitioner testified she could not walk anymore. (T. 19) The records reflect that Petitioner wanted a second opinion for her right leg pain. She reported the pain started the day before, behind her right knee and went down her leg, feeling like pressure. She denied any injury to the area. She reported that she stocks shelves. She did not report a pain or a twinge after stepping off anything. She reported that she went home and took a nap. She reported waking up with pain (She did not report having increasing pain when running errands with her children as she testified). She reported being tested at Swedes for a blood clot. She reported being given an ace wrap and crutches and ibuprofen for pain. She reported being unable to sleep. (Px 2)

X-rays of the right knee were negative for fracture or dislocation. The ER doctor noted he was unclear as to the etiology of the knee and calf pain. Considering the atraumatic nature of the right knee pain, consideration was given for septic joint versus gout versus other arthropathy. Knee aspiration was offered and refused. She was given a prescription for indomethacin for gout and Norco for pain. She was told to follow up with orthopedics in the next week. (Px 2) She was given a note keeping her off work until July 22, 2019, but there is nothing in the note noting the nature of her condition to be occupational, only that she was seen in the ER, (Px 4)

Petitioner testified that she then went in to Respondent on July 19, 2019 to fill out an accident report. (T. p. 35, Rx 2) This accident report reflects that Petitioner reported having a pulled tendon in the back of her knee. She reported the injury occurred while standing on a pallet getting freight. (Rx 2) Such a history of injury and such a diagnosis do not appear in any of the aforementioned medical records.

Petitioner testified that after she went to Respondent on July 19, 2019, she returned to Javon Bea Mercy Hospital. (T. p. 35, Px 2). She arrived at 1423 (2:23 PM). She was discharged at 1635 (4:35 PM). She was complaining of right leg pain. She reported being seen by a physician 2 days prior; her right knee was wrapped in an ace wrap and she walked with crutches. Petitioner stated that she fainted in the shower the day before. She reported taking Norco for pain. (Px 2)

The record further reflects she was taking indomethacin. She reported the pain started at work with a tingling sensation in the back of her right knee while at Farm & Fleet. She also reported working at UPS as a mail sorter. She reported a lot of standing and walking activities. She denied reports of trauma, falls, significant repetitive activity, running and jumping. She reported standing in the shower washing her hair when she felt lightheaded and faint. She reported total bruising of her thigh after. Physical exam confirmed faint bruising to her right lateral thigh with slight purplish brown hue. There was no effusion of the knee. (Px 2)

The physician reported rather exquisite pain involving the distal tendon with some nodularity. The source of this tendinitis was unclear. The physician thought Petitioner had either gout or arthritis process. The physician told her to contact an orthopedic physician and she was given an off work slip. The doctor told her to advise Farm and Fleet supervisor regarding possible work related etiology as it started with some symptoms while at work. (Px 2)

Petitioner testified that she returned to the ER at Javon Bea on July 22, 2019, because her knee had become more red, swollen and painful. (T. pp. 20 – 21) The records from this visit (Px 2) reflect that Petitioner presented at 0028 (12:30 AM) and was discharged at 0346 (3:46 AM). Physical exam showed 1+ pitting edema in the right leg, erythema blotchy and hemicircumferential predominately affecting the medial side with streaking along the deep venous of right thigh. She had limited painful range of motion. There was no erythema directly around the knee joint and there was no tenderness with palpation of knee joint spaces, proximal fibula, proximal tibia, patella or distal femur. (Px 2) It was also noted that Petitioner was not using her crutches consistently and walking on the leg despite being told not to do so. She was counseled on compliance. (Px 2)

Another ultrasound was performed and was negative for DVT. The doctor discussed the diagnoses as including DVT vs. cellulitis in context of subacute possible tendonitis. This physician slightly favored cellulitis as she had a documented fever two ER visits previous, and two negative ultrasounds. He did not believe Petitioner had a septic arthritis because her range of motion was preserved although painful. He noted the knee joint itself was not painful as well. He noted if her pain worsened she might need inpatient workup. (Px 2)

On July 22, 2019, at 3:40 PM Petitioner saw Dr. Konstantakos. (Px 3) Petitioner told this provider of stepping off a pallet at work and noticing tingling in the back of her right knee. He diagnosed a tear of the medial collateral ligament of the right knee and swelling in the knee. He recommended an MRI. (Px 3)

On July 23, 2019, Petitioner returned to Javon Bea ER. (Px 2) She arrived at 2112 (9:12 PM) and was discharged July 24, 2019 at 0054 (12:54 AM). She complained of pain down to her foot with right foot swelling. She wanted to be admitted to the hospital. She accepted a Toradol injection into her knee and she was given a prescription for oral Toradol. (Px 2)

On July 30, 2019, Petitioner underwent an MRI of the right knee. (Px 2) The radiologist described a nondisplaced impaction fracture of the right medial tibial plateau, low to moderate grade sprain of the medial collateral ligament just distal to the joint line, edema within the semimembranosus tendon with small intramuscular hematoma, moderate to high grade strain tear along the insertion of the semimembranosus tendon on the posterior medial tibia/capsule suggestive of posterior medial corner injury, small knee joint effusion and edema within the popliteus muscle belly, partially visualized and compatible with low to moderate grade strain. (Px 2).

Petitioner saw Dr. Konstantakos on July 31, 2019. (Px 3) On this visit she was placed in a knee immobilizer (Px 3) She returned to Dr. Konstantakos on August 5, 2019. (Px 3) He ordered a CT scan of the knee.

The CT was performed on August 6, 2019. (Px 2) The radiologist described a cortical irregularity/defect which corresponded to the abnormal marrow changes on recent MRI. The radiologist noted that given patient's history of trauma, this finding is likely related to an evolving nondepressed tibial plateau fracture. The bony changes were not evident on radiographs from July 18, 2019. (Px 2)

The records reflect that Petitioner saw Dr. Konstantakos on August 16, 2019 to review her CT scan. (Px 3) She was to continue wearing her knee immobilizer.

On August 29, 2019 she again saw Dr. Konstantakos. (Px 3). She underwent x-rays that did not show any fracture or dislocation, but did show a mild suprapatellar effusion. (Px 3)

Petitioner testified she saw Dr. Konstantakos on September 30, 2019. (T. p. 26) However there is no note from this visit. There is a Fitness for Duty exam in Px 4 dated September 27, 2019 showing Petitioner can return to work without restriction on September 30, 2019.

Petitioner testified that she did not return to work for Respondent after her discharge from work. (T. p. 27) Petitioner testified that she did not feel safe working there. (T. p. 27) Petitioner testified she did not tell Respondent that she had been taken off work. (T. 25)

Petitioner testified that she continued to work at UPS until February 2020. She did a lot of standing at UPS, sorting packages. (T. p. 37) After working at UPS, Petitioner testified she worked at Amazon as a sorter. This job required her to constantly walk, lift, kneel. And squat. (T. pp. 38 – 39). Petitioner testified that she now works for Emery Air. She is a supervisor for the air cargo ramp. She reports on flights that come in and does mainly computer work. She is making more money at Emery than she did for Respondent. (T. p. 39)

Petitioner testified that she saw Dr. Mark Levin at Respondent's request. (T. p. 37, Rx 3) She reported to Dr. Levin that she had no restrictions and was able to do everything she was able to do prior to July 16, 2019. (Rx 3, ex 3, p. 3) Dr. Levin opined that initially Petitioner had a cellulitis in her leg that was not work related but was consistent with her multiple pains. Petitioner then had an injury of falling in the shower with increasing pain, consistent with a post traumatic medial tibia plateau fracture. The fall in the shower and the subsequent medial tibial plateau fracture were not related to her employment. She had fully recovered from all of her medical issues with regard to the right leg and knee. She required no restrictions, she required no medical treatment. She was at maximum medical improvement (MMI) by end of September 2019. He opined that she sustained 0 Impairment as defined by the AMA Guidelines, Sixth Edition, Second Printing. (Rx 3, ex 3).

Mr. Clay Hammes testified on behalf of Respondent. He is the senior Director of Risk Management for Respondent. (T. 43) He testified he has held this position for the past four years and has been employed by Respondent for a little over 16 and a half years. (T. p. 43) He testified that he was familiar with the Rockford store having visited it many times. (T. p. 44) He testified that he is also familiar with the pallets that Petitioner testified to stepping on. They are 40 inches by 48 inches. They would not fill an entire aisle. There is room to move around three sides of the pallet when they are in an aisle. (T. p. 46)

CONCLUSIONS OF LAW

In support of the Arbitrator's decision with respect to C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent and with respect to F. Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds as follows:

The claimant in a workers' compensation case has the burden of proving by a preponderance of the evidence all the elements of the claim. *O'Dette v. Industrial Commission,* 79 Ill. 2d 249 (1980). Claimant must show by a preponderance of the evidence that she suffered a disabling injury that arose out of and in the course of the claimant's employment. Included within that burden is proof that her current condition of ill-being is causally connected to a work related injury. *Sisbro, Inc. v. Industrial Commission,* 207 Ill. 2d 193(2003).

The Arbitrator concludes that the Petitioner failed to prove she sustained accidental injuries that arose out of and in the course of her employment. The Arbitrator concludes that Petitioner's testimony is inconsistent with her medical records and even assuming it were an accurate description of her activities, does not amount to an accident based upon the initial medical records and the diagnoses in said records.

As discussed above, Petitioner denied any type of trauma to her right knee to the medical providers at Swedish American Hospital and several times at Javon Bea Mercy Hospital. Medical providers asked her in several different ways whether she sustained any trauma to her knee, whether she participated in any repetitive activities or whether she sustained any injury to her knee. And many times she denied having sustained any type of injury to her knee. She only indicated she began to feel a tingling sensation in the back of her knee while at work. This case does not require an analysis of increased risk or neutral risk simply because the Petitioner simply denied any incident that is consistent with triggering such an analysis. Moreover, her initial diagnoses are not consistent with the type of activities she was performing. Her initial diagnoses included gout and cellulitis. There was no history of trauma or injury to the knee. Her version of events changed only after the ER doctor advised her to make a workers' compensation claim because her symptoms started while at work.

The Arbitrator also notes the change in condition in Petitioner's leg after her fall in the shower. She now had bruising about her thigh that had not been present previously. It is unclear from the records whether Dr. Konstantakos was aware of the shower incident and whether he considered that to be a traumatic incident. It is unclear whether Dr. Konstantakos reviewed all the medical records prior to his involvement and what his understanding of the Petitioner's "trauma" to her knee was. It is clear that the only trauma Petitioner sustained to her right leg and knee was when she fell in the shower.

Conversely, Dr. Mark Levin studied all of Petitioner's medical records. He noted the diagnoses of gout and cellulitis for which she initially presented for treatment to the ERs. He explained the fall in the shower was consistent with the development of a medial tibial plateau fracture:

> Based on all the information, the mech of injury at work that she described to me prior to the fall was not consistent with that fracture but a fainting and falling in the shower would be consistent with that occurring at that time. (Rx 3, p. 21)

The Arbitrator is persuaded by the testimony of Dr. Levin as opposed to the medical records and comments of the doctors therein.

Based upon all of the above, the Arbitrator finds that Petitioner failed to prove she sustained accidental injuries that arose out of and in the course of her employment be Respondent and moreover that Petitioner's current condition of ill-being is causally related to the claimed work accident. Petitioner's claim for compensation is denied.

Based upon these conclusions, all other issues in this matter are moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC024061
Case Name	Christopher Chapman v. Beutel Machining Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0075
Number of Pages of Decision	24
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	James Leahy
Respondent Attorney	Aisha Shotande

DATE FILED: 2/21/2023

/s/ Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTOPHER CHAPMAN,

Petitioner,

vs. NO: 19 WC 24061

BEUTEL MACHINING, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed April 14, 2022, is hereby affirmed and adopted.

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

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

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

February 21, 2023

CAH/tdm
O: 2/16/23
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC024061
Case Name	CHAPMAN, CHRISTOPHER v. BEUTEL MACHINING, INC.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	James Leahy
Respondent Attorney	Aisha Shotande

DATE FILED: 4/14/2022

THE INTEREST RATE FOR THE WEEK OF APRIL 12, 2022 1.22%

/s/Ana Vazquez, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Christopher Chapman
Employee/Petitioner

v.

Beutel Machining, Inc.
Employer/Respondent

Case # **19** WC **024061**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, on **November 24, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **03/20/2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**41,600.00**; the average weekly wage was $**800.00**.

On the date of accident, Petitioner was **38** years of age, ***married*** with **4** dependent children.

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

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

Respondent shall be given a credit of $**1,120.00** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**N/A**.

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

ORDER

Respondent shall pay reasonable and necessary medical services, as provided in Petitioner's Exhibits 1 through 12, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $533.33/week for 1 1/7 weeks, for May 31, 2019 through June 2, 2019 and December 18, 2019 through December 22, 2019, as provided in Section 8(b) of the Act. Respondent is entitled to a credit in the amount of $1,120.00 for benefits paid to Petitioner for the TTD period awarded.

Respondent shall pay Petitioner permanent partial disability benefits of $480.00/week for 58.45 weeks, because the injuries sustained caused 35% loss of use of the right foot, as provided in Section 8(e) of the Act.

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

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

Ana Vazquez

_____ **APRIL 14, 2022**

Signature of Arbitrator

FINDINGS OF FACT

Petitioner worked for Respondent as a machinist for five years. Transcript of Proceedings on Arbitration ("Tr.") at 44. As a machinist, Petitioner is on his feet, walking. Tr. at 44. Prior to the work accident, Petitioner did not have problems with his feet, besides a clubbed foot when he was an infant. Tr. at 44-45, 59. Petitioner did not have any problems with his ankle prior to March 20, 2019. Tr. at 58-59. Petitioner did not have any problems working or walking as an adult. Tr. at 45.

On March 20, 2019, Petitioner began work at 6 a.m. Tr. at 45. At approximately 11:00 a.m. or 11:30 a.m., Antonio Diaz asked Petitioner to grab a skid for some long pivot shafts that they were packing. Tr. at 45. Petitioner explained that a pivot shaft is a long shaft they machine, and Petitioner had just finished working on it. Tr. at 45. Petitioner went to an old trailer that is used by Respondent for storage, which is parked behind Respondent's facility. Tr. at 45. Petitioner testified that there was an aluminum ladder, hooked onto the back of the trailer by two hooks, that was used to get into the trailer. Tr. at 46. Petitioner did not have any problems ascending the ladder. Tr. at 46. Once inside the trailer, Petitioner picked up a skid and had half of it under his arm, while grabbing onto the rest of it. Tr. at 47. He then descended the ladder, while facing into the trailer. Tr. at 47. While descending the ladder, the ladder slid, and Petitioner fell onto the side of his right foot. Tr. at 47-48. Petitioner heard a sound that he described as a "twig snapping, like a pop or a snap" and he felt a lot of pain. Tr. at 48.

Following the accident, Petitioner pulled the skid into the shop and told Mr. Diaz that he had fallen, "hopefully, it was just a sprain," and that he would wait to see what happened overnight. Tr. at 48. Petitioner also spoke with Ludwig Beutel sometime after 1:00 p.m., which was when Mr. Beutel returned from his lunch break. Tr. at 49. Petitioner testified that Mr. Beutel asked why he was limping and Petitioner told Mr. Beutel that he fell at the trailer, he heard a pop, and that it was hopefully just a sprain. Tr. at 49. Petitioner testified that Mr. Beutel told him "Okay." Tr. at 49. Petitioner finished the workday. Tr. at 48. Petitioner testified that as he finished the workday, he felt some of the worst pain that he had ever felt. Tr. at 48-49.

Petitioner did not feel better the next day. Tr. at 50. Petitioner testified that he got dressed, drove to Respondent, and told Mr. Diaz that he was going to the hospital. Tr. at 50. Petitioner presented at the emergency department of St. Alexius Medical Center on March 21, 2019 with complaints of traumatic right foot pain. Px2 at 17. The record notes that Petitioner reported twisting

his right foot the day before while walking, that Petitioner presented with right foot pain after slipping on the stairs the previous evening, and that Petitioner stated "he tripped and twisted the ankle and had immediate pain afterwards." Px2 at 17, 19, 33. Petitioner testified that he did not tell St. Alexius Medical Center that his injury was work-related because he did not have Respondent's worker's compensation insurance information and he was afraid of any financial repercussions. Tr. at 50-51. He claimed the treatment on his wife's insurance for those reasons. Tr. at 51. His wife did not work for Respondent. Tr. at 50. On cross examination, Petitioner testified that he told St. Alexius Medical Center that he tripped and twisted his ankle, then later testified that all he said at St. Alexius Medical Center was that he was putting the treatment on his own insurance. Tr. at 73. X-rays of Petitioner's right foot demonstrated a nondisplaced fracture of the base of the right fifth metatarsal. Px1 at 18, 28. Petitioner was diagnosed with a Jones fracture. Px1 at 18. A short splint and cast was applied. Px1 at 42.

On March 21, 2019, Petitioner also presented at Suburban Orthopedics and was seen by Dr. Kyle Samuel Peterson. Px2 at 34, Px4 at 8. Petitioner was referred to Dr. Peterson by St. Alexius Medical Center. Tr. at 52-53. Petitioner did not recall filling out a questionnaire when he arrived at Dr. Peterson's office, however, he testified that his signature and writing were on the form. Tr. at 53, 54, 75, 76; Respondent's Exhibit ("Rx") 3. Petitioner presented to Dr. Peterson with his foot wrapped in a soft cast, which was done at the hospital. Tr. at 78, 87. Dr. Peterson did not remove the wrap until Petitioner went into surgery. Tr. at 87. Petitioner testified that the first thing that Dr. Peterson said to him was that he was having surgery. Tr. at 55. Petitioner testified that Dr. Peterson did not perform a physical examination of his foot, and that Dr. Peterson and a woman in the room looked at the x-rays that were taken at the hospital. Tr. at 78.

Dr. Peterson's March 21, 2019 record notes that Petitioner reported that he was walking in his house when he slipped and twisted his right foot. Px2 at 34. Petitioner, however, testified that all he ever said to Dr. Peterson was that he was putting the treatment on his own insurance. Tr. at 55. Petitioner testified that he refused to give Dr. Peterson an answer as to how the injury occurred, and that Dr. Peterson did not ask him how it happened. Tr. at 55, 77. Petitioner further testified that he has been claiming that he did not tell Dr. Peterson that he fell at home "the whole time" and that was the reason he and his wife called him. Tr. at 79. At the March 21, 2019 visit with Dr. Peterson, Petitioner reported feeling pain and swelling immediately. Px2 at 34. Petitioner also reported trying to go to work, but the pain was increasing, and he went to St. Alexian Brothers.

Px2 at 34. Petitioner reported constant aching and numbness and tingling. Px2 at 34. Dr. Peterson's impression was right fifth metatarsal Jones fracture. Px2 at 36. Dr. Peterson recommended a right open reduction and internal fixation of the fifth metatarsal fracture. Px2 at 36. Dr. Peterson kept Petitioner off work. Px2 at 36.

On March 25, 2019, Petitioner underwent a right open reduction internal fixation of the fifth metatarsal fracture. Px2 at 45, Px4 at 11. Petitioner's postoperative diagnosis was right foot fifth metatarsal Jones fracture. Px2 at 45, Px4 at 11. Petitioner testified that the day following surgery, Mr. Beutel called Petitioner and told Petitioner that he needed to go into work because Mr. Beutel's son was on vacation. Tr. at 56. Petitioner testified that Mr. Beutel needed Petitioner to show him how to run a machine. Tr. at 56. Mr. Beutel also told Petitioner that if he did not go into work, he would go to Petitioner's house. Tr. at 56. Petitioner testified that he went to work because it did not seem that he had a choice not to go to work. Tr. at 56-57. Petitioner went to work wearing a cast and continued to work while wearing a cast. Tr. at 57.

Petitioner followed up with Dr. Peterson on April 1, 2019. Px2 at 30. Petitioner reported having moderate pain along with tingling. Px2 at 30. X-rays taken on this date showed (1) normal alignment, (2) closed physis, (3) displaced fracture of the fifth metatarsal Jones fracture, (4) no dislocations, (5) no degenerative changes, (6) no loose or foreign bodies, and (7) no congenital abnormalities. Px2 at 32. Dr. Peterson's diagnosis was unchanged. Px2 at 32. Dr. Peterson recommended and ordered over-the-counter NSAIDs, cryotherapy as needed, and ordered and applied a short leg cast. Px2 at 32. Petitioner was kept off work. Px2 at 32.

On April 4, 2019, Petitioner again saw Dr. Peterson and reported on-and-off cramping, predominantly in his calf. Px2 at 26. Dr. Peterson's impressions were right fifth metatarsal Jones fracture and increased right leg pain and swelling. Px2 at 28. An ultrasound of Petitioner's right leg was ordered to rule out DVT. Px2 at 28. The short leg cast was discontinued and a CAM walker was applied. Px2 at 28. Petitioner's off work restriction continued. Px2 at 28.

Petitioner saw Dr. Peterson for follow up on April 15, 2019. Px2 at 22. Petitioner reported that he was doing slightly better, but that he was still having a lot of pain and swelling. Px2 at 22. Petitioner continued to wear the CAM boot. Px2 at 22. Petitioner's ultrasound was negative. Px2 at 24. Dr. Peterson's impressions were unchanged. Px2 at 24. Petitioner's off work restriction continued. Px2 at 24.

Petitioner again saw Dr. Peterson on April 22, 2019, with complaints of increased burning pain and significant swelling after a workday. Px2 at 18. Petitioner reported intermittent numbness and tingling at the toes when his foot swelled. Px2 at 18. Petitioner reported that he was taking Norco, but was requesting a new medication due to the side effects of Norco. Px2 at 18. X-rays taken on this date were unchanged. Px2 at 20. Dr. Peterson's impressions were unchanged. Px2 at 20. Dr. Peterson placed Petitioner on light duty restrictions. Px2 at 20.

On May 17, 2022, Petitioner followed up with Dr. Peterson. Px2 at 14. Petitioner reported that his foot was not too painful, however, his main concern was his ankle. Px2 at 14. Petitioner testified that he could barely walk because there was something wrong with his ankle. Tr. at 57-58. Petitioner reported pain across the front of the ankle, which radiated down the lateral side and into the foot. Px2 at 14. Dr. Peterson noted swelling in the ankle and sensitivity in his foot. Px2 at 14. Dr. Peterson also noted that Petitioner was using a cane for support when walking. Px2 at 14. Petitioner continued to report intermittent numbness and tingling in his toes, and also on the lateral side of the ankle. Px2 at 14. On exam, Dr. Peterson noted that there was a great deal of pain about the ankle joint line, especially in the anterolateral corner. Px2 at 16. The joint felt fairly unstable with an anterior drawer and talar tilting evident, especially when compared to the left side. Px2 at 16. Mild crepitus was noted. Px2 at 16. The peroneal tendons were intact, but were slightly tender. Px2 at 16. X-rays taken on this date were unchanged. Px2 at 16. Dr. Peterson's impressions were (1) right fifth metatarsal Jones fracture, (2) increased right leg pain and swelling, (3) lateral ankle sprain with ATFL tear, and (4) ankle instability. Px2 at 16. Dr. Peterson recommended a right ankle arthroscopy with extensive debridement and an open Brostrom/Gould procedure. Px2 at 16. Petitioner's light duty restrictions were maintained, with Dr. Peterson noting that Petitioner would require two to four weeks off work following the recommended surgical procedures. Px2 at 17.

On May 29, 2019, Petitioner underwent a (1) right ankle arthroscopy with extensive debridement, (2) right open Brostrom, Gould lateral ligament repair, and (3) right excision exostosis, distal fibula. Px2 at 40, Px8 at 2. Petitioner's postoperative diagnoses were (1) right lateral ankle sprain with ATFL tear, (2) right lateral ankle instability, and (3) right distal fibula exostosis. Px2 at 40, Px8 at 2. The operative report notes that Petitioner also sustained a lateral ankle sprain at the time of his fifth metatarsal Jones fracture and that the lateral ligament injury did not properly heal with conservative treatment. Px2 at 40-41, Px8 at 2-3. Petitioner returned to work the following Monday. Tr. at 59. Petitioner testified that following the May 29, 2019

procedure, he was in an immobilization device when he returned to work and he worked while wearing it. Tr. at 59.

On June 4, 2019, Petitioner presented for a follow up with Dr. Peterson. Px2 at 9. Petitioner was still having pain at the surgical site, and was having difficulty sleeping due to the pain. Px2 at 9. Petitioner was using crutches to ambulate. Px2 at 9. X-rays taken on this date showed (1) normal alignment, (2) closed physis, (3) a displaced fracture of the fifth metatarsal Jones fracture, the screw was in good alignment and healed, (4) no dislocations, (5) no degenerative changes, (6) no loose or foreign bodies, and (7) no congenital abnormalities. Px2 at 11. Dr. Peterson noted that Petitioner was to be off work for two to four weeks. Px2 at 11.

Petitioner returned to Dr. Peterson on June 11, 2019, with continued complaints of pain at the surgical site. Px2 at 5. Petitioner reported constant burning at the surgical site, as well as tingling and numbness in his right toes. Px2 at 5. A CAM walker was ordered and applied. Px2 at 7. Petitioner was released to full duty. Px2 at 7. On June 25, 2019, Petitioner reported to Dr. Peterson that he was not doing well and that he had increased pain and swelling. Px2 at 1. Petitioner reported that he had pain in his heel and at times, his ankle locked near the lateral aspect. Px2 at 1. Petitioner reported that the area was sensitive and that he had increased pain at night. Px2 at 1. Petitioner also continued to report numbness and tingling in his toes. Px2 at 1. Petitioner requested pain medication for nighttime use. Px2 at 1. Dr. Peterson's impressions remained unchanged. Px2 at 3. The CAM walker was discontinued and a Webly lace-up brace was ordered. Px2 at 3. Petitioner's full duty release continued. Px2 at 3.

On July 11, 2019, Petitioner presented at ATI for an initial evaluation. Px9 at 30. At his evaluation, Petitioner reported that he was injured at work when a ladder slipped out from under him and he landed on the outside of his foot. Px9 at 30. Petitioner further reported that he felt a pop and reported it to work, that he finished the workday, and that when he went into work the next day, he went to the emergency room. Px9 at 30. On August 22, 2019, Petitioner was discharged from physical therapy, having attended 11 sessions. Px9 at 11. The record notes that Petitioner called ATI to cancel his appointments and wanted to call back to start physical therapy again in a couple of weeks. Px9 at 7. Petitioner testified that the physical therapy did not help much. Tr. at 60.

Dr. Peterson noted in an addendum that on July 25, 2019, he had a conversation with Petitioner and Petitioner's wife in regards to Petitioner's initial injury on March 20, 2019. Px2 at

37. While Dr. Peterson's records indicated that Petitioner had a slip and fall accident at his house on the stairs, Petitioner and Petitioner's wife stated that Petitioner fell at work and that treatment should be billed under Petitioner's workers' compensation claim with Liberty Mutual. Px2 at 37. Petitioner testified that he called Dr. Peterson's office in July 2019 to inform him that the injury was work-related and requested that the records be changed. Tr. at 80-81. Petitioner advised Suburban Orthopedics to bill his treatment to workers' compensation. Tr. at 84. Petitioner did not ever try to contact Liberty Mutual, however, Tammy Albee, of Liberty Mutual, contacted him. Tr. at 83. Petitioner was not sure if his wife had contacted Liberty Mutual. Tr. at 83. Petitioner spoke to Tammy Albee at Liberty Mutual only once. Tr. at 83.

On October 16, 2019, Petitioner presented at OrthoIllinois and was seen by Dr. Scott Mox. Px10 at 23. Petitioner found OrthoIllinois online. Tr. at 85. Petitioner complained of right foot pain. Px10 at 23. Petitioner reported that he was going up a ladder at work, the ladder slid, and he twisted his foot. Px10 at 23. Petitioner also reported that he was being seen at Suburban Orthopedics, but wanted to transfer care. Px10 at 23. Petitioner reported numbness, tingling, and paresthesias. Px10 at 23. X-rays showed (1) a long cancellus screw extending from the base of the fifth metatarsal to the shaft in good position and (2) no Jones fracture was appreciated and the previous fracture was fully healed. Px10 at 25. Dr. Mox's assessment of Petitioner was pain in right foot. Px10 at 25. Dr. Mox noted that Petitioner's pain appeared to be caused by hardware irritation from the screw head. Px10 at 25. Dr. Mox did not see any new fractures. Px10 at 25. Dr. Mox noted that Petitioner was working regular duty as a machinist and was walking independently. Px10 at 25. Dr. Mox also noted that if Petitioner's hardware irritation continued, surgical removal of the screw would be considered. Px10 at 25.

Petitioner next saw Dr. Mox on November 13, 2019. Px10 at 19. His symptoms were unchanged and he wanted to discuss hardware removal. Px10 at 19. Dr. Mox referred Petitioner to his ankle and foot associate, Dr. Nicholas Brissey, for consideration of hardware removal. Px10 at 21. Petitioner was seen by Dr. Brissey on November 21, 2019. Px10 at 16. The mechanism of injury is noted as "he was going up a ladder at work, the ladder slid and he twisted his foot." Px10 at 16. Petitioner continued with complaints of right foot pain at the base of the fifth metatarsal. Px10 at 16. Petitioner testified that he reported to Dr. Brissey that he "felt like something was sticking out the side of [his] foot," and that he was still having a lot of pain, swelling, and numbness from halfway up his leg down to his ankle. Tr. at 61. Dr. Brissey's assessment of Petitioner was

pain due to internal orthopedic devices, implants, and grafts at the fifth metatarsal base. Px10 at 17. Dr. Brissey noted that Petitioner wanted to proceed with hardware removal due to continued pain with conservative treatments. Px10 at 17. Petitioner presented to Dr. Pradeep Raju at OrthoIllinois for pre-operative clearance on December 4, 2019. Px10 at 12.

On December 18, 2019, Petitioner underwent (1) removal of painful hardware, right foot, (2) neurectomy, lateral fifth metatarsal base with burial of nerve into the abductor digiti minimi, and (3) removal of painful osteophyte with bone biopsy, fifth metatarsal base with secondary repair of the peroneus brevis tendon, right. Px10 at 10. Petitioner's preoperative diagnoses were (1) painful hardware, right foot, (2) neuritis with nerve entrapment damage to the lateral fifth metatarsal base, right foot, and (3) painful osteophyte lateral fifth metatarsal base, right foot. Px11 at 10. No postoperative diagnoses were provided. Petitioner was prescribed Percocet, Acetaminophen, and Tramadol. Px11 at 11. Dr. Brissey also discussed with Petitioner and Petitioner's father that he could not return to work following the procedures and while taking the prescribed medications. Px11 at 11. Petitioner returned to work the following Monday. Tr. at 62. Petitioner testified that he was still having some pain, swelling, and numbness following the third surgery. Tr. at 65.

Petitioner next saw Dr. Brissey on December 26, 2019 and reported improved pain, however, he still had mild pain when walking. Px10 at 9. Petitioner was working without restrictions. Px10 at 9. Petitioner was instructed to continue following post-op instructions and use of the surgical shoe. Px10 at 10. On January 2, 2020, Petitioner followed up with Dr. Brissey. Px10 at 6. Petitioner reported mild pain with walking. Px10 at 6. Petitioner was working without restrictions. Px10 at 6. X-rays demonstrated no signs of complications to healing. Px10 at 6. The sutures were removed and steri strips were applied. Px10 at 7.

A note dated January 16, 2020, notes that Dr. Brissey's office called Petitioner to ask if he could present at an earlier time, and Petitioner stated that he could not because of work and rescheduled for the following Thursday. Px10. During the call, Petitioner stated that he was feeling good and wanted to know if he needed to be seen again or if he could be done treating. Px10 at 5. A note written by Cristy Rockey states that Petitioner did not need to come in for an appointment if he was doing well. Px10 at 5. Petitioner last saw Dr. Brissey in January 2020. Tr. at 65.

On August 26, 2020, Petitioner was seen by Dr. Simon Lee, for an independent medical examination ("IME") at Respondent's request. Rx1 at 1. Petitioner reported a consistent work

accident to Dr. Lee. Rx1 at 1. Dr. Lee, however, noted the inconsistencies of the accident history in the medical records. Rx1 at 1. At the time of the IME, Petitioner reported continued symptoms in his right lower extremity, including chronic dorsolateral foot pain and ankle pain. Rx1 at 2. Petitioner also reported decreased range of motion of the toes and that he felt that he could not run, exercise, or hike. Rx1 at 2. Following his exam, Dr. Lee's diagnoses were (1) status post right fifth metatarsal fracture with lateral ligament instability, (2) status post right fifth metatarsal and lateral ligament repair, and (3) status post hardware removal and neurectomy. Dr. Lee opined that Petitioner "was at maximum medical improvement from the original injury, although it is not clear if it is occupationally related." Rx1 at 4. Dr. Lee provided an impairment rating of 1% lower extremity impairment. Rx1 at 4.

Petitioner testified that he used his vacation time for the time that he was off work due to his injury, and that was the reason he was paid in full during the time that he off work for his injury. Tr. at 62. Petitioner testified that at the time of the injury he was getting two weeks of vacation time, and that he would let his vacation time accumulate. Tr. at 62. Petitioner always used his vacation time. Tr. at 63. Petitioner was able to cash out his vacation time. Tr. at 63.

Petitioner testified that at the time of arbitration, he still did not have a lot of feeling on the outside of his leg. Tr. at 65-66. The Arbitrator noted that Petitioner pointed to his right ankle and moved his right finger up to about mid-calf of his right leg, when he described the location of numbness. Tr. at 66. Petitioner was not aware that a nerve was removed from his foot. Tr. at 66. Petitioner testified that "it feels like an electric current almost" and he was experiencing that sensation as he testified. Tr. at 67. Petitioner testified that he experiences that sensation at least once a week and there is no activity associated with that feeling. Tr. at 67.

Petitioner also testified that he does not have the movement that he had prior to the accident and cannot workout like he used to. Tr. at 67. If he tries to workout, his ankle swells up and he has to walk with a cane. Tr. at 67. When his ankle swells, Petitioner feels a tightness and he cannot move it up and down or twist it. Tr. at 68. His ankle swells daily, after work and he feels the swelling and stiffness every day. Tr. at 68. Petitioner testified that he does not feel so much pain, but feels "like a loss of movement almost" in his ankle and foot. Tr. at 68. When Petitioner walks, he feels tightness in the back of his right Achilles area. Tr. at 69. Petitioner has visible scarring on the side of his right foot and ankle. Tr. at 69-70. Petitioner testified that he enjoyed hiking in

Colorado, last hiked in Colorado one year prior to the accident, and has stopped hiking because he experiences "pain, stiffness, all of it" when he walks. Tr. at 72.

At the time of arbitration, Petitioner was working at Partners Manufacturing. Partners Manufacturing was a vendor of Respondent. Tr. at 89.

Testimony of Antonio Diaz

Petitioner called Antonio Diaz as a witness in his case-in-chief. Tr. at 8. Mr. Diaz worked as a machinist at Respondent, but is now retired. Tr. at 9. Mr. Diaz began working at Respondent in 2007 and was let go in August 2019. Tr. at 10.

Mr. Diaz testified that his shift began at 6:00 a.m. and ended at 3 p.m., and they worked without a lunch break. Tr. at 10. Mr. Diaz testified that they normally and mostly stood while working, and sat once in a while. Tr. at 19. Mr. Diaz worked with Petitioner for a year and a half prior to the accident, which was a guess. Tr. at 19, 26. Mr. Diaz did not know Petitioner prior to the time that Petitioner began working at Respondent. Tr. at 26-27.

On March 20, 2019, at approximately 11:30 a.m., Petitioner was instructed to load some parts on a skid. Tr. at 11, 24. Petitioner asked Mr. Diaz for his opinion as to whether he should get a new skid. Tr. at 11. Mr. Diaz testified that the skid in the shop "was in pretty bad shape." Tr. at 11. Mr. Diaz told Petitioner to go outside and look for a new skid in the semi-trailer that was used for storage, which was located in the yard behind Respondent's facility. Tr. at 11, 23, 25. Mr. Diaz did not walk outside with Petitioner. Tr. at 23. Mr. Diaz testified that Petitioner came back a while later, limping and "his face, you could tell that he was in pain." Tr. at 11. About five to seven minutes had elapsed from the time that Petitioner walked out to the trailer to the time that he returned. Tr. at 25. Mr. Diaz asked Petitioner what happened and Petitioner said that he had fallen off the ladder used to get into the trailer. Tr. at 11. Mr. Diaz did not see Petitioner fall. Tr. at 24. Mr. Diaz testified that the ladder is three or four feet, it has two little hooks, and sometimes slides when you are walking up on it. Tr. at 12.

Mr. Diaz testified that Petitioner told him that he heard a snap in his foot when he landed and was not sure if he had broken anything. Tr. at 12, 24. Mr. Diaz told Petitioner that he should go to emergency care, and Petitioner told him "let me see how I feel at the end of the day. I can endure the pain for the rest of the day and we will take it from there." Tr. at 12. Mr. Diaz testified that he noticed that Petitioner struggled all afternoon with his foot and that "you could tell he was in pain." Tr. at 13. Petitioner finished the workday at 3:00 p.m. Tr. at 12-13, 24.

Mr. Diaz testified that he did not notice anything unusual about the way that Petitioner was walking prior to Petitioner walking out to the trailer. Tr. at 19. Mr. Diaz had seen Petitioner working prior to the accident, and "everything was fine." Tr. at 19. In all of his time having worked with Petitioner, Mr. Diaz did not ever notice Petitioner having any problems with his right foot or the way that he walked. Tr. at 20. Mr. Diaz testified that Petitioner did not ever make any complaints or have problems with his right foot prior to the March 20, 2019 incident. Tr. at 20.

Mr. Diaz testified that Mr. Beutel was not at the facility at the time that Petitioner was injured. Tr. at 13-14. Mr. Diaz explained that Mr. Beutel normally left around 11:30 a.m. to go to lunch and would return at 1:00 p.m. Tr. at 14. When Mr. Beutel returned from lunch on March 20, 2019, he talked with Petitioner and wanted to know why Petitioner was limping. Tr. at 14. Mr. Diaz heard Petitioner tell Mr. Beutel that he had fallen off the ladder and had landed on his foot. Tr. at 14. Mr. Diaz did not know if Petitioner told Mr. Beutel how his foot was feeling. Tr. at 14.

Mr. Diaz testified that he had a conversation with Mr. Beutel about what Petitioner told him regarding the injury. Tr. at 15. Mr. Diaz told Mr. Beutel that Petitioner had fallen off the ladder when he went to look for a new skid and had hurt his foot. Tr. at 15.

Mr. Diaz saw Petitioner the following morning. Tr. at 13. They went into work at 6:00 a.m., and Petitioner came in "right away" and said that he was going to the emergency room to find out what was wrong with his foot. Tr. at 13, 25. Later in the morning, Petitioner texted Mr. Diaz that he had broken a bone in his foot and also texted a picture. Tr. at 13. Mr. Diaz did not accompany Petitioner to the emergency room. Tr. at 25. Mr. Diaz testified that Petitioner did not tell him what he told the physicians at the emergency room. Tr. at 25.

In September 2019, Mr. Beutel's daughter in law, Valerie, called Mr. Diaz and asked him to write a letter on behalf of Respondent stating what happened so that she could submit the letter to Respondent's workers' compensation insurance. Tr. at 15, 16. Valerie was the office manager. Tr. at 15-16. Mr. Diaz wrote the letter, scanned it, signed it, and sent it to Valerie by email. Tr. at 16. Mr. Diaz had no further communication with Valerie after he emailed her the letter. Tr. at 17. Mr. Diaz had a copy of the letter on his phone. Tr. at 17. Mr. Diaz opened the letter on his phone and testified that the letter was dated September 9, 2019. Tr. at 17. Mr. Diaz read the letter from his phone on the record. Tr. at 17-18.

Testimony of Ludwig Beutel

Petitioner called Ludwig Beutel as a witness in its case-in-chief and Respondent also called Mr. Beutel to testify on its behalf. Tr. at 29-30, 91. Mr. Beutel is the owner/president of Respondent and has been since 1973. Tr. at 30, 91. In March 2019, Mr. Beutel had four employees at Respondent. Tr. at 92-93. The four employees were himself, his son, Mr. Diaz, and Petitioner. Tr. at 93. Mr. Beutel's daughter-in-law worked part-time at Respondent. Tr. at 30, 93.

Mr. Beutel testified that his usual lunch break began at 11:30 a.m. and that he returned from lunch at 1:00 p.m. or 1:15 p.m. on March 20, 2019. Tr. at 30-31. Mr. Beutel testified that it was brought to his attention that Petitioner slipped and hurt his foot. Tr. at 31. Mr. Beutel further testified that Mr. Diaz's testimony was "the truth and that is the way everything went." Tr. at 31, 41. Mr. Beutel agreed that he had a conversation about the accident with Petitioner and with Mr. Diaz on March 20, 2019. Tr. at 31. He did not recall everything that was said between him and Petitioner on March 20, 2019. Tr. at 31. Mr. Beutel testified that Petitioner was "perfectly healthy" when he started working at Respondent and was healthy up until the time that he hurt his foot. Tr. at 41.

Mr. Beutel did not recall calling Petitioner and asking him to return to work after Petitioner's first surgery. Tr. at 32. Mr. Beutel also did not recall telling Petitioner that he would give Petitioner a ride to work if Petitioner did not have a ride. Tr. at 32. Mr. Beutel testified that he "never said anything like that" when asked if he recalled Petitioner asking him if he would be paying Petitioner's copays. Tr. at 32. Respondent was covered by workers' compensation insurance. Tr. at 32, 33. Mr. Beutel did not report Petitioner's injury to Respondent's insurance company. Tr. at 33. Mr. Beutel found out later that he had to report workers' compensation injuries right away. Tr. at 33.

Mr. Beutel testified that he did not report Petitioner's injury because he "was never in a situation like that." Tr. at 33. By the time that he found out that he needed to report the injury, "a couple of days or whatever passed by." Tr. at 33-34. Mr. Beutel could not recall when he reported Petitioner's injury to Respondent's workers' compensation insurance, however, he did not think that it was a couple of months after the injury. Tr. at 35. Mr. Beutel testified that it must have been him that contacted Respondent's workers' compensation insurance because Valerie only came in once a week. Tr. at 37. Petitioner's injury was the first injury Mr. Beutel had to report to Respondent's workers' compensation insurance. Tr. at 37. Mr. Beutel saw the letter that Valerie

received from Mr. Diaz after he reported Petitioner's injury to Respondent's workers' compensation insurance. Tr. at 40-41.

Mr. Beutel was shown Respondent's Exhibit 2, which he identified as paystubs for Petitioner from his checkbook. Tr. at 94. Mr. Beutel identified paystubs for Petitioner for the weeks of March 25 through March 31, 2019, May 27 through June 2, 2019, and December 16 through December 22, 2019. Tr. at 96-97. Mr. Beutel explained that Petitioner had two weeks of paid vacation time. Tr. at 100. Petitioner "took a day here, there, day there or week there" and "it was all mutual" between Petitioner and Mr. Beutel. Tr. at 100-101. Mr. Beutel explained that "we integrated it in his paycheck," and Petitioner kept track of his vacation time and told Mr. Beutel how much he owed Petitioner and "how his vacation days go." Tr. at 101.

Mr. Beutel testified that he basically paid Petitioner his full salary every week during Petitioner's disability. Tr. at 101. Mr. Beutel always paid off Petitioner's vacation time, whether Petitioner took it or not. Tr. at 101-102. Mr. Beutel could not tell whether any of the paystubs in Rx2 reflected vacation pay. Tr. at 103. His secretary recorded the checks and always indicated 40 hours, and he did not know whether she specified if it was for vacation paid. Tr. at 103.

Regarding Mr. Diaz, Mr. Beutel did not recall the last day that Mr. Diaz worked at Respondent. Tr. at 93. Mr. Beutel testified that he and Mr. Diaz had a disagreement on the last day that Mr. Diaz worked at Respondent. Tr. at 93. Mr. Diaz walked out and never came back. Tr. at 94. Mr. Beutel testified that he and Mr. Diaz had disagreements "here and there all the time," and that they "got along until the next time." Tr. at 93-94. Mr. Diaz worked at Respondent for 14 or 15 years. Tr. at 94.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission,* 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders his evidence worthy of belief. It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

In the case at hand, the Arbitrator observed Petitioner's behavior and conduct during the hearing and finds Petitioner to be a credible witness.

Issue C, whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

In order for a claimant to be entitled to benefits under the Act, a claimant must prove by a preponderance of the evidence that he suffered an injury that arose out of and in the course of his employment. *McAllister v. Ill. Workers' Comp. Comm'n, 2020 IL 124848*, ¶32 (2020) citing *Sisbro, Inc. v. Industrial Comm'n.*, 207 Ill. 2d 193, 203 (2003). The "in the course of" element, refers to the time, place, and circumstances under which the injury occurred. *Id.* at ¶34 citing *Scheffer Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366-67 (1977). An injury "arises out of" a claimant's employment if it has its origin in some risk connected with or incidental to the employment so as to create a causal connection between the employment and injury. *Id*. at ¶36 citing *Sisbro*, 207 Ill. 2d at 203.

The Arbitrator finds that Petitioner established that an accident occurred on March 20, 2019 that arose out of and in the course of his employment with Respondent. Having considered all of the evidence, it is clear that the dispute regarding whether the accident arose out of and in the course of Petitioner's employment with Respondent relies on the issue of credibility. The Arbitrator finds that Petitioner's testimony was credible and persuasive when weighing all other evidence.

Petitioner testified that on March 20, 2019, at approximately 11:00 a.m. or 11:30 a.m., Mr. Diaz instructed Petitioner to retrieve a skid from a semi-trailer used as storage by Respondent, there was a ladder hooked onto the back of the trailer for use to get into the trailer, and as Petitioner was descending the ladder, the ladder slid, causing Petitioner to fall onto his

right foot. Petitioner testified that he reported the accident to Mr. Diaz and Mr. Beutel on March 20, 2019.

Petitioner's testimony is supported by the testimony of Mr. Diaz. Mr. Diaz testified that on March 20, 20219, at approximately 11:30 a.m., he instructed Petitioner to look for a skid in the trailer that was used by Respondent for storage. While Mr. Diaz did not walk outside with Petitioner, he testified that Petitioner returned between five to seven minutes later, limping and grimacing. Mr. Diaz testified that he asked Petitioner what happened, and Petitioner told him that he had fallen off the ladder used to get into the trailer and that he heard a snap in his foot when he landed. Mr. Diaz further testified that Mr. Beutel spoke with Petitioner, as he wanted to know why Petitioner was limping, and Mr. Diaz heard Petitioner tell Mr. Beutel that he had fallen off the ladder and had landed on his foot. Mr. Diaz also testified that he spoke with Mr. Beutel as well, regarding Petitioner's accident. Overall, Mr. Diaz's testimony as to how the accident occurred is consistent with Petitioner's testimony.

More importantly, Mr. Beutel's testimony is wholly consistent with Petitioner's and Mr. Diaz's testimonies. Mr. Beutel testified that following his return from lunch on March 20, 2019, he was made aware that Petitioner had slipped and hurt his foot. Further, Mr. Beutel agreed with Mr. Diaz's testimony, testifying that Mr. Diaz's testimony was "the truth and that is the way everything went." Mr. Beutel further agreed that he had a conversation with Petitioner and a conversation with Mr. Diaz regarding Petitioner's accident on March 20, 2019.

The Arbitrator notes that while the initial treatment records do not reflect a report of Petitioner's accident as work-related, Petitioner credibly testified that he did not report his injury as work-related because he did not have Respondent's workers compensation insurance information, and he was, understandably, afraid of any potential financial repercussions that would result from claiming the injury as work-related. The Arbitrator finds Petitioner's testimony in this regard reliable. Petitioner testified that he and his wife called Dr. Peterson's office in July 2019 and requested that the records be amended to reflect the injury as work-related. Petitioner's testimony is substantiated by Dr. Peterson's addendum dated July 25, 2019. The Arbitrator notes that Petitioner consistently provided an accident history of falling off the ladder while at work to ATI, Dr. Mox, Dr. Brissey, and Dr. Lee, Respondent's Section 12 Examiner.

Based on the record as a whole, the Arbitrator finds that Petitioner sustained an accident on March 20, 2019 that arose out of and in the course of his employment with Respondent.

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient to prove a causal connection between the accident and the claimant's injury. *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 (1982).

The Arbitrator finds that Petitioner established a causal connection between the work accident of March 20, 2019 and his current condition of ill-being. The Arbitrator relies on the treatment records of (1) St. Alexius Medical Center, (2) Dr. Peterson, (3) Dr. Mox, and (6) Dr. Brissey in finding that Petitioner's complaints are related to the injury of March 20, 2019. The Arbitrator notes that the evidence demonstrates that Petitioner was in condition of good health immediately prior to the work accident, and heard a pop and felt pain immediately following the accident. Further, the opinions and diagnoses given by St. Alexius Medical Center, Dr. Peterson, Dr. Mox, and Dr. Brissey are unrebutted.

Based on the record as a whole, the Arbitrator finds that Petitioner has met his burden in proving a causal connection between his March 20, 2019 accident and his current right foot and right ankle conditions of ill-being.

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

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner's medical treatment has been reasonable and necessary, and that Respondent has not paid all appropriate charges. Petitioner claims Respondent is liable for unpaid medical bills from AMITA St. Alexius Medical Center ($2,566.00), Radiological Consultants of Woodstock ($39.00), Suburban Orthopedics- Dr. Peterson ($26,526.70), Advocate Sherman Hospital ($17,055.00), Midwest Anesthesia Partners ($7,813.00), Integrated Imaging ($150.00), Trilab, L.L.C.

($4,013.61), Ashton Center for Day Surgery ($58,316.00), ATI Physical Therapy ($5,193.71), OrthoIlliois ($3,606.00), NW Med-Centegra Huntley Hospital ($21,467.50), and Huntley Anesthesia Associates ($2,400.00). See Px1 through Px12. The Arbitrator further finds that Respondent shall pay the reasonable, necessary, and causally related medical expenses, as provided in Px1 through Px12, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

Issue K, whether Petitioner is entitled to temporary total disability ("TTD"), the Arbitrator finds as follows:

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits. Petitioner claims that he is entitled to temporary total disability benefits for March 25, 2019, May 29, 2019 through June 2, 2019, and December 18, 2019 through December 22, 2019. (See Ax1, No. 8).

Petitioner underwent his first surgical procedure on March 25, 2019 and testified that he returned to work on March 26, 2019. Petitioner underwent his second surgical procedure on May 29, 2019, a Wednesday, and Petitioner testified that he returned to work the following Monday, June 3, 2019. Petitioner underwent his third surgical procedure on December 18, 2019, a Wednesday, and Petitioner testified that he returned to work the following Monday, December 23, 2019. Petitioner's testimony as to his time off work due to the injury is unrebutted. Off work restrictions were provided by Dr. Peterson and Dr. Brissey for the TTD periods claimed by Petitioner.

The Arbitrator notes that Petitioner and Mr. Beutel testified that Petitioner received his full salary for the TTD periods claimed by Petitioner. Respondent's Exhibit 2 contains paystubs that reflect that Petitioner was paid his full salary on the dates that Petitioner claims he is entitled to TTD and do not specify whether it was for vacation time. Petitioner testified that he was paid his full salary during the time that he was off work because he used his vacation time; and Mr. Beutel testified that he paid Petitioner his full salary during his disability, but was unsure if it was paid as vacation time.

Based on the record as a whole, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits for March 25, May 29, 2019 through June 2, 2019, and December 18, 2019 through December 22, 2019. The Arbitrator further finds that Respondent is entitled to a credit in the amount of $1,120.00 for benefits paid to Petitioner by Respondent for the TTD periods awarded.

Issue L, with respect to the nature and extent of the injury, the Arbitrator finds as follows:

The Arbitrator notes that pursuant to Section 8.1(b) of the Act, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered includes: (i) the reported level of impairment pursuant to AMA; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records.

With regard to criterion (i), the Arbitrator notes that an AMA Impairment Rating of 1% lower extremity impairment was rendered by Dr. Lee, Respondent's Section 12 examiner. The Arbitrator gives this factor its appropriate weight.

With regard to criterion (ii) and (iii), the Arbitrator notes that Petitioner was 38 years old and employed at Respondent as a Machinist at the time of the accident. The Arbitrator also notes that Petitioner returned to work at Respondent while treating for his injury. The Arbitrator further notes that Petitioner was ultimately released to return to work without restrictions and returned to work at Respondent in the same capacity. The Arbitrator gives each of these factors some weight.

With regard to criterion (iv), the Arbitrator again notes that Petitioner returned to work following the work injury. The Arbitrator also notes that Petitioner has not demonstrated that his future earning capacity has been affected by the accident and there is no evidence of reduced earning capacity in the record. The Arbitrator gives lesser weight to this factor.

With regard to criterion (v), the Arbitrator notes that following the March 20, 2019 accident, Petitioner was initially diagnosed with a Jones fracture in the right foot and underwent a right open reduction internal fixation of the fifth metatarsal fracture on March 25, 2019. Px2 at 45, Px4 at 11. Thereafter, Petitioner was diagnosed with increased right leg pain and swelling, lateral ankle sprain with ATFL tear, and ankle instability on May 17, 2019. Px2 at 16. On May 29, 2019, Petitioner underwent a (1) right ankle arthroscopy with extensive debridement, (2)

right open Brostrom, Gould lateral ligament repair, and (3) right excision exostosis, distal fibula. Px2 at 40, Px8 at 2. Petitioner's postoperative diagnoses were (1) right lateral ankle sprain with ATFL tear, (2) right lateral ankle instability, and (3) right distal fibula exostosis. Px2 at 40, Px8 at 2. On November 21, 2019, Petitioner was diagnosed with pain due to internal orthopedic devices, implants, and grafts at the fifth metatarsal base by Dr. Brissey. Px10 at 17. On December 18, 2019, Petitioner underwent (1) removal of painful hardware, right foot, (2) neurectomy, lateral fifth metatarsal base with burial of nerve into the abductor digiti minimi, and (3) removal of painful osteophyte with bone biopsy, fifth metatarsal base with secondary repair of the peroneus brevis tendon, right. Px10 at 10. Petitioner's preoperative diagnoses were (1) painful hardware, right foot, (2) neuritis with nerve entrapment damage to the lateral fifth metatarsal base, right foot, and (3) painful osteophyte lateral fifth metatarsal base, right foot. Px10 at 10. Petitioner credibly testified that he continues to experience swelling and stiffness, as well as numbness from the mid-calf of his right leg down to his ankle. Tr. at 66, 67. Petitioner also has visible scarring on the side of his right foot and ankle. Tr. at 69-70. Petitioner also credibly testified that he has limited range of motion and cannot work out, exercise, or hike like he did prior to the March 20, 2019 accident. Tr. at 67-69, 72. The Arbitrator gives this factor its appropriate weight.

Upon consideration of the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 35% loss of use of the right foot, pursuant to Section 8(e) of the Act.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC022578
Case Name	Keith Stefanisin v. Prairie State Energy Campus
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0076
Number of Pages of Decision	18
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Michael Karr

DATE FILED: 2/22/2023

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KEITH STEFANISIN,

Petitioner,

vs. NO: 21 WC 22578

PRAIRIE STATE ENERGY CAMPUS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's current right shoulder condition of ill-being is causally related to his stipulated accident, entitlement to incurred medical expenses, entitlement to prospective medical treatment, and entitlement to temporary disability benefits, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission 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 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 24, 2022 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the reasonable and necessary medical services outlined in Petitioner's Exhibit 1, pursuant to §8(a) and subject to §8.2 of the Act. Respondent shall receive credit for any amounts previously paid and shall indemnify and hold Petitioner harmless from claims made by any health providers arising from the expenses for which it claims credit.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,361.95 per week for a period of 14 & 1/7ths weeks, representing November 21, 2021 through February 28, 2022, that being the additional period of temporary total incapacity for work under §8(b), 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 provide and pay for prospective medical care recommended by Dr. Bradley.

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

IT IS FURTHER ORDERED BY THE COMMISSION that 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 $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 22, 2023

DJB/wde

O: 1/25/23

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

/s/ *Stephen Mathis*
Stephen Mathis

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC022578
Case Name	STEFANISIN, KEITH v. PRAIRIE STATE ENERGY CAMPUS
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Michael Karr

DATE FILED: 6/24/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 22, 2022 2.39%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

KEITH STEFANISIN
Employee/Petitioner

v.

PRAIRIE STATE ENERGY CAMPUS
Employer/Respondent

Case # **21** WC **22578**

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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **February 28, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **November 14, 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 $**106,232.36**; the average weekly wage was $**2,042.93**.

On the date of accident, Petitioner was **36** 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 $**any paid** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**any paid**.

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

ORDER

Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's Exhibit 1, as provided in § 8(a) and § 8.2 of the Act. Respondent shall have credit for any amounts previously paid and shall indemnify and hold Petitioner harmless from claims made by any health providers arising from the expenses for which it claims credit.

Respondent shall pay for the treatment recommended by Dr. Bradley.

The parties stipulated all temporary total disability benefits had been paid until November 20, 2021. Respondent shall therefore pay additional temporary total disability benefits of $**1,361.95**/week for **14 and 1/7ths weeks**, representing November 21, 2021, to February 28, 2022, as provided in Section 8(b) of the Act.

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.

Jeanne L. AuBuchon

Signature of Arbitrator

JUNE 24, 2022

PROCEDURAL HISTORY

This matter proceeded to trial on February 28, 2022, pursuant to Sections 19(b) and 8(a) if the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) the causal connection between the accident and the Petitioner's right shoulder condition; 2) payment of medical bills incurred; 3) entitlement to TTD benefits after November 21, 2021; and 4) entitlement to prospective medical care to the Petitioner's right shoulder. The Respondent accepted injuries to the Petitioner's right forearm and wrist.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 36 years old, employed with Respondent as a maintenance mechanic. (T. 10) On November 14, 2020, the Petitioner was repairing a coal feeder when a bracket weighing 400-500 pounds came down on his right arm and pinned it. (T. 12) He said that in extricating his arm, he injured his wrist, elbow and shoulder. (Id.) He said it felt like it took a long time to get his arm out, and he was "freaking out." (T. 13-14)

The Petitioner stated that after the accident, which occurred on a Saturday, he was checked by emergency response personnel at the plant and finished his shift but did not perform his regular work duties. (T. 22-23) On Monday, he worked his full shift but was doing computer and light duty work. (T. 23) He said that he started feeling a little better on Wednesday or Thursday and went back to working full duty as tolerated. (T. 24) He said he had a lot of discomfort and pain when working but took anti-inflammatories and pushed through it. (T. 25) He said he was stubborn and thought it was a bruise and would get better. (T. 28-29)

On November 16, 2020, the Petitioner sought treatment at Wood River Clinic with a chief complaint of right forearm pain. (PX3) He described the accident and complained of soreness and stiffness. (Id.) The Petitioner acknowledged that he said he did not feel he needed to go to a

medical facility at that time. (T. 24) Dr. Panayiotis Ellinas diagnosed the Petitioner with a right forearm contusion, ordered an X-ray, which was normal, and instructed the Petitioner to use ice and take over-the-counter anti-inflammatories. (PX3, PX4) In his examination of the Petitioner, Dr. Ellinas noted no abnormality at either shoulder with full range of movement. (Id.)

At a follow-up visit on November 25, 2020, the Petitioner reported that his right arm was doing better, but he was still having pain and a new complaint of pain from his distal right humerus to his proximal forearm in an area above and distant from the contusion site that he did not have prior to the incident. (PX3) The Petitioner told Dr. Ellinas that he was performing his job without any problem and, when he thought he should not exert himself, he asked for help. (Id.) Dr. Ellinas referred the Petitioner to Dr. David Brown, an orthopedic surgeon at The Orthopedic Center of St. Louis specializing in treatment of the hands and upper extremities. (Id.)

The Petitioner saw Dr. Brown on November 30, 2020. (PX5) After an MRI on February 19, 2021, Dr. Brown diagnosed a partial-thickness tear of the common extensor tendon origin. (Id.) He performed an excision of the tendon with limited lateral epicondylectomy and forearm fascia repair on July 1, 2021, and the Petitioner underwent occupational therapy. (PX5, PX7, PX8) The Petitioner testified that before the surgery, his entire arm hurt. (T. 14) He said the surgery helped, but he was still having symptoms in his forearm and wrist and from his elbow to his shoulder and vice versa. (T. 14-15) He reported shoulder popping to occupational therapist Tonya Troxell at HSHS St. Joseph's Hospital Outpatient Rehab on July 21, 2021, and OT Troxell heard and felt the pop. (PX8) The Petitioner reported no increased pain with popping but said it felt strange. (Id.) He also reported wrist pain, wrist clicking or popping and right shoulder pain throughout therapy. (Id.) The shoulder pain was posteriorly near the acromion radiating down the spine to the scapula and into the posterior deltoid muscle. (Id.)

At a follow-up visit with Dr. Brown on August 9, 2021, he said his right elbow was 70 percent better but complained of persistent pain along the ulnar aspect of his right wrist and in his shoulder. (PX5) Dr. Brown recommended an MRI arthrogram of the wrist and seeing a shoulder specialist if he pain continued. (Id.) On September 9, 2021, Dr. Brown performed surgery on the Petitioner's right wrist. (PX5, PX7) During post-surgical occupational therapy, the Petitioner continued to report right shoulder pain. (PX8)

On August 30, 2021, the Petitioner saw Dr. Matthew Bradley, an orthopedic surgeon at Metro East Orthopedics, regarding his right shoulder. (PX10) The Petitioner described the accident and said he screamed and pulled his arm out from underneath the roller. (Id.) A physical examination showed below normal active range of motion, normal rotator cuff strength, positive impingement signs, positive biceps provocative testing, negative instability testing, negative cross chest test, full unrestricted motion and strength across the elbow/wrist/hand, sensation intact to light touch distally and his neurovascular was intact. (Id.) X-rays were normal. (Id.) Dr. Bradley noted that the Petitioner had significant pain in the shoulder particularly with testing of the biceps tendon. (Id.) He stated that given the mechanism of injury, it was certainly possible the Petitioner sustained an injury to his shoulder labrum. (Id.) He opined that the work injury was causally related to and at least a precipitating factor in the Petitioner's need for ongoing medical treatment and evaluation. (Id.) He ordered an MRI and recommended a home-exercise program. (Id.)

The MRI was performed on August 30, 2021, by radiologist Dr. David Dusek, who reported the scan to be normal. (PX11) Dr. Bradley read the MRI on September 7, 2021, and saw a small (less than 20 percent thickness) partial articular-sided tear to the supraspinatus tendon but no pathology to the labrum or biceps tendon. (PX10) He recommended an injection for diagnostic and therapeutic purposes and continuation of the home exercise program. (Id.) On October 4,

2021, Dr. Bradley diagnosed the Petitioner with right shoulder impingement with possible labral tear and performed an intraarticular corticosteroid injection. (Id.) He ordered work restrictions of no lifting more than 10 pounds and no pushing or pulling more than 20 pounds. (Id.)

The Petitioner underwent a Section 12 examination on November 2, 2021, by Dr. Timothy Farley, an orthopedic surgeon at Motion Orthopaedics. (RX1, Deposition Exhibit B) Dr. Farley took a history from the Petitioner, reviewed records from Drs. Brown and Bradley, reviewed physical therapy records, performed a physical examination and reviewed X-rays and an MRI from August 30, 2021. (Id.) During the physical examination, Dr. Farley noted forward flexion of 175 bilaterally and external rotation sign of 60 bilaterally. (Id.) The Petitioner could abduct well above the horizontal and symmetrically and had normal strength in abduction and external rotation. (Id.) He had a symmetric belly press maneuver indicative of a functioning subscapularis. (Id.) His left shoulder could perform a lift-off, but the right could not. (Id.) The Petitioner had minimal tenderness at the acromioclavicular (AC) joint and no pain with cross-body abduction – rather a sense of "stretching" at the back of his shoulder. (Id.) Neer and Hawkins were negative. (Id.) O'Brien's maneuver caused no pain in the thumbs-down position, but in the thumb-up position, the Petitioner reported it hurt more – which Dr. Farley said was not a positive O'Brien's maneuver with that result, describing it as an atypical response. (Id.) The Petitioner had no pain or apprehension and normal strength and sensation distally. (Id.)

On the X-rays, Dr. Farley noted mild to moderate AC joint arthritis. (Id.) He found the MRI scan to be normal with no evidence of any tearing of the rotator cuff or labrum. (Id.) He assessed the Petitioner as having had a normal right shoulder with subjective pain complaints. (Id.) He said there were no signs of objective pathology and noted that the Petitioner demonstrated signs of voluntary subluxation of the shoulder with a "clunking" sensation that was not typically

considered posttraumatic or a related injury but driven by voluntary motions. (Id.) Dr. Farley said he could not state that the work incident led to any abnormality in the right shoulder. (Id.)

Dr. Farley said he did not believe the Petitioner suffered any injury to his right shoulder as a result of the work accident, citing his lack of notifying anybody in the first few months after the time of injury, lack of objective radiographic findings and the mechanism of injury being incompatible with the development of shoulder pain. (Id.) He said no additional treatment was reasonable and necessary and he did not require any work restrictions. (Id.)

At a follow-up visit with Dr. Bradley on November 8, 2021, the Petitioner reported he had approximately two weeks of relief from the injection. (PX10) He said the pain came back gradually and was the same as before the injection. (Id.) Dr. Bradley found this indicative of likely pathology that was not just inflammatory. (Id.) He recommended diagnostic arthroscopy to include subacromial decompression and rotator cuff debridement and gave work restrictions of no lifting, pushing or pulling greater than 20 pounds with the right upper extremity. (Id.)

Dr. Bradley performed an arthroscopic-assisted supraspinatus rotator cuff repair and subacromial decompression on December 8, 2021. (PX10, PX12) In his operative report, Dr. Bradley noted a significant amount of subacromial bursitis and scarring and a high-grade, partial-thickness tear to the anterior one-third of the supraspinatus. (Id.) During the procedure, he reported that the most anterior aspect had an almost-complete full-thickness tear of more than 95 percent that became thinner moving posterior but was in excess of 75 percent throughout. (Id.) At a follow-up visit on December 20, 2021, the Petitioner reported improvement and was given work restrictions for desk work only without using his right upper extremity. (PX10)

Dr. Bradley testified consistently with his reports at a deposition on January 19, 2022. (PX13) He stated that the inflammatory scar tissue around the rotator cuff tear was probably the

reason why the MRI did not clearly show the tear. (Id.) He said that in the case of a sprain or strain, the inflammation should go away over a couple of months, but in the case of a rotator cuff or labrum tear, the tear constantly irritates the joint, which stays inflamed. (Id.) He thought the Petitioner had the rotator cuff tear and, as the months went by, he had scar tissue over it so that the tear was not seen on the MRI. (Id.) Another reason for the tear not being visible on the MRI was because it was a longitudinal tear. (Id.) He also said the tear he saw on the MRI would not have made him operate – that the decision to operate was due to the Petitioner's symptoms not getting better and his response to the injection. (Id.) Regarding his causation opinion, Dr. Bradley testified that the mechanism of injury was consistent with causing the shoulder injury, adding that anyone's gut reaction to a 400-500-pound roller falling on his forearm would be to try to pull his arm out, injuring the shoulder, elbow and wrist. (Id.) He said the physical examination and intraoperative findings of a clean tear supported this theory. (Id.)

In a supplemental report on January 21, 2022, Dr. Farley reported having reviewed arthroscopic pictures and the surgical report. (RX1, Deposition Exhibit C) He saw – at worst – a rather inconsequential 2 millimeter articular-sided tearing of the supraspinatus that he said represented no more than about at 15-percent partial thickness tear on the articular surface of the supraspinatus that he attributed to age-related change. (Id.) He said he was unable to interpret Dr. Bradley's thoughts as to how there could be a 75-percent thickness tear in one side and a 95-percent thickness tear on the opposite side. (Id.) Dr. Farley said neither the images nor operative report changed his opinion. (Id.)

Dr. Farley testified consistently with his reports at a deposition on January 25, 2022. (RX1) He explained that on an MRI arthrogram, dye would be seen cutting through soft tissues if there were tears in the rotator cuff tendon or within the labrum, which he did not see. (Id.) When asked

it was possible for a partial thickness rotator cuff tear to be obscured on an MRI due to swelling or inflammation in the joint, Dr. Farley said he was not sure how he could even interpret that. (Id.) He also said that having been a shoulder surgeon since 2003 and having performed thousands of rotator cuff repairs, he had not seen scar tissue fill in a partial tear and block dye from escaping through a tear in the rotator cuff. (Id.) He said he did not understand hypothetically how that would happen. (Id.)

Regarding his physical examination, Dr. Farley said the tests he performed were subjective. (Id.) He said the Petitioner's ability to voluntarily dislocate/sublux his shoulder was clearly not related to any particular work injury. (Id.) He said that from his review of the Petitioner's medical records, he believed the first time the Petitioner reported any issues with his right shoulder was to Dr. Brown on August 9, 2021. (Id.) As to the Petitioner's explanation of the mechanism of injury, Dr. Farley pointed out that the Petitioner said a load fell on the dorsum of his forearm but did not say he tried to rip his arm free. (Id.) He said he would not change his opinions due to the history the Petitioner gave to Dr. Bradley of him screaming and pulling his right arm out. (Id.) He explained that if someone ripped something apart in his shoulder, he would have immediate shoulder pain that would require some sort of workup – not being a back-burner issue until eight or nine months later. (Id.)

As to Dr. Bradley's operative report, Dr. Farley said that the tears Dr. Bradley reported would have shown up on the MRI. (Id.) He stated that the report of a 75-percent partial thickness tear on the bottom surface of the rotator cuff and a 95-percent partial thickness tear on the top surface did not make sense to him in that such tearing would have resulted in a "big ole hole," which would have been seen on the MRI. (Id.) He characterized the tearing he saw as "scuffing" and did not believe it to be pain causing. (Id.)

On cross-examination, Dr. Farley said he did not think he detected any signs of symptom magnification or malingering by the Petitioner. (Id.) As to the lack of the Petitioner reporting to him that he pulled his arm when it was caught in the coal feeder, he said he imagined that he asked him if this occurred and probably would have documented that in his report. (Id.) Dr. Farley acknowledged that two weeks of improvement after the injection could be indicative of a shoulder problem. (Id.) He also stated that, hypothetically, small tears could be missed on an MRI. (Id.) He said that, oftentimes, the driving force behind treatment recommendations is the patient's symptoms but stated that when a patient reports pain, it does not necessarily mean he will offer surgery. (Id.)

At a follow-up visit with Dr. Bradley on January 27, 2022, the Petitioner reported improvement but had some soreness and stiffness that was not overly bothersome. (PX10) Impingement signs and biceps provocative testing that previously were positive were negative at this visit. (Id.) Dr. Bradley gave work restrictions of no lifting greater than one pound and no pushing or pulling greater than two pounds with the right upper extremity. (Id.)

The Petitioner testified that before the surgery, his shoulder hurt every day. (T. 17) He said the surgery helped him, and he was delighted that he had it done. (Id.) At the time of arbitration, he was undergoing therapy that he said consisted of stretches and light strengthening. (T. 17-18) However, he said he was still experiencing quite a bit of pain on the ulnar side of his wrist and wanted to have that evaluated by either Dr. Bradley or Dr. Brown. (T. 18)

The Petitioner testified that he received TTD until November 21, 2021, and was let go from his job on February 1, 2022. (T. 18) He applied for short-term disability benefits and was denied benefits on January 7, 2022, because the benefits provider – Unum – determined that the shoulder injury was a direct result of the work accident, relying on Dr. Bradley's records. (PX14) The

Petitioner said he wants to "get fixed to the best of medical ability" and be paid the wages he has lost. (T. 19)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below.

Issue (F): Is Petitioner's current condition of ill-being, specifically his right shoulder injury, causally related to the accident?

A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the workers' compensation claimant's injury. *Shafer v. Illinois Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC, 976 N.E.2d 1 (2011). See also *Pulliam Masonry v. Industrial. Comm'n*, 77 Ill. 2d 469, 471-472, 397 N.E.2d 834, 34 Ill.Dec. 162 (1979); *Gano Elec. Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724, 197 Ill.Dec. 502 (4th Dist. 1994); *International Harvester v. Industrial Com.*, 93 Ill.2d 59, 63-64, 442 N.E.2d 908, 66 Ill.Dec. 347 (1982).

Drs. Bradley and Farley were diametrically opposed as to whether the Petitioner suffered a shoulder injury at all. Dr. Farley maintained there was no injury. Dr. Bradley explained how the rotator cuff tear he saw would not have been apparent on the MRI due to the longitudinal nature of the tear and the fact that scar tissue had developed since the injury that obscured the tear. As the Petitioner's treating physician, Dr. Bradley had more opportunities to be familiar with the Petitioner and his condition. He noted impingement signs during each of his examinations. Dr. Bradley also saw the injuries first-hand during surgery and testified in detail as to what he saw.

Therefore, the Arbitrator gives more weight to Dr. Bradley's opinions as to the nature of the Petitioner's injury and the cause of that injury.

The circumstantial evidence in this case also supports a causal nexus between the work accident and the Petitioner's shoulder condition. He had no shoulder issues prior to the accident or any other intervening incidents that would explain the development of his shoulder symptoms.

As to whether the Petitioner pulled on his arm while it was stuck in the coal feeder, he did report this to Dr. Bradley, and it was apparent from Dr. Farley's report and testimony that he did not ask. Regarding the lapse of time between the accident and the Petitioner's shoulder complaints, the Arbitrator notes that the Petitioner complained of upper arm symptoms as early as November 25, 2020, and shoulder pain during his physical therapy following the surgery on his elbow.

The Arbitrator notes that it is a common occurrence that where accidents result in multiple injuries, medical providers do not know the full extent of a patient's injuries immediately and treat the multiple injuries successively as they become apparent. That is what occurred in this case. Doctors first focused on the Petitioner's forearm and elbow and then on his wrist, which were accepted injuries. When it was clear that the Petitioner was still having problems with his shoulder, he sought treatment from Dr. Bradley.

Lastly, the Arbitrator notes that the Respondent's disability insurance carrier denied benefits based on Dr. Bradley's opinion that the shoulder injury was work-related. The Respondent can't have it both ways – that the injury was work-related for the purpose of short-term disability benefits but was not work-related for the purpose of workers' compensation benefits.

Therefore, the Arbitrator finds that the Petitioner has met his burden of proof establishing causal connection between the accident and the Petitioner's right shoulder condition.

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

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const*., 388 Ill. App. 3d 380, 383, 902 N.E.2d 1269, 1273 (2009).

Dr. Bradley explained that his decision to operate was not based solely on his reading of the MRI, which differed from Drs. Dusek and Farley. It was also based on his examinations, the Petitioner's complaints and the diagnostic results of the injection. Dr. Farley agreed that the reaction to the injection would be indicative of a shoulder problem. Although hindsight is 20-20, it is worth noting that the Petitioner improved after surgery and the impingement signs and biceps provocative testing that previously were positive were negative. Based on this and the above findings regarding causation, the Arbitrator finds that the treatment rendered was reasonable and necessary.

Therefore, the Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 1. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

Issue (K): Is Petitioner entitled to any prospective medical care?

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691

N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

At the time of arbitration, the Petitioner was still treating for his shoulder injury. Based on this and the findings above, the Arbitrator finds that the Petitioner is entitled to prospective medical care as recommended by Dr. Bradley, and the Respondent shall authorize and pay for such care.

Issue (L): What temporary benefits are in dispute? (TTD)

The parties dispute temporary total disability benefits from November 21, 2021, through the trial date of February 28, 2022. An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Id.* at 121.

As of November 21, 2021, the Petitioner was under work restrictions from Dr. Bradley. Therefore, the Petitioner is entitled to temporary total disability benefits pursuant to Section 8(b) of the Act for 44 weeks, from November 21, 2021, through February 28, 2022.

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.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC030663
Case Name	David Hoague v. Durham School Bus
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0077
Number of Pages of Decision	20
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Noah Hamann

DATE FILED: 2/22/2023

/s/ Thomas Tyrrell, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

HOAGUE, DAVID,

Petitioner,

vs. NO: 19 WC 30663

DURHAM SCHOOL BUS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, permanent disability, temporary disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 5, 2021, is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $25,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 22, 2023

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TJT/ldm
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/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC030663
Case Name	HOAGUE, DAVID v. DURHAM SCHOOL BUS
Consolidated Cases	No Consolidated Cases
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Noah Hamann

DATE FILED: 10/5/2021

INTEREST RATE FOR THE WEEK OF OCTOBER 5, 2021 0.05%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

David Hoague
Employee/Petitioner
v.
Durham School Bus
Employer/Respondent

Case # **19** WC **030663**

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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **June 14, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **January 4, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**20,000.00**; the average weekly wage was $**350.00**.

On the date of accident, Petitioner was **57** years of age, ***married*** with **0** dependent children.

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

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

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

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

ORDER

Respondent shall pay the medical bills outlined in Petitioner's Exhibit 1, as provided in § 8(a) and § 8.2 of the Act. Respondent shall be given credit for medical benefits that have been paid, if any, and Respondent shall hold Petitioner harmless from any claims for which Respondent is receiving this credit, as provided in § 8(j) of the Act.

Respondent shall pay temporary total disability benefits for a period of 20 1/7ths weeks for Petitioner's disability from November 4, 2019 through the March 23, 2020.

Respondent shall pay Petitioner the sum of $220.00/week for a further period of 113.9 weeks, as provided in Section 8(e)9 and 8(e)10 of the Act, because the injuries sustained caused 10% loss to Petitioner's right hand, 10% loss to Petitioner's left hand, 15% loss to Petitioner's right arm, and 15% loss to Petitioner's left arm.

Respondent shall pay Petitioner compensation that has accrued from 6/16/2017 through 12/1/18, and shall pay the remainder of the award, if any, in weekly payments.

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

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

Jeanne L. AuBuchon
Signature of Arbitrator

October 5, 2021

PROCEDURAL HISTORY

This matter proceeded to trial on June 14, 2021, on all issues. The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment; 2) the causal connection between the accident and the Petitioner's carpal and cubital tunnel conditions; 3) payment of medical bills incurred; 4) entitlement to TTD benefits from November 4, 2019, through March 23, 2020; and 6) the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

The Petitioner is employed with Respondent as a school bus driver and has been for the past nine years. (T. 11-12) He typically works 20 hours per week – sometimes more when he takes another bus route. (T. 12-13) As of January 4, 2019 – the alleged date of injury – the Petitioner was 57 years old. (AX1) As part of his job duties, the Petitioner performs a "pre trip" inspection of the bus that takes about ten minutes and includes: hitting the six bus tires with a "thumper" (similar to a baseball bat) to make sure they are not flat; raising and lowering the hood of the bus to check the fluids; testing the lights and alarm, which entails lifting a latch on the back door; checking the safety switches on the escape window by tilting the window up; hitting and pulling the seats to make sure they are not loose; pulling the windows up or down, which entails squeezing the latches with a pinching motion; and using a wand with a push button to tag each area that has been inspected. (T. 13-20, 41) He added that moving the windows requires force because they get stuck, and that the bus has 34 windows. (T. 20-21)

After the pre trip, the Petitioner drives his morning route, which takes about one hour and 15 minutes. (T. 22) The Petitioner said that driving a route involves hand-over-hand steering of a steering wheel approximately the width of his shoulders and using a pull-out button for the brakes at every stop. (T. 22-23) He said that steering requires a strong grip and that he executes 500 to

1,000 turns (including about 200 full revolutions) and transports 40-69 students. (T. 24-25, 79) The Petitioner testified that after dropping the students off at school, he drove back to the bus lot and do a "post trip," consisting of the same checks as in the pre trip except for checking under the hood. (T. 25-26) For his afternoon route, the Petitioner does not do the pre trip routine again unless he is using a different bus, which happens two or three times a week. (T. 27-28) After dropping the children off after school, the Petitioner does another "post trip" inspection. (T. 29) On occasion, the Petitioner had to "double up" when he had to take another driver's route, which means picking and dropping off more children. (T. 30)

On cross-examination, the Petitioner agreed that at each stop on his route, he would have between a half minute and a minute of rest for his hands while waiting for the child to take his or her seat. (T. 45-46) He also had about six hours between morning and afternoon routes. (T. 46)

The Petitioner wrote a job description consistent with his testimony, but not as detailed as his testimony. (PX7) The Respondent provided a job description that included general responsibilities and physical requirements of being a bus driver. (RX6) The physical requirements included: occasional reaching overhead with less than 25 pounds of force to operate emergency exits, adjust mirrors, retrieve bus equipment and open and close hood; continuous reaching at shoulder height on all planes with up to 15 pounds of force to operate the bus, adjust mirrors and use communication device; continuous gross motor skills to operate the bus, assist passengers and perform vehicle inspections; and using fine motor skills to operate the bus and fasten safety belts. (Id.)

Mike Malcolm, another bus driver working for the Respondent for the past two years from a different location, disagreed with the Petitioner's description of his job in that a standard bus had 24 windows, not 34, and that maybe a little more than half of them would be down. (T. 60-62)

Although he was not familiar with the Petitioner's route or the number of children the Petitioner carried, Mr. Malcolm said that in his experience, multiple children would get on and off the bus at one stop. (T. 63-64) Mr. Malcolm also stated that he believed that the Petitioner's estimate of 500 to 1,000 turns was high. (T. 66-67)

The Petitioner testified that although he has diabetes, it is under control, and he has never been diagnosed with diabetic neuropathy. (T. 37-38) He admitted that he had a cervical disc replacement in 2015, after experiencing radiating or radicular symptoms in his hands. (T. 38) He said the symptoms went away after the disc replacement. (T. 39)

The Petitioner testified that his hands or elbows "started getting painful" during his work activities shortly before December 18, 2018, which was Christmas break. (T. 31) He said "everything was in pain to do everything," the symptoms woke him up at night, and he would drop things. (T. 32) He stated that his symptoms improved over the break, but in January 2019 he picked up an after-school route taking home kids from detention or tutoring – adding another two hours of driving. (T. 33-34)

On December 6, 2018, the Petitioner underwent EMG and nerve conduction studies performed by Dr. Keith Burchill, a physiatrist at Southern Illinois Healthcare. (PX3) Dr. Burchill found evidence of a moderate to severe bilateral median neuropathy at the wrist (carpal tunnel syndrome) affecting sensory and motor components. (Id.) He found no evidence of ulnar neuropathy at the elbow nor cervical radiculopathy in the nerves/muscles that were tested. (Id.) However, peripheral neuropathy could not be ruled out. (Id.)

On January 4, 2019, the Petitioner saw his family doctor, Dr. William Hayes, at Southern Illinois Healthcare. (PX4) Dr. Hayes opined that the Petitioner's work caused him an overuse syndrome and believed the Petitioner needed surgery. (Id.) The Petitioner returned to Dr. Hayes

on April 9, 2019, at which time Dr. Hayes reported that the Petitioner's numbness and tingling in his hands was related to neck problems, rather than diabetic neuropathy. (Id.) On September 20, 2019, Dr. Hayes prescribed new wrist splints for the Petitioner. (Id.) On November 4, 2019, the Petitioner reported to Dr. Hayes that the pain, discomfort and numbness in his hands was increasing and that he was waiting on workers' compensation to have his surgery. (Id.) Dr. Hayes warned that if the Petitioner did not have surgery in the near future, he could suffer permanent damage in both hands. He referred the Petitioner to Dr. Steven Young, an orthopedic surgeon at the Orthopaedic Institute of Southern Illinois. (Id.) Dr. Hayes wrote an off-work note stating that the Petitioner could not return to work until released by himself and the orthopedic surgeon. (Id.)

The Petitioner underwent a Section 12 examination on December 3, 2019, conducted by Dr. David Brown, a hand and upper extremity surgeon at The Orthopedic Center of St. Louis. (RX1) The Petitioner told Dr. Brown that he developed gradual onset of numbness and tingling in both of his hands around August 2018. (Id.) The job description the Petitioner related was that he worked as a school bus driver since August 6, 2012; that he worked six hours a day, 30 hours per week; that he was off during June, July and August; and that he drove a school bus with an automatic transmission. (Id.) X-rays revealed mild degenerative changes at the bases of both thumbs. (Id.) A physical examination produced negative Tinel's sign over the ulnar nerve at the bilateral cubital tunnels, negative bilateral direct compression/elbow flexion test, positive Tinel's sign over the bilateral carpal tunnels; some discomfort and radiating paresthesias with direct compression/Phalen's test. (Id.) There was no intrinsic muscle atrophy in either hand, and two-point discrimination was variable and inconsistent with repeated testing. (Id.) Grip strength was greater in the right than left. (Id.)

Dr. Brown diagnosed bilateral carpal tunnel syndrome but did not believe the Petitioner's job duties would be considered a factor in the cause of his carpal tunnel syndrome nor of his need for treatment. (Id.) He wrote that evidence-based medicine has not shown that driving a bus or car is a risk factor for carpal tunnel syndrome. (Id.) He noted that in spite of not working for the past two months, there had been no improvement in the Petitioner's symptoms. (Id.) He also stated that the Petitioner had several personal risk factors that put him at an increased risk for carpal tunnel syndrome, including diabetes, increased body mass index and osteoarthritis. (Id.)

The Petitioner went to Dr. Young's office on March 25, 2020, and saw Michelle Steh, an advanced practice registered nurse. (PX5) He reported numbness and tingling in both hands that started in December 2018. (Id.) At the time of his examination, the Petitioner stated that he had been wearing carpal tunnel braces but was still having symptoms that start at his elbow and go down through his fingers. (Id.) He said all five fingers on both hands were numb, and at times his pain is at an eight out of ten. (Id.) A physical examination revealed positive ulnar nerve compression test and a positive Tinel's sign. (Id.) The Petitioner had a positive median nerve compression test on the right and a negative Tinel's sign at the median nerve on the left. (Id.)

APRN Steh diagnosed bilateral carpal and cubital tunnel syndrome and opined that due to the nature of the Petitioner's job, it was possible that these conditions could be related to his job due to repetitive motions. (Id.) She recommended endoscopic ulnar nerve decompression and carpal tunnel release. (Id.) Dr. Young performed the surgeries on the Petitioner's right hand and arm on May 13, 2020, prescribed physical and occupational therapy and ordered work restrictions of left upper extremity work only and no lifting. (Id.) On August 5, 2020, Dr. Young performed the surgeries on the Petitioner's left hand and arm. (Id.) The Petitioner reported improvement at

follow visits to Dr. Young's office. (Id.) He was released to full duty on September 30, 2020. (Id.)

At a deposition on June 5, 2020, Dr. Brown testified consistently with his report. (RX4) He stated that the Petitioner did not describe any problems with his elbows, and his examination was negative for cubital tunnel syndrome. (Id.) However, the Petitioner filled out a questionnaire at Dr. Brown's office that had "Elbow, Both Wrists" circled, and stated that the Petitioner had sharp pain like his funny bone getting hit. (RX4, Petitioner's Deposition Exhibit 1) The Petitioner also wrote the following as a job description: "School bus driver, drive the bus, turning each way 500+ times while driving my route three times a day for two hours at each route." (Id.) Dr. Brown testified that he did not know any other details about the Petitioner's job duties other than what he said verbally and in the questionnaire. (Id.)

Regarding causation, Dr. Brown testified that there was no scientific medicine that supports bus driving as an activity that is a risk factor for carpal tunnel syndrome and pointed to the other risk factors that the Petitioner had. (Id.) For example, he stated that a person with type 2 diabetes and obesity has four times the risk of getting carpal tunnel syndrome. (Id.) Dr. Brown also stated that the Petitioner's report that his condition had not improved while he was off work for two months prior to the examination was evidence that work was not aggravating the Petitioner's condition. (Id.)

Dr. Brown testified that he thought the treatment the Petitioner had received for carpal tunnel syndrome prior to his examination was reasonable and appropriate and agreed that the Petitioner was indicated for carpal tunnel releases, but he did not see that the Petitioner required any activity or work restrictions. (Id.)

Dr. Young also testified consistently with his reports at a deposition on June 30, 2020. (PX8) He explained that occupational risks for compression neuropathies, such as carpal and cubital tunnel syndromes, include repetitive gripping and pinching and prolonged flexing or extension of the wrists or elbows. (Id.) Non-occupational risk factors included age, female gender, obesity, diabetes, rheumatoid arthritis, alcohol consumption, smoking and low thyroid function. (Id.) Dr. Young opined that the work duties as described by the Petitioner contributed to and aggravated his carpal and cubital tunnel syndromes – most significantly gripping the steering wheel and having his elbows in a flexed position while driving. (Id.) He said the Petitioner's age, weight and diabetes also were contributing factors. (Id.) He noted that the Petitioner had tried conservative treatment of splinting, but his symptoms progressed. (Id.) Regarding his findings during his surgery, Dr. Young stated that the Petitioner had severe thickening of the carpal ligament on the right wrist, which indicates a chronic problem and puts pressure on the median nerve. (Id.)

On cross-examination, Dr. Young admitted that he did not review any kind of ergonomic study regarding the Petitioner's job details nor a seen a video job analysis showing the Petitioner's job duties. (Id.) Dr. Young also did not have any breakdown of the Petitioner's workday, including how the day is spent, how many breaks he has, how much down time he has and whether he works during the summer. (Id.) He said this information could be beneficial and relevant in forming a causal connection opinion. (Id.) He admitted that the Petitioner's non-occupational risk factors could contribute to the development of the Petitioner's symptoms or be larger factors, but he would not discount the Petitioner's job duties. (Id.) He believed it is significant when a patient relates the onset or worsening of symptoms to his or her job duties. (Id.)

Dr. Young acknowledged that physical examination findings are fairly subjective and are open to interpretation by the examiner and compliance from the patient, resulting in different results from different examiners. (Id.) He could not say from reviewing his records whether he saw the Petitioner during the initial examination, but said he trusted what his nurse practitioner would tell him. (Id.)

On November 16, 2020, Dr. Brown performed a records review, in which he reviewed Dr. Young's deposition and job descriptions from the Respondent and the Petitioner. (RX2) These did not change Dr. Brown's opinions from his first report. (Id.) Dr. Brown issued an addendum report on December 3, 2020, in which he stated that his original examination of the Petitioner was negative for cubital tunnel syndrome, and the electrodiagnostic studies showed no evidence of cubital tunnel syndrome nor an ulnar neuropathy at the elbow. (RX3)

Dr. Brown testified at another deposition on April 9, 2021, and said that the job descriptions provided by the Respondent and the Petitioner did not add any information that would cause him to changes his opinion. (PX5) On cross-examination, Dr. Brown testified that aside from the basic statements in the job descriptions, he did not know what specific tasks the Petitioner performed to carry out those duties. (Id.) He listed the following as examples of activities and postures of the wrist and hands that have been shown to be risk factors for carpal tunnel if done at a high frequency over a prolonged period of time: repetitive forceful gripping, prolonged repetitive wrist flexion, prolonged repetitive intense vibration exposure and repetitive forceful pinching. (Id.) He stated that repetitive use of vibratory tools, repetitive prolonged elbow flexion past 90 degrees and traumatic blows to the ulnar nerve at the cubital tunnel are risk factors for cubital tunnel syndrome. (Id.)

The Petitioner testified that after the surgeries, he has done much better but still experiences pain and numbness and expects to do so until he heals in six months to a year. (T. 35) He said it has been easier to drive a bus since the surgeries, but the numbness causes problems picking things up – like a penny. (T. 36-37, 40) At the time of arbitration, the Petitioner reported a pain level of four out of ten, while it was an eight before the surgeries. (T. 40)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below.

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

The claimant in a worker's compensation proceeding has the burden of proving by a preponderance of the credible evidence that the injury arose out of and in the course of employment, and that involves as an element a causal connection between the accident and the condition of claimant. *Cassens Transp. Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 330, 633 N.E.2d 1344, 199 Ill. Dec. 353 (2nd Dist. 1994) An injury is considered "accidental" even though it develops gradually over a period of time as a result of repetitive trauma, without requiring complete dysfunction, if it is caused by the performance of claimant's job. *Id*. Compensation may be allowed where a workman's existing physical structure, whatever it may be, gives way under the stress of his usual labor. *Laclede Steel Co. v. Indus. Comm'n.*, 6 Ill.2d 296 at 300, 128 N.E.2d 718, 720 (Ill. 1955)

Further, a Petitioner's job duties need not be repetitive in the sense that the same task is done over and over again as on an assembly line to result in a compensable injury. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec.

333 (4th Dist., 2009). Intensive use of hands and arms can result in cumulative injuries that are compensable. *Id*.

At arbitration, the Petitioner gave a detailed description of the activities he performs in his job and demonstrated those activities, such as pulling and pushing the brake button, pinching the window latches, performing his pre and post trip routines and gripping and turning the steering wheel with his elbows extended at an angle greater than 90 degrees. Aside from miscounting the number of bus windows he opens and closes, the Petitioner was credible.

The doctors agreed that the Petitioner was suffering from moderate to severe carpal tunnel syndrome. They disagreed as to whether he had cubital tunnel syndrome. The differences in their opinions can be resolved by looking at the circumstantial evidence. Nerve conduction and EMG testing was negative for cubital tunnel syndrome on December 6, 2018 – shortly after he reported his symptoms. Dr. Brown's physical examination on December 3, 2019, showed negative results for cubital tunnel tests, although the Petitioner did report symptoms consistent with cubital tunnel syndrome. On March 25, 2020, cubital tunnel tests were positive during APRN Steh's examination. It is important to note that in January 2019, the Petitioner picked up an extra route taking students home after detention or tutoring. For more than a year after the nerve condition and EMG tests, the Petitioner had been driving his normal routes plus the extra route. He had been wearing wrist braces, but nothing to protect his elbows. It is plausible that the Petitioner's cubital tunnel syndrome developed to the point of producing positive test results in the three plus months after Dr. Brown's examination. In addition, Dr. Brown's opinion is weakened by the fact that he testified that the Petitioner did not describe any problems with his elbows, despite having the Petitioner's questionnaire where he circled "Elbow, Both Wrists" and stated that he had sharp pain like his funny bone getting hit.

The claimant's injury need not be the sole factor that aggravates a preexisting condition, so long as it is a factor that contributes to the disability. *Id*. The appropriate question is whether the evidence can support an inference that the accident aggravated the condition or accelerated the processes which led to the claimant's current condition of ill-being. *Id*. The Commission may find a causal relationship based on a medical expert's opinion that the injury "could have" or "might have" been caused by the accident. *Id*. at 332.

The Petitioner had several non-occupational factors that no doubt contributed to developing carpal and cubital tunnel syndrome. Dr. Young found that the Petitioner's work was a contributing factor to his condition. The Arbitrator notes that Dr. Brown gave his causation opinion with very little information about the exact activities that the Petitioner performed as a bus driver. Granted, he didn't change his opinion after getting more information. However, the Petitioner's testimony and demonstrations at Arbitration were much more detailed than the job descriptions presented to Dr. Brown and were compelling evidence that the Petitioner performed intensive hand and arm activities that likely contributed to him developing carpal and cubital tunnel syndromes. The Arbitrator gives little weight to Dr. Brown's opinion. In addition, the Petitioner's conditions improved over Christmas break. Therefore, at a minimum, the Arbitrator finds that the Petitioner's work accelerated the processes that led to his current condition of ill-being.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his injuries arose out of and in the course of his employment.

Issue F: Is Petitioner's current condition of ill-being causally related to the accident?

Based on the causation findings above regarding whether the injuries were in the course of and arose out of employment, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his carpal and cubital tunnel conditions are causally related to the accident.

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

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const*., 388 Ill. App. 3d 380, 383, 902 N.E.2d 1269, 1273 (2009).

Although Dr. Brown disagreed with Dr. Young's causation findings, he acknowledged that the Petitioner had tried conservative treatment for his carpal tunnel syndrome and that surgery was indicated. Regarding cubital tunnel surgery, the Arbitrator gives great weight to his opinion that surgery was reasonable and necessary.

Therefore, the Arbitrator finds that these services received by the Petitioner were reasonable and necessary and orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 1. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

Issue K: What temporary benefits are in dispute? (TTD)

According to the Request for Hearing (AX1), the parties dispute temporary total disability benefits for the period of November 4, 2019, through March 23, 2020.

An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

On November 4, 2019, Dr. Hayes ordered the Petitioner to be off work until released by him or the orthopedic surgeon. Dr. Young released the Petitioner on September 30, 2020. However, the Petitioner was off work and collecting unemployment from March 23, 2020, until

his ultimate release. Based on this and the findings above regarding causation, the Arbitrator finds that the Petitioner was entitled to TTD benefits from November 4, 2019, until March 23, 2020.

Issue L: What is the nature and extent of the Petitioner's injury?

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

(i) **Level of Impairment.** Neither party submitted an AMA rating. Therefore, the Arbitrator uses the remaining factors to evaluate the Petitioner's permanent partial disability.

(ii) **Occupation.** The Petitioner continues to work as a bus driver and is subject to the same stressors on his hands and elbows. The Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 57 years old at the time of the injury. He has several work years left during which time he will need to deal with the residual effects of his carpal and cubital tunnel syndromes. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity.** There was no evidence of limitation of the Petitioner's earning capacity. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** The Petitioner testified that he still experiences pain and numbness and expects to do so until he fully heals. Although it has been easier to drive a bus since the surgeries,

the numbness causes problems picking things up. The Arbitrator puts significant weight on this factor.

Based on the foregoing evidence and factors, the Arbitrator finds that the Petitioner sustained serious and permanent injuries that resulted in 10% loss of use of the right hand, 10% loss of use the left hand, 15% loss of use of the right arm and 15% loss of use of the left arm.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC030494
Case Name	Enrique Tellez v. Lyons Twp. High School Dist. 204
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0078
Number of Pages of Decision	14
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Donovan Fechner
Respondent Attorney	W. Britt Isaly

DATE FILED: 2/22/2023

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ENRIQUE TELLEZ,
Petitioner,

vs. NO: 16 WC 30494

LYONS TWP. HIGH SCHOOL DIST. 204,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability (TTD), and permanent partial disability (PPD) and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

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

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

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

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

February 22, 2023
o: 02/16/23
CMD/ma
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC030494
Case Name	Enrique Tellez v. Lyons Twp. High School Dist. 204
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Donovan Fechner
Respondent Attorney	W. Britt Isaly

DATE FILED: 9/1/2022

THE INTEREST RATE FOR THE WEEK OF AUGUST 30, 2022 3.23%

/s/ Jeffrey Huebsch, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Enrique Tellez
Employee/Petitioner
v.
Lyons Twp. High School Dist.204
Employer/Respondent

Case # **16** WC **030494**

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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **3/16/2022.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **9/29/2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**63,941.28**; the average weekly wage was $**1,229.64**.

On the date of accident, Petitioner was **50** years of age, ***married*** with **1** dependent child.

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

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

Respondent shall be given a credit of $**14,591.73** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**14,591.73**.

Respondent is entitled to a credit of $**32,225.33** under Section 8(j) of the Act, and is set forth below.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $819.76 per week for 58-3/7 weeks, commencing 10/5/2016 through 11/17/2017, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $151,732.88, as provided in Sections 8(a) and 8.2 of the Act, and as is set forth below.

Respondent shall pay Petitioner permanent partial disability benefits of $737.78 per week for 137.5 weeks, because the injuries sustained caused the 20.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act and serious and permanent disfigurement to Petitioner's face and left leg to the extent of 35 weeks, in accordance with Section 8(c) of the Act.

Respondent shall pay Petitioner the compensation benefits that have accrued from 9/29/2016 through 3/16/2022, and shall pay the remainder of the award, if any, in weekly payments.

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

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

SEPTEMBER 1, 2022

/S/ Jeffrey Huebsch

Signature of Arbitrator

FINDINGS OF FACT

On September 29, 2016, Petitioner was employed by Respondent as a groundskeeper. He had been so employed for over 23 years. His job duties included mowing the grass, moving things between campuses and cleaning leaves out of gutters.

The Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on September 29, 2016. Petitioner testified that after moving several sixty pound fertilizer bags without difficulty, he was needed to clean the gutters of the school district's building. (Tx 12). Petitioner used an extension ladder in order to access the gutters of one of the school buildings, intending to clean them out with a hand blower. When Petitioner was approximately halfway up the ladder, the ladder slid, causing Petitioner to fall. He was about 10 feet up when he fell. The ladder was extended over a three-foot high fence and struck the fence as it fell. (Tx. 14). Petitioner's face (nose and forehead), chest and left shin struck the ladder when it hit the fence. (Tx 15). Petitioner then fell of the ladder and landed on his back on the hard on the ground. Petitioner estimated that he fell 7 to 10 feet. (Tx 16) Petitioner remained on the ground disoriented and in tremendous pain until a co-worker came to his assistance and an ambulance was called to take him to the emergency room at LaGrange Memorial Hospital ("LaGrange"). (Tx 16-17).

At the LaGrange, Petitioner was noted to have pain in his chest, left arm and left leg, as well as lacerations to his forehead and nose. (Px 2; 24-25). Petitioner's lacerations were sutured and, following radiological studies, Petitioner was diagnosed with a 3 cm forehead laceration, a 1 cm laceration to the nose and a 2 cm laceration to the middle of the left shin. He was further diagnosed with a nasal bone fracture, sternal fracture, rib fractures and a brachiocephalic vein injury. (Px 2; 28) Due to cardiac concerns, Petitioner was transferred by ambulance to Loyola Medical Center ("Loyola") for further care. (Px 1).

At Loyola, Petitioner was admitted and initially noted to have suffered a displaced nasal bone and septal fractures as well as a fractured sternum and ribs. Loyola's records noted a concern for the brachiocephalic

defect. (Px 3A; 17 -23). Petitioner was noted to be in tremendous pain. (Px 3A; 24). Petitioner received care for a sternum fracture, bilateral upper rib fractures, a comminuted fracture of his nasal bone and septum and lacerations over his right eyebrow, nasal dorsum and left shin. Petitioner was noted to be complaining of significant facial and chest pain. (Px 3A; 28-29).

On September 30, 2016, the second day of admission to Loyola, Petitioner reported pain in his right shoulder as well as bilateral forearm tenderness. (Px 3A; 40; Tx 19). Petitioner testified that the right shoulder pain was in the top and anterior portion of the shoulder. The physicians at Loyola continued to prioritize the possible left arm thrombus of the brachiocephalic vein. (Px 3A; 67). Petitioner's pain was initially controlled with Toradol and Morphine. (Px 3A;70, 72).

On October 4, 2016, Petitioner underwent a bedside closed reduction of his nasal fracture. (Px 3A; 89, 111). When he consulted with the occupational therapist at Loyola, he continued to report pain in his right arm, which was treated with hot pack applications. (Px 3A; 90, 91). Xrays were taken of the right forearm and humerus, but no studies were taken of Petitioner's right shoulder at Loyola. (Px 3B; 12

Petitioner remained at Loyola until October 5, 2016, when he was discharged from care. Continued complaints of right arm pain were noted at that time. (Px 3; 112).

Petitioner followed up with doctors at both Loyola and his Primary Care Physician, Jose Penaherrera, M.D. at the Silver Cross Sanitas Clinic ("Silver Cross") in New Lenox. (Px 5; 175).

Dr. Penaherrera referred Petitioner to physical therapy at ATI Physical Therapy in New Lenox, which began on October 10, 2016. (Px 5, 167; Px 4B, 27). A primary/rehab diagnosis of sternum fracture and right shoulder pain was noted by the physical therapist. (Px 4B; 27). Petitioner reported that his chest pain continued and was worse on movement. He also continued to complain of right shoulder pain and significant bruising was noted along both upper extremities. (Px. 4B; 27). On October 11, 2016, Petitioner followed up at Loyola, and complained of continuing right arm pain. He reported needing to take several Norco daily for the pain. (Px 3C; 106, 108). This continued on his October 18, 2016 follow up visit. (Px. 3C; 119).

On October 24, 2016, Petitioner followed up with the Otolaryngology Department at Loyola noting pressure and numbness over his forehead and complaining that he felt that his nose was deviating to the left. (Px 3C; 131). On November 7, 2016, Petitioner followed up with Dr. Villagomez at Silver Cross, who noted limited range of motion in the right shoulder and continued chest pain. (Px 5; 52). The right arm pain continued to be reported at his November 1, 2016 and November 15, 2016 follow ups with Loyola and physical therapy was ordered to continue. (Px 3C; 147; Px 3D; 1).

On December 9, 2016, physical therapy noted no improvement in Petitioner's chest and right shoulder conditions. (Px. 4B; 27). The physical therapist reported concerns with the lack of improvement in the right shoulder. (Px 5; 165). Dr. Villagomez ordered physical therapy to continue and indicated that Petitioner would be reevaluated for possible referral to an orthopedic surgeon. (Px 5; 165)

On December 12, 2016, Dr. Villagomez noted that Petitioner could only lift one pound weights and could only lift his arms to approximately sixty degrees, with limited range of motion in the right shoulder and pain in the chest area. (Px 5; 49-50). On December 21, 2016, Dr. Villagomez wrote a note to keep Petitioner off work until further medical notice. (Px 5;146). Petitioner was discharged from physical therapy on December 29, 2016, with no improvement in the right shoulder and chest. (Px 4B; 27; Tx 22).

On January 13, 2017, Petitioner was again seen at Silver Cross with continued complaints of right shoulder pain and Dr. Penaherrera referred him for a right shoulder MRI at American Diagnostic MRI and to an orthopedist. (Px 5; 46, 48).

The right shoulder MRI, taken on February 27, 2016, revealed a high-grade partial thickness tear of the distal supraspinatus tendon with a few superimposed focal full-thickness perforations. (Px 6; 13).

On March 1, 2017, Petitioner was seen by orthopedic surgeon, Adam Meisel, M.D. at MidAmerica Orthopaedics. (Px 7; 11). Dr. Meisel noted the fall history and complaints of right shoulder pain also noting the Petitioner is right hand dominant. (Id.).

After examining Petitioner and reviewing the MRI film, Dr. Meisel diagnosed Petitioner with right shoulder adhesive capsulitis, and right shoulder high-grade partial thickness rotator cuff tearing, with possible

full thickness areas as well as right biceps tendonitis/tenosynovitis. (Px 7; 12). Dr. Meisel described a high-grate tear as a near complete tearing of the thickness of the tendon. (Px 10; 12, 8-14).

Dr. Meisel recommended aggressive range of motion physical therapy for the right shoulder and performed a right glenohumeral joint corticosteroid injection. (Id.) Physical therapy noted mild improvement. Petitioner continued to have localized pain at the front and top of his right shoulder, had difficulty sleeping and difficulty with his activities of daily living. Therefore, when he returned to Dr. Meisel on March 29, 2017, Petitioner decided to proceed with surgery. (Px 7; 10, 36; Px 10; 14-24).

Dr. Meisel performed the arthroscopic right shoulder surgery on May 16, 2017 at the Palos Hills Surgery Center. (Px 8; 7). Petitioner underwent extensive debridement, decompression and a distal clavicle excision along with the rotator cuff tear repair and biceps tenodesis. The surgery was performed without complication. (Px 8; 9). Petitioner returned to Dr. Meisel for post-surgery follow up on May 26, 2017, reporting that his pain was well-controlled and the healing was noted as routine. Physical therapy could proceed in two to three weeks. (Px 7; 9). Dr. Meisel explained that until that time, surgical patients are heavily restricted and kept off of work. (Px 10; 19; 13-18).

Dr. Meisel testified that on November 10, 2017, he had noted his plan to return Petitioner to full duty (Px 23; 21-22). Dr. Meisel has opined to a reasonable degree of medical and surgical certainty that based on Petitioner's reported mechanism of injury, the radiographic findings, physical examination and surgical findings that the injuries sustained to the right shoulder were appropriate and consistent with the September 29, 2016 work accident. (Px 10; 25,19 – 26; 5).

Petitioner was last seen by Dr. Meisel on December 8, 2017, with full range of motion being noted. . Dr. Meisel instructed Petitioner to continue full duty work, with no restrictions and deemed the shoulder to have reached maximum medical improvement. Petitioner was then discharged from care. (Px 7; 4). This was the last treatment that Petitioner had for his injuries.

Petitioner's facial and left shin lacerations left permanent scars which were observed from a distance of eight feet by the arbitrator at trial. The facial scar above Petitioner's right eyebrow was noted by the Arbitrator

to be a one and a half to two inch scar between 1/8 of an inch and 1/4 of an inch. (Tx 32). A discolored scar on Petitioner's nose was located about a third of the way down from the top of his nose. (Tx 32). The left shin scar was noted to be over an inch long and more than a quarter inch wide at its widest point. The skin texture was the same as the rest of the shin scar. (Tx 33). Petitioner testified that the scars make him self-conscious and he gets asked questions about them all the time. The eyebrow scar has caused Petitioner to wear hats to cover his forehead and he avoids wearing shorts because of the left shin scar. (Tx 35).

Petitioner remained off of work from the time of the accident until November 17, 2017. (Tx 28). He currently works for an apartment management company as a groundskeeper and custodian. Petitioner testified that the still has pain in his chest and right shoulder when doing cleaning activities such as mopping, vacuuming, mowing the lawn or waxing his car. (Tx 30, 35-36, 47).

While working at this new job, he has noticed that his right shoulder and arm become tired more quickly and he is unable to lift more than forty pounds. (Tx 29). While Petitioner is able to move his arm above his head and to the side without difficulty, he continues to have pain in the shoulder and chest when required to perform pushing movements at work. (Tx 30). He is able to alleviate the discomfort by resting for a "couple of minutes." (Id.)

Petitioner testified that he had no problems with his right shoulder before the September 29, 2016 accident and had no new trauma to the right shoulder after the September 29, 2016 fall. (Tx. 20, 24). The Silver Cross records contains notes dating back to 2012 and make no reference of any prior right shoulder complaints. (Px 5; 227).

Petitioner submitted the evidence deposition of Adam Foster Meisel, M.D., Petitioner's treating orthopedic surgeon, as Px 10. Dr. Meisel is board certified and he provided treatment to Petitioner from March 1, 2017 to December 8, 2017. At the last visit, Petitioner was noted to have full range of motion and good strength in his right shoulder. Dr. Meisel thought that Petitioner had experienced a good recovery. Dr. Meisel endorsed causation based upon Petitioner's reported mechanism of injury, the radiographic findings, the physical exam, the surgical findings and Petitioner's lack of prior right shoulder complaints. The absence of

findings consistent with a rotator cuff tear in the ER records did not change his opinion on causation. The MRI was not consistent with a chronic tear and it was plausible that the manubrial fracture was the focus of Petitioner's pain complaints and of the attending physician's treatment. (Px 10)

Respondent submitted the evidence deposition of Martin P. Lanoff, M. D. as Rx 1. Dr. Lanoff is a physiatrist and is board certified in physical medicine and rehab and pain medicine. He examined Petitioner on December 15, 2016 and issued a report of that date, along with 3 addendum reports. He did not believe that any condition of ill-being regarding Petitioner's right shoulder was causally related to the September 29, 2016 work accident. He thought that Petitioner did suffer rib fractures, a manubrial sternal fracture, brachiocephalic vein thrombosis, possible cardiac contusion, laceration above the eye, a nasal fracture and a left anterior shin laceration as a result of the injury. Dr. Lanoff did not endorse causation, opining that if Petitioner had suffered a significant rotator cuff tear as a result of the fall, based upon the lack of findings consistent with a RTC tear in the physical exam of December 15, 2016 exam and no documented right shoulder complaints or findings in the ER records from LaGrange and Loyola. (Rx 1, 18)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d).

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between her employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989)

Decisions of an arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

The Arbitrator finds Petitioner's testimony to be credible

In regards to (F), "Is Petitioner's current condition of ill-being causally related to the injury?, the Arbitrator finds:

The Arbitrator finds that Petitioner's current condition of ill-being, to wit: status post right rotator cuff repair, as described by Dr. Meisel, healed rib fractures, healed brachiocephalic vein thrombosis, healed manubrial sternal fracture, healed nasal fractures with nose disfigurement, healed eyebrow laceration and healed shin laceration is causally related to the injury. This finding is based on the credible testimony of Petitioner, the medical records and the persuasive testimony of Dr. Meisel.

Dr. Meisel's opinion on causation regarding Petitioner's right shoulder is consistent with the medical records, which do show RUE complaints on the day after the accident and several other times in the Loyola records. There was no evidence of any prior right shoulder complaints or treatment. Given the above, Dr. Lanoff's opinions on causation are not persuasive.

In regards to (J), "Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary treatment?", the Arbitrator finds:

The Arbitrator finds that all treatment rendered to Petitioner was reasonable and necessary and causally related to the injuries sustained.

The Parties agreed that Respondent was entitled to a §8(j) credit of 32,225.33 for medical bills paid and they agreed that such a credit would exist for any additional bills paid by Blue Cross/Blue Shield. Respondent also is entitled to a credit for all awarded medical expenses that it has paid or compromised.

Accordingly, the medical bills from ATI Physical Therapy in the amount of $77,218.88; American Diagnostic MRI in the amount of $1,950.00; MidAmerica Orthopaedics in the amount of $36,324.00; Palos

Hills Surgery Center in the amount of $33,270.00 and Palos Hills Anesthesia in the amount of $2,970.00 shall be satisfied by Respondent, pursuant to §§8(a) and 8.2 of the Act, subject to the Medical Fee Schedule.

In regards to (K), "What temporary benefits are in dispute? TTD?", the Arbitrator finds:

Petitioner claimed to be entitled to TTD benefits from 10/5/2016 through 11/17/2017. Respondent claimed that the correct TTD period was 10/5/2016 through 1/24/2017. The Parties agreed that $14,591.73 in TTD benefits has been paid.

Petitioner testified that he was off work from the date of the work accident until November 17, 2017. Petitioner's medical providers consistently kept Petitioner off work while he treated for all of his injuries, including the disputed right shoulder injury, until he was returned to work by Dr. Meisel.

Based upon the Arbitrator's finding above on the issue of causation and the testimony of Petitioner and the medical records, Respondent shall pay Petitioner TTD benefits of $819.76/week for 58-3/7 weeks, commencing 10/5/2016 through 11/17/2017. Respondent is entitled to a credit for the $14,591.73 in TTD benefits paid against this award.

In regards to (L), "What is the nature and extent of the injury?", the Arbitrator finds:

In determining PPD, the Arbitrator has analyzed the five factors as required by §8.1b of the Act. The award regarding the nature and extent of the injuries also includes §8(c) disfigurement benefits, which do not require §8.1b analysis.

i) **The reported level of impairment pursuant to subsection (a) of Section 8.1b**: Neither party submitted an AMA impairment rating. Therefore, the Arbitrator does not give any weight to this factor in determining PPD.

ii) **The occupation of the injured employee**: Petitioner was a groundskeeper at the time of the injury. He no longer works for the Respondent, but he has returned to work at a similar job. There is no

evidence that Petitioner is restricted from performing this job. The Arbitrator gives this great weight in determining PPD.

iii) **The age of the employee at the time of the injury**: Petitioner was 50 years old at the time of the injury. As a middle-aged laborer, the permanent effects of the injury, as testified to, will have a long impact on his work life. Therefore, the Arbitrator gives this factor great weight in determining PPD.

iv) **The employee's future earning capacity:** There is no vocational evidence that the work injury affected Petitioner's future earning capacity or the extent of that affect. Therefore, the Arbitrator gives this factor little weight in determining PPD.

v) **Evidence of disability:** Petitioner's testimony regarding her ongoing condition and symptoms is corroborated by the medical records of his treating doctors. He has no residual issues regarding the alleged cardiac contusion/brachiocephalic vein thrombus injury. He has some residuals regarding the shoulder and rib/manubrial fractures. It is clear that he has some ongoing symptoms and pain that affect his day to day life, as well as his occupational life. Therefore, the Arbitrator gives this factor significant weight in determining PPD

Based on consideration of the above five factors and the Record as a whole, the Arbitrator finds that as a result of the injuries sustained, Petitioner suffered 15 weeks disfigurement for the scarring above his eyebrow, 10 weeks disfigurement for the nose scarring and 10 weeks disfigurement for the left shin scarring, all in accordance with §8(c) of the Act. As to other the injuries sustained, the Arbitrator awards the following: Rib Fractures: 2% loss of use of the person as a whole; Manubrial Fracture: 4% loss of use of the person as a whole; Nasal Fractures: 2% loss of use of the person as a whole; Surgically repaired Right Shoulder: 12.5% loss of use of the person as a whole.

Accordingly, Respondent shall pay Petitioner PPD benefits of $737.78/week for 137.5 weeks, pursuant to §§8(c) and 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC013234
Case Name	Jose Felix v. Crystal Lake Chrysler
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0079
Number of Pages of Decision	13
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	David Martay
Respondent Attorney	Michael Chalcraft II

DATE FILED: 2/22/2023

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOSE FELIX,

Petitioner,

vs. NO: 18 WC 13234

CRYSTAL LAKE CHRYSLER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) of the Act having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective care, temporary total disability, and permanent partial disability, and being advised of the facts of law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, with the changes made below. The Commission further remands this case to the Arbitrator for further proceedings including a determination of permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

While affirming and adopting the Decision of the Arbitrator, the Commission writes additionally on the issue of temporary total disability. The Arbitrator awarded temporary total disability benefits for the period from November 29, 2017, through May 1, 2018, and stated that the award represented 21 and 6/7ths weeks of disability. The Commission only corrects the calculation, as the period awarded represents 22 weeks of disability.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated September 6, 2022, is hereby affirmed and adopted, but changed with respect to the calculation of the temporary total disability period.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner

the sum of $1,410.00 per week commencing November 29, 2017, through May 1, 2018, a period of 22 weeks, that being the period of temporary total incapacity for work under section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that 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 expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

February 22, 2023
o: 2/16/23
CMD/kcb
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC013234
Case Name	Jose Felix v. Crystal Lake Chrysler
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	David Martay
Respondent Attorney	Michael Chalcraft II

DATE FILED: 9/6/2022

THE INTEREST RATE FOR THE WEEK OF AUGUST 30, 2022 3.23%

/s/ Paul Seal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF MCHENRY)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jose Felix
Employee/Petitioner
v.
Crystal Lake Chrysler
Employer/Respondent

Case # **18** WC **13234**
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 **Arbitrator Seal**, Arbitrator of the Commission, in the city of **Woodstock**, on **July 6, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **January 16, 2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**109,980.00**; the average weekly wage was $**2,115.00**.

On the date of accident, Petitioner was **47** years of age, ***married*** with **0** dependent children.

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

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

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

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

ORDER

F.
The Arbitrator finds Petitioner has proven by a preponderance of the evidence that his current condition of ill-being as it relates to his bilateral shoulder injuries are causally related to his repetitive trauma work-injury on January 16, 2017.

J.
The Arbitrator finds Respondent is responsible for unpaid bills to IBJI totaling $19,138.03, Hawthorn Surgery Center totaling $49,729.00 and to Praxis Physical Therapy totaling $8,347.00. These bills shall be paid to Petitioner per the statutory medical fee schedule.

K.
The Arbitrator finds Petitioner has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from November 29, 2017, through May 1, 2018. This represents 21 and 6/7th weeks of disability at a weekly disability rate of $1,410.00 totaling $30,818.51.

L.
The Arbitrator finds Petitioner sustained a permanency loss of 17.5% loss of a man as a whole pursuant to Section 8(d)(2) of the Act. This award amounts to 87.5 weeks of permanency at the maximum rate of $775.18 totaling $67,828.25.

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

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

SEPTEMBER 6, 2022

Signature of Arbitrator

FINDINGS OF FACT

Petitioner, Jose Felix, was a 47-year-old married man with no children under the age of 18 and employed by Crystal Lake Chrysler on January 16, 2017. He worked for the car dealership as a technician and had been employed by the Respondent for twelve years prior to his alleged work injury. (TR 12)

As a technician, Petitioner testified that he, "did everything from engine rebuilds to transmission rebuilds to wiring diagrams and anything from differentials to heavy work as a level three technician." (TR 12-13)

Petitioner testified that his workday began at 8:00 am and he would typically work eleven hours per day until he clocked out at 7:00 pm. His job required him to spend more than half his day doing overhead work using impact guns that weighed up to 25 pounds, hand tools, air tools, and battery tools.

In January 2017, Petitioner noted he began to experience numbness in his fingers and arms, with pain primarily on the left side. Petitioner elected to file an Application for Adjustment of claim and alleged a repetitive trauma injury dating to January 16, 2017, which is the date that he reported his injuries to his employer. (RX1)

Two days after reporting his work injuries to his employer, Petitioner reported to Dr. Christ Pavlatos at the Illinois Bone and Joint Clinic. (PX1) At the initial evaluation, Dr. Pavlatos provided Petitioner with an injection into his left shoulder and prescribed physical therapy. *Id.* Petitioner returned to Dr. Pavlatos on June 29, 2017, with continued left shoulder pain. Petitioner was prescribed physical therapy for both his left and right shoulders and was given an epidural

injection to his left shoulder on that date. *Id.* In addition, Dr. Pavlatos prescribed MRIs of both left and right shoulder.

Petitioner underwent an MRI of each shoulder on November 10, 2017. (Px 1) Petitioner returned to Dr. Pavlatos on November 19, 2017, and he was given an injection to his right shoulder and prescribed surgery for the left shoulder. In addition, Dr. Pavlatos authorized Petitioner off work.

On December 18, 2017, Petitioner underwent surgery which included an arthroscopy of the left shoulder, debridement of the labrum, subacromial decompression distal clavicle resection along with rotator cuff repair. (PX3) Petitioner had follow up appointments with Dr. Pavlatos on January 31, 2018 and February 28, 2018 at which time the doctor continued to authorize Petitioner off work and prescribed physical therapy. (PX1) On April 26, 2018, Dr. Pavlatos prescribed an updated MRI of the right shoulder as well as prescribing physical therapy for the left shoulder. In addition, Dr. Pavlatos released Petitioner to return to work on May 1, 2018. *Id.* Petitioner has not sought any additional medical care with Dr. Pavlatos or any other physician for his shoulders since April 2018.

Petitioner returned to work for the Respondent in his same job as a technician on or around May 2, 2018. (TR 20)

Petitioner testified that prior to undergoing his surgery, he was called into the office by the owner of the company, Gary Rosenberg, (Tr. 21) At that time, Petitioner filled out leave forms for AFLAC. (RX2) Petitioner testified that he was ordered by his employer to fill out the forms for AFLAC. However, Petitioner testified that when he originally was requesting leave, he requested to receive benefits from workers' compensation (Tr. 22-23) Petitioner testified that he

was ordered by his employer to fill out the forms for AFLAC indicating the injury was not work related in order to obtain lost time benefits. (Tr. 23)

Subsequent to his employment with Respondent, Petitioner took a job with Gurnee Dodge which was near his home. At the time of hearing, Petitioner was employed by Woodstock Kunes Chrysler. (Tr. 27) Petitioner's current job is a foreman position which is a less physical than the job he was doing when employed by Respondent. *Id.* Additionally, Petitioner's current job requires him to do less overhead work than he was performing prior to his work injury and surgery. Petitioner further testified that since his surgeries, he does not work as quickly as he once did. He requires some help with the types of tools he is using, "because I can't keep my hands above my head for a long period of time." (Tr. 28) Petitioner further testified that in his current job he works on two to three cars per day versus the six or seven cars that he was working on for respondent before his work injury. (Tr. 29). When Petitioner performs overhead work, he notices numbness in his arms primarily in the left arm. Petitioner is left hand dominant.

Regarding his medical bills, Petitioner testified he has unpaid medical bills. He has medical bills due and owing to Illinois Bone & Joint Institute totaling $19,138.03, Hawthorne Surgery Center totaling $49,729.00, and Praxis Physical Therapy totaling $8,347.00. (PX1, 3, 4)

On cross-examination, Petitioner testified that he had previously filled out forms for AFLAC regarding lost time pertaining to a bunion he had on his foot. (Tr. 37) Petitioner also confirmed that when he initially sought medical care with Dr. Pavlatos on January 18, 2017, the intake forms that he filled out did not contain a statement that his injuries were "work related." (Tr. 41-44) Petitioner further testified that when he initially saw his doctors, "I had pain in my shoulders. I just didn't know how, when and what was causing it. We had definitive answer when we got my MRI done and we did the ink or whatever and they injected into me at that

time." (Tr. 48) Petitioner also was provided with a medical report from his physical therapist indicating he had been doing yard and some farm work in August 2017. (Tr. 53)

Regarding the issue (F), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds the following:

Petitioner credibly testified that his work as a technician for a Respondent required him to perform overhead duty work at least five to six hours per day. In addition, Petitioner testified that he would use power tools that sometimes weighed up to 25 pounds in order to repair cars while doing work overhead. The Arbitrator notes that in the report from Dr. Pavlatos dated November 29, 2017, the doctor wrote, "At this point, it is my feeling that the patients both shoulder problems are a result of this overhead activity related to the work he does as a mechanic." (PX1) The Arbitrator further notes that Respondent did not offer any expert opinions to rebut the report and/or opinion of Dr. Pavlatos.

To dispute causation, Respondent offered forms Petitioner and Respondent's employees filled out for AFLAC. (RX2) The Arbitrator specifically notes that Petitioner signed forms indicating that his injuries were not work related. The Arbitrator also takes into consideration the fact that Petitioner did not state on the initial intake forms with his doctor that his injuries were "work related."

Rather, Petitioner testified that he was directed by his employer to fill out the AFLAC forms indicating that his injuries were not work related in order to receive disability payments while he was off work. Petitioner credibly testified that when he initially reported the injury to his employer, he advised he wanted to receive workers' compensation benefits, but was directed to fill out the AFLAC forms stating otherwise. There was no testimony proffered by the

Respondent to rebut Petitioner's testimony that he was ordered by his employer to fill out the AFLAC forms indicating his injuries were not work related.

The Arbitrator places the most weight on the causation issue with respect to the report generated by Dr. Pavlatos stating that the injuries were "work related." Petitioner's testimony was credible that he was directed to fill out the AFLAC forms denying that his injuries were work related. Further, Petitioner's testimony regarding his job and job duties for the Respondent were substantial enough to justify a repetitive trauma injury to his shoulders resulting in a left shoulder surgery and a torn right shoulder labrum. (PX1)

The Arbitrator finds that Petitioner has proven by the preponderance of the evidence that his current condition of ill-being as it relates to his bilateral shoulders is causally related to his repetitive trauma work injury on January 16, 2017.

Regarding the issue (J), were the medical services that were provided to Petitioner reasonable and necessary, the Arbitrator finds the following:

Having found Petitioner's current condition of ill being is related to his work injury on January 16, 2017, all medical care provided to Petitioner in order to resolve his bilateral shoulder injuries has been reasonable and necessary. The Arbitrator places the greatest weight regarding causation on the opinions of Dr. Pavlatos. The Arbitrator finds that Respondent is responsible for unpaid medical bills to Illinois Bone & Joint Institute $19,138.03, Hawthorne Surgery Center $49,729.00 and Praxis Physical Therapy $8,347.00. (PX1, 3, 4) These bills shall be paid to Petitioner per the statutory medical fee schedule.

Regarding the issue (K), what temporary benefits are in dispute, the Arbitrator finds the following:

Having found Petitioner suffered injuries to his bilateral shoulders on January 16, 2017, the Arbitrator finds that Petitioner should have been paid proper TTD benefits for the time that

he was authorized off work by Dr. Pavlatos. Petitioner credibly testified that he was off work from November 29, 2017, through May 1, 2018. This period of lost time is confirmed by the treating medical records from Dr. Pavlatos. (PX1) Further, having found that Petitioner's bilateral shoulder injuries are work related, the Arbitrator awards Petitioner his lost time benefits.

The Arbitrator finds that Petitioner has proven by the preponderance of the evidence that he is entitled to temporary total disability benefits from November 29, 2017, through May 1, 2018. This represents 21 6/7th weeks of disability at a rate of $1,410.00 totaling $30,818.51.

Regarding the issue (l), what is the nature and extent of the injury, the Arbitrator finds the following:

Section 8.1(b) of the Act states, "In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

(i) the reported level of impairment pursuant to subsection (a)

(ii) the occupation of the injured employee

(iii) the age of the employee at the time of the injury

(iv) the employee's future earning capacity; and

(v) evidence of disability corroborated by the treating medical records

No single enumerated factor shall be the sole determinant of disability."

For factor (i), no AMA rating was introduced into evidence, so no weight is given to this factor.

As for factor (ii), Petitioner testified that he worked in the same position following his work injury although he was working at a slower rate of pace, but not suffering any wage loss. Some weight is given to this factor.

As for factor (iii), Petitioner suffered this work injury at age 47. Petitioner's young age means he will have to live with these bilateral shoulder issues for several years. More weight is given to this factor.

As for factor (iv), Petitioner presumably did not suffer loss of future earning capacity. Less weight is given to this factor.

As for factor (v), Petitioner testified that he continues to suffer some bilateral shoulder numbness when he does work overhead. He does not take any prescribed medications. He is back to work, but now as a foreman which does not require him to perform as much physical work on a daily basis. Some weight is given to this factor.

The Arbitrator finds Petitioner sustained a permanency loss of 17.5% man as a whole. As noted, Petitioner underwent a left shoulder surgery with a rotator cuff repair and was also diagnosed with a right shoulder tear per the MRI. (PX1) This award amounts to 87.5 weeks of permanency at the maximum rate of $775.18 totaling $67,828.25.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC013131
Case Name	Alfonso Penalosa Roman v. Skyline Staffing, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0080
Number of Pages of Decision	16
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Jordan Browen
Respondent Attorney	Michael J. Danielewicz, Daniel J Levato

DATE FILED: 2/22/2023

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

☐ 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

Alfonso Penalosa Roman,

Petitioner,

vs. No. 21 WC 013131

Skyline Staffing, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW PURSUANT TO §19(B) AND §8(A)

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

The Commission does correct a clerical error in the Arbitrator's decision. That decision ordered Respondent pay Petitioner temporary total disability benefits of $424.47/week for 53-4/7 weeks, commencing May 26, 2021 through June 9, 2022, as provided in Section 8(b) of the Act. While the Commission affirms the TTD period as being from May 26, 2021 through June 9, 2022, it corrects the number of weeks that period represents to be 54-2/7 weeks. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 28, 2022, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall 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 expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

February 22, 2023

MP/mcp
o-02/16/23
068

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC013131
Case Name	Alfonso Penalosa Roman v. Skyline Staffing, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Jordan Browen
Respondent Attorney	Torrie Poplin

DATE FILED: 7/28/2022

THE INTEREST RATE FOR THE WEEK OF JULY 26, 2022 2.92%

/s/Stephen Friedman, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF DuPage)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Alfonso Penalosa Roman
Employee/Petitioner

v.

Skyline Staffing, Inc
Employer/Respondent

Case # **21** WC **013131**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen J. Friedman**, Arbitrator of the Commission, in the city of **Wheaton**, on **June 9, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [ ] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [x] 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. [x] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [x] Is Petitioner entitled to any prospective medical care?
L. [x] What temporary benefits are in dispute?
[x] TPD [ ] Maintenance [x] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On the date of accident, **May 7, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**2,945.60**; the average weekly wage was $**636.70**.

On the date of accident, Petitioner was **58** years of age, ***married*** with **2** dependent children.

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services of $79,614.95 as detailed in the Arbitrator's finding with respect to Medical attached hereto, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for additional reasonable and necessary treatment consistent the recommendations of Dr. Templin including an L4-5 discectomy and fusion, any post operative treatment, physical therapy, or other reasonable and necessary care.

Respondent shall pay Petitioner temporary total disability benefits of $424.47/week for 53 4/7 weeks, commencing May 26, 2021 through June 9, 2022, as provided in Section 8(b) of the Act.

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.

JULY 28, 2022

/s/ Stephen J. Friedman
Signature of Arbitrator

ICArbDec19(b)

Statement of Facts

Petitioner Alfonso Penalosa Roman testified in Spanish through an interpreter. Petitioner testified that on May 7, 2021, he was employed by Respondent Skyline Staffing Inc. Respondent is a staffing agency that "gets workers and sends them places to work." On May 7, 2021, Respondent sent him to work at a packaging company. He had been assigned to work at this packaging company for some days prior to May 7, 2021. Petitioner testified that his job duties at the packaging company entailed "setup" of packages that came into the company. His duties were to scan packages, to help set up the package, forming them up, and sending them out. He had to pick up garbage. His work at the packaging company was in a warehouse-type environment.

Petitioner testified that he was working on May 7, 2021, and a forklift came behind him and hit him at his back and lower back-hip region on the right side. The forklift was carrying boxes of cargo when it struck him. He was struck by the boxes. Petitioner testified that he did not fall down. He supported himself with the boxes in front of him so as not to fall over from the impact. Petitioner testified that after the impact, he tried to continue working, but could not because he started to feel a lot of pain in his back. He reported the incident to his manager, Luis. After Petitioner reported his injury, Skyline Staffing sent him to AMITA Alexian Brothers Medical Center for treatment.

Petitioner was seen at Alexian Brothers Amita Health on May 7, 2021 (PX 1). Petitioner reported he was hit by a forklift and complained of pain in the right lower back and upper hip areas. The AMITA records include a diagram where right sided low back pain and upper hip area is indicated by drawing and handwritten notes. X-rays of the hip and low back were negative for fracture. There were multilevel arthritic changes in the lumbar spine. Petitioner was diagnosed with a low back sprain and contusion to the right gluteal and hip area. He was placed on a 20 pound restriction (PX 1). On May 13, 2021, Petitioner's restriction was modified to 25 pounds. He was to get physical therapy (PX 1). Respondent offered modified duty on May 13, 2021 (RX 4). Petitioner testified he did work at Respondent's own office for about four days following his injury. He was sorting papers. Petitioner testified he did not go back to work because he was in pain.

Petitioner testified he then followed up at Illinois Orthopedic Network (ION). Petitioner was seen by Dr. Lipov at ION on May 14, 2021, complaining of neck pain, right shoulder pain, low back pain, right hip pain. A history was taken that noted a forklift hit him with a loaded pallet impacting the right side of his body. Petitioner underwent physical examination and was diagnosed with cervicalgia, right shoulder pain, right trapezius pain, right flank and low back pain, and right hip pain. He was referred for an MRI of the lumbar spine and right shoulder, instructed to begin physical therapy, and given light duty work restrictions (PX 2, p 5-7).

Petitioner underwent two sessions of physical therapy at West Suburban Physical Therapy on May 17, 2021 and May 18, 2021 with treatment to his right neck, shoulder, hip, and low back (PX 3). The impression of the May 21, 2021 lumbar MRI at Molecular Imaging was loss of normal lumbar lordosis likely due to muscular spasm; disc dehydration identified at multiple levels; modic type I changes seen at L4-L5; L5-S1 shows diffuse disc bulge of approximately 2.0 mm causing thecal sac indentation with minimal bilateral recess and neural foramina narrowing; L4-L5 shows diffuse disc bulge of approximately 4.7 mm with central disc protrusion causing thecal sac compression with mild spinal canal narrowing and severe bilateral recess and neural foramina narrowing, posterior annular tear is noted; L3-L4 shows diffuse disc bulge of approximately 3.7 mm causing thecal sac indentation with severe bilateral lateral recess and neural foramina narrowing; L2-L3 level shows diffuse disc bulge of approximately 3.2 mm causing thecal sac indentation with moderate to severe

bilateral recess and neural foramina narrowing; and L1-L2 shows diffuse disc bulge of approximately 3.0 mm causing thecal sac indentation with moderate to severe bilateral recess and neural foramina narrowing (PX 4). The right shoulder MRI revealed degenerative changes to the AC joint causing impingement, a partial tear of the supraspinatus, abnormal signals raising the possibility of a glenoid labral tear (PX 4).

Petitioner switched therapy providers and began treating at La Clinica on May 21, 2021 (PX 5). Petitioner saw Dr. Chunduri on May 26, 2021 complaining of right shoulder pain, mild neck pain, low back, and right buttock pain. The MRI findings were reviewed. Dr. Chunduri continued physical therapy and prescribed meloxicam, diclofenac gel, and lidocaine patches. Petitioner was taken off work (PX 2, p 15-17). Petitioner testified he took the medications. On June 1, 2021, Petitioner saw Dr. Kevin Tu at ION for an evaluation of his right shoulder. Dr. Tu reviewed the MRI and opined that it demonstrated a partial thickness rotator cuff tear. Dr. Tu administered a cortisone injection at this visit (PX 2, p 19-20). Petitioner also saw Dr. Lipov on June 1, 2021 for his low back. Dr. Lipov stated the MRI revealed lumbar degenerative disc disease and L4-5 disc herniation with severe bilateral neural foraminal narrowing. He recommended an L4-5 ESI (PX 2, p 23-24).

On June 2, 2021, Petitioner attended a Section 12 examination at Respondent's request with Dr. Shadid (RX 3, Ex. 2). Dr. Shadid took a history from Petitioner. He noted Petitioner was not working but was willing to return to work. He performed a physical examination, and reviewed medical records as well as the MRI. Dr. Shadid diagnosed Petitioner with multilevel degenerative lumbar spine disease. Dr. Shadid opined that Petitioner's complaints were not related to the May 7, 2021 accident but rather to a degenerative spine which was pre-existing. Based on his normal examination, Petitioner sustained a lumbar strain which had resolved. Dr. Shadid opined that Petitioner was at maximum medical improvement, capable of full duty work, and that no additional treatment was necessary (RX 3, Ex.2).

On June 9, 2021, Petitioner saw Dr. Chunduri. Petitioner reported improvement in his neck and right shoulder, but was still complaining of constant, right sided back pain. He continued to report radicular symptoms down his right lower extremity. Dr. Chunduri recommended right L4 and L5 transforaminal epidural steroid injections, as well as continued therapy and medications (PX 2, p 38). On June 16, 2021, Petitioner underwent lumbar TESI at L4-L5 (PX 2, p 42). On June 29, 2021, Petitioner reported 80% relief from the injections, which lasted one week, but now only 50% relief. Dr. Lipov recommended a second injection. Petitioner was continued on medication, physical therapy, and remained off work (PX 2, p 46-48). Petitioner also saw Dr. Tu on June 29, 2021. After physical therapy and a cortisone injection, Petitioner reported minimal difficulty with his right shoulder. Dr. Tu released him to return on an as-needed basis for the right partial thickness rotator cuff tear (PX 2, p 50).

On July 21, 2021, Dr. Lipov stated Petitioner would be a candidate for facet injections and a possible radiofrequency ablation. He reviewed Dr. Shadid's report and stated that he agreed that Petitioner has a pre-existing degenerative spine, but he believes he had an exacerbation following the injury. Petitioner was referred for an EMG and given a referral for spine surgery evaluation (PX 2, p 52-55). The July 28, 2021 EMG noted an abnormal test with bilateral L5 and right S1 radiculopathy (PX 2, p 56-58).

On August 20, 2021, Petitioner presented for an initial evaluation with Dr. Cary Templin. After he reviewed the history of Petitioner's injury and treatment to date, performed a physical examination, and reviewed the MRI of the lumbar spine, Dr. Templin recommended a fusion of the L4-L5 level. Petitioner was continued off work and instructed to continue physical therapy and pain management with Dr. Lipov until surgery is undertaken. Dr. Templin disagreed with Dr. Shadid's opinion that this was a lumbar strain. He stated the condition was related

to the injury (PX 2, p 59-60). Petitioner saw Dr. Lipov on September 15, 2021. Dr. Lipov discussed medial branch injections and radiofrequency ablation while waiting for surgical clearance. The medial branch blocks were discussed on October 18, 2021. Authorization for the treatment was not granted, so Petitioner was continued with medications, home exercise, and off work (PX 2, p 62-65). Petitioner continued physical therapy at La Clinica through November 10, 2021. By September 10, 2021, Petitioner reported he had no shoulder pain whatsoever (PX 5, p 86). He reported his back pain remains the same through November 10, 2021(PX 5, p 64).

Dr. Templin testified by evidence deposition taken October 5, 2021 (PX 10). He testified to his examination of Petitioner on August 20, 2021. That was the only time he saw Petitioner. Petitioner complained of lower back pain rated at 5-6/10. Petitioner had no previous history of back pain before May 7, 2021. He noted Petitioner had been hit by a forklift. He had no further details of the accident. Petitioner had been attending physical therapy for about three months, had been taking pain medication, and had one epidural injection. Neither treatment gave Petitioner lasting pain relief. Dr. Templin performed a physical examination and noted limited range of motion in Petitioner's lumbar spine with both flexion and extension. He reviewed the MRI films and noted that the most significant finding was the amount of degenerative change and the severe Modic endplate change which was acute at the L4-5 level. His diagnosis was L4-L5 degenerative disc changes with foraminal and lateral recess stenosis. Dr. Templin's treatment plan was to fuse the L4-5 level. Given Petitioner's pain and reliance on medication, Dr. Templin took him off work (PX 10).

Dr. Templin testified that he reviewed the IME report and disagreed with Dr. Shadid's opinion that Petitioner had simply suffered a lumbar strain injury. Dr. Templin testified Petitioner had appropriate treatment with three months of physical therapy and that Petitioner's diagnosis was more consistent with an aggravation of a degenerative condition and potential radiculopathy. He did not order or consider the EMG findings. Dr. Templin testified that the cause of Petitioner's current condition of ill-being is the injury which occurred to him on May 7, 2021. His opinions on treatment and causation are based upon the Petitioner's subjective complaints and his inability to return to work. If Petitioner was asymptomatic, he would not recommend surgery. His causation opinion also notes his lack of any prior back symptoms before the accident. Dr. Templin testified that postoperative care following the fusion would include wearing a brace, physical therapy, and work conditioning, and eventually a return to full duty work. Dr. Templin testified it is extremely likely he would be able to return to pre-injury activity levels.(PX 10).

Dr. Templin testified that the only records he had available from AMITA Health Care was the x-ray report. He further testified that ION provided him with access to treatment records of Dr. Lipov and that he had the MRI imaging to review himself contemporaneous with his examination. He testified that L5-S1 disc was well preserved. It would not be a source of radiculopathy. He does not think a herniated disc is the cause of Petitioner's pain. His finding of severe modic endplate change means that the disc is not doing its job and so you have two bones that are banging into one another. It is likely degenerative. It was something that was going on for the shorter term which is known to be a significant cause of back pain. Dr. Templin agreed that Modic endplate changes could be degenerative and asymptomatic. He also agreed that a degenerative condition can become symptomatic after an acute impact or collision. Being struck by a forklift could change that condition from asymptomatic to symptomatic (PX 10).

On November 10, 2021, Petitioner was examined a second time by Dr. Shadid (RX 3, Ex. 3). Dr. Shadid reviewed Petitioner's medical treatment since the original IME on June 2, 2021, including the EMG and Dr. Templin's evidence deposition. He took a detailed history of the mechanism of accident from Petitioner. He

notes a prior work-related back injury 4 years ago treated with PT and then return to work. Petitioner denied the use of prescription medications. His physical examination was completely negative. Dr. Shadid comments on inconsistencies noted. He opined that the treatment was not necessary or related to the May 7, 2021 accident, including the recommended lumbar fusion. He does not find the prescription medications, or the EMG were reasonable or necessary. A fusion is to address instability per ODG guidelines. He does not feel is a candidate for a fusion. He maintains his prior opinion that Petitioner was at MMI and able to return to full duty work (RX 3, Ex. 3).

On December 1, 2021, Petitioner underwent lumbar medial branch injections at L4-5 and L5-S1, administered by Dr. Lipov (PX 2, p 189). On December 20, 2021, Petitioner reported 60% improvement from the injections, which lasted 3 days. Dr. Lipov planned to proceed with radiofrequency ablation (PX 2, p 193). On January 19, 2022, Petitioner asked to return to work light duty. Dr. Lipov released him to work with a 20 pound lifting/pushing/pulling restrictions (PX 2, p 196). On February 16, 2022, Dr. Lipov discussed radiofrequency ablations from L3-S1 or surgical consult. Petitioner did not want to proceed with surgery, but did want to proceed with the radiofrequency ablation (PX 2, p 198). Petitioner had a phone consult on March 23, 2022. He noted Respondent had not been able to accommodate his restrictions and he was having difficulty finding a position. He was having financial constraints. The radiofrequency treatment was not authorized. Dr. Lipov referred him for an FCE to assess permanent restrictions (PX 2, p 200). The April 12, 2022 FCA performed at ATI Physical Therapy found a valid study. Petitioner demonstrated physical capabilities at a light physical demand level, below his job requirements of medium physical demand (PX 7).

Dr. Lipov reviewed the FCE results on May 3, 2022, and discharged Petitioner to light duty restrictions. He could return if he is approved for the radiofrequency ablation (PX 2, p 212). On May 31, 2022, Dr. Templin continued to recommend the lumbar fusion at L4-5 given his ongoing complaints of pain. He stated this would stabilize the axial instability and eliminate the modic changes, as well as alleviate the stenosis which is causing his radicular complaints (PX 11).

Dr. Shadid testified by evidence deposition taken March 30, 2022 (RX 3). He testified to his June 2, 2021 examination. Upon examination, Petitioner had minimal tenderness in the SI joint region, full range of motion Petitioner could possibly have full range of motion even with a spinal fusion recommended, but Petitioner would have noted pain. The primary reason for lumbar fusions is for instability, which is tested and should elicit pain if a spinal fusion is needed; Petitioner did not have pain with this test. Petitioner had 5/5 strength in all categories for strength testing without noting pain. Petitioner had a normal straight leg test and an otherwise normal examination of his lumbar spine. Dr. Shadid testified that Petitioner's May 21, 2021 lumbar MRI is a classic picture of an arthritic lower back with multiple findings that accumulate over a long period of time. Petitioner's MRI of his lumbar spine was typical for someone of his age with no acute findings. Dr. Shadid diagnosed Petitioner with multi-level degenerative lumbar spine condition which was not related to the work incident as a work injury cannot cause arthritis. Arthritis develops over a period of years, not over a single incident. Petitioner did not exacerbate any of the degenerative conditions in his lumbar spine. If Petitioner exacerbated any of his degenerative conditions, he would have sustained immediate, sharp pain as opposed to a delay. Petitioner initially told Dr. Shadid that he had a five-minute delay before he felt anything and did not think much of it at all. At Petitioner's second IME, Petitioner mentioned it took about 10 minutes for him to feel pain. This report of pain is more typically and classically associated with a muscle strain as opposed to a structural change within his lumbar spine. A lumbar strain was possible, but he did not see any residuals. There was no evidence of muscle spasm or any other unusual findings. Dr. Shadid testified that Petitioner did

not need any additional medical treatment as related to the work incident and if Petitioner did seek treatment, it would not be related to the work incident. Petitioner could go back to work full duty without restrictions (RX 3).

Dr. Shadid testified that at the November 10, 2021 independent medical examination, Petitioner complained of intermittent lower back pain and pain in the buttock. The buttock pain could be referred pain due to the degenerative condition around the L4, L5, S1 region. Petitioner reported he had a lower back injury four years ago that was treated with physical therapy, and he returned to work after physical therapy. Petitioner did not report this injury the first time he saw him. He testified to the more detailed history of accident. Petitioner standing at work and was not paying attention. He stated that a forklift had a pallet on it with a bunch of boxes and one of the boxes that was approximately waist height bumped into him in the lower buttocks/back region. Knowing the mechanism of injury is important because it tells you how the forces were applied. Dr. Shadid testified that he was primarily looking at the biomechanics of the trauma. Petitioner only sustained a lumbar strain as a result of the work injury. Petitioner's lumbar spine was not changed in any significant way either for the better or for the worse. Petitioner was complaining of intermittent low back pain at a rate of 5 out of 10 consistently over a long period of time regardless of treatments. Dr. Shadid opined that Petitioner's condition was not causally related to the May 7, 2021 work incident. Petitioner would have a 50-pound weight restrictions for his degenerative spine condition that is unrelated to his work injury. Petitioner could perform full duty without restrictions as a result of his work injury. Petitioner may need to have restrictions due to his degenerative spine, but it would not be related to the work injury. Petitioner's BMI is likely what is causing his subjective complaints of pain as there is strong correlation in scientific literature between elevated BMI's and low back pain (RX 3).

Dr. Shadid listed inconstancies in his evaluation. Petitioner had 5/5 strength and no pain with active range of motion. He related his testicular pain and difficulty urinating to his back injury. This issue is not related to his lumbar spine. Petitioner did not have a destabilizing acute structural injury or neurological injury due to the delay in noticing his symptoms. The spread of his symptoms to his shoulder, the hip, and the neck, and the upper back one week later is inconsistent with the mechanism of injury of getting hit in the buttocks region. The lack of improvement with any and all treatments including extensive physical therapy is a pattern for symptom magnification as most people get better. Dr. Shadid also noted that Petitioner's pain has always been a 5 out of 10 since the day of injury. 5 out of 10 pain cannot be ignored for more than a few minutes, Dr. Shadid testified he did not see any level of pain during his 30 minutes of face to face. Petitioner did not seem to be distracted by his pain and sat comfortably throughout the interview and was fully cooperative. The MRI findings were of diffuse degenerative changes throughout the lumbar spine and there were no acute findings at any one single level that would tend to associate with an injury (RX 3).

Dr. Shadid stated Petitioner did not need any prescription medication after the first week or so as a result of this injury. He opined that the L5-S1 transforaminal injection would not be related to a lumbar strain injury and not related to Petitioner's work accident. Petitioner's L3-S1 bilateral medial branch injections were not related to Petitioner's work accident. Petitioner may be a candidate for radiofrequency ablation to treat his degenerative condition, but it would not be related to the work injury. Dr. Shadid did not agree with Dr. Templin's recommendation of a lumbar spinal fusion at L4 to L5. There needs to be some sort of demonstration of a level of instability in order to say that there's a strong basis for a fusion. Dr. Shadid testified that at L4-L5, there was no definitive objective findings to state that doing a fusion at that level would be significantly better that at any other level. The EMG showed that there might have been more problems at L5-S1 than there were at L4-5. Dr. Shadid stated at the time of his examination, Petitioner was not ready to go through surgery. Dr. Shadid testified that performing surgery on a patient who only has subjective complaints

of pain is a dangerous thing to do. If the basis for surgery is Modic endplate changes, it does not meet the natural guidelines or ODG standard recommendations. It does not meet the scientific criteria for a fusion. Petitioner did not have instability at any level in his lumbar spine. Modic changes would not be caused by a horizontal force such as described by Petitioner (RX 3).

Petitioner has not worked since May 7, 2021 except for the few days of office work for Respondent. Petitioner testified he looked for other work. When asked where he applied, he responded stores, but they would not give him work. He applied to staffing companies. He could not recall the names, but they were close to where he lived. When he applied to jobs, he told them he had a 20-pound lifting restriction and that he felt pain and gets tired when he stands or sits. He told them that he can't lift a lot of weight. Petitioner testified he could not remember when he started applying for jobs but before two months ago.

Petitioner testified he is in pain in his low back whether he is sitting, standing, or walking. He has been feeling pins and needles in his glut area down his leg. he recently saw Dr. Templin who again recommended surgery. Petitioner testified he wanted to undergo the procedure.

Conclusions of Law

In support of the Arbitrator's decision with respect to (F) Causal Connection, the Arbitrator finds as follows:

A Workers' Compensation Claimant bears the burden of showing by a preponderance of credible evidence that his current condition of ill-being is causally related to the workplace injury. *Horath v. Industrial Commission*, 449 N.E.2d 1345, 1348 (Ill. 1983) citing *Rosenbaum v. Industrial Com.* (1982), 93 Ill.2d 381, 386, 67 Ill. Dec. 83, 444 N.E.2d 122). The Commission may find a causal relationship based on a medical expert's opinion that the injury "could have" or "might have" been caused by an accident. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 182, 457 N.E.2d 1222, 1226, 75 Ill. Dec. 663 (1983). However, expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's work duties and his condition of ill-being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63, 442 N.E.2d 908, 911, 66 Ill. Dec. 347 (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839, 639 N.E.2d 886, 892, 203 Ill. Dec. 327 (1994). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205 (2000). The accident need not be the sole or principal cause, as long as it was a causative factor in a claimant's condition of ill-being. *Lopez v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130355WC-U, P25 (Ill. App. Ct. 3d Dist. 2014).

The current dispute is whether the recommended lumbar treatment including an L4-5 fusion is reasonable, necessary, and causally connected to the work accident. Petitioner was working full duty without restrictions up to the date of the accident. This job was in the Medium physical demand level per the FCE. Thereafter, he began a continuous course of medical treatment with physical therapy, injections, multiple diagnostics without resolution of his low back symptoms. The Arbitrator notes that the November 2021 report of Dr. Shadid includes Petitioner stating he had prior back pain with physical therapy 4 years prior. No records of this condition or any records of ongoing pain, medical care, or disability from that date to the date of accident was presented. All medical providers confirm that there is a degenerative component to Petitioner's low back condition. But the undisputed facts are that he performed his work without difficulty up to the date of accident

and has been either disabled or placed on light duty restrictions thereafter. The Arbitrator therefore considered the chain of events.

Petitioner initially treated at Alexian Brothers Amita Health on May 7, 2021. The Amita records include a diagram where right sided low back pain and upper hip area is indicated by drawing and handwritten notes. X-rays of the hip and low back were negative for fracture. There were multilevel arthritic changes in the lumbar spine. Petitioner was diagnosed with a low back sprain and contusion to the right gluteal and hip area. He was placed on a 20 pound restriction. He then followed with Dr. Lipov at ION. He was diagnosed with cervicalgia, right shoulder pain, right trapezius pain, right flank and low back pain, and right hip pain. The May 21, 2021 lumbar MRI showed changes at multiple levels; most significant at L4-5 and L5-S1. Dr. Lipov stated the MRI revealed lumbar degenerative disc disease and L4-5 disc herniation with severe bilateral neural foraminal narrowing. He performed an L4-5 ESI.

The right shoulder MRI revealed degenerative changes to the AC joint causing impingement. A partial tear of the supraspinatus, abnormal signals raising the possibility of a glenoid labral tear. Petitioner saw Dr. Tu for his shoulder. He had an injection and reported that the shoulder symptoms had resolved.

On June 2, 2021, Dr. Shadid diagnosed Petitioner with multilevel degenerative lumbar spine disease. Dr. Shadid opined that Petitioner's complaints were not related to the May 7, 2021 accident but rather to a degenerative spine which was pre-existing. Petitioner sustained a lumbar strain which had resolved. Petitioner was at maximum medical improvement, capable of full duty work, and that no additional treatment was necessary

Dr. Lipov stated Petitioner would be a candidate for facet injections and a possible radiofrequency ablation. He reviewed Dr. Shadid's report and stated that he agreed that Petitioner has a pre-existing degenerative spine, but he believes he had an exacerbation following the injury. Petitioner was referred for an EMG which noted an abnormal test with bilateral L5 and right S1 radiculopathy. On August 20, 2021, Dr. Cary Templin recommended a fusion of the L4-L5 level. Dr. Templin disagreed with Dr. Shadid's opinion that this was a lumbar strain. He stated the condition was related to the injury.

On November 10, 2021, Dr. Shadid's physical examination was completely negative. Dr. Shadid comments on inconsistencies noted. He opined that the treatment was not necessary or related to the May 7, 2021 accident, including the recommended lumbar fusion. He does not find the prescription medications, or the EMG were reasonable or necessary. He does not feel Petitioner is a candidate for a fusion. He maintains his prior opinion that Petitioner was at MMI and able to return to full duty work.

Dr. Templin and Dr. Shadid testified by evidence deposition defending their conflicting opinions on Petitioner's current diagnosis, necessary treatment, and causation of the condition.

It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406-07, 459 N.E.2d 963, 76 Ill. Dec. 828 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041, 721 N.E.2d 1165, 242 Ill. Dec. 634 (1999). Expert testimony shall be weighed like other evidence with its weight determined by the character, capacity, skill, and opportunities for observation, as well as the

state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v. Industrial Commission*, 309 Ill. 91, 138 N.E. 211 (1923). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, 960 N.E.2d 587, 355 Ill. Dec. 705. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.*, 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87, 274 Ill. Dec. 284 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue, but may look 'behind' the opinion to examine the underlying facts.

Not only may the Commission decide which medical view is to be accepted, it may attach greater weight to the opinion of the treating physician. *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill.2d 1, 31 Ill. Dec. 789, 394 N.E.2d 1166 (1979); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225, 168 Ill. Dec. 756, 590 N.E. 2d 78 (1992).

Having heard the testimony and reviewed the medical records and deposition testimony, the Arbitrator finds the opinions of Dr. Templin, supported by Dr. Lipov, more persuasive. The Arbitrator finds Petitioner's testimony that he was pain free before the accident credible and unrebutted. He has advanced consistent complaints in the low back and right lower extremity thereafter. No evidence of inconsistent behavior has been presented. The Arbitrator finds Dr. Shadid's "inconsistencies" unpersuasive and simply a collection of his own negative findings and questioning of Petitioner. He states the lumbar sprain would resolve in 6 weeks, so the fact that Petitioner continues to advance symptoms is an inconsistency. He has no explanation for ongoing complaints since his own diagnosis does not explain the current situation. He then concedes that Petitioner may be a candidate for radiofrequency ablation to treat his degenerative condition, but it would not be related to the work injury. His opinions do not refute the aggravation of the pre-existing degenerative condition which is now symptomatic and in need of ongoing care.

The Arbitrator notes that Petitioner also advanced complaints in the right shoulder about a week after the accident at his first visit to ION. He was treated by Dr. Chunduri and Dr. Tu with an injection and therapy. His symptoms resolved and he was released at MMI by Dr. Tu. The Arbitrator finds this condition causally related based upon the medical records and chain of events.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that his current condition of ill-being in the right shoulder and lumbar spine is causally connected to the accidental injuries sustained on May 7, 2021.

In support of the Arbitrator's decision with respect to (J) Medical, the Arbitrator finds as follows:

Under section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are necessary to diagnose, relieve, or cure the effects of his injury. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165, 351 Ill. Dec. 63 (2011)*. Based upon the Arbitrator's finding with respect to Causal Connection, reasonable & necessary treatment for Petitioner's condition of ill-being would be compensable. Petitioner has submitted unpaid bills contained in the medical records as follows:

1.	Illinois Orthopedic Network		$32,443.58
2.	Premium Healthcare Solutions/Molecular Imaging		$2,500.00
3.	La Clinica		$23,000.00
4.	Metro Anesthesia Consultants		$3,210.13
5.	ATI Physical Therapy		$2,542.93
6.	Midwest Specialty Pharmacy		$10,473.46
7.	QMed Assist Inc.		$5,239.85
8.	Hinsdale Orthopedics		$205.00
		TOTAL:	$79,614.95

Respondent's payments reflected in RX 1 are noted in the billing. The billing submitted is not reduced by fee schedule or negotiated rate.

Having reviewed the medical records and bills, the Arbitrator, relying on the persuasive opinions of Dr. Templin and Dr. Lipov, finds the medical treatment and billing reasonable, necessary, and causally related.

Based upon the record as a whole and the Arbitrator's finding with respect to Causal Connection, the Arbitrator finds that Respondent shall pay reasonable and necessary medical services of $79,614.95 as detailed above, as provided in Sections 8(a) and 8.2 of the Act.

In support of the Arbitrator's decision with respect to (K) Prospective Medical, the Arbitrator finds as follows:

Dr. Templon has recommended Petitioner undergo surgery consisting of an L4-5 fusion. Although Dr. Lipov suggested radiofrequency ablation, Petitioner has continued treatment with Dr. Templin and testified that he is now willing to undergo the suggested fusion. As more fully addressed above in the Arbitrator's finding with respect to Causal Connection, the Arbitrator finds the opinions of Dr. Templin persuasive and finds the proposed surgery is reasonable, necessary, and causally related to the accident.

Based upon the record as a whole, the Arbitrator finds that Respondent shall authorize and pay for additional reasonable and necessary treatment consistent the recommendations of Dr. Templin including an L4-5 discectomy and fusion, any post operative treatment, physical therapy, or other reasonable and necessary care.

In support of the Arbitrator's decision with respect to (L) Temporary Compensation, the Arbitrator finds as follows:

Temporary compensation is provided for in Section 8(b) of the Workers' Compensation Act, which provides, weekly compensation shall be paid as long as the total temporary incapacity lasts, which has interpreted to mean that an employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. The dispositive test is whether the claimant's condition has stabilized, i.e., reached MMI. *Sunny Hill of Will County Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To be entitled to TTD benefits a claimant must prove not only that he did not work but that he was unable to work. *Freeman United Coal Min. Co. v. Indus. Comm'n*, 318 Ill. App. 3d 170, 175, 741 N.E.2d 1144, 1148 (2000). Based upon the Arbitrator's findings with respect to Causal Connection and Prospective Medical, the Petitioner has not yet reached MMI.

Immediately following the May 7, 2021 accident, Petitioner was placed on restricted duty. Respondent offered such work to Petitioner, and he testified that he worked in the office for several days. The wage records offered (RX 2) note work through the week of May 30, 2021. While Petitioner worked less than 40 hours per week during that time, he testified he missed time due to pain, but was not taken off work completely by his medical providers until he was taken off work by Dr. Chunduri on May 26, 2021. No evidence was presented that these reduced hours were the result Respondent offered him less than full time work, rather than his own choice to not show up due to pain without medical authorization, and therefore any claim for temporary total disability or temporary partial disability from May 7, 2021 through May 25, 2021 is denied.

Thereafter, Petitioner was either taken completely off work or placed on restrictions that Respondent no longer accommodated through the date of hearing on June 9, 2022. Petitioner is entitled to temporary total disability for this period.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he is entitled to temporary total disability commencing May 26, 2021 through June 9, 2022, a period of 53 4/7 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC029906
Case Name	Dylan Baumann v. Urban Elevator
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0081
Number of Pages of Decision	11
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Mark Lee
Respondent Attorney	Michael Milstein

DATE FILED: 2/22/2023

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Dylan Baumann,

Petitioner,

vs. NO: 20 WC 29906

Urban Elevator,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 22, 2022, is hereby affirmed and adopted.

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

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $9,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 22, 2023

MP:yl
o 2/16/23
68

/s/ *Marc Parker*
Marc Parker

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC029906
Case Name	BAUMANN, DYLAN v. URBAN ELEVATOR
Consolidated Cases	
Proceeding Type	19(b) & 8(A) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Mark Lee
Respondent Attorney	Michael Milstein

DATE FILED: 6/22/2022

/s/Elaine Llerena, Arbitrator

Signature

INTEREST RATE WEEK OF JUNE 22, 2022 2.39%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

Dylan Baumann
Employee/Petitioner

v.

Urban Elevator
Employer/Respondent

Case # **20** WC **029906**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **February 25, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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 **What is the nature and extent of the injury?**

FINDINGS

On the date of accident, **November 3, 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 $**121,617.60**; the average weekly wage was $**2,338.80**.

On the date of accident, Petitioner was **26** years of age, ***single*** with **0** dependent children.

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

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

Respondent is entitled to a credit of $**2,852.93** under Section 8(j) of the Act.

ORDER

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

Respondent shall authorize and pay for prospective medical care in the form of the right shoulder arthroscopy ordered by Dr. Alpert.

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.

Elaine Llerena

Signature of Arbitrator

June 22, 2022

ICArbDec19(b)

STATEMENT OF FACTS:

On November 3, 2020, Petitioner worked for Respondent as an elevator mechanic (T. 9) Petitioner's duties included removing old and installing new elevator equipment. *Id.*

Petitioner testified that on November 3, 2020, he and his apprentice were installing a new door operator, which had all the equipment attached to it; and was about 8 feet long. (T. 11) Petitioner was on top of the elevator, holding the door operator on about a quarter-inch lip. (T. 11-12) The apprentice moved the door operator to put a bolt in, shifting the door operator's weight, knocking the door operator off the quarter-inch lip and "throwing the weight down". (T. 12) The weight shift of the door operator threw Petitioner off-balance, and he fell off the elevator. *Id.* Petitioner fell about 2 feet forward over his apprentice, "head over my feet, kind of onto an arm like outstretched down to the floor" and heard a crunch/pop in his shoulder. *Id.* Petitioner stated it felt like his shoulder came out of the socket and popped back in when he hit the floor. *Id.* Petitioner notified Respondent of the accident the same day. (T. 13).

On November 3, 2020, Petitioner sought treatment at Advocate Sherman Hospital. (PX1) Before going to the hospital, Petitioner went home to get his then fiancée. (T. 31) Petitioner arrived at the hospital about 2.5 hours after his incident. (T. 30-31) At the emergency room, Petitioner reported that he fell on his shoulder at work. (PX1, pg. 8) Petitioner testified he had pain, stiffness, and swelling in his right shoulder after the accident. (T. 16) The right shoulder x-rays showed no evidence of fracture or dislocation. (PX1, pgs. 8-9). Petitioner was diagnosed with a right shoulder rotator cuff injury. (PX1, pg. 9) Petitioner was told to follow up with an orthopedic doctor and did so after his wedding. (T. 33-34) Petitioner testified he had planned on taking Friday off for his wedding and decided to take Wednesday and Thursday off to try and recover. (T. 15) Petitioner was given naproxen. (PX1, pg. 8) Petitioner testified that after November 3, 2020, and leading up to his wedding, he had pain, a little swelling and stiffness in his shoulder. (T. 16)

Baylee Baumann, Petitioner's wife, testified that on November 3, 2020, Petitioner came home and immediately told her that he had gotten hurt at work and asked her to look at his shoulder. (T. 58) Mrs. Baumann noticed that when Petitioner moved, he grimaced in pain and the shoulder seems sore. *Id.* Mrs. Baumann testified that she and Petitioner went to the hospital that night and further testified that Petitioner did not work the rest of the week. *Id.*

Mrs. Baumann testified that from November 3, 2020, until her wedding night four days later, Petitioner kept trying to not move his right shoulder much and did a lot of protective posturing; "he didn't want to move his hand---or his arm." (T. 59)

Rene Hertsberg was the Chief Financial Officer (CFO) and General Counsel at Urban Elevator on November 3, 2020 (T. 69) Mr. Hertsberg had the ultimate responsibility for the company's financial, legal, Human Resources, Work Comp Claims, and insurance claims. *Id.* He testified that if someone was hurt at work, he was notified. *Id.* Mr. Hertsberg stated that if there was a workplace incident, it was typically reported to the technician's supervisor and the supervisor would inform him if a claim needed to be processed or something needed to happen. (T. 70) After being notified, Mr. Hertsberg would contact the injured worker. *Id.*

Mr. Hertsberg testified that he was notified of Petitioner's accident on November 3, 2020. (T. 70-71) Ms. Pecoraro, the project manager at the time, told Mr. Hertsberg that Petitioner fell off an elevator cart top and hurt his shoulder. (T. 71) Mr. Hertsberg then spoke with Petitioner who told him that his shoulder was a little bit sore. (T. 72) Mr. Hertsberg told Petitioner to go seek treatment and let him know if he could be of any help. *Id.* Mr. Hertsberg did not hear from Petitioner again on November 3, 2020, or the rest of the week. (T. 72-73) At

the end of the day on November 3, 2020, Ms. Pecoraro told Mr. Hertsberg that Petitioner's scans were all clear and he was a little sore. (T.73) She also told him Petitioner was taking the rest of the week off for his wedding. *Id.*

Petitioner's wedding took place on November 7, 2020. (T. 15) Petitioner testified that at his wedding, while dancing with his wife, he went to twirl her, and when she pulled on his outstretched arm, his shoulder popped out of the socket. (T. 17) Petitioner testified that he began drinking at 4:00 p.m. and had about 10 scotches before the incident. (T. 35-36) Petitioner indicated that everything went black after the incident. (T. 39) He stated he didn't "recall telling anybody anything" about his incident because "he was not with it." *Id.*

The Baumanns demonstrated what they were doing when they were dancing at trial. (T. 60-61) Mrs. Baumann testified that Petitioner took her hands, then they stepped away from each other and she let go of Petitioner's left hand. (T. 61) Mrs. Baumann explained that Petitioner pushed her out and then pulled her back in and she turned away from Petitioner. *Id.* Mrs. Baumann testified that after this dance maneuver, she turned back around and noticed Petitioner had taken his left hand and braced his right arm; "he was kinda bent over at the waist. And then we had immediately gotten him a chair." *Id.*

Petitioner went to the Mercy Hospital Emergency Room where they put his shoulder back in. (PX2) Per the emergency department notes, Petitioner reported that he "was dancing at a wedding and fell down on his right arm and now is having shoulder pain." *Id.* The medical records indicate Petitioner had a history of shoulder pain. *Id.* Petitioner testified that his wife answered the questions at Mercy Hospital. (T. 39) However, per the records, Petitioner told the hospital staff he had consumed 10+ drinks and was still able to answer the physician's questions. (PX2) Petitioner was diagnosed with a right shoulder dislocation. *Id.*

Petitioner began treating with Dr. Joshua Alpert on November 11, 2020. (PX4) Petitioner reported to Dr. Alpert that he was "2 feet up when he fell off the top of the elevator cart and landed on his shoulder and heard a crunch/pop." *Id.* He also reported he thought his shoulder may have slid in and out of the socket on its own. *Id.* Petitioner further reported he dislocated his shoulder four days ago at his wedding when he "was just pulling his wife up and the ball popped out." *Id.* Dr. Alpert noted that Petitioner had not had any problems with his right shoulder before and noted that Petitioner fell directly onto his right shoulder where the ball popped in and out of the socket, and then, while pulling his wife at a wedding a few days later, Petitioner's shoulder completely dislocated. *Id.* Dr. Alpert diagnosed Petitioner as having instability of the right shoulder. *Id.* Dr. Alpert opined that, given the lack of prior problems with the right shoulder, Petitioner's condition was consistent with a work-related shoulder subluxation and labral tear which occurred on November 3, 2020. *Id.* Dr. Alpert ordered physical therapy and an MRI arthrogram of the right shoulder, kept Petitioner in a sling and released Petitioner to return to work with no lifting with the right upper extremity. *Id.*

Mr. Hertsberg testified he next spoke with Petitioner on November 11, 2020, when Petitioner asked for the claim number on his workers' compensation claim. (T. 74-75) Mr. Hertsberg told Petitioner he was not aware there was a workplace injury and therefore had not created a workers' compensation claim number. (T. 75) Mr. Hertsberg did not file a workers' compensation claim earlier because he was not aware it rose to the level of a workers' compensation injury. (T. 76)

The MRI arthrogram was taken on December 24, 2020, the results of which showed a Hill Sachs lesion of the humeral head, an anterior-inferior labral tear, and partial-thickness tear of the anterior band of the inferior glenohumeral ligament near the glenoid attachment. (PX3)

Petitioner attended physical therapy from March 2, 2021, through April 15, 2021. (PX5)

On March 31, 2021, Petitioner saw Dr. Nikhil Verma for an independent medical examination (IME), at Respondent's request, pursuant to Section 12 of the Act. (RX1, EX2) Petitioner told Dr. Verma he was working on an elevator and fell approximately 2 feet. *Id.* He reported he landed on his right side and felt a crack or crunch. Id. Dr. Verma reported Petitioner did "not indicate any frank dislocation." *Id.* Dr. Verma reviewed November 3, 2020, emergency room records and x-ray which showed no fracture or dislocation. *Id.* Dr. Verma noted Petitioner said he was having minimal pain, minimal swelling, no numbness or tingling, and there was no complaint of dislocation at the emergency room. *Id.* Dr. Verma also noted that on November 7, 2020, Petitioner was "twirling his wife and she pulled traction on his arm and it slipped out of place." *Id.* Dr. Verma also reviewed the December 24, 2020, MRI and noted that it showed an anterior labral tear but that the rotator cuff appeared to be intact. *Id.* Dr. Verma found that Petitioner sustained a secondary injury on November 7, 2020, which resulted in a complete shoulder dislocation. *Id.* Dr. Verma explained that the mechanism of injury on November 7, 2020, was a competent mechanism for shoulder instability. *Id.* Dr. Verma opined that the November 7, 2020, right shoulder dislocation was not related to the November 3, 2020, work accident. *Id.* Dr. Verma noted that on November 3, 2020, there was no evidence of shoulder instability and that he sustained a contusion with preliminary diagnosis of a possible rotator cuff tear. *Id.* There was no description by Petitioner of any type of transient subluxation or dislocation mechanism. *Id.* Dr. Verma opined that, in the absence of any clear instability event on November 3, 2020, the November 7, 2020, incident represented a separate and distinct injury resulting in the shoulder dislocation. *Id.* Dr. Verma further opined that there was no causal relationship between Petitioner's current right shoulder condition and the November 3, 2020, work accident. *Id.* Dr. Verma determined that subsequent treatment to Petitioner's shoulder after the November 3, 2020, emergency room visit was for the November 7, 2020, incident. *Id.* Dr. Verma agreed with the surgery recommendation, but found that it was related to the November 7, 2020, incident. *Id.* Dr. Verma found that Petitioner had reached maximum medical improvement (MMI) as to the November 3, 2020, work accident. *Id.*

Petitioner returned to Dr. Alpert on April 14, 20201. (PX4) Petitioner reported that his right shoulder felt as if it was going to give out. *Id.* Dr. Alpert noted that Petitioner had limitations in range of motion in the right shoulder. *Id.* Dr. Alpert recommended a right shoulder arthroscopic subacromial decompression, anterior-inferior labral repair with inferior capsular shift. *Id.* Dr. Alpert opined that Petitioner subluxated or potentially dislocated his shoulder and tore his labrum on November 3, 2020. *Id.* Dr. Alpert explained that the mechanism of injury where Petitioner was just pulling his wife up at the wedding would not be a competent mechanism for someone to dislocate their shoulder unless there was a pre-existing labral tear, a pre-existing Hill-Sachs lesion, which was the case with Petitioner. *Id.* Dr. Alpert further explained that the pulling of Petitioner's arm at a wedding is something commonly seen in patients who have inherent shoulder instability from previous labral tearing. *Id.* Dr. Alpert opined that Petitioner's right shoulder conditions were work-related conditions. *Id.* Dr. Alpert continued Petitioner's right shoulder restrictions. *Id.*

On April 28, 2021, Dr. Alpert authored a narrative report of Petitioner's treatment and his opinions. (PX4) Dr. Alpert noted that on November 3, 2020, Petitioner fell directly on his shoulder, and he felt or heard a crunch and pop. *Id.* Dr. Alpert opined that at this time Petitioner likely tore his labrum and the shoulder dislocated or subluxated and reduced on its own, causing the shoulder to become unstable. *Id.* Dr. Alpert explained that Petitioner's subsequent injury on November 7, 2020, is an injury that commonly happens to someone who has a labral tear and a Hill-Sachs lesion, predisposing the shoulder to dislocate. *Id.* Dr. Alpert opined that the November 3, 2020, accident caused the tear which made his shoulder inherently unstable. *Id.* Dr. Alpert opined that, given the fact that Petitioner did not have any right shoulder problems prior to November 3, 2020, the accident on November 3, 2020, was a contributing factor to Petitioner's shoulder dislocation that occurred on November 7, 2020, and would make the subsequent dislocation injury on November 7, 2020, more likely. *Id.*

On May 18, 2021, Dr. Verma issued an IME addendum where he confirmed "[t]he mechanism of dancing in an intoxicated state with a traction injury to the arm would be sufficient to cause a shoulder dislocation absent any prior injury or event." (RX1, EX3) Dr. Verma's findings and opinions remained unchanged. *Id.*

Dr. Alpert's evidence deposition was taken on September 24, 2021. (PX4) When asked about his narrative report having multiple descriptions of the events at the wedding, Dr. Alpert acknowledged the multiple inconsistent histories and admitted that despite the events of the wedding being very important, he had no certainty as to what happened at the wedding. (*Id.* at 69-70) During Dr. Alpert opined that the November 2, 2020, work accident was at least a cause or contributing factor for a subsequent shoulder dislocation when Petitioner was pulling his wife at his wedding. (*Id.* at 47)

Dr. Verma's evidence deposition was taken on November 10, 2021. (RX1) Dr. Verma testified that he did not see any evidence of shoulder instability, subluxation or apprehension in the November 3, 2020, emergency room records. (*Id.* at 5) Dr. Verma opined that Petitioner sustained a shoulder dislocation because of the November 7, 2020, incident. (*Id.* at 6) Dr. Verma further opined that Petitioner's shoulder being pulled on was consistent with a traction event that would cause shoulder instability. Id. Dr. Verma defines "she pulled traction" as meaning one person is essentially pulling against the other. (RX1 at 5) Dr. Verma opined Petitioner had a secondary injury on November 7, 2020, "where he had a traction event on the arm with dancing with his wife in an intoxicated state" which "would be a competent mechanism for shoulder instability." (RX1 at 101)

Petitioner testified that his arm feels sore every day and when he wakes up, he can't move his shoulder full range, and can't rotate it back completely. (T. 21) Petitioner explained that sleeping on his right side causes constant pain and his right shoulder starts getting numb after about 15 minutes. (T. 21)

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

The Arbitrator notes that Petitioner fell and injured his right shoulder, leading to an emergency room visit on November 3, 2020. The Arbitrator notes that the emergency room records indicated that treaters at the emergency room suspected a tear in Petitioner's right shoulder on November 3, 2020. department opined that Petitioner suffered a rotator cuff tear.

The Arbitrator finds the findings and opinions of Dr. Alpert more persuasive than those of Dr. Verma regarding the issue of potential shoulder instability causing Petitioner's subsequent dislocation on November 7, 2020. Dr. Alpert opined that, due to Petitioner's lack of any right shoulder problems prior to November 3, 2020, it would be highly that Petitioner would dislocate his shoulder dancing and believes that there must have been a contributing factor like pre-existing shoulder instability. Dr. Alpert further explained that Petitioner's subsequent injury on November 7, 2020, is an injury that commonly happens to someone who has a labral tear and a Hill-Sachs lesion, predisposing the shoulder to dislocate. The Arbitrator notes that Dr. Verma admitted it was possible Petitioner suffered a subluxation event or suffered a labral tear on November 3, 2020. The Arbitrator finds Dr. Alpert's opinion that the shoulder instability Petitioner suffered on November 3, 2020, contributed to Petitioner's subsequent shoulder dislocation on November 7, 2020, persuasive and supported by the record.

Based on the above, the Arbitrator finds that Petitioner's current condition of ill-being regarding his right shoulder is causally related to the November 3, 2020, work accident.

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

The Arbitrator adopts her findings regarding causation in section (F) above. The Arbitrator notes that Dr. Verma did not question the reasonableness or appropriateness of Petitioner's right shoulder treatment.

Based on the above, Respondent is liable for all of Petitioner's medical treatment for the right shoulder pursuant to Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator adopts her findings regarding causation in section (F) above. The Arbitrator notes that Dr. Verma did not question the reasonableness or appropriateness of the recommendation for right shoulder surgery as made by Dr. Alpert.

Based on the above, Respondent shall authorize and pay for prospective medical care in the form of the right shoulder arthroscopy ordered by Dr. Alpert, pursuant to Sections 8(a) and 8.2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC037848
Case Name	Martin L Moore v. Benchmark Construction
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0082
Number of Pages of Decision	23
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Steven Seidman
Respondent Attorney	Nicole Hanlon

DATE FILED: 2/24/2023

/s/Stephen Mathis, Commissioner

Signature

23IWCC0082

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARTIN MOORE,

Petitioner,

vs. NO: 14 WC 037848

BENCHMARK CONSTRUCTION,

Respondent.

DECISION AND OPINION ON REVIEW

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

Permanent Disability

The Commission views the evidence differently with respect to Section 8.1b(b) factor (iii).

(iii) the age of the employee at the time of the injury

Petitioner was 46 years old on the date of accident. Noting Petitioner will suffer the effects of his injury for the remainder of his working and natural life, the Arbitrator afforded significant weight to this fact. The Commission concurs that Petitioner's relatively young age means he will endure pain and disability from his accidental injury for an extended period. The evidence adduced at hearing demonstrates that Petitioner's disabilities range from chronic pain from his cervical injury (PX8), to PTSD, (PX18), and chronic post-traumatic headache (PX20).

This weighs heavily in favor of increased permanent disability.

Having weighed the evidence and analyzed the Section 8.1b(b) factors, the Commission finds Petitioner sustained a 32.5% loss of use of the person as a whole under Section 8(d)2.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary partial disability benefits of $132.07 a week for 33 3/7 weeks, commencing April 6, 2015, through November 25, 2015, as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner directly for unpaid medical bills as outlined in Petitioner's exhibits 1-16 and 19 as provided in Section 8(a) of the Act for Petitioner's post-concussion disorder, post-traumatic headaches, and post-traumatic stress disorder as well as Petitioner's cervical spine (the latter of which is limited to dates of service October 14, 2014, through and including November 25, 2015) for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $735.37 per week for a period of 162.5 weeks, as provided in §8d1 of the Act, for the reason that the injuries sustained caused the loss of 32.5% loss of use of the person as a whole

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $50,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 24, 2023

SJM/msb
o-01/11/2023
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC037848
Case Name	MOORE, MARTIN v. BENCHMARK CONSTRUCTION
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Steven Seidman
Respondent Attorney	Nicole Hanlon

DATE FILED: 2/28/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUAARY 23, 2022 0.71%

/s/ Rachael Sinnen, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Martin Moore
Employee/Petitioner

v.

Benchmark Construction
Employer/Respondent

Case # **14** WC **037848**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **11.19.21**. 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 **"relatedness of prospective medical"**

FINDINGS

On **10.11.14**, 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 $**114,141.04**; the average weekly wage was $**2195.02**.

On the date of accident, Petitioner was **46** years of age, ***single*** with **2** dependent children.

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

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

Respondent shall be given a credit of $**33,526.75** for TTD, $**1,684.49** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**35,211.24**.

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

ORDER

Respondent shall pay Petitioner temporary partial disability benefits of $132.07 a week for 33 3/7 weeks, commencing April 6, 2015, through November 25, 2015, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner directly for unpaid medical bills as outlined in Petitioner's Exhibits 1-16 and 19 as provided in Section 8(a) of the Act for Petitioner's post-concussion disorder, post-traumatic headaches, and post-traumatic stress disorder as well as Petitioner's cervical spine (the latter of which is limited to dates of service October 14, 2014, through and including November 25, 2015).

Respondent shall pay Petitioner permanent partial disability benefits of $735.37 a week for 137.5 weeks because the injuries sustained caused the 27.5% loss of use of the person as a whole, as provided in Section 8d1 of the Act. See Conclusions of Law for Arbitrator's considerations under §8.1b(b) of the Act.

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

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

Signature of Arbitrator

FEBRUARY 28, 2022

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Martin Moore,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 14WC037848
Benchmark Construction	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on November 19, 2021, in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing. Issues in dispute include causation, medical bills, temporary partial disability "TPD" benefits, nature & extent of the alleged injury (wage differential) and credit for medical bills paid. Arbitrator's Exhibit "Ax" 1.

Petitioner Martin Moore was 46 years old on October 11, 2014. (AX1.) He was working for Respondent as an operating engineer. (T 9.) Petitioner was a "tunnel hand," digging deep shafts and performing deep tunnel work. (T 9.) Their main shaft was 350 feet deep. (T 9.) The tunnel work was performed by excavators, backhoes, rubber tire loaders, mainly heavy equipment of that sort. (T 10.) Prior to October 11, 2014, Petitioner had worked with Respondent for six to eight years. (T 9-10.)

Prior to October 11, 2014, Petitioner had never had any treatment for his neck, his back, his head, or for any concussion disorders. (T 10.) Prior to that date, he had had no reason to have such treatment. (T 10.)

October 11, 2014 was a Saturday. (T 10.) Petitioner was working an overtime day setting 28-inch pipe in a 30-foot-deep shaft. (T 10-11.) They used a machine called a jack leg to set the pipe, but then Petitioner had to remove the dirt from inside of the pipe using a smaller machine that he ran. (T 11.) This dirt was then loaded into a bucket and the bucket was removed from the shaft using a backhoe, then loaded into a truck. (T 11-12.) There was no cover protecting the workers when dirt was being lifted out of the shaft—they simply had to hug the wall of the shaft. (T 11.) Petitioner was wearing a helmet. (T 14.) The backhoe operator began lifting a bucket of dirt above the workers, taking it out of the shaft. (T 12.) Suddenly, Petitioner felt a very sharp pain in his head and neck. (T 15.) Petitioner blacked out. (T 12.)

Petitioner was transported to Mount Sinai Hospital by ambulance, where he was admitted to the emergency room. (T 17.) Petitioner's Emergency Department Trauma History and Physical dated October 11, 2014, states that a large piece of clay fell 25 feet onto Petitioner's head at work. (PX2.) Petitioner reported that he was dizzy and that he thinks he blacked out after the impact. (PX2.) Initial comments in the report read: "brought by CFD heavy object fell hit head c/o LOC headache." (PX2.)

Petitioner remained at Mount Sinai Hospital until October 15, 2014. (T 17.) During the course of his stay, Petitioner complained of headaches and back pain at 10/10, neck pain at 8/10 radiating down his spine, ear pressure, vertigo, blue objects floating in his field of vision, blurred vision in his left eye, tingling in his left upper extremity and on the left side of his face, numbness in the median nerve distribution of his left hand that had been constant since the accident, periodic numbness in his right hand, and dizziness when standing. (PX2.)

A coworker visited the hospital and delivered Petitioner's work helmet to Petitioner's wife. (T 16.) Petitioner testified that Petitioner's Exhibit 23 was this same helmet which he was wearing at the time of the accident. (T 15.) Petitioner testified that the helmet could withstand 500 psi of pressure before cracking. (T 15.) Petitioner testified that his helmet was cracked through and through, with a crack reaching from the outside through to the inside. (T 15-16.) Petitioner was informed that it was a clay brick weighing approximately 80-85 pounds and falling at one pound-mile-hour that struck him. (T 16-17; PX2.) During trial, Petitioner was shown the helmet he was wearing at the time of the accident. The Arbitrator observed a crack on the front of the helmet consistent with Petitioner's testimony.

A CT scan of the thoracic spine revealed a linear translucency at T10 raising the question of an incomplete fracture, though the radiologist felt that it was most likely old. (PX2.) An MRI of the cervical spine revealed mild to moderate degenerative joint disease of the cervical spine with central stenosis and foraminal narrowing at multiple levels. (PX2.) A CT scan of the brain revealed no skull fracture, intracranial hemorrhage, mass effect, or midline shift. (PX2.)

Petitioner was discharged on October 15, 2014, with the following diagnoses: a head injury with loss of consciousness, left occipital pulsatile headaches, light-headedness, vertigo, and likely post-concussion syndrome; and spinal injury with neck pain, mid-back pain, and paresthesia in the left hand. (PX2.) Dr. Amir Vafa opined that the paresthesia likely resulted from an acute event aggravating chronic degenerative changes in Petitioner's spine. (PX2.) Petitioner was prescribed Flexeril for his muscle spasms and Norco and Dilaudid for pain management, was provided with a c-collar and a walker and was released home in the care of his wife with instructions to follow up at the trauma clinic. (PX2.)

On October 20, 2014, Petitioner visited his primary care physician Dr. Frank Donatello complaining of neck pain and headaches. (PX4; PX8.) Petitioner complained of frustration with remaining at home. (PX4.) Dr. Donatello assessed Petitioner with post-concussion syndrome; Dr. Donatello recommended that Petitioner book a psychiatric appointment. (PX4.)

On October 21, 2014, Petitioner had his initial evaluation at Flexeon Rehabilitation. (PX6.) He was put on a 6-week program attending PT 2-3 times per week. (PX6.) Physical therapist Naglaa

Elskenidy opined that Petitioner's physical therapy treatment plan was medically necessary. (PX6.)

On October 21, 2014, Petitioner was admitted to Silver Cross Hospital. (PX5.) He reported an episode of left-sided weakness and numbness in his left arm, left leg, and the left side of his face that morning, convincing him to visit the hospital. (PX5.) The symptoms largely abated after 15 minutes, though he was still experiencing numbness in both feet and on the left side of his face. (PX5.)

Petitioner was given a consult with Dr. Sreepathy Kannan. (PX5.) Petitioner reported that the morning prior, he felt pressure inside his head and then suddenly developed dizziness as well as weakness along the left side of his body, including his left arm, left leg, and the left side of his face. (PX5.) Petitioner reported that he had been experiencing constant headaches and dizziness since his work injury on October 11, 2014, and that he was still experiencing them at that time of examination. (PX5.)

Dr. Kannan performed a physical exam. (PX5.) Progress notes documented headaches, dizziness, and concentration difficulty on and off. (PX5.) Dr. Kannan stated that Petitioner's symptoms may be caused by his concussion but ordered an MRA brain scan and carotid doppler to rule out an active stroke. (PX5.) These test results ultimately returned normal, and Petitioner was discharged on October 23, 2014, with a diagnosis of "left-sided weakness and left-sided facial weakness and numbness mostly related to the history of the concussion," with instructions to rule out diagnoses of transient ischemic attack/cerebrovascular accident and deep vein thrombosis. (PX5.)

Petitioner continued to follow up with Dr. Donatello. (PX4.)

On November 6, 2014, Petitioner came under the care of Dr. Cary Templin at Hinsdale Orthopaedics complaining of significant neck pain extending into his left arm and hand at 6/10 with numbness, as well as ringing and popping in his ears. (PX8; T 18.) Petitioner reported his history of injury: he was operating a piece of heavy machinery without a cab on it when a back loader moving clay dropped some of the clay, hitting him directly in the head. (PX8.) Since that time, Petitioner had significant neck and lower back pain, headaches, paresthesia into his left arm and hand, and issues with short-term memory and confusion. (PX8.)

On physical examination, Petitioner exhibited tenderness to palpation diffusely about the neck, limited cervical range of motion, a positive Spurling maneuver on the left side, and diminished sensation in the central digits of the left hand. (PX8.) Dr. Templin reviewed Petitioner's cervical MRI, which he opined showed spondylotic change from C4 to C7 with significant left-sided neural foraminal stenosis at each level. (PX8.)

Dr. Templin diagnosed Petitioner with cervical spondylosis and overt myelopathy with potential radiculopathy extending to the left hand. (PX8.) Dr. Templin opined that Petitioner's condition "was likely aggravated by his work injury with an axial load to the head." (PX8.) Dr. Templin kept Petitioner off work. (PX8.) Dr. Templin ordered a lumbar spine MRI to assess his lower back with left leg pain. (PX8.) Dr. Templin also stated that it was imperative Petitioner follow

up with a neurologist. (PX8.) He referred Petitioner to Dr. Udit Patel at Pain and Spine Institute. (T 18.)

On November 19, 2014, Petitioner had his first visit with Dr. Patel. (PX15.) He complained of neck pain at 8/10 radiating to the shoulders bilaterally as well as down his left arm. (PX15.) He reported lower back pain with radiation into his thighs, night sweats, anxiety, and depression. (PX15.) Petitioner related his history of injury: Petitioner was unloading dirt at work when a piece of clay hit him in the head, causing loss of consciousness. (PX15.) His symptoms started after this incident. (PX15.)

On physical examination, Petitioner had a positive Spurling's sign on the left and positive straight leg raise tests bilaterally. (PX15.) Dr. Patel diagnosed Petitioner with cervical radiculitis and lumbar radiculitis. (PX15.) Dr. Patel sent out a request for Petitioner's records. (PX15.)

On December 1, 2014, Petitioner underwent a Section 12 examination with Dr. Zelby. (RX3; T 19.) Physical examination revealed diminished deep tendon reflexes bilaterally, diminished sensation to pinprick and vibratory sensation in both his left upper and lower extremities, and diminished strength in the hallux rigidus bilaterally, worse on the left. (RX3.) Dr. Zelby observed mild scoliosis. (RX3.)

Dr. Zelby opined that Petitioner did not sustain a loss of consciousness from the impact and that his concussion was therefore definitionally "minimal." (RX3.) Dr. Zelby opined that Petitioner's whole-left-side symptoms would be better explained by a brain injury than a spinal injury. (RX3.) Dr. Zelby diagnosed Petitioner with a concussion and post-concussion syndrome and opined that his symptoms would improve considerably over the coming months, with a projected full recovery of April 2015. (RX3.) Dr. Zelby recommended home exercise. (RX3.)

On December 1, 2014, Petitioner followed up with Dr. Templin. (PX8.) He reported continued neck and lumbar pain at 8/10 as well as headaches with head motion. (PX8.) Petitioner reported no significant benefit from physical therapy. (PX8.) On physical examination, Petitioner remained unchanged. (PX8.)

Dr. Templin reviewed Petitioner's lumbar MRI, which showed only mild degenerative change at L2-3. (PX8.) Dr. Templin opined that there was no lumbar compression to explain his lower back pain, and that given the predominance of his neck pain they would proceed with facet blocks and potentially epidural injections to see if they helped. (PX8.)

Petitioner continued to treat with Dr. Patel, consistently reporting neck pain, headaches, and lower back pain. (PX15.) On December 9, 2014, Dr. Patel prescribed Petitioner Gabapentin to help alleviate his neck pain. (PX15.)

On December 29, 2014, Petitioner underwent a second Section 12 examination, this time with Dr. Karen Levin. (RX4; T 19-20.) Dr. Levin opined that Petitioner described his history of injury "slightly differently than the records do." (RX4.) She recommended that he undergo neuropsychometric testing, an EMG of the left upper extremity, and a VNG to document any true disabilities in his left upper extremity, cognition, or vestibular system. (RX4.)

On January 8, 2015, Petitioner underwent an EMG/NCS test via Section 12 examination with Dr. Igor Rechitsky. (RX5.) The test disclosed moderately severe, and demyelinating left and right median neuropathies at the wrist without evidence of axonal loss. (RX5.) Although Dr. Rechitsky opined that he had found no electrodiagnostic evidence of cervical radiculopathy, he stated that EMG sensitivity for detection of cervical radiculopathy is moderate at best, and that mild cervical radiculopathy would go undetected by the procedure. (RX5.) Dr. Rechitsky further opined that cervical facet injections could be considered based upon the MRI findings of bilateral foraminal narrowing at C5-6 and C6-7 as well as the C6 and C7 segmental distribution of sensory symptoms in the left upper extremity. (RX5.)

Petitioner continued to treat with Dr. Templin, receiving a cervical epidural injection. (PX8.) On February 3, 2015, Petitioner returned to Dr. Templin with pain reports of 3-5/10, which Dr. Templin noted was an improvement. (PX8.) Dr. Templin opined that the cervical epidural steroid injection had helped Petitioner significantly, with only mild paresthesia to the right hand now. (PX8.) Dr. Templin recommended that Petitioner undergo another cervical epidural injection, potentially a facet injection, to be followed by physical therapy. (PX8.)

On February 5, 2015, Petitioner underwent a neuropsychological Section 12 examination with Robert Hanlon, PhD. (RX6.) Hanlon opined that Petitioner's head injury was nothing more than a mild concussion, and further opined that his effort on neuropsychological testing was questionable in part because of inconsistency between his VPA subtest results and "the effects of a minor concussion." (RX6.) Hanlon opined that all of Petitioner's cognitive and intellectual functions were within normal limits, but observed obsessive compulsive traits, histrionic personality features, anxiety, strong somatic reactivity, and strong tendencies for aggressiveness and proneness to anger. (RX6.) Hanlon opined that from a neuropsychological perspective, Petitioner was capable of returning to work full-time after 3-4 weeks of part-time work. (RX6.) He recommended a trial of antidepressants to facilitate that return to work. (RX6.)

On March 15, 2015, Dr. Levin authored an addendum to her Section 12; she stated that she had reviewed Dr. Rechitsky's report, Hanlon's report, and a VNG dated January 16, 2015. (RX7.) She opined that Petitioner had no neurologic disabilities and that he could return to work full duty from a neurological standpoint. (RX7.)

On March 16, 2015, Petitioner returned to Dr. Zelby for a second Section 12 examination. (RX8.) Petitioner reported that he was doing better than before, with a headache only 2-3 times a week at a 4-6/10 pain level with dizziness and light-headedness; constant pain in his neck at 4-6/10; constant numbness in his right third digit; and occasional tightness in his lower back after sitting for hours. (RX8.) Dr. Zelby opined that Petitioner had no radicular symptoms, that he required neither injections nor further physical therapy, that he had reached maximum medical improvement "MMI", and that he could return to work full duty. (RX8.)

Petitioner continued to attend physical therapy at Flexeon until March 27, 2015. (PX6.) On this date, Naglaa Elskenidy noted that tightness in Petitioner's neck and cervical/upper back region had improved and that Petitioner's side-bending mobility to the left side had improved as well. (PX6.) However, simultaneously, she noted that Petitioner remained functionally limited by more

than 50% in his head and neck, that he still exhibited loss of cervical mobility, that he was still experiencing headaches, and that he remained "unable to perform essential job duties." (PX6.)

On April 3, 2015, Petitioner underwent a medial branch block injection at C3, C4, and C5. (PX15.) The injection was noted to reduce Petitioner's pain by 75%. (PX15.)

On April 28, 2015, Petitioner returned to Dr. Templin complaining of pain at 4/10. (PX8.) Petitioner had received the additional injections, and Dr. Templin noted that the pain in his arms was "much better." (PX8.) Dr. Templin encouraged Petitioner undergo a radiofrequency ablation procedure, and in the meantime kept him on physical therapy. (PX8.)

Petitioner returned to working for Respondent on May 20, 2015. (PX21.)

On May 4, 2015, Petitioner underwent a radiofrequency ablation procedure at C3, C4, and C5 with Dr. Patel. (PX15.) Upon follow-up on June 16, 2015, Petitioner reported a 60% improvement in his axial pain. (PX15.)

On August 13, 2015, Petitioner returned to Dr. Templin. (PX8.) He reported that he was doing well, with paresthesia to his right arm in the C6 and C7 distributions, but with neck pain at only 2/10. (PX8.) On examination, Spurling maneuver remained positive on the right. (PX8.) Petitioner reported that he had opted not to proceed with surgery; Dr. Templin stated that therefore, from a surgical perspective, Petitioner was at maximum medical improvement. (PX8; T 22.) She instructed Petitioner to return to her as needed and opined that surgery would be a reasonable treatment for his paresthesia should he change his mind. (PX8.)

Petitioner testified that he ultimately opted not to proceed with the proposed neck surgery because it was scary. (T 21-22.) Thinking about the surgery still terrifies him. (T 22.) He has a family and two young children. (T 22.) Petitioner also testified that he is concerned about the safety implications of the surgery for his coworkers; operating heavy machinery, it's important to be able to quickly swivel your head and stop the machine from making certain moves. (T 22.)

On return to Dr. Patel on September 1, 2015, Dr. Patel opined that Petitioner would need chronic pain management for the rest of his life. (PX15.)

On November 20, 2015, Petitioner left his employ with Respondent to work for the Midwest Operating Engineers Union as a business agent organizer. (T 26.) Petitioner worked for the Union until April 30, 2018. (PX21; T 26.) Petitioner left because he couldn't think on his feet as fast as he needed to anymore. (T 27-28.)

On November 25, 2015, Petitioner returned to Dr. Patel reporting neck pain of moderate intensity and symptoms essentially unchanged from his prior visit. (PX15.) Dr. Patel put Petitioner at MMI for his neck and discharged him with instructions to use Norco sparingly as needed. (PX15.)

Petitioner went two years living with his symptoms without further treatment. (T 22-23.) Petitioner was experiencing headaches, claustrophobia, fear, and mind-blowing levels of stress. (T 23.) Petitioner testified that he felt like he was in a fog all the time. (T 24.) Petitioner

couldn't stand up too fast or lean backwards or he would get light-headed and dizzy, losing his balance. (T 24.) Petitioner explained that, as an ex-athlete, he was very frustrated with his condition. (T 24.) Petitioner testified that his pain caused him to become very temperamental with his wife. (T 24.) Petitioner's wife suggested that he see someone and get help. (T 23.)

Petitioner began to treat with Dr. Stephen Rothke, a neuropsychologist, beginning with an evaluation on April 20, 2017. (T 24-25.) Petitioner was referred by Dr. Donatello. (PX17.) Dr. Rothke documented a conversation with Petitioner's wife, who stated that Petitioner was "not the guy I married" since his accident. (PX17.) She related that prior to the accident, Petitioner had been outgoing, very active, and witty; post-accident, Petitioner became irritable and introverted, with frequent headaches and noticeably reduced short-term memory. (PX17.) Petitioner's wife stated that Petitioner now sweats excessively during sleep and occasionally has violent dreams. (PX17.)

Petitioner himself reported throbbing pain in his neck and back, with throbbing and pounding headaches, reduced concentration, forgetfulness, inability to sleep more than four hours at a stretch, waking up in a cold sweat at night, and remembering 8 to 9 nightmares per month. (PX17.)

Dr. Rothke conducted a battery of tests. On the WAIS-IV, Petitioner scored in the borderline-impaired range for working memory (attention and concentration), mildly impaired arithmetic reasoning and attention span for digits. (PX17.) He scored in the impaired range on the BTA, which tests for divided attention. (PX17.) He tested moderately impaired for visual memory on the BMVT-R. (PX17.) The WCST, measuring simple conceptual reasoning and ability to shift problem-solving strategies, revealed markedly impaired performance. (PX17.)

Dr. Rothke opined that Petitioner's headaches and neck pain, poor mood, and sleep disruption are most likely what accounted for Petitioner's changes in concentration and memory. (PX17.) Dr. Rothke opined that Petitioner was suffering from adjustment disorder with mixed anxiety and depressed mood. (PX17.) He opined that Petitioner should begin a trial of antidepressants and that he should begin a trial of cognitive behavioral therapy. (T 25; PX17.)

In August 2017, Petitioner began to see Dr. Leonard Elkun, a psychiatrist, whom he treated with for four sessions over the following two months. (T 23; PX18.) On September 28, 2017, Dr. Elkun wrote a letter documenting Petitioner's psychological treatment and his own opinions with respect to Petitioner's condition. (PX18.) Dr. Elkun wrote that Petitioner returned to work light-duty after his work accident, but that after a few months Petitioner was encouraged to return to work on heavy machinery. (PX18.) Petitioner reported being filled with fear and apprehension every time he had to work on heavy machinery from that point forward. (PX18.) He was filled with dread coming to work, though he forced himself to do so anyway for financial reasons. (PX18.) Petitioner found himself constantly checking for falling objects, fearful of a repeat episode. (PX18.) Petitioner replayed the accident in his mind constantly. (PX18.) Dr. Elkun wrote that Petitioner has had less fear and anxiety since leaving Respondent's employ, but that he still suffers from persistent fears, daydreams, nightmares, and flashbacks of his work accident and that he avoids heavy machinery and pits at all costs. (PX18.)

Since the accident, Petitioner had become "seriously hypervigilant" about danger both on and off the job site. (PX18.) Petitioner reported that his personality had changed from happy and outgoing to irritable and impatient. (PX18.) He now avoided social interactions with family and friends, preferring to be alone. (PX18.) Dr. Elkun wrote:

> Based upon my 4 evaluations of Mr. Moore, it is my strong opinion that he is suffering with signs and symptoms of Post-Traumatic Stress Disorder (F43.12). Mr. Moore has been evaluated by two psychologists, both having been hired by the insurance company to do an IME, and not surprisingly or unexpectedly both found him to be maximizing his disability, and presenting an inconsistent story, and neither diagnosed him with the obvious disorder he is suffering.

(PX18.) Dr. Elkun opined that Petitioner suffers from PTSD as a direct result of his work-related injury of October 14, 2014. (PX18.)

On December 24, 2019, Petitioner returned to Dr. Templin reporting continued pain in his neck and arms with numbness and tingling, particularly his right radial digits. (PX8.) Dr. Templin assessed Petitioner with worsening radicular symptoms and ordered a new MRI. (PX8.) Dr. Templin did not provide an opinion on causation in this medical noted. (PX 8.)

Petitioner underwent the MRI on January 4, 2020, which revealed bulging discs at C3-4 with mild-to-moderate central canal and bilateral foraminal narrowing; C4-5 with mild-to-moderate central canal and left foraminal narrowing as well as mild right foraminal narrowing; C5-6 with mild-to-moderate foraminal narrowing bilaterally; and at C6-7 with moderate left foraminal narrowing on the left and mild-to-moderate foraminal narrowing on the right. (PX8.)

On January 8, 2020, Petitioner returned to Dr. Templin's office but was seen by Kelly Burgess, PAC. (PX8.) Petitioner continued to present with pain and radiculopathy in his upper extremities, primarily on the right. (PX8.) Ms. Burgess, PAC, assessed Petitioner with chronic and increasing neck pain with radiculopathy that began after a work injury with underlying multi-level cervical spondylosis. (PX8.) Ms. Burgess, PAC, reiterated Dr. Templin's previous recommendation of a cervical discectomy and fusion between C3 and C7 with Petitioner. (PX8.) Petitioner stated that he would like to think over his options and that he would get back to her if he wished to proceed. An off-work note was given. (PX8.)

On March 3, 2020, Petitioner returned to Dr. Zelby for a third Section 12 examination. (RX9.) Petitioner reported that he was still experiencing pain from 2015 to 2019, but that his symptoms began to worsen in 2019—possibly from sitting and bouncing in heavy machinery, possibly from the passage of time. (RX9.) Petitioner reported constant neck pain, numbness in his left arm, and pain in his lower back. (RX9.) He reported daily hours-long headaches in the right temporal region and tingling in his left upper extremity approximately once a day for several minutes at a time. (RX9.) He further reported a little difficulty with concentration and memory. (RX9.) Petitioner had not been working since December 14, 2019, after getting laid off for the season. (RX9.) Dr. Zelby opined that Petitioner's current complaints were unrelated to his work accident and were likely caused by progression of his degenerative cervical spine condition. (RX9.) Dr.

Zelby opined that there was no medical basis to conclude that Petitioner sustained a permanent disability. (RX9.)

On March 8, 2021, Petitioner presented to Diamond Headache Clinic complaining of day-long headaches approximately 20 times per month, frontal, and occipital, left greater than right, with pulsing, pounding, throbbing, aching pain at 5-10/10. (PX19.) Petitioner reported that he had experienced occasional headaches since receiving several concussions playing football as a young man, but that since suffering a significant blow to the head at work on October 11, 2014, with loss of consciousness, he had begun experiencing continued aching pain and recurrent chronic migraine-like pain. (PX19.)

Dr. Christopher Rhyne examined Petitioner. (PX19.) He noted normal attention, concentration, and memory, and noted no motor, sensation, or coordination deficits. (PX19.) Dr. Rhyne diagnosed Petitioner with chronic migraines, intractable chronic post-traumatic headache, nausea, and trigeminal neuralgia. (PX19.) Dr. Rhyne took Petitioner off of Sumatriptan, Metaxalone, and Naproxen and prescribed Petitioner Amitriptyline, Ondansetron, Diclofenac, and Oxcarbazepine. (PX19.)

Subsequently, Dr. Rhyne wrote a letter outlining his opinions with respect to Petitioner's headaches. (PX20.) Dr. Rhyne opined that following his work injury, Petitioner experienced a fundamental shift in his headache type. (PX20.) Whereas before Petitioner suffered from occasional moderate-grade headaches with associated nausea, light sensitivity, and sound sensitivity, Petitioner was now suffering chronic post-traumatic headaches secondary to his work injury. (PX20.) These post-traumatic headaches are distinguishable as constant moderate-to-severe grade headaches without associated light sensitivity, sound sensitivity, or nausea. (PX20.) Petitioner no longer has days with pain or days without pain; he simply exists on a continuum of less pain or more pain. (PX20.)

Dr. Rhyne wrote that chronic post-traumatic headache is a rare finding but one well-established in the medical literature. (PX20.) He opined that Petitioner's headaches fit the definition of chronic post-traumatic headaches. (PX20.) Dr. Rhyne wrote that limited treatment options exist for this condition, and that due to Petitioner's failure to respond to those treatments, it is likely that Petitioner would suffer moderate-to-severe headaches daily for the rest of his life. (PX20.)

On April 20, 2020, Dr. Zelby authored an addendum after reviewing x-rays and a CT scan from 2014 as well as an MRI of the cervical spine from January 4, 2020. (RX10.) Dr. Zelby opined that the latter MRI showed foraminal stenosis and partial effacement of the cerebrospinal fluid-containing portions of the spine at C5-6 and C6-7, as well as foraminal stenosis and near-total effacement of the cerebrospinal fluid-containing portions of the spine at C3-4 and C4-5. (RX10.) Dr. Zelby opined that the progression of Petitioner's cervical spine condition was related to aging of the spine. (RX10.) He opined that these conditions did not become more likely to arise as a result of Petitioner's work accident, and that no present or future spine conditions would be related to Petitioner's work accident. (RX10.)

Petitioner is currently working at Northern Pipeline as an operating engineer. (T 7-8.) He works above ground, digging holes in the ground and putting pipe into them for gas services. (T 8.) He

has been working there for a year-and-a-half; he is making $70,000-80,000 a year. (T 8.) He earns $52 an hour. (T 39.)

Petitioner is married with two dependent children. (AX1.) The parties have stipulated that in the year preceding the injury, Petitioner earned $114,141.04 for an average weekly wage of $2,195.02. (AX1.)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial

evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

Cervical Spine

Petitioner testified that prior to October 11, 2014, he had never had any treatment for his neck. (See T 10.) Petitioner testified that he was injured when a chunk of clay weighing 80 to 85 pounds dropped 25 feet directly onto his head, cracking his hard hat. (See T 15-17, PX2.) Following the accident, at Mount Sinai Hospital, Petitioner complained of tingling in his left upper extremity and on the left side of his face, numbness in the median nerve distribution of his left hand, and periodic numbness in his right hand. (See PX2.) Dr. Templin, Petitioner's treating physician for his neck, opined that Petitioner's underlying degenerative condition was rendered symptomatic by his work accident. (See PX8.) On November 6, 2014, Dr. Templin opined that Petitioner suffered from cervical spondylosis and overt myelopathy "likely aggravated by his work injury with an axial load to the head." (See PX8.) Dr. Amir Vafa specifically opined that the paresthesia in Petitioner's left upper extremity likely resulted from an acute event aggravating chronic degenerative changes in Petitioner's spine. (See PX2.)

When Dr. Templin recommended surgery, Petitioner declined. Dr. Templin released Petitioner to return to work with no restrictions on August 13, 2015, and he was to return as needed. (See PX 8). On November 25, 2015, Petitioner returned to Dr. Patel with neck pain, cervical radiculitis, and chronic pain syndrome. (See PX 15) As Petitioner's symptoms remained the same since his last visit, Dr. Patel recommended Petitioner use Norco sparingly as needed and was declared at MMI with no restrictions.

Four years later, on December 24, 2019, Petitioner returned to Dr. Templin who noted worsening radicular symptoms and recommended a new MRI. Petitioner continued working full duty without restrictions. The Arbitrator finds it significant that Dr. Templin's treatment note did not contain an opinion on causation given the four-year gap in treatment. The Arbitrator further notes that when Petitioner returned to Dr. Templin's office on January 4, 2020, he was not seen by Dr. Templin but by Kelly Burgess, PAC. (See PX 8.)

The Arbitrator finds a four-year gap in treatment too long to maintain a chain of events theory under International Harvester and no new medical opinion was provided to prove a causal nexus between the October 2014 accident and Petitioner's current condition seven (7) years later. (See 442 N.E.2d at 908.)

Based on the testimony and medical evidence set forth above, the Arbitrator finds that Petitioner's cervical spine condition is causally related to his work accident of October 11, 2014, through November 25, 2015, when Dr. Patel declared Petitioner at MMI.

Post-Concussion Disorder and Post-Traumatic Headaches

The majority of medical experts in this case including Section 12 examiners opined that Petitioner suffered from post-concussion disorder caused by his accident but that his condition was temporary and has since resolved. However, Petitioner credibly testified that following his

accident he began to have intense headaches starting immediately. (See T 36.) Petitioner's medical records document constant headaches beginning on the date of accident and persisting for years post-accident. Petitioner's testimony establishes that prior to October 11, 2014, Petitioner had never had any treatment for his head although Petitioner admitted to Dr. Rhyne that he had experienced migraines going back 30 years. (See T 10; PX 20.)

The Arbitrator relies on the medical opinions of Dr. Rhyne who was aware that Petitioner previously experienced migraines and opined that Petitioner's headaches following the work accident are different. Petitioner's pre-existing migraines were occasional moderate-grade headaches with associated nausea, light sensitivity, and sound sensitivity. (See PX20.) Post-accident, Petitioner began suffering chronic moderate-to-severe grade headaches without associated light sensitivity, sound sensitivity, or nausea, indicating that these post-accident headaches are not migraines. (See PX20.) Dr. Rhyne wrote that chronic post-traumatic headache is a rare finding but one well-established in the medical literature, and that Petitioner's post-accident headaches fit the definition. (See PX20.)

The Arbitrator finds that Petitioner's current condition of ill being with respect to his post-concussion disorder and post-traumatic headaches are causally related to his work accident of October 11, 2014.

PTSD

In Illinois, psychological injuries are compensable under a physical-mental theory when the injuries are related to and caused by a physical trauma or injury. Matlock v. Indus. Comm'n, 321 Ill. App. 3d 167, 171, 746 N.E.2d 751, 755 (1st Dist. 2001). In dealing with the physical-mental category, even a minor physical contact or injury may be sufficient to trigger compensability. Id. Post-traumatic stress disorder is a compensable mental injury. See e.g. Diaz v. Illinois Workers' Comp. Comm'n, 2013 IL App (2d) 120294WC, ¶ 34, 989 N.E.2d 233, 242–43 (2d Dist. 2013).

In this case, Petitioner's mental injury began with the physical trauma of being struck in the head by a chunk of clay weighing 80 to 85 pounds falling from a height of 25 feet. (See PX2.) Dr. Donatello, Petitioner's primary care physician, recommended that he seek the care of a psychiatrist during his very first visit post-accident on October 20, 2014. (See PX4.) In Petitioner's first visit to Dr. Patel on November 19, 2014, Dr. Patel noted that Petitioner was "positive for night sweats" and "positive for anxiety and depression." (See PX15.) These same symptoms appeared in Dr. Rothke's records of April 20, 2017, both related to him by Petitioner and corroborated in a telephone interview with Petitioner's wife. (See PX17.) Dr. Rothke recommended that Petitioner undergo cognitive behavioral therapy. (See PX17.)

In August 2017, Petitioner began to see a psychiatrist, Dr. Elkun. (See PX18.) Dr. Elkun opined that Petitioner was suffering from post-traumatic stress disorder causally related to his work accident. (See PX18.) He based his opinion upon the signs and symptoms he observed over the course of treating Petitioner. (See T 23; PX18.) These symptoms included serious hypervigilance, flashbacks to his work accident, nightmares, fear of working heavy machinery, anxiety, and drastic personality change. (See PX18.)

The Arbitrator relies on the opinions of Dr. Elkun over those of Dr. Levin and Dr. Hanlon. The Arbitrator takes into consideration that opinions of Dr. Levin and Dr. Hanlon but notes that their primary purpose was to evaluate any cognitive impairments. (See RX4.)

Based on the testimony and medical evidence set forth above, the Arbitrator finds that Petitioner's current condition of ill-being of post-traumatic stress disorder is causally related to his work accident of October 11, 2014.

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

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

Having found Petitioner's cervical spine condition causally related to his work accident through November 25, 2015, when Dr. Patel declared Petitioner at MMI, the Arbitrator further finds Petitioner's treatment for the cervical spine from October 14, 2014, through November 25, 2015, to be reasonable and necessary and finds that Respondent has not paid for all of said treatment.

Further, having found Petitioner's post-concussion disorder, post-traumatic headaches, and post-traumatic stress disorder causally related to the work accident of October 11, 2014, the Arbitrator further finds Petitioner's treatment for post-concussion disorder, post-traumatic headaches, and post-traumatic stress disorder to be reasonable and necessary and finds that Respondent has not paid for all of said treatment.

As such, the Arbitrator orders Respondent to pay Petitioner directly for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act, all of the medical bills submitted into evidence (See PX 1- 16, 19.) for Petitioner's post-concussion disorder, post-traumatic headaches, and post-traumatic stress disorder as well as Petitioner's cervical spine (the latter of which is limited to dates of service October 14, 2014, through and including November 25, 2015).

Issue K, whether Petitioner is entitled to temporary partial disability benefits, the Arbitrator finds as follows:

TTD benefits are not in dispute. (See AX 1.) At issue are TPD benefits from April 6, 2015, through December 31, 2015, and January 1, 2019, through November 19, 2021 (date of hearing). TPD benefits were paid from April 8, 2015 – May 23, 2015. (See RX 12.).

Having found Petitioner's cervical spine condition causally related to his work accident through November 25, 2015, when Dr. Patel declared Petitioner at MMI with no work restrictions, the

Arbitrator finds that the only TPD benefits Petitioner may be in entitled to are from April 6, 2015, through November 25, 2015 (33 3/7 weeks).

"When the employee is working light duty on a part-time basis or full-time basis and earns less than he or she would be earning if employed in the full capacity of the job or jobs, then the employee shall be entitled to temporary partial disability benefits. Temporary partial disability benefits shall be equal to two-thirds of the difference between the average amount that the employee would be able to earn in the full performance of his or her duties in the occupation in which he or she was engaged at the time of accident and the gross amount which he or she is earning in the modified job provided to the employee by the employer or in any other job that the employee is working." 820 ILCS 305/8. A TPD benefit is awarded when an employee (1) is able to work, but with a temporary decrease in wage-earning capacity or (2) is not capable of returning to substantially similar employment but is able to perform other work consistent with his or her disability. Mechanical Devices v. Industrial Comm'n (Johnson), 344 Ill. App. 3d 752, 762, 800 N.E.2d 819, 828 (4th Dist. 2003).

Petitioner submitted wage information from April 6, 2015, through December 31, 2015. (See PX21.) For dates covering April 2015 through November 2015 (34 6/7 weeks), Petitioner earned $69,606.90 and worked a total of 1,442 hours. (See PX21.) For Petitioner's work accident, the parties stipulated to an AWW of $2,195.02.

The Arbitrator finds that Petitioner is entitled to TPD benefits of $132.07 per week for 33 3/7 weeks (April 6, 2015, through November 25, 2015).

Issue L, the nature and extent of the injury, the Arbitrator finds as follows:

Section 8(d) of the Act details two types of compensation for employees who are permanently and partially disabled. Section 8(d)(1) provides for a wage differential award; alternatively, section 8(d)(2) provides for a percentage-of-the-person-as-a-whole award. See Jackson Park Hospital v. Illinois Workers' Compensation Comm'n, 2016 IL App (1st) 142431WC, ¶ 2, 47 N.E.3d 1167

Section 8(d)(1) of the Act sets out the two requirements for a wage differential award. Under section 8(d)(1), an impaired worker is entitled to a wage differential award when (1) he is "partially incapacitated from pursuing his usual and customary line of employment" and (2) there is a "difference between the average amount which he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident." 820 ILCS 305/8(d)(1)

Alternatively, section 8(d)(2) of the Act provides for a PPD award based on a percentage-of-the-person-as-a-whole, rather than a wage differential, under three circumstances: when the claimant's injuries do not prevent him from pursuing the duties of his employment but he is disabled from pursuing other occupations or is otherwise physically impaired; when his "injuries partially incapacitate him from pursuing the duties of his usual and customary line of employment but do not result in an impairment of earning capacity;" or when the claimant having suffered an

"impairment of earning capacity elects to waive his right to recover" under Section 8(d)(1) of the Act. 820 ILCS 305/8(d)(2)

When section 8(d)(1) is construed in conjunction with section 8(d)(2), a crucial issue in determining which type of PPD award is appropriate is whether the claimant has suffered an impairment of his "earning capacity." In other words, a percentage-of-the-person-as-a-whole award under 8(d)(2) would be appropriate *only if* claimant has suffered no loss in his "earning capacity," or having suffered a loss in "earning capacity," elected to waive his right to an award under 8(d)(1). See Jackson Park Hospital, 47 N.E.3d 1167.

On November 20, 2015, Petitioner left his employment with Respondent to work for the Midwest Operating Engineers Union as a business agent organizer but left the Union on April 30, 2018, stating that he couldn't think on his feet as fast as he needed to anymore. (See T 26-28; PX21.) At the time of trial, Petitioner was working at Northern Pipeline as an operating engineer where he works above ground, digging holes in the ground and putting pipe into them for gas services. (See T 7-8.) At the time of trial, Petitioner had been working there for a year-and-a-half earning approximately $52.00 an hour ($70,000.00-$80,000.00 a year). (See T 39.) The parties have stipulated that in the year preceding the injury, Petitioner earned $114,141.04 for an average weekly wage of $2,195.02. (See AX1.)

Petitioner does not have any restricted work duties as a result of his post-concussion disorder, post-traumatic headaches, nor post-traumatic stress disorder. With regards to the cervical spine, the Arbitrator has found that Petitioner reached MMI with no work restrictions on November 25, 2015. As a result, the Arbitrator does not find any loss of earning capacity as a result of the October 11, 2014, work accident and instead awards PPD benefits under Section 8(d)(2).

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

Under Section 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. Therefore, the Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner worked for Respondent as an operating engineer digging deep shafts and performing deep tunnel work. (See T 9.) Although Petitioner no longer works for Respondent, he is currently working at Northern Pipeline still as an operating engineer doing above groundwork, digging holes in the ground, and putting pipe into them for gas services. (See T 8.) The Arbitrator finds

Petitioner's past and current work to be the same in nature and is hard manual labor. The Arbitrator therefore gives great weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 46 years old at the time of the accident and has many years left in his working life. The Arbitrator gives great weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes Petitioner does not have any restricted work duties as a result of his post-concussion disorder, post-traumatic headaches, nor post-traumatic stress disorder. With regards to the cervical spine, the Arbitrator has found that Petitioner reached MMI with no work restrictions on November 25, 2015. As a result, the Arbitrator does not find any loss of earning capacity as a result of the October 11, 2014, work accident. The Arbitrator therefore gives no weight to this factor.

Under Section 8.1b(b)(iv), evidence of disability corroborated by the treating medical records, the Arbitrator gives great weight to this factor. Petitioner suffered cervical disc bulges with radiculopathy that required injections, physical therapy, ablation, and a recommendation for cervical discectomy and fusion between C3 and C7 which Petitioner declined. For Petitioner's chronic headaches, Dr. Rhyne wrote that Petitioner would suffer moderate-to-severe headaches daily for the rest of his life. (See PX20.) Petitioner's documented PTSD symptoms included serious hypervigilance, flashbacks to his work accident, nightmares, fear of working heavy machinery, anxiety, and drastic personality change. This is consistent with Petitioner's testimony.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 27.5% loss of use of person as a whole pursuant to §8(d)(1) of the Act which corresponds to 137.5 weeks of permanent partial disability benefits at a maximum weekly rate of $735.37.

Issue O, "relatedness of prospective medical" and "credit for medical paid," the Arbitrator finds as follows:

As nature and extent of the injury is at issue (See AX1.), Petitioner is not seeking an award under Section 8(a) of the Act. As such, the Arbitrator is not awarding prospective medical at this time and will not render any decisions on the "relatedness of prospective medical." However, the Arbitrator reiterates her decisions outlined in Issue F: (1) that Petitioner reached MMI on November 25, 2015, for his cervical spine condition that was related to his work accident of October 11, 2014; (2) that Petitioner's *current* condition of ill-being of post-traumatic headaches post-traumatic stress disorder are causally related to his work accident of October 11, 2014; and (3) that Petitioner's post-concussion disorder, that has since resolved, is causally related to his work accident of October 11, 2014.

As for "credit for medical paid," the Arbitrator notes that Respondent did not claim any credit under 8(j) (See AX1.) and thus no credit is awarded.

It is so ordered:

Arbitrator Rachael Sinnen

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC043173
Case Name	Johnny E Baggett v. II-N-One
Consolidated Cases	
Proceeding Type	Remand From Circuit Court
Decision Type	Commission Decision
Commission Decision Number	23IWCC0083
Number of Pages of Decision	7
Decision Issued By	Stephen Mathis, Commissioner, Deborah Baker, Commissioner

Petitioner Attorney	David Starshak
Respondent Attorney	Tammy Paquette

DATE FILED: 2/24/2023

/s/Stephen Mathis, Commissioner

Signature

DISSENT: /s/Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Johnny Baggett,

Petitioner,

vs. No. 12 WC 43173

II in One Contractors,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on second remand from the circuit court.[1] The circuit court, Judge Daniel P. Duffy, reversed the Commission's Decision, finding and ordering as follows:

> "The court finds that, on remand, the Commission erred in failing to follow the directions of the mandate. As pointed out by the dissenting Commissioner, Judge McGing's order of July 12, 2018 remanded the matter to the Commission with specific instructions — it was not, as apparently understood by the majority of the Commission, a general remand.
>
> IT IS THEREFORE ORDERED:
>
> 1. That the Decision and Opinion on Review of the Commission dated July 1, 2019 be, and is hereby, VACATED, and the matter is REMANDED to the Commission;

[1] The underlying facts are set forth in the circuit court's and the Commission's prior Decisions in this matter.

2. That, pursuant to 735 ILCS 5/3-111(a)(6), on remand, the Commission shall (with reference to its Decision and Opinion on Review dated January 5, 2018):

A. Correct the date of the accident to November 12, 2012;

B. Calculate the PPD rate in accordance with the corrected date of accident;

C. Make factual findings as to whether the Claimant's current condition of ill-being (as of the date of Arbitration) is — or is not — causally related to the accident given the Arbitrator's finding (adopted by the Commission) that Claimant had 'embellished' his symptoms;

D. Make findings of fact and conclusions of law in connection with the determination that Claimant is eligible for Section 8(d)(2) benefits;

E. Make findings of fact and conclusions of law in connection with the determination that Claimant is not eligible for benefits pursuant to Section 8(d)(l).''

In sum, the circuit court vacated in its entirety the Commission's Decision of July 1, 2019, awarding wage differential benefits pursuant to Section 8(d)(1).[2] The circuit court further ruled that the legally operative Decision of the Commission is the Decision of January 5, 2018, which must be modified in accordance with the circuit court's present directions.

In our Decision of January 5, 2018, the Commission modified the Arbitrator's Decision to reflect the parties' stipulation regarding temporary total disability benefits, and otherwise affirmed and adopted the Arbitrator's Decision. However, the Arbitrator's Decision was problematic in two main respects: (1) it listed on page 2 an incorrect date of accident,[3] which impacted the weekly rate of section 8(d)(2) benefits; and (2) it awarded section 8(d)(2) benefits representing a 35 percent disability to the person as a whole because Petitioner sustained "a career ending injury," while at the same time stating Petitioner had "embellished" his symptoms and his current condition of ill-being was variously related (page 5) or unrelated (page 2) to the accident. On review, Petitioner did not bring these errors to the Commission's attention.

The Commission hereby corrects these errors.[4] The Commission corrects the date of accident to November 12, 2012. The corresponding (maximum) weekly rate of section 8(d)(2) benefits is $712.55.

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[2] Judge McGing noted that *Crittenden v. Workers' Compensation Comm'n*, 2017 IL App (1st) 160002WC and *Gallianetti v. Industrial Comm'n*, 315 Ill. App. 3d 721 (2000) appear to support an award of wage differential benefits.

[3] The date of accident in the Findings of Fact on page 5 is correct.

[4] As we did in our Decision of July 1, 2019.

Turning to the issue of causal connection, the Arbitrator's findings (on page 5), in their entirety, were as follows:

> "Petitioner has had continued complaints, albeit embellished, since his work accident. The sequence of events is consistent. The medical records are corroborative. Dr. Sokolowski's testimonial opinions are persuasive.
>
> Therefore, the Arbitrator finds that Petitioner's alleged current condition of ill-being is causally related to the work injury of November 12, 2012."

To the extent that page 2 of the Arbitrator's Decision summarily states that "Petitioner's current condition of ill-being ***is not*** causally related to the accident," it is clearly a clerical error due to the fact that later in the decision, the Arbitrator found Petitioner's condition is causally related and awarded permanent partial disability benefits.

Next, we turn to the Arbitrator's finding that Petitioner "embellished" his complaints. Under *S&H Floor Covering, Inc. v. Workers' Compensation Comm'n*, 373 Ill. App. 3d 259, 267-68 (2007), which speaks of deference to the Arbitrator's credibility findings, the Commission must act with caution when it has not observed the claimant testify. In this case, the Commission decided not to reverse the finding of embellishment, given the Arbitrator's affirmative finding on the overarching issue of causal connection, the clerical error notwithstanding.

We now turn to the nature and extent of Petitioner's disability. The Arbitrator's findings (on page 5), in their entirety, were as follows:

> "*Petitioner has sustained a career ending injury*. However, he has embellished his symptoms. His claim of entitlement to wage differential benefits must be based upon credible testimony of actual physical limitations.
>
> Therefore, the Arbitrator finds that Petitioner's claims for any wage differential benefits are denied.
>
> The Arbitrator further finds that Petitioner is entitled to be compensated for a loss of trade.
>
> Based upon the foregoing, the Arbitrator finds that Petitioner has sustained the 35% loss use of the person as a whole."[5] (Emphasis added.)

The Commission notes that Petitioner's lifelong occupation was in construction; specifically, cement work. At the time of the accident, which took place ten years ago, Petitioner was 54 years old. The parties stipulated his average weekly wage during the year preceding the injury was $1,750.00. Petitioner testified at the arbitration hearing that he takes medication for

[5] These findings dispel any question as to what the Arbitrator found on the issue of causal connection.

pain in his low back and neck. He described his symptoms as follows: "I still get the tingling in my right hand, it wakes me up in the middle of the night. The back pain, I live with that every day. If I do anything strenuous, then the back pain sits me down for two days, up to two days, I'm unable to do anything." "If I mow my lawn, I take breaks before I'm complete, at the end, I can't do anything. I'm in the house for a couple of days to regroup." "Walking, if I even go fishing, if I'm fishing a day, then after I get home, my knee swells, and then I'm back to trying to regroup for the next day." "I can only stand for short periods. If I'm washing dishes, I have to stop, sit down." "[A]ny standing, if I'm standing for a long period of time, it will start to be a mild pain and it gets worse until I have to sit down." Petitioner further testified that he keeps his activities within the restrictions imposed by his doctors. He has not worked since the accident. Petitioner's vocational rehabilitation counselor, Mr. Blumenthal, did not recommend any classes. Petitioner acknowledged occasionally gambling in Las Vegas, last time driving there in 2015. Petitioner also acknowledged a surveillance video, which showed him lifting three cases of beer, among other activities of daily living. The Commission again notes that we did not observe Petitioner testify.

The Arbitrator acknowledged that Petitioner's treating physicians, Dr. Marsiglia and Dr. Sokolowski, imposed permanent restrictions at the light physical demand level. The Arbitrator did not discuss the opinions of Petitioner's vocational rehabilitation counselor, Mr. Blumenthal, or Respondent's vocational expert, Ms. Allen. As we noted in our Decision of July 1, 2019, Mr. Blumenthal was pessimistic about Petitioner's employment prospects and Ms. Allen found an impairment of earnings.

The circuit court now agrees with the Arbitrator that Petitioner is entitled to permanent partial disability benefits under section 8(d)(2), but not under section 8(d)(1) of the Act. The circuit court never reversed the Arbitrator's finding that Petitioner sustained a career ending injury. Having carefully reconsidered the entire record, the Commission cannot find that while Petitioner sustained a career ending injury, he did not sustain an impairment of earnings. See *Crittenden v. Workers' Compensation Comm'n*, 2017 IL App (1st) 160002WC; *Gallianetti v. Industrial Comm'n*, 315 Ill. App. 3d 721 (2000). However, the circuit court's Order unequivocally prohibits us from awarding section 8(d)(1) wage differential benefits, as we have done in our Decision of July 1, 2019.

To comply with the mandate and to simplify further judicial review, we keep the substance of the Commission's legally operative permanency award unchanged. As noted, in our Decision of January 5, 2018, we affirmed and adopted the Arbitrator's award of section 8(d)(2) benefits representing permanent disability to the extent of 35 percent of the person as a whole. We correct the weekly rate of section 8(d)(2) benefits to $712.55.

IT IS THEREFORE ORDERED BY THE COMMISSION that we have complied with the mandate of the circuit court as stated herein.

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

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

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

February 24, 2023

o-11/09/2022
SM/sk
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/s/ *Stephen J. Mathis*
Stephen J. Mathis

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

DISSENT, IN PART

I agree with the majority's recitation of the procedural history and the majority's corrections to the date of accident and the PPD rate; however, I do not agree with the majority's approach to the remainder of the Circuit Court's mandate. The Circuit Court mandated, in relevant part:

> C. Make factual findings as to whether the Claimant's current condition of illbeing (as of the date of Arbitration) is — or is not — causally related to the accident given the Arbitrator's finding (adopted by the Commission) that Claimant had "embellished" his symptoms;
>
> D. Make findings of fact and conclusions of law in connection with the determination that Claimant is eligible for Section 8(d)(2) benefits;
>
> E. Make findings of fact and conclusions of law in connection with the determination that Claimant is not eligible for benefits pursuant to Section 8(d)(l).

While it is my view that Petitioner is entitled to an award pursuant to section 8(d)(1) of the Act based on precedent, the Circuit Court specifically mandated that the Commission award benefits pursuant to section 8(d)(2). In doing so, the Circuit Court noted an inconsistency in the Arbitrator's decision that was never clarified or corrected by the Commission, that being the following findings in the Decision of the Arbitrator:

> "Petitioner has had continued complaints, albeit embellished, since his work accident. The sequence of events is consistent. The medical records are corroborative. Dr. Sokolowski's testimonial opinions are persuasive.
>
> Therefore, the Arbitrator finds that Petitioner's alleged current condition of ill-being is causally related to the work injury of November 12, 2012."

I agree that the Arbitrator found Petitioner's condition is causally related and thus awarded permanent partial disability benefits, albeit based on inconsistent factual findings. In my view, the Commission should clarify that either: (1) any evidence of embellished complaints were inconsequential as the medical evidence supports Petitioner's claim; or (2) additional review of the record shows no embellishment of complaints. It is well within the purview of the Commission to re-assess a petitioner's credibility. See *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866 (1st Dist. 2010) ("the Commission exercises original [] jurisdiction and is not bound by an arbitrator's findings" and "[w]hen evaluating whether the Commission's credibility findings which are contrary to those of the arbitrator are against the manifest weight of the evidence, "resolution of the question can only rest upon the reasons given by the Commission for the variance."). In my view, *S&H Floor Covering, Inc. v. Workers' Compensation Comm'n,* 373 Ill. App. 3d 259 (2007), does not stand for the proposition that the Commission must give deference to the Arbitrator's credibility findings, thus I disagree with the majority's application of *S&H Flooring*. The Commission has original jurisdiction in all workers' compensation cases and has the authority to review any and all issues. See 820 ILCS 305/19(b) ("the jurisdiction of the Commission to review the decision of the arbitrator shall not be limited to the exceptions stated in the Petition for Review).

For the above reasons, I respectfully dissent.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC015041
Case Name	Timothy Craft v. Continental Tire North America
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0084
Number of Pages of Decision	13
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	
Respondent Attorney	James Keefe, Jr.

DATE FILED: 2/24/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

☒ 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

Timothy Craft,

Petitioner,

vs. NO. 20WC15041

Continental Tire North America,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by both parties herein and notice given, the Commission, after considering the issues of medical expenses, causal connection and permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 3, 2022 is hereby affirmed and adopted.

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

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

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

February 24, 2023

SJM/sj
o-1/25/2023
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/s/ *Stephen J. Mathis*
Stephen J. Mathis

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC015041
Case Name	CRAFT, TIMOTHY v. CONTINENTAL TIRE NORTH AMERICA
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	James Keefe, Jr.

DATE FILED: 2/3/2022

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

/s/Linda Cantrell, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

☐ 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

TIMOTHY CRAFT
Employee/Petitioner

v.

CONTINENTAL TIRE NORTH AMERICA
Employer/Respondent

Case # **20** WC **015041**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **November 9, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **February 3, 2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**45,123.68**; the average weekly wage was $**936.13**.

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

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

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

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

Respondent is entitled to a credit of **any benefits paid** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner's medical bills contained in Petitioner's Group Exhibit 1, as provided in Section 8(a) and Section 8.2 of the Act, as the Arbitrator finds said bills to be reasonable, necessary, and causally related to the work accident. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits and indemnify and hold Petitioner harmless from any claims arising from the expenses for which it receives credit. The parties stipulate that Respondent shall receive credit for any medical bills paid through its group medical plan, under Section 8(j) of the Act.

Respondent shall further pay Petitioner the sum of $**561.68**/week for a period of **37.5 weeks,** as provided in Section 8(d)2 of the Act, because the injuries sustained caused permanent partial disability of **7.5%** loss of his body as a whole.

Respondent shall pay Petitioner compensation that has accrued from 11/12/18 through 11/9/21, and shall pay the remainder of the award, if any, in weekly payments.

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

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

Linda J. Cantrell

FEBRUARY 3, 2022

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

TIMOTHY CRAFT,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 20-WC-015041
	)	
CONTINENTAL TIRE NORTH AMERICA,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on November 9, 2021 on all issues. The parties stipulated that on February 3, 2018 Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent. The issues in dispute are causal connection, medical bills, and the nature and extent of Petitioner's injuries. All other issues have been stipulated.

TESTIMONY

Petitioner was 36 years old, single, with one dependent child at the time of accident. He was hired by Respondent in May 2012 and is a truck tire builder. Petitioner testified that on 2/3/18 he was pushing a cassette into a machine when it twisted causing his body to twist as he held onto the cassette. Petitioner stated he injured his back. He testified he had no low back injuries or treatment prior to his work accident and has not sustained any injuries to his low back since.

Petitioner initially treated at Respondent's health care facility. He began receiving chiropractic treatment in May 2019 that provided minimal relief. Petitioner received injections prescribed by Dr. Gornet that provided one week of relief. He underwent an MRI, CT scan, and a discogram and surgery was not recommended. He last treated with Dr. Gornet in October 2020.

Petitioner testified he continues to have low back pain on the left side with prolonged sitting and standing. He has tightness and spasms in his low back. He has pain with bending and twisting and has to squat to lift objects from the floor. He does not have radicular pain. His symptoms affect his ability to sleep. Petitioner testified that his hobbies of hiking, sailing, and swimming have been completely curtailed.

On cross-examination, Petitioner testified he has treated with a chiropractor for his low back prior to 2/3/18. He did not recall telling the chiropractor on 5/22/19 that he began experiencing neck and thoracic pain about 3 to 4 months ago that was gradual over time and worsened the week prior. He stated he returned to Dr. Gornet in November 2019, one year after being released, due to continued back pain. Dr. Gornet did not offer additional treatment at that time. In July 2020, Dr. Gornet ordered a new lumbar MRI and a thoracic MRI. Petitioner underwent an injection to his mid back following the MRIs and did not return to Dr. Gornet. Petitioner testified he continues to work as a tire builder and is earning the same pay since his accident.

MEDICAL HISTORY

Petitioner treated with Respondent's health care facility immediately after the accident. He was referred to Dr. Matthew Gornet whom he saw on 5/24/18. Petitioner provided a history of injury and Dr. Gornet noted Petitioner had physical therapy at Respondent's facility for 3-4 weeks, which gave him temporary relief. Petitioner was working light duty with a 10-pound lifting limit and no repetitive lifting or bending. Petitioner reported low back pain central to both sides, left greater than right. The pain radiated from his low back to between his shoulder blades. Examination showed pain with forward flexion and normal motor strength and sensation. Dr. Gornet reviewed lumbar spine films which showed mild loss of disc height at L5-S1.

Dr. Gornet recommended a lumbar MRI that revealed a central disc protrusion/annular tear at L4-5. (PX4-92). Dr. Gornet recommended a steroid injection centrally at L4-5 and continued Petitioner's light duty restrictions. He stated that based on the information he had Petitioner's symptoms were causally related to his work injury.

On 7/3/18, Dr. Helen Blake performed an L4-5 epidural steroid injection. Petitioner stated he received only one week of relief from the injection. He returned to Dr. Gornet on 7/30/18 at which time Dr. Gornet recommended a CT discogram, MRI Spectroscopy, and weight loss.

On 8/22/18, Dr. Gornet performed a L4-5 and L5-S1 discogram that revealed non-provocative discs at both levels. The MRI Spectroscopy showed normal discs with normal chemicals at L4-5 and painful chemicals at L5-S1. Dr. Gornet recommended no surgical treatment, a vigorous exercise program, and continued light duty.

On 11/12/18, Dr. Gornet noted Petitioner will always have some level of pain, but he did not require further treatment. Dr. Gornet dispensed Meloxicam and Cyclobenzaprine and placed Petitioner at maximum medical improvement with no restrictions. He advised Petitioner to begin exercising and return as needed.

On 5/22/19, Petitioner was examined by Dr. Kent Herron for chiropractic treatment. Petitioner complained of low back pain that started a year-and-a-half prior and related it to his work injury. Petitioner also complained of a gradual onset of cervical and thoracic pain that started 3 to 4 months prior, with worsening symptoms over the past week. Petitioner underwent

intermittent chiropractic treatment through 11/4/19 that addressed his cervical, thoracic, and lumbar spines.

On 11/11/19, Petitioner returned to Dr. Gornet and reported central low back pain to his buttocks, with left flank pain. Dr. Gornet noted no interval trauma and recommended physical therapy, medication, and follow up as needed.

Petitioner resumed chiropractic treatment and on 1/29/20 he reported worsening left lower thoracic pain over 5 to 6 days prior. He was uncertain what caused an increase in pain. The last chiropractic note dated 2/11/10 indicates Petitioner had increased symptoms after sleeping on a different bed and flying on vacation.

On 10/26/20, Petitioner returned to Dr. Gornet with continued left-sided lumbar pain. Dr. Gornet ordered lumbar and thoracic MRIs that revealed mild disc pathology, particularly at L3-4 and L4-5, with an annular tear slightly at L5 to the left, and an obvious disc herniation at T10-11. Dr. Gornet opined that the thoracic herniation correlated with Petitioner's flank pain and was part of Petitioner's original injury. Dr. Gornet stated Petitioner could continue working and there was little he could do surgically. He ordered a thoracic injection and noted Petitioner may require injections again in the future. Dr. Gornet ordered Petitioner to return in January 2021.

On 5/11/21, Dr. Blake performed a left-sided T10-11 epidural steroid injection. Petitioner rated his post procedure pain at 3 out of 10.

On 2/8/21, Petitioner was examined by Dr. Sarah Fouke pursuant to Section 12 of the Act. Dr. Fouke took a history of injury and reviewed medical records and diagnostic studies. She diagnosed mild thoracic and lumbar spondylosis. Dr. Fouke opined Petitioner sustained a lumbar strain as a result of his work accident and reached MMI in November 2018. She opined Petitioner's current thoracic diagnosis is not associated with his work accident and although the thoracic ESI was not unreasonable, it was not necessary and not related to Petitioner's work accident. Dr. Fouke gave an impairment rating of 0% for the lumbar spine and 1% for the thoracic spine.

Dr. Matthew Gornet testified by way of evidence deposition on 5/17/21. Dr. Gornet is a board-certified orthopedic spine surgeon. Dr. Gornet testified to the history of the injury, reviewed Petitioner's diagnostic studies, and believed his current condition and state of ill-being is related to Petitioner's work accident. Dr. Gornet testified that when Petitioner returned in November 2019 there was no new history of trauma and his pain radiated to the mid back which was consistent with his symptoms on 5/24/18.

Dr. Gornet testified he ordered additional testing to determine if Petitioner's condition has progressed or if there was pathology that was missed on the previous scans. He testified that the imaging of the lumbar spine had not progressed significantly and looked essentially the same. He stated that the thoracic spine imaging showed an obvious left-sided herniation that was not noticed on previous imaging because the imaging did not go up that high. He recommended a steroid injection to calm Petitioner's symptoms and opined there was nothing he could do for him surgically.

Dr. Gornet testified that Petitioner initially presented to him with low back pain to both sides that radiated between his shoulder blades. Dr. Gornet initially believed the radiating symptoms were caused by a lumbar spine injury. Based on subsequent thoracic imaging at a higher thoracic level, Dr. Gornet opined it is the thoracic injury that was causing Petitioner's current symptoms.

Dr. Gornet testified the lumbar discogram did not show any significant structural disc pathology and the MRI spectroscopy showed normal chemical levels. He opined the T10-11 herniation is causally related to Petitioner's work accident because Petitioner had left flank pain when he initially saw him in 2018. He testified that the L3-4 disc protrusion on the 2020 lumbar MRI was not clinically significant.

Dr. Sarah Fouke testified by way of evidence deposition on 5/27/21. Dr. Fouke is a neurosurgeon by training involving treatment of neurological disorders of the brain and spine. She opined the T10-11 disc was not causally related to Petitioner's work accident because the records near the time of accident did not document or correlate with such pathology. Dr. Fouke opined Petitioner sustained a lumbar strain as a result of the work injury and no further treatment was reasonable or necessary with regard to Petitioner's lumbar spine. Dr. Fouke provided a 0% impairment rating with regard to Petitioner's lumbar spine.

On cross-examination, Dr. Fouke acknowledged her research and papers focused on the brain as opposed to the spine. Dr. Fouke agreed she did not have certification to perform AMA ratings. She did not believe that any of Petitioner's treatment after November 2018 was related to his work accident.

CONCLUSIONS OF LAW

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

In addition to or aside from expert medical testimony, circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 III.App.3d 92, 96-97, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 111.2d 59, 442 N.E.2d 908 (1982).

Based on the testimony of Drs. Gornet and Fouke, the Arbitrator finds Petitioner's lumbar spine condition is causally connected to the 2/3/18 work accident. Although Dr. Fouke opined Petitioner's treatment after November 2018 was not related to Petitioner's work injury, Dr. Gornet noted on 11/12/18 that Petitioner will always have some level of pain. He prescribed Meloxicam and Cyclobenzaprine, placed Petitioner at MMI with no restrictions, and advised Petitioner to return as needed. The records reflect that Petitioner attempted to control his symptoms with chiropractic treatment from 5/22/19 through 11/4/19. He complained of low back pain that he related to the 2/3/18 accident and cervical and thoracic pain that started 3 to 4 months prior to May 2019. Dr. Gornet noted at Petitioner's initial examination on 5/24/18 that

Petitioner's lumbar pain radiated into his upper back between his shoulder blades. Petitioner's symptoms did not resolve with chiropractic treatment and he returned to Dr. Gornet on 11/11/19. Dr. Gornet noted no interval trauma and there was no evidence admitted at hearing that Petitioner sustained intervening trauma following his 2/3/18 work injury.

Due to Petitioner's ongoing low back pain with radiculopathy into his mid/upper back, Dr. Gornet ordered additional diagnostic testing. Dr. Gornet testified his initial impression was that Petitioner's thoracic symptoms were caused by a lumbar spine injury. It was not until an MRI was performed at a different, higher level of the thoracic spine that Dr. Gornet appreciated a disc herniation at T10-11. Dr. Gornet explained the thoracic herniation correlated with Petitioner's left flank symptoms which he complained of since his first visit. As a result of the T10-11 herniation, Dr. Gornet ordered additional treatment in the form of an injection. He stated Petitioner might require additional injections in the future.

Petitioner testified that prior to his work accident he suffered no injuries to his lumbar spine and did not undergo any diagnostic lumbar studies. Although Dr. Fouke opined Petitioner suffered a lumbar strain as a result of his work accident, the objective diagnostic studies and Petitioner's persistent complaints prove otherwise. The Arbitrator finds the opinion of Dr. Gornet more persuasive than that of Dr. Fouke.

The Arbitrator finds that Petitioner sustained his burden of proof in establishing that his current condition of ill-being in his lumbar and thoracic spine is causally related to his work accident.

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

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d. 13, 229 Ill.Dec. 77 (Ill. 2000). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 758 N.E.2d 18 (1st Dist. 2001).

Dr. Gornet testified that all of Petitioner's care, including the need for injection and possibly future injection, was causally related to his work accident. The Arbitrator also finds it significant that Dr. Fouke, though disagreeing on the issue of causal connection, acknowledged that the injection by Dr. Gornet was not unreasonable.

Based on the above findings as to causal connection, the Arbitrator finds that Petitioner is entitled to medical benefits. Respondent shall therefore pay Petitioner's medical bills contained in Petitioner's Group Exhibit 1, as provided in Section 8(a) and Section 8.2 of the Act, as the Arbitrator finds said bills to be reasonable, necessary, and causally related to the work accident. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits and indemnify and hold Petitioner harmless from any claims arising from

the expenses for which it receives credit. The parties stipulate that Respondent shall receive credit for any medical bills paid through its group medical plan, under Section 8(j) of the Act.

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

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Dr. Fouke provided an impairment rating of 0% with respect to Petitioner's lumbar spine and 1% with respect to the thoracic spine. The Arbitrator notes that Dr. Fouke's ratings are based on a diagnosis of lumbar strain and her opinion that Petitioner's thoracic spine injury is not causally related to the work accident. The Arbitrator places some weight on this factor.

(ii) **Occupation**: Petitioner returned to his pre-accident position with Respondent and there is no evidence contained in the record that his injuries affect his work performance. The Arbitrator places some weight on this factor.

(iii) **Age:** Petitioner was 36 years old at the time of his injury. The Arbitrator places some weight on this factor as Petitioner has residual symptoms which he must live and work with for an extended number of years.

(iv) **Earning Capacity**: There is no evidence of reduced earning capacity contained in the record. The Arbitrator places some weight on this factor.

(v) **Disability**: Petitioner's initial lumbar MRI revealed a central disc protrusion/annular tear at L4-5. Petitioner underwent conservative treatment including medication, a steroid injection centrally at L4-5, and chiropractic treatment. His symptoms failed to improve and Dr. Gornet recommended a CT discogram and MRI Spectroscopy. The L4-5 and L5-S1 discogram revealed non-provocative discs at both levels. The MRI Spectroscopy showed normal discs with normal chemicals at L4-5 and painful chemicals at L5-S1. Dr. Gornet recommended no surgical treatment and opined Petitioner will always have some level of pain. Despite dispensing additional medication and placing Petitioner at MMI, Petitioner returned to Dr. Gornet with ongoing pain and new lumbar and thoracic MRIs were obtained. The lumbar MRI revealed mild disc pathology, particularly at L3-4 and L4-5, with an annular tear slightly at L5 to the left. The thoracic MRI revealed an obvious disc herniation at T10-11 which Dr. Gornet opined correlated with Petitioner's flank pain and was part of Petitioner's original injury. Dr. Gornet stated Petitioner could continue working and there was little he

could do surgically. He ordered a thoracic spine injection and noted Petitioner may require injections again in the future.

Petitioner testified he continues to have low back pain on the left side with prolonged sitting and standing. He has tightness and spasms in his low back. He has pain with bending and twisting and has to squat to lift objects from the floor. He does not have radicular pain. His symptoms affect his ability to sleep. Petitioner testified his hobbies of hiking, sailing, and swimming have been completely curtailed. He continues to work full duty for Respondent without restrictions. He has not returned to Dr. Gornet since 10/26/20. The Arbitrator places greater weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator orders Respondent to pay Petitioner the sum of $**561.68**/week for a period of **37.5 weeks,** as provided in Section 8(d)2 of the Act, because the injuries sustained caused permanent partial disability of **7.5%** loss of his body as a whole.

Respondent shall pay Petitioner compensation that has accrued from 11/12/18 through 11/8/21, and shall pay the remainder of the award, if any, in weekly payments.

Linda J. Cantrell

Arbitrator Linda J. Cantrell DATED:

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC026674
Case Name	Angela Agnew v. St Benard Hospital
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0085
Number of Pages of Decision	14
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Mark Slavin
Respondent Attorney	Lloyd McCumber

DATE FILED: 2/24/2023

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANGELA AGNEW,
Petitioner,

vs. NO: 17 WC 26674

ST. BERNARD'S HOSPITAL,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, prospective medical care, and permanent partial disability (PPD) and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 28, 2022 is hereby affirmed and adopted.

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

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 24, 2023
o: 02/16/23
CMD/ma
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC026674
Case Name	Angela Agnew v. St. Bernard's Hospital
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	John Schmidt
Respondent Attorney	Lloyd McCumber

DATE FILED: 7/28/2022

THE INTEREST RATE FOR THE WEEK OF JULY 26, 2022 2.92%

/s/Charles Watts, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Angela Agnew
Employee/Petitioner

v.

St. Bernard's Hospital
Employer/Respondent

Case # **17** WC **026674**

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 **Charles Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **July 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. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On **7/11/2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was not*** 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 $**27,248.00**; the average weekly wage was $**524.00**.

On the date of accident, Petitioner was **56** years of age, **single** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services through its group carrier.

Respondent has paid all appropriate charges for all reasonable and necessary medical services through its group carrier.

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

Respondent is entitled to a credit of $**40,628.31** under Section 8(j) of the Act.

ORDER

THE ARBITRATOR FINDS THE PETITIONER FAILED TO PROVE SHE SUSTAINED ACCIDENTAL INJURIES ARISING OUT OF AND IN THE COURSE OF HER EMPLOYMENT.

THE ARBITRATOR FINDS THE PETITIONER FAILED TO PROVE HER PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE ALLEGED WORK ACCIDENT.

THE ARBITRATOR FINDS PROVIDED NOTICE TO THE RESPONDENT OF THE ACCIDENT.

ALL OTHER ISSUES ARE RENDERED MOOT. COMPENSATION IS DENIED.

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

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

JULY 28, 2022

Signature of Arbitrator

STATEMENT OF FACTS

The petitioner testified that she was employed by St. Bernard's Hospital as a unit secretary. She indicated that her job duties were varied. Her tasks included arranging papers, sending faxes, paginating charts, making phone calls, copying documents and pressing a button to allow access into a restricted area. She was employed in this capacity since September of 2014. She indicated that the task of pressing the button to allow access required her to reach with her right arm in front of her, the distance of approximately a foot. She estimated she had to do so approximately 78 times per day. She claims that this arm motion of pushing the access button caused her right shoulder condition of ill-being.

On July 11, 2016, she began to feel pain in her arm while working. She reported this to Amanda Collins, her supervisor and sought medical treatment with her primary care physician, Dr. Lucero, at the Beloved Community Wellness Center. The records from this facility, (Pet. Ex. 1) indicate that she was seen on July 11, 2016 complaining of right shoulder pain. She indicated that the onset of the pain occurred one month earlier. She did not indicate that the pain was associated with pressing the access button at work or any other work-related activity. When seen by Dr. Lucero on September 2, 2016, she did not relate the pain to pressing a button or any work-related activity. The only activity to which she attributed her condition was that her pain was "aggravated by lifting." Dr.

Lucero referred her to an orthopedic physician. (Pet. Ex. 1) She continued treating with Dr. Lucero through the end of 2017 and never mentioned that the shoulder pain was associated with pressing a button at work. She did, however, indicate that she needed surgery and was concerned that she did not have disability insurance while she was off for the surgery. (Pet. Ex. 1)

The orthopedic referral was to Dr. Terrell whom she first saw on August 15, 2016. She provided a history of right shoulder pain for approximately one month without trauma or change in activity. No mention was made of any work-related activity causing or aggravating the problem. Dr. Terrell sent her for an MRI which was performed on September 15, 2019 and revealed a longitudinal tear in the distal rotator cuff along with AC joint arthrosis, osteitis and a subacromial osteophyte. Dr. Terrell thereafter administered an injection to the shoulder. She was diagnosed with a right rotator cuff tear. She continued treating with Dr. Terrell through March 16, 2017. At no time did she indicate that pressing a button or any other work-related activity caused or aggravated her shoulder pain. (Pet. Ex. 2)

She then came under the care of a different orthopedic surgeon, Dr. Primus. The records of Dr. Primus (Pet. Ex. 3) indicate that she was first seen on May 26, 2017 complaining of shoulder pain. She indicated that she had the problem for approximately one year and denied history of any injury. There is no indication that any work-related activity caused or aggravated her shoulder pain. On the

contrary, she informed Dr. Primus, "that she woke up one day in pain." (Pet. Ex. 3) Dr. Primus recommended shoulder surgery to repair a torn rotator cuff. At the pre-op visit with Dr. Primus on June 19, 2017, he indicated that the pain was "of insidious onset." On July 16, 2017, Dr. Primus performed surgery which included repair of a rotator cuff tear, subacromial decompression, and distal clavicle excision. (Pet. Ex. 3) At the first post-operative visit of July 11, 2017, there was no discussion of the cause of her shoulder pain nor was there any mention of its cause in the note of July 17, 2017. The petitioner was sent for post-operative physical therapy.

The records further reflect that on August 25, 2017, for the first time, the petitioner mentioned that she had to perform a repetitive motion with her right shoulder at work, 70 – 100 times per day, and had been working at that position for three years. She further told Dr. Primus that she first noted the right shoulder pain while on the job but was not aware that the activity was causing the problem. (Pet. Ex. 3) In Dr. Primus' note of December 8, 2017, he attributed the shoulder problem to her work-related activities. (Pet. Ex. 3) The petitioner returned to work on January 8, 2018. She continues to notice pain and cracking in the shoulder along with pain while lifting heavier objects.

Evelyn Jones testified that she has been the Vice-President of Nursing Services for the Respondent for the past thirteen years. Her job duties include

supervision of the entire nursing staff including the secretarial personnel. She is familiar with the petitioner who, as a unit secretary, was under her supervision. She was familiar with the petitioner's job duties and confirmed that the petitioner is required to push a button to allow access to a restricted area as part of her job duties. She would have to do so approximately 50 – 70 times per day. Ms. Jones has pushed the button herself and it requires little or no exertion in doing so.

She made a video of an individual, her secretary, performing the activity of pushing the button to allow access into the restricted area. Her secretary is 5'2" which is the approximate height of the petitioner. The video (Resp. Ex. 1) accurately depicts the motion that the petitioner had to perform as part of her job duties. The videotape was played and showed an individual reaching in front of her across her desk to press a button.

There is a procedure for reporting work injuries at the Respondent's facility. It requires all employees to notify their supervisor immediately at which time an accident report is prepared. All employees are advised of this policy at the time they are hired. She searched the records of the hospital and found no evidence that the petitioner ever reported a work-related injury. The only mention of her shoulder is an Employee Counseling Report in which the petitioner indicated that she had been calling off of work because she had a torn rotator cuff. There is no

mention that it was the result of a work injury or a work-related activity. The report is dated June 30, 2017. (Resp. Ex. 3)

On rebuttal, the petitioner testified that the video does not reflect exactly the motion she had to perform when she first began work for the respondent. She indicated that the buzzer was approximately 6 – 7 inches further away and mounted on the wall when she first started in September of 2014. She confirmed that the video does accurately reflect what she had to do in July of 2016. There was a remodeling project that occurred in 2015 and the early part of 2016. She had to work at a different work station. The video, however, accurately reflects the motion she had to perform in 2015 and 2016 at the temporary work station and the remodeled work station in early 2016.

Evelyn Jones thereafter testified that when the button was mounted on the wall, it was approximately 3 – 4 inches farther away.

The respondent entered into evidence the report of Dr. Prasant Atluri who performed an examination of the petitioner on March 12, 2018 at the request of the respondent. He took a history of the petitioner in which she indicated that the problems began approximately in May of 2016. She stated that she simply, "began to wake up with pain" and does not recall a specific incident. He performed a physical examination of the petitioner which revealed the following: tenderness of the AC joint; no crepitus of the right shoulder motion but snapping; negative cross-

arm, Hawkins and Yergason's maneuver; and reduced strength of the right arm. He further reviewed a written job description, all records of treatment and a video of an individual performing the pushing of the button to which the petitioner attributes her shoulder problems. He noted that there is no forceable use of the upper extremity and no prolonged elevation of the upper extremity or heavy forceful activity with the arm in an elevated position. He diagnosed a right rotator cuff tear. He further opined that the right shoulder condition is not causally related to the work activities. The type of duties depicted in the video do not involve any significant exposure to heavy forceful activity involving the shoulder. This type of work activities could not have contributed to the rotator cuff tear. He further opined that she is at maximum medical improvement and capable of working full duty. (Resp. Ex. 2)

CONCLUSIONS OF LAW

With respect to issues (C) "Did an accident occur that arose out of and in the course of Petitioner's employment with the Respondent? and (F) "Is Petitioner's current condition of ill-being causally related to the injury?", the Arbitrator concludes the following:

The petitioner alleges that her work duty of reaching forward to press a button approximately 78 times per day caused a rotator cuff tear in her right shoulder. The Arbitrator finds that the petitioner failed to prove she sustained accidental injuries arising out of and in the course of her employment and that her present condition of ill-being is causally related to the alleged accident. The

Arbitrator bases his findings on several factors. First, the Arbitrator notes that when the petitioner first began to treat for the shoulder on July 11, 2016, she did not attribute her shoulder pain to reaching forward to press a button. Furthermore, she stated that the problem existed for approximately one month. At no time during her treatment with her primary care physician did she ever mention a work-related activity. She informed Dr. Lucero that the only activity that aggravates her shoulder is lifting. By all accounts, there is no lifting or exertion involved in pressing the access button at work. At no time during her treatment with the original orthopedic surgeon, Dr. Terrell, did she ever attribute the pain to a work activity. When first seen by Dr. Primus on May 19, 2017, ten months after the onset of the problem, she did not attribute the shoulder complaints to her work activity or even that she experienced a problem with her shoulder at work. She stated that she just "woke up" with pain in the shoulder one morning which is directly contrary to her current claim. The first mention of a work activity being the cause of the problem is set forth in Dr. Primus' note of August 25, 2017, over thirteen months subsequent to the date of the alleged accident. Therefore, the documented medical histories do not support the petitioner's claim.

Secondly, for a petitioner to prove a repetitive trauma injury, an activity must be "repetitive." The petitioner estimated that she had to perform this activity approximately 78 times per day whereas Evelyn Jones testified she had to perform

the activity between 50 and 70 times per day. Using either estimate, the petitioner was required to perform the simple task of raising her arm less than 10 times per hour in a normal workday. Such activity is not sufficiently repetitive to be considered a repetitive trauma injury.

Thirdly, the Arbitrator has reviewed the videotape and notes that the activity involved does not require forceful or exertional activity. Evelyn Jones testified that she has pushed the button in the past and it requires little or no exertion. The petitioner conceded in her testimony that it requires no exertion at all. Dr. Atluri opined in his report that the pushing of the button could not have contributed to rotator cuff tear because it does not involve any significant exposure to heavy forceful activity involving the shoulder.

Finally, the Arbitrator finds that the opinion of Dr. Atluri is more persuasive than that of Dr. Primus. Dr. Atluri's opinion is predicated on a review of the video which demonstrates the activity that the petitioner had to perform whereas Dr. Primus did not review the videotape of the activity. In addition, Dr. Atluri reviewed all records of treatment. There is no indication from Dr. Primus' records that he reviewed any records of her prior treatment. Furthermore, Dr. Primus' opinion is directly contrary to the history he recorded in his initial visit with the petitioner that she simply "woke up" one morning with pain in the shoulder.

Therefore, the petitioner's claim for compensation is denied. All other issues are moot.

With respect to issue (E) "Was timely notice of the accident given to Respondent?" the Arbitrator concludes the following:

Section 6(c) of the Worker's Compensation Act requires the petitioner to provide timely notice of the accident within forty-five days of the day of the alleged accident. The Arbitrator finds timely notice was given.

Petitioner testified that she gave notice of her right shoulder injury to Amanda Collins, her immediate supervisor, on July 11, 2016. Evelyn Jones, vice president of management services, testified that Amanda Collins was, in fact, Petitioner's immediate supervisor at the time of the alleged injury. Ms. Jones did not testify that Petitioner failed to provide proper notice of her injury to Respondent. Petitioner's testimony that she gave proper notice of her injury to her supervisor, Ms. Collins, is unrebutted.

Affirm and Adopt (No Changes) No Affirm with Changes Yes No Reverse Reason No Modify	Injured Workers' Benefit Fund (§4(d)) No Rate Adjustment Fund (§8(g)) No Second Injury Fund (§8(e)18) No PTD/Fatal denied No

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC010580
Case Name	WILLIAMS, MARVIN v. STATE OF ILLINOIS – ILLINOIS DEPARTMENT OF TRANSPORTATION
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0086
Number of Pages of Decision	14
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Stephanie Seibold
Respondent Attorney	Joseph Blewitt

DATE FILED: 2/24/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LASALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARVIN WILLIAMS,

Petitioner,

vs.

NO: 19 WC 010581
19 WC 010580

STATE OF ILLINOIS DEPARTMENT OF TRANSPORTATION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability, and permanent partial disability, and being advised of the facts and law, affirms with correction the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Petitioner filed three Applications for Benefits arising from several alleged work accidents which occurred February 1, 2019 (19 WC 010589), February 4, 2019 (19 WC 010580) and January 31, 2019 (19 WC 010581). The cases were consolidated under case number 19 WC 010589. Hearing on the three consolidated cases was conducted before the Arbitrator on January 27, 2022. The Arbitrator issued separate decisions in each of the cases. The Commission notes that the three claims filed by Petitioner were, counterintuitively, sequenced in a random chronological order.

Having reviewed the facts and law the Commission finds that the Arbitrator made a scrivener's error on the caption of the Decision which is the subject of Respondent's petition. The substance of the Decision refers to Petitioner's work-related accident of February 4, 2019, (19 WC 010580) as does the language of the order. The caption of the Decision filed on April 1,

2022, erroneously reflects the case number as 19 WC 010581. Respondent State of Illinois Department of Transportation filed a Petition for Review which duplicated the typographical error, i.e. 19 WC 010581. Respondent's Statement of Exceptions is correctly captioned i.e. 19 WC 010580. Petitioner did not file for review.

The Commission finds that the clear intent of Respondent was to appeal the Arbitrator's Decision regarding the February 4, 2019, work accident. The substance of Respondent's brief addresses the February 4, 2019, work accident. Additionally, a footnote in Petitioner's brief explicitly acknowledges that the issues on review arise from the February 4, 2019, work accident.

In *Shafer v. Ill. Workers' Comp. Comm'n.,* 211 IL App (4th) 100505WC the Court noted that Section 19(b) of the Act merely requires that Petitions for Review be filed within 30 days and that they contain a statement of the petitioning party's specific exceptions to the Decision of the Arbitrator. The Court stated in that case that the Commission recognized that the employer intended to appeal the correct case. In the instant case given the correct number on Respondent's brief combined with Petitioner's acknowledgement of a scrivener's error it is clear that from the time the petition was filed the parties have acted as the case was properly before the Commission. Furthermore, neither party has raised the issue of the typographical error on review.

For the foregoing reasons the case number on the Decision and Petition for Review, copies of which are attached hereto are. hereby corrected. All else is affirmed and adopted with corrections.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 1, 2022, is hereby affirmed with correction as stated herein.

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

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

Pursuant to Section 19(f)(1) of the Act, this decision is not subject to judicial review.

February 24, 2023

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

SJM/msb
o-01/25/2023
44

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC010580
Case Name	WILLIAMS, MARVIN v. ILLINOIS DEPARTMENT OF TRANSPORTATION
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Stephanie Seibold
Respondent Attorney	Joseph Blewitt

DATE FILED: 4/1/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 29, 2022 1.05%

/s/ Paul Cellini, Arbitrator
Signature

CERTIFIED as a true and correct
copy pursuant to820 ILCS 305/14

April 1, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MARVIN WILLIAMS
Employee/Petitioner

v.

ILLINOIS DEPARTMENT OF TRANSPORTATION
Employer/Respondent

Case # **19** WC **10580**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Cellini**, Arbitrator of the Commission, in the city of **Chicago**, on **January 27, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [x] 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. [x] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [ ] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [ ] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On **January 31, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

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

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**81,355.69**; the average weekly wage was $**1,564.53**.

On the date of accident, Petitioner was **48** years of age, ***married*** with **1** dependent child.

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

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

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

Respondent claims a credit for all medical expenses paid via group health under Section 8(j) of the Act.

ORDER

The Arbitrator finds that the Petitioner has failed to prove that he sustained accidental injuries arising out of and in the course of his employment on January 31, 2019. Based on this finding, the Petitioner has also failed to prove that any alleged injuries are causally related to a January 31, 2019 accident.

No benefits are awarded.

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

APRIL 1, 2022

STATEMENT OF FACTS

Petitioner, a 25 year employee of the Illinois Department of Transportation (IDOT), testified that he was working as a highway maintainer / silkscreen operator in early 2019 and worked in the "sign shop" at the Respondent's Dixon, Illinois facility. He worked on signs in the winter and would get called in for snow plowing when needed. When he would plow, he would first have to report to a facility in Oregon, Illinois. Prior to and during this time period, Petitioner testified that a dispute had arisen between management and his union regarding use of a state versus personal vehicle to travel between the Dixon and Oregon facilities, which are about 15 miles apart, based on who would be responsible for obtaining insurance to cover third parties if an accident occurred. Petitioner testified it was "hit or miss" as to how he would get to Oregon: "A lot of times we drove our personal vehicles, but we were in dispute over the policy. So, some of us were driving state vehicles." He testified that he signed an insurance form indicating he would no longer use his personal vehicle for state business: "So we were using a bunch of – from the sign shop we were using a state vehicle and other people used a state vehicle. It just depends on the supervisor I would assume allowing you to take a state vehicle or not take a state vehicle."

A document titled "Certification of License and Automobile Liability Coverage" was submitted into evidence. (Px16). This document was signed by Petitioner on 1/5/18. In the document, Petitioner certifies that he is a licensed Illinois driver, and that he is "unwilling or unable to certify that I have automobile liability coverage or bond in an amount equal to or in excess of that required by Illinois law. I acknowledge that I am not authorized to use any personal vehicle on official state business or receive reimbursement for such use. I agree to notify my supervisor that I do not have in effect the required minimum amounts of automobile liability coverage or bond." (Px16).

Petitioner testified his union was involved in addressing this matter: "A letter was sent to the union president about not having to drive your personal vehicle, that they should allow us to use the state vehicle, but it had to be disputed if the supervisor was going to argue it. That contract time would have to be negotiated again and talked about." He further testified: "Our supervisor Kevin (Marchak) pretty much said that he didn't care how we got to -- once we reported to our normal work location, he didn't care how we got to the next location; walk, ride a bike, take a cab, ride a horse. He didn't care." Petitioner testified that Marchak, the district engineer, informed Petitioner if he used a state vehicle anymore, he would be disciplined, but did not testify as to exactly when or how this conversation took place.

On 1/31/19, Petitioner reported to his shift at the Dixon location. Later towards the evening, he was advised to report to Oregon for snow plowing. He began to walk from Dixon to Oregon, indicating his supervisors were aware of this. Asked if he was offered a state vehicle after he began walking, he testified: "Not after I was walking. Well, when I initially walked, I was not offered anything but then sometime during the evening my supervisor from the Oregon yard, Josh Butterfield, realized I was walking and I believe he was told to come pick me up." Petitioner testified that he had walked for a couple of hours before being picked up, and that the Governor had issued a weather emergency due to the cold. He testified that he felt pain in his fingers and toes from the cold during the walk.

On 2/1/19, Petitioner again was assigned to plow slow, this time early in the day. To his recall around 8 a.m. he again began to walk from Dixon to Oregon. This time, he estimated he was outside walking for about 5 to 6 hours. He was about 2 miles from the Oregon location when he was picked up by his union president. As to whether he was offered a state vehicle: "No, I was not offered a state vehicle. I had someone (Mike Hubbell) -- someone from the shop was going to Oregon to fix a sign or something, and I asked if I could ride with him and they told me no." Again, in this time period, Petitioner testified: "The union stated that the state couldn't necessarily write me up for taking a state vehicle or not using my vehicle, but they would find different avenues

to try to write me up and possibly get me terminated if I chose not to use my personal vehicle anymore." Asked whether he was concerned he'd be disciplined if he used a personal vehicle, he testified: "I told them -- I signed a paper stating that I didn't care for the liability insurance that they required and that I didn't carry liability insurance that they carried, and I didn't have a vehicle at that time anyway. It was in the shop. They knew prior to that that that was the stance on the driving."

Petitioner testified that while he was walking on Route 2 on 2/1/19, while trying to walk across the road, a semi-truck came around the curve and he had to jump out of the way, twisting his left knee and landing on his back on a guardrail. He indicated his back was not a big deal, that a bruise was found there when he sought treatment that day at Physician's Immediate Care (PIC), but that his toes, fingertips, and knee were the main problem. He testified that when this incident occurred, "it gets to a narrow spot, and the visibility was not the greatest during the storm."

On 2/4/19, Petitioner testified that when he went to sit in a chair at work, the chair broke: "…the screws came out and broke and I fell back and landed on my back and knocked my head on the concrete and kind of bounced." For this injury, Petitioner testified he sought treatment with chiropractor Dr. Warner on 2/6/19.

Petitioner submitted multiple accident reporting documents for each case: a Form 45, a Tristar Notification of Injury, and a Tristar Workers' Compensation Employee's Notice of Injury. The reports regarding the 1/31/19 alleged injury reflects a consistent history of frostbite complaints after walking outside. The 2/1/19 accident reports note the same thing, but also that he "slipped and fell due to ice" in the Form 45, a fall/slip/trip on ice/snow in the Notification of Injury with back and left knee injuries, and "trying to get out of the way of a semi-truck" in the Notice of Injury with report of twisting the left knee and "also back." Regarding the alleged 2/4/19 accident, the reports indicate he sat in a chair that broke and landed on his buttocks and then the concrete floor, injuring his back, buttocks, head, and right shoulder blade (Form 45 and Notification); in the Notice of Injury it states the chair broke and he fell on the concrete floor with injury to the head, back, neck and right shoulder. (Px2, Px4, Px6)

On cross examination, Petitioner testified that, in addition to a general union contract, a separate agreement was made regarding transportation, but he denied signing anything that indicated the state did not have to provide transportation or a state vehicle while he was on duty. Asked if he was upset about Respondent's policy regarding the use of personal vehicles, he testified: "I don't agree with it. I don't agree with it but that's not my decision. That's the union", and "it's not my choice to be upset." Petitioner testified further: "If you want me, I have a form that states that if you choose not to use your vehicle, you don't have to use your vehicle. IDOT wants you to have the proper insurance if you are going to use your vehicle. So, when you sign that and a group of us signed that, so we were driving state vehicles. So, at that point, it was not a question. They said you sign this paper. They gave us a vehicle to drive, and then at some point they took it away again." He also testified that "Certain people use state vehicles and they don't say anything and then certain people don't." Petitioner testified that he and coworkers had been allowed to use a state vehicle to travel between facilities, but some time prior to 1/31/19 a memo was issued by Kevin Marcheck indicating they were to use their personal vehicles for this travel. Neither party entered this memo into evidence, so it is unclear exactly what was stated.

Petitioner denied that his walking between the two facilities was a personal protest of the policy change, but rather that he didn't have a vehicle, and Marcheck's memo indicated that they didn't care "how we got there, walking, riding a bike or whatever mode of transportation to get there, get there. Otherwise, you are going to be disciplined up to termination." Most of his co-workers chose to drive their personal vehicles. Petitioner's testimony on cross as to when he was supposed to report to the Oregon facility on 1/31 and 2/1/19 was confusing to the Arbitrator, and at one point he testified: "I don't have a family. I don't have a time frame. The newer ones do. I don't have a time frame." He would have to sign in and out of each facility, but then testified

that while he was supposed to do so, "they don't make you because of the whole liability issue of being in two places at the same time." He did not believe he signed out at the Dixon facility on 1/31/19 before he started walking but did believe he signed in when he got to Oregon, though he couldn't say for sure. He couldn't say if he signed out of Dixon on 2/1/20, testifying he would need to see the sign in/out sheets. Petitioner testified that when the union president picked him up on 2/1/19, he told Petitioner that Respondent had informed him that he was walking again. He denied telling the union president that he was walking in protest of the vehicle policy. Petitioner was unable to say when the vehicle policy change memo had some out prior to his alleged accident dates. He testified he was wearing reflective clothing when he was walking on both dates. As to other workers compensation cases pending that were not being heard at this hearing, Petitioner testified he had "maybe one" which involved the head and neck.

A co-worker of Petitioner, Mike Hubbell, was called by Petitioner to testify. A 20 year IDOT worker before retiring a year before his testimony, Mr. Hubbell was working as a highway maintainer at the Dixon sign shop in early 2019 and advised that he was aware of the change in the vehicle use policy around that time after a grievance had been filed. There was a conflict between IDOT and the union and he testified that discussions were had with supervisors regarding whether or not he should use a personal vehicle. Mr. Hubbell testified: "Up until that point in time I used a state vehicle. I plowed snow out of the Rock Falls yards, and I would use a state pickup truck if we were at work already, not from home. If we were at work already, I would use a state pickup truck to go to Rock Falls which is approximately 12 miles. After doing that a few times, I had a conversation with the supervisor over there, and he pointed out that it was going to be very difficult on our OS one." He further testified: "The head engineer in our department, that the rest of management would make it difficult on him if we continued to do so. At that point in time, I chose not to drive a state vehicle anymore." He didn't want to get involved in the conflict. On 2/1/20, Mr. Hubbell testified that he drove the Petitioner to work because his vehicle was in the shop. He was questioned as to whether Petitioner asked him for a ride to Oregon that day, and Hubbell testified: No, because I was working too but I had a job to do in Oregon, and I offered to give him a ride and was instructed I could not provide that ride in a state vehicle." He testified that Respondent supervisors were "absolutely" aware that Petitioner was walking on both dates. The memo the Petitioner testified to came out subsequent to the noted grievance being filed, and to Hubbell's knowledge that grievance remained pending at the time of the hearing.

Respondent called Josh Butterfield to testify. A 22 year IDOT employee, he was the operations supervisor for Ogle County (Oregon), and in winter would supervise highway maintainers in maintaining the right of way with pothole patching or snow plowing. At approximately 1:30 p.m. on 1/31/19, due to a storm, he recruited maintainers from the sign shops to plow snow including workers from the Dixon facility, which is about 15 miles away from Oregon. Three of the four he recruited showed up, but the Petitioner did not. Mr. Butterfield testified that the recruits had a reasonable amount of time to show up, and per union rules he would have had to show by 3:30 p.m. At about 3:20 p.m., he called Petitioner's supervisor, Aaron Buss, to find out about Petitioner's status and was told that he was waiting for a ride from his wife to go pick up his vehicle so he could head to Oregon. When Petitioner still hadn't arrived by 4:20 p.m., he again called Buss, who told him he believed Petitioner left and had started walking. He could not say when Buss learned that Petitioner had started walking. Butterfield called his Bureau Chief, Trisha Thompson, asking what he should do for shift integrity as he was to show up by 3:30, and she advised him to call Petitioner and see where he was. When he did, Petitioner said he was walking to Oregon and was north of Grand Detour. Butterfield told him to stop walking and go to the nearest gas station and he would go pick him up. Petitioner did not do so and continued to walk, and had been walking when Butterfield picked him up around 4:40 p.m. He testified he asked Petitioner why he was doing something so dangerous, that he could have been killed, and Petitioner stated it was "all about the dispute they are having with the vehicles and that was pretty much our whole conversation."

Mr. Butterfield testified that no one in his 22 years had attempted to walk from Dixon to Oregon, so Petitioner doing so was a total surprise, especially given that there were subzero temperatures, the roads were snow covered, and he was walking on a highway with no sidewalk. He believed the roads were the same or a little better on 2/1/19 though he could not say for sure as he didn't travel on the road himself on 2/1/20. Asked if the Respondent's vehicle use issue was a policy or was part of the union contract, Mr. Butterfield testified: "I am not clear on an actual state policy, but in the union contract, it clearly states that any highway maintainer that is asked to go to a subsequent yard plus provide their own transportation to get to that yard and in return they will get mileage or reimbursed for that time. So as for needing liability insurance, I have never seen that, but it is stated in the current contract for any union member that is a current member of the union that has signed the union contract that they are required to use their personal vehicle if asked to go to a different yard and they will get reimbursed for it. That is in the union contract, not any employee policy." This contract was in effect in early 2019.

On rebuttal, Petitioner testified that Buss knew "at some point" that he was walking to Oregon. He knew Petitioner didn't have a car. Petitioner testified that no other supervisors knew he was walking on 1/31/19, but that on 2/1/19 other supervisors did know. He reiterated that he was told they didn't care how he got there, but that he would face discipline if he didn't get there. He was not carrying the auto insurance coverage that Respondent required at the time he signed Px16 on 1/5/18, or on 1/31/19 or 2/1/19. His concern was that the state would not cover any property damage if he was in an accident while driving his personal car between the facilities, and he would have to pay, while any injuries in such accident would be covered under workers' compensation. Petitioner did not believe he had plowed snow out of the Oregon facility since 2/1/19 but wasn't 100% sure.

At his initial 2/1/19 visit to PIC, Petitioner presented with complaints of upper and lower extremity tingling, and low back and left knee pain. He reported walking on 1/31/19 from one IDOT station to another outside for 3 hours in minus-15 degree temperatures and complained of tingling in the tips of his fingers and toes. He reported he then was walking again earlier this day and had to jump out of the way of a semi, injuring his back and left knee against a guard rail. Knee and spine x-rays were normal. He was diagnosed with contusions of the low back and left knee, and superficial frostbite of the bilateral fingers and toes. He was restricted from prolonged driving and lifting over 50 pounds until 2/7/19. On 2/7/19, Petitioner reported frostbite and back symptoms, reporting "give way" in the left knee with prolonged standing. Physical therapy and medication were prescribed, a knee brace was issued, and restrictions were reduced to no snow plowing for over 8 hours. On 2/20/19, the frostbite symptoms were resolving with ongoing back and knee pain, and therapy and restrictions were continued. (Px7).

On 4/23/19, Petitioner reported ongoing left knee and back symptoms and that he was unable to continue therapy because work would not approve it. He reported Respondent took him off work on 4/5/19 and advised he needed to follow up. Restrictions were advised of avoiding jackhammer use and prolonged driving through 5/9/19. A referral to orthopedic surgery for the left knee referenced that Respondent was denying the Petitioner's claims. (Px7). Petitioner did testify that he did participate in physical therapy for the left knee for a period of time.

On 6/27/19, Petitioner reported improved back pain, worse with activities like prolonged lifting or mowing. Left knee instability continued. He was restricted from ladders, jackhammers, prolonged driving, kneeling, and bending through 7/25/19. The treating physician at PIC stated, "the original injury of hitting a guard rail while going to another workstation at work, injuring the lower back and left knee is work related." (Px7).

On 8/30/19, Petitioner sought treatment with Dr. Bodner (Midwest Orthopedic Institute). Noting a history of three prior left knee surgeries, Petitioner reported being at work on 2/2/19 and needed to plow, went outside and

slipped and fell, landing on his back with immediate left knee pain. He reported pain around the patella with popping, give way and increased pain with activity. The diagnosis was left knee prepatellar scar tissue significant following 3 arthroscopic surgeries and early arthritic change. Optioned were discussed and Petitioner wanted to have arthroscopic surgery "as a last treatment before he would be looking at knee replacements in his 50's." Petitioner also reported no results with prior therapy or injections. (Px10).

On 5/28/20, Dr. Bodner performed a left knee patellar chondroplasty with latera retinacular release and synovial resection of the lateral gutter. Postoperative diagnoses were patellar pain with grade 3 chondromalacia with tight retinacular tissues and abundant synovial tissue in the lateral gutter. Ligaments and menisci were intact. Petitioner was held off work. On 6/9/20, Dr. Bodner noted Petitioner had good motion and very little pain. He indicated Petitioner had an excellent result and advised him to perform home exercises and to follow up as needed. (Px10).

Following the 4/4/19 injury with the chair, Petitioner presented to Warner Chiropractic on 2/5/19 with complaints of neck, back, head, right shoulder, and left knee pain. Petitioner followed up with Dr. Warner on 4/19/19 and he indicated Petitioner should limit his lifting and not perform driving for over eight hours. On 6/25/19, 8/30/19 and 10/25/19, Dr. Warner completed paperwork indicating he should not operate trucks or equipment in excess of eight hours and should avoid operation of a jackhammer. The 10/25/19 note also indicated Petitioner should not reach or work above shoulder level; should not operate a jackhammer. On 12/30/19, Dr. Warner completed similar paperwork. (Px8). Petitioner participated in chiropractic care with Dr. Warner between 2/5/19 and 2/28/20. (Px8).

A 9/16/19 cervical MRI radiology report indicated films were unremarkable. (Px9).

Petitioner saw Dr. Ahmed (Ortho Illinois) for neck pain on 2/28/20 on referral from Dr. Warner, noting It was the result of a fall from a chair. Petitioner reported a pain level from 2/10 to 5/10 depending on activity. Petitioner reported a year of pain and that chiropractic care helped tremendously with the pain and headaches. Following exam and review of the cervical MRI, Dr. Ahmed diagnosed cervicalgia, noting the MRI findings were indicative of a chronic strain that would get better with time and conservative treatment. Aggressive manipulation was not recommended. Modalities were recommended with possible pain management. (Px13).

Petitioner testified that he was made aware that Respondent was denying his workers' compensation claims, which he understood to be based on the state not knowing he had been walking, and that he informed them that Trisha Thompson, Kevin Marchak and Aaron Buss all knew he was walking to the Oregon location and had sent out an email that if he was seen walking not to pick him up.

Petitioner testified that PIC and Dr. Warner continued to restrict him from driving heavy equipment through April 2019. On 4/5/19, Respondent informed him that they would no longer accommodate his restrictions and that he would be put on non-occupational disability. He testified it took a period of time to kick in and he believed this benefit totaled $3200 a month, some percentage of his salary

Petitioner testified that his complaints to the chiropractor were of a stiff neck, headaches and dizziness and he underwent chiropractic manipulations several times per week for his neck and shoulders through early 2020. He also saw a surgeon, Dr. Sliva, for his neck, who indicated that surgery wasn't recommended, and medication and chiropractic treatment could continue. He believed he was referred to Rockford Spine Center, i.e. Dr. Sliva, by PIC.

Dr. Warner released Petitioner to full duty around 3/17/20. During the year he was off work, Petitioner never offered to accommodate his work restrictions. He had spoken to a Gina Christofferson, noting he was not sure

of what her title was but that she dealt with non-occupational disability for Respondent. He testified that "I was told it's an unwritten rule for highway maintainers to be able to come to work on light duty, on non-work related injuries", but did not testify as to who told him this.

Petitioner testified he had prior problems with his knees, including bilateral knee surgeries, but that he was 100% fine prior to 2/1/19 and had not had medical care for "quite a while." He testified that he believed he found Dr. Bodner on his own. He disputed the history indicated by Dr. Bodner if it stated he was outside and slipped and fell and injured his knee on 2/2/19. Petitioner testified he did not recall saying this. His testimony in this regard was confusing, as he also alluded to "the accident upstairs." To his recall, his knee pain began when he got out of the way of the semi and there had been no subsequent left knee injuries.

Petitioner testified that his left knee symptoms following the 2/1/19 incident involved tingling, numbness and occasional shooting pain into the foot, symptoms he did not have before 2/1/19. He had no work restrictions related to his knee prior to January 2019, and following the 5/28/20 post-accident left knee arthroscopy, he was released to full work duties by Dr. Bodner. He wasn't sure how long he was off work following the surgery, but agreed it could have been until about 6/19/20, when he was advised to perform home exercises and follow up as needed.

Petitioner had two prior left knee claims (3/30/05 and 8/18/14) and three prior claims involving the head/neck/back (7/7/10, 4/12/11, and 4/30/12). (Rx2, Rx3, Rx4).

Petitioner's Exhibit 14 and Respondent's Exhibit 3 were rejected based on objections from the opposing party.

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

This issue is the key question in the cases involving claimed 1/31/19 and 2/1/19 accident dates.

With regard to the "in the course of" prong of the accident issue, the Arbitrator finds that the Petitioner was in the course of his employment as he was traveling from the Respondent's Dixon location to its Oregon location during a time when Petitioner had been assigned to perform snow plowing from the Oregon location.

With regard to the "arising out of" prong, the Court in *Stembridge Builders v. Illinois Industrial Comm'n*, 201 Ill.Dec. 656, 263 Ill.App.3d 878, 636 N.E.2d 1088 (1994) stated: "An injury 'arising out of' one's employment may be defined as one which has its origin in some risk so connected with, or incidental to, the employment as to create a causal connection between the employment and the injury. (*Greene v. Industrial Comm'n* (1981), 87 Ill.2d 1, 4, 56 Ill.Dec. 884, 885, 428 N.E.2d 476, 477.) A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling his duties. (*Fisher Body Division, General Motors Corp. v. Industrial Comm'n* (1968), 40 Ill.2d 514, 516, 240 N.E.2d 694, 695.) An injury is not compensable if it resulted in a risk personal to the employee rather than incidental to the employment. (*Fisher Body Division*, 40 Ill.2d at 517, 240 N.E.2d at 696.) Recklessly doing something persons are employed to do which is incidental to their work differs considerably from doing something totally unconnected to the work. (*Gerald D. Hines Interests v. Industrial Comm'n* (1989), 191 Ill.App.3d 913, 917, 138 Ill.Dec. 929, 932, 548 N.E.2d 342, 345.). The question of whether the conduct so deviated from the employer's business that it took the employee out of

the scope of employment is a question of fact. (*Paganelis v. Industrial Comm'n* (1989), 132 Ill.2d 468, 483-84, 139 Ill.Dec. 477, 484, 548 N.E.2d 1033, 1040.)

In the case at bar, it is clear that the Petitioner's travel from the Dixon facility to the Oregon facility was connected to him fulfilling his work duties. In addition, it makes him a traveling employee, wherein a case could be determined to be compensable merely by Petitioner participating in a reasonably foreseeable activity during the travel. That being said, while the travel itself was obviously reasonably foreseeable, the manner in which Petitioner performed the traveling was not. Not only was it not foreseeable, but in this Arbitrator's view, the activity was incredibly dangerous and reckless. He testified that he decided to take a 15 mile walk from Dixon to Oregon in a snowstorm with temperatures that were so cold the Governor had declared a weather emergency. Despite being confronted by the Oregon supervisor on 1/31/19 about how dangerous this was, he did it again the next day. The Petitioner, while he disagreed with Respondent's policy of using a personal vehicle, absolutely understood well in advance of these incidents that he was not to use a state vehicle. One would think a reasonable person, first of all, would not attempt this walk including walking down a highway with no sidewalk. Secondly, a reasonable person unquestionably would not attempt to do so again the next day after experiencing symptoms as he testified to in his hands and feet. The Arbitrator finds that the Petitioner's conduct in attempting to walk between the Respondent facilities, a 15 mile distance, during snowstorms and with temperatures he himself indicated were 15 below zero, so deviated from the employer's business that it took the Petitioner out of the scope of his employment.

While the Petitioner testified that he did not do this in protest and that he did not have a personal vehicle to drive, it is unclear why he wouldn't have obtained a ride with a coworker. He testified that most of his coworkers used their personal vehicles for the trip to Oregon. Unless this claimant is tremendously disliked by his co-workers, it makes no sense whatsoever that the Petitioner would not have obtained a ride to Oregon on 2/1/19, or prepared to have a personal vehicle available that day, given the circumstances that had occurred the day prior. Instead, it appears quite clear that he did this in protest, at the risk of his health and his life.

The Petitioner's testimony at hearing was often very confusing, and at times contradicting. His explanations of what the specific policy was at Dixon on vehicle use to Oregon prior to 1/31/19 is unclear. The Petitioner seemed to be saying that some workers would be allowed to use state vehicles and others wouldn't, but also testified that when the policy changed, most of is coworkers started to use their personal vehicles. He didn't testify to any conversations he may have had with supervisors on 1/31/19 and 2/1/19 after he learned he was assigned to Oregon to plow snow. While he testified that Aaron Buss knew he was walking n 1/31/19, it appears from Mr. Butterfield's testimony that Buss initially thought Petitioner's wife was picking him up and didn't realize until well after Petitioner had begun walking that he was doing so. Petitioner's testimony that his decision to walk was not in protest of the rule is not very believable under these circumstances, namely attempting to walk 15 miles in temperatures well below zero. Petitioner and Hubbell did testify that Respondent advised Hubbell on 2/1/19 that he wasn't to allow Petitioner to ride with him to the Oregon site. However, Hubbell's testimony indicates he was not being sent to Oregon to plow snow, but rather for a different purpose, and no evidence was presented as to whether Petitioner asked any of the other three workers Butterfield testified were pulled from Dixon to plow on 1/31/19 for a ride or not, or whether Respondent somehow blocked this. As noted, the Respondent doesn't have the cleanest hands here given the order to Hubbell to not drive Petitioner on 2/1/19. That said, this is in the context of Petitioner already attempting to walk the day prior in very dangerous conditions, and Petitioner seemingly well aware of the need to use his personal vehicle prior to these alleged accident dates. Mr. Butterfield, in fact, testified credibly that this policy was part of the union contract. Additionally, as can be seen from his testimony, the Petitioner often states things, such as some people were allowed to use state vehicles and others did not, with no foundation as to who may have indicated this or how he has knowledge of it. They are simply allegations unsupported by any foundational evidence.

Petitioner testified that he wasn't sure which knees were involved in his previous surgeries, and that he thought he had one on the left, is contradicted by medical records which indicate he had three prior left knee surgeries. It seems highly unlikely that one would forget undergoing multiple left knee surgeries.

The Arbitrator finds that the Petitioner participated in extremely reckless behavior in attempting to walk 15 miles between Respondent's locations during extreme cold and snow, which was the whole reason he was assigned to plow snow. He was walking on what appears to be a significant route where there was no sidewalk. The Arbitrator also notes that these actions by Petitioner potentially put Illinois drivers at extra risk due to a snowplow being idled while Petitioner walked for hours. The Petitioner knew he was in danger of discipline if he showed up late at the Oregon facility. In making the decision to walk 15 miles during severe snow and cold, it had to be clear to Petitioner that he was going to be tremendously late, and he in fact testified that on 2/1/19 he was outside for 4 to 5 hours. It doesn't appear that there would be much of a difference in not showing up at all versus showing up 5 or 6 hours late (he still had two miles to go on 2/1/19 when he was picked up by his union president), making this choice patently unreasonable in the Arbitrator's view. The greater weight of the evidence supports the finding that the Petitioner was making a personal protest of a union contractual term, use of the personal vehicle, and took this to an extreme level, endangering himself and others on the road.

The Arbitrator finds that the Petitioner failed to prove he sustained accidental injuries arising out of and in the course of his employment with Respondent on 1/31/19 or 2/1/19.

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

Based on the Arbitrator's findings regarding Petitioner's failure to prove a compensable accident, this issue is moot.

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

Based on the Arbitrator's findings regarding Petitioner's failure to prove a compensable accident, this issue is moot.

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

Based on the Arbitrator's findings regarding Petitioner's failure to prove a compensable accident, this issue is moot.

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

Based on the Arbitrator's findings regarding Petitioner's failure to prove a compensable accident, this issue is moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC029738
Case Name	Nicholas Depinto v. Ups Cach
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0087
Number of Pages of Decision	5
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Joseph P. Brancky
Respondent Attorney	Cody Hartman

DATE FILED: 2/27/2023

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Nicholas DePinto,
Petitioner,

vs. No. 20 WC 029738

UPS CACH,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, and prospective medical treatment, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below. The Commission further remands this case to the Arbitrator for further proceedings 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 (1980).

The Arbitrator found Petitioner failed to prove that on December 6, 2020 he sustained an accident that arose out of and in the course of his employment and that his current condition of ill-being was causally related to that accident. Therefore, he denied Petitioner all benefits. The Commission views the evidence differently and finds that Petitioner's repetitive stress accident arose out of and in the course of his employment with Respondent and that his bilateral knee osteoarthritis is causally related to that accident. The Commission awards benefits accordingly.

I. Findings of Fact and Procedural History

Petitioner was employed by Respondent as a loader (3.5 years), package car driver (12.5 years), and then as a street feeder driver delivering semi-trailers (12 years). As a street feeder driver, he drove a semi-tractor to relocate trailers within the UPS facility, opened trailer doors, connected air lines, used a dolly wheel assembly to assemble semi-trailers, and accessed a cab with

three steps several times daily. His prior positions required him to lift 50-pound packages into trailers for delivery, deliver packages weighing up to 75 pounds, and make 120 delivery stops and 30 pickups a day. Petitioner testified that he worked 50-55 hours per week.

On June 2, 2020, Petitioner complained to Dr. Michael Durkin of Hinsdale Orthopedics of bilateral knee pain. He told the doctor the pain started spontaneously. Dr. Durkin diagnosed Petitioner with bilateral osteoarthritis and administered cortisone injections, but Petitioner obtained only minimal relief. On July 14, 2020, Petitioner returned for gel injections, which provided two months of relief. Dr. Durkin recommended bilateral total knee replacements. Petitioner did not discuss his work activities at those appointments.

Petitioner was off work from July 2020 to October 2020 for open heart surgery.

On November 30, 2020, Petitioner sought evaluation from Dr. Vasili Karas at Midwest Orthopaedics for his worsening knee pain. He told Dr. Karas that his knees hurt when he was working, because his job had become more physically demanding when he returned after his heart surgery. As a shifter driver, he had to step in and out of his vehicle more frequently than he had in his prior position as feeder driver, up to 50 times a day. Petitioner told Dr. Karas that his knee pain had been present for several years but had been manageable until recently. Dr. Karas noted the repetitive nature of Petitioner's work and found climbing in and out of trucks for 42 years was a contributing factor to his present knee pain. The doctor noted that Petitioner's osteoarthritis was multifactorial. Genetics and obesity may have contributed to cause his bilateral knee pain, but the repetitive nature of Petitioner's employment was also a contributing factor. Dr. Karas agreed with Dr. Durkin's recommendation for a bilateral knee replacement. Dr. Durkin administered additional gel injections on August 10, 2021.

Petitioner filed his Application for Adjustment of Claim on December 7, 2020, alleging a date of accident of December 6, 2020, the date Dr. Karas completed his office note for Petitioner's November 30, 2020 visit. This was the first time a physician had causally related Petitioner's knee pain to his work activities.

Respondent's §12 examiner, Dr. Shadid, agreed with Dr. Karas's and Dr. Durkin's diagnosis of osteoarthritis and his recommendation for bilateral total knee replacement. However, he denied that Petitioner's work activities, specifically climbing in and out of truck cabs, would have aggravated his pre-existing osteoarthritis. The Arbitrator found Dr. Shadid's opinions more persuasive than those of Petitioner's treating physicians. He concluded that Petitioner failed to prove that he suffered a repetitive stress accident arising out of and in the course of his employment and that his bilateral knee condition was causally related to that accident. All benefits were denied.

II. Conclusions of Law

The Commission views the evidence differently and finds that Petitioner proved that he sustained a compensable repetitive stress accident that arose out of and in the course of his employment with Respondent and that his bilateral knee arthritis was causally related to his work.

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land & Lakes Co. v. Industrial Comm'n,*

359 Ill. App. 3d 582, 592 (2005). A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 205 (2003). Thus, even if the claimant had a pre-existing degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. *Sisbro,* 207 Ill. 2d at 205; *Swartz v. Industrial Comm'n,* 359 Ill. App. 3d 1083, 1086 (2005). A claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Mason & Dixon Lines, Inc. v. Industrial Comm'n,* 99 Ill. 2d 174, 181 (1983); *Azzarelli Construction Co. v. Industrial Comm'n,* 84 Ill. 2d 262, 266 (1981); *Swartz,* 359 Ill. App. 3d at 1086.

Petitioner testified that there was no specific work incident on December 6, 2020, but this was the date he first learned that his knee pain was related to his work activities. Petitioner argues that the repetitive lifting and climbing required by his work over many years contributed to cause his bilateral knee osteoarthritis and pain. Dr. Karas noted that Petitioner was obese and may have been genetically predisposed to develop arthritis. However, the doctor believed that the repetitive nature of Petitioner's various jobs with Respondent had also contributed to his bilateral knee condition, hastening his need for bilateral total knee replacements.

Respondent's §12 examiner, Dr. Shadid, opined there was no objective medical evidence to support a finding that Petitioner's work activities contributed to cause his condition. He pointed to Petitioner's obesity and age as factors and denied that repeatedly climbing in and out of the truck cabs would have aggravated or contributed to cause Petitioner's osteoarthritis, although it might have caused symptoms. As the Illinois Supreme Court noted in *Azzarelli Construction* and *Mason & Dixon Lines*, aggravation of a pre-existing condition is sufficient to constitute an accident under the Act. *See also, Waldorf Corp. v. Industrial Comm'n,* 303 Ill. App. 3d 477, 480-81 (1999), where the Appellate Court found that a worker's pre-existing fibromyalgia was aggravated by his repetitive work activities on a press.

Here, the Commission finds that although Petitioner's osteoarthritis pre-existed his date of injury, the repetition of his climbing and lifting work activities over the years and the increase in his climbing required by the job change upon his return to work after heart surgery aggravated his osteoarthritis and accelerated the need for bilateral total knee replacements. Therefore, Petitioner is entitled to medical benefits under the Act and to prospective medical treatment as recommended by Dr. Durkin, Dr. Karas, and Dr. Shadid.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on July 26, 2022, is hereby reversed. The Commission finds Petitioner sustained an accident on December 6, 2020 that arose out of and in the course of his employment, and Petitioner proved by a preponderance of the evidence that his current condition of ill-being is causally related to the accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable and necessary medical expenses incurred for treatment and listed in Petitioner's Exhibits 2 and 4, as provided under Section 8(a) and Section 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the bilateral total knee replacements recommended by Dr. Durkin, Dr. Karas, and Dr. Shadid, as provided under Section 8(a) and Section 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall 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, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980), but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $1,300.00. 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.

February 27, 2023
MP:dk
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/s/ *Marc Parker*
Marc Parker

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC030559
Case Name	Sonny P. Garcia v. State of Illinois - Illinois State University
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0088
Number of Pages of Decision	6
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Kathy Olivero
Respondent Attorney	Bradley Defreitas

DATE FILED: 2/27/2023

/s/ Deborah Simpson, Commissioner

Signature

21WC030559
Page 1

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

☒ 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

Sonny Garcia,
Petitioner,

vs. NO: 21 WC 030559

Illinois State University,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of medical expenses, nature and extent and out of pocket expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 22, 2022, is hereby affirmed and adopted.

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

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

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

February 27, 2023
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DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC030559
Case Name	Sonny P. Garcia v. State of Illinois - Illinois State University
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	4
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Kathy Olivero
Respondent Attorney	Bradley Defreitas

DATE FILED: 9/22/2022

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 20, 2022 3.78%

/s/Kurt Carlson, Arbitrator
Signature

CERTIFIED as a true and correct copypursuant to
820 ILCS 305/14

September 22, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

☐ 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

Sonny Garcia Case # **21** WC **30559**
Employee/Petitioner/ Kathy@kanoski.com
v.
Illinois State University
Employer/Respondent / bradleydefreitas@ilag.gov

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 **Kurt Carlson**, Arbitrator of the Commission, in the city of **Bloomington**, on **August 31, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **October 24, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**45,630.00**; the average weekly wage was $**877.50**.

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

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

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

Respondent shall be given a credit for TTD paid per the 19b decision.

Respondent is entitled to credit under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of $7,994.26, as provided in Sections 8(a) and 8.2 of the Act as provided in Petitioner's Exhibit #4 at the fee schedule rate.

Respondent shall pay Petitioner temporary total disability benefits of 585.00/week for 4 3/7 weeks, commencing 2/26/22 through 3/28/22, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the sum of $526.50 for 43 weeks, as provided in Section 8(e) if the Act, because the injuries sustained caused 20% loss of the right leg.

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.

Kurt A. Carlson

Signature of Arbitrator

September 22, 2022

Sonny Garcia v Illinois State University
21-WC-30559

Conclusions of Law

As an initial matter the Arbitrator notes Petitioner has the burden of proving all of his case by a preponderance of the evidence. Chicago Rotoprint v. Industrial Comm'n, 157 Ill.App.3d 996, 1000, 509 N.E.2d 1330, 1331(1st Dist. 1987).

Issue (L): What is the Nature and Extent of the injury?

As Section 8(d) has two option for permanent partial disability awards then an analysis for a PPD award is necessary. With respect to disputed issue (L), pertaining to the nature and extent of Petitioner's injury, and consistent with 820 ILCS 305/8.1b, permanent partial disability shall be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1b of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. No single enumerated factor shall be the sole determinant of disability. Id.

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

With regard to subsection (ii): the occupation of the employee: the Petitioner is still employed as building service foreman for Respondent which requires a significant usage of his lower extremities. He did testify that he is able to perform all job duties as required by his employer. Therefore the Arbitrator gives some weight to this factor.

With regard to subsection (iii): the Arbitrator notes that Petitioner was 50 years old at the time of the accident. The Petitioner is young and still has a significant amount of time left in the labor force, the Arbitrator gives moderate weight to this factor.

With regard to subsection (iv): Petitioner's future earnings capacity: There was no testimony presented that this injury has affected the future earnings of Petitioner. Therefore, the Arbitrator places little weight on this factor.

With regard to subsection (v): evidence of disability corroborated by the treating medical records: the Arbitrator notes Petitioner underwent right knee arthroscopy to repair a medial meniscus tear of the posterior horn and an abrasion chondroplasty of the patella. The medical records show that Petitioner actively participated in physical therapy and progressed well while in their care. Therefore, the Arbitrator gives this factor greater weight.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 20% of the right leg, pursuant to §8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC011748
Case Name	Enrique Estrada v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0089
Number of Pages of Decision	18
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Steven Seidman
Respondent Attorney	Barrett Long, Andrew Zasuwa

DATE FILED: 2/27/2023

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ENRIQUE ESTRADA,

Petitioner,

vs. NO: 16 WC 11748

CHICAGO TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's left knee condition of ill-being is causally related to his undisputed accident, entitlement to medical expenses, and the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, corrects the Decision of the Arbitrator and provides additional analysis as stated below, but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

FINDINGS OF FACT

The Commission observes the Findings of Fact set forth in the Decision omits the August 9, 2017 addendum of Respondent's Section 12 expert, Dr. Preston Wolin. For the sake of completeness, the Commission inserts the following paragraph after the first paragraph on Page 7 of the Decision:

On August 9, 2017, Dr. Preston Wolin authored an addendum detailing his review of additional medical records. Specifically, Dr. Wolin had been provided with the March 27, 2017 left knee MRI; Dr. Diekevers' November 21, 2016 office note; the October 17, 2016 platelet injection procedure report; as well as physical therapy notes from May 18, 2016 through August 22, 2016 and March 29, 2017 through June 1, 2017. Noting that the records failed to document

either complaints of left knee pain or altered gait, Dr. Wolin concluded he is "unable to relate the condition of the tear of the medial meniscus to the prior Achilles tendon injury." Resp.'s Ex. 2.

CONCLUSIONS OF LAW

I. Causal Connection

The Arbitrator concluded Petitioner's left knee condition of ill-being is causally related to his right foot injury. Our review of the evidence yields the same result, however, we write separately as our analysis differs.

Petitioner alleges his left knee condition developed as a result of overcompensation and the altered gait mechanics caused by his right Achilles tendon injury. We begin with a review of the applicable legal standard. "Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury." *National Freight Industries v. Illinois Workers' Compensation Commission*, 2013 IL App (5th) 120043WC, ¶ 26. Where the work injury itself causes a subsequent injury, the chain of causation has not been broken: "In this context, the cases have applied a 'but for' test, basing compensability for an ultimate injury or disability upon a finding that it was caused by an *event* which would not have occurred had it not been for the original injury…Clear illustrations of this chain of causation relationship are cases where a second injury occurs due to treatment for the first…." *International Harvester v. Industrial Commission*, 46 Ill. 2d 238, 245 (1970) (Emphasis in original). With this standard in mind, we analyze the evidence regarding Petitioner's gait mechanics.

On April 4, 2016, Petitioner sustained an undisputed right Achilles tendon injury. Arb.'s Ex. 1. Petitioner testified his gait changed drastically after the injury: "My walk was a little, you know, to the side, limping kind of, you know, slower. I was walking a lot slower because I couldn't bend my knee as much. In that sort of way." T. 23. The Commission, like the Arbitrator, finds Petitioner is credible. We further find Petitioner's testimony is supported by the medical records, as the evidence of an altered gait is implicit in Petitioner's post-accident weightbearing status. *See Krantz v. Industrial Commission*, 289 Ill. App. 3d 447, 450-51 (5th Dist. 1997) (The Commission is an administrative tribunal that hears only workers' compensation cases and deals extensively with medical issues) and *Long v. Industrial Commission*, 76 Ill. 2d 561, 566 (1979) (The Commission possesses inherent expertise regarding medical issues). Immediately after his Achilles tendon injury, Petitioner began an extensive course of treatment, during which his weightbearing status was compromised. When Petitioner was evaluated at St. Francis Hospital on April 4, 2016, the emergency room physician provided crutches and directed Petitioner to be non-weightbearing on his right leg. Pet.'s Ex. 2. Petitioner remained non-weightbearing until April 21, 2016, when he was evaluated by Dr. Douglas Diekevers. The Commission notes that Dr. Diekevers did not allow Petitioner to resume normal weightbearing but instead placed Petitioner in an Achilles Aircast. Pet.'s Ex. 3. The records reflect Petitioner's right ankle was "immobilized" through at least June 24, 2016, at which time Dr. Diekevers recommended a platelet rich plasma injection to address Petitioner's persistent swelling and "quite significant" pain. Pet.'s Ex. 3. The recommended procedure was denied by the insurance carrier, so Petitioner underwent additional physical therapy while Dr. Diekevers appealed the denial. The Commission's review of the August

2016 physical therapy notes reveals Petitioner reported persistent and significant pain with standing and walking. Pet.'s Ex. 9. At trial, Petitioner testified he first noticed left knee pain in late August or mid-September, 2016, and by October, the pain was worsening to the degree that he asked Dr. Diekevers to refer him to a knee specialist. T. 18. Petitioner's treatment nonetheless remained focused on his right foot, and on October 17, 2016, Dr. Diekevers performed a platelet rich plasma injection. Pet.'s Ex. 4. When this procedure failed to resolve Petitioner's pain, swelling, and functional deficits, Dr. Diekevers determined surgery was necessary. On January 13, 2017, Dr. Diekevers performed a right Achilles tendon debridement. Pet.'s Ex. 4. Post-operatively Petitioner was in a cast and non-weightbearing until February 7, 2017, at which point he was placed into a CAM boot and allowed to begin weightbearing. Pet.'s Ex. 3.

In arguing against causal connection, Respondent places particular emphasis on that fact that Dr. Diekevers consistently memorialized that Petitioner's gait and stance were normal. The Commission observes, however, those gait and stance assessments did not refer to the mechanics of Petitioner's stride but rather were part of Dr. Diekevers' neurological testing. The significance of this distinction is borne out by the March 22, 2017 office note, wherein Dr. Diekevers observed that Petitioner was "walking on his toe he is not dorsiflexing his foot" yet simultaneously found Petitioner's "gait and stance were normal." Pet.'s Ex. 3. The Commission further emphasizes that when Petitioner consulted with Dr. Ellis Nam five days later, Dr. Nam documented that Petitioner walked with an altered gait. On March 27, 2017, Petitioner presented to Dr. Nam for evaluation of his left knee pain. Dr. Nam memorialized that Petitioner's pain was triggered by prolonged walking and standing and Petitioner, who had no prior history of a left knee injury, believed "his pain is [secondary] to being treated for a right Achilles tendinitis." Pet.'s Ex. 3. On examination, Dr. Nam observed Petitioner had a "limp when walking." Pet.'s Ex. 3. Dr. Nam ordered an MRI of the left knee, which revealed a medial meniscal tear and ultimately led to left knee surgery on April 26, 2017. Pet.'s Ex. 3. The Commission finds the credible evidence establishes that Petitioner had an altered gait following the April 4, 2016 injury.

Our analysis next turns to consideration of the competing causation opinions of Dr. Ellis Nam and Dr. Preston Wolin. Dr. Nam's May 12, 2017 narrative report reflects Petitioner gave a history of left knee pain which Petitioner believed was associated with treatment of his right Achilles injury: "In other words, Mr. Enrique Estrada, since the time of his injury in April 2016, has had altered gait mechanics and has been putting more pressure on his left lower extremity to compensate for his right Achilles tendon injury." Pet.'s Ex. 13. Dr. Nam concluded the extended period of "additional stress on the left lower extremity secondary to compensation" for the right Achilles injury was a competent mechanism of injury to cause Petitioner's left knee medial meniscal tear:

> … I do feel that a five-month period of putting added stress and altered gait on the left lower extremity can very well contribute to one developing a left knee medial meniscus tear. In other words, as he has been suffering from persistent right lower extremity Achilles tendinosis, I do feel that he has had to increase the amount of weightbearing involved on his left lower extremity, which could have very well added significant stress to his left knee, which could very well had [*sic*] contributed to him developing a left knee medial meniscus tear. Pet.'s Ex. 13.

Dr. Wolin, in turn, was given the same history, but he opined the medical records did not support a causal connection. In his August 1, 2017 §12 report, Dr. Wolin memorialized that Petitioner advised "he began noticing the onset of left knee pain in September or October in 2016 while rehabilitating for an achilles [*sic*] tendon injury. He states that he placed increased weight on his left knee during the treatment for his right ankle." Resp.'s Ex. 2. Prior to offering his opinion, Dr. Wolin emphasized that he had not been provided with any preoperative treatment notes or imaging studies and therefore his opinions were predicated on limited information. Resp.'s Ex. 2. Dr. Wolin opined, "Based on the information made available to me, I am unable to state that the current complaints are related to overcompensation and altered gait resulting from the achilles [*sic*] tendon injury." On August 9, 2017, Dr. Wolin authored an addendum which reflects Respondent had provided him with additional records, including Dr. Diekevers' records and the physical therapy notes from May 18, 2016 through August 22, 2016 and March 29, 2017 through June 1, 2017. Dr. Wolin opined those records fail to document either the complaints of left knee pain or altered gait necessary to support a finding of causal connection. Resp's Ex. 2.

The Commission finds Dr. Nam's opinion is persuasive and supported by the medical records whereas Dr. Wolin's opinion is inconsistent with the evidence of Petitioner's compromised weightbearing status as detailed above. The Commission also finds it significant that Dr. Wolin was not provided with Dr. Nam's March 27, 2017 evaluation, wherein Dr. Nam noted that Petitioner had an altered gait. Pet.'s Ex. 3. The Commission further observes that, contrary to Dr. Wolin's assertion that there is no mention of a gait abnormality in the records from March 29 through June 1, Dr. Nam's April 3, 2017 re-evaluation note again includes a physical examination finding of "limp when walking." Pet.'s Ex. 3. The Commission adopts Dr. Nam's conclusion that Petitioner's left knee condition developed as a result of overcompensation caused by Petitioner's altered gait following the right Achilles tendon injury. The Commission finds Petitioner's left knee condition of ill-being is a sequela of his undisputed April 4, 2016 right Achilles tendon injury.

II. Permanent Disability

The Arbitrator concluded Petitioner sustained 22.5% loss of use of the right foot as well as 12.5% loss of use of the left leg. The Commission agrees with the permanence determinations but believes a more detailed explanation of the weight placed upon the factors is necessary to satisfy the requirements of Section 8.1b(b). *820 ILCS 305/8.1b(b)* (West 2014); *Corn Belt Energy Corp. v. Illinois Workers' Compensation Commission*, 2016 IL App (3d) 150311WC, ¶ 52.

Section 8.1b(b)(i) – impairment rating

Neither party submitted an impairment rating. As such, the Commission assigns no weight to this factor and will assess Petitioner's permanent disability based upon the remaining enumerated factors.

Section 8.1b(b)(ii) – occupation of the injured employee

Petitioner was a train conductor. Following treatment by Dr. Douglas Diekevers and Dr. Ellis Nam, Petitioner was discharged from care with no restrictions, and he returned to his pre-accident occupation. The Commission finds this factor weighs heavily in favor of decreased permanent disability.

Section 8.1b(b)(iii) – age at the time of the injury

Petitioner was 46 years old on the date of his accidental injury. The Commission notes that due to his age, Petitioner will experience his residual complaints for an extended period. This factor weighs in favor of increased permanent disability.

Section 8.1b(b)(iv) – future earning capacity

There is no direct evidence Petitioner's work accident had an adverse impact on his future earning capacity. The Commission finds this factor weighs in favor of reduced permanent disability.

Section 8.1b(b)(v) – evidence of disability corroborated by treating medical records

Petitioner's undisputed work accident resulted in surgical intervention to his right foot and left knee: on January 13, 2017, Dr. Diekevers performed a right Achilles tendon debridement with amniotic graft application, and on April 26, 2017, Dr. Nam performed an arthroscopic partial medial meniscectomy, chondroplasty medial femoral condyle, and partial synovectomy. Pet.'s Ex. 4. Petitioner underwent an extensive course of post-operative physical therapy. On June 1, 2017, Dr. Nam noted Petitioner was doing well though he had persistent pain; Dr. Nam directed Petitioner to perform a home exercise program and discharged him from care. Pet.'s Ex. 3. Physical therapy for Petitioner's right foot continued over the next several weeks, and Petitioner was re-evaluated by Dr. Diekevers for the final time on September 7, 2017. At that visit, Dr. Diekevers memorialized that Petitioner had persistent edema and mild pain with palpation, but the doctor concluded Petitioner was ready to return to work; Dr. Diekevers directed Petitioner to work light duty for two weeks then resume full duty, and indicated further follow-up would be on an as needed basis. Pet.'s Ex. 3.

Petitioner returned to work full duty on September 27, 2017. T. 20. He testified his right foot pain has essentially resolved, however he continues to have left knee difficulties. Petitioner explained his left knee bothers him with prolonged standing, and he wears a knee brace every day. T. 21, 24. Petitioner takes Naproxen twice a day each day to ameliorate his symptoms. T. 21. The Commission finds this factor is indicative of decreased permanent disability for the right foot, and increased permanent disability for the left knee.

Based on the above, the Commission finds Petitioner sustained 22.5% loss of use of the right foot as well as 12.5% loss of use of the left leg.

All else is affirmed.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's current right foot and left knee conditions of ill-being are causally related to his undisputed April 4, 2016 work accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $898.78 per week for a period of 77 1/7 weeks, representing April 5, 2016 through September 26, 2017, that being the stipulated period of temporary total incapacity for work under §8(b). Respondent shall have a credit of $69,334.46 for TTD benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $564.94 for medical expenses, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $755.22 per week for a period of 37.575 weeks, as provided in §8(e)11 of the Act, for the reason that the injuries sustained caused the 22.5% loss of use of the right foot.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $755.22 per week for a period of 26.875 weeks, as provided in §8(e)12 of the Act, for the reason that the injuries sustained caused the 12.5% loss of use of the left leg.

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

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

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

February 27, 2023

/s/ *Deborah J. Baker*

DJB/mck
O: 1/11/23
43

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC011748
Case Name	ESTRADA, ENRIQUE v. CHICAGO TRANSIT AUTHORITY
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Steven Seidman
Respondent Attorney	Andrew Zasuwa

DATE FILED: 1/12/2022

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

/s/ Raychel Wesley, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Enrique Estrada
Employee/Petitioner

v.

Chicago Transit Authority
Employer/Respondent

Case # **16** WC **011748**

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 **Raychel A. Wesley**, Arbitrator of the Commission, in the city of **Chicago**, on **October 1, 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

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

FINDINGS

On **April 4, 2016**, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $**70,104.87**; the average weekly wage was $**1,348.17**.

On the date of accident, Petitioner was **46** years of age, married with **2** dependent children.

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $**69,337.69** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**69,337.69**.

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

ORDER

RESPONDENT SHALL PAY REASONABLE AND NECESSARY MEDICAL SERVICES OF $564.94, AS PROVIDED IN SECTIONS 8(A) AND 8.2 OF THE ACT, SUBJECT TO THE FEE SCHEDULE. RESPONDENT SHALL PAY PETITIONER TEMPORARY TOTAL DISABILITY BENEFITS OF $69,334.46 (77 AND 1/7 WEEKS X 2/3 X $1,348.17), SUBJECT TO RESPONDENT'S CREDIT.

RESPONDENT SHALL PAY PETITIONER PERMANENT PARTIAL DISABILITY BENEFITS EQUAL TO 22.5% OF THE RIGHT FOOT, AS WELL AS 12.5% LOSS OF THE LEFT LEG , AS PROVIDED IN SECTION 8(E) OF THE ACT.

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

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

_____/s/ *Raychel A. Wesley*_____ **JANUARY 12, 2022**

Signature of Arbitrator

Enrique Estrada v. Chicago Transit Authority
Case No. 16 WC 011748

FINDINGS OF FACT

Petitioner Enrique Estrada sustained an on the job accident on April 4, 2016. At the time of the accident, he was 46 years old and had been working for Respondent as a train conductor since April 2012. (T 9-10; AX1.)

Prior to April 4, 2016, Petitioner had never had any medical treatment for his right foot with regard to the Achilles tendon. (T 12.) Prior to April 4, 2016, Petitioner had never had any medical treatment for his left leg. (T 12.)

On April 4, 2016, Petitioner was working a morning shift for Respondent. During his shift, Petitioner's train went into an emergency stop. (T 11.) During such a stop, the procedures are to check the train, make sure there's no debris or body parts outside the train, and make sure the train hasn't derailed. (T 11.) Petitioner exited the train to check it; afterwards, he climbed the stirrup—the ladder on the side of the train—to get back on board. (T 11-12.) As he was leaning forward coming up the stirrup, Petitioner felt his right Achilles tendon pop. (T 11-12.) Petitioner's foot hurt a lot; he noticed it becoming very swollen. (T 13.) He found it very difficult to walk; he was limping. (T 13.)

Petitioner was transported by ambulance to Presence St. Francis Hospital in Evanston. (T 13; PX1; PX2.) There, Petitioner related his history of injury: he was boarding a train at work, stepping upwards when he stepped wrong with his right ankle. (PX2 21.) Petitioner reported constant, dull right ankle pain at 9/10 with swelling at the posterior aspect of the ankle. (PX2 21.)

On physical examination, Dr. Matthew Huberty noted that Petitioner was tender to palpation about the Achilles tendon. (PX2 22.) Dr. Huberty noted deformity of the Achilles tendon. (PX2 22.) He observed Petitioner to be ambulatory but with a limp on his right side. (PX2 22.) Three x-rays were performed of the right foot and right ankle; they revealed focal thickening and edema about the Achilles tendon, and could not exclude injury. (PX2 23.)

Dr. Huberty diagnosed Petitioner with partial rupture of the right Achilles tendon and referred him to an orthopedic doctor for follow-up. (PX2 24.) Petitioner's injury was noted to be "work related." (PX2 19.) Dr. Huberty prescribed Petitioner Motrin, applied an ACE wrap to his ankle, issued him crutches, and instructed him to remain non-weight-bearing on his right leg until told otherwise by an orthopedist. (PX2 24, 39.)

On April 21, 2016, Petitioner presented to Chicago Orthopedic and Sports Medicine for follow-up care, where he was seen by Dr. Douglas Diekevers. (T 14.) Two days prior, on April 19, 2016, Petitioner underwent an MRI of the right foot at Presence St. Joseph Hospital on referral from Dr. Diekevers; the imaging revealed moderate tendinosis of the right Achilles tendon with tenosynovitis as well as a chronically torn ATFL. (PX4 6, 9.) Upon presenting to Dr. Diekevers on April 21, 2016, Petitioner complained of continued pain to his Achilles tendon. (PX2 41.) Physical examination

revealed abnormal dorsiflexion of the right ankle, edema with fusiform swelling over the right distal Achilles tendon, and pain with both dorsiflexion and palpation over the Achilles tendon with pain along

the course of the peroneal tendons laterally. (PX2 41-42.) He observed no neurologic abnormalities. (PX2 41.) Dr. Diekevers reviewed the MRI, which he noted showed tendinosis of both the Achilles and peroneal tendons. (PX2 41.)

Dr. Diekevers diagnosed Petitioner with tendinitis of the Achilles and peroneal tendons. (PX2, 42.) He opined that Petitioner's work accident likely inflamed his Achilles tendon. (PX2 42.) Dr. Diekevers prescribed Petitioner Naprosyn and an AirCast as well as a course of physical therapy. (PX2 42.)

On April 30, 2016, Dr. Diekevers restricted Petitioner from operating vehicles, lifting, climbing, bending, kneeling, squatting, crawling, or walking on either uneven or elevated ground. (PX2 87.)

Petitioner underwent physical therapy at NovaCare from May 16, 2016 until August 23, 2016. (T 15; PX 9.) During this period, he continued to treat with Dr. Diekevers with reports of pain and swelling. (PX2.)

On June 24, 2016, Dr. Diekevers observed that Petitioner's ankle swelling was consistent and significantly painful. (PX2 38.) Dr. Diekevers recommended a course of PRP treatment and had Petitioner continue physical therapy. (PX2 38.)

On July 21, 2016, Petitioner began to report pain in his left foot as well. (PX2 36.) Dr. Diekevers continued to recommend PRP treatment. (PX2 36.) He maintained Petitioner's restrictions. (PX2 86.)

On August 29, 2016, Petitioner underwent a Section 12 examination with Dr. Armen Kelikian. (T 24; RX1.) Dr. Kelikian diagnosed Petitioner with Achilles tendinosis, which he opined was "probably related to the injury." (RX1.) Dr. Kelikian opined that there was no tear and that PRP was not indicated, but that Petitioner was not at MMI; Dr. Kelikian recommended debridement of the tendon and a gastrocnemius recession as treatments going forward. (RX1.)

Petitioner testified that after his right Achilles tendon ruptured, it caused him to walk with a limp, which in turn caused him to put a lot of extra weight onto his left leg. (T 17.) Petitioner first began to notice pain in his left knee between the end of August and mid-September 2016. (T 17.) Petitioner complained to Dr. Diekevers about his knee pain. (T 18.) In August, Petitioner requested referral to a knee specialist due to the pain he was experiencing; Dr. Diekevers eventually referred Petitioner to Dr. Ellis Nam for treatment of his knee. (T 17-18.)

On October 17, 2016, Petitioner underwent a PRP injection in his ankle. (PX2 60-61; T 17.)

Petitioner followed up with Dr. Diekevers on October 24, 2016; he reported doing well. (PX2

33.) On physical examination, dorsiflexion of the ankle was normal. (PX2 33.) Dr. Diekevers prescribed another course of physical therapy. (PX2 33.) However, physical therapy did not proceed

due to insurance limitations. (PX9 91.)

Upon return to Dr. Diekevers on November 17, 2016, Dr. Diekever's noted that the mass in Petitioner's ankle had improved; however, Petitioner was continuing to experience pain with dorsiflexion. (PX2 31.) On physical examination, dorsiflexion of his right foot had returned to being abnormal. (PX2 31.) Dr. Diekevers opined that conservative treatment had not worked; he discussed surgical debridement of the Achilles tendon with Petitioner. (PX2 32.) On November 21, 2016, Petitioner continued to have pain and abnormal dorsiflexion in his right ankle. (PX2 29.) Petitioner stated that he would like to proceed with the procedure. (PX2 29.)

On January 13, 2017, Petitioner underwent surgery for his right ankle: Achilles tendon debridement with a graft. (PX4 152-54; T 15-16.) The Achilles tendon was exposed and an incision was cut into it. Dr. Diekevers identified and excised scar tissue from the tendon, at which point the tendon was stitched back into tube form using vicryl sutures. (PX4 153.) Dr. Diekevers then laid a graft over the Achilles tendon and approximated the paratenon and subcutaneous structures with vicryl sutures. (PX4 154.) Petitioner was fitted with semi-compressive dressing and a cast and discharged. (PX4 154.) Both pre- and post-operatively, Dr. Diekevers diagnosed Petitioner with Achilles tendinosis. (PX4, 152.)

Upon follow up over the following month, Petitioner reported decreasing pain in his right ankle. (PX2 27-28.) As of February 7, 2017 the incisions had healed. Dr. Diekevers removed Petitioner's cast, issued him a CAM boot, and instructed him to begin weightbearing. (PX2 27.)

On March 22, 2017, Petitioner returned to Dr. Diekevers. (PX2 25.) Dr. Diekevers noted that Petitioner was walking on his right toe and not dorsiflexing his foot. (PX2 25.) On examination, Dr. Diekevers noted abnormal dorsiflexion and edema of the right ankle, though he opined that the swelling was not the same as it had been pre-surgery. (PX2 25.) Petitioner had not yet begun physical therapy. (PX2 25.) Dr. Diekevers opined that physical therapy was extremely important; he had Petitioner contact his insurance carrier so that physical therapy could begin. (PX2 25.)

On March 28, 2017, Petitioner began a course of physical therapy for his right ankle that would last until July 28, 2017. (PX9.)

Prior to January 13, 2017, Petitioner's left knee was giving him a lot of pain. (T 16-17.) On March 27, 2017, Petitioner presented to Dr. Nam for the first time, on referral from Dr. Diekevers. (PX2 53; T 18.) Petitioner related his history of injury: he began experiencing knee pain on September 1, 2016. (PX2 53.) He reported mechanical symptoms and occasional knee buckling. (PX2 53.) He believed that his knee symptoms were secondary to his right ankle problems. (PX2 53.)

On examination, Dr. Nam noted that Petitioner had a limp when walking. (PX2 53.) Dr. Nam

ordered a knee MRI to rule out a meniscus tear. (PX2 53; T 19.)

On March 29, 2017, Petitioner underwent an MRI of his left knee at Chicago North Side MRI. (PX2 62; T 19.) The MRI revealed a horizontal oblique tear of the medial meniscus in Petitioner's left knee. (PX2 62.)

On April 3, 2017, Petitioner returned to Dr. Nam with his MRI results. (PX2 51.) Dr. Nam diagnosed him with a medial meniscal tear. (PX2 51.) After discussing treatment options, they agreed to proceed with an arthroscopy and possible repair of the medial meniscal tear. (PX2 51.)

On April 26, 2017, Dr. Nam performed an arthroscopic partial medial meniscectomy, chondroplasty and partial synovectomy. (PX4 291; T 19.) Two portals were created in Petitioner's left leg; diagnostic arthroscopy revealed mild chondral wear along the trochlear groove, inflamed synovial tissues along the anteromedial space, and a complex tear of the posterior horn and body of the medial meniscus, "unstable to probing and unamenable to repair." (PX4 292.) Dr. Nam performed a chondroplasty at the medial joint line, shaving a grade II chondral lesion; a partial synovectomy, shaving off the inflamed synovial tissues; and a partial medial meniscectomy, resecting the medial meniscus until it was found to be stable upon probing. (PX4 292.)

Following surgery, Petitioner underwent several months of physical therapy at NovaCare. (T 19-20.) Petitioner had his initial knee evaluation at NovaCare on May 10, 2017. (PX9 174.) Physical therapist Erin Battaglia noted that after months of compensating for his right ankle, Petitioner began to experience left knee pain in September 2016. (PX9 174.) Battaglia observed slight swelling in Petitioner's left knee as well as scar tissue adhesions. (PX9, 175.) Battaglia opined that Petitioner's left knee arthroscopy was "likely from compensation" from his right Achilles tendon condition. (PX9, 175.)

On May 12, 2017, Dr. Nam penned a letter opining as to the cause of Petitioner's left knee condition. (PX13.) Dr. Nam noted that prior to Petitioner's injury of April 2016, he had no problems with his left knee. (PX13.) Following the injury, Petitioner's gait mechanics were altered, causing him to put more pressure onto his left lower extremity to compensate for his right Achilles tendon injury. (PX13.) Dr. Nam noted that Petitioner's left knee pain began on or about September 1, 2016. (PX13.) Subsequently, Dr. Nam obtained an MRI of the left knee documenting a medial meniscus tear. (PX13.) Dr. Nam opined that Petitioner's altered gait had increased the amount of weightbearing on his left lower extremity, and that over the course of five months this very well could have added significant stress to his left knee and contributed to the development of a medial meniscus tear. (PX13.)

Petitioner continued to follow up with Dr. Nam; he reported gradual improvement in his left knee pain. (PX2 47, 49.)

On August 1, 2017, Petitioner underwent a Section 12 examination with Dr. Preston Wolin. (T 24.) Dr. Wolin stated that he had not reviewed any imaging studies from before the operation, nor had

he reviewed the pre- or post-operative notes. (RX2.) Dr. Wolin remarked: "Based on the information made available to me, I am unable to state that the current complaints are related to overcompensation

and altered gait resulting from the achilles tendon injury." (RX2.) He stated that he did not "see any remaining disability." (RX2.)

Petitioner continued to treat with Dr. Diekevers for his right ankle; he reported improvement in his pain over the course of several months. (PX2 16, 18.) On September 7, 2017, Petitioner returned to Dr. Diekevers having completed physical therapy; Petitioner reported feeling ready to return to work. (PX2 13.) Dr. Diekevers released him back to work light duty on a trial basis for two weeks. (PX2 14.)

Petitioner returned to work full duty as a train conductor on September 27, 2017. (PX2 83; T 20, 26.) Petitioner is presently off work for an injury unrelated to these proceedings. (T 22, 26.)

Petitioner testified at the arbitration hearing that since returning to work as a train conductor he continues to feel pain in his knee. (T 20.) Petitioner deals with his ongoing knee inflammation by taking 500 mg Naproxen twice a day. (T 20.) He wears a knee brace every day as well. (T 20, 23.)

Petitioner's right foot no longer has pain; however, the tendon rupture caused Petitioner to limp and walk a lot slower. (T 20-21, 23.) Before the accident, Petitioner weighed 270-80 pounds; at the hearing, he testified that he now weighs 320 pounds. (T 23.)

At the time of his injury, Petitioner was married with two dependent children. (AX1.) Petitioner had an average weekly wage of $1,348.17 in the year prior to the accident. (AX1.)

CONCLUSIONS OF LAW

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATED TO:

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

The parties agree that Petitioner suffered an accident arising out of and in the course of his employment; however, Respondent disputes that Petitioner's current condition of ill-being is causally connected. (AX1.) For the following reasons, the Arbitrator finds that Petitioner's current conditions of ill-being are causally related to his work accident of April 4, 2016.

Achilles Tendon

"A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal

nexus between the accident and the employee's injury." *Int'l Harvester v. Indus. Comm'n*, 93 Ill. 2d 59, 63–64, 442 N.E.2d 908, 911 (1982).

Here, the circumstantial evidence establishes such a causal chain quite clearly. Petitioner's credible and unrebutted testimony establishes that he had never had any medical treatment at all for his right Achilles tendon prior to April 4, 2016. (T 12.) On April 4, 2016, Petitioner was leaning forward climbing up a stirrup to get onto a train at work when he felt his right Achilles tendon pop, followed immediately by a lot of pain and swelling. (T 11-13.) He found it very difficult to walk; he was limping. (T 13.) Petitioner was transported to the emergency room that same day for treatment; the records from the hospital verify this account. (PX2.)

Further, there is no dispute among the medical experts that Petitioner's Achilles tendon condition is causally related to the accident. Petitioner's injury was noted to be "work related" starting with his visit to the hospital on the date of accident. (PX2 19.) Upon Petitioner's first visit to Dr. Diekevers, he diagnosed Petitioner with tendinitis of the Achilles and peroneal tendons and opined that Petitioner's work accident likely inflamed his Achilles tendon. (PX2 42.) Respondent's own expert, Dr. Kelikian, also opined that Petitioner's Achilles tendinosis was "probably related to the injury." (RX1.)

As there is no meaningful disagreement on this point, the Arbitrator finds that Petitioner's right Achilles tendon condition is causally related to the injury.

Left Knee

An *International Harvester*-style causal nexus exists for the left knee as well. Prior to April 4, 2016, Petitioner had never had any medical treatment at all for his left leg. (T 12.) Petitioner's credible and unrebutted testimony establishes that after his right Achilles tendon ruptured, it caused him to walk with a limp which in turn caused him to put a lot of extra weight onto his left leg. (T 17.) At the time, Petitioner weighed between 270 and 280 pounds. (T 23.) Petitioner first began to notice pain in his left knee after approximately five months of this dynamic, between the end of August and mid-September 2016. (T 17.) This previous condition of good health, in combination with his subsequent left knee injury following months of an altered gait putting extra weight onto his left leg with every step, is sufficient to prove a causal nexus under *International Harvester*.

The medical evidence supports this causal inference. Petitioner's physical therapist, Erin Battaglia, noted that Petitioner first began to experience left knee pain in September 2016 after months of compensating for his right ankle. (PX9 174.) Battaglia opined that Petitioner's left knee arthroscopy was "likely from compensation" from his right Achilles tendon condition. (PX9, 175.) Dr. Nam, for her part, noted that prior to Petitioner's injury of April 2016, he had no problems with his left knee and that his knee pain only began on September 1, 2016. (PX13.) She stated that following the injury, Petitioner's gait mechanics were altered. (PX13.) This caused him to put more pressure onto his left lower extremity to compensate for his right Achilles tendon injury. (PX13.) Dr. Nam opined that this compensation increased the amount of weightbearing on his left lower extremity, and that over

the course of five months this could have added significant stress to his left knee, thereby contributing to the development of a medial meniscus tear. (PX13.)

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Although Respondent cites Dr. Wolin's Section 12 report as a contrary opinion, far from affirmatively opining that Petitioner's left knee condition was unrelated to the accident, Dr. Wolin merely stated that he was unable to opine that the left was causally related based on the information available to him. (RX2.) In essence, Dr. Wolin abstained from offering a causal opinion due to his own lack of information; the Arbitrator does not find mere abstention from affirming a causal connection a sufficiently persuasive rebuttal to evidence of a causal connection.

In light of the foregoing, the Arbitrator finds that Petitioner's left knee condition is causally related to his work accident as well.

J. Were the medical services that were provided to Petitioner reasonable and necessary?

Petitioner claims that Respondent is liable for the outstanding medical bills attached to the signed stipulation sheet. Respondent disputes and claims that treatment for the left knee is disputed per IME by Dr. Preston Wolin, date of service 8/1/17, 8/9/17; and that platelet-rich plasma (PRP) injections for the right ankle are disputed per IME from Dr. Armen Kelikian, date of service 8/29/16.

Dr. Kelikian never offered any actual rationale for his belief that PRP injections were inappropriate. The records of treatment with Dr. Diekevers show that in practice, the injection did produce at least temporary improvement of Petitioner's ankle condition, with physical examination of his right ankle one week later revealing normal dorsiflexion of the ankle for the first time since Petitioner's accident. (PX2 33.) Further, the Arbitrator notes that injections are less invasive than surgical debridement and amniotic grafting of a tendon. The Arbitrator finds it reasonable that Dr. Diekevers attempted to treat Petitioner's tendinosis with a more conservative measure before proceeding with a surgical debridement and graft of the tendon.

As for the reasonableness and necessity of Petitioner's left knee treatment, the Arbitrator notes that Dr. Wolin opined that said treatments were reasonable and necessary in his Section 12 report. (RX2.) Further, as noted in Section F above, the Arbitrator has found Petitioner's left knee condition causally related to the accident.

Based on the foregoing, the Arbitrator finds that all of Petitioner's treatments for his conditions of ill-being were reasonable and necessary. Petitioner has submitted exhibits showing remaining outstanding bills of $564.94. Respondent is ordered to pay all outstanding bills related to the accident.

L. What is the nature and extent of the injury?

Pursuant to Section 8.1b(b) of the Act, the Arbitrator considers the following factors in determining the level of permanent partial disability:

(i) Neither party submitted an impairment rating report.

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(ii) Petitioner's current occupation is that of a train conductor. (T 20, 26.)

(iii) Petitioner was 46 years old at the time of his injury.

(iv) No evidence as to Petitioner's future earnings capacity was submitted.

(v) Petitioner offered evidence of disability in the form of testimony at the arbitration hearing, as well as via extensive medical documentation. Petitioner underwent two surgeries, each requiring months of physical therapy and recovery. Although Petitioner's Achilles tendon was no longer hurting him as of the date of hearing, the fact remains that he did suffer a tendon rupture necessitating that the tendon be cut open, shaved of scar tissue, sutured back into a tube shape, grafted together, and then reattached using an approximation of the paratenon and subcutaneous structures achieved with vicryl sutures. (PX4 153-54.) He will live with those suture-based approximations of proper ankle anatomy for the rest of his life. Moreover, although Dr. Wolin stated that he did not "see any remaining disability" in Petitioner's knee during his Section 12 examination of the Petitioner, Petitioner had not yet returned to work by this point. (RX2; T 26.) At the hearing, Petitioner credibly testified that since returning to work as a train conductor, he continues to feel pain in his knee. (T 20.) Petitioner wears a knee brace every day and deals with ongoing knee inflammation by taking 500 mg Naproxen twice a day. (T 20, 23.)

Having weighed the relevant factors, the Arbitrator finds that Petitioner is entitled to permanent partial disability equal to 22.5% loss of use of the right foot and 12.5% loss of use of the left leg.