ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC030727
Case Name	William Keef v. Continental Tire North America
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0001
Number of Pages of Decision	9
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	David Jerome
Respondent Attorney	James Keefe, Jr.

DATE FILED: 1/3/2023

/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

William Keef,

Petitioner,

vs. NO. 20WC 30727

Continental Tire North America,

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 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 February 23, 2022, is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $43,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 3, 2023

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC030727
Case Name	KEEF, WILLIAM v. CONTINENTAL TIRE NORTH AMERICA
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	David Jerome
Respondent Attorney	James Keefe, Jr.

DATE FILED: 2/25/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 23, 2022 0.71%

/s/ Jeanne AuBuchon, 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
NATURE AND EXTENT ONLY

WILLIAM KEEF
Employee/Petitioner

v.

CONTINENTAL TIRE NORTH AMERICA
Employer/Respondent

Case # **20** WC **30727**

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 **Mt. Vernon**, on **September 8, 2021**. By stipulation, the parties agree:

On the date of accident, **December 16, 2019**, 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 $**56,476.65**, and the average weekly wage was $**1,163.27**.

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 $**886.30** for TTD, $- for TPD, $- for maintenance, and $**23,032.60** for other benefits, for a total credit of $**23,918.90**.

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 $**697.96**/week for a further period of **62.5** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **12.5% loss of the body as a whole**.

Respondent shall pay Petitioner compensation that has accrued from **May 11, 2020,** through **September 8, 2021**, 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

FEBRUARY 25, 2022

PROCEDURAL HISTORY

This matter proceeded to trial on September 8, 2021 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 his accident, the Petitioner was 47 years old, right-handed and employed as a wind up operator, cutting rolls of product and putting it in racks. (AX1, T. 10, 39) This entailed lifting rolls weighing between 95 and 110 pounds 25 to 30 times per shift. (T. 10-11) On December 16, 2019, one of the rolls was cocked in the wheels, causing him to have to rock it back and forth to force it down to the end. (T. 12) When he did so, he felt a very dull pain that shot from his left arm into his chest. (Id.) The Petitioner testified that he never had any prior accidents or injuries to his left pectoral muscle. (T. 24) He did have carpal and cubital tunnel syndromes in his left arm that resulted in surgery to his hand and elbow, for which he received a workers' compensation award. (T. 31) He said he had no issues with his left arm after the surgery. (T. 32)

The Petitioner first sought treatment at the plant dispensary and was referred to the emergency room at St. Mary's Good Samaritan Hospital, which referred him to Dr. Ahn, an orthopedic surgeon at the Orthopaedic Center of Southern Illinois. (T. 13) Dr. Ahn performed a repair of a tear to the Petitioner's left pectoralis major on December 24, 2019. (PX2, PX3)

The Petitioner underwent physical therapy from January 10, 2020, to March 24, 2020, for a total of 11 visits. (PX1) At his last visit, he said he had resumed using his left arm almost as normal and was not having any pain. (Id.) He returned to work on March 2, 2020, on light duty, which he said consisted of sitting in an office watching movies on his phone. (T. 14-15) On March 30, 2020, the Petitioner reported to Dr. Ahn that he was doing well without complaints and wanted

to go back to regular duty at work. (PX1) Dr. Ahn released the Petitioner to regular duty that day, and the Petitioner began scanning stock at work. (PX1, T. 15-16) On May 11, 2020, Dr. Ahn discharged the Petitioner from treatment, noting that the Petitioner was tolerating regular duty without difficulty. (PX1)

The Petitioner testified that prior to his final release, he did not have an opportunity to test his arm in a full duty work environment, such as lifting anything away from his body. (T. 16-17) When he returned to his regular job duties, his pectoral muscle would cramp up like a charley horse when he put stress on that muscle. (T. 19-20) He had to massage the muscle for the cramp to release. (T. 20) He said he modified his work activities to use only his right side for pushing, and his coworkers would help him push. (T. 20-21) He also uses his feet to roll the rolls, instead of grabbing them with his right arm and rolling them with his left, as he did before the accident. (Id.) At the time of arbitration, the Petitioner was still working his same job and planned on staying there until he retired. (T. 25)

Other activities that caused the Petitioner pain and cramping were opening a jar, raking and lifting heavy objects. (T. 26-27) He had lifted weights regularly for 20 years, but the frequency of his workouts diminished, and he had not lifted for three to four months at the time of arbitration. (T. 27, 36) He said he used to press about 400 pounds, but now it would be about 200 pounds. (T. 37-38) He said he could do a pushup, but it causes cramping. (T. 38) When he experiences cramps, they last 20-30 seconds with pain at a level of 6/10. (T. 29-30) The Petitioner said he had not been back to Dr. Ahn since his release and does not take any medication for his current complaints. (T. 35)

CONCLUSION

<u>Issue 10</u>: 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 works the same job as prior to the accident with the same physical demands. The Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 47 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 his 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 has limitations at work and in his personal life as a result of the injury. Activities that involve stress on his pectoralis muscle cause painful cramping. He has had to modify his activities at work and in his personal life to put less stress on his pectoralis muscle. 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 12.5% loss of his body as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC008435
Case Name	Goran Mrsic v. Job Network & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0002
Number of Pages of Decision	15
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Jason Esmond
Respondent Attorney	Dan Kallio

DATE FILED: 1/6/2023

/s/ Deborah Simpson, Commissioner

Signature

23IWCC0002

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: Liability of IWBF	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify:	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GORAN MRSIC,

Petitioner,

vs. NO: 10 WC 8435

JOB NETWORK, and ILLINOIS STATE TREASURER as the *ex officio* custodian of the INJURED WORKERS' BENEFIT FUND,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent Injured Workers' Benefit Fund herein and notice given to all parties, the Commission, after considering all issues, and being advised of the facts and law, reverses the Decision of the Arbitrator, in part, by vacating the award against the Injured Workers' Benefit Fund (hereinafter, the "Fund") and finding that the Fund cannot be held liable since Respondent Job Network had workers' compensation insurance on the accident date of February 2, 2010. The Commission otherwise affirms and adopts the Arbitrator's findings and award with respect to Respondent Job Network.

The Commission puts significant emphasis on the NCCI certification obtained in this matter, dated January 18, 2021, that shows Respondent Job Network had an effective workers' compensation insurance policy through Freestone Insurance Company on the accident date. The NCCI certification does disclose that Respondent Job Network was insured under a workers' compensation insurance policy from Work First Casualty Company that was cancelled on September 17, 2010 with the effective date of October 30, 2009. On the Proof of Coverage Inquiry, it was noted that this policy was canceled because the insured had coverage placed elsewhere. The other representation made in the NCCI certification confirms that Respondent Job Network did in fact place coverage elsewhere with a different insurance carrier called Freestone Insurance Company for the effective year of October 30, 2009 to October 30, 2010. As such, the NCCI certification indicates that Respondent Job Network maintained workers' compensation insurance

through Freestone Insurance Company on accident date of February 2, 2010.

In addition to the NCCI certification's disclosure of a valid workers' compensation insurance policy, counsel for both Petitioner and the Fund agreed at the hearing that the insurance company previously handling this matter for Respondent Job Network had paid temporary total disability benefits to Petitioner from February 3, 2010 to November 24, 2011. This again implies that Respondent Job Network held a workers' compensation insurance policy on the accident date.

Respondent Job Network's prior counsel, Roddy Law, provided some insight into what transpired with this previous workers' compensation insurance policy in its motion to withdraw as Respondent Job Network's attorney. In its motion filed on June 8, 2015, Roddy Law represented that the insurance company for Respondent Job Network went into receivership in April of 2014 and that the receivership/bankruptcy stay had since been lifted on Dallas National/Freestone Insurance Company cases. This motion again suggests that Respondent Job Network maintained a workers' compensation insurance policy on the accident date, as the insurance company for Respondent Job Network did not go into receivership until April 2014.

In consideration of the above, the Commission concludes that Petitioner did not prove that Respondent Job Network failed to maintain proper workers' compensation insurance on the accident date, which is a requirement to trigger the liability of the Fund under the Illinois Workers' Compensation Act. According to the Act, monies in the Fund shall be used only for the payment of benefits to injured employees when the employer has failed to provide coverage pursuant to §4(d). 820 ILCS 305/4(d). Because there is not always enough money in the Fund to pay the entire amount of all awards assessed against it each year, it is important that its monies are reserved only for its intended beneficiaries. The Act is clear that the Fund is implicated only where there is a violation of §4(d). *Id.* The Fund is considered always appropriated for the purposes of disbursement as provided by §4(d) and "shall not at any time be appropriated or diverted to any other use or purpose." *Id.*

With this in mind, §4(d) does not cover all insurance issues that a petitioner might encounter. As is the situation in the present case, an employer does not violate §4(d) when it maintained proper insurance on the accident date and for some time thereafter before the employer/insurance company subsequently entered a receivership. Respondent Job Network had workers' compensation insurance through Freestone Insurance Company on the accident date but later encountered an insurance/insolvency issue. Since this particular scenario does not violate §4(d), the Fund cannot be made to assume liability. Instead, in these circumstances, Petitioner should have pursued its action against the Illinois Guaranty Fund.

The Commission thus vacates the Arbitrator's award against the Fund, while otherwise affirming and adopting the Arbitrator's findings and award with respect to Respondent Job Network.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated July 6, 2022, is hereby reversed as stated herein.

IT IS FURTHER ORDERED that the award assessed against the Fund is hereby vacated,

because Petitioner failed to establish that Respondent Job Network lacked a valid workers' compensation insurance policy on the accident date of February 2, 2010. The Commission otherwise affirms and adopts the Arbitrator's findings and award with respect to Respondent Job Network.

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

IT IS FURTHER ORDERED that Respondent shall receive a 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 $37,000.00. 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.

January 6, 2023

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O- 12/14/22
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/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	10WC008435
Case Name	Goran Mrsic v. Job Network/Illinois State Treasurer as ex-officio of the Injured Workers' Benefit Fund
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Jason Esmond
Respondent Attorney	Dan Kallio

DATE FILED: 7/6/2022

THE INTEREST RATE FOR THE WEEK OF JULY 6, 2022 2.50%

/s/Michael Glaub, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Goran Mrsic
Employee/Petitioner

v.

Job Network / Illinois State Treasurer as ex-officio of the Injured Workers' Benefit Fund
Employer/Respondent

Case # **10 WC 8435**

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, **February 2, 2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner's average weekly wage was **$340.00**.

On the date of accident, Petitioner was **21** years of age, ***single*** with **0** dependent children.

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

ORDER

- The Respondent shall pay the Petitioner the sum of **$213.33** / week for a period of **175** weeks, as provided in Section 8(d)(2) of the Act, because the injuries sustained caused **35% loss** of a person as a whole.

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

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

Michael Glaub JULY 6, 2022

Signature of Arbitrator

ICArbDec

STATEMENT OF FACTS

The parties appeared for hearing on April 26, 2022 before Arbitrator Glaub under the Illinois Workers' Compensation Act. Petitioner was represented by counsel. Petitioner attempted to provide notice of the hearing date to Respondent, Job Network, by certified mail. (Px. 4). The letter was provided to the last known address for Respondent, and the address for which Respondent had previously held workers' compensation insurance. (Px. 3). NCCI certified that Respondent had acquired, but terminated a workers' compensation insurance policy on September 17, 2020, with a cancellation effective date of October 30, 2009. As Respondent did not have workers' compensation insurance coverage as of Petitioner's February 2, 2010 injury, the Illinois Attorney General's Office appeared on behalf of the Illinois State Treasurer, as ex-officio custodian of the Injured Workers' Benefit Fund. (Px. 3).

Petitioner testified that on February 2, 2010, he was working for Job Network, a temp agency. He indicated that he had started working for Job Network in September or October of 2009 and was placed at J. Rubin Steel, a steel company. He believed he learned about the position with Job Network through the newspaper or through a friend. He worked at the steel company through February 2, 2010, when he sustained his injury. Petitioner testified that he was paid $8.50 - $9.00 an hour and worked full time, 40 hours a week. He worked from 3pm to 11pm, five days a week. He was paid by check with taxes taken out. At the steel company, he worked as a general laborer, separating steel, unloading trucks, bundling steel, and transporting materials. He testified he did the job on his feet all day, lifting up to 100 or 150 pounds. At the position, he wore a vest, a hard hat, gloves, and steel toed boots. He used forklifts, cranes, and sandblast machines, which were all provided at the steel company's location. His training consisted of shadowing co-workers for a few days.

On February 2, 2010, Petitioner indicated he was helping to unload a bundle of 10-12 foot steel poles. Two other workers were attempting to lower the bundle onto a table. Prior to the bundle reaching the table, they cut the straps, and the bundle fell apart. Petitioner testified that a pole weighing approximately 600 pounds fell onto his left foot. Petitioner testified that his brother was also working at the steel company and he called an ambulance. Prior to the ambulance arriving, the manager, Mark, drove him to Brookside Immediate Care.

Brookside Immediate Care records document that Petitioner was injured that day when a 200 lb. steel bar fell on top of his left foot. He reported 10/10 pain at that time and x-rays revealed an acute fracture of the first metatarsal. He was put in a CAM walker and provided crutches. He was given restrictions of sit-down work and advised to follow up with an orthopedic. (Px. 7). Petitioner testified that sit-down work was not available through Job Network and Petitioner began receiving temporary total disability benefits as of February 3, 2010. (Px. 6).

Petitioner was then seen by Dr. Anton at Lundholm Orthopedics on February 4, 2010. Dr. Anton noted the same history of injury, assessing a left foot metatarsal fracture with minimal displacement and left foot middle cuneiform avulsion fracture. (Px. 8). He noted that Petitioner may have another chip fracture of the second metatarsal which is difficult to see. He advised to keep Petitioner in a cast for 3-4 weeks until the swelling went down. (Px. 8).

Petitioner followed up at Lundholm Orthopedic with some gradual improvement in his pain. By March 15, 2010, he was put in a CAM walker boot. He was kept off work. (Px. 8). On March 29, 2010, x-rays continued to show good alignment with minimal displacement. Petitioner was to begin physical therapy and gait training. He was continued off work. (Px. 8). Petitioner began physical therapy at Rebound on April 7, 2010.

On April 18, 2010, Petitioner reported pain in his foot for 2 days, requesting medication. (Px. 7). On April 28, 2010, Petitioner followed up at Lundholm Orthopedic. He reported pain with prolonged walking as well as limping. He was advised to complete physical therapy prior to being released at full duty. (Px. 8).

On June 9, 2010, Petitioner was seen at Brookside Immediate care again with pain in his left foot. X-rays revealed non-union of the fracture of the 1st metatarsal. He was prescribed an Orthotic shoe and pain medications. (Px. 7). He followed up with Lundholm Orthopedic on June 14, 2010 with complaints of pain and swelling. He was recommended electrical stimulation as he was then four months post-injury. He was continued off work. (Px. 8).

On August 5, 2010, Petitioner was sent to Dr. Lin for an Independent Medical Examination by an attorney representing respondent Job Network at that time. Dr. Lin noted that Petitioner job required him to lift 50 – 100 lbs. at work, stand and walk all day, walk up and down stairs, and on short ladders. It was noted he had to do a significant amount of stooping and squatting. Dr. Lin assessed a first metatarsal fracture which had healed, a fracture at the base of the 2nd metatarsal and medial cuneiform which had healed, and a foot contusion. Dr. Lin opined Petitioner could work with 4 hours of standing, with 15 minutes of rest and that he could drive, squat, kneel, sit, and climb without limitation. He restricted Petitioner to lifting 50 lbs. Dr. Lin recommended a CT scan to rule out nonunion of the first metatarsal. (Px. 12).

Petitioner underwent the CT scan on September 23, 2010 and followed up with Lundholm Orthopedics on September 30, 2010. The CT scan was interpreted to demonstrate healing at the first metatarsal with a defect on the plantar aspect measuring 3 mm in thickness with healed corticated margins. Additional treatment options discussed included osteotomy, but Petitioner felt he could live with the pain. As such, an FCE was prescribed. (Px. 8).

Petitioner subsequently prescribed treatment with Dr. Vucicevic on December 27, 2010. (Px. 9). Dr. Vucicevic recommended a CT scan which was performed on February 24, 2011. On February 28, 2011, Dr. Vucicevic recommended additional therapy. Dr. Vucicevic kept Petitioner off work and referred him to a pain clinic on April 18, 2011. (Px. 9).

Petitioner returned to Dr. Vucicevic on August 22, 2011, complaining of a lot of pain in his foot as well as clicking in his ankle. He noted he could walk for a limited amount of time. Dr. Vucicevic's exam revealed limited swelling with some discomfort upon palpitation, correlating with arthritic changes documented on the CT scan. He noted the arthritis changes were a part of the crushing injury of the mid tarsal area, resulting in incongruity along the metatarsal bone. He noted Petitioner was unable to walk without an antalgic gait. (Px. 9). His diagnosis was severe degenerative joint disease of the mid tarsal joint. Dr. Vucicevic recommended a job with limited ambulation and standing. He noted Petitioner's other option would be a fusion of the metatarsal joint. (Px. 9). Petitioner did not undergo the fusion noting that Dr. Vucicevic had recommended he hold off on the fusion until he couldn't take the pain anymore.

Petitioner was seen by Dr. Lin for another IME on October 6, 2011. Petitioner still complained of 9/10 pain associated with swelling, stiffness, giving way, numbness, and locking. Dr. Lin opined Petitioner could work with 4 hours of standing and lifting of 50 lbs. He recommended an FCE as well. (Px. 12).

On October 20, 2011, Dr. Vucicevic disagreed with Dr. Lin's suggestion that Petitioner could walk 4 hours a day and lift 50 lbs. He noted Petitioner could not be on his feet more than 1-1 ½ hours without pain and recommended a custom orthotic as well as an FCE. (Px. 9).

Petitioner underwent the FCE at Belvidere Physical Therapy on November 23, 2011. (Px. 11). The FCE was interpreted to demonstrate questionable effort with positive Waddell findings and was found invalid. Based on the evaluation, the therapist recommended limitation to the Medium physical demand level. (Px. 11). At this time, TTD benefits were ceased.

Petitioner followed up with Dr. Vucicevic on December 8, 2011. He kept Petitioner off work for another two weeks. (Px. 9). On December 18, 2011, Dr. Lin authored an addendum report, recommending Petitioner be released to medium level work with no restrictions regarding the length of time on his feet. He opined Petitioner had reached maximum medical improvement. (Px. 12).

Petitioner was seen for a second opinion by Dr. Kelikian on August 6, 2012. (Px. 13). Dr. Kelikian interpreted Petitioner's CT scan to demonstrate 2nd and 3rd metatarsal fractures. X-rays at the time showed a healed fracture and a small amount of diastasis. Dr. Kelikian opined Petitioner had a fracture of the 1st metatarsal as well as the cuneiforms, Lisfranc type of variant. He noted that hard orthotics were an option, as would be a fusion procedure. (Px. 13). Dr. Kelikian noted that his symptoms were all related to his injury. He did not believe there was a nonunion, but a 1st metatarsal fracture healed with midtarsal involvement with Lisfranc variant. (Px. 13).

Petitioner testified he has not undergone additional treatment to his foot after seeing Dr. Kelikian on August 6, 2012. He had taken pain medication for a couple years but chose to cease the medications.

Since the injury, Petitioner has attempted work driving a truck or cooking at a bar. The trucking position lasted a few months, but he had difficulty using the clutch with his left foot. He worked part-time as a cook in a bar but was let go after approximately four months. He testified he hasn't worked any other jobs in the last 10 years.

Petitioner testified that he still has pain in his ankle with changes in the weather. If he is on his foot for three or four hours, it becomes swollen. If he spends a couple days on his feet, the pain is unbearable and he's unable to stand for days. He testified that he will lie down, elevate his foot, and use ice to alleviate the pain and swelling.

Notice of the trial date was attempted to be served on the Respondent. (Px. 4). Petitioner offered a certificate of noncompliance from the NCCI confirming that Respondent failed to have insurance. (Px. 3). Finally, Petitioner offered exhibits 1 and 2 which were the original Application for Adjustment of Claims and the amended Application for Adjustment of Claims, adding the Injured Workers Benefit Fund is a party to the case. All issues were in dispute at the time of trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON THE DISPUTED ISSUES

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

The Arbitrator finds that the Petitioner and Respondent were operating under and subject to the Illinois Workers' Compensation Act on February 2, 2010. Petitioner testified that he applied at Job Network after seeing an advertisement in the newspaper or being referred by a friend. Petitioner's injury took place in Illinois at a steel company he was placed at by Job Network. Job Networks' place of business was in Illinois and the injury took place in Illinois. Therefore, jurisdiction is proper in Illinois.

Petitioner testified that his job was as a general laborer involved separating steel, unloading trucks, bundling steel, and transporting materials. He testified that he used forklifts, cranes, and sandblast machines. Therefore, the work is subject to the Illinois Worker's Compensation Act consistent with 820 ILCS 305/3(4, 15).

The provisions of the Act apply automatically to any business or enterprise in which electric, gasoline, or other power-driven equipment is used in the operation thereof, businesses engaging in the operation of any warehouse or general or terminal storehouses. The Arbitrator finds Petitioner's testimony credible and finds automatic coverage under Section 3 of the Illinois Workers Compensation Act on February 2, 2010.

B. ☒ Was there an employee-employer relationship?

The Arbitrator finds that there was an employee-employer relationship between Petitioner and Job Network. Petitioner testified that Job Network was a temp company that put him in the position with the steel company. He testified that he worked a consistent schedule, from 3pm to 11pm, five days a week. He was paid by check and taxes were taken out. He was paid $8.50 to $9.00 per hour. All of this information went uncontradicted at trial. Further, the Arbitrator finds Petitioner credibly testified to his employment relationship with Job Network. Therefore, the Arbitrator finds that there was an employee-employer relationship between Petitioner and Job Network on February 2, 2010.

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

The Arbitrator finds that an accident did occur that arose out of and in the course of Petitioner's employment with Job Network on February 2, 2010. Petitioner testified that on that day, while assisting with a bundle a poles, a large, heavy pole fell onto his left foot. Petitioner's initial medical record from Brookside Immediate Care contained a similar history, noting that a 200 lb. steel bar fell on top of his left foot while at work that day. Petitioner's treatment records thereafter consistently document the history of a large, heavy steel pipe falling onto his foot on February 2, 2010 while in the course of his employment. Petitioner's testimony regarding the accident was uncontradicted at trial and is clearly supported by the treatment records. As such, the Arbitrator finds that Petitioner suffered an injury that arose out of and in the course of his employment with Job Network on February 2, 2010.

D. ☒ What was the date of the accident?

The Arbitrator finds that the date of the accident was February 2, 2010. The initial Application for Adjustment of Claims noted an accident date of February 2, 2010. The medical records support an injury date of February 2, 2010. As it conforms to proofs, the Arbitrator finds that Petitioner's accident occurred on February 2, 2010.

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

The Arbitrator finds that Petitioner provided timely notice of the accident to Job Network. Petitioner testified that his manager at the steel company in which he was working initially took him to Brookside Immediate Care after his injury. Petitioner was taken off work thereafter and was paid benefits while off work. No evidence was provided to contradict Petitioner's testimony. Therefore, the Arbitrator finds that timely notice was given by Petitioner to Job Network.

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

The Arbitrator finds that Petitioner's present condition of ill-being is causally related to the injury that occurred on February 2, 2010. On the date of injury, Petitioner was immediately transported to Brookside Immediate Care and diagnosed with an acute fracture of the 1st metatarsal in his left foot. Additional diagnostics shortly after noted additional fractures with subsequent non-union of the fracture site. Petitioner was seen by Dr. Lin at Job Network's request, who also assessed multiple fracture sites in Petitioner's left foot. Multiple fracture sites were documented by Lundholm Orthopedic, Dr. Vucicevic, Dr, Lin, and Dr. Kelikian. There is no indication in the medical records that Petitioner had a preexisting issue with his left foot.

Based on the medical records, there is a clear chain of events which connect the acute injury that occurred on February 2, 2010 and the fractures found in his left foot. Dr. Vucicevic assessed severe arthritis in August of 2011. When last seen by Dr. Kelikian in August of 2012, Petitioner continued to experience pain in his foot. Dr. Kelikian opined that his symptoms remained related to his injury. Petitioner testified that he continues to experience pain in his foot with weather changes or with being on his feet for more than a couple hours. Petitioner's ongoing symptoms are consistent with the injuries he suffered, and no opinion has been provided that would indicate his ongoing symptoms are unrelated to his injury. Therefore, the Arbitrator finds that Petitioner's present condition of ill-being is causally related to his February 2, 2010 injury.

G. ☒ What were Petitioner's earnings?

The Arbitrator finds that Petitioner earned $340 per week. Petitioner testified that he worked 3pm – 11pm, 5 days a week and was paid $8.50 or $9.00 per hour. The Arbitrator finds that Petitioner's testimony was credible and finds he earned an average weekly wage of $340.00 per week.

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

Petitioner testified that he was born on February 3, 1988. That is consistent with his application for Adjustment of Claims and was noted as his birthdate in his medical records. As such, the Arbitrator finds that Petitioner was 21 years old at the time of his February 2, 2010 injury.

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

Petitioner's Application for Adjustment of Claims indicated he was single, with no dependent children at the time of his February 2, 2010 injury. No evidence was offered otherwise. Therefore, the Arbitrator finds that Petitioner was single and with no dependent children at the time of his February 2, 2010 injury.

K. What temporary benefits are in dispute?

The Arbitrator finds that Petitioner is owed Temporary Total Disability benefits from February 3, 2010 through November 24, 2011. The parties stipulated that Temporary Total Disability benefits were paid during this period of time with evidence of TTD benefits being submitted at Petitioner's Exhibit 6.

The Supreme Court of Illinois has held that "the determinative inquiry for deciding entitlement to TTD benefits remains, as always, whether the claimant's condition has stabilized. If the injured employee is able to show that he continues to be temporarily totally disabled as a result of his work-related injury, the employee

is entitled to TTD benefits." Interstate Scaffolding v. Illinois Workers' Compensation Commission, 236 Ill. 2d 132 (2010).

"To establish entitlement to TTD benefits, a claimant must demonstrate not only that he or she did not work, but also that the claimant was unable to work. (Internal citation omitted). It is irrelevant whether the claimant could have looked for work. (Internal citation omitted). The dispositive test is whether the claimant's condition has stabilized, that is, whether the claimant has reached maximum medical improvement."

Mech. Devices v. Indus. Comm'n (Johnson), 344 Ill. App. 3d 752, 759 (4th Dist. 2003).

"The factors to be considered in determining whether a claimant has reached maximum medical improvement include: (1) a release to return to work; (2) the medical testimony concerning the claimant's injury; (3) the extent of the injury; and (4) "most importantly," whether the injury has stabilized."

Id. at 760.

Petitioner was off work following his injury and while undergoing treatment. Benefits were paid based on the off-work notes and restrictions that were not accommodated as described in the above Statement of Facts. Temporary Total Disability benefits were ceased as of November 24, 2011, following the FCE performed on November 23, 2011. At that time, the FCE noted Petitioner would be capable of Medium physical demand level work. That opinion was shared by Dr. Lin on December 18, 2011. Petitioner underwent no additional treatment thereafter. He was seen for a second opinion by Dr. Kelikian on August 6, 2012. However, Dr. Kelikian noted that should Petitioner not undergo additional treatment, he was at maximum medical improvement and that it would not harm him to try to go back to working. As such, the Arbitrator finds that temporary total disability benefits were owed, and were paid, from February 3, 2010 through November 24, 2011. As such, no additional TTD benefits are owed.

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

The Arbitrator adopts the findings of fact stated above and incorporates them herein by this reference. In assessing the nature and extent of Petitioner's injury, the Arbitrator must consider the following five factors:

1) An impairment report prepared by a physician using the most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment." No impairment rating was offered by either party. The Arbitrator finds that this factor weighs in neither increased nor decreased permanence.

2) The occupation of the injured employee. Petitioner worked for Respondent for approximately 4 months as a general laborer. He testified the job required lifting of 100-150 lbs. and standing and walking all day. Petitioner did not return to work for Job Network after his injury. The Arbitrator finds that this factor weighs in favor of increased permanence.

3) The age of the employee at the time of the injury. Petitioner was only 21 years old at the time of his February 2, 2010, injury. The petitioner was at the very beginning of his natural work career. Accordingly, the petitioner will have to live with effects of his injury much linger than would an older worker. The Arbitrator finds that this factor weighs in favor of increased permanence.

4) The employee's future earning capacity. No doctor has released the petitioner to return to full duty work. Petitioner testified to difficulty maintaining employment subsequent to his injury. He testified that he attempted to work as a truck driver, which lasted only a few months and that he had difficulty depressing the clutch with his left foot. He testified he worked as a cook for approximately four months. Otherwise, Petitioner testified that he has not worked over the last 10 years. The Arbitrator finds that this factor weighs in favor of increased permanence.

5) Evidence of disability corroborated by the treating medical records. Petitioner testified to ongoing pain and swelling in his left foot if he walks for more than a couple hours. He testified to pain with weather changes. He noted that after long periods of time on his feet, his left foot swells and he must ice and elevate his leg the next day. In August of 2011, Dr. Vucicevic noted Petitioner has severe degenerative joint disease of the mid tarsal joint as a result of his injury. He opined that Petitioner should work at a position allowing limited ambulation and standing. Dr. Lin opined that Petitioner could work a medium job without limitation regarding the time on his feet as of December 18, 2011. This was based, in part, on the November 23, 2011 FCE that recommended Medium physical demand level employment. In August of 2012, Dr. Kelikian indicated that Petitioner could attempt to return to work if capable. Petitioner's ongoing pain and swelling complaints are consistent with the crush injury he sustained, and the fractures suffered. The Arbitrator finds that this factor weighs in favor of increased permanence.

The Arbitrator finds that Petitioner's February 2, 2010 injury has therefore resulted in a loss of his ability to return to the past work he was performing for Job Network. Petitioner reported significant heavy lifting required with his position. Dr. Vucicevic opined that Petitioner would need a position with limited ambulation. Dr. Lin opined Petitioner could perform medium level work. Even assuming the less strict limitations recommended by Dr. Lin, Petitioner lost his ability to perform the same work he performed for Job Network, as well as a large pool of jobs that would require more than Medium level lifting. Petitioner testified to difficulty standing and walking for more than a few hours a day. Given the significant decrease in employment options for a very young individual, the Arbitrator finds that Petitioner has sustained a loss of occupation and awards 35% loss of a person as a whole under Section 8(d)2 of the Act at the minimum PPD rate of $213.33.

M. No Penalties or Fees have been Sought.

The Arbitrator finds that no claim has been made and no evidence submitted related to penalties and fees and therefore none are awarded.

N. Respondent is Not Due A Credit.

The Arbitrator finds that Respondent-Employer is not entitled to a credit.

O. The Injured Workers' Benefit Fund is Liable.

The Illinois State Treasurer as ex officio custodian of the Injured Workers' Benefit Fund was named as a party respondent in this matter. Petitioner submitted sufficient credible evidence that Respondent-Employer was not insured at the time of the injury. Such evidence consists of the National Council on Compensation Insurance Certificate. Further, Petitioner provided sufficient credible evidence that notice of the proceedings were provided to the Respondent-Employer.

This finding is hereby entered as to the Fund to the extent permitted and allowed under §4(d) of the Act. Should any recovery by the Petitioner occur, Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund, including but not limited to any full award in this matter, the amounts of any medical bills paid, temporary total disability paid or permanent partial disability paid. The Employer-Respondent's obligation to reimburse the IWBF, as set forth above, in no way limits or modifies its independent and separate liability for fines and penalties set forth in the Act for its failure to be properly insured.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC002797
Case Name	Cynthia Bloodworth v. O'Reilly Auto Parts
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0003
Number of Pages of Decision	11
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Arnold Rubin
Respondent Attorney	Daniel Flores

DATE FILED: 1/6/2023

/s/ Deborah Baker, 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

CYNTHIA BLOODWORTH,

Petitioner,

vs. NO: 20 WC 02797

O'REILLY AUTO PARTS,

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 Petitioner's entitlement to maintenance benefits and whether Respondent proved its refusal to pay benefits was reasonable such that §19(l) and §19(k) penalties and §16 attorney's fees are not warranted, 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 May 9, 2022 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner maintenance benefits in the amount of $436.89 per week for a period of 17 1/7 weeks, representing December 2, 2021 through March 31, 2022, as provided in §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner §19(l) penalties in the amount of $3,420.00.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner §19(k) penalties in the amount of $3,557.53.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner §16 attorney's fees in the amount of $1,423.12.

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.

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 $15,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 6, 2023

/s/ *Deborah J. Baker*

DJB/mck

O: 12/14/22

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC002797
Case Name	BLOODWORTH, CYNTHIA v. O'REILLY AUTO PARTS
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Arnold Rubin
Respondent Attorney	Daniel Flores

DATE FILED: 5/9/2022

THE INTEREST RATE FOR THE WEEK OF MAY 3, 2022 1.42%

/s/Gerald Granada, Arbitrator

Signature

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

- ☐ 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)

Cynthia Bloodworth
Employee/Petitioner

v.

O'Reilly Auto Parts
Employer/Respondent

Case # **20** WC **002797**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Wheaton**, on **March 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. ☐ 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, **11/14/19**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**34,077.42**; the average weekly wage was $**655.33**.

On the date of accident, Petitioner was **36** years of age, ***married*** with **2** dependent children.

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

Respondent shall be given a credit of $**17,597.12** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**17,597.12**.

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

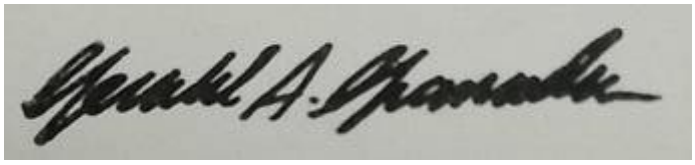
ORDER

- Respondent shall pay Petitioner maintenance benefits in the amount of **$436.89**/week for **17-1/7** weeks, for the periods of **12/2/2021 through 3/31/2022**, which is the period of maintenance for which compensation is due.
- Respondent shall pay **$3,557.53** in penalties, as provided in 19(k) of the Act.
- Respondent shall pay **$3,420.00** in penalties, as provided in Section 19(l) of the Act.
- Respondent shall pay **$1,423.12** in attorney's fees, as provided in Section 16 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.



Signature of Arbitrator Gerald Granada

MAY 9, 2022

FINDINGS OF FACT

This case involves Petitioner Cynthia Bloodworth, who alleges to have sustained injuries while working for the Respondent O'Reilly Auto Parts on November 14, 2019. Respondent disputes Petitioner's claim, with the issues being: 1) maintenance, and 2) penalties and attorney fees. Petitioner testified via a Spanish interpreter.

On November 14, 2019, Petitioner was working for Respondent as a stocker/driver when she injured her right hand and arm. At the time she was slipped on a piece of cardboard and fell onto her right arm, striking the cement floor. She immediately felt pain in her right wrist and arm, and notified her supervisor Raul that same day. Later that day, she went to Northwestern Immediate Care where she was provided a wrist brace and ibuprofen. (PX 2)

On November 27, 2019, Petitioner saw Dr. Fitzgerald at Amita Health Medical Group. (PX 3). He noted that Petitioner was working light duty with only one hand. (PX 2). He recommended an MRI of the right shoulder and x-rays of the wrist. (PX 2). On January 6, 2020, Petitioner underwent the recommended MRI studies at Bolingbrook Hospital, which revealed: minimal cervical spondylosis, and a partial thickness tear of the long head biceps tendon in the bicipital groove and a posterior superior labral tear in her right shoulder. (PX 4 and 5) Dr. Fitzgerald referred Petitioner to Dr. Lee.

On January 16, 2020 Petitioner saw Dr. Lee on January 16, 2020. (PX 6) Dr. Lee made an assessment of right biceps tendinitis, right partial thickness rotator cuff tear and strain of the muscle of the right shoulder. (PX 6) He recommended work restrictions, physical therapy, medication and possibly an injection. (PX 6)

On January 30, 2020, Petitioner elected to seek a second opinion for medical care at Hinsdale Orthopedics, where she was initially evaluated by Dr. Chudik's PA. (PX 7). It was recommended that Petitioner participate in physical therapy and have Dr. Chudik review the MRI study. (PX 7). Petitioner was also referred to a hand and spine specialist at Hinsdale Orthopedics. (PX 7). Petitioner participated in physical therapy at Athletico. (PX 8).

Right hand/wrist treatment

On February 10, 2020, Petitioner saw Dr. Fajardo at Hinsdale Orthopedics for her right wrist. (PX 9) X-rays of the right wrist were taken and revealed a possible chronic fracture of the hook of the hamate. Dr. Fajardo recommended a CT scan of the right wrist, use of a wrist guard and ice. (PX 9). Petitioner underwent the CT scan of the right wrist on February 25, 2020 that revealed subtle subchondral sclerosis and cystic changes along the ulnar aspect of the lunate. (PX 10). Dr. Fajardo reviewed the CT scan on March 2, 2020. (PX 9). He discussed surgical and non-surgical options with Petitioner and recommended a wrist guard. (PX 9). Dr. Fajardo subsequently ordered an EMG, which Petitioner underwent on June 2, 2020. (PX 12) The EMG was consistent with mild right carpal tunnel syndrome. (PX 12). Over the course of her treatment with Dr. Fajardo, Petitioner had two injections to her right wrist. Dr. Fajardo assessed Petitioner with right wrist sprain and mild carpal tunnel syndrome unresponsive to steroid injection. (PX 9).

Right arm/shoulder treatment

On February 21, 2020, Petitioner saw Dr. Chudik at Hinsdale Orthopedics for her right shoulder. (PX 7) Dr. Chudik's assessment was right shoulder impingement post work injury. (PX 7) He recommended physical therapy and light duty work. (PX 7) On April 3, 2020, Dr. Chudik noted that Petitioner was making progress in physical therapy, but continued to experience symptoms in her shoulder and arm. (PX 7) He suspected irritation of the nerve root in the cervical spine and referred Petitioner to spinal specialist Dr. Darwish. (PX 7) Petitioner saw Dr. Darwish for her cervical spine on March 19, 2020. (PX 11) X-rays of the cervical spine revealed loss of cervical lordosis and no instability or flection on extension. (PX 11) Dr. Darwish diagnosed pain in the right shoulder, noting that Petitioner's main complaints were right wrist and right shoulder pain. He stated that the symptoms in the right upper extremity were not originating in the cervical spine. (PX 11)

Petitioner continued to treat with Dr. Chudik for her right shoulder condition and received injections to the AC joint that did not provide relief. Dr. Chudik also noted that Petitioner failed her conservative care and recommended a diagnostic arthroscopy with evaluation of her rotator cuff and labrum and possible distal clavicle resection. (PX 7)

On December 10, 2020, Petitioner underwent the right shoulder surgery at Salt Creek Surgical Center performed by Dr. Chudik. (PX 13) Petitioner's surgery involved a right arthroscopy with right rotator cuff repair, open biceps tenodesis, subacromial decompression and right labral debridement. (PX 13) The diagnosis was right shoulder pain, rotator cuff tear, biceps instability and partial rupture, impingement syndrome and labral tear. (PX 13) Petitioner remained under the post-operative care of Dr. Chudik. (PX 7) Post-operative care included follow up appointments with Dr. Chudik, physical therapy, work conditioning and activity restrictions. (PX 7) Dr. Chudik later ordered an FCE.

On November 23, 2021 Petitioner underwent an FCE at Athletico. (PX 14) The FCE indicated that Petitioner met 11 of 15 reported job demands. (PX 14) It stated that Petitioner did not demonstrate the physical capabilities and tolerances to perform all the essential functions of the job. (PX 14) Petitioner could lift 30.5 pounds overhead, 40 pounds from waist to shoulder and 55 pounds from floor to waist. (PX 14) The report documented that Petitioner's subjective complaints were consistent with the diagnosis and there was no evidence of symptom magnification. (PX 14)

On December 1, 2021, Petitioner last saw Dr. Chudik, who at that time documented that Petitioner experienced right shoulder pain and limited range of motion. (PX 7) He set forth an impression of post right shoulder arthroscopy, rotator cuff repair, subacromial decompression and superior labral debridement with open biceps tenodesis. (PX 7) Upon reviewing the FCE, Dr. Chudik indicated that Petitioner had reached maximum medical improvement and could return to work within the restrictions of the FCE. (PX 7) Dr. Chudik noted that Petitioner could not return to her pre-injury employment and continued to experience pain and stiffness in her right shoulder with end ranges of motion. (PX 7)

Independent Medical Evaluation

At the request of Respondent, Petitioner was examined by Dr. Verma on two occasions. (PX 15) Dr. Verma initially examined Petitioner on September 11, 2020 and diagnosed Petitioner with right shoulder

biceps tendinitis with partial tear, which he found causally related to her November 14, 2019 work accident – including her need for surgery. Dr. Verma again examined Petitioner on June 11, 2021 wherein his opinions regarding medical causation, symptom magnification and reasonableness of treatment were the same as set forth in the previous report. In his second evaluation, Dr. Verma noted that Petitioner was not at MMI and recommended an injection and work restrictions. (PX 15)

Post-Accident Employment

Following the work-related accident, Petitioner returned to work for Respondent in a light duty capacity. She worked with restrictions until December 6, 2020. Petitioner remained off work until June 22, 2021. Petitioner returned to work with restrictions for Respondent on June 22, 2021 and worked until September 15, 2021. Since September 16, 2021, Petitioner has not returned to work for Respondent. Petitioner testified regarding her light duty position with Respondent. Petitioner worked in the front of the warehouse handing out masks. She also returned RF guns to the storage room and performed some stocking. She worked wherever she was assigned and where she was needed.

Petitioner received temporary total disability/maintenance benefits from September 16, 2021 through December 7, 2021. She has not received any benefits since December 8, 2021. Petitioner testified that has not returned to work for Respondent or any other employer since December 1, 2021. Further, she has not been offered any work within her restrictions.

After Petitioner was released by Dr. Chudik on December 1, 2021, she contacted Respondent to return to work. Petitioner contacted Linette Villa on December 3, 2021 via telephone. Ms. Villa is in human resources. She called to ask for a job within her restrictions. Petitioner was not offered a job within her restrictions. Petitioner sent an email to Ms. Villa on December 6, 2021 to Ms. Villa's work email. (PX 17) She provided Ms. Villa with a copy of the FCE. She testified that she also called Ms. Villa on December 6, 2021. Ms. Villa reviewed the FCE on the phone with Petitioner. She told Petitioner she would call her back regarding the restrictions. Ms. Villa did not call Petitioner back and did not offer Petitioner work within restrictions. In the email of December 6, 2021, Petitioner stated that "this is the one that the office send [sic] to me for what I can do and what I can't do." (PX 17). Petitioner sent the email on December 6, 2021 because that is when she received a copy of the FCE report. She did not specifically request work because the email was sent as a follow up to her pervious conversation with Ms. Villa and she called Ms. Villa on December 6, 2021 to discuss the restrictions. Further, Ms. Villa reviewed the restrictions while she was on the phone with Petitioner. Petitioner also called and emailed Ms. Villa on March 14, 2022. (PX 17). She left a voicemail for Ms. Villa regarding returning to work. The email of March 14, 2022 set forth that "I know we had spoken over the phone and you said you would call me to see if I could return to work. I have not received any emails or calls. Am I able to return to work now?" (PX 17).

Petitioner sent another email to Ms. Villa on March 15, 2022. (PX 17). She also tried to call Ms. Villa. The email confirmed that Petitioner tried to call Ms. Villa. (PX 17). Petitioner stated that she received a call that she had abandoned her job. (PX 17). Petitioner responded that "this was very confusing for me because I have not received a call to return back to work since we last talk [sic]. I did not receive a letter or correspondence to return like the last time neither. Please help and call me when you can." (PX 17). Ms. Villa responded to Petitioner's email on March 18, 2022. (PX 17). She did not call Petitioner. Rather, Ms. Villa sent Petitioner an email. In the email, she set forth that she is aware that Petitioner did not abandon her job. (PX 17). The signature line set forth that Ms. Villa was a human resource business partner. (PX 17). No job offer was extended in the email. (PX 17).

Petitioner testified that since December 3, 2021, she has not received any offers of employment from Respondent. As of the hearing date, Petitioner had not received any offers of employment. She testified that Ms. Villa would contact her. She was waiting for a phone call from Ms. Villa. She did not receive a phone call from Ms. Villa. Ms. Villa did not testify at the hearing.

Through her attorney's office, Petitioner requested vocational rehabilitation services. (PX 18). In correspondence to Respondent's attorney Mr. Flores from Petitioner's attorney Mr. Rubin, Petitioner's attorney asked whether Respondent could accommodate Petitioner's permanent restrictions and if work was not available to provide vocational rehabilitation services. (PX 18). The letter dated December 7, 2021 set forth that Petitioner will not begin a job search until he received a response to the correspondence. (PX 18). No response was submitted into evidence besides an email from Mr. Flores stating he would reach out to the adjuster. (PX 18). Vocational services were not offered at that time. (PX 18). Further, Respondent did not complete a vocational assessment as required by the Illinois Workers' Compensation Rule 9110.10(a). *Ill. Admin. Code tit. 50, § 9110.10.*

Self-Directed Job Search

Petitioner began a self-directed job search in March 2022. (PX 19). Petitioner conducted a job search between March 17, 2022 and March 24, 2022. (PX 19). She did not receive help from a vocational rehabilitation counselor. Petitioner documented her job search in the job logs. (PX 19). Petitioner waited to begin the job search because Ms. Villa told her that she would call back regarding work within her restrictions with Respondent. However, Ms. Villa did not call Petitioner back or offer her work within her restrictions. Through her job search, Petitioner obtained an offer of employment as a driver with Geodis. The job is within her restrictions and Petitioner will begin her employment with an orientation on April 4, 2022.

Petitioner has not received payment of benefits since December 7, 2021. Petitioner's attorney has demanded payment of benefits and vocational services on multiple occasions. (PX 18). Petitioner's counsel, Mr. Rubin sent emails regarding payment of benefits on January 4, 2022, January 7, 2022, and March 7, 2022. (PX 18). No explanation as to why benefits were not paid was offered. (PX 18). A Petition for Penalties and Fees was filed prior to the hearing of March 31, 2022. (PX 19).

CONCLUSIONS OF LAW

1. Regarding the issue of maintenance, the Arbitrator finds the Petitioner has met her burden of proof. In support of this finding, the Arbitrator relies on the Petitioner's unrebutted testimony and the medical evidence. The Arbitrator notes that temporary total disability benefits were fully paid and not in dispute and Respondent paid maintenance benefits through December 7, 2021. Respondent did not present any evidence, witnesses or argument in support of its failure to pay maintenance benefits. There was no evidence offered to rebut Petitioner's testimony that she: provided Respondent with her permanent work restrictions given by Dr. Chudik on December 1, 2021; reached out to Respondent a number of times to see if work was available within those restrictions; and that Respondent failed to respond to Petitioner's request to for light duty work. There was no evidence of any explanation as to why no maintenance benefits were paid, despite the overwhelming evidence that Petitioner has permanent work restrictions that stem from her work accident. Based on these facts, the Arbitrator awards the Petitioner maintenance benefits from December 2, 2021 through March 31, 2022.

2. The Arbitrator finds that penalties and attorneys fees are warranted in this case. The Arbitrator finds that Respondent acted in an unreasonable and vexatious manner in failing to pay Petitioner maintenance benefits. Respondent did not present any defense to payment of maintenance benefits and failed to submit any evidence disputing Petitioner's entitlement to benefits. Based on the credible and unrebutted testimony of Petitioner, the medical evidence, emails and correspondence, the Arbitrator assesses penalties and fees against Respondent for failure to pay maintenance benefits due to Petitioner. The Arbitrator previously found that Petitioner was entitled to payment of maintenance benefits from December 2, 20221 through March 31, 2022. Respondent has paid benefits from December 2, 2021 December 7, 2021. Accordingly, Petitioner is owed payment of benefits from December 8, 2021 through March 31, 2022, or 16-2/8 weeks at a rate of $436.89. This amounts to past due benefits of $7,115.06 due to Petitioner.

The Arbitrator finds that Petitioner is entitled to 19(l) penalties for the nonpayment of benefits from December 8, 2021 to March 31, 2022, or 114 days. Respondent failed to pay past due benefits and Petitioner has demanded payment of the benefits. Respondent failed to submit any written letter advising as to why benefits were not issued and has not offered any defense to payment of benefits. Pursuant to the Act, the Arbitrator awards a penalty of $30 per day. Based on the period of benefits due, the Arbitrator awards a 19(l) penalty in the amount of $3,420 ($30 per day multiplied by 114 days).

The Arbitrator also award Petitioner penalties under Section 19(k). Petitioner was owed total benefits of $7,115.06 for nonpayment of maintenance benefits. Pursuant to the Act, the Petitioner is awarded a 50% penalty. Accordingly, the Arbitrator awards a Section 19(k) penalty in the amount of $3,557.53.

The Arbitrator also awards a Section 16 attorney fee of 20% in the amount of $1,423.12.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC016504
Case Name	Terrence S Brown v. Bedford Motor Services Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0004
Number of Pages of Decision	17
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Erin Cullen

DATE FILED: 1/6/2023

/s/ Deborah Simpson, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Terrence S. Brown,
Petitioner,

vs. NO: 15 WC 16504

Bedford Motor Services, Inc.,
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, permanent disability 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.

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 the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $28,600.00. 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.

January 6, 2023
o12/13/22
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	15WC016504
Case Name	BROWN, TERRENCE v. BEDFORD MOTOR SERVICES INC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Erin Cullen

DATE FILED: 12/13/2021

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

/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)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Terrence Brown
Employee/Petitioner

v.

Bedford Motor Services, Inc.
Employer/Respondent

Case # **15** WC **016504**

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 **October 28, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **October 14, 2014**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**49,400.00**; the average weekly wage was $**950.00**.

On the date of accident, Petitioner was 53 years of age, ***single*** with **0** dependent children.

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

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

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

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $570.00/week for 50 weeks, because the injuries sustained caused the 10% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Petitioner's claims for Medical and Temporary Compensation are hereby denied.

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

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

/s/ Stephen J. Friedman **DECEMBER 13, 2021**
Signature of Arbitrator

Statement of Facts

Petitioner Terrence Brown testified that his education is three years of college. He is 20 credits away from an Associates degree in liberal arts. On October 14, 2014, he was employed by Respondent Bedford Motor Service. Respondent's business is warehouses and moving freight from railyards to different warehouses. His job title was driver. He had worked for Respondent for about 2 years. He drove tractor that pulled a shipping container or trailer. Most of the time he just drove, but they did have to secure the load to make sure it did not move around inside the trailer or container. He averaged 50 to 60 hours per week. He last worked for Respondent 7 or 8 years ago. Petitioner tendered his voluntary resignation to Respondent on January 16, 2015 (RX B). He started working shortly thereafter for RJW doing similar duties as he had performed for Respondent. After that, he worked for Holland Freight. He now drives for 4D Trucking. His duties are similar to those with Respondent.

Petitioner testified he began work on the date of accident around 6:00 AM. The accident happened around noon. He was at Midwest Warehouse, backing a loaded shipping container into the dock. He got out of his cab to open the two doors on the back of the container. He found the freight inside the container had shifted. There was a piece of wood securing the load. He climbed into the container to get the wood and threw it down. He was intending to get off the container and his foot caught in between the container and the chassis. He fell backward landing on his back and when he hit the ground the back of his head struck the cement or asphalt and cracked his head open. He estimates he fell 3 ½ to 4 feet. Petitioner testified he had 9/10 low back pain, 10/10 neck pain. His head was throbbing and bleeding. Petitioner testified he had pain in his right shoulder later on. Petitioner testified he went inside to the office. They gave him a compress for the bleeding on his head and called the safety director who took him to the clinic.

Petitioner was seen at Clearing Clinic on October 14, 2014 (PX 1, RX D). Petitioner reported he fell off a truck and hit his head on the concrete. He complained of a laceration on his head. He was treated with dermabond for a 2 cm wound on the occiput. Head x-rays were negative for fracture. Petitioner was released to regular duty (PX 2). Petitioner testified he returned to work and was still hurting in his neck, back, and head. Petitioner returned on October 17, 2014, noting a 4/10 headache accompanied by neck stiffness. His diagnosis was open wound, head, and contusion, head. His work status was regular duty (PX 2). On October 21, 2014, neck examination noted normal range of motion with pain and some numbness in the right hand. Petitioner was scheduled for a PT evaluation. Petitioner began physical therapy on October 23, 2014. The therapist noted cervical pain worse with rotation. There was no radicular pain, numbness or tingling in the arms. Petitioner treated through January 15, 2015 for a diagnosis of open head wound, head contusion, and neck strain. He was discharged on that date as improved. He was discharged from therapy reporting pain of 1.5/10 with 80% improvement to his neck pain (PX 2). Petitioner testified he was still having back pain, but his neck was worse. Petitioner testified that at the time of his discharge his pain was at 8/10.

Petitioner testified his next medical treatment was with Dr. Ghanayem in July 2015. He was not referred there. During the six-month interval, he still had severe neck pain, problems with his back, and headaches. The neck pain seemed to have lessened, but the back pain got worse. He used ice packs for pain. He continued to do his regular job. On July 16, 2015, Petitioner saw Dr. Ghanayem (PX 3, RX F). He reported the fall in October 2014. He described pain on the right side of his neck, that seems to be more muscular in nature. He had no upper or lower extremity radiculopathy. He has also developed low back pain. Physical exam was unremarkable. Dr. Ghanayem diagnosed cervicalgia and recommended a cervical MRI (PX 3). The September 17, 2015 MRI impression was degenerative changes, most prominent at C6-7 where the MRI notes

subluxation and a disc osteophyte complex causing mild central canal stenosis abutting the ventral cord. On September 17, 2015, Dr. Ghanayem stated the MRI reveals a disc herniation at C6-7 but no spinal cord compression. He planned to manage his problem non-surgically. Dr. Ghanayem noted a 10-15% lifetime chance he will need a fusion (PX 3).

Petitioner testified that he underwent chiropractic treatment a couple of times per month at Chiro Health. He testified that he was not specifically referred to Chiro Health by a physician. He had a total of six chiropractic treatments from October 3, 2015 through November 21, 2015 (PX 9). Petitioner had complaints of right sided neck pain, lower back pain and left greater than right hip pain. His pain diagram noted a right rotator cuff cortisone injection 2-3 years ago and old surgeries to the right hip. Muscle testing was positive in the right neck. Petitioner initially reported pain of 5-6/10 in both the cervical and lumbar spine. On his November 21, 2015 daily progress report, cervical symptoms were 3/10 and lumbar symptoms were 6/10. He noted the symptoms come and go 25% to 50% of the time (PX 9).

On January 14, 2016, Dr. Ghanayem's record indicates Petitioner described increased neck symptoms. He was provided prescription strength anti-inflammatory. On February 25, 2016, Petitioner reported right-sided neck pain. He denied any radicular symptoms into the upper or lower extremities. Physical examination noted full range of motion, negative Spurling's and Lhermitte's test, 5/5 strength. Petitioner denied numbness or tingling. The impression was cervical degenerative disc disease. Dr. Ghanayem stated he would not recommend surgical intervention. Petitioner was discharged to be seen as needed and returned to work without restriction (PX 3). Petitioner testified that Dr. Ghanayem referred him to Dr. Bajaj for pain management. The records reflect that Petitioner was referred on March 14, 2015 for bulging cervical disc C6-7, reports hands fall asleep, headaches, and facial twitching. Also has low back pain (RX F, p 210-211).

On March 14, 2016, Petitioner saw Dr. Bajaj (PX 3, RX F). The history recorded is simply a referral from Dr. Ghanayem for cervical and lumbar chronic pain which began in 2014 after a fall sustained at work. Petitioner complained of cervical pain radiating to the bilateral shoulders and elbows, but not the fingers and lumbar pain focused lumbar spine and bilateral buttocks. He stated pain has been getting worse. Physical exam noted good range of motion with pain, negative neurological testing, and positive straight leg raise. Dr. Bajaj diagnosed cervical spine radiculitis and chronic low back pain status post traumatic fall in 2014. He recommended a cervical epidural injection, a lumbar MRI and physical therapy for Petitioner's neck and back (RX F, p 216-220). Petitioner underwent the injection on April 15, 2016 (RX F, p 237). Dr. Bajaj's April 15, 2016 prescription for physical therapy notes a diagnosis of cervical radiculitis (RX G, p 760). The Phone Screen Form lists the complaint as Cervical Bulging Disc (RX G, p 750). The Patient Medical History notes the problem was neck (RX G, p 734). The Functional Status summaries note the body part as Neck, listed back pain as "other complaint" (RX G, p 725-729). Petitioner had focused cervical therapy through June 25, 2016. On June 4, 2016, Petitioner reported he aggravated his cervical radiculitis the prior week while at work (RX G, p 693). On June 25, 2016, he had full PROM in the cervical spine and limited Active ROM. He reported mild limitations with work activities, but functioning at full duty with low level pain. The note states he would benefit from continued therapy to resolve neck muscle guarding and restrictions (RX G, p 680). .

On August 8, 2016, Petitioner reported no response to the CESI. Dr. Bajaj ordered an EMG. He stated that if the EMG showed radiculopathy, he would consider a repeat injection. If it was negative, he would consider physical therapy directed at the shoulder and possible shoulder injection (RX G, p 255-256). Petitioner saw Dr. Bajaj on August 22, 2016. An EMG revealed no evidence of cervical radiculopathy or plexopathy. Since Petitioner's complaints were mostly right shoulder, Dr. Bajaj recommended physical therapy for the right

shoulder and the neck (RX G, p 266-267). Petitioner had further therapy for cervical radiculitis, pain in the shoulder, and cervical myofascial pain through December 10, 2016. At discharge it was noted he has been seen 1 day per week since a new job extended work hours. He would benefit from further shoulder assessment and further physical therapy (RX G, p 624-679).

Petitioner next saw Dr. Bajaj on February 27, 2017 complaining of low back and neck pain. Physical examination noted decreased lumbar extension and pain on palpation of the bilateral low back and right cervical paraspinals. Strength, sensation, and reflexes were normal. Dr. Bajaj assessment was chronic cervicalgia, right shoulder impingement v. rotator cuff tendinopathy, chronic low back pain with SIJ and/or low back facet arthropathy. Dr. Bajaj states neck and back pain may be from his fall – compression/whiplash injury. He ordered a lumbar MRI (RX G, p 274-276). On May 16, 2017, Dr. Bajaj performed a right shoulder injection for a diagnosis of right shoulder impingement (RX G, p 293-294). The lumbar spine MRI performed October 28, 2017 at Smart Choice MRI an L3-4 disc protrusion/herniation and background of multifactorial spondylosis results in moderate to severe spinal stenosis; L4-5 disc bulging and facet arthropathy results in bilateral lateral recess stenosis with impingement of the L5 nerve roots and mild spinal canal stenosis (RX H). On December 19, 2017, Petitioner reported the shoulder injection improved his pain by 80% for a week and then pain returned. He continued to have right shoulder pain with limitations on overhead activity and reaching. He continues to have low back pain that radiates down the right leg. Dr. Bajaj recommended a Lumbar ESI and therapy thereafter (RX F, p 306-308). Petitioner last saw Dr. Bajaj on January 23, 2018 with complaints of back pain radiating to the lateral hips and thighs to the level of the knees. He also has numbness in his hands and feet, as well as right shoulder pain. Dr. Bajaj again recommended the lumbar injection and referral to a shoulder surgeon (RX F, p 327-329).

Dr. Bajaj testified by evidence deposition taken December 12, 2019 (PX 11). He testified he first treated Petitioner on March 14, 2016. He testified he understood Petitioner had a fall at work. He was asked to assume Petitioner fell backward, striking his head on a concrete surface approximately 3 feet to the ground. He testified Petitioner was seen with neck pain, low back pain, myofascial pain and shoulder pain, and radicular pain down the leg and well as the arm. His low back diagnosis was lumbar radiculitis. Petitioner had spinal stenosis and foraminal stenosis in the lumbar spine with irritation of the L5 nerve roots and a disc herniation. For the neck he diagnosed cervicalgia, cervical radiculitis. An EMG was negative for radiculopathy. His findings were more consistent with myofascial pain and shoulder pain (PX 11).

Dr. Bajaj testified he was not aware of treatment from the date of accident to his first visit. He does not recall what treatment Dr. Ghanayem rendered. He does not recall if Petitioner had been symptomatic before the October 14, 2014 injury. Dr. Bajaj testified to his treating records. After the upper extremity EMG was negative for radiculopathy, he recommended physical therapy focused on the shoulder. He testified that Petitioner's neck and back pain may be from his fall compression/whiplash injury. His fall could be the cause of his back pain. He testified he did a shoulder injection. Petitioner has a lumbar MRI which showed an L3-4 disc protrusion/herniation, moderate to severe spinal stenosis at L4-5 and a bilateral disc bulge facet arthropathy resulting in bilateral lateral stenosis with impingement of the L5 nerve root. He recommended an LESI on the right. He last saw Petitioner January 23, 2018. He testified to Petitioner's complaints and his examination findings on that date. His diagnosis was chronic low back pain with radicular pain down the legs and right shoulder pain likely secondary to rotator cuff tear. He recommended a lumbar epidural steroid injection at L4-5 and referral to a shoulder specialist (PX 11).

Dr. Bajaj opined that based upon the hypothetical posed and that the accident is the only injury that occurred, the accident can cause his condition in the low back and neck. He testified he did not see Petitioner until 2016. He does not have a good opinion on that. His opinions are based upon the speculation that no other injury occurred prior and he had no other symptoms. A fall can cause a whiplash injury to the back and neck. The degenerative conditions will take time to develop, but a whiplash injury can aggravate the joints and make these conditions symptomatic. These opinions are based upon the assumptions he was asked to make. He has no information about the specifics of the accident from Petitioner. The cervical MRI from September 17, 2015 notes loss of disc height at C6-7. This can be degenerative or age-related. The MRI findings were mostly degenerative. Petitioner had essentially no response to the cervical injection from April 15, 2016. He did not address the back pain in August 2016. He was focused on the neck. Dr. Bajaj does not recall if he reviewed the films or just the report of the lumbar MRI from October 28, 2017. He testified that a disc bulge, protrusion, or herniation are interchangeable terms. The finding can be degenerative. There is nothing on the MRI to determine when that finding began. Dr. Bajaj could not provide any opinion regarding treatment after January 23, 2018. Dr. Bajaj testified that he would expect any back pain related to the October 14, 2014 accident to appear within up to a few weeks to a month after the accident. He expected radicular symptoms to appear within the first month or so after a traumatic event. If Dr. Ghanayem's treatment in later 2015 was the first indication of any low back pain after the October 14, 2014 accident, Dr. Bajaj testified that it is more likely true than not that the low back condition was not related to the accident (PX 11).

Dr. Bajaj did not refer Petitioner to Dr. Lim. He never provided Petitioner with work restrictions. Dr. Bajaj testified he cannot affirmative say that Petitioner's back conditions, or neck and right shoulder conditions were related to the October 14, 2014 accident. Dr. Bajaj could not render an opinion as to whether any spinal surgery Petitioner underwent was causally related to the accident. He could not render an opinion as to the right shoulder condition that Petitioner has now and whether it is causally connected to the accident. He could not provide an opinion as to when Petitioner reached maximum medical improvement from any injuries from the accident (PX 11).

Petitioner testified he sought a second opinion from Dr. Lim at Midwest Orthopaedic Consultants. He was seen on February 7, 2018 for low back and neck problems (PX 5, RX I). He provided a history that the problem started after an injury at work where he alleges a fall off a dock approximated 4 feet, struck his head, neck, and lower back and had immediate onset of pain. Dr. Lim examined Petitioner and reviewed the prior MRI studies of the cervical and lumbar spine. He diagnosed cervical disc degeneration and lumbar degenerative disc disease and spinal stenosis. He stated Petitioner most likely sustained an aggravation of a pre-existing condition in his lumbar spine. More likely than not, he has pre-existing spinal stenosis which was aggravated or unmasked by a slip and fall injury. He recommended epidural injections for the lumbar spine and therapy for the neck and back (RX I, p 784-785). Petitioner began therapy at Athletico. He had an epidural injection on February 15, 2018. On March 9, 2018, Petitioner reported the injection and therapy have not helped. Dr. Lim recommended a minimally invasive decompression at L3-4 and L4-5. He ordered an updated MRI which was performed on April 14, 2018 which noted multilevel degenerative disc disease of the lumbar spine (RX I, p 803). On April 23, 2018, Dr. Lim performed a minimally invasive decompression of right L3, L4 and L5 nerve roots. The postoperative diagnosis was severe spinal stenosis with neurogenic claudication (RX I, p 796).

On May 8, 2018, Petitioner reported his radicular symptoms have subsided. He was to continue home exercised and stay off work. On June 19, 2019, Petitioner reported his low back pain is manageable and his leg pain has 100% resolved. He was returned to full duty on July 1, 2018. Petitioner was seen on December

18, 2018, reporting leg pain improved 65% but no improvement in his back pain. Petitioner was prescribed Naprosyn and a new MRI was ordered (RX I, p 789-794). Petitioner testified he has not had the MRI.

Dr. Lim testified by evidence deposition taken April 21, 2020 (PX 10). He testified to his treatment records including the operative report. Dr. Lim testified he did not treat the cervical spine condition. He opined that the lumbar spine stenosis was not caused by the accident on October 14, 2014, but rather the stenosis and the symptoms were a result of aggravation of his preexisting condition, and that was caused by the work accident. His basis was his understanding of the development of spinal stenosis and how symptoms occur. For the same reasons he opined that his treatment was causally related, reasonable, and necessary (PX 10). Dr. Lim testified he was not aware of the date of accident. A degenerative spine condition can exist for many years before causing symptoms. He has no information in his records that he reviewed any prior treatment records. He was not aware of treatment at Clearing Clinic, Dr. Ghanayem, or Dr. Bajaj. He was not aware that Petitioner was working full duty from the date of accident until being seen in February 2018. His understanding is that Petitioner had immediate onset of head, neck, and back pain after his accident (PX 10).

Petitioner saw Dr. Garbis at Loyola on December 18, 2018 for evaluation of is right shoulder. He reported the fall off the truck and right shoulder pain starting since that time. He may have had mild symptoms before that time, but they were greatly worsened afterward. Dr. Garbis assessed a probable rotator cuff tear. He recommended an MRI (RX F, p 345-346). Petitioner testified that when he moves his shoulder, it still pops and cracks. He started feeling this sensation a few months later after the accident.

Dr. Carl Graf reviewed medical records and prepared a report of his opinions on August 3, 2020 (RX A, Ex. 2). Dr. Graf testified by evidence deposition taken December 17, 2020 (RX A). Dr. Graf testified to the records he reviewed and radiologic studies. There was no documentation of back pain or symptoms in the Clearing Clinic or MacNeal Occupational Health records through January 14, 2015. He testified that the records do not record any low back pain until Petitioner mentioned it to Dr. Ghanayem 9 months after the incident on July 16, 2015. The record for that date indicates no upper or lower extremity radiculopathy, no leg radiating pain. He testified that he reviewed the cervical MRI films from September 17, 2015 and there was disc degeneration at C6-7 with a posterior disc bulge. These were degenerative changes. The October 28, 2017 lumbar MRI films showed disc degeneration increased at L3-4, a broad based disc bulge at L3-4 and facet arthropathy. There was facet hypertrophy at L4-5. He testified there were no acute findings, but disc degeneration at L3-4 and L4-5 with spinal stenosis. The April 14, 2018 lumbar MRI was essentially the same (RX A).

Dr. Graf opined that Petitioner had a head contusion in the October 14, 2014 work injury. It is possible he suffered a cervical strain. The head contusion, scalp laceration and possible cervical strain were causally related to the work accident. He opined that Petitioner suffered no other injuries in the work accident. He opined that Petitioner reached maximum medical improvement when he was released from care on January 14, 2015. He testified that Petitioner's diagnosis as to the lumbar spine is lumbar spinal stenosis with a lumbar decompression. He opined that this is not caused or aggravated by the October 14, 2014 work incident. He disagrees with Dr. Lim. He opined there was no aggravation of a preexisting condition. His opinion as to Petitioner's current cervical spine diagnosis is unchanged. He opined that any neck or cervical spine condition or symptoms after January 14, 2015 are not caused or aggravated by the accident. Only treatment from the date of accident to January 14, 2015 would be causally related to the accident. None of the lumbar treatment, including his surgery, would be causally related to the accident. There was no treatment specifically for the shoulder throughout that time frame, so he testified that right shoulder treatment was not causally related to the accident. Petitioner does not require any future medical treatment causally related to the accident. He

opined that Petitioner is not a candidate for a cervical fusion. Petitioner does not require any work restrictions (RX A).

Dr. Graf testified he prepared an AMA impairment rating of 1% of the whole person based upon the diagnosis of cervical strain. He testified his opinions on causation are based in part on the 8 month gap in care, the release by Clearing Clinic, the examination findings, the imaging studies, putting everything together. He testified it is possible to suffer a concussion, aggravate cervical or lumbar degeneration, or suffer shoulder impingement by falling 3 feet the ground. Dr. Graf testified that to a reasonable degree of medical certainty that Petitioner did not suffer an aggravation of his preexisting cervical or lumbar degenerative disc disease or shoulder impingement. He found no diagnosis of a concussion, just a head contusion. Dr. Graf has no records prior to the date of accident. He has no evidence that any condition was symptomatic before that date.

Petitioner testified that he has no further treatment scheduled or planned. He has had no treatment for headaches since the Clearing Clinic. He has had no further treatment for his neck, back or shoulder since 2018. He is not on any kind of work restrictions. His job at 4D is similar to the job he had with Respondent. He is able to perform those functions. He testified that the level of his neck pain depends. It is more severe in the morning. He has pain of 6/10 throughout the day. It varies and gets worse sometimes. He still has pain in his low back every day. Walking, sitting, and laying aggravate it. He has headaches. His shoulder is worse if he uses it, such as shifting gears. He testified that he did not have neck pain, headaches, back pain or shoulder pain or treatment before October 14, 2014. He testified he does not jog or play sports like he used to. He has difficulties with activities of daily living like laundry, mowing the lawn, taking out the garbage.

Petitioner denies any subsequent injuries to his neck, back, head, or shoulder. He testified to one accident while working for Holland Freight when a car pulled back of him while he was going into a dock. He did not aggravate his head, neck, back or shoulder. Petitioner suffered a work injury at Holland Freight on July 30, 2018 to his chest and right hand when he was struck by a heavy piece of equipment at work (RX M). He had an injury on October 19, 2018 working for Holland when a door fell on his right hand. He had treatment including surgery on the fingers (RX N, RX O). He filed a Workers Compensation case for that accident as 18WC037557 (RX Q). The settlement contract states Petitioner did not return to his regular job and was engaged in a self-directed job search. He was paid weekly benefits from 10/02/19 to the date of settlement on 3/23/21. The settlement was for $157,078.40 representing 50.38% whole person plus the funding of an MSA (RX Q).

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).

Petitioner sustained an undisputed accident on October 14, 2014 when he fell from the back of his truck striking the ground. He has an undisputed head laceration and cervical strain, but Respondent disputes the causal relationship of his conditions of ill-being in the neck, head, back and right shoulder beyond those diagnoses. Petitioner was initially seen at Clearing Clinic from October 14, 2014 through January 15, 2015. The records note only complaints of headaches and neck stiffness. The October 21, 2014 neck examination noted normal range of motion with pain and some numbness in the right hand. He received therapy focused solely on his neck. On October 23, 2014, the therapist noted cervical pain worse with rotation. There was no radicular pain, numbness or tingling in the arms. Petitioner treated for a diagnosis of open head wound, head contusion, and neck strain. He was discharged on that date as improved. He was discharged from therapy reporting pain of 1.5/10 with 80% improvement to his neck pain.

Petitioner continued full duty work and sought no treatment for 6 months until seeing Dr. Ghanayem on July 16, 2015, after seeing an attorney in May 2015. He described pain on the right side of his neck, that seems to be more muscular in nature. He had no upper or lower extremity radiculopathy. Petitioner said he has also developed low back pain. Physical exam was unremarkable. The cervical MRI impression was degenerative changes, most prominent at C6-7. Dr. Ghanayem stated the MRI reveals a disc herniation at C6-7 but no spinal cord compression. He planned to manage his problem non-surgically. After some chiropractic visits, Petitioner returned to Dr. Ghanayem. On February 25, 2016, Petitioner reported right-sided neck pain. He denied any radicular symptoms into the upper or lower extremities. Physical examination noted full range of motion, negative Spurling's and Lhermitte's test, 5/5 strength. Petitioner denied numbness or tingling. The impression was cervical degenerative disc disease. Dr. Ghanayem stated he would not recommend surgical intervention. Petitioner was discharged to be seen as needed and returned to work without restriction. The records reflect that Petitioner was referred on March 14, 2015 for bulging cervical disc C6-7, reports hands fall asleep, headaches, and facial twitching. "Also has low back pain." Dr. Ghanayem's records do not connect the low back symptoms to the accident, or document any claim that the symptoms arose at that time.

Petitioner presented the testimony and opinions of Dr. Bajaj with respect to causal connection. Dr. Bajaj first saw Petitioner in March 2016, over a year after the accident. The history recorded is simply a referral from Dr. Ghanayem for cervical and lumbar chronic pain which began in 2014 after a fall sustained at work. He did not review any medical records of the treatment prior to his treatment. When presented a hypothetical question that Petitioner fell approximately 3 feet hitting his head on concrete, he opined that it could cause his low back and neck conditions. He also testified that he did not see Petitioner until 2016 and "I don't really have a good opinion of that." He further testified that the basis of his opinion was "the speculation that no other injury occurred prior and he had no other symptoms. A fall can cause a whiplash injury to the back and neck which can create pain symptoms in the back and neck." Dr. Bajaj notes Petitioner has degenerative conditions in the back and neck. He stated those conditions can be made symptomatic from a fall assuming no prior or subsequent injuries and "he was fully worked up from the time of the injury. Yes, it can happen." Dr. Bajaj admitted Dr. Ghanayem's initial records do not note any lumbar radicular complaints. He stated that if the lumbar condition occurred in the October 14, 2014 accident, he would expect lumbar complaints to occur

within a month of the injury. He can not say affirmatively that the back or neck condition is caused by the accident.
Petitioner also offered the opinions of Dr. Lim with respect to causal connection. Dr. Lim provided opinions only with respect to the lumbar spine. Dr. Lim did not see Petitioner until February 7, 2018 for low back and neck problems. Petitioner provided a history that the problem started after an injury at work where he alleges a fall off a dock approximated 4 feet, struck his head, neck, and lower back and had immediate onset of pain. He opined that the lumbar disc degeneration and stenosis was not caused by the accident, but that Petitioner suffered an aggravation of his preexisting condition based upon his "understanding of how the symptoms occur." His understanding is based upon the history provided by Petitioner on February 7, 2018. Nothing in the MRI studies or the operative findings indicates when the condition began. He has nothing to indicate whether he reviewed any prior treating records other than his films. He was not aware Petitioner had remained working full duty. The lumbar conditions he diagnosed predated the accident. He testified that he would expect symptoms from a traumatic event to occur right away. When asked if it was more probable than not that Petitioner's surgery was necessitated by a gradual worsening of the condition rather that a specific aggravation in 2014, he responded he "could not say one way or the other."

Respondent offered the causation opinions of Dr. Graf who performed a record review of treatment records and diagnostic films from October 14, 2014 through April 2019. He opined that Petitioner's lumbar spine condition was not causally related to the accident. He opined that the cervical spine condition after January 2015 was not causally related. He opined that only treatment through January 2015 was causally related and no condition of the right shoulder or hand was causally related. He opined there was no aggravation of a preexisting condition. He testified that falling 3 feet to concrete can aggravate cervical or lumbar degeneration or shoulder impingement. He does not believe such an aggravation occurred in this case.

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. A treating doctor's findings and opinions can be undermined, or even disregarded, through reliance on inaccurate or incomplete information." See *Ravji v. United Airlines*, 2012 WL 440353 at 13 (Ill. Indus. Comm'n) interpreting *Horath v. Industrial Commission*, 96 Ill.2d 349 (Ill. 1983).

With respect to the Petitioner's condition in the lumbar spine, the Arbitrator notes that both Dr. Bajaj and Dr. Lim based their opinions on Petitioner's history of immediate back pain after the accident. Dr. Bajaj testified that a disc bulge, protrusion, or herniation are interchangeable terms. The finding can be

degenerative. There is nothing on the MRI to determine when that finding began. Dr. Bajaj could not provide any opinion regarding treatment after January 23, 2018. Dr. Lim testified opined that the lumbar spine stenosis was not caused by the accident on October 14, 2014, but rather the stenosis and the symptoms were a result of aggravation of his preexisting condition. Both Dr. Bajaj and Dr. Lim agreed that the symptoms of a causally related aggravation should appear soon after the injury and based their opinions on that assumption. The Arbitrator finds Petitioner's testimony of these symptoms unpersuasive in light of the medical records from Clearing Clinic and the original history to Dr. Ghanayem which also contradicts an immediate onset of low back pain. The Arbitrator listened to Petitioner and observed his testimony. The Arbitrator finds that his claim of immediate 9/10 back pain is not credible in light of the treatment for 3 months with no notation of any complaints in the low back. The Arbitrator also notes other inconsistencies with Petitioner's testimony. Petitioner's testimony that his pain upon discharge from Clearing Clinic was 8/10, but the therapy notes state he has 80% improvement and 1.5/190 pain. He testified that when he went to Dr Ghanayem. the neck pain seemed to have lessened, but the back pain got worse. Yet no work up for the low back was done. Diagnostics and treatment focused only on the neck. The Arbitrator also notes that despite his denial of any prior shoulder problems he noted a right shoulder injection 2 years earlier when he was seen by the chiropractor. The Arbitrator notes no specific complaints or treatment for the low back for almost 9 months. The Arbitrator also considers the lack of objective radicular finding or even complaints for a longer period of time as documented in Petitioner's subjective presentations and the physical examinations performed.

The Commission has considered such a gap in care in determining causal connection. See: *Richard Olcikas v. Dominick's Finer Foods, Inc*., 2009 Ill. Wrk. Comp. LEXIS 1098, affirmed *Olcikas v. IWCC*, 2012 Ill. App. Unpub. LEXIS 26; 2011 IL App (1st) 103274WC-U; 2012 WL 6951575; *Jacob Haltom v. Center for Sleep Medicine*, 2013 Ill. Wrk. Comp. LEXIS 509; 13 IWCC 563, affirmed *Haltom v. IWCC*, 2015 IL App (1st) 133954WC-U; 2015 Ill. App. Unpub. LEXIS 1568; *Jose Ruben Meraz vs. Minute Men Staffing*, 2015 Ill. Wrk. Comp. LEXIS 30; 15 IWCC 30.

With respect to Petitioner's low back complaints, the Arbitrator finds the opinions of Dr. Bajaj and Dr. Lim are based upon incomplete and inaccurate information. Dr. Graf's opinion based upon the total treating chart is more persuasive.

With respect to Petitioner's complaints in the cervical spine, the Arbitrator notes that Petitioner did have immediate complaints and treatment following the accident on October 14, 2014 as documented by the records of Clearing Clinic. Although he was discharged in January 2015 and continued working full duty, the discharge notes reflect some ongoing pain. The Arbitrator finds that, given the nature of the fall and treatment received, the gap in care to July 2015 before seeing Dr. Ghanayem is not so great as to break causation in the absence of an intervening injury. The Arbitrator finds the cervical causation opinion of Dr. Bajaj, which is based on more accurate information more persuasive than that of Dr. Graf and finds Petitioner's condition of ill-being in the cervical spine causally related to the accident through the date of last treatment by Dr. Bajaj in January 2018. The Arbitrator finds his cervical condition reached MMI at that time since he has sought no further cervical treatment thereafter in almost 3 years thereafter.

With respect to the right shoulder condition, Petitioner's testimony that the symptoms did not appear for several months contradict an immediate onset of shoulder symptoms. There is also no explanation with respect to the chiropractic notes showing a prior injection. The Arbitrator recognizes the interaction with

shoulder and neck symptoms and finds the exploration of Dr. Bajaj of a possible shoulder involvement a reasonable medical decision, but in the absence of a clear medical causation opinion with respect to any pathology in the shoulder, the Arbitrator finds Petitioner failed to prove a causal connection of any discrete shoulder condition.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proved by a preponderance of the evidence that, as a result of the accidental injury on October 14, 2014, he sustained an aggravation of a preexisting cervical degenerative disc disease, which condition reached maximum medical improvement as of January 2018. Petitioner has failed to prove by a preponderance of the evidence that his conditions of ill-being in the lumbar spine and right shoulder are causally connected to the accident.

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). In weighing the reasonableness and necessity of treatment, the Commission considered the medical opinions presented. 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. 591, 138 N.E. 211 (1923).* Based upon the Arbitrator's finding with respect to Causal Connection, only reasonable and necessary treatment for the causally related conditions of ill-being would be compensable.

Petitioner has offered PX 12 with the outstanding medical bills and bills paid directly by Petitioner and has included the amounts claimed as an attachment to Arb. Ex. 1. The Arbitrator has reviewed the exhibit as well as the medical records documenting the treatment and finds that all claimed unpaid medical bills relate to the low back condition found by the Arbitrator to not be causally connected. Based upon the Arbitrator's finding, the issue of whether Petitioner exceeded his allowable choices of treating doctors is moot.

Based upon the record as a whole and the Arbitrator's finding with respect to Causal Connection, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence that there are any unpaid medical bills causally connected to the accident on October 14, 2014.

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

Petitioner is seeking temporary total compensation for the period from April 23, 2018 through July 14, 2018. The undisputed evidence, including Petitioner's testimony and the records and testimony of Dr. Lim, is that this period of lost time was a result of the lumbar surgery Petitioner underwent. Based upon the Arbitrator's finding with respect to Causal Connection, this lost time was for a condition of ill-being not causally connected to the accident.

Based upon the record as a whole and the Arbitrator's finding with respect to Causal Connection, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability.

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. Based upon the Arbitrator's finding with respect to Causal Connection, only the causally related conditions of ill-being will be considered.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that the record contains an impairment rating of 1% of the whole person as determined by Dr. Graf, pursuant to the most current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment (RX A). The Arbitrator notes that this level of impairment does not necessarily equate to permanent partial disability under the Workers' Compensation Act, but instead is a factor to be considered in making such a disability evaluation. The doctor noted his impairment rating was based upon a cervical sprain/strain. He did not address an aggravation of a preexisting degenerative condition. The Arbitrator also notes that Dr. Graf did not examine or interview the Petitioner is formulated his impairment rating. Because of this, the Arbitrator therefore gives lesser 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 truck driver at the time of the accident and that he is able to return to work in his prior capacity as a result of said injury. The Arbitrator notes that despite the Petitioner's subjective complaints he continued working without lost time for over 3 years before his low back surgery and returned to full duty 3 months thereafter. The Arbitrator also notes that despite a significant subsequent injury for which he was placed on permanent restrictions, he testified he is currently still working as a truck driver doing similar duties. Because of these facts, the Arbitrator therefore gives no weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 53 years old at the time of the accident. He would still be expected to remain in the labor force for a number of years. The Arbitrator notes that Petitioner has continued to perform his full duty work with the exception of lost time for his 2018 back surgery and following his subsequent unrelated accident for 7 years. Because of these facts, the Arbitrator therefore gives lesser weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner was released to his regular unrestricted job and voluntarily resigned from Respondent. Thereafter, he has worked for multiple trucking companies doing the same or similar duties. No evidence of any loss of earnings was presented. Because of these facts, the Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner suffered a laceration and contusion to the head with resulting headaches, He also suffered an aggravation of his preexisting cervical degenerative disc disease with extended physical therapy, a cervical MRI which noted disc disease at multiple levels, and epidural steroid injection. Dr. Ghanayem opined that Petitioner was not a surgical candidate. Dr. Bajaj diagnosed his condition as myofascial pain. His EMG was negative for radicular symptoms. His symptoms also resulted in a work-up for his shoulder. Because of this, the Arbitrator therefore gives greater weight to this factor.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC032703
Case Name	Patrick Lullo v. Arlington Automotive Services
Consolidated Cases	18WC032708; 18WC032866;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0005
Number of Pages of Decision	16
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Michelle LaFayette, Lawrence Cassano

DATE FILED: 1/9/2023

/s/ Deborah Baker, Commissioner

Signature

23IWCC0005

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

PATRICK LULLO,

Petitioner,

vs. NO: 18 WC 32703

ARLINGTON AUTOMOTIVE SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) of the Act having been filed by the Petitioner herein, and notice given to all parties, the Commission, after considering the issues of accident, notice, benefit rates, whether Petitioner's current condition is causally related to his alleged repetitive trauma injuries, Petitioner's entitlement to medical expenses, Petitioner's entitlement to prospective medical care, Petitioner's entitlement to temporary disability benefits, Petitioner's entitlement to permanent disability benefits, due process violations, and whether penalties under §19(k) and §19(l), and attorney fees under §16 of the Act should be imposed on Respondent and being advised of the facts and law, reverses the Decision of the Arbitrator. The Commission finds that Petitioner sustained a repetitive trauma accidental injury which manifested on September 27, 2018 and that his current condition of ill-being is causally related to said accident. 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 (1980). This case was consolidated for hearing with case numbers 18WC32708 and 18WC32866.

I. FINDINGS OF FACT

A. Background

Petitioner is right-handed and had no bilateral thumb or hand issues prior to complaining of hand issues to his primary care physician in 2015. Petitioner practiced Taekwondo until the age of 49, which was 10 years prior to his 2016. He testified that this did not cause any problems in his hands.

Petitioner was a mechanic for 45 years. Between 2016 and 2018 Petitioner was a Master Auto Technician for Respondent. He had been employed by Respondent for 15 years. He left Respondent's employ on December 21, 2018. He testified that when hired by Respondent, he had no bilateral thumb or hand issues. Tools he used included electric half-inch impact wrenches, pneumatic half-inch impact wrenches, pneumatic air chisels, electric grinders, power drills, brake lathes, air conditioning machines, and various sized pneumatic air ratchets. Almost all of the tools he used required a pinch grip. He worked on three to four vehicles daily, performing various repairs from 7:30 a.m. to 5:00 p.m. He testified that he usually took a working lunch. No day was standard. He did not use the same tools all day, every day.

On February 4, 2016, Petitioner began treating with Dr. Mark Yaffe after noticing right thumb throbbing pain and weakness, causing him to drop tools, nuts, and bolts. At that time, he complained of right hand pain, and decreased range of motion and crepitus on the right side. Dr. Yaffe diagnosed primary osteoarthritis of the first CMC joint of the right hand. He discussed activity modification, pain medication, splinting, steroid injections, and surgery with Petitioner. Dr. Yaffe also performed a right thumb steroid injection but did not place Petitioner on restrictions. PX 3. Petitioner testified the injection provided 4 to 6 months of relief and that he was able to keep working.

B. Relevant Medical Treatment

On December 1, 2016, Petitioner visited Dr. Yaffe again, this time for ***bilateral*** thumb pain, right greater than left. Petitioner testified he had begun to use his left hand more due to his increasing right hand pain. He was using an anti-inflammatory in the morning, but by the end of the day his hands were sore, and he was unable to use them. He would ice both thumbs at home. Dr. Yaffe noted pain was mild to moderate and constant. Petitioner reported his symptoms were aggravated by activities of daily living. He also reported that his symptoms had been relieved by the previous injection, but had now returned. PX 3. Dr. Yaffe's examination revealed pain and tenderness in the thumbs. He also performed X-rays which revealed stage 3 bilateral degenerative joint disease of the first CMC joint. Dr. Yaffe diagnosed bilateral primary osteoarthritis of the first CMC joints. Dr. Yaffe administered bilateral thumb cortisone injections but did not restrict Petitioner's work activities. PX 3. Petitioner testified the injections provided relief, and he returned to work the same day. Petitioner testified further that he also had previously informed Mr. Seiler that he would be late to work this day due to his hand appointment for right hand pain. Petitioner did not inform Mr. Seiler that his hand symptoms were due to the work he had been performing. Petitioner did not treat with Dr. Yaffe in 2017.

On January 2, 2018, Petitioner returned to Dr. Yaffe for his bilateral thumb pain. Dr. Yaffe's examination revealed bilateral thumb pain and tenderness with a CMC grind test. Dr. Yaffe diagnosed bilateral wrist pain and bilateral osteoarthritis of the CMC joints. He administered bilateral CMC steroid injections. On June 28, 2018, Petitioner returned to Dr. Yaffe with the same complaints. Dr. Yaffe's diagnoses remained the same and he again administered bilateral CMC joint injections. PX 3.

On September 27, 2018, Petitioner returned to Dr. Yaffe again and complained of increased bilateral thumb pain over the past few weeks. Petitioner informed Dr. Yaffe that he used heavy tools at work which made his symptoms significantly worse. Dr. Yaffe noted Petitioner's symptoms had been recalcitrant to conservative treatment. Petitioner informed Dr. Yaffe that he wanted to explore options other than steroid injections. Dr. Yaffe's examination revealed similar results to the previous visit and his diagnoses remained the same. Dr. Yaffe discussed conservative and surgical measures with Petitioner, who elected to move forward with surgery. PX 3. Petitioner testified that during the six months leading up to this visit, his workload had decreased quite a bit. There were days he left early due to lack of work. The day before the September 27, 2018 appointment, Petitioner informed Mr. Seiler that he would be late to work due to this appointment for his hands. Petitioner testified that he was having difficulties performing his work duties, specifically, he could not hold an alternator up and bolt it to an engine or assemble various motor parts. Trans., p.34. Following the appointment, Petitioner informed Mr. Seiler that bilateral hand surgery had been recommended. Petitioner testified Mr. Seiler requested that he "take care of it under [his] personal medical insurance." Trans., p. 42-43.

Petitioner subsequently returned to work until December 2018. During this time, Petitioner informed Respondent of his intention to follow his wife to Florida with her job. Petitioner denied telling Respondent he was retiring, only that he was following his wife to Florida. Trans., p.83-85.

On December 20, 2018, Petitioner followed up with Dr. Yaffe for his bilateral thumb conditions. Petitioner reported he was unable to perform his job duties due to pain. Dr. Yaffe's examination revealed bilateral CMC joint pain with grind test. Dr. Yaffe diagnosed severe and recalcitrant bilateral CMC joint osteoarthritis. Petitioner reported that he still wanted to move forward with surgery. Dr. Yaffe opined that based on the degree of Petitioner's symptoms, his history and examination, that his symptoms were at minimum made worse by his work-related activities. Dr. Yaffe released Petitioner to work with restrictions of 2-pounds weight bearing bilaterally with no repetitive grip, pinch, or use of mechanical and power tools. The following day Petitioner presented this note to Respondent's owner. Petitioner performed one "brake job," but could no longer work after that and went home. This was the last day Petitioner worked for Respondent. Trans., p. 36.

Petitioner testified that he purchased a villa in Florida in August 2018 and eventually moved there with his wife in June 2019. He sold his Illinois residence before moving. Trans., p.78-79. He initially found a job at Enterprise at RSW airport receiving new rental car shipments off trucks. He had to take factory key rings off the keys and put on Enterprise rings. By the second car, his thumb was "screaming" after having to manipulate the key rings. Later in the day he peeled stickers and stuck them on dashboards. By the end of the day, he was unable to use his hands. He never returned to this job. He could not use his hands for three days afterward. Petitioner then

found another job beginning April 6, 2020 as a "Home Watch" working Monday through Thursday. Petitioner testified that many people in southwest Florida are seasonal, so when they are gone in the summer he walks their houses checking their air conditioning, leaks, water damage, insect infestation, mold or anything else out of the ordinary that can be detrimental to a home. Petitioner testified that as a Home Watch, he must type reports. After typing, his right hand still works, but his left does not work at all. He tries not to use his left hand too much. Trans., p. 46, 57.

On March 1, 2021, Petitioner underwent a right, first CMC joint interposition arthroplasty with trapeziectomy, split flexor carpi radialis tendon transfer, ligament reconstruction, tendon interposition, and excision of a right wrist ganglion cyst. PX 7. Petitioner testified he no longer suffers from hand throbbing but stated it still gives him a "little bit of trouble." He testified that his left hand is still symptomatic and he would like to undergo surgery. Trans., p. 53-54.

C. Additional Testimony

Testimony of Steve Seiler

Mr. Seiler is Respondent's owner. Mr. Seiler testified that he has previously performed mechanic work himself. To date, he will occasionally help out in the shop. Mr. Seiler did recall Petitioner informing him of an upcoming medical appointment for his hands on December 1, 2016, but did not recall Petitioner informing him that his hand issue was work-related. Mr. Seiler testified that he mostly assigned oil changes, brake work, and wheel alignments to Petitioner.

Brake work requires removing tires with an impact wrench, and screwdrivers for prying off brake "calipers," "pads," and "rotors." A wheel alignment required the car to be put on a special rack with equipment hooked up to the tires. Then, Petitioner would either loosen tie rods or lock nuts, or would adjust "sleeves." Oil changes required a hand wrench to remove the drain plug and an oil filter wrench to remove the filter. Mr. Seiler acknowledged that using a hand wrench requires pulling with force, and that a wrench is also used to loosen the drain plug and oil filter. Subsequently, a pinch grip is then used to complete the untightening. A new filter is then hand-tightened into place. Mr. Seiler agreed that an oil change required repeated sustained grip, but stated it did not require a lot of force. He stated an oil drain plug torque is 25 pounds-feet. He also stated that oil changes take 30 minutes.

Mr. Seiler agreed that impact tools are either air or battery powered and can "kick back" when attempting to maneuver a bolt. Mr. Seiler testified that the pressure involved depends on the size of the bolt and whether or not it's rusted. Sometimes using two hands is necessary. Mr. Seiler acknowledged it can be hard work at times. He also noted that an "air chuck" is needed to fill a tire with air, which requires you to grip and put pressure on the device nozzle.

Mr. Seiler stated that the only duties Petitioner performed that did not require any pinch grip was when he used the computer to look up information. This could potentially be a couple of hours of a shift. Mr. Seiler never outlined the exact duties Petitioner performed on any given day. He never observed Petitioner working.

D. Section 12 Opinions & Deposition Testimony

Dr. Michael Vender §12 Report

On March 1, 2019, Dr. Michael Vender drafted a report after performing a medical records review on Respondent's behalf. His review included records of Dr. Yaffe and Dr. Anubhav P. Jagadish.[1] He referenced the December 1, 2016 medical record of Dr. Yaffe, which revealed Petitioner's complaints of bilateral hand pain, secondary to degenerative arthritis in both thumb carpometacarpal joints. Petitioner had been treated with steroid injections at that point. Dr. Vender noted Petitioner's January 2018 treatment, noting that injections were performed again, and that surgery was discussed. Joint RX 1.

Dr. Vender agreed with the bilateral CMC joint arthritis diagnoses, adding that X-ray findings supported these diagnoses. In response to a question of whether Petitioner's work duties were causally related to the diagnoses, Dr. Vender opined "Unless secondary to a single injury such as fracture, or connective tissue disorders such as rheumatoid arthritis, most cases of arthritis are naturally occurring processes. As such, they are frequently known as degenerative arthritis." He went on to state: "The development of these degenerative changes is completely separate from how a person utilizes their hands." Dr. Vender opined further that while Petitioner's work duties may have elicited symptoms of his degenerative condition, this is not the same as actually aggravating or progressing the underlying condition. Joint RX 1.

Dr. Kenneth Schiffman §12 Report

On November 18, 2019, Petitioner underwent an Independent Medical Examination with Dr. Schiffman at his counsel's request. He noted that he reviewed a job description prepared by Petitioner, medical records of Dr. Yaffe, and bilateral thumb X-rays. The job description indicated Petitioner's duties required great pinch strength. These duties included, but were not limited to:

> -Starting frozen/rusted lugs nuts [sic]
>
> ***
>
> -Removal and installation of spark plugs, carboned up and frozen
>
> ***
>
> -The pinch grip of air tools
> -Installation of oil filters done by hand tighten [sic]
> -Removing plastic or metal quick disconnect fuel and A/C lines ALL FINGERTIP WORK
> -Removal and installation of vehicle electrical connectors

Petitioner reported that his bilateral hand complaints persisted. He informed Dr. Schiffman he had been a mechanic for approximately 50 years. He also reported he had undergone conservative care, but that his condition had worsened, causing him to be off work since December 2018. He reported that his use of high torque tools such as impact wrenches aggravated his pain. He also noted he had five brothers working in blue collar jobs without high physical demands that did not have the same problem. Upon examination, Dr. Schiffman noted radial tenderness in both

[1] Records of Dr. Jagadish were for Petitioner's unrelated cervical issues.

hands, decreased grip strength, and positive findings with CMC grind tests for pain. He opined that the December 2016 and January 2018 X-rays revealed degenerative changes at the trapeziometacarpal joint in both thumbs with joint space narrowing and osteophyte formation. He diagnosed bilateral thumb CMC arthrosis and found the conditions to be causally related to Petitioner's work duties, stating that "repetitive and forceful pinch grip required of both hands to do his job over the course of many years has unquestionably and causally contributed to this painful condition." Dr. Schiffman agreed with Dr. Yaffe's surgical recommendation. Dep. Ex 2.

Dr. Mark Yaffe, Treating Physician, June 18, 2019 Deposition

Dr. Yaffe is a board-certified orthopedic surgeon. He began treating Petitioner on February 4, 2016, at which time he diagnosed Petitioner with degenerative CMC joint osteoarthritis on the right. At the follow up visit on December 1, 2016, Petitioner's pain had returned, and he also now complained of left thumb symptoms. Bilateral thumb injections were performed this time, which reduced Petitioner's pain for approximately another year, as Petitioner did not return until January 2, 2018. On that date Petitioner reported bilateral tenderness at the CMC joints bilaterally, along with pain with a CMC grind test, which is a test that isolates the CMC joint and grinds the base of the metacarpal against the trapezium in an attempt to reproduce pain. Dr. Yaffe again administered bilateral CMC steroid injections. On June 28, 2018, Petitioner returned, and Dr. Yaffe found the same pain complaints upon testing. At that time, other treatment measures were discussed, including anti-inflammatories, splinting, additional injections, and surgery. Dr. Yaffe testified that at that time, Petitioner chose to undergo additional injections.

Dr. Yaffe also detailed Petitioner's treatment in relation to the September 27, 2018 manifestation date that is discussed in the Commission's decision in case number 18 WC 32703. Ultimately, Dr. Yaffe testified that following the subsequent treatment, he came to the conclusion that Petitioner's work duties worsened his symptoms, and the job duties/hand movements Petitioner described to him could contribute to an aggravation of pain from asymptomatic arthritis.

Dr. Michael Vender, Respondent's Medical Records Reviewer, July 19, 2019 Deposition

Dr. Vender is a board-certified orthopedic surgeon with a subspecialty in hand and upper extremities and added qualifications in hand surgery. He completed a medical records review, including records of Dr. Yaffe and Dr. Anubhav P. Jagadish. Dr. Vender understood Petitioner was a mechanic with varied duties involving intermittent forceful activity, intermittent tool usage, and the handling of heavy equipment.

Dr. Vender opined that CMC joint arthritis is generally due to wear and tear and occurs naturally. When Petitioner first sought treatment for the condition he was 61 years old, which Dr. Vender opined was age-appropriate. He opined that Petitioner's work duties did not contribute to his CMC joint arthritic conditions, and that the type of activities Petitioner performed at work did not aggravate his pre-existing condition. Dr. Vender would expect activities specific to thumb intensity that put a true load on the thumb joint consistently to cause injury to the CMC joint, rather than intermittent activity. He testified that when you grab a tool, the grasping done with the finger and the thumb is more passive, being used for balance. Dr. Vender would expect Petitioner to have symptoms with any hand activity, but that the hand usage did not progress Petitioner's arthritis nor

did it accelerate the need for treatment. However, Dr. Vender agreed with Dr. Yaffe's diagnoses and course of treatment recommended. Joint RX 1.

On cross examination, Petitioner's counsel presented Dr. Vender with a medical study from the Scandinavian Journal of Work, Environment & Health (2014) which reviewed evidence linking finger and wrist osteoarthritis with work activities requiring pinching and hand gripping and exposure to hand-arm vibration. Dr. Vender's Deposition, EX 3. Dr. Vender agreed that the study revealed 2 to 1 odds of developing CMC joint arthritis with repetitive pinch grip work. However, Dr. Vender could not think of any job that requires continued forceful use similar to a person turning a tight lock with a key. The authors of the study referred only to monotonous usage, which Dr. Vender described as the same use pattern or performance of a single task over and over again throughout a workday. Joint RX 1.

Dr. Kenneth Schiffman, Petitioner's Section 12 Physician, April 29, 2020 Deposition

Dr. Schiffman is a board-certified orthopaedic surgeon specializing in upper extremities from shoulders to fingers. He examined Petitioner once at the request of Petitioner's counsel on November 18, 2019. Petitioner was 65 years old at the time and brought with him a job description he had prepared (Dep. Ex 3), medical records of Dr. Yaffe from 2/4/16 through 9/28/18 (the 12/20/18 record was not included), and X-rays from December 2016 and January 2018. Petitioner had been off work since 2018. Petitioner informed Dr. Schiffman of his past conservative treatment and how the high torque tools at work aggravated his pain. Dr. Schiffman did not inquire about Petitioner's routine or activities outside of work.

Dr. Schiffman testified that his examination revealed tenderness, pain, and grip weakness bilaterally at the thumbs. Dr. Schiffman diagnosed CMC joint arthrosis bilaterally, noting that the December 2016 and January 2018 X-rays, which were essentially the same, supported this diagnosis. He opined that Petitioner's condition was causally related to his work duties as a mechanic. He testified that Petitioner's arthritis can be aggravated by grip-intensive tasks, such as those performed by Petitioner at work. His opinion was based in part on the job description Petitioner drafted and gave him. Dr. Schiffman stated that his opinion could possibly change if the job description was inaccurate. He agreed with Dr. Yaffe's recommendation of a trapezial arthroplasty surgery, as conservative measures had failed. He testified this surgery has a high success rate for pain relief. However, he opined that a return to work as an auto mechanic after these surgeries might be difficult due to loss of grip strength. Dr. Schiffman did not recall if he placed Petitioner on restricted duty, but testified that he normally does with patients with the same diagnosis. He further testified that restrictions would be reasonable and necessary for Petitioner. Dr. Schiffman acknowledged that this diagnosis is more prevalent with patients in their 50s and 60s. Dr. Schiffman testified that the most fortunate patients receive 6 months of pain relief after CMC injections are administered. PX 2.

II. CONCLUSIONS OF LAW

A. *Accident & Causation*

As it pertains to the issues of accident and causal connection, the Commission views the evidence differently than does the Arbitrator. The Arbitrator found Petitioner failed to prove a repetitive trauma accident occurred and arose out of and in the course of his employment with Respondent, and also failed to prove a manifestation date as there was no evidence Petitioner knew more than the diagnoses, and thus there was no evidence of a potential causal relationship between his bilateral conditions and his employment. The Arbitrator also found Petitioner failed to prove causation between his employment and his condition of ill-being. The Arbitrator relied on the opinions of Respondent's medical records reviewer, Dr. Vender, who opined that Petitioner's work duties did not contribute to the development of Petitioner's bilateral thumb conditions because his job duties did not require consistent thumb intensity to cause such a condition.

An employee who alleges repetitive trauma injuries is held to the same standard of proof as the employee alleging injury from specific trauma. *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 530 (1987). In a repetitive trauma claim, the date of injury is the date on which the injury manifests. The "manifestation date" is "the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." See *White v. Illinois Workers' Compensation Commission*, 374 Ill. App. 3d 907, 912 (4th Dist. 2007), citing *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 530 (1987).

Our supreme court in *Peoria County Belwood Nursing Home* (*Belwood*) found Professor Larson's workers' compensation treatise to be instructive:

> The practical problem of fixing a specific date for the accident has generally been handled by saying simply that the date of accident is the date on which disability manifests itself. Thus, in [*Ptak v. General Electric Co.*, 13 N.J. Super. 294, 80 A.2d 337 (1951)], the date of a gradually acquired [back] strain was deemed to be the first moment the pain made it impossible to continue work, and in [*Di Maria v. Curtiss-Wright Corp.*, 23 N.J. Misc. 374, 44 A.2d 688 (1945)], the date of accident for gradual loss of use of the hands was held to be the date on which this development finally prevented claimant from performing his work. However, for certain purposes the date of accident may be identified with the onset of pain occasioning medical attention, although the effect of the pain may have been merely to cause difficulty in working and not complete inability to work.

3 L. Larson, Larson's Workers' Compensation Law § 50.05, at 50-11-50-12 (2005).

In adopting Professor Larson's rule, the supreme court established that the date of an accidental injury in a repetitive-trauma compensation case is the date on which the injury "manifests itself." *Belwood*, 115 Ill. 2d at 530. Again, "manifests itself" means the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. *Belwood*, 115 Ill. 2d at 531.

Here, Petitioner sought and received medical treatment for bilateral thumb symptoms that began on February 4, 2016, and intermittently worsened from that time. On February 4, 2016, Petitioner received an injection in his right thumb and continued working. Beginning on December 1, 2016, after Petitioner began using his left hand more than his right hand, he began complaining of left thumb pain as well. Trans., p.30. At that time, he began receiving bilateral thumb injections. These injections continued periodically until September 27, 2018, when it became more prudent to hold further injections and any other conservative treatment and proceed with bilateral thumb surgeries. On September 27, 2018, Petitioner specifically alerted Dr. Yaffe of increased bilateral thumb pain over the past few weeks. During this visit, Dr. Yaffe noted Petitioner "…works with heavy tools at work and describes that symptoms are made significantly worse with his line of work." After discussing conservative measures with Dr. Yaffe who noted that "Symptoms have been recalcitrant to conservative treatment modalities," Petitioner elected to undergo surgery.

While the Arbitrator correctly asserted no physician opined that Petitioner's arthritic conditions were *caused* by his work activities, the Commission finds the evidence demonstrates that his condition was *exacerbated* and *aggravated* by his work activities to the point where surgical intervention became necessary. Although Petitioner had a pre-existing arthritic condition, the evidence supports a finding that his work duties caused an increase in his symptomatology to the point where he was no longer able to work by December 20, 2018, and he required surgical intervention to cure the effects of his increasingly painful condition. Dr. Schiffman agreed to as much in his deposition, when he was asked if Petitioner's work duties causally contributed to his painful condition. Dr. Schiffman's Deposition, p.15-16. Petitioner's preexisting condition does not preclude an award of benefits upon a showing that his condition was aggravated or accelerated by his employment. *General Electric Co. v. Industrial Comm'n,* 190 Ill. App. 3d 847, 855 (1989). A claimant need only to prove some act or phase of the employment was a causative factor, not the sole or even principal causative factor, in his ensuing injury to receive benefits under the Act. See *Mendota,* 243 Ill. App. 3d 834, 837 (4th Dist. 1993). The evidence supports a finding that Petitioner's work duties aggravated and accelerated his preexisting bilateral thumb conditions to the point where surgical intervention was required.

The Arbitrator's finding that Dr. Yaffe opined Petitioner's work activities did not change the progression of his disease is not supported by the record. The Commission finds that during Dr. Yaffe's deposition, he testified Petitioner's work duties worsened his symptoms. Dep., p.56-57. Dr. Yaffe went further, stating that the job duties/hand movements Petitioner described to him during treatment were consistent with those documented in the job description drafted by Petitioner. PX 2, Dep. Ex 2. Dr. Yaffe opined that these movements could contribute to an aggravation of pain from asymptomatic arthritis. In fact, Dr. Yaffe noted that Petitioner's work activities exacerbated his pain, and gripping and weightbearing were aggravating factors of his pain. PX 3. Due to this pain, Dr. Yaffe recommended surgery to Petitioner. These opinions and this recommendation were echoed by Dr. Schiffman, who testified that "This condition of arthritis at the base of the thumbs we know can be provoked or aggravated by grip intensive tasks which certainly would be consistent with his work history." Dr. Schiffman's Deposition, p.15. Dr. Schiffman went further, testifying that "I recommended what had already been recommended to this gentleman that he undergo surgery for what is called a trapezial resection or trapezial arthroplasty." Dr. Schiffman's Deposition, p.16.

The Commission also finds that the evidence does not support the opinions of Dr. Vender who opined that causation in this case was not present because Petitioner's work duties did not require specific thumb intensity performed on a consistent and regular basis, and were only required intermittently throughout the day. The Commission relies on the testimony of Respondent's owner Mr. Seiler to refute Dr. Vender's claim. During his testimony, Mr. Seiler stated that the only time Petitioner was ***not*** performing a duty that required any pinch grip was when he used the computer to look up information. Trans., p.145-46. Mr. Seiler estimated that Petitioner potentially performed computer work a couple of hours per shift. Petitioner testified he worked from 7:30 a.m. to 5:00 p.m. and usually took a working lunch. Thus, by Mr. Seiler's own admission, Petitioner spent approximately 7.5 hours per day performing job duties requiring a pinch grip. The Commission finds that performing job activities that require a pinch grip for approximately 7.5 hours per day is a significant amount of time and supports Dr. Yaffe and Dr. Schiffman's opinions.

The opinions of Dr. Yaffe and Dr. Schiffman are more persuasive than those of Dr. Vender and Dr. Cohen as Dr. Yaffe and Dr. Schiffman had a more complete understanding of Petitioner's job duties. First, Dr. Yaffe had significant knowledge of Petitioner's job activities and also discussed specific hand movements that Petitioner executed while performing his job duties, leading to his opinion that Petitioner's work duties could have contributed to an aggravation of pain from asymptomatic arthritis. Dr. Yaffe testified that during the December 20, 2018 visit, he and Petitioner "really sort of dove into what he's doing at work because…when you are talking about surgery…the patient has to know what to expect postoperatively. You know what he is used to in terms of grip and pinch may not return for a very long period of time." Dr. Yaffe's Deposition, p.20-21. Dr. Yaffe later testified that the job description outlining Petitioner's hand movements at work seemed consistent with what they discussed. Dr. Yaffe's Deposition, p.30, p.61. Similarly, Dr. Schiffman also discussed the use of high torque tools that aggravated Petitioner's pain, and opined that Petitioner's "[R]epetitive and forceful pinch grip required of both hands to do his job over the course of many years has unquestionably and causally contributed to this painful condition." Dr. Schiffman's Deposition Ex 2. Conversely, Dr. Vender and Dr. Cohen, who both performed records reviews without an examination, did not have the opportunity to discuss with Petitioner which work-related hand movements and duties aggravated his symptoms. Moreover, the medical evidence and Petitioner's ongoing credible and contemporaneous complaints of aggravation with work activity belie the opinions of Dr. Vender and Dr. Cohen that Petitioner's work duties were merely temporary aggravators of his condition.

Lastly, the Commission distinguishes the instant case from the case relied upon by the Arbitrator to deny causation, *Angell v. Chicago Heights School District #170,* 18 IWCC 354, 2018 Ill. Wrk. Comp. LEXIS 349 (June 6, 2018). In *Angell,* the claimant was a custodian who performed hand-intensive acts, but there was no evidence that any of his duties involved repetitive or sustained stress on his thumb joints. Conversely, in the case at bar, there *was* testimony and medical expert corroboration of Petitioner performing pinch-grip activities throughout the majority of his workday every day. Although Petitioner's duties were varied, the pinch-grip nature of the majority of his tasks remained constant throughout the majority of his shift. Moreover, the claimant in *Angell* had an extensive prior history of thumb issues while performing non-work activities, such as while playing video games. In the instant case, the evidence shows that Petitioner only

treated for his bilateral thumb conditions in connection with his work activities. There is no evidence that Petitioner treated for his thumbs in connection with non-work related activities.[2] Thus, *Angell* is significantly distinguishable from the case at bar and is not applicable here.

Accordingly, the Commission reverses the Decision of the Arbitrator and finds Petitioner has met his burden of proving by the preponderance of the evidence that he sustained repetitive trauma accidental injuries to his bilateral thumbs that manifested on September 27, 2018.

B. *Notice*

Pursuant to §6(c) of the Act, "Notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident." 820 ILCS 305/6(c) (West 2016). It further states "No defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." *Id*. The purpose of the notice requirement in the Act is to enable an employer to investigate an alleged accident. *Seiber v. Industrial Commission*, 82 Ill. 2d 87, 96 (1980). A claim is barred only if no notice whatsoever has been given. *Silica Sand Transport Inc. v. Industrial Commission*, 197 Ill. App. 3d 640, 651 (3d Dist. 1990). Notice shall be liberally construed, so that if some notice has been given, even if inaccurate or defective, the employer must show he has been unduly prejudiced. *Gano Electric Contracting v. Industrial Commission*, 260 Ill. App. 3d 92, 96 (4th Dist. 1994).

Petitioner informed Mr. Seiler on September 27, 2018 that he would be late to work the following day due to having a medical appointment for his right hand. After September 27, 2018, Petitioner testified that he informed Mr. Seiler he had been recommended for surgery, and that Mr. Seiler requested he use his group health insurance plan. Trans., p.42-43. Mr. Seiler testified that Petitioner told him he was having "issues" and would probably require surgery. Trans., p. 131-132. Additionally, Mr. Seiler acknowledged that his sister "got a Workmen's Comp claim… So I'm aware of it," however, he did not state when he became aware of the instant workers' compensation claim. Trans., p. 157-158. The Commission finds that Mr. Seiler's testimony did not directly rebut Petitioner's testimony.

The Commission finds that Respondent received timely notice of the instant claim, even if notice was defective. Respondent was not prejudiced since it had knowledge that Petitioner, who performed hand-intensive work, was suffering from significant hand-related medical ailments. Additionally, Respondent received subsequent updates from Petitioner regarding the treatment he underwent and received notice of the workers' compensation claim through Mr. Seiler's sister.

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[2] Petitioner filed two other workers' compensation claims in which he alleged that he underwent medical treatment for either his right thumb or his bilateral thumbs between February 4, 2016 and September 27, 2018, which was related to his work duties. The Commission denied Petitioner's repetitive trauma claims in these other cases (consolidated cases 18WC32708 and 18WC32866) as there was insufficient evidence to prove that Petitioner's right thumb or bilateral thumb conditions had manifested prior to September 27, 2018 based on the law as established in *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 530 (1987) and its progeny. The Commission did not deny the claims based on any other grounds and found no evidence that Petitioner's bilateral thumb conditions were solely caused or aggravated by non-work activities.

The Commission finds that the notice requirement has been satisfied. Further, the Commission takes judicial notice of its electronic case management system which indicates that the instant case was filed with the Commission on October 31, 2018, within the 45-day notice requirement. See *City of Centralia v. Garland*, 2019 IL App (5th) 180439, ¶ 10.

C. *Temporary Disability*

The Commission reverses the Arbitrator's denial of temporary total disability (hereinafter "TTD") benefits and finds that Petitioner's work restrictions imposed by Dr. Yaffe on December 20, 2018 were not accommodated by Respondent. Based on these restrictions and the surgical recommendation that was in place, it is clear Petitioner's conditions have not stabilized, thus he is entitled to TTD benefits from December 21, 2018 through April 5, 2020, as he started a new job beginning April 6, 2020. Petitioner is entitled to TTD benefits of $791.81/week for 67 & 2/7ths weeks.

The Commission also reverses the Arbitrator's denial of temporary partial disability (hereinafter "TPD") benefits beginning April 6, 2020 through September 19, 2021. PX 10. Dr. Yaffe imposed work restrictions on December 20, 2018, which have not been rescinded by a treating physician. Further, while Petitioner has undergone surgery for his right thumb, he has yet to undergo the same for his left thumb, which remains symptomatic. The Commission finds that the evidence supports a finding that Petitioner did not retire after leaving Respondent's employ. Petitioner's testimony denying he informed Respondent that he planned to retire is supported by the fact that Petitioner sought and acquired two jobs upon moving to Florida: employment at RSW Airport where he only worked for one day due to an aggravation of his symptoms, and subsequently his job as a Home Watch, which based on Petitioner's credible testimony was within the work restrictions imposed by Dr. Yaffe. Petitioner testified that he worked as a Home Watch at the time of the Arbitration hearing, however, the wage records indicate Petitioner worked as a Home Watch from April 6, 2020 through September 19, 2021 (Petitioner earned $9,898.40 in 2020 and $14,481.60 in 2021, totaling $24,380.00). PX 10. He would have earned $90,265.96 as a Mechanic for Respondent during this same time period ($1,187.71 AWW x 38 & 4/7 weeks = $45,811.16 in 2020; and $1,187.71 AWW x 37 & 3/7 weeks = $44,454.80 in 2021). Two-thirds of $65,885.96 ($90,265.96 - $24,380.00) equals $43,923.97, which is the amount of TPD owed to Petitioner.

D. *Medical Expenses*

The Commission reverses the denial of medical expenses related to Petitioner's bilateral thumb conditions. The Commission awards the reasonable and necessary medical expenses incurred by Petitioner for treatment related to his bilateral thumbs at Barrington Orthopedic Specialists, Northwest Community Hospital, Lee Memorial Health System, and Orthopedic Center of Florida detailed in Petitioner's Exhibits 3, 4, 6 & 7, as provided in §8(a), subject to §8.2 of the Act. The Commission finds that all related treatment was necessary to cure the effects of Petitioner's conditions, and said conditions have yet to reach maximum medical improvement.

E. *Prospective Medical Care*

The Commission reverses the Arbitrator's denial of prospective medical care. The Commission awards prospective medical treatment in the form of left thumb surgery as recommended by Dr. Yaffe.

F. *Penalties Pursuant to §§ 19(k) and 19(l) and Fees Pursuant to §16*

Based on a review of the evidence herein, the Commission finds that Respondent's denial of benefits to Petitioner, while ultimately based on the less persuasive opinions of Dr. Vender and Dr. Cohen denying causation, was nevertheless not unreasonable or vexatious. The Commission affirms the Arbitrator's denial of penalties and fees.

G. *Due Process*

On his Petitions For Review in all three consolidated cases (18WC32708, 18WC32866, and 18WC32703), Petitioner indicated that an issue on review was "Due Process violation by IWCC officer." The Commission addresses Petitioner's arguments regarding due process in the instant Decision only but notes that its findings and conclusions regarding due process apply to all three consolidated cases.

The Commission interprets Petitioner's due process argument to be an argument regarding the general fairness of the hearing since Respondent is represented by one law firm in case numbers 18WC32708 and 18WC32866 and a different law firm in the instant case as Respondent obtained a different workers' compensation insurance policy with a different company after the first two alleged manifestation dates. In his brief, Petitioner implicitly acknowledges that by itself, it was not improper for Respondent to be represented by two different law firms.

Petitioner argues that "[w]hen two different firms represent the same party in the same hearing, we need to consider whether the setup defeats the intended fairness of the system. Dueling defense lawyers may pose no problem if the hearing officer guards against gamesmanship. But that did not happen in Lullo's claims, meaning that the setup deprived Lullo of a fair consideration of his claim." Specifically, Petitioner argues that Respondent's counselors were "double-booked," in other words, given an unfair advantage to defend against Petitioner's claims. Petitioner states that this led to Respondent receiving double the cross-examination time, double the expert witnesses, concerted cross-examination strategies, and inconsistent evidentiary rulings when one counselor for Respondent would object to evidence while the other would not.

Due process includes the right to present evidence and argument on one's own behalf, a right to cross-examine adverse witnesses, and impartiality in rulings upon the evidence that is offered. *RG Construction Services v. Illinois Workers' Compensation Commission*, 2014 IL App (1st) 132137WC, ¶ 34. A party asserting a violation of its due process rights must be able to demonstrate the party is prejudiced by the conduct it asserts constitutes such a violation. *Id*.

The Commission finds Respondent had no tactical advantage as alluded to by Petitioner from being represented by two different law firms. While Respondent was represented by two

different law firms, each law firm represented Respondent in different claims. Specifically, one law firm represented Respondent in case numbers 18WC32708 and 18WC32866, and the other law firm represented Respondent in the instant case. Further, the Arbitrator was aware of the situation and vocalized his understanding of Petitioner's concerns when he stated: "So if there's some objection in the evidence deps in regards to one case, I'll only consider it towards that case." Trans., p. 190. Further, the Commission finds that even if the Arbitrator's rulings on the admission of evidence or objections were incorrect, Petitioner has failed to point to any specific prejudice by the Arbitrator's conduct and at the most, it was harmless error. Petitioner's remaining arguments, including the "blind signing of proposed findings," "misapplying arbitrary proof thresholds," and "misapplying precedent" have all been rendered moot by this Commission Decision and the Commission's decisions in case numbers 18WC32708 and 18WC32866.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 11, 2022 is hereby reversed.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner has proven he sustained a repetitive trauma accident that manifested on September 27, 2018.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner's current conditions of ill-being to his bilateral thumbs are causally related to the accident.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner satisfied the notice requirement under the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $791.81 per week for a period of 67 & 2/7ths weeks, representing December 21, 2018 through April 5, 2020, that being the 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 pay to Petitioner temporary partial disability benefits in the amount of $43,924.19 for the period beginning April 6, 2020 through September 19, 2021, as provided in §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the reasonable, necessary, and causally related medical expenses detailed in Petitioner's Exhibits 3 through 7, as provided in §8(a), subject to §8.2 of the Act. Respondent shall have a credit for medical benefits already 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 §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent authorize and pay for the prospective medical treatment recommended by Dr. Yaffe.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is not liable for

any penalties under §19(k) and §19(l), or attorney fees under §16 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 injury.

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 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 the 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.

January 9, 2023
O: 11/9/22
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	18WC032708
Case Name	Patrick Lullo v. Arlington Automotive Services
Consolidated Cases	18WC032703; 18WC032866;
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	23IWCC0006
Number of Pages of Decision	20
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Michelle LaFayette, Lawrence Cassano

DATE FILED: 1/9/2023

/s/ Deborah Baker, Commissioner

Signature

23IWCC0006

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

PATRICK LULLO,

Petitioner,

vs. NO: 18 WC 32708

ARLINGTON AUTOMOTIVE SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein, and notice given to all parties, the Commission, after considering the issues of accident, notice, benefit rates, whether Petitioner's current condition is causally related to his alleged repetitive trauma injury, Petitioner's entitlement to medical expenses, Petitioner's entitlement to prospective medical care, Petitioner's entitlement to temporary disability benefits, Petitioner's entitlement to permanent disability benefits, due process violations, and whether penalties under §19(k) and §19(l), and attorney fees under §16 of the Act should be imposed on Respondent and being advised of the facts and law, changes the Decision of the Arbitrator as set forth below, but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. This case was consolidated for hearing with case numbers 18WC32866 and 18WC32703.

I. FINDINGS OF FACT

A. Background

Petitioner is right-handed and had no bilateral thumb or hand issues prior to complaining of hand issues to his primary care physician in 2015. Petitioner practiced Taekwondo until the age of 49, which was 10 years prior to 2016. He testified that this did not cause any problems in his hands.

Petitioner was a mechanic for 45 years. Between 2016 and 2018 Petitioner was a Master Auto Technician for Respondent. He had been employed by Respondent for 15 years. He left Respondent's employ on December 21, 2018. He testified that when hired by Respondent, he had no bilateral thumb or hand issues. Tools he used included electric half-inch impact wrenches, pneumatic half-inch impact wrenches, pneumatic air chisels, electric grinders, power drills, brake lathes, air conditioning machines, and various sized pneumatic air ratchets. Almost all of the tools he used required a pinch grip. He worked on three to four vehicles daily, performing various repairs from 7:30 a.m. to 5:00 p.m. He testified that he usually took a working lunch. No day was standard. He did not use the same tools all day, every day.

B. Relevant Medical Treatment

On February 4, 2016, Petitioner began treating with Dr. Mark Yaffe after noticing right thumb throbbing pain and weakness, causing him to drop tools, nuts, and bolts. At that time, he complained of right hand pain, and decreased range of motion and crepitus on the right side. Dr. Yaffe diagnosed primary osteoarthritis of the first CMC joint of the right hand. He discussed activity modification, pain medication, splinting, steroid injections, and surgery with Petitioner. Dr. Yaffe also performed a right thumb steroid injection but did not place Petitioner on restrictions. PX 3. Petitioner testified the injection provided 4 to 6 months of relief and that he was able to keep working. Petitioner testified that on the day before the appointment, he told Respondent's owner, Steve Seiler, of his upcoming appointment for hand treatment, but did not inform Mr. Seiler that his hand symptoms were due to the work he was doing.

C. Additional Testimony

Testimony of Steve Seiler

Mr. Seiler is Respondent's owner. Mr. Seiler testified that he has previously performed mechanic work himself. To date, he will occasionally help out in the shop. Mr. Seiler did recall Petitioner informing him of an upcoming medical appointment for his hands on December 1, 2016, but did not recall Petitioner informing him that his hand issue was work-related. Mr. Seiler testified that he mostly assigned oil changes, brake work, and wheel alignments to Petitioner.

Brake work requires removing tires with an impact wrench, and screwdrivers for prying off brake "calipers," "pads," and "rotors." A wheel alignment required the car to be put on a special rack with equipment hooked up to the tires. Then, Petitioner would either loosen tie rods or lock nuts, or would adjust "sleeves." Oil changes required a hand wrench to remove the drain plug and an oil filter wrench to remove the filter. Mr. Seiler acknowledged that using a hand wrench requires pulling with force, and that a wrench is also used to loosen the drain plug and oil filter. Subsequently, a pinch grip is then used to complete the untightening. A new filter is then hand-tightened into place. Mr. Seiler agreed that an oil change required repeated sustained grip, but stated it did not require a lot of force. He stated an oil drain plug torque is 25 pounds-feet. He also stated that oil changes take 30 minutes.

Mr. Seiler agreed that impact tools are either air or battery powered and can "kick back" when attempting to maneuver a bolt. Mr. Seiler testified that the pressure involved depends on the

size of the bolt and whether or not it's rusted. Sometimes using two hands is necessary. Mr. Seiler acknowledged it can be hard work at times. He also noted that an "air chuck" is needed to fill a tire with air, which requires you to grip and put pressure on the device nozzle.

Mr. Seiler stated that the only duties Petitioner performed that did not require any pinch grip was when he used the computer to look up information. This could potentially be a couple of hours of a shift. Mr. Seiler never outlined the exact duties Petitioner performed on any given day. He never observed Petitioner working.

D. Section 12 Opinions & Deposition Testimony

Dr. Michael Vender §12 Report

On March 1, 2019, Dr. Michael Vender drafted a report after performing a medical records review on Respondent's behalf. His review included records of Dr. Yaffe and Dr. Anubhav P. Jagadish.[1] He referenced the February 4, 2016 medical record of Dr. Yaffe, which revealed Petitioner's complaints of right hand pain, secondary to degenerative arthritis in his right thumb carpometacarpal joint. Petitioner had been treated with a steroid injection at that point. Joint RX 1.

With respect to Petitioner's right thumb, Dr. Vender agreed with the CMC joint arthritis diagnosis, adding that X-ray findings supported this diagnosis. In response to a question of whether Petitioner's work duties were causally related to the diagnosis, Dr. Vender opined "Unless secondary to a single injury such as fracture, or connective tissue disorders such as rheumatoid arthritis, most cases of arthritis are naturally occurring processes. As such, they are frequently known as degenerative arthritis." He went on to state: "The development of these degenerative changes is completely separate from how a person utilizes their hands." Dr. Vender opined further that while Petitioner's work duties may have elicited symptoms of his degenerative condition, this is not the same as actually aggravating or progressing the underlying condition. Joint RX 1.

Dr. Kenneth Schiffman §12 Report

On November 18, 2019, Petitioner underwent an examination with Dr. Schiffman pursuant to Section 12 of the Act at his counsel's request. He noted that he reviewed a job description prepared by Petitioner, medical records of Dr. Yaffe, and bilateral thumb X-rays. The job description indicated Petitioner's duties required great pinch strength. These duties included, but were not limited to:

-Starting frozen/rusted lugs nuts [sic]

***

-Removal and installation of spark plugs, carboned up and frozen

***

-The pinch grip of air tools
-Installation of oil filters done by hand tighten [sic]
-Removing plastic or metal quick disconnect fuel and A/C lines ALL FINGERTIP

[1] Records of Dr. Jagadish were for Petitioner's unrelated cervical issues.

WORK
-Removal and installation of vehicle electrical connectors

Petitioner reported that his bilateral hand complaints persisted. He informed Dr. Schiffman he had been a mechanic for approximately 50 years. He also reported he had undergone conservative care, but that his condition had worsened, causing him to be off work since December 2018. He reported that his use of high torque tools such as impact wrenches aggravated his pain. He also noted he had five brothers working in blue collar jobs without high physical demands that did not have the same problem. Upon examination, Dr. Schiffman noted radial tenderness in both hands, decreased grip strength, and positive findings with CMC grind tests for pain. He opined that the December 2016 and January 2018 X-rays revealed degenerative changes at the trapeziometacarpal joint in both thumbs with joint space narrowing and osteophyte formation. He diagnosed bilateral thumb CMC arthrosis and found the conditions to be causally related to Petitioner's work duties, stating that "repetitive and forceful pinch grip required of both hands to do his job over the course of many years has unquestionably and causally contributed to this painful condition." Dr. Schiffman agreed with Dr. Yaffe's surgical recommendation. Dep. Ex 2.

Dr. Mark Yaffe, Treating Physician, June 18, 2019 Deposition

Dr. Yaffe is a board-certified orthopedic surgeon. He began treating Petitioner on February 4, 2016, at which time he diagnosed Petitioner with degenerative CMC joint osteoarthritis on the right. Dr. Yaffe also detailed Petitioner's treatment in relation to the December 1, 2016 and September 27, 2018 manifestation dates that are discussed in the Commission's decisions in case numbers 18 WC 32866 and 18 WC 32703. Ultimately, Dr. Yaffe testified that following the subsequent treatment, he came to the conclusion that Petitioner's work duties worsened his symptoms, and the job duties/hand movements Petitioner described to him could contribute to an aggravation of pain from asymptomatic arthritis.

Dr. Michael Vender, Respondent's Medical Records Reviewer, July 19, 2019 Deposition

Dr. Vender is a board-certified orthopedic surgeon with a subspecialty in hand and upper extremities and added qualifications in hand surgery. He completed a medical records review, including records of Dr. Yaffe and Dr. Anubhav P. Jagadish. Dr. Vender understood Petitioner was a mechanic with varied duties involving intermittent forceful activity, intermittent tool usage, and the handling of heavy equipment.

Dr. Vender opined that CMC joint arthritis is generally due to wear and tear and occurs naturally. When Petitioner first sought treatment for the condition he was 61 years old, which Dr. Vender opined was age-appropriate. He opined that Petitioner's work duties did not contribute to his CMC joint arthritic conditions, and that the type of activities Petitioner performed at work did not aggravate his pre-existing condition. Dr. Vender would expect activities specific to thumb intensity that put a true load on the thumb joint consistently to cause injury to the CMC joint, rather than intermittent activity. He testified that when you grab a tool, the grasping done with the finger and the thumb is more passive, being used for balance. Dr. Vender would expect Petitioner to have symptoms with any hand activity, but that the hand usage did not progress Petitioner's arthritis nor did it accelerate the need for treatment. However, Dr. Vender agreed with Dr. Yaffe's diagnoses

and course of treatment recommended. Joint RX 1.

On cross examination, Petitioner's counsel presented Dr. Vender with a medical study from the Scandinavian Journal of Work, Environment & Health (2014) which reviewed evidence linking finger and wrist osteoarthritis with work activities requiring pinching and hand gripping and exposure to hand-arm vibration. Dr. Vender's Deposition, EX 3. Dr. Vender agreed that the study revealed 2 to 1 odds of developing CMC joint arthritis with repetitive pinch grip work. However, Dr. Vender could not think of any job that requires continued forceful use similar to a person turning a tight lock with a key. The authors of the study referred only to monotonous usage, which Dr. Vender described as the same use pattern or performance of a single task over and over again throughout a workday. Joint RX 1.

Dr. Kenneth Schiffman, Petitioner's Section 12 Physician, April 29, 2020 Deposition

Dr. Schiffman is a board-certified orthopaedic surgeon specializing in upper extremities from shoulders to fingers. He examined Petitioner once at the request of Petitioner's counsel on November 18, 2019. Petitioner was 65 years old at the time and brought with him a job description he had prepared (Dep. Ex 3), medical records of Dr. Yaffe from 2/4/16 through 9/28/18 (the 12/20/18 record was not included), and X-rays from December 2016 and January 2018. Petitioner had been off work since 2018. Petitioner informed Dr. Schiffman of his past conservative treatment and how the high torque tools at work aggravated his pain. Dr. Schiffman did not inquire about Petitioner's routine or activities outside of work.

Dr. Schiffman testified that his examination revealed tenderness, pain, and grip weakness bilaterally at the thumbs. Dr. Schiffman diagnosed CMC joint arthrosis bilaterally, noting that the December 2016 and January 2018 X-rays, which were essentially the same, supported this diagnosis. He opined that Petitioner's condition was causally related to his work duties as a mechanic. He testified that Petitioner's arthritis can be aggravated by grip-intensive tasks, such as those performed by Petitioner at work. His opinion was based in part on the job description Petitioner drafted and gave him. Dr. Schiffman stated that his opinion could possibly change if the job description was inaccurate. He agreed with Dr. Yaffe's recommendation of a trapezial arthroplasty surgery, as conservative measures had failed. He testified this surgery has a high success rate for pain relief. However, he opined that a return to work as an auto mechanic after these surgeries might be difficult due to loss of grip strength. Dr. Schiffman did not recall if he placed Petitioner on restricted duty, but testified that he normally does with patients with the same diagnosis. He further testified that restrictions would be reasonable and necessary for Petitioner. Dr. Schiffman acknowledged that this diagnosis is more prevalent with patients in their 50s and 60s. Dr. Schiffman testified that the most fortunate patients receive 6 months of pain relief after CMC injections are administered. PX 2.

II. CONCLUSIONS OF LAW

A. Accident & Causation

In denying accident, the Arbitrator noted that while repetitive trauma work injuries can be compensable, employees who allege such an injury are held to the same standard of proof as an

employee alleging injury from a specific trauma. *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 530 (1987). In a repetitive trauma claim, the date of injury is the date on which the injury manifests. The "manifestation date" is "the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." See *White v. Illinois Workers' Compensation Commission*, 374 Ill. App. 3d 907, 912 (4th Dist. 2007), citing *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 530 (1987).

Our supreme court in *Peoria County Belwood Nursing Home* (*Belwood*) found Professor Larson's workers' compensation treatise to be instructive:

> The practical problem of fixing a specific date for the accident has generally been handled by saying simply that the date of accident is the date on which disability manifests itself. Thus, in [*Ptak v. General Electric Co.*, 13 N.J. Super. 294, 80 A.2d 337 (1951)], the date of a gradually acquired [back] strain was deemed to be the first moment the pain made it impossible to continue work, and in [*Di Maria v. Curtiss-Wright Corp.*, 23 N.J. Misc. 374, 44 A.2d 688 (1945)], the date of accident for gradual loss of use of the hands was held to be the date on which this development finally prevented claimant from performing his work. However, for certain purposes the date of accident may be identified with the onset of pain occasioning medical attention, although the effect of the pain may have been merely to cause difficulty in working and not complete inability to work.

3 L. Larson, Larson's Workers' Compensation Law § 50.05, at 50-11-50-12 (2005).

In adopting Professor Larson's rule, the supreme court established that the date of an accidental injury in a repetitive-trauma compensation case is the date on which the injury "manifests itself." *Belwood*, 115 Ill. 2d at 530. Again, "manifests itself" means the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. *Belwood*, 115 Ill. 2d at 531.

Here, Petitioner sought and received medical treatment on February 4, 2016 for his right thumb symptoms. However, after receiving a right thumb injection, he was released to work without restrictions. Thus, while February 4, 2016 may have been the date when Petitioner sought medical treatment for his right thumb condition and the fact of the injury was apparent, the causal relationship of the injury to Petitioner's employment was not plainly apparent at this time. Petitioner appears to concede this point in his brief by stating: "Therefore, Lullo's 9/27/18 visit with Yaffe and his conversation on that same day with Seiler serves as the most logical manifestation date for Lullo's work injuries (18WC32703)." The Commission's findings and conclusions of law with respect to the September 27, 2018 alleged manifestation date are contained in its decision in case number 18 WC 32703. Having affirmed the Arbitrator's denial of accident and causal connection in this claim, the Commission finds all remaining issues to be moot and strikes the Arbitrator's findings and conclusions with respect to all other issues.

B. ***Due Process***

The Commission has addressed Petitioner's arguments regarding due process in the Decision issued in case number 18WC32703.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 11, 2022, as changed above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner failed to prove that he sustained repetitive trauma injuries to his right thumb that manifested on February 4, 2016.

IT IS FURTHER ORDERED BY THE COMMISSION that, with the exception of accident and causation, all other issues in this claim are hereby moot, and the Arbitrator's findings and conclusions with respect to the other issues are stricken.

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

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(2)*. Based upon the denial of compensation herein, 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.

January 9, 2023
O: 11/9/22
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	18WC032708
Case Name	LULLO, PATRICK v. ARLINGTON AUTOMOTIVE SERVICE INC.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Michelle LaFayette

DATE FILED: 1/11/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 11, 2022 0,27%

/s/William McLaughlin, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF)

- ☐ 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)

Patrick Lullo
Employee/Petitioner

v.

Arlington Automotive Service, Inc.
Employer/Respondent

Case # **18WC 32708**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **William McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **September 30, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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, **2/04/2016**, 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 $**64,203.24**; the average weekly wage was $1,234.68.

On the date of accident, Petitioner was **62** years of age, ***married*** 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

Having found Petitioner failed to prove he sustained accidental injuries arising out of his employment on February 4, 2016 and he did not give proper notice of an alleged accident to Respondent, the claim for benefits is denied.

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.

JANUARY 11, 2022

Signature of Arbitrator

FINDINGS OF FACTS

Petitioner filed three separate Applications for Adjustment of Claim. For all three claims, Petitioner alleged he sustained injuries due to repetitive trauma on the dates of: February 4, 2016, December 1, 2016 and September 27, 2018. The cases were consolidated and tried on September 30, 2021. Petitioner testified before he went to work for Respondent, he had no problems with his hands. (T.24)

Respondent employed Petitioner as a master auto technician. He was with the company in this capacity for a total of 15 years. (T.18) He left his employment on December 21, 2018. To describe his job duties, Petitioner prepared an itemization of his job tasks with the percentage of time spent on a task. Petitioner identified two different descriptions of his job he prepared and gave to Dr. Yaffe and Dr. Schiffman. (T.19-21) His day began at 7:30 a.m. and ended at 5 p.m. (T.65) Petitioner testified there was not much opportunity to take a break during the day and he tended to eat lunch standing at his toolbox. (T.66-67)

Petitioner provided his own tools. He used mechanical and pneumatic tools, including electric impact, half-inch wrenches, pneumatic air chisels, pneumatic (electric) grinders, power drills, brake lathes, air conditioning machines, three-eighths pneumatic air ratchets and quarter-inch pneumatic air ratchets. (T.22-23) Petitioner testified the written job description reflected to the best of his ability the percentage of his day spent using each tool. (T.24) On average, Petitioner worked on 3 to 4 cars a day. No day was the same or standard; the job duties varied throughout the day, and he used a variety of different tools. (T.29; 79-80) To prepare the job description, Petitioner did not rely on scientific measurement of the torque or pressure put on his thumb. (T.69)

In February of 2016, Petitioner testified he noticed his right thumb was throbbing all the time, he started to lose strength and he was dropping things such as wrenches, nuts and bolts. (T.26) He found he was unable to start things because his dexterity was going away. (T.27) Petitioner testified the day before his first medical appointment he informed Steve Seiler, owner of the insured, he was going to see a doctor for his hands. (T.38) After the appointment, he had a band-aid on this thumb and made Steve aware of the injection. (T.39) Petitioner admitted he did not tell Steve his hand hurt because of his job activities. (T.59)

On February 4, 2016, Petitioner initiated medical treatment with Dr. Mark Yaffe of Barrington Orthopedic Associates. Dr. Yaffe documented complaints of chronic, constant and intermittently worsening right hand pain with no traumatic cause. On examination of the right hand, Dr. Yaffee noted CMC base tenderness with positive CMC grind test and dorsal wrist tenderness. Examination of Petitioner's left thumb was normal. Dr. Yaffe diagnosed CMC joint osteoarthritis, recommending and administering a cortisone injection. No formal recommendations were made for modification of Petitioner's activities whether at work or in his personal activities.

Petitioner testified he got quite a bit of relief from the injection. It allowed him to return to work, and he felt good for four to six months. (T.28) Petitioner testified the pain and aggravation returned to his right hand and his left hand started to be aggravated. He testified he was using his left hand more. (T.30) Petitioner began his day taking Celebrex, an anti-inflammatory or Tylenol. His morning would be pretty good, but by the end of the day his hands were very sore, he was unable to use his hands and he was losing mobility. (T.31) Before the next appointment with Dr. Yaffe, Petitioner testified he reported he was having problems with his hands to Steve and he had an appointment to see his specialist. (T.40-41) Petitioner again admitted he did not inform Steve the problem with his hands was related to his employment. (T.60)

On December 1, 2016 (10 months later), Petitioner returned to Dr. Yaffe. Dr. Yaffe again documented hand pain, right greater than left, which occurred constantly and fluctuated in severity from mild to moderate. Dr. Yaffe also noted Petitioner's symptoms were aggravated by his *daily activities*. Bilateral cortisone injections were administered. Petitioner was to return as needed. No formal modification of activity was recommended.

Petitioner testified he returned to his regular work duties. He also felt pretty good for a while. (T.33) In the six months before he saw Dr. Yaffe in September of 2018, Petitioner acknowledged the workload lessened and he worked fewer hours. (T.95)

Petitioner testified he returned to Dr. Yaffe on December 27, 2018 (T.33), but Dr. Yaffe's records show additional medical visits on January 2, 2018 and June 28, 2018 when bilateral cortisone injections were again administered. His records indicate the next date of service was September 27, 2018. Dr. Yaffe noted increased pain over the last few weeks, soreness in the 1st CMC joint bilaterally with the right hand being worse than the left hand. Dr. Yaffe noted Petitioner "works with heavy tools at work and describes that symptoms are made significantly worse with his line of work." Petitioner advised Dr. Yaffe he wanted to proceed with the surgery, a CMC arthroplasty.

Before the appointment, Petitioner testified he told Steve he was going to the doctor and he would be late the next day. (T.42) After the appointment, Petitioner testified he notified Steve of the recommendation for surgery, and Steve asked him to see if he could put the surgery through group. (T.43)

Petitioner testified he returned to Dr. Yaffe because his thumbs were a problem and he was having a hard time doing his job. He testified he could no longer hold an alternator and bolt it to the engine at the same time. He could not hold components and assemble them simultaneously. (T.34) After discussing whether to proceed with surgery with Dr. Yaffe, Petitioner returned to work and worked until December 21, 2018. (T.35) He testified he presented Steve of the insured with work restrictions from Dr. Yaffe after finishing a car he had left over from the previous day. (T.35-36) Petitioner testified he told Steve he could no longer do the job and denied telling Steve he planned to retire and move to Florida. (T.84)

Dr. Yaffe's records include an office visit on December 20, 2018. Dr. Yaffe noted minimal sustained relief after multiple cortisone injections. Dr. Yaffe also reported that the Petitioner, "he feels his work makes his symptoms worse" and Petitioner was unable to perform his regular job duties secondary to pain. Dr. Yaffe opined "symptoms at a minimum are made worse by his work-related activities." Surgery was recommended.

After Petitioner ended his employment with Respondent, Petitioner testified he continued to have symptoms and problems with his hands. (T.70) The symptoms occurred when he did activities with his hands, which included activities around the house, washing the car, cleaning the house and doing the laundry. (*Id.*) He would have symptoms with anything he did. (*Id.)*

Steve Seiler, president and owner, of Respondent company testified. (T.118). Steve no longer does automotive work daily, but he worked the job in the past and will do occasional automotive work. (T.118) Steve acknowledged Petitioner informed him he was going to see a doctor for his hands in February of 2016 (T.119), but Petitioner did not tell him the need to seek medical treatment was due to a work-related injury. (T.120) He had no specific recollection of Petitioner requesting time off to see a doctor in December of 2016, but does not dispute it likely happened. (T.120-121) Steve testified Petitioner never told him before or after December 1, 2016 he was going to the doctor for a work-related injury. (T.121)

The duties of an automotive technician include general repairs, maintenance (oil changes, brake work, steering, suspension, computer diagnostic, tune-up, timing belts and water pumps. (T.121) The tools used include impact wrenches, hand-held wrenches, screwdrivers, hammers and other basic hand tools. (*Id)* Steve broke the tasks for the job into four categories: (1) front end work (anything related to the underneath part of the vehicle); (2) oil changes; (3) engine work; and (4) transmissions. (T.122-24) The jobs Petitioner performed most of the time included oil changes, brake work and wheel alignments. (T.125)

An oil changes takes approximately 30 minutes to complete. A hand wrench is used to remove the drain plug and an oil filter wrench is used to remove the oil filter. (T.126) For brake work, the technician removes the tires, brake calipers, pads and rotors. Sometimes the rotors are replaced; other times they are surfaced on a brake lathe. (*Id.)* The tools used included an impact wrench to remove the lug nuts of the tires and hand tools such as a screwdriver for prying. (T.127) For a wheel alignment, the equipment is hooked to the vehicle's wheels. Adjustments are made to loosen a tie rod, lock nuts or adjusting a sleeve; bolts to adjust the strut could also be loosened. (*Id.)* A technician such as Petitioner worked on an average of three vehicles per day. (T.128) For the period from 2016 to 2018, Steve testified business was slow for the company. (T.128-129)

Testimony of Dr. Mark Yaffe:

Dr. Yaffe was the treating physician chosen by Petitioner. He treated Petitioner from 2016 to 2018 for a diagnosis of CMC joint osteoarthritis. On direct examination, Dr. Yaffe testified when a person uses their hands with a significant heavy load, it is a "fair assessment to say that at a minimum, a job or profession could aggravate an underlying condition like arthritis." (Pet'r Ex. No. 1 at 10)

When asked whether the job activities described in Exhibit No. 2 at the deposition could lead to CMC joint arthritis becoming symptomatic and leading to treatment, Dr. Yaffe responded the activities could contribute to an aggravation of pain and symptoms for otherwise asymptomatic arthritis. (Pet'r Ex. No. 1 at 31)

Dr. Yaffe acknowledged Petitioner's complaints were limited to the right hand at the first appointment of February 4, 2016 and the record incorrectly listed Petitioner to be left hand dominant. (Pet'r Ex. No. 1 at 33-34) Dr. Yaffe had no specific discussion with Petitioner about what caused his symptoms and whether the cause was related to his employment. (Pet'r Ex. No. 1 at 35) His recommendation for activity modification was a very general and basic suggestion to limit activities that seemed to be contributing to the symptoms whether the activities were personal or work-related. (Pet'r Ex. No. 1 at 36)

CMC joint arthritis is a degenerative process that commonly progresses with age. (Pet'r Ex. No. 1 at 36-37) Dr. Yaffe acknowledged 10 months transpired before Petitioner returned for further care on December 1, 2016. As was the case at the February 4, 2016 appointment, Dr. Yaffe again had no discussion with Petitioner or gave any consideration to what was causing Petitioner to experience symptoms. (Ex. No. 1 at 39) Petitioner described to Dr. Yaffe in 2018 he was having an aggravation because when he performed his work activities he had symptoms. (Pet'r Ex. No. 1 at 39) However, Dr. Yaffe opined one could not make a direct causal link between the work activities and a progression of the underlying disease process, the arthritis. (*Id.)*

When questioned about the activities that could cause symptoms associated with CMC joint arthritis, Dr. Yaffe testified

> *"I think any activity, athletic, extracurricular, home, work, otherwise that increases the load across the base of the thumb could increase pain in the setting of underlying arthritis."*

(Pet'r Ex. No. 1 at 42), acknowledging the activities are only causing a manifestation of pain and allowing for varying degrees of force across the base of the thumb that could correlate to some extent with a change in symptoms. (*Id.*) He also admitted he could not comment definitively on the rate of progression for any activity. (Pet'r Ex. No. 1 at 43)

Dr. Yaffe opined Petitioner's condition of osteoarthritis is multi-factorial and he could not relate the osteoarthritis to the CMC joint to his employment as an automotive technician. (Pet'r Ex. No.1 at 54) Dr. Yaffe testified he will not typically restrict a patient's activities, but if they request a work note, he will provide one. (Pet'r Ex. No. 1 at 29) Dr. Yaffe testified it would be a short-term restriction to allow for recovery or to control the pain level. (*Id.)*

Testimony of Dr. Michael Vender:

At Respondent's request, Dr. Vender completed a review of the medical records and provided opinions on the issue of causation fort he alleged accidental injury dates of February 4, 2016 and December 1, 2016. Dr. Vender agreed with the diagnosis of Dr. Yaffe as well as the course of treatment recommended. (Resp't Joint Exhibit No. 1 at 7-8)

Dr. Vender testified Petitioner worked as a mechanic. While the tasks and duties could vary, he understood the activities involved certain intermittent forceful activities depending on what the employee is handling. There would also be intermittent use of tools and different tools. (Resp't Joint Exhibit No. 1 at 8)

The cause of CMC joint arthritis is generally due to wear-and-tear. It is a naturally occurring process with the joint eventually giving out over time. (Resp't Joint Exhibit No. 1 at 8-9) At the point Petitioner sought treatment for the condition in 2016, he was 61 years old. The degree of degeneration was age appropriate. (Resp't Joint Exhibit No. 1 at 9) Dr. Vender opined Petitioner's duties as a mechanic did not contribute to the

CMC joint arthritis. He also opined the type of activities Petitioner performed did not cause an aggravation of the pre-existing condition. (Resp't Joint Exhibit No. 1 at 10) If he was looking for causation between an activity and an injury to the CMC joint, Dr. Vender testified he would be looking for activities that are specific for thumb intensity and put a true load on the thumb joint. (Resp't Joint Exhibit No. 1 at 10-11) He would be looking for an activity done on a regular and persistent basis as opposed to intermittently. (*Id.*) Dr. Vender described it as when you grab a tool, much like a baggage handler would grab a suitcase, the grasping is done with the finger and the thumb is more passive, being used for balance. (Resp't Joint Exhibit No. 1 at 12)

Dr. Vender opined he would expect Petitioner to experience symptoms when using his hand for any activity. (Resp't Joint Exhibit No. 1 at 13) However, the use of the hand did not cause a progression of the arthritis to the joint and did not accelerate the need for treatment. It was only an elicitation of symptoms. (*Id.)* He opined it would be speculation to conclude any more than an elicitation of symptoms occurred. (Resp't Joint Exhibit No. 1 at 26)

On cross examination Petitioner's attorney presented Dr. Vender with a medical study. Though hearsay, the study further supports Respondent's position in the case, *i.e.,* that the job duties merely elicited symptoms which were temporary and were not a cause of the condition. The arbitrator observes that the study in question shows no association between arthritis and handgrip work, and no association between arthritis in the hand and wrist and hand/arm vibration. The authors of the study refer only to monotonous usage, which Dr. Vender testified meant the same use pattern or performance of a single task over and over again throughout the course of the workday. (RX1, pp. 46-47)

Testimony of Dr. Kenneth Schiffman:

Dr. Schiffman examined Petitioner one time on November 23, 2019 for the purpose of an independent medical examination at the request of Petitioner's attorney. (Pet. Ex. No. 2 at 7, 41, 42) The evaluation did not take place until after the parties deposed both Dr. Yaffe and Dr. Vender. Petitioner told Dr. Schiffman he worked as an auto technician for almost 50 years. He complained of pain at the base of the basal thumbs more to the right than the left. (Pet. Ex. No. 2 at 11)

Dr. Schiffman diagnosed CMC joint arthritis, and he causally related the condition to Petitioner's employment as an auto technician. (Pet. Ex. No. 2 at 14) He opined the condition of arthritis at the base of the thumb can be provoked or aggravated by grip intensive tasks, which is consistent with Petitioner's work history. (Pet. Ex. No. 2 at 15)

Testimony of Dr. Michael Cohen:

At the request of Respondent for the alleged accidental injury date of September 27, 2018, Dr. Michael Cohen reviewed the medical records and job descriptions prepared by Petitioner to provide opinions on the issue of causation. He agreed with the diagnosis of CMC joint arthritis (Resp't Joint Exhibit No. 2 at 20-21), which is not an uncommon diagnosis for someone of Petitioner's age.

Dr. Cohen testified the CMC joint arthritis was diagnosed in 2016, thereafter following the natural progression of the disease over time in that it got progressively worse. (Resp't Joint Exhibit No. 2 at 21-22) During the course of the process, Dr. Cohen testified Petitioner may have experienced temporary exacerbations of the symptomology, but no change to the underlying natural history of the CMC arthritis. (*Id.*) Petitioner's job activities as an auto mechanic did not change the course of the disease. (Resp't Joint Exhibit No. 2 at 23)

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to C, whether an accidental injury occurred arising out of and in the course and scope of the employment, and F, whether Petitioner's present condition of ill-being is causally related to the alleged injury, the Arbitrator finds the following:

Illinois law provides injuries resulting from repetitive activities at work can be compensable. However, the employee who alleges repetitive trauma injuries is held to the same standard of proof as the employee alleging injury from specific trauma. *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 530, 505 N.E.2d 1026, 1028, 106 Ill.Dec. 235, 237 (1987). The employee must still prove a date of injury. In a repetitive trauma claim, the date of injury is the date on which the injury manifests. The "manifestation date" is "the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." *See, White v. Illinois Workers' Compensation Commission,* 374 Ill.App.3d 907 (4th Dist. 2007), *citing Peoria County Belwood Nursing Home v. Industrial Commission,* 115 Ill.2d 524, 530, 505 N.E.2d 1026, 1028, 106 Ill.Dec. 235, 237 (1987).

Applying the applicable law for repetitive trauma claims to the facts of the present case, it is clear Petitioner did not suffer an accidental injury due to repetitive on February 4, 2016. There is no evidence an injury, if one occurred, manifested within the meaning of the Illinois Workers' Compensation Act and case law. The medical evidence shows Petitioner was diagnosed with CMC joint arthritis on February 4, 2016 in the right hand by Dr. Yaffee. Nothing in Dr. Yaffe's chart, Dr. Yaffe's deposition or Petitioner's testimony established by a preponderance of the credible evidence that anyone even considered the fact Petitioner's condition of ill-being could be related to his employment.

Dr. Yaffe made no mention of a work-related cause in his record of February 4, 2016. He never discussed modifying Petitioner' job duties with Petitioner. He did not restrict Petitioner's activities while at work. Petitioner did not relate his symptoms or the occurrence of his symptoms to his employment activities. Instead, he reported symptoms with "daily activities." Daily activities include all activities; not just work activities. There is no evidence Petitioner's condition of ill-being manifested on February 4, 2016. All Petitioner knew on February 4, 2016 was he had been diagnosed with CMC joint arthritis. The condition's possible relationship to employment activities was not plainly evident to Petitioner let alone to a reasonable person on February 4, 2016. Accordingly, the Arbitrator finds Petitioner failed to prove there was an accident on February 4, 2016.

In addition to proving a date of injury, Petitioner also bore the burden of providing there was a causal relationship between his employment activities and the CMC joint arthritis. All physicians agreed CMC joint arthritis is an osteoarthritic condition that progressively worsens over time. Three physicians, Dr. Yaffe, Dr. Cohen and Dr. Vender opined Petitioner's work activities may have caused a temporary manifestation of symptoms, as could all activities of daily living, but the work activities did not change the progression of the disease.

Dr. Yaffe testified *"I think any activity, athletic, extracurricular, home, work, otherwise that increases the load across the base of the thumb could increase pain in the setting of underlying arthritis.* (Ex. No. 1 at 42). Dr. Yaffe acknowledged all activities, even non-work-related ones, caused only a manifestation of pain. The varying degrees of force across the base of the thumb when performing an activity could correlate to some extent with a change in symptoms. (*Id.*) The Arbitrator notes Dr. Yaffe was the treating physician, chosen by Petitioner. The Arbitrator thus gives the opinions and testimony of Dr. Yaffe greater weight.

Like Dr. Yaffe, Dr. Vender opined Petitioner would experience symptoms when using his hands with any activities, those at work as well as those away from work. Like Dr. Yaffe, Dr. Vender opined Petitioner's work activities did not alter the progression of the disease. For causation, Dr. Vender explained there would need to be an activity done on a persistent and regular basis as opposed to intermittently throughout the day and

that required a specific thumb intensity and put a true load on the thumb joint. The handling and use of tools Petitioner did as a mechanic did not provide this.

Like Dr. Yaffe and Dr. Vender, Dr. Cohen also testified Petitioner's work activities did not cause the CMC joint arthritis. He also agreed with both Dr. Yaffe and Dr. Vender Petitioner would experience symptoms when performing activities with his hands. He agreed with both physicians the performance of work activities did not alter the progression of the disease.

The only differing opinion came from Dr. Schiffman, who opined the work activities caused the CMC joint arthritis. Dr. Schiffman was a physician retained by Petitioner's attorney to evaluate Petitioner and provide opinions on causation after the depositions of Dr. Yaffe and Dr. Vender. Petitioner sought out the opinion only after Dr. Yaffe provided opinions his condition is not related to his employment. The Arbitrator finds the opinions of Dr. Schiffman to be less credible than those provided by Dr. Yaffe, Dr. Vender and Dr. Cohen. Three physicians, one of whom was Petitioner's treating physician, opined his condition is not work related. The one opinion from Dr. Schiffman opining causation has little credibility considering the three contradictory opinions.

The outcome here is similar to the Commission's decision in the matter of *William Angell v. Chicago Heights School District,* 18 IWCC 0354, 2018 WL 3675679. In *Angell*, the Commission held the claimant's bilateral CMC joint arthritis rose from a personal medical condition, not his employment activities. The claimant began treating for the condition in 2009, reporting difficulty using his hands with any activities. In 2013, the claimant asked the treating physician to provide an opinion relating his condition to his employment activities. The physician provided an opinion the work activities were an "exacerbating factor" for the disease. The claimant's condition progressed, and he filed an Application for Adjustment of Claim alleging his condition manifested on January 27, 2015.

Here, like in *Angell*, Petitioner presented to his chosen physician, Dr. Yaffe, reporting complaints of pain and difficulty using his hands with daily activities. As the disease continued along its course of natural progression, Petitioner eventually went to Dr. Yaffe asking Dr. Yaffe to relate his condition to his employment activities. Like the physician in *Angell*, Dr. Yaffe provided an opinion the work activities could elicit symptoms, but he too was equivocal and would not commit to an opinion the work activities accelerated the progression of the disease. Petitioner's claim must therefore fail like the claim did in *Angell.*

Petitioner's activities as an auto mechanic were varied. He worked on three to four different cars a day, performing different repairs and using a variety of different tools throughout his shift. The two descriptions of the job prepared by Petitioner demonstrated the varied nature of his job and the different tools used with no single task or tool dominating his day. Nothing about the duties described by Petitioner at trial or in the job description established the activities were repetitive or continuance. Petitioner offered no evidence of how the activities placed pressure or stress to the thumb joint; he offered no measurement of the torque or pressure asserted to the joint with the description of the job he prepared. The Arbitrator also notes Petitioner's prepared job description became more detailed and attempted to break down his tasks to a percentage of the day only after Dr. Yaffe's deposition and Petitioner's realization Dr. Yaffe did not relate his condition of ill-being to his employment.

The evidence in this case fails to show Petitioner's work duties were sufficiently repetitive in method or manner to cause or aggravate his condition of ill being. Petitioner's own treating physician Dr. Yaffe could only say that his activities – his work activities, athletic activities, home and extracurricular activities, and otherwise - merely increased pain in the setting of the underlying arthritis. (Pet'r Ex. No. 1 at 42)

Based on the foregoing, the Arbitrator finds Petitioner failed to prove he sustained accidental injuries arising out of an in the course of his employment on February 4, 2016. The evidence simply does not support a finding there is a causal relationship between Petitioner's present condition of ill-being and his job activities. In addition, Petitioner failed to prove an accident date of February 4, 2016, as there is no evidence Petitioner knew more than the diagnosis, meaning there was no evidence of a potential causal relationship between his condition and his employment was apparent to a reasonable person.

In support of the Arbitrator's decision relating to E, whether proper notice of the accident was given, the Arbitrator finds the following:

Section 6(c) requires an employer give proper notice of an accident no more than 45 days after the injury occurred. The notice requirement applies to a claimant alleging repetitive trauma injuries. *White v. Illinois Workers' Compensation Commission,* 374 Ill.App.3d 907, 873 N.E.2d 388, 313 Ill.Dec. 764 (4th Dist. 2007). In a repetitive trauma case, the date of injury from which notice must be given is the date when the injury manifested. *Id.* It also reasonably follows that to give notice of an injury, the employee needs to be aware of the injury and its relationship to the employment.

In *White,* the claimant alleged an accidental injury date of July 17, 2000. The employer had notice Petitioner had injuries before the alleged accident, but the employer did not have notice of *industrial* injuries. The employer therefore had no basis for knowing an industrial accident should be investigated, which is the purpose behind the notice requirement. The Court held it need not consider whether the employer was prejudiced, as the failure to give notice of an industrial injury was not defective notice, it was no notice at all.

In this case, Petitioner testified he notified Steve on February 3, 2016 that he would need time off to see a doctor for his hands on February 4, 2016. He admitted he never told Steve he was seeing the doctor for a work-related condition. How could he when Petitioner did not know his condition was work-related? Steve acknowledged Petitioner likely told him he was going to the doctor, but denied Petitioner reported the reason to see the doctor was for a work-related condition. As in *White*, Respondent had no notice of an industrial accident to investigate on February of 2016. Petitioner did not give notice of an industrial accident because Petitioner himself did not know his condition to be work-related. The mention of going to the doctor for his hands meant nothing more to Respondent and is not sufficient to be construed as notice under Section 6(c) of the Act.

Dr. Yaffe's records are consistent with Steve's and Petitioner's testimony. To Dr. Yaffe, Petitioner reported symptoms with daily activities; not just work activities. Neither Petitioner nor Dr. Yaffe concluded or in any way determined Petitioner's work activities were a cause or aggravation of the CMC joint arthritis. Again, if Petitioner and Dr. Yaffe did not know his condition was possibly related to his employment, Petitioner could not report a work-related injury to Respondent.

Petitioner does not report to Steve and tell him he thinks his condition is work-related until after the September 27, 2018 appointment with Dr. Yaffe. It is clear from the records that Petitioner considered trying to relate his condition to his employment activities in 2018, asking Dr. Yaffe to address causation for the first time in 2018. This is well beyond the 45 days required by the Act. It is over two years later. As such, Petitioner failed to give Respondent proper notice of an alleged accident on February 4, 2016.

In support of the Arbitrator's Decision relating to L, the amount due for TTD and TPD benefits, the Arbitrator finds the following:

An award for temporary total disability benefits is appropriate when an employee cannot return to gainful employment as a result of the work injury. The period of temporary total disability will continue until the employee's condition has stabilized, meaning he reaches maximum medical improvement, or until the employee returns to gainful employment. *See*, *Mt. Olive Coal Co. v. Industrial Commission,* 295 Ill. 429, 129 N.E. 104 (1920) and *Interstate Scaffolding v. Workers' Compensation Commission*, 236 Ill.2d 132, 923 N.E.2d 266, 337 Ill.Dec. 707 (2010).

Petitioner's claim for temporary total disability and temporary partial disability benefits fails because he failed to prove he sustained an accidental injury arising out of and in the course and scope of his employment on February 4, 2016. The claim for benefits further fails because Petitioner failed to introduce evidence of continued disability.

Petitioner continued working until December 21, 2018 when he abruptly went off work, handing Respondent a work status report from Dr. Yaffe. Dr. Yaffe's testimony did not support the basis for the work status report. Dr. Yaffe testified he typically will not provide a patient with a work status note. If one is requested, he will then provide it to allow the patient to be off work for a short period of time to allow for recovery or pain control. It is clear the work note Dr. Yaffe provided to Petitioner in December of 2018 was not intended to have Petitioner off work for more than a short period of time to control his symptoms. It was not intended to authorize Petitioner off work for almost three years. Petitioner never returned to Dr. Yaffe; this work status was never reconsidered by a treating physician. As such, the claim for TTD benefits fails.

Based on the foregoing, the Arbitrator finds Petitioner is not entitled to either TPD or TTD benefits.

In support of the Arbitrator's findings related to J and K, whether the medical expenses provided to Petitioner were reasonable and necessary and whether Petitioner is entitled to prospective medical, the Arbitrator finds the following:

Having failed to prove an accidental injury occurred due to repetitive trauma, Petitioner's claim for medical is denied.

In support of the Arbitrator's decision relating to M, whether penalties and attorney fees should be imposed on Respondent, the Arbitrator finds the following:

Penalties and attorney fees are awarded for an unreasonable and vexatious delay in the payment of benefits. Penalties and attorney fees are not appropriate when real, legitimate and bona fide disputes exist between the parties, which is the case here.

Dr. Yaffe's records do not contain a clear opinion of causation. The parties deposed Dr. Yaffe. He did not provide Petitioner with the desired opinion relating Petitioner's condition to his employment activities. Petitioner sought out a causation opinion of his own from Dr. Schiffman, which the Arbitrator afforded minimal weight considering Dr. Yaffe's, Dr. Vender's and Dr. Cohen's testimony and opinions. A legitimate dispute existed between the parties not only on whether Petitioner's employment activities caused his condition of ill-being, but also whether it was reasonable for Petitioner to be off work for three years after he last saw Dr. Yaffe in December of 2018. Dr. Yaffe's testimony on this issue also did not support Petitioner's claim for benefits.

Accordingly, the Arbitrator finds Respondent's denial of liability and nonpayment of benefits was reasonable. It was not vexatious for Respondent to question whether there was a causal connection between Petitioner's condition of ill-being and his employment activities. Dr. Yaffe's records and his testimony brought both into question. The request for penalties and attorney fees is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC032866
Case Name	Patrick Lullo v. Arlington Automotive Services
Consolidated Cases	18WC032703; 18WC032708;
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	23IWCC0007
Number of Pages of Decision	21
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Michelle LaFayette, Lawrence Cassano

DATE FILED: 1/9/2023

/s/ Deborah Baker, Commissioner

Signature

23IWCC0007

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

PATRICK LULLO,

Petitioner,

vs. NO: 18 WC 32866

ARLINGTON AUTOMOTIVE SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein, and notice given to all parties, the Commission, after considering the issues of accident, notice, benefit rates, whether Petitioner's current condition is causally related to his alleged repetitive trauma injuries, Petitioner's entitlement to medical expenses, Petitioner's entitlement to prospective medical care, Petitioner's entitlement to temporary disability benefits, Petitioner's entitlement to permanent disability benefits, due process violations, and whether penalties under §19(k) and §19(l), and attorney fees under §16 of the Act should be imposed on Respondent and being advised of the facts and law, changes the Decision of the Arbitrator as set forth below, but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. This case was consolidated for hearing with case numbers 18WC32708 and 18WC32703.

I. FINDINGS OF FACT

A. Background

Petitioner is right-handed and had no bilateral thumb or hand issues prior to complaining of hand issues to his primary care physician in 2015. Petitioner practiced Taekwondo until the age of 49, which was 10 years prior to his 2016. He testified that this did not cause any problems in his hands.

Petitioner was a mechanic for 45 years. Between 2016 and 2018 Petitioner was a Master Auto Technician for Respondent. He had been employed by Respondent for 15 years. He left Respondent's employ on December 21, 2018. He testified that when hired by Respondent, he had no bilateral thumb or hand issues. Tools he used included electric half-inch impact wrenches, pneumatic half-inch impact wrenches, pneumatic air chisels, electric grinders, power drills, brake lathes, air conditioning machines, and various sized pneumatic air ratchets. Almost all of the tools he used required a pinch grip. He worked on three to four vehicles daily, performing various repairs from 7:30 a.m. to 5:00 p.m. He testified that he usually took a working lunch. No day was standard. He did not use the same tools all day, every day.

On February 4, 2016, Petitioner began treating with Dr. Mark Yaffe after noticing right thumb throbbing pain and weakness, causing him to drop tools, nuts, and bolts. At that time, he complained of right hand pain, and decreased range of motion and crepitus on the right side. Dr. Yaffe diagnosed primary osteoarthritis of the first CMC joint of the right hand. He discussed activity modification, pain medication, splinting, steroid injections, and surgery with Petitioner. Dr. Yaffe also performed a right thumb steroid injection but did not place Petitioner on restrictions. PX 3. Petitioner testified the injection provided 4 to 6 months of relief and that he was able to keep working.

B. <u>Relevant Medical Treatment</u>

On December 1, 2016, Petitioner visited Dr. Yaffe again, this time for ***bilateral*** thumb pain, right greater than left. Petitioner testified he had begun to use his left hand more due to his increasing right hand pain. He was using an anti-inflammatory in the morning, but by the end of the day his hands were sore, and he was unable to use them. He would ice both thumbs at home. Dr. Yaffe noted pain was mild to moderate and constant. Petitioner reported his symptoms were aggravated by activities of daily living. He also reported that his symptoms had been relieved by the previous injection, but had now returned. PX 3. Dr. Yaffe's examination revealed pain and tenderness in the thumbs. He also performed X-rays which revealed stage 3 bilateral degenerative joint disease of the first CMC joint. Dr. Yaffe diagnosed bilateral primary osteoarthritis of the first CMC joints. Dr. Yaffe administered bilateral thumb cortisone injections but did not restrict Petitioner's work activities. PX 3. Petitioner testified the injections provided relief, and he returned to work the same day. Petitioner testified further that he also had previously informed Mr. Seiler that he would be late to work this day due to his hand appointment for right hand pain. Petitioner did not inform Mr. Seiler that his hand symptoms were due to the work he had been performing. Petitioner did not treat with Dr. Yaffe in 2017.

On January 2, 2018, Petitioner returned to Dr. Yaffe for his bilateral thumb pain. Dr. Yaffe's examination revealed bilateral thumb pain and tenderness with a CMC grind test. Dr. Yaffe diagnosed bilateral wrist pain and bilateral osteoarthritis of the CMC joints. He administered bilateral CMC steroid injections. PX 3. On June 28, 2018, Petitioner returned to Dr. Yaffe with the same complaints. Dr. Yaffe's diagnoses remained the same and he again administered bilateral CMC joint injections. PX 3.

C. Additional Testimony

Testimony of Steve Seiler

Mr. Seiler is Respondent's owner. Mr. Seiler testified that he has previously performed mechanic work himself. To date, he will occasionally help out in the shop. Mr. Seiler did recall Petitioner informing him of an upcoming medical appointment for his hands on December 1, 2016, but did not recall Petitioner informing him that his hand issue was work-related. Mr. Seiler testified that he mostly assigned oil changes, brake work, and wheel alignments to Petitioner.

Brake work requires removing tires with an impact wrench, and screwdrivers for prying off brake "calipers," "pads," and "rotors." A wheel alignment required the car to be put on a special rack with equipment hooked up to the tires. Then, Petitioner would either loosen tie rods or lock nuts, or would adjust "sleeves." Oil changes required a hand wrench to remove the drain plug and an oil filter wrench to remove the filter. Mr. Seiler acknowledged that using a hand wrench requires pulling with force, and that a wrench is also used to loosen the drain plug and oil filter. Subsequently, a pinch grip is then used to complete the untightening. A new filter is then hand-tightened into place. Mr. Seiler agreed that an oil change required repeated sustained grip, but stated it did not require a lot of force. He stated an oil drain plug torque is 25 pounds-feet. He also stated that oil changes take 30 minutes.

Mr. Seiler agreed that impact tools are either air or battery powered and can "kick back" when attempting to maneuver a bolt. Mr. Seiler testified that the pressure involved depends on the size of the bolt and whether or not it's rusted. Sometimes using two hands is necessary. Mr. Seiler acknowledged it can be hard work at times. He also noted that an "air chuck" is needed to fill a tire with air, which requires you to grip and put pressure on the device nozzle.

Mr. Seiler stated that the only duties Petitioner performed that did not require any pinch grip was when he used the computer to look up information. This could potentially be a couple of hours of a shift. Mr. Seiler never outlined the exact duties Petitioner performed on any given day. He never observed Petitioner working.

D. Section 12 Opinions & Deposition Testimony

Dr. Michael Vender §12 Report

On March 1, 2019, Dr. Michael Vender drafted a report after performing a medical records review on Respondent's behalf. His review included records of Dr. Yaffe and Dr. Anubhav P. Jagadish.[1] He referenced the December 1, 2016 medical record of Dr. Yaffe, which revealed Petitioner's complaints of bilateral hand pain, secondary to degenerative arthritis in both thumb carpometacarpal joints. Petitioner had been treated with steroid injections at that point. Dr. Vender noted Petitioner's January 2018 treatment, noting that injections were performed again, and that surgery was discussed. Joint RX 1.

Dr. Vender agreed with the bilateral CMC joint arthritis diagnoses, adding that X-ray

[1] Records of Dr. Jagadish were for Petitioner's unrelated cervical issues.

findings supported these diagnoses. In response to a question of whether Petitioner's work duties were causally related to the diagnoses, Dr. Vender opined "Unless secondary to a single injury such as fracture, or connective tissue disorders such as rheumatoid arthritis, most cases of arthritis are naturally occurring processes. As such, they are frequently known as degenerative arthritis." He went on to state: "The development of these degenerative changes is completely separate from how a person utilizes their hands." Dr. Vender opined further that while Petitioner's work duties may have elicited symptoms of his degenerative condition, this is not the same as actually aggravating or progressing the underlying condition. Joint RX 1.

Dr. Kenneth Schiffman §12 Report

On November 18, 2019, Petitioner underwent an Independent Medical Examination with Dr. Schiffman at his counsel's request. He noted that he reviewed a job description prepared by Petitioner, medical records of Dr. Yaffe, and bilateral thumb X-rays. The job description indicated Petitioner's duties required great pinch strength. These duties included, but were not limited to:

> -Starting frozen/rusted lugs nuts [sic]
>
> ***
>
> -Removal and installation of spark plugs, "carboned up and frozen"
>
> ***
>
> -The pinch grip of air tools
> -Installation of oil filters done by hand tighten [sic]
> -Removing plastic or metal quick disconnect fuel and A/C lines ALL FINGERTIP WORK
> -Removal and installation of vehicle electrical connectors

Petitioner reported that his bilateral hand complaints persisted. He informed Dr. Schiffman he had been a mechanic for approximately 50 years. He also reported he had undergone conservative care, but that his condition had worsened, causing him to be off work since December 2018. He reported that his use of high torque tools such as impact wrenches aggravated his pain. He also noted he had five brothers working in blue collar jobs without high physical demands that did not have the same problem. Upon examination, Dr. Schiffman noted radial tenderness in both hands, decreased grip strength, and positive findings with CMC grind tests for pain. He opined that the December 2016 and January 2018 X-rays revealed degenerative changes at the trapeziometacarpal joint in both thumbs with joint space narrowing and osteophyte formation. He diagnosed bilateral thumb CMC arthrosis and found the conditions to be causally related to Petitioner's work duties, stating that "repetitive and forceful pinch grip required of both hands to do his job over the course of many years has unquestionably and causally contributed to this painful condition." Dr. Schiffman agreed with Dr. Yaffe's surgical recommendation. Dep. Ex 2.

Dr. Mark Yaffe, Treating Physician, June 18, 2019 Deposition

Dr. Yaffe is a board-certified orthopedic surgeon. He began treating Petitioner on February 4, 2016, at which time he diagnosed Petitioner with degenerative CMC joint osteoarthritis on the right. At the follow up visit on December 1, 2016, Petitioner's pain had returned, and he also now complained of left thumb symptoms. Bilateral thumb injections were performed this time, which

reduced Petitioner's pain for approximately another year, as Petitioner did not return until January 2, 2018. On that date Petitioner reported bilateral tenderness at the CMC joints bilaterally, along with pain with a CMC grind test, which is a test that isolates the CMC joint and grinds the base of the metacarpal against the trapezium in an attempt to reproduce pain. Dr. Yaffe again administered bilateral CMC steroid injections. On June 28, 2018, Petitioner returned, and Dr. Yaffe found the same pain complaints upon testing. At that time, other treatment measures were discussed, including anti-inflammatories, splinting, additional injections, and surgery. Dr. Yaffe testified that at that time, Petitioner chose to undergo additional injections.

Dr. Yaffe also detailed Petitioner's treatment in relation to the September 27, 2018 manifestation date that is discussed in the Commission's decision in case number 18 WC 32703. Ultimately, Dr. Yaffe testified that following the subsequent treatment, he came to the conclusion that Petitioner's work duties worsened his symptoms, and the job duties/hand movements Petitioner described to him could contribute to an aggravation of pain from asymptomatic arthritis.

Dr. Michael Vender, Respondent's Medical Records Reviewer, July 19, 2019 Deposition

Dr. Vender is a board-certified orthopedic surgeon with a subspecialty in hand and upper extremities and added qualifications in hand surgery. He completed a medical records review, including records of Dr. Yaffe and Dr. Anubhav P. Jagadish. Dr. Vender understood Petitioner was a mechanic with varied duties involving intermittent forceful activity, intermittent tool usage, and the handling of heavy equipment.

Dr. Vender opined that CMC joint arthritis is generally due to wear and tear and occurs naturally. When Petitioner first sought treatment for the condition he was 61 years old, which Dr. Vender opined was age-appropriate. He opined that Petitioner's work duties did not contribute to his CMC joint arthritic conditions, and that the type of activities Petitioner performed at work did not aggravate his pre-existing condition. Dr. Vender would expect activities specific to thumb intensity that put a true load on the thumb joint consistently to cause injury to the CMC joint, rather than intermittent activity. He testified that when you grab a tool, the grasping done with the finger and the thumb is more passive, being used for balance. Dr. Vender would expect Petitioner to have symptoms with any hand activity, but that the hand usage did not progress Petitioner's arthritis nor did it accelerate the need for treatment. However, Dr. Vender agreed with Dr. Yaffe's diagnoses and course of treatment recommended. Joint RX 1.

On cross examination, Petitioner's counsel presented Dr. Vender with a medical study from the Scandinavian Journal of Work, Environment & Health (2014) which reviewed evidence linking finger and wrist osteoarthritis with work activities requiring pinching and hand gripping and exposure to hand-arm vibration. Dr. Vender's Deposition, EX 3. Dr. Vender agreed that the study revealed 2 to 1 odds of developing CMC joint arthritis with repetitive pinch grip work. However, Dr. Vender could not think of any job that requires continued forceful use similar to a person turning a tight lock with a key. The authors of the study referred only to monotonous usage, which Dr. Vender described as the same use pattern or performance of a single task over and over again throughout a workday. Joint RX 1.

Dr. Kenneth Schiffman, Petitioner's Section 12 Physician, April 29, 2020 Deposition

Dr. Schiffman is a board-certified orthopaedic surgeon specializing in upper extremities from shoulders to fingers. He examined Petitioner once at the request of Petitioner's counsel on November 18, 2019. Petitioner was 65 years old at the time and brought with him a job description he had prepared (Dep. Ex 3), medical records of Dr. Yaffe from 2/4/16 through 9/28/18 (the 12/20/18 record was not included), and X-rays from December 2016 and January 2018. Petitioner had been off work since 2018. Petitioner informed Dr. Schiffman of his past conservative treatment and how the high torque tools at work aggravated his pain. Dr. Schiffman did not inquire about Petitioner's routine or activities outside of work.

Dr. Schiffman testified that his examination revealed tenderness, pain, and grip weakness bilaterally at the thumbs. Dr. Schiffman diagnosed CMC joint arthrosis bilaterally, noting that the December 2016 and January 2018 X-rays, which were essentially the same, supported this diagnosis. He opined that Petitioner's condition was causally related to his work duties as a mechanic. He testified that Petitioner's arthritis can be aggravated by grip-intensive tasks, such as those performed by Petitioner at work. His opinion was based in part on the job description Petitioner drafted and gave him. Dr. Schiffman stated that his opinion could possibly change if the job description was inaccurate. He agreed with Dr. Yaffe's recommendation of a trapezial arthroplasty surgery, as conservative measures had failed. He testified this surgery has a high success rate for pain relief. However, he opined that a return to work as an auto mechanic after these surgeries might be difficult due to loss of grip strength. Dr. Schiffman did not recall if he placed Petitioner on restricted duty, but testified that he normally does with patients with the same diagnosis. He further testified that restrictions would be reasonable and necessary for Petitioner. Dr. Schiffman acknowledged that this diagnosis is more prevalent with patients in their 50s and 60s. Dr. Schiffman testified that the most fortunate patients receive 6 months of pain relief after CMC injections are administered. PX 2.

II. CONCLUSIONS OF LAW

A. *Accident & Causation*

In denying accident, the Arbitrator noted that while repetitive trauma work injuries can be compensable, employees who allege such an injury are held to the same standard of proof as an employee alleging injury from a specific trauma. *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 530 (1987). In a repetitive trauma claim, the date of injury is the date on which the injury manifests. The "manifestation date" is "the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." See *White v. Illinois Workers' Compensation Commission*, 374 Ill. App. 3d 907, 912 (4th Dist. 2007), citing *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 530 (1987).

Our supreme court in *Peoria County Belwood Nursing Home* (*Belwood*) found Professor Larson's workers' compensation treatise to be instructive:

> The practical problem of fixing a specific date for the accident has generally been handled by saying simply that the date of accident is the date on which disability manifests itself. Thus, in [*Ptak v. General Electric Co.*, 13 N.J. Super. 294, 80 A.2d 337 (1951)], the date of a gradually acquired [back] strain was deemed to be the first moment the pain made it impossible to continue work, and in [*Di Maria v. Curtiss-Wright Corp.*, 23 N.J. Misc. 374, 44 A.2d 688 (1945)], the date of accident for gradual loss of use of the hands was held to be the date on which this development finally prevented claimant from performing his work. However, for certain purposes the date of accident may be identified with the onset of pain occasioning medical attention, although the effect of the pain may have been merely to cause difficulty in working and not complete inability to work.

3 L. Larson, Larson's Workers' Compensation Law § 50.05, at 50-11-50-12 (2005).

In adopting Professor Larson's rule, the supreme court established that the date of an accidental injury in a repetitive-trauma compensation case is the date on which the injury "manifests itself." *Belwood*, 115 Ill. 2d at 530. Again, "manifests itself" means the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. *Belwood*, 115 Ill. 2d at 531.

Here, Petitioner sought and received medical treatment on December 1, 2016 for his bilateral thumb symptoms. However, after receiving bilateral thumb injections, he was released to work without restrictions. Thus, while December 1, 2016 may have been the date when Petitioner sought medical treatment for his bilateral thumb conditions and the fact of the injury was apparent, the causal relationship of the injury to Petitioner's employment was not plainly apparent at this time. Petitioner appears to concede this point in his brief by stating: "Therefore, Lullo's 9/27/18 visit with Yaffe and his conversation on that same day with Seiler serves as the most logical manifestation date for Lullo's work injuries (18WC32703)." The Commission's findings and conclusions of law with respect to the September 27, 2018 alleged manifestation date are contained in its decision in case number 18 WC 32703. Having affirmed the Arbitrator's denial of accident and causal connection in this claim, the Commission finds all remaining issues to be moot and strikes the Arbitrator's findings and conclusions with respect to all other issues.

B. ***Due Process***

The Commission has addressed Petitioner's arguments regarding due process in the Decision issued in case number 18WC32703.

C. ***Respondent's 19(f) Petition***

Having made the above changes to the Decision of the Arbitrator, the Commission finds that the "Respondent's Petition to Correct Clerical Error Pursuant to 19(f)" is now moot and is hereby dismissed. Respondent's Petition sought to have all references to the alleged accident date and the notice provided therein changed to December 1, 2016. The Commission finds that by changing the Decision of the Arbitrator as noted above, these purposes have been satisfied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 11, 2022, as changed above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner failed to prove that he sustained repetitive trauma injuries to his bilateral thumbs that manifested on December 1, 2016.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent's Petition to Correct Clerical Error Pursuant to 19(f) is hereby dismissed as it is moot.

IT IS FURTHER ORDERED BY THE COMMISSION that, with the exception of accident and causation, all other issues in this claim are hereby moot, and the Arbitrator's findings and conclusions with respect to the other issues are stricken.

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

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(2)*. Based upon the denial of compensation herein, 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.

January 9, 2023
O: 11/9/22
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	18WC032866
Case Name	LULLO, PATRICK v. ARLINGTON AUTOMOTIVE SERVICE INC.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Michelle LaFayette

DATE FILED: 1/11/2022

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

/s/William McLaughlin, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF)

- ☐ 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)

Patrick Lullo
Employee/Petitioner

v.

Arlington Automotive Service, Inc.
Employer/Respondent

Case # **18WC 32866**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **William McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **September 30, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **12/01/2016**, 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 $**64,203.24**; the average weekly wage was $1,234.68.

On the date of accident, Petitioner was **62** years of age, ***married*** 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

Having found Petitioner failed to prove he sustained accidental injuries arising out of his employment on February 4, 2016 and he did not give proper notice of an alleged accident to Respondent, the claim for benefits is denied.

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.

JANUARY 11, 2022

Signature of Arbitrator

FINDINGS OF FACTS

Petitioner filed three separate Applications for Adjustment of Claim. For all three claims, Petitioner alleged he sustained injuries due to repetitive trauma on the dates of: February 4, 2016, December 1, 2016 and September 27, 2018. The cases were consolidated and tried on September 30, 2021. Petitioner testified before he went to work for Respondent, he had no problems with his hands. (T.24)

Respondent employed Petitioner as a master auto technician. He was with the company in this capacity for a total of 15 years. (T.18) He left his employment on December 21, 2018. To describe his job duties, Petitioner prepared an itemization of his job tasks with the percentage of time spent on a task. Petitioner identified two different descriptions of his job he prepared and gave to Dr. Yaffe and Dr. Schiffman. (T.19-21) His day began at 7:30 a.m. and ended at 5 p.m. (T.65) Petitioner testified there was not much opportunity to take a break during the day and he tended to eat lunch standing at his toolbox. (T.66-67)

Petitioner provided his own tools. He used mechanical and pneumatic tools, including electric impact, half-inch wrenches, pneumatic air chisels, pneumatic (electric) grinders, power drills, brake lathes, air conditioning machines, three-eighths pneumatic air ratchets and quarter-inch pneumatic air ratchets. (T.22-23) Petitioner testified the written job description reflected to the best of his ability the percentage of his day spent using each tool. (T.24) On average, Petitioner worked on 3 to 4 cars a day. No day was the same or standard; the job duties varied throughout the day, and he used a variety of different tools. (T.29; 79-80) To prepare the job description, Petitioner did not rely on scientific measurement of the torque or pressure put on his thumb. (T.69)

In February of 2016, Petitioner testified he noticed his right thumb was throbbing all the time, he started to lose strength and he was dropping things such as wrenches, nuts and bolts. (T.26) He found he was unable to start things because his dexterity was going away. (T.27) Petitioner testified the day before his first medical appointment he informed Steve Seiler, owner of the insured, he was going to see a doctor for his hands. (T.38) After the appointment, he had a band-aid on this thumb and made Steve aware of the injection. (T.39) Petitioner admitted he did not tell Steve his hand hurt because of his job activities. (T.59)

On February 4, 2016, Petitioner initiated medical treatment with Dr. Mark Yaffe of Barrington Orthopedic Associates. Dr. Yaffe documented complaints of chronic, constant and intermittently worsening right hand pain with no traumatic cause. On examination of the right hand, Dr. Yaffee noted CMC base tenderness with positive CMC grind test and dorsal wrist tenderness. Examination of Petitioner's left thumb was normal. Dr. Yaffe diagnosed CMC joint osteoarthritis, recommending and administering a cortisone injection. No formal recommendations were made for modification of Petitioner's activities whether at work or in his personal activities.

Petitioner testified he got quite a bit of relief from the injection. It allowed him to return to work, and he felt good for four to six months. (T.28) Petitioner testified the pain and aggravation returned to his right hand and his left hand started to be aggravated. He testified he was using his left hand more. (T.30) Petitioner began his day taking Celebrex, an anti-inflammatory or Tylenol. His morning would be pretty good, but by the end of the day his hands were very sore, he was unable to use his hands and he was losing mobility. (T.31) Before the next appointment with Dr. Yaffe, Petitioner testified he reported he was having problems with his hands to Steve and he had an appointment to see his specialist. (T.40-41) Petitioner again admitted he did not inform Steve the problem with his hands was related to his employment. (T.60)

On December 1, 2016 (10 months later), Petitioner returned to Dr. Yaffe. Dr. Yaffe again documented hand pain, right greater than left, which occurred constantly and fluctuated in severity from mild to moderate.

Dr. Yaffe also noted Petitioner's symptoms were aggravated by his *daily activities*. Bilateral cortisone injections were administered. Petitioner was to return as needed. No formal modification of activity was recommended.

Petitioner testified he returned to his regular work duties. He also felt pretty good for a while. (T.33) In the six months before he saw Dr. Yaffe in September of 2018, Petitioner acknowledged the workload lessened and he worked fewer hours. (T.95)

Petitioner testified he returned to Dr. Yaffe on December 27, 2018 (T.33), but Dr. Yaffe's records show additional medical visits on January 2, 2018 and June 28, 2018 when bilateral cortisone injections were again administered. His records indicate the next date of service was September 27, 2018. Dr. Yaffe noted increased pain over the last few weeks, soreness in the 1st CMC joint bilaterally with the right hand being worse than the left hand. Dr. Yaffe noted Petitioner "works with heavy tools at work and describes that symptoms are made significantly worse with his line of work." Petitioner advised Dr. Yaffe he wanted to proceed with the surgery, a CMC arthroplasty.

Before the appointment, Petitioner testified he told Steve he was going to the doctor and he would be late the next day. (T.42) After the appointment, Petitioner testified he notified Steve of the recommendation for surgery, and Steve asked him to see if he could put the surgery through group. (T.43)

Petitioner testified he returned to Dr. Yaffe because his thumbs were a problem and he was having a hard time doing his job. He testified he could no longer hold an alternator and bolt it to the engine at the same time. He could not hold components and assemble them simultaneously. (T.34) After discussing whether to proceed with surgery with Dr. Yaffe, Petitioner returned to work and worked until December 21, 2018. (T.35) He testified he presented Steve of the insured with work restrictions from Dr. Yaffe after finishing a car he had left over from the previous day. (T.35-36) Petitioner testified he told Steve he could no longer do the job and denied telling Steve he planned to retire and move to Florida. (T.84)

Dr. Yaffe's records include an office visit on December 20, 2018. Dr. Yaffe noted minimal sustained relief after multiple cortisone injections. Dr. Yaffe also reported that the Petitioner, "he feels his work makes his symptoms worse" and Petitioner was unable to perform his regular job duties secondary to pain. Dr. Yaffe opined "symptoms at a minimum are made worse by his work-related activities." Surgery was recommended.

After Petitioner ended his employment with Respondent, Petitioner testified he continued to have symptoms and problems with his hands. (T.70) The symptoms occurred when he did activities with his hands, which included activities around the house, washing the car, cleaning the house and doing the laundry. (*Id.*) He would have symptoms with anything he did. (*Id.)*

Steve Seiler, president and owner, of Respondent company testified. (T.118). Steve no longer does automotive work daily, but he worked the job in the past and will do occasional automotive work. (T.118) Steve acknowledged Petitioner informed him he was going to see a doctor for his hands in February of 2016 (T.119), but Petitioner did not tell him the need to seek medical treatment was due to a work-related injury. (T.120) He had no specific recollection of Petitioner requesting time off to see a doctor in December of 2016, but does not dispute it likely happened. (T.120-121) Steve testified Petitioner never told him before or after December 1, 2016 he was going to the doctor for a work-related injury. (T.121)

The duties of an automotive technician include general repairs, maintenance (oil changes, brake work, steering, suspension, computer diagnostic, tune-up, timing belts and water pumps. (T.121) The tools used include impact wrenches, hand-held wrenches, screwdrivers, hammers and other basic hand tools. (*Id)* Steve broke the tasks for the job into four categories: (1) front end work (anything related to the underneath part of the vehicle); (2) oil changes; (3) engine work; and (4) transmissions. (T.122-24) The jobs Petitioner performed most of the time included oil changes, brake work and wheel alignments. (T.125)

An oil changes takes approximately 30 minutes to complete. A hand wrench is used to remove the drain plug and an oil filter wrench is used to remove the oil filter. (T.126) For brake work, the technician removes the tires, brake calipers, pads and rotors. Sometimes the rotors are replaced; other times they are surfaced on a brake lathe. (*Id.)* The tools used included an impact wrench to remove the lug nuts of the tires and hand tools such as a screwdriver for prying. (T.127) For a wheel alignment, the equipment is hooked to the vehicle's

wheels. Adjustments are made to loosen a tie rod, lock nuts or adjusting a sleeve; bolts to adjust the strut could also be loosened. (*Id.)* A technician such as Petitioner worked on an average of three vehicles per day. (T.128) For the period from 2016 to 2018, Steve testified business was slow for the company. (T.128-129)

Testimony of Dr. Mark Yaffe:

Dr. Yaffe was the treating physician chosen by Petitioner. He treated Petitioner from 2016 to 2018 for a diagnosis of CMC joint osteoarthritis. On direct examination, Dr. Yaffe testified when a person uses their hands with a significant heavy load, it is a "fair assessment to say that at a minimum, a job or profession could aggravate an underlying condition like arthritis." (Pet'r Ex. No. 1 at 10)

When asked whether the job activities described in Exhibit No. 2 at the deposition could lead to CMC joint arthritis becoming symptomatic and leading to treatment, Dr. Yaffe responded the activities could contribute to an aggravation of pain and symptoms for otherwise asymptomatic arthritis. (Pet'r Ex. No. 1 at 31)

Dr. Yaffe acknowledged Petitioner's complaints were limited to the right hand at the first appointment of February 4, 2016 and the record incorrectly listed Petitioner to be left hand dominant. (Pet'r Ex. No. 1 at 33-34) Dr. Yaffe had no specific discussion with Petitioner about what caused his symptoms and whether the cause was related to his employment. (Pet'r Ex. No. 1 at 35) His recommendation for activity modification was a very general and basic suggestion to limit activities that seemed to be contributing to the symptoms whether the activities were personal or work-related. (Pet'r Ex. No. 1 at 36)

CMC joint arthritis is a degenerative process that commonly progresses with age. (Pet'r Ex. No. 1 at 36-37) Dr. Yaffe acknowledged 10 months transpired before Petitioner returned for further care on December 1, 2016. As was the case at the February 4, 2016 appointment, Dr. Yaffe again had no discussion with Petitioner or gave any consideration to what was causing Petitioner to experience symptoms. (Ex. No. 1 at 39) Petitioner described to Dr. Yaffe in 2018 he was having an aggravation because when he performed his work activities he had symptoms. (Pet'r Ex. No. 1 at 39) However, Dr. Yaffe opined one could not make a direct causal link between the work activities and a progression of the underlying disease process, the arthritis. (*Id.)*

When questioned about the activities that could cause symptoms associated with CMC joint arthritis, Dr. Yaffe testified

> *"I think any activity, athletic, extracurricular, home, work, otherwise that increases the load across the base of the thumb could increase pain in the setting of underlying arthritis."*

(Pet'r Ex. No. 1 at 42), acknowledging the activities are only causing a manifestation of pain and allowing for varying degrees of force across the base of the thumb that could correlate to some extent with a change in symptoms. (*Id.*) He also admitted he could not comment definitively on the rate of progression for any activity. (Pet'r Ex. No. 1 at 43)

Dr. Yaffe opined Petitioner's condition of osteoarthritis is multi-factorial and he could not relate the osteoarthritis to the CMC joint to his employment as an automotive technician. (Pet'r Ex. No.1 at 54) Dr. Yaffe testified he will not typically restrict a patient's activities, but if they request a work note, he will provide one. (Pet'r Ex. No. 1 at 29) Dr. Yaffe testified it would be a short-term restriction to allow for recovery or to control the pain level. (*Id.)*

Testimony of Dr. Michael Vender:

At Respondent's request, Dr. Vender completed a review of the medical records and provided opinions on the issue of causation fort he alleged accidental injury dates of February 4, 2016 and December 1, 2016. Dr. Vender agreed with the diagnosis of Dr. Yaffe as well as the course of treatment recommended. (Resp't Joint Exhibit No. 1 at 7-8)

Dr. Vender testified Petitioner worked as a mechanic. While the tasks and duties could vary, he understood the activities involved certain intermittent forceful activities depending on what the employee is handling. There would also be intermittent use of tools and different tools. (Resp't Joint Exhibit No. 1 at 8)

The cause of CMC joint arthritis is generally due to wear-and-tear. It is a naturally occurring process with the joint eventually giving out over time. (Resp't Joint Exhibit No. 1 at 8-9) At the point Petitioner sought treatment for the condition in 2016, he was 61 years old. The degree of degeneration was age appropriate. (Resp't Joint Exhibit No. 1 at 9) Dr. Vender opined Petitioner's duties as a mechanic did not contribute to the CMC joint arthritis. He also opined the type of activities Petitioner performed did not cause an aggravation of the pre-existing condition. (Resp't Joint Exhibit No. 1 at 10) If he was looking for causation between an activity and an injury to the CMC joint, Dr. Vender testified he would be looking for activities that are specific for thumb intensity and put a true load on the thumb joint. (Resp't Joint Exhibit No. 1 at 10-11) He would be looking for an activity done on a regular and persistent basis as opposed to intermittently. (*Id.*) Dr. Vender described it as when you grab a tool, much like a baggage handler would grab a suitcase, the grasping is done with the finger and the thumb is more passive, being used for balance. (Resp't Joint Exhibit No. 1 at 12)

Dr. Vender opined he would expect Petitioner to experience symptoms when using his hand for any activity. (Resp't Joint Exhibit No. 1 at 13) However, the use of the hand did not cause a progression of the arthritis to the joint and did not accelerate the need for treatment. It was only an elicitation of symptoms. (*Id.)* He opined it would be speculation to conclude any more than an elicitation of symptoms occurred. (Resp't Joint Exhibit No. 1 at 26)

On cross examination Petitioner's attorney presented Dr. Vender with a medical study. Though hearsay, the study further supports Respondent's position in the case, *i.e.,* that the job duties merely elicited symptoms which were temporary and were not a cause of the condition. The arbitrator observes that the study in question shows no association between arthritis and handgrip work, and no association between arthritis in the hand and wrist and hand/arm vibration. The authors of the study refer only to monotonous usage, which Dr. Vender testified meant the same use pattern or performance of a single task over and over again throughout the course of the workday. (RX1, pp. 46-47)

Testimony of Dr. Kenneth Schiffman:

Dr. Schiffman examined Petitioner one time on November 23, 2019 for the purpose of an independent medical examination at the request of Petitioner's attorney. (Pet. Ex. No. 2 at 7, 41, 42) The evaluation did not take place until after the parties deposed both Dr. Yaffe and Dr. Vender. Petitioner told Dr. Schiffman he worked as an auto technician for almost 50 years. He complained of pain at the base of the basal thumbs more to the right than the left. (Pet. Ex. No. 2 at 11)

Dr. Schiffman diagnosed CMC joint arthritis, and he causally related the condition to Petitioner's employment as an auto technician. (Pet. Ex. No. 2 at 14) He opined the condition of arthritis at the base of the thumb can be provoked or aggravated by grip intensive tasks, which is consistent with Petitioner's work history. (Pet. Ex. No. 2 at 15)

Testimony of Dr. Michael Cohen:

At the request of Respondent for the alleged accidental injury date of September 27, 2018, Dr. Michael Cohen reviewed the medical records and job descriptions prepared by Petitioner to provide opinions on the issue of causation. He agreed with the diagnosis of CMC joint arthritis (Resp't Joint Exhibit No. 2 at 20-21), which is not an uncommon diagnosis for someone of Petitioner's age.

Dr. Cohen testified the CMC joint arthritis was diagnosed in 2016, thereafter following the natural progression of the disease over time in that it got progressively worse. (Resp't Joint Exhibit No. 2 at 21-22) During the course of the process, Dr. Cohen testified Petitioner may have experienced temporary exacerbations of the symptomology, but no change to the underlying natural history of the CMC arthritis. (*Id.*) Petitioner's job activities as an auto mechanic did not change the course of the disease. (Resp't Joint Exhibit No. 2 at 23)

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to C, whether an accidental injury occurred arising out of and in the course and scope of the employment, and F, whether Petitioner's present condition of ill-being is causally related to the alleged injury, the Arbitrator finds the following:

Illinois law provides injuries resulting from repetitive activities at work can be compensable. However, the employee who alleges repetitive trauma injuries is held to the same standard of proof as the employee alleging injury from specific trauma. *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 530, 505 N.E.2d 1026, 1028, 106 Ill.Dec. 235, 237 (1987). The employee must still prove a date of injury. In a repetitive trauma claim, the date of injury is the date on which the injury manifests. The "manifestation date" is "the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." *See, White v. Illinois Workers' Compensation Commission,* 374 Ill.App.3d 907 (4th Dist. 2007), *citing Peoria County Belwood Nursing Home v. Industrial Commission,* 115 Ill.2d 524, 530, 505 N.E.2d 1026, 1028, 106 Ill.Dec. 235, 237 (1987).

Applying the applicable law for repetitive trauma claims to the facts of the present case, it is clear Petitioner did not suffer an accidental injury due to repetitive on February 4, 2016. There is no evidence an injury, if one occurred, manifested within the meaning of the Illinois Workers' Compensation Act and case law. The medical evidence shows Petitioner was diagnosed with CMC joint arthritis on February 4, 2016 in the right hand by Dr. Yaffee. Nothing in Dr. Yaffe's chart, Dr. Yaffe's deposition or Petitioner's testimony established by a preponderance of the credible evidence that anyone even considered the fact Petitioner's condition of ill-being could be related to his employment.

Dr. Yaffe made no mention of a work-related cause in his record of February 4, 2016. He never discussed modifying Petitioner' job duties with Petitioner. He did not restrict Petitioner's activities while at work. Petitioner did not relate his symptoms or the occurrence of his symptoms to his employment activities. Instead, he reported symptoms with "daily activities." Daily activities include all activities; not just work activities. There is no evidence Petitioner's condition of ill-being manifested on February 4, 2016. All Petitioner knew on February 4, 2016 was he had been diagnosed with CMC joint arthritis. The condition's possible relationship to employment activities was not plainly evident to Petitioner let alone to a reasonable person on February 4, 2016. Accordingly, the Arbitrator finds Petitioner failed to prove there was an accident on February 4, 2016.

In addition to proving a date of injury, Petitioner also bore the burden of providing there was a causal relationship between his employment activities and the CMC joint arthritis. All physicians agreed CMC joint arthritis is an osteoarthritic condition that progressively worsens over time. Three physicians, Dr. Yaffe, Dr. Cohen and Dr. Vender opined Petitioner's work activities may have caused a temporary manifestation of symptoms, as could all activities of daily living, but the work activities did not change the progression of the disease.

Dr. Yaffe testified *"I think any activity, athletic, extracurricular, home, work, otherwise that increases the load across the base of the thumb could increase pain in the setting of underlying arthritis.* (Ex. No. 1 at 42). Dr. Yaffe acknowledged all activities, even non-work-related ones, caused only a manifestation of pain. The varying degrees of force across the base of the thumb when performing an activity could correlate to some extent with a change in symptoms. (*Id.*) The Arbitrator notes Dr. Yaffe was the treating physician, chosen by Petitioner. The Arbitrator thus gives the opinions and testimony of Dr. Yaffe greater weight.

Like Dr. Yaffe, Dr. Vender opined Petitioner would experience symptoms when using his hands with any activities, those at work as well as those away from work. Like Dr. Yaffe, Dr. Vender opined Petitioner's work activities did not alter the progression of the disease. For causation, Dr. Vender explained there would need to be an activity done on a persistent and regular basis as opposed to intermittently throughout the day and

that required a specific thumb intensity and put a true load on the thumb joint. The handling and use of tools Petitioner did as a mechanic did not provide this.

Like Dr. Yaffe and Dr. Vender, Dr. Cohen also testified Petitioner's work activities did not cause the CMC joint arthritis. He also agreed with both Dr. Yaffe and Dr. Vender Petitioner would experience symptoms when performing activities with his hands. He agreed with both physicians the performance of work activities did not alter the progression of the disease.

The only differing opinion came from Dr. Schiffman, who opined the work activities caused the CMC joint arthritis. Dr. Schiffman was a physician retained by Petitioner's attorney to evaluate Petitioner and provide opinions on causation after the depositions of Dr. Yaffe and Dr. Vender. Petitioner sought out the opinion only after Dr. Yaffe provided opinions his condition is not related to his employment. The Arbitrator finds the opinions of Dr. Schiffman to be less credible than those provided by Dr. Yaffe, Dr. Vender and Dr. Cohen. Three physicians, one of whom was Petitioner's treating physician, opined his condition is not work related. The one opinion from Dr. Schiffman opining causation has little credibility considering the three contradictory opinions.

The outcome here is similar to the Commission's decision in the matter of *William Angell v. Chicago Heights School District,* 18 IWCC 0354, 2018 WL 3675679. In *Angell*, the Commission held the claimant's bilateral CMC joint arthritis rose from a personal medical condition, not his employment activities. The claimant began treating for the condition in 2009, reporting difficulty using his hands with any activities. In 2013, the claimant asked the treating physician to provide an opinion relating his condition to his employment activities. The physician provided an opinion the work activities were an "exacerbating factor" for the disease. The claimant's condition progressed, and he filed an Application for Adjustment of Claim alleging his condition manifested on January 27, 2015.

Here, like in *Angell*, Petitioner presented to his chosen physician, Dr. Yaffe, reporting complaints of pain and difficulty using his hands with daily activities. As the disease continued along its course of natural progression, Petitioner eventually went to Dr. Yaffe asking Dr. Yaffe to relate his condition to his employment activities. Like the physician in *Angell*, Dr. Yaffe provided an opinion the work activities could elicit symptoms, but he too was equivocal and would not commit to an opinion the work activities accelerated the progression of the disease. Petitioner's claim must therefore fail like the claim did in *Angell.*

Petitioner's activities as an auto mechanic were varied. He worked on three to four different cars a day, performing different repairs and using a variety of different tools throughout his shift. The two descriptions of the job prepared by Petitioner demonstrated the varied nature of his job and the different tools used with no single task or tool dominating his day. Nothing about the duties described by Petitioner at trial or in the job description established the activities were repetitive or continuance. Petitioner offered no evidence of how the activities placed pressure or stress to the thumb joint; he offered no measurement of the torque or pressure asserted to the joint with the description of the job he prepared. The Arbitrator also notes Petitioner's prepared job description became more detailed and attempted to break down his tasks to a percentage of the day only after Dr. Yaffe's deposition and Petitioner's realization Dr. Yaffe did not relate his condition of ill-being to his employment.

The evidence in this case fails to show Petitioner's work duties were sufficiently repetitive in method or manner to cause or aggravate his condition of ill being. Petitioner's own treating physician Dr. Yaffe could only say that his activities – his work activities, athletic activities, home and extracurricular activities, and otherwise - merely increased pain in the setting of the underlying arthritis. (Pet'r Ex. No. 1 at 42)

Based on the foregoing, the Arbitrator finds Petitioner failed to prove he sustained accidental injuries arising out of an in the course of his employment on February 4, 2016. The evidence simply does not support a finding there is a causal relationship between Petitioner's present condition of ill-being and his job activities. In addition, Petitioner failed to prove an accident date of February 4, 2016, as there is no evidence Petitioner knew more than the diagnosis, meaning there was no evidence of a potential causal relationship between his condition and his employment was apparent to a reasonable person.

In support of the Arbitrator's decision relating to E, whether proper notice of the accident was given, the Arbitrator finds the following:

Section 6(c) requires an employer give proper notice of an accident no more than 45 days after the injury occurred. The notice requirement applies to a claimant alleging repetitive trauma injuries. *White v. Illinois Workers' Compensation Commission,* 374 Ill.App.3d 907, 873 N.E.2d 388, 313 Ill.Dec. 764 (4th Dist. 2007). In a repetitive trauma case, the date of injury from which notice must be given is the date when the injury manifested. *Id.* It also reasonably follows that to give notice of an injury, the employee needs to be aware of the injury and its relationship to the employment.

In *White,* the claimant alleged an accidental injury date of July 17, 2000. The employer had notice Petitioner had injuries before the alleged accident, but the employer did not have notice of *industrial* injuries. The employer therefore had no basis for knowing an industrial accident should be investigated, which is the purpose behind the notice requirement. The Court held it need not consider whether the employer was prejudiced, as the failure to give notice of an industrial injury was not defective notice, it was no notice at all.

In this case, Petitioner testified he notified Steve on February 3, 2016 that he would need time off to see a doctor for his hands on February 4, 2016. He admitted he never told Steve he was seeing the doctor for a work-related condition. How could he when Petitioner did not know his condition was work-related? Steve acknowledged Petitioner likely told him he was going to the doctor, but denied Petitioner reported the reason to see the doctor was for a work-related condition. As in *White*, Respondent had no notice of an industrial accident to investigate on February of 2016. Petitioner did not give notice of an industrial accident because Petitioner himself did not know his condition to be work-related. The mention of going to the doctor for his hands meant nothing more to Respondent and is not sufficient to be construed as notice under Section 6(c) of the Act.

Dr. Yaffe's records are consistent with Steve's and Petitioner's testimony. To Dr. Yaffe, Petitioner reported symptoms with daily activities; not just work activities. Neither Petitioner nor Dr. Yaffe concluded or in any way determined Petitioner's work activities were a cause or aggravation of the CMC joint arthritis. Again, if Petitioner and Dr. Yaffe did not know his condition was possibly related to his employment, Petitioner could not report a work-related injury to Respondent.

Petitioner does not report to Steve and tell him he thinks his condition is work-related until after the September 27, 2018 appointment with Dr. Yaffe. It is clear from the records that Petitioner considered trying to relate his condition to his employment activities in 2018, asking Dr. Yaffe to address causation for the first time in 2018. This is well beyond the 45 days required by the Act. It is over two years later. As such, Petitioner failed to give Respondent proper notice of an alleged accident on February 4, 2016.

In support of the Arbitrator's Decision relating to L, the amount due for TTD and TPD benefits, the Arbitrator finds the following:

An award for temporary total disability benefits is appropriate when an employee cannot return to gainful employment as a result of the work injury. The period of temporary total disability will continue until the employee's condition has stabilized, meaning he reaches maximum medical improvement, or until the employee returns to gainful employment. *See*, *Mt. Olive Coal Co. v. Industrial Commission,* 295 Ill. 429, 129 N.E. 104 (1920) and *Interstate Scaffolding v. Workers' Compensation Commission*, 236 Ill.2d 132, 923 N.E.2d 266, 337 Ill.Dec. 707 (2010).

Petitioner's claim for temporary total disability and temporary partial disability benefits fails because he failed to prove he sustained an accidental injury arising out of and in the course and scope of his employment on February 4, 2016. The claim for benefits further fails because Petitioner failed to introduce evidence of continued disability.

Petitioner continued working until December 21, 2018 when he abruptly went off work, handing Respondent a work status report from Dr. Yaffe. Dr. Yaffe's testimony did not support the basis for the work status report. Dr. Yaffe testified he typically will not provide a patient with a work status note. If one is requested, he will then provide it to allow the patient to be off work for a short period of time to allow for recovery or pain control. It is clear the work note Dr. Yaffe provided to Petitioner in December of 2018 was not intended to have Petitioner off work for more than a short period of time to control his symptoms. It was not intended to authorize Petitioner off work for almost three years. Petitioner never returned to Dr. Yaffe; this work status was never reconsidered by a treating physician. As such, the claim for TTD benefits fails.

Based on the foregoing, the Arbitrator finds Petitioner is not entitled to either TPD or TTD benefits.

In support of the Arbitrator's findings related to J and K, whether the medical expenses provided to Petitioner were reasonable and necessary and whether Petitioner is entitled to prospective medical, the Arbitrator finds the following:

Having failed to prove an accidental injury occurred due to repetitive trauma, Petitioner's claim for medical is denied.

In support of the Arbitrator's decision relating to M, whether penalties and attorney fees should be imposed on Respondent, the Arbitrator finds the following:

Penalties and attorney fees are awarded for an unreasonable and vexatious delay in the payment of benefits. Penalties and attorney fees are not appropriate when real, legitimate and bona fide disputes exist between the parties, which is the case here.

Dr. Yaffe's records do not contain a clear opinion of causation. The parties deposed Dr. Yaffe. He did not provide Petitioner with the desired opinion relating Petitioner's condition to his employment activities. Petitioner sought out a causation opinion of his own from Dr. Schiffman, which the Arbitrator afforded minimal weight considering Dr. Yaffe's, Dr. Vender's and Dr. Cohen's testimony and opinions. A legitimate dispute existed between the parties not only on whether Petitioner's employment activities caused his condition of ill-being, but also whether it was reasonable for Petitioner to be off work for three years after he last saw Dr. Yaffe in December of 2018. Dr. Yaffe's testimony on this issue also did not support Petitioner's claim for benefits.

Accordingly, the Arbitrator finds Respondent's denial of liability and nonpayment of benefits was reasonable. It was not vexatious for Respondent to question whether there was a causal connection between Petitioner's condition of ill-being and his employment activities. Dr. Yaffe's records and his testimony brought both into question. The request for penalties and attorney fees is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC011544
Case Name	Bertell McKenzie v. Enterprise Holdings
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	23IWCC0008
Number of Pages of Decision	12
Decision Issued By	Deborah Simpson, Commissioner, Deborah Baker, Commissioner

Petitioner Attorney	Al Koritsaris
Respondent Attorney	Joseph R. Needham

DATE FILED: 1/9/2023

/s/ Deborah Simpson, 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 re-write	☐ 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

BERTELL McKENZIE,
Petitioner,

vs. NO: 20 WC 11544

ENTERPRISE HOLDINGS,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causation, temporary total disability, and medical expenses both current and prospective and being advised of the facts and law, affirms the Decision of the Arbitrator but strikes the text of the Decision and issues this Decision in *lieu* of the original Decision of the Arbitrator.

The Arbitrator found that Petitioner failed to sustain his burden of proving a compensable accident which caused conditions of ill-being of his right shoulder and lumbar spine. The Commission agrees with the outcome of the Decision of the Arbitrator but not necessarily the bases of his reasoning

Findings of Fact

First Report of Injury dated March 2, 2020

The Human Resources coordinator indicated that at 9:30 a.m. Petitioner reported he was sitting in and prepping a vehicle. He leaned back on his right side to pull plastic from the back seat when he felt something pull on his right side and when he got out of the vehicle he felt a painful pull/pinch in his back. He took two Motrin and was told to sit and see how he felt. At 9:48 a.m. he left the premises saying he was going to Urgent Care.

Petitioner's Testimony

Petitioner testified that in March of 2020 he worked for Respondent as lot coordinator and had been so employed for 10 years. In that job, he made inventory calls, inspected new cars to be delivered to rental companies, and identified problems with used cars that come in from rental companies and other lessors.

On March 2, 2020 he was performing a pre-delivery inspection on a car taking the plastic off seats. He was sitting in the driver's seat and reached with his right hand behind the passenger "seat to pull the plastic off it. It normally comes right off, but this time it didn't pull right off like it normally does." His "body was twisted between the two seats" and pulling downward. He felt a sharp pain in his back and then a pinch in his right shoulder. The plastic was like a heavy-duty garbage bag.

Petitioner sought medical treatment immediately and went to Advocate Urgent Care, where he saw Dr. McCreary. He had x-rays, was prescribed pain medication, and provided a sling. He was off work for three days and was able to return to work thereafter. He did not recall ever injuring his shoulder previously. He acknowledged that when he was 15 he was shot in the lower back with a shotgun. There was still some metal in his back from that incident. He had not seen any doctor for that injury for the past 10 years.

Petitioner testified that on March 18, 2020 he went to his primary care physician, Dr. Kandula, to whom he reported excruciating pain in his back and right shoulder. He was prescribed more pain medication and taken off work. He had a CT of his pelvis on March 18, 2020, x-rays of his lumbar spine on March 20, 2020, and a CT of his abdomen/pelvis on April 2, 2020. She referred him to a specialist and provided him what appears to be a work-restriction note. He was able to return to work with that note. His employment with Respondent ended on April 28, 2020. He received temporary total disability benefits through August 17, 2020.

On April 29, 2020, he saw Dr. Brisbin, apparently the specialist he was referred to by Dr. Kandula. Besides the pain he also had difficulty raising his arm in a forward motion toward the ceiling. He was only able to raise it the height of his navel. Dr. Brisbin gave him work restrictions, but noted he was not able to return to work because of the pandemic. On May 6, 2020, Dr. Brisbin administered an injection in his shoulder and prescribed physical therapy.

Petitioner continued physical therapy until August 25, 2020. Dr. Brisbin noted some improvement with the injection, referred Petitioner to Dr. Meisel for further evaluation of his shoulder, and prescribed additional physical therapy. Petitioner agreed that Dr. Meisel informed him that a CT showed a labral tear in his shoulder and he administered another injection. He then released Petitioner to work with restrictions.

Petitioner returned to Dr. Brisbin for treatment of his lower back. She noted some improvement with physical therapy and referred him to Dr. Metzler for consideration of lumbar injections. Petitioner scheduled an appointment for the injection. Thereafter, on July 30, 2020, Respondent sent him to a doctor for an examination under Section 12 of the Act. Petitioner testified he was in the office for about 20 minutes, but only "maybe five minutes" was spent with the doctor. All the doctor did was tell him to sit, to stand, to bend, and he tested Petitioner's reflexes. Thereafter, WC denied additional treatment.

Petitioner testified that currently, his shoulder has improved but "not much," and his back had not improved at all. He was wearing a back brace which was prescribed by Dr. Metzler. He has limited range of motion in his shoulder. He cannot perform the work he did prior to the accident.

On cross examination, when asked whether anybody witnessed the accident, Petitioner replied that there were cameras there. He tried to see Dr. Kandula every year. He agreed that he returned to work a few days after his first visit with Advocate. He was then taken off work and released to work again. He denied he ever asked for an off-work note. Petitioner sought treatment at MidAmerica (Dr. Brisbin). He chose it from a list provided to him by Dr. Kandula.

Petitioner testified that he hurt his back and then his shoulder. He explained that when he felt pain in his back he "tried to snatch" his arm back because of the pain, and pulled something in his shoulder. He felt the back pain after he got out of the car. When asked if he any prior imaging of his lumbar spine, Petitioner replied that a few months before the accident, he had testing on his organs and did not know whether it included his lumbar spine.

Petitioner explained that the back pain was "like dead center" and shooting down more on his "right and then it comes down to" his left. He had that pain since the accident. He also had pain and restricted range of motion in his shoulder since the accident. He never previously took any medication for his shoulder.

Petitioner agreed that at the time of the accident he had medical insurance and he used it for some of his visits. He did not remember exactly when that insurance was terminated. He did not recall whether he still had insurance on August 25th. He then responded that he did not have insurance after they took him off Workers' Compensation. It appears that Petitioner testified that he could not afford COBRA coverage. He was not furloughed because of the pandemic; "they were downsizing because of [his] situation."

Petitioner identified an e-mail correspondence he received from Respondent. He talked to Respondent prior to the e-mail but not after. He was never advised to contact Respondent after the e-mail to see if they had any work for him. He has been looking for light-duty work, but hasn't found anything. He had not seen a doctor since July 21, 2020 because he didn't "have any money to go see a doctor." He has received unemployment benefits.

On redirect examination, Petitioner testified that the time between injuring his back and his shoulder was less than a second: "it was a twist and then a pull." The correspondence from Respondent indicated that they expected the termination to be permanent as of April 30th.

Medical Records

On March 2, 2020, Petitioner presented to Dr. McCreary at Advocate Medical Group for right shoulder pain. He was at work when he sustained pain in the shoulder and tightness in his lower back that morning at work. The pain radiated from his lower back to his right thigh. Range of motion of the right shoulder was normal. X-rays of the right shoulder taken because of trauma with pain showed degenerative joint disease of the glenohumeral joint with joint-space narrowing and small osteophyte formation. X-rays of the lumbar spine taken for low back pain showed moderate disc space narrowing at L4-5, mild disc space narrowing at L5-S1, mild endplate degeneration at multiple levels, and numerous small metallic bodies in the abdomen. The findings appeared to be stable. Dr. McCreary diagnosed injury to right shoulder, rotator cuff strain, and lumbar muscle spasm, prescribed a muscle relaxer, and advised Petitioner to use a sling.

On March 18, 2020, Petitioner presented to Dr. Kandula, also at Advocate, for work-related injuries to his right shoulder and lower back, abdominal burning, and some chest pains, he believed were gas-induced. Dr. Kandula noted that Petitioner had elevated liver enzymes. After his injury, Petitioner "visited walk in care" but only his shoulder was evaluated and not his back. He was off work for three days, worked that day, and wanted a "work note." Dr. Kandula issued diagnoses of low back pain with sciatic and right shoulder pain. The chronicity of these conditions was unspecified. She ordered a CT of the abdomen/pelvis, referred Petitioner to physical therapy, and noted that "leave note from work provided."

On April 29, 2020, Petitioner presented to Dr. Brisbin at MidAmerica Orthopedics, for right shoulder pain and low back pain from an injury on March 2nd. He reported pulling a prep plastic wrap off of the backset of a car when his shoulder hyperextended, he felt a sharp pain, and had he difficulty raising his arm above chest height. He denied prior problems with his shoulder. He had been off work due to injury as well as the pandemic. He reported diffuse pain across his lower back. He stated the pain started after his injury to his shoulder. He denied pain radiating into the legs. He was not taking medication for his symptoms. On examination, Petitioner showed reduced right shoulder range of motion, and rotator cuff weakness with abduction and external rotation. X-rays taken that day showed mild degenerative joint disease of the AC joint but no acute findings.

Dr. Brisbin diagnosed right shoulder injury with possible rotator cuff tear and lumbar strain. She ordered a CT of the right shoulder, recommended physical therapy, recommended over-the-counter medication/heat/ice, and released Petitioner to light duty with a 3-5 pound limit and no overhead work or climbing.

A CT arthrogram taken on May 5, 2020 showed a few well-defined opacities around the shoulder joint, well-maintained spaces in the AC and glenohumeral joint, and no significant bony abnormalities. The CT showed a small tear at the posterior margin of the glenoid labrum and no evidence of rotator cuff tear.

The next day Petitioner reported he still had pain in his right shoulder and Respondent was not able to accommodate his restrictions. Dr. Brisbin noted that the CT showed the rotator cuff was intact, but there appeared to be a small tear in the posterior labrum. Petitioner continued to have limited range of motion and some weakness with resisted abduction. Dr. Brisbin administered an injection, prescribed physical therapy, and continued work restrictions.

On May 7, 2020, Petitioner was initially evaluated by physical therapy on referral from Dr. Brisbin for lumbar strain/pain and right shoulder impingement/pain/tightness/weakness. He reported that he was "pulling plastic out of the car and twisted his body and experienced immediate pain in the low back and pinched his shoulder." He was currently off work until cleared by his doctor. He rated his low back pain at 8/10, but it could reach 10/10. He reported no current shoulder pain, but that also could reach 10/10. There was pain associated with all shoulder range of motion/strength testing and the lumbar spine showed positive Neer/empty can tests, and negative Hawkin's Kennedy.

On June 3, 2020, Dr. Brisbin noted that Petitioner was in physical therapy, which he thought helped, particularly for his back. He also reported mild improvement from the injection. He was still unable to raise his arm above shoulder height. Dr. Brisbin continued physical therapy for both his shoulder and back, continued work restrictions, provided a back brace, and referred Petitioner to Dr. Meisel for evaluation of his shoulder.

A month later, Petitioner presented to Dr. Meisel. He reportedly "reached for something working in an abducted position" and "felt pain in his shoulder." He was taking Naproxen. Dr. Meisel diagnosed right shoulder adhesive capsulitis/posterior labral tear. He prescribed Naproxen/physical therapy, imposed restrictions of occasional lifting/pushing/pulling 5-10 pounds, and administered a cortisone injection in the glenohumeral joint.

Petitioner returned to Dr. Brisbin on July 1st for follow up for low back pain. He still reported bilateral pain across the low back despite physical therapy and a diligent home exercise program. Nevertheless, he believed he had some limited improvement. Dr. Brisbin ordered more imaging and continued work restrictions.

A CT taken on July 16, 2020 showed lumbar spondylosis with mild facet arthropathy, diffuse protrusion of L2-3 disc indenting the anterior thecal sac with mild central canal/bilateral neuroforaminal stenosis, possible posterior extrusion of L4-5 disc with mild central canal/bilateral neuroforaminal stenosis, mild straightening of curvature indicating paraspinal muscle spasm, and multiple lead pellets around the vertebrae.

On July 21, 2020, Petitioner presented to Dr. Metzler who noted he reported low back pain radiating down the back of both legs since March. It happened when he was lifting/pulling pieces of plastic at work. He had physical therapy and medication with no significant improvement. The pain interfered with activities of daily living. He had positive straight leg raises, decreased lumbar range of motion, and minimal pain with facet loading. Dr. Metzler diagnosed lumbosacral degenerative disc disease and L5-S1 radiculopathy. He was open to an epidural steroid injection at L5-S1.

The treatment note dated August 25, 2020 appears to be the 17th and last daily treatment note in physical therapy, though there is no indication that he was being discharged. The therapist noted that he consistently arrived five minutes late. He continued to report pain in the shoulder limiting his activities of daily living. He exhibited symptoms and impairment consistent with "right shoulder anterior glide syndrome." "He was unable to complete resisted rows of extensions due to pain in the shoulder with light resistance."

Evidence from Dr. Zoellick

At Respondent's request, on July 30, 2020 Dr. Zoellick performed an examination on Petitioner pursuant to Section 12 of the Act. In his report he noted Petitioner's reported mechanism of injury and that there were some inconsistencies in his histories. Initially, he reported radiation of back pain to his legs, but then denied such radiation to Dr. Brisbin on numerous occasions as well as showing inconsistencies on how the low back pain was radiating.

Dr. Zoellick noted that Petitioner showed some evidence of symptom magnification referring to his observation of his walking into the office and how he was walking after the examination. He also showed very good strength in his right shoulder with passive range of motion, but would not allow his shoulder to be lifted up above 90 degrees. He complained of constant 4/10 low back pain which could reach 10/10.

The CT showed degenerative findings of chronic underlying spondylosis in the lumbar spine. These findings were age-appropriate. In his opinion, Petitioner's subjective complaints did not match the objective findings. Dr. Zoellick believed Petitioner suffered only a lumbar strain and his subjective complaints were not related to his work accident. In this regard he noted that Petitioner had 5/5 strength with full motion and he was neurologically intact.

Regarding the recommendation for an injection at L5-S1, Dr. Zoellick opined that if an injection were administered it should be at L4-5 and not L5-S1. However, if he did have an injection, it would not be for treatment of any work-related injury. He did not agree with the recommendation for branch block injections, because they are administered for acute injuries, and there were no acute injuries here. He thought reasonable treatment that was related to the accident included treatment at Urgent Care, evaluation by his primary care physician, evaluation by Dr. Brisbin, the CT, and a brief course of physical therapy. Petitioner was at maximum medical improvement for any lumbar strain injury and he should have been within 6-8 weeks.

Regarding his shoulder he exhibited decreased range of motion, "which is not solely an objective finding." His subjective complaints were out of proportion to the objective findings of a possible small posterior labral tear. That type of injury would not be caused by the mechanism of injury Petitioner reported. He could not explain his reduced range of motion, and noted that it was reported to be full when he was first seen in the ER. He did not have objective pathology to explain his subjective complaints. The CT possibly showed a small tear of the glenoid labrum, which he thought was age-appropriate and represented a chronic non-acute condition. He was at maximum medical improvement.

Dr. Zoellick indicated that it appeared Petitioner needed a 20-pound weight restriction, no overhead use of the right arm, and no repetitive bending/stooping. However, any work restrictions were not related to his work injuries. An FCE was not then indicated because "he has some findings on examination which are not explained by the diagnostic studies." When asked to include any additional commentary, Dr. Zoellick responded that the diagnostic studies did not explain his ongoing complaints. "He has not been working and he has been getting worse." Dr. Zoellick could not explain that inconsistency. The mechanism of injury would not cause a labral tear or disc herniation. At most Petitioner suffered shoulder/lumbar strains.

Dr. Zoellick testified by deposition on November 4, 2020. He is a board-certified orthopedic surgeon. Petitioner reported he was a dock coordinator for Respondent, which involved parking cars, checking inventory, and doing light maintenance. He reported at times he had to lift up to 100 pounds. He denied any prior problems with his shoulder or lower back.

Petitioner also reported that on March 2, 2020 he was pulling plastic off the seats of a truck. He was sitting in the diver side and reached backwards with his right hand. He felt a pinch in his low back and right shoulder with immediate onset of pain in the right shoulder and low back going down both legs to his feet. He reported the injury and drove himself to urgent care. At the exam, Petitioner reported 4/10 low back pain and 6/10 right shoulder pain, but both could reach 10/10.

Dr. Zoellick noted that Petitioner was walking very slowly when he came into the office, but he saw him leave the office he was walking more briskly and freely, which "seemed very deliberate." He observed Petitioner walking freely in the parking lot and did not appear to have any difficulty getting into a vehicle.

On examination, Petitioner had tenderness and decreased active range of motion in his shoulder with positive impingement sign but no apprehension sign. He complained of pain with any shoulder motion. There were negative lift-off, empty can, and O'Brien's tests (the O'Brien test is to assess symptomatic labral lesion). The negative results did not correspond with Petitioner's subjective complaints.

Petitioner reported inability to move his arm up to 90 degrees. However, that was inconsistent with the strength he exhibited when Dr. Zoellick resisted. He did not have a good

explanation for that divergence. The positive impingement sign could be just inflammatory tendinitis. He did not believe that condition was caused by the accident.

On examination of the lumbar spine, Dr. Zoellick noted some mild tenderness in the paraspinal musculature and sitting bilateral straight leg raises were negative. He could bend over only to the level of his thighs. That appeared to be much greater loss of lumbar flexion than reported in other records. Sensation and motor functions were intact. The negative straight leg raises were inconsistent with Petitioner's report of radiculopathy.

Dr. Zoellick reviewed Petitioner's diagnostic imaging films. The CT arthrogram from May 6, 2020 did not appear to show any rotator cuff tear but there was a question of a possible small posterior tear in the labrum. The lumbar CT showed disc protrusions at L2-3 and L4-5 with mild bilateral neuroforaminal stenosis. This was "a chronic pre-existing problem." He did not believe the accident exacerbated that condition, because he believed he suffered only a strain. He was "just turning" and his initial complaint was only "tightness" in the back.

Dr. Zoellick did not believe the mechanism of injury would cause reduced range of motion in his shoulder, because it was "reaching back the shoulder" which would not cause a labral or rotator cuff tear, and in any event, the CT did not show any rotator cuff tear. The mechanism of injury of reaching back could have resulted in some initial shoulder pain but that would not be sustained for several months. Reaching back would not cause a posterior labral tear.

Based on his review, Dr. Zoellick did not believe the injection at L5-S1 recommended by Dr. Metzler was indicated. He noted that Petitioner had full strength on his examination. Dr. Zoellick also would not agree with recommended bilateral medial block injections. He believed Petitioner was at maximum medical improvement for whatever work work-related lumbar injuries he had.

Based on Petitioner's report of his job activities, Dr. Zoellick did not believe he needed any restrictions based on any work injuries. Restrictions he recommended in his report were based only on Petitioner's subjective complaints concerning his shoulder. He would place no restrictions based on Petitioner's back condition.

On cross examination, Dr. Zoellick testified Petitioner did not tell him which back seat he was pulling the plastic off. To Dr. Zoellick which back seat he was de-plasticizing was irrelevant. He agreed that Petitioner reported he felt a pinch in his shoulder and back followed by immediate pain. Petitioner told him that he had two injections in his shoulder and the second made him worse. He also complained of low back pain down both legs with associated weakness.

Dr. Zoellick agreed that on examination Petitioner reported tenderness in the shoulder upper arm area, reduced range of motion, and a positive impingement sign. He would not expect an impingement sign from a labral tear. Dr. Zoellick uses sitting straight leg raises because he finds them to be more accurate than supine testing.

Dr. Zoellick agreed that hypothetically lumbar herniations can cause radicular symptoms and those symptoms can wax and wane. He agreed that he based his opinion of symptom magnification on his observation of Petitioner walking in his office and after leaving his office, when he was walking at a "moderate pace." He agreed that Petitioner sustained some soft-tissue injury to his lower back. He agreed that Petitioner had no prior back injury, other than being shot. He did not believe Petitioner's pre-existing condition was made symptomatic after the accident, because he did not sustain any injury to bone or the arthritic portion of the spine.

Dr. Zoellick explained that when he wrote in his report that if an injection were to be administered it should be at the L4-5 level, he was not implying that he agreed that Petitioner had nerve root irritation/impingement nor endorsing the injection at all. He was "just pointing out they're talking about doing things at different levels." What pathology present was at L4-5. Dr. Zoellick agreed that trauma can make asymptomatic facet joint arthritis symptomatic. His notation about Petitioner having an MRI was a typo; he had a CT because he could not have an MRI due to the presence of buckshot. He agreed that a labral tear can be caused "where the shoulder is placed in abduction and that it is externally rotated while applying force."

Dr. Zoellick agreed that Petitioner's report of having to lift up to 100 pounds exceeded his recommended restrictions and that Petitioner had not worked since his accident. The restrictions he recommended were based on his examination, but he did not believe his examination was consistent with his injury. His recommendation that Petitioner avoid repetitive bending/stooping was referring to his subjective complaints about his lower back, but he did not mean that such restrictions were based on his work injury. Petitioner needed additional treatment for his back and shoulder, but that is all related to his degenerative conditions.

On redirect examination, Dr. Zoellick reiterated that it did not matter whether he was reaching back to the driver's side or the passenger's side. He did not believe Petitioner experienced waxing/waning symptoms from his work injuries. He found it odd that Petitioner's symptoms changed legs. Dr. Zoellick explained that typically nerve root compression as well as resulting symptoms are more prominent on only one side. He thought the labral tear was an incidental finding. He reiterated that any limitations Petitioner had were the result of his degenerative conditions and not any work-related injuries.

Conclusions of Law

The Arbitrator found that Petitioner did not sustain his burden of proving accident or causation to any current condition of ill-being. We agree with the conclusions of the Arbitrator based our adoption of the opinions of Dr. Zoellick. We agree with Dr. Zoellick that the relatively innocuous mechanism of injury reported by Petitioner is inconsistent with the type of injuries Petitioner alleges. We also agree that the mechanism of injury would have resulted in nothing more than possibly soft-tissue strains which have long since resolved without permanent disability. We also agree that Petitioner exhibited some symptom magnification in his consistent report of excruciating pain, the observations of Dr. Zoellick regarding the difference in Petitioner's gait and behavior in the office and in the parking lot, and the fact that Petitioner's subjective complaints did not match the relatively benign objective findings.

The Commission also relies on the fact that Dr. Zoellick noted that the objective pathology found in the CT were age-appropriate (Petitioner was 50 at the time of the alleged accident), the pathology was degenerative in nature, and nothing in the CTs showed any acute findings. Finally, in this regard the Commission notes that no treating doctor has characterized any findings as acute nor has any treating doctor opined that his conditions of ill-being were actually casually related to his alleged accident. Accordingly, the Commission finds that Petitioner has not sustained his burden of proving he sustained a work-related accident on March 2, 2020, which caused conditions of ill-being of his right shoulder and lumbar spine. Accordingly, compensation is denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated January 27, 2022, is affirmed as re-written above and compensation is denied.

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

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

January 9, 2023

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

DLS/dw
O-11/9/22
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/s/*Stephen J. Mathis*
Stephen J. Mathis

DISSENT

I disagree with the majority's decision to affirm the Arbitrator's denial of Petitioner's claim. In my view, Petitioner proved by a preponderance of the evidence that he sustained a compensable work-related injury to his right shoulder and back on March 2, 2020 based on his unrebutted, credible testimony and the medical records.

Petitioner worked for Respondent for 10 years as a Lot Coordinator. The medical records show that on March 2, 2020, Petitioner sought medical treatment for work-related injuries to his right shoulder and back. Petitioner treated for his injuries consistently following this treatment. Petitioner's treating physicians diagnosed him with a right shoulder labral tear and lumbar disc protrusions at L2-3 and L4-5. As corroborated by Petitioner's testimony, the medical records support a finding that he injured his right shoulder and back on March 2, 2020 while working. There is no testimony to rebut this. In fact, even Dr. Zoellick, Respondent's Section 12 examining physician, acknowledged that Petitioner sustained an injury on March 2, 2020, although, he did not believe the injury was significant or serious, despite there being diagnostic evidence of injury.

Based on the medical evidence, I would find Petitioner proved that he sustained a work accident on March 2, 2020 to his right shoulder and back, and his current conditions are causally related to that accident based on a chain of events analysis. For the reasons set forth above, I respectfully dissent.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC025656
Case Name	Kaitlynn Simpson-Schmiz v. FedEx Ground
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0009
Number of Pages of Decision	21
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Timothy Alberts

DATE FILED: 1/9/2023

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)	☒ Affirm and adopt (no changes)
) SS.	☐ Affirm with changes
COUNTY OF)	☐ Reverse
CHAMPAIGN	☐ Modify
	☐ 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

KAITLYNN SIMPSON-SCHMIZ,
Petitioner,

vs. NO: 20 WC 25656

FEDEX GROUND,
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, TTD, medical expenses, and 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 May 2, 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.

January 9, 2023
o: 01/05/23
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	20WC025656
Case Name	SIMPSON-SCHMIZ, KAITLYNN v. FEDEX GROUND
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Timothy Alberts

DATE FILED: 5/2/2022

THE INTEREST RATE FOR THE WEEK OF APRIL 26, 2022 1.37%

/s/ Dennis OBrien, Arbitrator

Signature

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

☐ 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

Kaitlynn Simpson-Schmiz
Employee/Petitioner

v.

FedEx Ground
Employer/Respondent

Case # **20** WC **025656**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Dennis O'Brien**, Arbitrator of the Commission, in the city of **Champaign**, on **March 18, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **July 8, 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.

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

In the 6 4/7 weeks preceding the injury, Petitioner earned $**2,515.85**; the average weekly wage was $**374.70**.

On the date of accident, Petitioner was **24** years of age, ***single*** with **no** dependent children.

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

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

Respondent shall be given a credit of $**105.72** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**105.72**.

Respondent is entitled to a credit of $10,267.65 under Section 8(j) of the Act.

ORDER

Petitioner suffered an accident on July 8, 2020, which arose out of and in the course of his employment by Respondent.

Petitioner's medical conditions, a tear of the peroneus brevis tendon, a tear to the retinaculum, and an unhealed ATFL avulsion, are causally related to the accident of July 8, 2020.

Petitioner was temporarily totally disabled as a result of the accident from July 9, 2020 through July 15, 2020 and from March 24, 2021 through June 10, 2021, a total period of 12 1/7 weeks, which is to be paid at a weekly rate of $249.80.

All of the bills introduced into evidence by Petitioner in Petitioner Exhibit 1 are related to Petitioner's right ankle injuries, are reasonable, and were necessitated to treat or cure Petitioner's injuries suffered in this accident, and are to be paid pursuant to the Medical Fee Schedule.

Petitioner sustained permanent partial disability to the extent of 25% loss of use of the right foot pursuant to §8(e) of the Act and is to be paid 41.75 weeks of permanent partial disability at a weekly rate of $246.67, on account of these injuries.

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 2, 2022

Signature of Arbitrator

FINDINGS OF FACT:

TESTIMONY

Petitioner testified that as of the date of arbitration she was not employed by Respondent, she was working for Aramark. She stated that she had previously, for a period of three months, worked for Respondent as a package handler. She said she was working for Respondent on July 8, 2020 when, while unloading boxes, a wall of heavy boxes fell, landing on her foot. She said while unloading trucks she normally used only her hands, not equipment such as a pallet jack or a forklift. She said the boxes could weigh between 5 pounds and 200 pounds. She said the number of boxes which fell on her was not numerous, but that the box that fell on her foot was a mini fridge that weighed about 119 or 120 pounds.

Petitioner said that after the box fell on her right foot it don't feel very well, and she limped for a while and asked to leave work early. She was asked to walk it off, but if it still felt bad she could go home. She said her only symptom at that time was pain.

Petitioner said she went to the emergency room at Decatur Memorial Hospital the next day, where x-rays were taken and a splint was applied to her foot. She was told at that time not to walk on the foot until she saw the doctor. Petitioner said they kept her off work.

Petitioner said she saw an orthopedist at Decatur Orthopedic Center on July 15, 2020, though she could not remember his name. She said he examined her and put her in a boot with instructions not to walk. She said the doctor did not keep her off work, but she did not go to work that day because she was in pain. She said an MRI was later recommended and conducted, at which time she was referred to a podiatrist, Dr. Elliott.

Petitioner said Dr. Elliott said x-rays did not indicate a tear and he suggested she take high dose Ibuprofen. Subsequent to that Dr. Elliott injected her foot, but that only gave her four hours of relief, she said, at which point the same symptoms she had been experiencing returned, but were slightly worse. She said Dr. Elliott then referred her to Dr. Bradley for a second opinion, which was obtained on February 10, 2021.

Petitioner said she told all of her doctors, including Dr. Bradley, of her accident. She said she had experienced one prior right foot or ankle injury, in 2009 while in grade school, a sprained ankle, which required her to take Ibuprofen and use crutches for a few weeks. She said she had not had right foot or ankle problems from 2009 through 2020, nor did she miss any time from work because of her right foot and ankle.

Petitioner said Dr. Bradley ordered another MRI for her right foot and ankle and, because he saw tears, he scheduled her for surgery, an ATFL reconstruction repair, which occurred on March 24, 2021. She said Dr. Bradley kept her off of work following that surgery and had her treated further with physical therapy and pain medication. She said the treatment caused her to improve. On June 10, 2021, Dr. Bradley released her to return to work as she was doing excellent and improving. She said she saw him in July 2021 and he released her to return to work full duty and placed her at maximum medical improvement.

Petitioner said she returned to see Dr. Bradley in October of 2021, after the cold weather hit. She said she had not experienced any additional injuries, but she was having severe pain, with stabbing sensations in her

foot. She said he prescribed medication, which helped, and the symptoms improved. She said he released her from his care again on January 24, 2022. She said she had improved and was doing well at that time. She said her ankle reacted to weather changes, that she would occasionally have stabbing pain and her foot would go numb, she would get tingling in her foot and occasionally the pain would radiate up her calf or up her leg. She said the pain would be intermittent, and she would take pain medication for it, as needed. She said the are would get sore with weather changes of if she was walking or exercising. She said walking, standing or sitting would be difficult if done for long periods of time. She said after a long period of standing or walking she would have severe pain, occasional numbness or soreness and sometimes she would have a hard time getting up from a seated position. She said the range of motion of her foot was limited in regard to moving the foot inwards or outwards. She said driving long distances would cause pain and she had difficulty going up and down steps, feeling exhausted in her leg.

Petitioner testified that as of the date of arbitration she had a new job and her foot and ankle affected the way she performed that job, as trying to lift things from the floor, climbing stairs, and walking backwards while cleaning are difficult. She said her activities of daily living were affected, again in climbing stairs, playing with her children, and performing housework. Despite that, she was glad she had the surgery as it reduced her pain, it was not constant.

Petitioner said Respondent had her examined by a doctor, she attended that examination and answered the doctor's questions. She noted that the medical records and bills introduced into evidence were for treatment of this injury.

On cross examination Petitioner agreed that she did not seek medical attention on the date of the accident and waited until the next evening to go to the emergency room. She said she recalled seeing Dr. Holmes, Respondent's examining physician, saying she answered all of Dr. Holmes's questions as truthfully and completely as possible.

Petitioner agreed that in June of 2021 she was released to full duty work by Dr. Bradley and released from his care, but returned to see him three months later, in October.

Petitioner said that as of the date of arbitration she was working full duty for Aramark, her new employer. She said that despite all of the complaints she testified to as occurring since June of 2021 no physician had restricted her or had limited what she could do in her new job as a result of her ankle condition.

On redirect examination Petitioner said she started working for Aramark on October 1, 2020. She said she had stopped working for Respondent as she had been fired. She said she earned less when she started working for Aramark, and was as of the date of arbitration making two cents less. She said her work at Aramark did involve unloading boxes, such as boxes one would get from Amazon. She said that when at home she did not perform the type of work she had performed for Respondent.

Petitioner said she had not injured her foot in any manner other than how she described doing it at the arbitration hearing.

MEDICAL EVIDENCE

Petitioner was seen in the emergency room at Decatur Memorial Hospital on July 9, 2020, giving a history consistent with her testimony at arbitration. It was noted that Petitioner had, years earlier, previously

injured the same ankle. She noted that she was unable to put weight on her right foot. Physical examination revealed mild swelling in the area of the right lateral malleolus and tenderness in the same area. X-rays revealed a questionable navicular fracture and a CT scan was suggested. A second radiologist reviewed the images and did not feel there was evidence of a fracture. The emergency room physician, Dr. Albrecht, noted his clinical impression was closed nondisplaced fracture of navicular bone of the right foot. The foot was splinted and crutches supplied to Petitioner. She was advised to contact Dr. Sullivan for follow up. (PX 3 p.4,7,8,10,11,15)

Dr. Sullivan saw Petitioner on July 15, 2020. Her history was again consistent with that given at arbitration. On physical examination Petitioner was found to have full range of motion with "appropriate discomfort," and tenderness to palpation over the peroneal tendon. X-rays conducted that day showed no obvious bony or soft tissue abnormality. Dr. Sullivan's diagnosis was right ankle sprain, and he did not believe that Petitioner at that time needed surgery. He placed her in a boot and advised her to begin weaning from the use of crutches. He sent her for physical therapy, and said she could start weaning from the boot in two weeks, as pain allowed. He prescribed anti-inflammatories and said she could return to work in the boot as needed for a month. (PX 4 p.3,4)

Petitioner received physical therapy at ApexNetwork from July 17, 2020 through September 24, 2020. By September 24, 2020 Petitioner was reporting that overall her ankle had improved greatly with therapy, though she continued to at times have twinges of pain. She had some sharp pains and had scheduled a follow up with her doctor for October 12, 2020. Range of motion measurements showed improvement on dorsiflexion, plantarflexion, and inversion ranges of motion while in therapy, but dorsiflexion and plantarflexion on the right was still less than the ranges of motion on the left. Strength had also improved on the right after this round of therapy. Petitioner was to continue with her home exercise program following her release from therapy on September 24, 2020. (PX 5 p.1-40)

Petitioner returned to Dr. Sullivan on October 12, 2020, complaining of continued pain. Physical examination indicated tenderness to palpation over the anterior talofibular ligament (ATFL), which Dr. Sullivan felt might be ruptured. He felt she could also have some internal derangement, such as a cartilage defect. He therefore ordered an MRI, and Petitioner was to return after it was completed. (PX 4 p.5)

The MRI of Petitioner's right ankle was performed on October 22, 2020. It showed an abnormal signal within the posterior talofibular ligament which the radiologist felt raised a question of a partial tear. (PX 6 p.1)

Dr. Sullivan saw Petitioner on October 26, 2020 to review the results of her MRI. Physical examination showed her to continue to be tender over the ATFL, and less so over the calcaneofibular ligament (CFL). She was not tender to palpation over the peroneal tendons. She had full ankle range of motion with minimal discomfort. He noted the MRI's abnormal signal within the posterior talofibular ligament, which caused him to question a partial tear of that structure. He felt the MRI suggested a sprain of the posterior talofibular ligament and he wanted to refer Petitioner to a podiatrist for evaluation and treatment. (PX 4 p.10)

Petitioner was seen by a podiatrist, Dr. Elliott, on December 1, 2020. Petitioner gave Dr. Elliott a consistent history of accident. Physical examination at that time showed pain and tenderness on palpation diffusely in the anterior ankle joint as well as pain with passive ankle range of motion testing. Petitioner also had pain associated with the ATFL and the posterior fibula area. Dr. Elliott diagnosed right ankle pain and right

ankle impingement syndrome. He performed an injection into the right ankle and Petitioner reported her symptoms were immediately relieved by the injection. (PX 7 p.1,3,4)

Petitioner was seen by Dr. Elliott again on December 16, 2020, with a new history of numbness in the right foot since the last visit, advising that she had sustained multiple falls due to the numbness in her foot as well as occasional shooting pain down the back of her leg. She did not claim to have suffered any injury to her low back. Dr. Elliott's physical examination was unchanged with the exception of his noting that sensation was decreased to light touch to the right leg compared to the left. At this point Dr. Elliot referred Petitioner to neurology for an EMG/NCV due to her right foot numbness. (PX 7 p.7-9)

Petitioner returned to Dr. Elliott on January 12, 2021. She had not yet seen a neurologist but her right foot continued to be numb. She said her right ankle pain had not improved. Physical exam showed pain and tenderness on palpation as well as with passive ankle range of motion. While an arthroscopic examination was discussed, Petitioner said she wanted to exhaust all possible conservative treatment before surgery. She requested a second opinion in St. Louis. Dr. Elliott agreed to refer Petitioner to a St. Louis doctor. (PX 7 p.19-21)

Petitioner was seen by Dr. Bradley on February 10, 2021. She gave him a consistent history of both her accident and her medical testing and treatment. Dr. Bradley also found tenderness of the lateral ankle posterior to the lateral malleolus. He found her sensation to be intact to light touch (SILT). Dr. Bradley noted that Petitioner's mechanism of injury was consistent with a peroneal tendon tear. He wanted to review Petitioner's prior medical records, as well as obtain a second MRI with a high quality 3 Tesla magnet to assess the soft tissues in her right ankle, especially the peroneal tendon posterior to the lateral malleolus. (PX 8 p.5,6)

Respondent had Petitioner undergo an independent medical examination by Dr. Holmes in Chicago on February 24, 2021. Dr. Holmes took a history which was consistent with Petitioner's testimony at arbitration. He reviewed prior medical records and x-rays but was not at that time able to review the MRI which had previously been performed. On physical examination he identified the areas where Petitioner noted she had pain on the lateral aspect of her right ankle as well as where she had radiating pain up from the ankle. He said her examination was essentially normal. He felt she had sustained a contusion in her work-related injury, but he did not find evidence of any instability or of a significant ligamentous tear in the ankle. He noted he was of the opinion that Petitioner's current symptomatology did have its onset as of July 8, 2020, but her pathology was normal as of the date he saw her. He was also of the opinion that the treatment Petitioner had received was causally related to the July 8, 2020 accident. He did not believe she needed another MRI at that time, and he felt she could perform her usual and customary duties with respect to the right ankle. (RX 7)

A second MRI of Petitioner's right ankle was performed on February 26, 2021. It was interpreted to show a peroneus brevis malposition at the lateral malleolar pully and a chronic appearing grade II ATFL insertional tear with a small associated ossicle anterior to the lateral malleolar anterior colliculus, likely a result of a small, unhealed avulsion fragment. (PX 9 p.1,2)

Dr. Bradley again saw Petitioner on March 1, 2021. Petitioner reported that her pain was slightly worse and that she had been to an independent medical examination in Chicago, and that examination had aggravated her ankle. Petitioner's physical examination was similar to her previous exam, with the addition of slight pain with supination. Dr. Bradley reviewed with Petitioner the recent MRI findings, which showed a longitudinal

tear to the peroneus brevis tendon with torn retinaculum/pulley, along with an unhealed ATFL avulsion. Because of the severity of Petitioner's tears Dr. Bradley recommended surgery as the definitive long-term treatment. Petitioner agreed with that recommendation. (PX 8 p.9,10)

Dr. Bradley performed a right ankle ATFL reconstruction, peroneus brevis tendon debridement and repair and superior and inferior peroneal retinacular repair on March 24, 2021. Following the surgery Petitioner was to be non-weightbearing in a CAM boot which was applied at the end of the surgery. (PX 8 p.12-14; PX 10 p.1-3)

Petitioner saw Dr. Bradley on April 8, 2021. Dr. Bradley felt she was doing well. (PX 8 p.15,16)

Following her surgery, Petitioner had another round of physical therapy at ApexNetwork from April 14, 2021 through June 11, 2021. After nearly two months of physical therapy Petitioner was still reporting that she was very sore after doing a lot of walking, that she had stopped wearing her brace in early June as it was rubbing and making her pain worse, and also noting that she thought she was moving her foot better after the brace was off. She said her pain was 4/10 on June 4, 2021 and 6/10 on June 10, 2021. By June 4, 2021 Petitioner's dorsiflexion, plantarflexion, inversion and eversion range of motion had all improved considerably from her April 14, 2021 measurements, but had not improved to match her left side motions. Physical therapy was discontinued as of June 11, 2021 as Petitioner was returning to work and her doctor was happy with the progress she had made. (PX 5 p.41-93)

On April 23, 2021 Dr. Holmes issued an addendum report to his IME. He had reviewed additional records, including those of Dr. Bradley, and the report of the February 26, 2021 MRI. He made no mention of viewing the MRI images from either 2020 or 2021. Dr. Holmes then noted he did not believe any proposed surgery would be causally connected to this accident, and he did not recommend surgical intervention, he felt she could work without restrictions and he felt she was at MMI. (RX 8)

Petitioner returned on May 6, 2021, and advised the doctor that the only time she was out of the CAM boot was when she was in the shower, and on those occasions her ankle felt great and she did not have feelings of instability or pain. She was excited about getting into regular shoes and getting to return to work. The CAM boot was discontinued at this visit, with Petitioner being fit for an ankle brace, which she was to wear around the house for the next two weeks, but wearing the CAM boot for long standing or walking. (PX 8 p.17,18)

Petitioner was seen by Dr. Bradley on June 10, 2021. Petitioner said she had not been having severe pain and denied any instability. She was increasing her activity. X-rays taken that day showed nothing unusual post-operatively. She felt she was improving daily. Dr. Bradley released Petitioner to return to work full time without restrictions, while wearing an ankle brace, and asking she be given extra time to complete heavy activities. (PX 8 p.19-21)

On July 15, 2021, Petitioner was seen by Dr. Bradley, reporting that she developed some minor swelling when she did not wear her brace for a week, but no significant pain. Physical examination was normal and x-rays showed no post-operative complications. Dr. Bradley said she had excellent range of motion, strength and stability. She was to continue her hone exercise program and was able to return to work with no restrictions. Petitioner was declared to be at maximum medical improvement. (PX 8 p.1,2)

Petitioner returned to see Dr. Bradley on October 25, 2021, with right lateral ankle pain. She said it would shoot into her shin and felt as though she was getting a Charlie horse in her calf. She also reported that her foot was swelling. With the exception of some tenderness over her incision, Petitioner's physical examination was normal. Dr. Bradley felt that overall Petitioner was doing exceptionally well from her surgery, with no instability in her ankle and the ability to walk without a limp. He said she was probably suffering from some scar tissue postoperatively and with the change in seasons. He prescribed non-steroidal anti-inflammatory cream and some diclofenac oral medication. (PX 8 p.25-27)

Petitioner was seen by Dr. Bradley for the final time on January 24, 2022. She advised him she was slightly improved, though her stability and pain level were greatly improved. Her physical examination showed no abnormalities. She was to continue her home exercise program to maintain motion and strength. Petitioner was released from care. (PX 8 p.30-32)

DEPOSITION TESTIMONY OF DR. MATTHEW BRADLEY

Dr. Bradley was deposed as a witness by Petitioner on June 9, 2021. He testified that he was a board-certified orthopedic surgeon whose practice was general, treating degenerative conditions such as arthritis, which could include joint replacements in the shoulders, hips and knees, as well as acute injuries, such as fractures of bones in the wrists and ankles. He also treated soft tissue injuries such as injuries to the rotator cuff, meniscus, ankle ligaments, and knee ligaments. He noted that perhaps 60 to 70 percent of his work involved the lower extremities, with about 20 percent of that lower extremity work involving the ankle. (PX 11 p.4-6)

Dr. Bradley said he first treated Petitioner on February 10, 2021. His testimony of history given to him by Petitioner and his physical examination findings and treatment of Petitioner was consistent with the summary of his medical records summarized above.

Dr. Bradley testified that ankle and foot injuries can sometimes be very difficult to image on a lesser-quality MRI, so he recommended an MRI on an MRI with a higher quality magnet, a 3 Tesla magnet, saying the difference in strength between a 3 Tesla MRI and a 1.5 Tesla MRI is like the difference between a black-and-white TV and a high-definition TV. He said he subsequently reviewed the images from the 3 Tesla MRI and he said the images were of really good quality. He said this MRI showed a tear of the peroneus brevis tendon, with is on the outside of the ankle, in the area Petitioner was complaining of pain. It also showed a tear to the retinaculum, a type of ligament which keeps the tendon in place. He agreed with the interpretation of the radiologist entirely. He said his diagnosis was a symptomatic perineal tendon tear with a retinacular tear. He recommended surgery to repair these injuries. He said the findings in the MRI were totally consistent with the history of accident he had received from Petitioner. He testified that in his opinion the injury Petitioner sustained on July 8, 2020 contributed to or was the prevailing factor in Petitioner's diagnoses and her need for treatment. (PX 11 p.11-15)

Dr. Bradley said he performed multiple procedures on Petitioner right ankle on March 24, 2021, repairing the torn peroneus brevis tendon, which he found to be torn in half, repairing the retinaculum and replacing a ligament to give the ankle stability as it could not even be found. He said he restricted Petitioner

from work following the surgery. He testified his follow up care was as summarized above. He said by May 6, 2021 he would normally have allowed her to go back to sedentary work, with limited time on her feet, not going up and down stairs or carrying heavy loads. though he could not find a copy of the work restriction form he filled out on that date. (PX 11 p.15-19)

Dr. Bradley did not think Petitioner would have improved without surgery, as she had undergone seven months of conservative care and was not getting better. He said she was scheduled to see him the day following the deposition, and he was anticipating she would be told to do her home exercise program, wear her lace up ankle brace as needed, and could do anything, though she should work up her stamina and endurance. (PX 11 p.19-21)

Dr. Bradley said he had reviewed Dr. Holmes's independent medical examination report dated February 24, 2021, and he did not believe she would have had a normal physical examination on that date, as reported by Dr. Holmes, as he had seen her prior to that examination and she did not have a normal examination, nor did she have a normal examination after that date. He noted other doctors had also found abnormalities on physical examination. He said Petitioner did suffer a contusion as diagnosed by Dr. Holmes, but she suffered other injuries as well, as seen on the MRI. He said that while Petitioners ankle did not appear unstable when he was examining her, during the surgery, when she was unconscious, the ankle see looser, but not necessarily unstable, and he had been totally unable to find the ATFL, so one of her stabilizers was definitely torn. He said surgery had been indicated not due to instability but due to pain which was related to the peroneal tendon which appeared to be torn on physical examination and was found to be torn on the MRI. He said he did not feel the injection Petitioner had previously received to the ankle could have caused Petitioner's condition of ill-being. As she had been in a boot and had physical therapy but did not describe to them any incident which would have caused it. He said a cortisone shot could cause changes to ligaments, even some tearing, but it would not cause a longitudinal tear such as the one Petitioner had. He noted that the cortisone shot was given in the front of the ankle, and the surgery he performed was in a very different area, the back side of the ankle, behind the bone, so the cortisone shot could not have done anything to the peroneal tendon. (PX 11 p.21-27)

Dr. Bradley testified that the medical treatment he provided, including the surgery, and the bills for his medical services, were for treatment of injuries caused in the July 8, 2020 accident. (PX 11 p.28)

On cross examination Dr. Bradley said ankles comprised about 10 percent of his surgeries and 20 to 25 percent of his overall care, as much of his ankle treatment was nonoperative. He said historically 10 percent of his practice was workers' compensation, but that had increased as Medicare patients did not seek treatment as much during Covid. He said performing independent medical examinations was a very small part of his practice, he would perform one or less per month. (PX 11 p.31-33)

On redirect examination Dr. Bradley said he had personally examined Petitioner multiple times and that her biggest finding was pain behind her lateral malleolus, the bone on the outside of the ankle. He said he did not have her medical records when he first examined Petitioner, that he received them later. He said he relied on the later MRI to confirm his diagnoses, but that his diagnoses were also based upon Petitioner's subjective complaints, Petitioner's statements to him, her physical examination findings, and her x-ray findings. (PX 11 p.34,35,37,38)

Dr. Bradley, when asked about Petitioner's restrictions, said that after her surgery he did not want her doing any kind of work, he wanted her to keep her foot elevated and iced, and for her to stay off of it. He said that remained true until he released her for desk work on May 6, 2021. (PX 11 p.39)

DEPOSITION TESTIMONY OF DR. GEORGE B. HOLMES

Dr. Holmes was deposed as a witness by Respondent on June 22, 2021. Dr. Holmes testified that he was a board certified orthopedic surgeon who had practiced in foot and ankle orthopedics since 1987. He said 10 percent of his practice was performing independent medical examinations and rendering second opinions, with 90 percent of his practice involving the treatment of patients. He said he performed an independent medical examination on Petitioner on February 24, 2021. On that date he took a history from Petitioner of her having had two or three boxes fall on her right foot. She advised him of the treatment she had received, noting that Dr. Elliott had recommended a nerve test which had not been performed as of the time he saw her. He said he reviewed medical records which he summarized in his report. (RX 9 p.5,6,8-13)

Dr. Holmes testified that he performed a physical examination upon Petitioner, found no atrophy in her legs, no ligamentous instability in her ankle, made marks on her foot and ankle where she voiced pain, and then photographed the foot and ankle. He had x-rays taken which he deemed normal. He reviewed Petitioner's MRI report which noted abnormal signal in the posterior talofibular ligament which the radiologist said raised a question of a partial tear of the posterior talofibular ligament. He said that report was consistent with part, but not all, of his examination. He said if the ligament had been torn Petitioner would have had instability in the ankle and he found her to have a stable ankle. (RX 9 p.13-15)

Dr. Holmes said his diagnosis for Petitioner was that she had sustained a contusion as a result of the boxes falling on her foot. He said he did not find any evidence of instability of the ankle. He did not believe the accident had aggravated any pre-existing injury. He did not think Petitioner had any pre-existing medical conditions which were relevant with this case. He felt that other than the cortisone injection Petitioner had received, her treatment, including the boot, physical therapy and MRI, had been necessary and reasonable, and was causally related to her work accident. He said he did not believe she needed another MRI based on the mechanism of her injury and her prior MRI report. He said he did not find any objective criteria to exclude Petitioner from returning to work without restrictions, that she could work full duty when he saw her. Based on her measurement, x-rays and the MRI report, he felt Petitioner was at maximum medical improvement on February 24, 2001 (sic). (RX 9 p.15-20)

Dr. Holmes testified that he authored a second report after being provided additional medical records. He said the new MRI of February 28, 2021 was reported to show malposition of the peroneus brevis tendon and some chronic issues with the anterior talofibular ligament, which is different from the previously noted posterior talofibular ligament. Those had not been noted in the October 22, 2020 MRI. He said the additional treatment which had ben rendered was causally related to the work accident given Petitioner's subjective complaints. He said he still did not believe Petitioner was a surgical candidate as she had not shown swelling when examined, and that was a good indication for underlying pathology, and the examination did not demonstrate any instability that required surgical intervention, nor did he find any evidence of subluxation or dislocation of the

peritoneal tendons. In addition, Petitioner's pain was beyond the projected pathology on the MRI and the earlier MRI had not shown any pathology which would recommend surgery. (RX 9 p.20-24)

Dr. Holmes said he could not explain the differences in the MRIs as these were relatively significant differences and he felt the more accurate MRI would be the one closest to the injury. He said his opinions from the first report had not changed. (RX 9 p.26,27)

On cross examination Dr. Holmes explained that he saw 90 patients in a week, nine or ten would be independent medical examinations or second opinions. He said a majority of those would be for Respondent, they paid for the examination 70 to 80 percent of the time. (RX 9 p.28,29)

Dr. Holmes said he saw Petitioner on only one occasion, that her history to him was consistent with the medical records he reviewed, that he saw no records from prior to the date of the accident, that the records he reviewed did not indicate Petitioner having any prior problems with her right foot, that she was cooperative in his examination, and he did not indicate in his report that he detected any signs of symptom magnification. He said that to the best of his knowledge Petitioner had not had any symptoms or pain in her right foot or ankle prior to this accident. He said Petitioner's treatment had not alleviated all of her symptoms. (RX 9 p.31-35,42,43)

Dr. Holmes said that while he reviewed the MRI report of October 22, 2020, he was not provided with an actual copy of the MRI study itself and he was not able to confirm the findings by looking at the study with his own eyes. (RX 9 p.39)

Dr. Holmes testified that among the additional medical records he reviewed for the addendum report was an MRI report for a right foot and ankle MRI conducted on February 26, 2021, but it did not appear he had the actual images for this MRI, either. He noted that the first MRI had been about four months prior to the second. He said that different MRI machines can have differences in resolution. He did not know if the October 2020 MRI was of diagnostic quality, nor did he know what the strength of the magnet was for the first MRI. He said he was not familiar with the facility which performed the first MRI and did not know if he had ever reviewed any MRIs from that facility. (RX 9 p.43-46)

When asked to describe what the Siemens 3.0 Tesla close bore scanner used for the second MRI was, Dr. Holmes said he could not do so, that Petitioner attorney would need to take a deposition of a radiologist who could tell him the nuances and differences between the different types of MRIs, he could not and would not do so. He could not say if a 3 Tesla was the highest commercially available MRI. He said he had probably reviewed MRIs from 3 Tesla MRI machines but could not say if they were of higher definition. (RX 9 p.48-50)

Dr. Holmes said the abnormalities noted on the February 26, 2021 MRI, the second MRI, could be painful or painless, they could be caused by trauma or no trauma, that they could be a source of pain. When asked what was meant by the radiologist in that report of a chronic appearing tear, Dr. Holmes said if an MRI eight months after an accident revealed a chronic tear, that was enough time after an accident for a tear to appear chronic. (RX 9 p.51-53)

Dr. Holmes was not aware that Dr. Bradley had performed the surgery he had earlier recommended, and had not been provided with a copy of the operative report of intraoperative photographs, so he was not able to comment on Dr. Bradley's findings. He said the cortisone injection performed by Dr. Elliott could have had

repercussions in Petitioner's ankle, but you could not know whether or not it had done some additional injury. He said it was his opinion, however, that the findings read off of the second MRI report were not in existence in October and did not require surgical intervention. When asked to describe how the cortisone injection could have caused the pathology observed in the February 2021 MRI, Dr. Holmes said that "some other events could have happened between the October MRI and the subsequent MRI of February." He said a steroid injection could cause ligamentous tears, ruptures, tendinopathy "or injury to the tumors (sic?) themselves." When told Dr. Bradley had testified that he would not have administered the cortisone injection, Dr. Holmes said he agreed with Dr. Bradley. He agreed that if the cortisone injection had caused the pathology seen in the 2021 MRI, those findings could be the direct result or the sequella of the prior treatment of Petitioner's work injury. (RX 9 p.53,54,59-62)

Dr. Holmes said he was not aware of any subsequent traumatic accident Petitioner may have had between October of 2020 and February of 2021. (RX 9 p.62)

On redirect examination Dr. Holmes reiterated that he did not consider himself an expert on MRI equipment. (RX 9 p.65)

ARBITATOR'S CREDIBILITY ASSESSMENT

Petitioner's testimony appeared to be straightforward with no effort apparent to mislead or avoid answering questions posed to her by either attorney. Her testimony was consistent with the treating medical records as well as to the examining physician. She did not appear to exaggerate her complaints or abilities at the arbitration hearing. The Arbitrator finds Petitioner to be a credible witness.

CONCLUSIONS OF LAW:

In support of the Arbitrator's decision relating to whether an accident occurred which arose out of and in the course of Petitioner's employment by Respondent on July 8, 2020, and whether Petitioner's current conditions of ill-being, a tear of the peroneus brevis tendon, a tear to the retinaculum, and an unhealed ATFL avulsion, are causally related to the accident of July 8, 2020, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The Arbitrator's credibility assessment is incorporated herein.

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. Industrial Commission, 260 Ill.App.3d 92, 631 N.E.2d 724 (1994). 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. International Harvester v. Industrial Commission, 93 Ill.2d 59, 442 N.E.2d 908 (1982).

Petitioner testified that on July 8, 2020 while unloading boxes at Respondent's facility, a wall of heavy boxes fell, landing on her foot. She said the number of boxes which fell on her was not numerous, but that the box that fell on her foot was a mini fridge that weighed about 119 or 120 pounds. Petitioner said that after the box fell on her right foot it did not feel well, and she limped for a while and asked to leave work early. She was asked to walk it off, but if it still felt bad she could go home. She said her only symptom at that time was pain. No evidence was introduced via testimony or documents contradicting Petitioner's testimony in regard to accident, nor were any records introduced indicating prior right ankle injuries in the days, weeks, months or several years preceding the date of this accident.

Petitioner sought medical treatment in the days following that accident and continued treating with an orthopedist, a podiatrist and another orthopedist until she had surgery on March 24, 2021 to repair the tear of the peroneus brevis tendon, the tear to the retinaculum, and the unhealed ATFL avulsion seen on the MRI of February 26, 2021 and by Dr. Bradley during the surgery. All of Petitioner's histories and complaints to her treating doctors appear to be consistent with the findings on the second MRI, which was performed on a much better 3 Tesla machine with a stronger magnet than the first, and also were consistent with Dr. Bradley's findings at surgery.

Dr. Bradley appeared to have far greater knowledge and observational experience with different levels of MRI machines than Dr. Holmes had, with Dr. Bradley noting that the second MRI, done on the 3 Tesla MRI with a higher quality magnet, a 3 Tesla magnet, was of far greater quality than a 1.5 Tesla MRI , saying it is like the difference between a black-and-white TV and a high-definition TV. He said he subsequently reviewed the images from the 3 Tesla MRI and he said the images were of very good quality. Dr. Holmes did not have any apparent knowledge of the difference in the 1.5 Tesla MRI machine and the 3 Tesla machine, apparently assuming a higher number involved an improvement of some sort, comparing it to computer software versions. He said he had probably reviewed MRIs from 3 Tesla MRI machines but could not say if they were of higher definition. More importantly, however, Dr. Holmes never looked at the MRI images from either the first or the second MRIs. Instead he relied on the reports of the radiologists, while noting he did not know the radiologists or, it would seem, their experience or the quality of their work.

Dr. Holmes did acknowledge that the second MRI showed abnormalities not noted on the first MRI of about four months earlier, but he then speculated that a cortisone injection by Dr. Elliott, the podiatrist, could have caused those changes. Liability under the Illinois Workers' Compensation Act cannot be premised on speculation or conjecture, but must be based on facts contained in the record. *Deichmiller v. Industrial Commission*, 147 Ill. App. 3d 66,497 N.E. 2d 451 (1986).

It should be noted that as of the date he examined Petitioner, Dr. Holmes felt that other than the cortisone injection Petitioner had received, her treatment, including the boot, physical therapy and MRI, had been necessary and reasonable, and was causally related to her work accident. Dr. Holmes also agreed that if the cortisone injection had caused the pathology seen in the 2021 MRI, those findings could be the direct result or the sequella of the prior treatment of Petitioner's work injury. Dr. Holmes said he was not aware of any subsequent traumatic accident Petitioner may have had between October of 2020 and February of 2021. Dr. Bradley noted that the cortisone injection was to the front of the ankle joint and the area surgically repaired was

in the back of the joint. Dr. Holmes did not address how a cortisone shot in the front of the ankle could cause the defects in the rear of the ankle joint or explain what, other than the accident, would have caused Petitioner's ankle to be immediately painful and continue to be symptomatic after the accident until the time of Dr. Bradley's surgical repair.

Dr. Bradley said Petitioner did suffer a contusion as diagnosed by Dr. Holmes, but she suffered other injuries as well, as seen on the second MRI. He said that while Petitioner's ankle did not appear unstable when he was examining her, during the surgery, when she was unconscious, the ankle seemed looser, but not necessarily unstable, and during surgery he had been totally unable to find the ATFL, so one of her stabilizers was definitely torn. He said surgery had been indicated not due to instability but due to pain which was related to the peroneal tendon which appeared to be torn on physical examination and was found to be torn on the MRI. He said he did not feel the injection Petitioner had previously received to the ankle could have caused Petitioner's condition of ill-being, that it could cause changes to ligaments, even some tearing, but it would not cause a longitudinal tear such as the one Petitioner had. He noted that the cortisone shot was given in the front of the ankle, and the surgery he performed was in a very different area, the back side of the ankle, behind the bone, so the cortisone shot could not have done anything to the peroneal tendon. Dr. Bradley testified that the medical treatment he provided, including the surgery, was for treatment of injuries caused in the July 8, 2020 accident.

Dr. Bradley did not think Petitioner would have improved without surgery, as she had undergone seven months of conservative care and was not getting better, and that after the surgery Petitioner's symptoms decreased, she improved, and she was eventually released from care with no restrictions.

The Arbitrator finds that Petitioner suffered an accident on July 8, 2020, which arose out of and in the course of his employment by Respondent.

The Arbitrator further finds that Petitioner's medical condition, a tear of the peroneus brevis tendon, a tear to the retinaculum, and an unhealed ATFL avulsion, all of which were surgically repaired by Dr. Bradley, are causally related to the accident of July 8, 2020. This finding is based upon the medical records summarized above and the testimony and opinions of both Dr. Sullivan, who had noted his belief that the ATFL was ruptured on October 12, 2020, and Dr. Bradley, who had actual surgical viewing of the injured structures as well as multiple examinations before and after surgery. The opinions of Dr. Holmes are not adopted as his one examination did not include actual viewings of the MRI images or knowledge of the surgical findings of March 24, 2021, or knowledge of Petitioner's post-surgical care and recovery following that surgery. This finding is also supported by the chain-of events, Petitioner's unrebutted testimony to a pre-accident state of asymptomatic good health in the right ankle and foot, her having an accident on July 8, 2020, and her immediately after said accident having sudden pain, immediate medical treatment and new diagnoses based on diagnostic testing and physical examinations, as well as surgical findings. Certi-Serve, Inc. vs. Industrial Commission, 101 Ill.2d 236,244 (1984).

In support of the Arbitrator's decision relating to what temporary benefits Petitioner is entitled to as a result of the accident of July 8, 2020, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The findings in regard to accident and causal connection, above, are incorporated herein.

Petitioner claims entitlement to temporary total disability from July 9, 2020, through July 15, 2020, a period of 6/7 weeks, and from March 24, 2021, through June 21, 2021.ne 10, 2021, a period of 11 2/7 weeks. Petitioner testified that she was initially taken off work on July 9, 2020, after which she was released by Dr. Sullivan at the Decatur Orthopedic Center. (PX 3 p.14,15; PX 4 p.3,4) Petitioner's second period of disability arose as a result of her surgery done on March 24, 2021, from which she was convalescent until Dr. Bradley's released her to return to work full, unrestricted work on June 10, 2021. (PX8 p.20)

The Arbitrator finds that Petitioner was temporarily totally disabled as a result of the accident from July 9, 2020 through July 15, 2020 and from March 24, 2021 through June 10, 2021, a period of 12 1/7 weeks. This finding is based upon the treating medical records of Decatur Memorial Hospital and of Dr. Bradley as well as the testimony of Dr. Bradley. Respondent shall have credit for $105.72 in temporary total disability paid.

In support of the Arbitrator's decision relating to whether the medical services that were provided to Petitioner were reasonable and necessary as a result of the Accident of July 8, 2020, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The findings in regard to accident and causal connection, above, are incorporated herein.

The medical records and the testimony of Dr. Bradley support the Petitioner's conservative treatment and diagnostic studies Petitioner immediately received following the accident. Much of Dr. Holmes's testimony also supported causal connection and reasonableness and necessity of that treatment, with the exception of the cortisone injection. The principal dispute regarding reasonableness and necessity of medical care stemmed from Dr. Holmes' opinion that Petitioner was not a surgical candidate and did not require additional diagnostic studies following the initial MRI. As noted above, the second 3 Tesla MRI was of higher definition that the earlier MRI and there was no evidence indicating any intervening accident or event which would have caused the second MRI and surgical findings.

The Arbitrator finds that all of the bills introduced into evidence by Petitioner in Petitioner Exhibit 1 are related to Petitioner's right ankle injuries, are reasonable, and were necessitated to treat or cure Petitioner's injuries suffered in this accident, and are to be paid pursuant to the Medical Fee Schedule. This finding is based upon the treating medical records introduced into evidence and the testimony of Petitioner and Dr.Bradley. Respondent is awarded credit for $10,267.65 in medical benefits paid by its group insurer pursuant to Section 8(j) of the Act.

In support of the Arbitrator's decision relating to the nature and extent of the injury the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The findings in regard to accident, causal connection, temporary total disability, and medical, above, are incorporated herein.

As the accident occurred after September 1, 2011, the nature and extent of the injury must be determined through the five-factor test set out in §8.1b(b) of the Act.

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

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that that Petitioner was employed as a package handler at the time of the accident and that she *is* able to return to work in her prior capacity as a result of said injury. The Arbitrator notes Petitioner no longer works for Respondent but is working for Aramark, work which also involves unloading boxes, but not as many as was required when she worked for Respondent. Because of her apparent ability to perform work of the same general physical nature as she had performed at the time of this accident, though she testified to having some difficulties lifting from the floor, climbing stairs or walking backwards while cleaning, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 24 years old at the time of the accident. Because Petitioner must live and work with her injury and the resulting disability for her numerous remaining years of expected work-life, and her having to deal with some continuing complaints and limitations during that period of time, 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 that as of the date of arbitration Petitioner said she was earning two cents less per hour than she would have earned in her old job with Respondent. Because of the earnings being almost equal, the Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner's complaints as of the date of arbitration were of problems at work lifting objects

from the floor, climbing stairs, walking backwards to clean, and difficulty opening heavy doors. Because of this injury Petitioner said she had difficulties while playing with her children and getting household chores done. Petitioner testified to her ankle reacting to weather changes and her experiencing stabbing pains and numbness in the ankle. She said this was intermittent and that she took pain medication for it when needed. She said long standing or walking caused her pain. The Arbitrator notes that the medical records indicate objective structural damage to Petitioner's right ankle, a tear of the peroneus brevis tendon, a tear to the retinaculum, and an unhealed ATFL avulsion, all of which had to be surgically repaired. When seen by Dr. Bradley on October 25, 2021, Petitioner was complaining of right lateral ankle pain which would shoot into her shin and felt as though she was getting a Charlie horse in her calf. She also reported that her foot was swelling. Dr. Bradley found some tenderness over Petitioner's incision, but otherwise her physical examination was normal. Dr. Bradley felt that overall Petitioner was doing exceptionally well from her surgery, with no instability in her ankle and the ability to walk without a limp. He said she was probably suffering from some scar tissue postoperatively and with the change in seasons. He prescribed non-steroidal anti-inflammatory cream and some diclofenac oral medication. When last seen on January 24, 2022, Petitioner told Dr. Bradley she was slightly improved, though her stability and pain level were greatly improved. Her physical examination showed no abnormalities, and Dr. Bradley told Petitioner to continue her home exercise program to maintain motion and strength. Because of the objective physical injuries which were surgically repaired, the ongoing, though minor complaints, the recommendation for a continued home exercise program to maintain motion and strength, and Petitioner's being released to full duty work with no restrictions, the Arbitrator therefore gives *moderate* 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 the right foot pursuant to §8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC020125
Case Name	Maribel Bautista v. McDonald's
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0010
Number of Pages of Decision	25
Decision Issued By	Stephen Mathis, Commissioner, Deborah Baker, Commissioner

Petitioner Attorney	Christine David
Respondent Attorney	James Toomey

DATE FILED: 1/9/2023

/s/Stephen Mathis, Commissioner

Signature

DISSENT: /s/Deborah Baker, 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

Maribel Bautista,

Petitioner,

vs. NO. 15WC 20125

McDonald's,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue(s) of accident, medical expenses, prospective medical care, causal connection, 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 21, 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 shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

No bond is required for the 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.

January 9, 2023

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

SJM/sj
o-11/9/2022
44

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

DISSENT

I disagree with the majority's decision to affirm the Arbitrator's denial of Petitioner's claim. In my view, Petitioner proved by a preponderance of the evidence that she sustained compensable work-related repetitive trauma injuries to her shoulders and neck, which manifested on April 14, 2015. The medical records, diagnostic testing, and expert opinions all support Petitioner's claim.

To address Petitioner's credibility, which appears to be the primary reason the Arbitrator denied Petitioner's claim, I note that the evidence contradicts the Arbitrator's adverse credibility assessment and negative inferences. *See R & D Thiel v. Illinois Workers' Compensation Commission*, 398 Ill. App. 3d 858, 866 (1st Dist. 2010) (When 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 making an adverse credibility determination, the Decision of the Arbitrator states Dr. Martinez's notes indicate Petitioner advised him of "the 2012 motor vehicle accident ***and*** her claim occupationally-related repetitive neck movements [sic]." The Decision of the Arbitrator also states that "[c]ontrary to her testimony she reported no specific onset." It should be clarified that on April 14, 2015, Petitioner sought care from Dr. Martinez and he noted:

> Patient to be evaluated for neck pain. The location of discomfort is on the right side. It radiates to the right subscapular region, right shoulder, and right arm. The pain is characterized as severe, intermittent, and pulling. She cannot recall the time of

> initial onset. ***The precipitating event seems to have been occupationally-related repetitive neck movements and also hand MVA about 3 yrs ago.*** (Emphasis added)

The April 14, 2015 note indicates that Petitioner was truthful in reporting that she had neck symptoms following a motor vehicle accident in 2012 as well as neck symptoms associated with her work activities for Respondent three years after the motor vehicle accident. Further, the significance of Petitioner being unable to recall a time of "initial onset" is unclear as Petitioner is claiming a repetitive trauma injury and there is no requirement, nor is it usually possible, for injured workers to identify a specific, initial onset of a repetitive use injury.

The courts contemplated this very point when defining the term "manifestation date." The "manifestation date" is "the date on which both *the fact of the injury* and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." See *White v. Illinois Workers' Compensation Commission*, 374 Ill. App. 3d 907, 912 (4th Dist. 2007), citing *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 530 (1987) (emphasis added).

Our supreme court in *Peoria County Belwood Nursing Home* (*Belwood*) found Professor Larson's workers' compensation treatise to be instructive:

> The practical problem of fixing a specific date for the accident has generally been handled by saying simply that the date of accident is the date on which disability manifests itself. Thus, in [*Ptak v. General Electric Co.*, 13 N.J. Super. 294, 80 A.2d 337 (1951)], the date of a gradually acquired [back] strain was deemed to be the first moment the pain made it impossible to continue work, and in [*Di Maria v. Curtiss-Wright Corp.*, 23 N.J. Misc. 374, 44 A.2d 688 (1945)], the date of accident for gradual loss of use of the hands was held to be the date on which this development finally prevented claimant from performing his work. However, for certain purposes the date of accident may be identified with the onset of pain occasioning medical attention, although the effect of the pain may have been merely to cause difficulty in working and not complete inability to work.

3 L. Larson, Larson's Workers' Compensation Law § 50.05, at 50-11-50-12 (2005).

In adopting Professor Larson's rule, our supreme court established that the date of an accidental injury in a repetitive-trauma compensation case is the date on which the injury "manifests itself." *Belwood*, 115 Ill. 2d at 530. Again, "manifests itself" means the date on which both the fact of the injury, *not the specific onset of the injury*, and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. *Belwood*, 115 Ill. 2d at 531. In this case, Petitioner proved a manifestation date of April 14, 2015 as this was the date that the fact of her injury (neck and shoulder pain), and the causal relationship of the injury became apparent to Petitioner.

Regarding the 2012 motor vehicle accident, the medical records show that on April 14, 2015, Petitioner presented to Dr. Martinez with neck pain that radiated into the right shoulder and Petitioner truthfully told Dr. Martinez about the 2012 motor vehicle accident as well as her repetitive work duties. Although it is documented that Petitioner reported both the 2012 motor vehicle accident and her repetitive work duties to Dr. Martinez, Dr. Martinez's subsequent notes omit Petitioner's reference to her work duties as a potential aggravating factor in her injuries. Of note, the April 14, 2015 record also documents Petitioner's ethnicity incorrectly. I find that the earliest medical record, the April 14, 2015 note, most accurately documents the fact that Petitioner's neck and shoulder symptoms, while they may have begun in 2012 and she received treatment for those symptoms through May 2013, dissipated enough for her to resume working full duty until her symptoms were aggravated in 2015 by her work duties.

Further, Petitioner showed truthfulness in admitting that she did not tell Dr. Hennessey and Respondent's section 12 examining physicians about the 2012 motor vehicle accident. While providing incorrect information and denying previous injuries to physicians is never justified, in this case, the impact of the omission was ameliorated by the fact that after Dr. Hennessey learned about the 2012 motor vehicle accident and reviewed records from that accident, his causal connection opinions did not change. In fact, Dr. Hennessey testified during his second deposition that none of the medical records for treatment following the 2012 motor vehicle accident changed his mind, but instead, strengthened his opinions.

I also find that while Petitioner displayed general confusion during the arbitration hearing, both during direct examination and cross examination, her testimony did not contradict the medical records. Additionally, Petitioner's description of her job duties was never contradicted, and she always mentioned the relevant parts of her job, even if she did not fully state every single job duty every time she was questioned about them. Further, I find that her testimony with respect to the number of cars that she served while working the drive-through window for Respondent was unrebutted and was reasonable considering she worked the morning shift of a fast-food restaurant where single order items such as coffee may be more common.

With respect to causation, I find that Petitioner's work duties were ***a*** cause of her neck and shoulder injuries. It is well established that an accident need not be the sole or primary cause—as long as employment is ***a*** cause—of a claimant's condition. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 205 (2003). Furthermore, an employer takes its employees as it finds them (*St. Elizabeth's Hospital v. Illinois Workers' Compensation Commission*, 371 Ill. App. 3d 882, 888 (5th Dist. 2007)), and a claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d 30, 36 (1982). As the Appellate Court held in *Schroeder v. Illinois Workers' Compensation Commission*, 2017 IL App (4th) 160192WC, the inquiry focuses on whether there has been a deterioration in the claimant's condition:

> That is, if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the

> intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been. *Schroeder* at ¶ 28.

Based on the above legal standard, I find Petitioner has proved that her current neck and shoulder conditions are causally related to her work duties for Respondent. Dr. Hennessey credibly and persuasively opined that the 2013 MRI showed no evidence of a labral tear. However, the 2016 MRI showed a labral tear with a paralabral cyst. Dr. Hennessey noted that Dr. Verma, one of Respondent's section 12 examining physicians, had no explanation for the labral tear and cyst that appeared on the 2016 MRI, which were not found on the 2013 MRI. If Petitioner's current condition was not related to her work duties, then there is no explanation for how the labral tear came to be. Dr. Hennessey also emphasized that Petitioner's neck condition is separate from the condition in her right shoulder and he has repeatedly ordered a right shoulder MRI with a 1.5 Tesla scanner but it has never been approved.

Finally, Petitioner's testimony that she had no choice but to work despite her work restrictions because she had no income and no insurance was credible and unrebutted.

For the reasons set forth above, I respectfully dissent.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC020125
Case Name	BAUTISTA, MARIBEL v. McDONALD'S
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Christine David
Respondent Attorney	James Toomey

DATE FILED: 1/21/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 19, 2022 0.37%

/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)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Maribel Bautista
Employee/Petitioner

v.

McDonalds
Employer/Respondent

Case # **15** WC **20125**

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 **October 28, 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 14, 2015**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did 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 $**12,269.99**; the average weekly wage was $**340.83**.

On the date of accident, Petitioner was **31** years of age, ***single*** with **1** dependent child.

Respondent ***has*** 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 paid $**2,247.39** for other benefits.

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

ORDER

BECAUSE PETITIONER FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT SHE SUSTAINED ACCIDENTAL INJURIES ARISING OUT OF AND IN THE COURSE OF HER EMPLOYMENT WITH RESPONDENT ON APRIL 14, 2015 AND FURTHER FAILED TO PROVE THAT ANY CONDITION OF ILL-BEING WAS CAUSALLY CONNECTED TO HER EMPLOYMENT WITH RESPONDENT, PETITIONER'S CLAIM FOR COMPENSATION IS HEREBY DENIED.

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

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

/s/ Stephen J. Friedman JANUARY 21, 2022
Signature of Arbitrator

ICArbDec19(b)

Statement of Facts

Petitioner Maribel Bautista testified she is currently married and working for Armanetti Liquors in Addison, Illinois. She began working there in August 2018 as a cashier. She works Monday through Friday, 35 hours per week. In April 2014, she was working for Respondent McDonalds in Addison. She began working there in the middle of 2010. She was hired as a cashier working at the front counter. Her duties would include taking orders, making coffee, giving customers their food, making sure the counter is clean. Sometimes she would be sent to the lobby to make clean up. The cash register was located at chest height. She did that position for a year and then was drive-thru window cashier. She worked the drive-thru on a consistent basis from 2011 to the date of accident alleged. Her job title was crew trainer. She would spend about two hours training new employees. She worked 30 to 35 hours per week. Her shift was 6 AM to 1 PM. It was very busy. She testified she suffered a repetitive injury to her neck and shoulder. She got one half-hour break per day.

Petitioner testified she had a cash register and a monitor for taking orders. She testified she would stand the entire time at work. She would punch orders in on the screen to her right above shoulder level. The cash register was located to her left a little above shoulder level. The machine to swipe credit cards was to her right, a little lower that the order screen. When the customer came in, she would take the order on the touch screen and send it to the cash register. Once the car pulled in, she would greet the customer, give him his total. She would then open the window with her right hand, get the money or credit card, swipe it, or get change. She did all of these duties using her dominant right hand. She would turn her head all day. She testified she handled 150 to 180 cars per hour.

She testified that on April 14, 2015, about 2 hours before the shift ended, she had a sharp pain in her shoulder and then on her neck before her shift ended. She testifies she finished her shift. She testified she told her manager that she had a sharp pain on her neck going through her right shoulder and something was pulling her and told him it was because the drive-thru window being repetitive movement. She testified she told him she was going to her doctor. Petitioner testified she went home to clean up and go to the doctor. She required help to get off her sweater because she could not lift her right arm. She saw her primary doctor, Dr. Ricardo Martinez on the day of the accident. She testified she told him she was having a very sharp pain going through her neck and right shoulder because of the repetitive movement at the drive-thru window she was working for Respondent. Dr. Ricardo Martinez has been her primary care doctor for 7 or 8 years.

On April 14, 2015, Petitioner saw Dr. Martinez (PX 2, RX 4). Petitioner reported neck pain on the right side that radiates to the right subscapular region, right shoulder, and right arm. She characterized the pain as severe, intermittent, and pulling. She could not recall the time of initial onset. Dr. Martinez notes that the "precipitating event seems to have been occupationally-related repetitive neck movements and also had an MVA three years ago." Medical history is pertinent for prior neck injury. Petitioner has sustained an injury and is here for medical attention. The accident occurred on 05/2012. She was a restrained passenger. Location of injury pertained to the right shoulder and chest pain. Dr. Martinez assessed her with neck pain and shoulder pain, referred her to physical therapy, and prescribed Ibuprofen and Skelaxin. Dr. Martinez's addendum on April 17, 2015 stated Toradol 30 mg. Dr. Martinez kept her off work until the next visit on April 28, 2014.

Petitioner testified that she had a prior motor vehicle accident on May 28, 2012. She was working at the drive thru at Respondent at that time. She was a passenger in a car that was struck on the right side. On June 25, 2012, Dr. Yasmeen Ansari took Petitioner off work for a day (RX 16). Petitioner presented to the emergency department of Elmhurst Memorial Hospital on June 29, 2012 reporting right chest pain and right shoulder pain

(RX 16). She gave a history of a motor vehicle collision one month earlier, and that she has experienced pain about her joints intermittently. On examination, Petitioner was found to have full range of motion of the extremities but pain with palpation and range of motion about the anterior right shoulder, and no pain with palpation was appreciated in the cervical or thoracic spine. Petitioner had full range of motion (RX 16). On July 9, 2020, Petitioner saw Dr. Ansari complaining of body aches and headaches. She reported aching right arm pain without radiation after a motor vehicle accident. The pain was aggravated by lifting. T there were no relieving factors. She complained of pain in the right upper clavicle area with pain radiating down to the right arm which felt weak at times. Petitioner reported she was unable to lift her arm above her head. She complained of headache at times. Dr. Ansari indicated the right shoulder had anterior shoulder tenderness with moderately reduced range of motion. She diagnosed right shoulder pain and recommended an MRI (RX 16). On July 19, 2012, Petitioner reported severe neck pain which had not changed. The pain was located in the right shoulder with radiation with aggravating factors including exertion and lifting. She reported she had attempted NSAIDs and physical therapy. Physical therapy helped but then would get worse again when she returned to work. She reported she was attempting to do light duty, but even light duty was aggravating her arm and neck. Dr. Ansari authored an off-work note for two weeks with a return to work on August 2, 2012. On August 2, 2012, Dr. Ansari provided work restrictions of no lifting more than 10 pounds and no reaching or lifting above shoulder level (RX 16).

On August 1, 2012, Petitioner presented to Dr. Theodore J. Suchy, with a history of a motor vehicle accident as a restrained passenger when a car struck her vehicle on the passenger side (RX 8). Petitioner's handwritten intake form notes problems in her right shoulder and neck from the May 28, 2012 accident. She reported a course of physical therapy and that the shoulder pain persisted to the point that she had to quit working at McDonald's as a Crew Trainer because of right shoulder pain (RX 8). Petitioner denied a prior history of right shoulder problems and reported occasional numbness going down her arm. Dr. Suchy noted acute paravertebral muscle spasms of the cervical spine. He noted normal passive range of motion of the right shoulder, but that Petitioner was resistant to actively moving her right shoulder. Dr. Suchy reviewed an MRI which showed no rotator cuff tear. He diagnosed traumatic rotator cuff tendinitis of the right shoulder. He expressed concern because Petitioner was really guarding her arm, and he recommended that she use her arm as there was no objective finding that could prevent her from using it. He performed an injection into the subacromial space and recommended a different course of therapy. Dr. Suchy indicated he did not have a problem with Petitioner returning to work as a Crew Trainer at McDonald's, but he restricted her to no shoulder level or above work with the right arm and no lifting more than 10 pounds (RX 8).

Petitioner was seen for a PT outpatient evaluation on August 2, 2012. She reported she could not carry a coffee pot and food at the drive thru. She feels worse since the shot. Shoulder and neck pain are rated 7/10. The August 23, 2012 therapy note states she cannot do full duty work at the drive thru. She is limited to working just using the touch screen. She cannot reach overhead or behind her back. She reports she is unable to do repetitive upper extremity activity (RX 8).

Petitioner returned to Dr. Suchy on August 29, 2012, complaining of continued pain in her right shoulder. She complained of pain over the clavicle and indicated she was working but not her usual hours. She reported pain that was significant with any activities, especially at shoulder level or above. Dr. Suchy indicated he could not explain why she was having persistent pain in the right shoulder. She claimed that her therapist told her not to use the shoulder. Dr. Suchy indicated he was concerned she could develop a reflex sympathetic dystrophy and indicated Petitioner did not have an operative problem. He recommended she see Dr. Hudoba for a pain evaluation. He stopped physical therapy and continued the same work restrictions (RX 8).

On August 30, 2012, Petitioner saw Chiropractor David Cavazos complaining of pain after a motor vehicle accident. Petitioner reported that she had her right arm hanging out the open passenger window when the accident occurred. Chiropractor Cavazos indicated a right shoulder MRI performed July 10, 2012 revealed mild degenerative changes of the AC joint and tendinopathy of the long head of the biceps and subscapularis strain. Arbitrator notes this study is not within the medical treatment records entered into evidence. Dr. Cavazos found mildly positive Speed's test and moderate hypertonicity through the right upper trapezius into the neck on palpation. He diagnosed impingement syndrome, tendinopathy of the long head of the biceps, sprain/strain of the subscapularis, cervical intersegmental dysfunction. He opined the above conditions are most likely due to the motor vehicle accident. He recommended a course of chiropractic manipulation/therapy, which Petitioner began on August 30, 2012 (RX 9).

During that course of care, Petitioner presented to Dr. Ossama Abdellatif at Pro-clinics on November 29, 2012 (RX 10). His history states that the car she was in on May 28, 2012 flipped due to impact, and that Petitioner had immediate right shoulder pain and right cervical spine pain which has been increasing and radiating to the right side. She also complained of left shoulder pain due to physical therapy not helping. Dr. Abdellatif recommended an MRI of the cervical spine and EMG with consideration of three cervical epidural steroid injections. He also diagnosed cervical facet syndrome and recommended MRIs of the shoulders with an orthopedic consult. He recommended continued physical therapy and medication (RX 10).

Petitioner continued to treat with Chiropractor Cavazos through February 13, 2013. She continued to complain of constant right shoulder pain and indicated her neck felt moderately better when she did not work the drive-through line. Chiropractor Cavazos recommended light duty with minimizing repetitive rotation of her head such as when working the drive-through. He states Petitioner is to see Dr. Hassan and continue medically necessary care (RX 9).

On March 19, 2013, Petitioner presented to Dr. Gregory Markarian of Orthopedic Associates of Naperville for right shoulder pain (PX 8, RX 11). She reported being post right shoulder rotator cuff injury in May 2012, when she sustained a right shoulder and cervical spine injury in a motor vehicle accident. Dr. Markarian notes a cervical MRI which shows disc desiccation at C2, C3, and C4. She had a closed MRI of the right shoulder on July 10, 2012, which showed biceps tendinosis and supraspinatus tendonitis with some subscapularis strain. His physical examination noted restricted cervical range of motion, pain on axial loading, strength weakness secondary to pain, and significant paravertebral spasm. Shoulder exam reported pain in the impingement arc of the right shoulder. He noted she could achieve 180° of forward elevation, 180° of abduction, 90° of external rotation, and 90° of internal rotation. He found tenderness over the AC joint and the long head of the biceps with a positive Hawkin's maneuver, positive relocation sign, positive apprehension sign. and positive O'Brien's test. Dr. Markarian diagnosed early spondylosis of C2–3, C3-4, and C5-6, and a possible labral tear with rotator cuff tendinosis and biceps tendinosis as well. He recommended an MRI arthrogram to rule out any labral pathology. He also recommended a follow-up with a neurosurgeon relative to the cervical spine. Dr. Markarian noted Petitioner has been off work since March 14, 2013 and took her off work through April 16, 2013 (PX 8, RX 11).

On April 2, 2013, Petitioner presented to Bloomingdale Open MRI for an MRI of the right shoulder with and without contrast. The impression was irregular contour of the superior aspect of the subscapularis associated with the junction of the middle glenohumeral ligament and the superior glenohumeral ligament. While the

finding could be anatomic, a partial thickness tear could also have such an appearance. The glenoid labrum and glenohumeral ligaments were intact (RX 12).

On April 16, 2013, Petitioner reported 8/10 right shoulder pain which was sharp. Dr. Markarian recommended a course of physical therapy for her shoulder and neck. He released Petitioner for sedentary work. On May 21, 2013, Dr. Markarian indicated that Petitioner may have a labral tear on exam. She complained of pain with forward elevation, which would indicate possible partial thickness rotator cuff tear. He recommended a follow-up in one week so he could review the MRI imaging. He maintained the same work status of sedentary work of 10 pounds lifting. On June 4, 2013, Petitioner was reporting 5/10 shoulder pain. Dr. Markarian interpreted the MR arthrogram of the right shoulder as showing no evidence of labral pathology. His assessment was cervicalgia, partial tear of the rotator cuff, bicipital tenosynovitis. Dr. Markarian recommended additional physical therapy. Petitioner was scheduled for follow up visit on July 2, 2013 and continued on modified sedentary duty (RX 11). Petitioner testified she received a settlement in the auto accident in late 2013 or early 2014. Petitioner had no further treatment until the April 14, 2015 visit to Dr. Martinez.

After seeing Dr. Martinez on April 14, 2015, Petitioner saw Joel Bolton DC on April 17, 2015 and April 24, 2015 complaining of neck and right shoulder pain. She reported the onset of symptoms was April 14, 2015. Dr. Bolton ordered an MRI of the cervical spine (PX 6, RX5). Petitioner had a cervical MRI on April 27, 2015. The impression was mild foraminal disc bulging bilaterally at C5-6 with mild narrowing. No herniations are demonstrated. Petitioner returned to Dr. Martinez on April 28, 2015. Dr. Martinez history is Petitioner sustained an injury due to an accident on 5/2012. The precipitating event was a motor vehicle accident. Dr. Martinez notes Petitioner is going through physical therapy, reports no improvement and recently had an MRI of the cervical neck which showed mild bulging disc without herniation. Dr. Martinez diagnosed Petitioner with shoulder and neck pain. He kept her off work and referred her to Dr. Ryon Hennessy. The registration form dated April 27, 2015 notes the date of accident as being 4/14/2015 (PX 2, RX 4).

Petitioner saw Dr. Ryon Hennessy on May 4, 2015, complaining of neck and right shoulder pain after a work accident on April 15, 2015 (PX 3). She reported being a cashier and assistant manager at McDonald's. There was no significant trauma. She was “just by the drive-through window and all of a sudden developed neck pain with right arm radiculopathy." She denied any prior problems relative to her neck and right shoulder (PX 3). Petitioner testified she was not truthful with him because she was afraid that he would relate her condition to the car accident, and she did not believe there was a connection. On May 4, 2015, she reported that chiropractic therapy was not helping and that she was advised to see Dr. Hennessy for another opinion. Dr. Hennessy’s physical examination noted 5/5 strength, no defect in the shoulder or pectoralis. She moves the shoulder more gingerly. He noted tenderness in the right trapezius area and neck as well as the right pectoralis. He noted a little bit of pain at the rotator cuff insertion. He indicated that cervical range of motion was decreased about 60% in all directions. Dr. Hennessy stated the MRI of the cervical spine appeared essentially normal. C5-6 may have some minor bulging but that the disc height was normal. C5-6 could be an acute issue, but Petitioner could also have an intrinsic right shoulder problem. He recommended a course of physical therapy and a Medrol dosepak with Prilosec. Should Petitioner not improve, he would recommend a right shoulder MRI (PX 3). On May 18, 2015, Petitioner reported that the Medrol dosepak provided a little bit of help. She indicated that she only attended four sessions of physical therapy before her insurance denied any further appointments. PA Masterson noted flexion of the right shoulder of only 115°. Internal rotation resulted in her thumb touching her lumbar spine. He noted a positive Speed’s tests and indicated Petitioner was very tender to palpation on the bicep’s tendon in the bicipital groove. He recommended continued physical therapy as well as 600 mg of Ibuprofen. He maintained an off-work status (PX 3).

Petitioner returned to Dr. Bolton for chiropractic care from May 15, 2015 through July 13, 2016. His notes reflect no significant change in her condition during his care (PX 6).

On June 15, 2015, Petitioner received injection of Kenalog and Bupivacaine. PA Masterson recommended continued therapy at the chiropractor's office (PX 3). On July 27, 2015, Petitioner returned to Dr. Hennessy, reporting that she was essentially the same with right shoulder pain going to the pectoralis and right cervical radiculopathy seemingly in the right C6 dermatome to the second and third fingers. Dr. Hennessy indicated that an MRI of the right shoulder had not been approved by workers' compensation. He documented abduction and flexion of the right shoulder at only 90°, and cervical range of motion decreased at 50% of normal. Dr. Hennessy again recommended an MRI of the right shoulder. He kept Petitioner off work and to continue therapy. He was waiting for an IME (PX 3). On August 24, 2015, PA Masterson indicated that Petitioner was to present for an IME on September 9, 2015. He recommended continued off-work status and continued physical therapy (PX 3).

Petitioner was seen for a Section 12 examination by Dr. Wellington Hsu on September 9, 2015 (RX 3, Ex 2). She did not report any prior history. Petitioner testified that she did not tell him about the prior injuries because they just wanted to relate it to the car accident, and my problem was working, the overuse and continuous repetitive movement of my neck and my shoulder. Dr. Hsu noted the April 27, 2015 cervical MRI noted mild neural foraminal disc bulging at C5-C6 with no evidence of herniation or other significant pathology. He opined that no work injury occurred, but that Petitioner suffered symptoms from cervical radiculopathy and right sided shoulder and neck pain as a result of the manifestation of a preexisting condition. There is no evidence that there was any work-related activity caused her symptoms. He stated her symptoms were not related to the prior motor vehicle accident but related to age and genetic related preexisting conditions (RX 3, Ex 2).

On October 12, 2015, Dr. Hennessy reviewed the IME report from Dr. Wellington Hsu. Dr. Hennessy indicated that there was definitely a causal relationship with some aggravation of the pre-existing C5-6 level as well as the tendinopathy and tendinitis of the right shoulder as Petitioner never sought treatment for these body parts before the work injury of April 2015. He stated Petitioner was handling 180 cards per hour as well as swiping card. He opined that this is a capable cause of aggravating a previously asymptomatic degenerative disc disease as well as causing tendinitis or tendinopathy. He states that she had no prior neck pain, cervical radiculopathy, or right shoulder pain prior to April 2015. She never sought treatment for these areas of her body. On examination, Dr. Hennessy noted right shoulder abduction to 100° with positive impingement signs and a questionably positive biceps sign. Dr. Hennessy recommended a right shoulder MRI (PX 3). The October 14, 2015, right shoulder MRI impression was subscapularis tendinosis, finding suspicious for a tear involving the posterior superior labrum with an adjacent para labral cyst. The radiologist interpreted a para labral cyst, mild subacromial/subdeltoid bursitis, and cystic changes within the posterior aspect of the greater tuberosity (PX 5, RX 6).

On October 19, 2015, Dr. Hennessy indicated he had recommended continued therapy and a pain center evaluation for the cervical spine. He maintained an off-work restriction. With regard to the right shoulder, Dr. Hennessy indicated Petitioner's labral signs were positive more than the impingement signs. Dr. Hennessy reviewed the right shoulder MRI and appreciated a subchondral cyst at its insertion site. There was a question of a posterior/superior labral tear and recommended an MRI arthrogram in accordance with the radiologist's recommendation. He advised Petitioner that her shoulder likely will require surgery (PX 3).

Petitioner was seen for a Section 12 examination by Dr. Verma on March 14, 2016 (RX 1, Ex 2). Dr. Verma took a history of the April 14, 2015 injury. Petitioner reported she believes that the pain was a result of repetitive use turning her neck to the side to interact with customers as well as reaching out to provide food and collect money. Dr. Verma reviewed records and diagnostics. He noted the October 2015 MRI shows some mild rotator cuff tendinosis, but no evidence of acute injury or trauma. He did not see discrete evidence of a labral tear. His diagnosis was atypical chronic right shoulder, neck, and upper extremity pain. There is no evidence of an anatomic injury or lesion based upon the imaging studies. He found no indication the work injury was the cause of her diagnosis. The work being performed would be inconsistent with the development of a labral tear or other shoulder pathology. The current medical condition appears to be myofascial in nature as well as related to the preexisting complaints of shoulder and neck pain between 2012 and 2013. He saw no evidence that the work exposure aggravated a preexisting condition. He did not find the treatment to date related to any work injury. He saw no indication that Petitioner would benefit from further surgical or non-surgical intervention or further treatment (RX 1, Ex 2).

Petitioner returned to Dr. Hennessy on April 29, 2016. She complained of persistent neck pain and right sided cervical radiculopathy. He opined that her condition was aggravated by the work-related accident. With regard to the right shoulder, Petitioner complained of worsened symptoms with motion at 120° and internal rotation only to the right buttocks. Dr. Hennessy noted positive impingement signs and positive biceps signs. He stated the MRI was suboptimal and he recommended a closed MRI with arthrogram. He opined the right shoulder rotator cuff tendinosis and probable labral tear were causally related to the work incident and maintained an off-work status. He refilled Naproxen 500 mg twice per day (PX 3). On May 27, 2016, Dr. Hennessy indicated that he reviewed Dr. Verma's IME report. He again recommended an MRI arthrogram of the right shoulder (PX 3).

On July 11, 2016, Petitioner had an MRI arthrogram of the right shoulder (RX 7). The impression was rotator cuff tendinosis without evidence of acute full thickness rotator cuff tear; degenerative changes of the acromioclavicular joint with minimal findings for impingement; no definitive contrast extending into the glenoid labrum, there is a degenerative-type signal within the glenoid labrum most prominent inferiorly; a lobulated fluid intensity collection adjacent to the posterior labrum suspicious for a para labral cyst or ganglion, occult tear of the glenoid labrum is not excluded (RX 7).

On July 11, 2016, Petitioner returned to Dr. Hennessy, reporting that overall, her neck condition appeared to be improving. Dr. Hennessy noted 5/5 strength and full motion of the neck. Dr. Hennessy reviewed the MRI arthrogram of the right shoulder and interpreted a para labral cyst which indicated an injury to the labrum posteriorly as well as rotator cuff tendinosis. He conducted an examination and again documented labral signs that were positive. He opined that the MRI arthrogram supported his opinion over the opinions of Dr. Verma. Dr. Hennessy recommended a subacromial decompression for the rotator cuff tendinitis, and opined that the need for surgery was caused by an accident at work. Petitioner reported that she wished to proceed to surgery, and Dr. Hennessy maintained an off-work status (PX 3). Petitioner attended physical therapy at ATI from July 21, 2016 through September 26, 2016. They noted Petitioner job was sedentary-light (PX 7). On September 26, 2016, Petitioner was complaining of right shoulder pain and cervical radiculopathy. She also reported left shoulder pain, which she stated was from overuse of the left arm due to the disability of the right. He renewed his recommendation for right shoulder arthroscopy and indicated Petitioner could consider a cortisone injection into the left shoulder under regular insurance. He stated the cervical spine condition was related to the claimed work injury, but Petitioner did not have a surgical lesion (PX 3). On November 14, 2016, Petitioner reported that both of her shoulders hurt. Dr. Hennessy indicated that Petitioner had an only

questionably positive impingement sign on the right, but a positive labral sign. He noted the impingement sign was more positive on the left shoulder. Dr. Hennessy renewed his recommendation of right shoulder arthroscopy with subacromial decompression and labral repair. He also renewed his request for approval for treatment of the left shoulder, as well as non-operative treatment of the cervical spine through a pain center. He maintained an off-work status (PX 3). On January 6, 2017, PA Masterson conducted the examination and recommended a follow-up after the deposition (PX 3)

Dr. Hennessy testified by evidence deposition taken February 8, 2017 (PX 9). He testified to his treatment of Petitioner. He disagreed with Dr. Hsu's opinion on causation. Dr. Hennessy testified that Petitioner's conditions in the neck and right shoulder were related to the repetitive actions of her job. He noted the swiping of 180 cards per hour created the conditions of tendinitis and labral tearing in the right shoulder. Turning her head repeatedly could aggravate the neck. He opined the left shoulder complaints were related to overuse from compensating for the condition of the right shoulder. He also noted the lack of any prior neck or right shoulder pain. He stated this aggravated the preexisting degenerative condition of her cervical spine. Dr. Hennessy also disagreed with Dr. Verma that the work was inconsistent with the development of a labral tear. He disagreed with Dr. Verma that Petitioner could return to work and needed no treatment. He recommended surgery for the shoulder pending the updated MRI. He did not recommend cervical spine surgery. He noted the MR arthrogram noted a para labral cyst. He testified this usually indicates a labral tear. Dr. Hennessy testified he reviewed no medical records of any prior injuries. She had no prior issues. He testified he was unaware of any of the treatment received in 2012 to 2013. His causation opinions could change if he reviewed those records. His understanding of Petitioner's job was from her self-reporting.

On February 17, 2017, Dr. Hennessy indicated that opposing counsel during the deposition provided evidence of previous treatment for the cervical spine and right shoulder. The records had not been provided to him. Dr. Hennessy indicated that the examination was the same and his recommendation was the same. He asked Petitioner to try to get any prior information so that he could make opinions that will potentially move her forward in getting treatment. On April 14, 2017, Dr. Hennessy indicated Petitioner brought in all medical records from 2012 and 2013 which she treated for neck pain with right arm radiculopathy. Dr. Hennessy indicated there was no mention of shoulder pain. Dr. Hennessy again recommended right shoulder arthroscopy (PX 3).

Dr. Verma testified by evidence deposition taken June 26, 2019 (RX 1). Dr. Verma testified to his examination including Petitioner's history of being employed at McDonald's for five years, with the most recent two years being assigned primarily to a drive-through window and her complaints of pain in her neck, trapezial region on the right side of her body radiating to her arm and hand, forearm and wrist, as well as superior shoulder pain. due to turning her neck to the side as well as reaching out to provide food or collect payment. Dr. Verma reviewed records from Chiropractor Cavazos, Orthopedic Associates of Naperville, including an arthrogram radiology report dated April 2, 2013, all of which predated the claimed date of accident and medical records from Dr. Martinez, Elite Rehabilitation, and Dr. Hennessy, as well as the IME report from Dr. Hsu and an MRI of the right shoulder dated October 14, 2015. Dr. Verma testified that he performed an examination, noting fairly diffuse pain with palpation throughout the extremity including the front, back, top of the right shoulder, right forearm, and wrist. There was decreased cervical range of motion with axial neck pain, and mild pain with palpation over the top of the right shoulder in the AC joint and biceps. There was no restriction and range of motion but pain with range of motion, full strength but complaints of pain with strength testing, and negative labral findings. X-rays on March 14, 2016 were normal. He testified the right shoulder MRI dated October 14, 2015 did not show any evidence of labral pathology, partial, or full thickness rotator cuff tear. Dr. Verma

testified that degeneration within the tendon which occurred as part of the normal age-related process was tendinosis. He testified that tendinosis could cause pain complaints, but it was not consistent with Petitioner's pain complaints (RX 1).

Dr. Verma testified that MRIs were only one piece of the evaluation for a labral tear. Dr. Verma did not see evidence of a labral tear that would be discrete based on the MRI scan. Petitioner's symptoms were not at all consistent with labral pathology. A patient with a labral tear would have symptoms reproduced by motion, but that there would be no pain just by touching the shoulder. The type of activities Petitioner reported would not be consistent with labral pathology generation. Dr. Verma concluded Petitioner had a diagnosis of atypical chronic right shoulder, neck, and upper extremity pain. He did not believe Petitioner sustained a work injury on or about April 14, 2015. The mechanism of injury being performed would not be one that would typically generate shoulder pain. He opined that Petitioner's clinical exam was far out of proportion to any singular diagnosis that would be consistent with a shoulder problem or amenable to such treatment. Dr. Verma testified that labral tears were generally traumatic, such as when an individual would fall onto the arm or outstretched extremity. Petitioner's presentation appeared in large part myofascial, but he could not arrive at a comprehensive diagnosis to explain all of her complaints. Based on the subjective complaints, the diagnostic workup and initial trial of physical therapy was reasonable. He did not believe Petitioner required any ongoing management and could not connect any ongoing treatment with the work activities. Dr. Verma testified that Petitioner had no objective basis for any work restrictions and believed Petitioner could return to work full duty. No further medical treatment warranted (RX 1).

On cross-examination, Dr. Verma testified that the only repetitive injury mechanism that he knew of which would result in labral pathology would be baseball overhead throwing athletes. He testified that he would limit that classification to pitchers or potentially an outfielder repetitively overhead throwing a baseball at 80 to 90 mph. Dr. Verma testified that someone who was 31 years old could have degenerative fraying or tearing of the labrum. Dr. Verma testified that he was not provided a job description but testified that he believed anyone who has been to McDonald's understands the job duties for someone who works in that type of a position. He testified that Petitioner primarily worked in the drive-thru window, so she delivered food and took payment. His opinion would not change if he learned Petitioner swiped credit cards a couple hundred times per shift.
Dr. Verma testified that he does not have an opinion as to whether the motor vehicle accident from May 2012 was the cause of Petitioner's shoulder complaints. He testified that he had not seen her within a timeframe commensurate with the injury of the symptoms at the time or the exam findings. He testified that he did not see any evidence that would suggest a labral tear that would be amenable to any type of treatment. He had never seen a patient develop a labral tear from the type of light use even in a repetitive nature as described by Petitioner. He opined that one could not just look at an MRI and recommend fixing it. In Petitioner's case, the history did not add up to something that could cause a labral tear and Petitioner's examination was vastly out of proportion and inconsistent with labral pathology. The MRI did not show any evidence of a clear and distinct labral tear which would be amenable to surgery. Dr. Verma testified that he was not aware that Petitioner underwent an MRI arthrogram on July 11, 2016, as it was after his examination. Rotator cuff tendinosis existed on the earlier MRI. He opined that a para labral cyst did not indicate a tear of the labrum. The cyst in the shoulder did not explain pain in the neck, and did not explain why Petitioner had pain when he palpated the arm below the elbow. Dr. Verma testified that a non-arthrogram image would show a cyst, and that he did not see a cyst on the October 14, 2015 MRI. His opinions would not change as he reviewed the arthrogram on the right shoulder (RX 1).

On December 16, 2019, Dr. Hennessy testified at a second evidence deposition (PX 10). Dr. Hennessy testified that he had an opportunity to review medical records related to the May 2012 motor vehicle accident. He testified that he reviewed records from Dr. Markarian, records from Dr. Ricardo Martinez, records from Dr. Hassan, records from Chiropractor Cavazos, and an MRI of the right shoulder with and without contrast from April 2, 2013. Dr. Hennessy testified that his opinions were strengthened by the further medical treatment records. He testified that Dr. Markarian's records and the MRI showed no labral tear or para labral cyst. Dr. Markarian reviewed the MRI arthrogram and stated the study showed no labral pathology on his June 4, 2013 report. Dr. Hennessy testified that the MRI arthrogram he obtained on July 11, 2016 did show labral tear with para labral cyst. Dr. Hennessy testified that he evaluated Petitioner on April 14, 2017, and that Petitioner brought in medical records from 2012 and 2013. He testified that he did not have all the records that he was subsequently provided. Dr. Hennessy testified that he also reviewed Dr. Verma's deposition transcript. He testified that Dr. Verma's position that a professional baseball player being the only individual to sustain a repetitive injury to the labrum was a bit of an extreme statement. He believed that the activities at McDonald's could cause a labral tear and a para labral cyst. Dr. Hennessy further testified that Dr. Verma did not have an opportunity to review the July 2016 MRI arthrogram. He offered opinions with more complete information than Dr. Verma had. Dr. Hennessy testified that he did not offer an opinion that the cyst was causing numbness and tingling. Petitioner also had cervical spine pathology which was causing the numbness and tingling (PX 10).

On cross-examination, Dr. Hennessy confirmed that there was a typo in his April 14, 2017 report, as there were probably some medical records for treatment of the right shoulder. He also did not actually review the MRI imaging of either July 10, 2012 or the MRI arthrogram from April 2, 2013 or the actual images from the cervical spine MRI from February 9, 2013. Dr. Hennessy testified that rotary motion in the shoulder would be repetitive movements that could cause a labral tear. These movements would be more round, circular, or more back and forth. Swaying one's arms back and forth while walking would be a very extreme and very benign activity, though would be possible for such an activity to cause a labral tear. If there was a lot of material in the pot versus a little rice in a small saucepan, it could cause a labral tear. Dr. Hennessy testified that the placement of where Petitioner was swiping with a credit card could affect his opinion as to causation. He also allowed that the amount of force required to swipe the card could affect his opinion. When asked if labral tears were a common occurrence of cashiers, Dr. Hennessy testified that some may be lifting groceries (PX 10).

Dr. Hennessy testified that he did not make note of how many hours per week Petitioner worked at McDonald's. A para labral cyst in most circumstances indicates there is some pathology to the labrum. He opined that this would be significantly more than 50%. The para labral cyst would not instantaneously develop when there was underlying labral pathology. It would take weeks, months, or possibly a year. Dr. Hennessy testified that the July 2016 MRI arthrogram showed a para labral cyst that was about 1.5 cm x 1.5 cm. Petitioner's positive biceps signs were consistent with her labral tearing. Dr. Hennessy testified that the 19 pages he printed out did not change his opinion as to causation, and that nothing referenced the labrum (PX 10).

On January 22, 2020, Dr. Wellington Hsu testified by evidence deposition (RX 3). He testified to his medical examination on Petitioner on September 9, 2015. Dr. Hsu testified that Petitioner reported an injury on April 14, 2015 while she was working at a drive-through window and swiping a credit card. She reported she turned her neck and experienced a sudden onset of right-sided shoulder and neck pain. Dr. Hsu testified that Petitioner reported her job as a Crew Trainer required lifting less than 20 pounds on a regular basis. She denied any prior injuries to her neck. Dr. Hsu testified that he performed an examination which resulted in

essentially all normal findings in all phases of all parts of the examination. Petitioner had normal range of motion in the cervical spine, negative Spurling's sign, negative Lhermitte's sign, and negative Hoffman's sign. Dr. Hsu testified that he reviewed the April 27, 2015 cervical spine MRI images. He diagnosed mild degenerative disc disease at C5-6 but age-appropriate spondylotic changes in the other areas of her discs. There was no significant stenosis, disc herniation, or nerve root compression. He diagnosed cervical spondylosis, which is genetic related wear and tear changes seen on the motion segments of a segment of the spine. Dr. Hsu opined that the alleged work injury did not cause Petitioner's neck complaints. The work-related activity as described was not unique to the position and responsibilities as it pertains to everyday life. He did not believe swiping a credit card would impose unique work forces on the spine that would cause an injury (RX 3).

Dr. Hsu testified that he did not believe any of Petitioner's diagnosis were related to a motor vehicle accident in 2012 either. He testified that Petitioner did not divulge that she was involved in a prior motor vehicle accident. He testified that Petitioner did not aggravate any pre-existing spinal condition with her work activities as described. He did not believe any of the treatment was related to any purported work injury or exposure. Petitioner did not require any further treatment for her cervical spine as she did not demonstrate any functional disability on physical examination, and that it was safe for Petitioner to return to full duty work (RX 3).

Dr. Hsu testified that he authored a supplemental report dated September 2, 2019. He testified that he reviewed additional medical treatment records, including records from Chiropractor Cavazos, an MRI of the cervical spine report from 2013, and medical records from Orthopedic Associates of Naperville, as well as records from Pro Clinics. Dr. Hsu also reviewed Dr. Verma's March 14, 2016 IME report. Dr. Hsu testified that his opinions relative to his diagnosis for Petitioner had not changed in any way. His opinions also did not change relative to medical treatment recommendations. Dr. Hsu testified that the treatment records divulge a prior injury and medical care for the neck, which was inconsistent with what Petitioner reported to him. His opinions on causation, return to work, and appropriateness of care all did not change (RX 3).

Dr. Hsu testified that he did not have any additional information as to Petitioner's job activities other than what she reported and what he has observed that a cashier performs at McDonald's. He testified that he did not believe repetitive work could aggravate a pre-existing neck condition. He testified that evidence-based literature suggested that repetitive activities while in an occupation does not worsen any cervical pathology. He testified that only trauma or an inciting event, such as if a piece of ceiling falls on someone's head could cause an aggravation of a pre-existing condition. He testified that it was possible a motor vehicle accident could aggravate a pre-existing condition. Dr. Hsu testified that the motor vehicle accident caused some sort of cervical injury, maybe a cervical strain and not an aggravation. He only reviewed a couple of records from that motor vehicle accident, and he was not asked to evaluate that incident specifically. Dr. Hsu further testified that the MRI report from February 9, 2013 was what he relied upon to provide the opinion that the motor vehicle accident did not aggravate the degenerative neck condition. He testified that the radiologist's impression did not document any acute injuries (RX 3).

Dr. Hsu testified that if Petitioner turned her neck 180 to 200 times per hour to look at a customer and swipe a credit card, his opinion would not change on causation. While spondylosis was more common in older individuals, he saw plenty of patients with spondylosis that were Petitioner's age. Dr. Hsu testified that he believed all of the treatment Petitioner received since the alleged accident was reasonable for the spondylotic condition. Dr. Hsu testified that at the time of his examination in 2015, he did not believe that Petitioner's condition relative to the cervical spine was related to the motor vehicle accident based on the MRI he reviewed

which demonstrated no structural injury or dramatic problems. He testified that it was possible that the motor vehicle accident aggravated such a condition and then resolved. He had no information to either refute or confirm that question or diagnosis. The motor vehicle accident from 2012 could or could not have aggravated the spondylotic condition, but that he did not have enough information regarding the accident to hold an opinion to a reasonable degree of medical and surgical certainty (RX 3).

Dr. Verma authored a May 6, 2020 IME addendum report (RX 2). He reviewed additional medical records. Dr. Verma testified that he reviewed an MRI of the right shoulder dated April 2, 2013 with irregular contour of the superior aspect of the subscapularis with intact rotator cuff and labrum. Dr. Verma reviewed the deposition transcript of Dr. Hennessy on February 8, 2019 and December 16, 2019. Dr. Verma reviewed the MRI arthrogram of the right shoulder from April 2, 2013, which showed no evidence of subacromial fluid. The glenohumeral joint showed no evidence of significant labral tear. He noted age related tendinosis of the rotator cuff. He found no acute or traumatic finding. Dr. Verma reviewed MRI imaging of the right shoulder from April 14, 2015 with findings of tendinosis with a small amount of cystic changes in the greater tuberosity but no evidence of significant partial or full thickness tear. He did not note a glenohumeral effusion or subacromial fluid. He opined that the labrum appeared intact. There was trace fluid in the superior labral area posteriorly, which did not appear as a cyst, but rather fluid surrounding the labrum. Dr. Verma reviewed the MRI arthrogram dated July 16, 2016. He noted the rotator cuff to be intact and no subacromial fluid. There was age related AC joint degeneration and the bicep appeared intact. Dr. Verma noted signal surrounding the posterior labrum with labral degeneration, but did not identify a cyst. He opined that his diagnosis remained unchanged with atypical neck, right shoulder, and right upper extremity pain. While the MRI scans showed mild progressive degeneration of the labrum and rotator cuff, Dr. Verma did not see any evidence of acute or traumatic injury and no condition that would be related to any repetitive use activities occurring during Petitioner's cashier duties at Respondent. He did not see any evidence of either aggravation or exacerbation of right shoulder condition, nor any evidence of structural injury in the shoulder that would be consistent with Petitioner's ongoing complaints. He indicated that Petitioner's complaints were materially similar to the condition of the shoulder and the neck after the motor vehicle accident in 2012. Dr. Verma opined that there was no indication for treatment for any alleged work accident on April 14, 2015, and that there were concerns of significant symptom magnification. He noted it was relevant that Petitioner had significant complaints after the motor vehicle accident that were not completely explained based on diagnostic imaging or clinical evaluation. He opined that Petitioner required no further treatment (RX 2).

Petitioner returned to Dr. Hennessy on October 11, 2021 (PX 4). She reported taking Ibuprofen daily for her neck and right shoulder, and that she could not take much because she was diabetic. She reported obtaining a job at a liquor store as a cashier to make money while her workers' compensation case was being litigated. Dr. Hennessy conducted a cervical spine examination and noted flexion with Petitioner's chin to her chest, rotation right and left at 50° with the most pain on right rotation, extension at 30° and a positive Spurling's sign for neck pain but not radiculopathy. Dr. Hennessy indicated Petitioner described right C6 radiculopathy similar to his last exam four years earlier. Dr. Hennessy examination of the right shoulder noted flexion to 140° compared the 170° for the left, limitation on right internal rotation to the lumbosacral junction. positive biceps signs, positive impingement signs. Dr. Hennessy indicated "at one time she did have a clunk which could have represented the labral tear." Dr. Hennessy reviewed x-rays of the cervical spine and noted no spondylolisthesis. He noted no treatment in the years since he last saw Petitioner. He recommended obtaining updated imaging studies to make a definitive surgical plan, but that he continued to recommend right shoulder arthroscopy and that once recovered, Petitioner would likely require anterior cervical discectomy and fusion. He opined the surgeries were made necessary by the claimed work injury (PX 4).

Petitioner testified she has been working for Armanetti Liquors since August 2018 as a cashier. She began looking for work in 2018. Her job does not require stocking. She uses both hands to bag heavy bottles of liquor. Petitioner testified she was in pain when she began, but was seen by Mike Pagnoni, a chiropractor, for 7 sessions. She does home exercises 3 times per week. She was able to resume her duties. Her duties do not require her to lift her arm above shoulder level. She also worked for Burrito Grill at the same time as a cashier. When that job ended, she found employment at Anthony's Cleaners in 2019. She was let go because she was not legal. She worked there for a year until the liquor store needed her for the morning shift. Respondent offered the subpoenaed records of Armanetti Liquors containing an Application for Employment dated 11/20/20 and wage records beginning 12/7/20 (RX 14). Respondent offered surveillance of Petitioner taken in January 2021 (RX 15, RX 15A). The Arbitrator reviewed the video taken January 21, 2021 which showed Petitioner entering her car and driving to work at Armanetti Liquors, and January 22, 2021 showing Petitioner driving to work and checking out a customer with 3 bottles of wine (RX 15A).

Petitioner denied any subsequent injuries. She testified that her shoulder felt the same after she left Respondent. She has difficulty performing activities of everyday life. She wishes to undergo the surgery recommended by Dr. Hennessy.

Conclusions of Law

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

To obtain compensation under the Act, a claimant must show, by a preponderance of the evidence, that he suffered a disabling injury that arose out of and in the course of the claimant's employment. An injury is accidental within the meaning of the Act when it is traceable to a definite time, place and cause and occurs in the course of employment unexpectedly and without affirmative act or design of the employee*. International Harvester Co. v. Industrial Comm*., 56 Ill. 2d 84, 89 (Ill. 1973). An injury occurs "in the course of' employment when it occurs during employment and at a place where the claimant may reasonably perform employment duties, and while a claimant fulfills those duties or engages in some incidental employment duties. An injury "arises out of" one's employment if it originates from a risk connected with, or incidental to, the employment and involves a causal connection between the employment and the accidental injury. For an injury to 'arise out' of the employment its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in order in fulfilling his job duties. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848.

The claimant in a workers' compensation case has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. *O'Dette v. Industrial Comm'n, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 38 Ill. Dec. 133 (1980)*. Included within that burden is proof that his current condition of ill-being is causally connected to a work-related injury. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. Id. at 205. "Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being." Id.

An employee who suffers a repetitive-trauma injury still may apply for benefits under the Act, but must meet the same standard of proof as an employee who suffers a sudden injury. *Durand v. Industrial Comm'n, 224 Ill. 2d 53, 65, 862 N.E.2d 918, 308 Ill. Dec. 715 (2006)*. In a repetitive trauma case, issues of accident and causation are intertwined. Therefore, a review of the evidence allows both issues to be resolved together." *Boettcher v. Spectrum Property Group and First Merit Venture Realty Group,* 97 W.C. 44539, 99 I.I.C. 0961.

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).

Petitioner herein is seeking compensation for repetitive trauma injuries to her cervical spine and right shoulder as a result of her job duties at the drive-thru window for Respondent. Petitioner testified to her work activities. She would punch orders in on the screen to her right above shoulder level. The cash register was located to her left a little above shoulder level. The machine to swipe credit cards was to her right a little lower that the order screen. When the customer came in, she would take the order on the touch screen and send it to the cash register. Once the car pulled in, she would greet the customer, give him his total. She would then open the window with her right hand, get the money or credit card, swipe it, or get change. She did all of these duties using her dominant right hand. She would turn her head all day. She testified she handled 150 to 180 cars per hour. She testified that on April 14, 2015, about 2 hours before the shift ended, she had a sharp pain in her shoulder and then on her neck before her shift ended.

The only evidence of her job duties was her own testimony and medical histories that she herself provided. The Arbitrator, having listened to the testimony and reviewed the evidence, finds that Petitioner was not a credible witness. Petitioner initially advised Dr. Martinez of the 2012 motor vehicle accident and her claim occupationally-related repetitive neck movements. Contrary to her testimony she reported no specific onset. Dr. Martinez thereafter stated the precipitating event seems to have been occupationally-related repetitive neck movements and also had an MVA three years ago. On April 28, 2015, Dr. Martinez history is Petitioner sustained an injury due to an accident on 5/2012. The precipitating event was a motor vehicle accident. Petitioner then purposely misled both her treater Dr. Hennessy and the IME doctors by denying any prior history despite almost 2 years of active treatment for her neck and shoulders. Petitioner admitted she did this consciously to avoid them relating her conditions to the motor vehicle accident because **she** believed her condition was work related. The Arbitrator notes that on cross examination, Petitioner also was not completely forthright about the extent of her prior care as documented by her multiple prior treating providers.

Petitioner testimony that she had been working the drive-thru during the entire time she was treated for the motor vehicle accident is contradicted by the work status notes contained her records which show she was either off work or on restrictions for much of that time. On July 19, 2012, Petitioner reported she was attempting to do light duty, but even light duty was aggravating her arm and neck. Dr. Ansari took her off work. On August 2, 2012, Dr. Ansari provided work restrictions of no lifting more than 10 pounds and no reaching or

lifting above shoulder level. Dr. Suchy restricted her to no shoulder level or above work with the right arm and no lifting more than 10 pounds. The August 23, 2012 therapy note states cannot do full duty work at the drive thru. She is limited to working just using the touch screen. She cannot reach overhead or behind her back. She reports she is unable to do repetitive upper extremity activity. On August 29, 2012, she complained of pain over the clavicle and indicated she was working but not her usual hours. She reported pain that was significant with any activities, especially at shoulder level or above. In February 2013, Chiropractor Cavazos recommended light duty with minimizing repetitive rotation of her head such as when working the drive-through. Dr. Markarian noted Petitioner has been off work since March 14, 2013 and took her off work through April 16, 2013. Petitioner was never discharged from his medical care or released to full duty work. Dr. Markarian recommended additional physical therapy. Petitioner was scheduled for follow up visit on July 2, 2013 and continued on modified sedentary duty.

These treatment records, including the ongoing subjective complaints and work limitations and restrictions, not only contradict Petitioner's testimony as to her ability to perform her duties during this period, but stretch the Arbitrator's credulity that she was without symptoms from July 2013 thru April 2015. The medical records also challenge the truthfulness of Petitioner's subjective complaints both before and after the alleged work injury. Dr. Suchy indicated he could not explain why she was having persistent pain in the right shoulder. Dr. Suchy expressed concern because Petitioner was really guarding her arm, and he recommended that she use her arm as there was no objective finding that could prevent her from using it.

Given the Petitioner's admitted and demonstrated deception of her own doctor, the Arbitrator questions her other testimony, particularly her description of her job duties and her physical condition between 2013 and April 2015. Petitioner had already documented medical records noting she was unable to do overhead or repetitive work, yet she testified she had performed her duties at the drive-thru during this time. The August 23, 2012 therapy note states she cannot do full duty work at the drive-thru, but she could use the touch screen even though she cannot reach overhead or behind her back and is unable to do repetitive upper extremity activity. The Arbitrator notes that Petitioner focuses on different aspects of her job in various histories and in her testimony. At trial, she spoke extensively about the above shoulder location of the credit card and touch screens. In other histories she discusses repeatedly turning her head, making change, delivering food. The Arbitrator questions her unsubstantiated estimate of 180 cars per hour. The concept of processing 3 drive-thru orders every minute for a seven hour shift stretches common sense and credulity. Petitioner was also repeated advised her restrictions were to work below shoulder level. Dr. Suchy indicated he did not have a problem with Petitioner returning to work as a Crew Trainer at McDonald's, but he restricted her to no shoulder level or above work with the right arm and no lifting more than 10 pounds. Since her testimony is that she returned to the drive-thru, her claim that the credit card machine and touch screen required her to work above shoulder level is inconsistent. The Arbitrator does not find any medical history given by Petitioner which describes these functions as being over shoulder height.

Against this questionable testimony, the Arbitrator must judge the opinion of Dr. Hennessy that Petitioner's work activities caused or aggravated her condition in the right shoulder, left shoulder, and cervical spine. The Arbitrator notes that Dr. Hennessy 's initial history has no detail with respect to her work activities. His records note only that she was a cashier and assistant manager at McDonald's. There was no significant trauma. She was "just by the drive-through window and all of a sudden developed neck pain with right arm radiculopathy." The additional details of her work were only presented later through the Petitioner or reviewing the IME reports which also reported Petitioner's statements. His opinions presented in his initial deposition were that there was causation in large part since she had no prior history of symptoms, a fact clearly untrue. Thereafter, he

reviewed a portion of the earlier records provided by the Petitioner and reconfirms his causation opinion in the second deposition based upon the Petitioner's description of her duties and his readings of the current MR arthrogram versus the 2013 study which he finds a labral tear not present in the earlier study. He also opines Petitioner aggravated her pre-existing cervical spine condition.

Respondent submitted the opinions of Verma who concluded Petitioner had a diagnosis of atypical chronic right shoulder, neck, and upper extremity pain. He did not believe Petitioner sustained a work injury on or about April 14, 2015. The mechanism of injury as being performed would not be one that would typically generate shoulder pain. He opined that Petitioner's clinical exam was far out of proportion to any singular diagnosis that would be consistent with a shoulder problem or amenable to such treatment. He testified the right shoulder MRI dated October 14, 2015 did not show any evidence of labral pathology, partial, or full thickness rotator cuff tear. In his addendum, Dr. Verma reviewed the MRI arthrogram dated July 16, 2016. He noted the rotator cuff to be intact and no subacromial fluid. Dr. Verma noted signal surrounding the posterior labrum with labral degeneration, but did not identify a cyst. He opined that his diagnosis remained unchanged with atypical neck, right shoulder, and right upper extremity pain. While the MRI scans showed mild progressive degeneration of the labrum and rotator cuff, Dr. Verma did not see any evidence of acute or traumatic injury and no condition that would be related to any repetitive use activities occurring during Petitioner's cashier duties at Respondent. He did not see any evidence of either aggravation or exacerbation of right shoulder condition, nor any evidence of structural injury in the shoulder that would be consistent with Petitioner's ongoing complaints. He indicated that Petitioner's complaints were materially similar to the condition of the shoulder and the neck after the motor vehicle accident in 2012. Dr. Verma opined that there was no indication for treatment for any alleged work accident on April 14, 2015, and that there were concerns of significant symptom magnification. He noted it was relevant that Petitioner had significant complaints after the motor vehicle accident that were not completely explained based on diagnostic imaging or clinical evaluation.

Respondent also offered the opinions of Dr. Hsu. He diagnosed mild degenerative disc disease at C5-6 but age-appropriate spondylotic changes in the other areas of her discs. There was no significant stenosis, disc herniation, or nerve root compression. RX3 P. 11. He diagnosed cervical spondylosis, which is genetic related wear and tear changes seen on the motion segments of a segment of the spine. Dr. Hsu opined that the alleged work injury did not cause Petitioner's neck complaints. The work-related activity as described was not unique to the position and responsibilities as it pertains to everyday life. He did not believe swiping a credit card would impose unique work forces on the spine that would cause an injury.

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. A treating doctor's findings and opinions can be undermined, or even disregarded, through reliance on inaccurate or incomplete information." See *Ravji v. United Airlines*, 2012 WL 440353 at 13 (Ill. Indus. Comm'n) interpreting *Horath v. Industrial Commission*, 96 Ill.2d 349 (Ill. 1983).

Having reviewed the record, the Arbitrator finds the opinions of Dr. Hsu and Dr. Verma, as corroborated in part by Dr. Martinez statement that the precipitating factor was the May 2012 accident, more persuasive that those of Dr. Hennessy. Dr. Hennessy has inaccurate or incomplete information concerning Petitioner's prior condition and no corroboration concerning the details of the job duties as claimed by Petitioner. The Arbitrator finds his opinions to be based on insufficient credible foundation. The Arbitrator notes his significant litigation involvement including extended critique of the IME reports and solicitation of additional information after his first deposition to so that he could make opinions that will potentially move her forward in getting treatment. The Arbitrator also notes that his recommendations appear to vary despite no additional credible information or findings. At his initial visit, Dr. Hennessy stated the MRI of the cervical spine appeared essentially normal. On July 11, 2016, Petitioner reporting that overall, her neck condition appeared to be improving. Dr. Hennessy noted 5/5 strength and full motion of the neck. On September 26, 2016, he stated the cervical spine condition was related to the claimed work injury, but Petitioner did not have a surgical lesion. Yet in his October 2021 report states she is a candidate for a cervical fusion. He also provided her with off work status despite Petitioner's clear ability to find work as demonstrated by her employment from 2018 through the trial date. The Arbitrator notes Petitioner's claim to be unable to work is not credible given her ability to work for at least 2 years with significant restrictions for Respondent and her ability to find at least 3 different jobs once she decided to seek employment in 2018.

Based upon the record as a whole, the Arbitrator finds that Petitioner failed to prove by a preponderance of the evidence that she sustained accidental injuries arising out of and in the course of her employment with Respondent on April 14, 2015 and further failed to prove by a preponderance of the evidence that she has any condition of ill-being causally connected to her employment with Respondent.

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

Based upon the Arbitrator's findings with respect to Accident and Causal Connection, the remaining issues of Medical, Prospective Medical, and Temporary Compensation are moot.

Petitioner's claim for compensation is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC008440
Case Name	David McCain Jr v. The American Coal Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0011
Number of Pages of Decision	16
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	James Keefe, Jr.
Respondent Attorney	Gregory Keltner

DATE FILED: 1/9/2023

/s/Marc Parker, 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

David McCain, Jr.,

Petitioner,

vs. NO: 17 WC 8440

The American Coal 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 nature and extent of Petitioner's disability, and specifically, whether Petitioner is entitled to a permanent partial disability award under §8(d)2 of the Act in addition to an award of statutory permanent total disability under §8(e)18, 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 15, 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.

January 9, 2023

MP:yl
o 1/5/23
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	17WC008440
Case Name	MCCAIN, JR. DAVID v. THE AMERICAN COAL COMPANY
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	James Keefe, Jr.
Respondent Attorney	Gregory Keltner

DATE FILED: 6/15/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 14, 2022 2.16%

/s/Linda Cantrell, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DAVID MCCAIN, JR.
Employee/Petitioner

v.

THE AMERICAN COAL COMPANY
Employer/Respondent

Case # **17** WC **008440**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **March 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 **Whether Petitioner is entitled to permanent partial disability benefits pursuant to Section 8(d)2 of the Act.**

FINDINGS

On **November 5, 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 $**78,655.20**; the average weekly wage was $**1,512.60**.

On the date of accident, Petitioner was **37** years of age, ***married*** with **4** 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 $**298,211.62** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**298,211.62**.

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

ORDER

The parties stipulate that all medical expenses have been paid and Respondent agrees to hold Petitioner harmless for any Medicaid and Medicare conditional payments for reasonable, necessary, and causally related treatment. Petitioner agrees to cooperate and assist Respondent if it raises defenses to the Medicaid and Medicare liens.

Respondent agrees to pay Petitioner $35,000.00 for home healthcare benefits provided to Petitioner by his spouse. By stipulation of the parties, payment of this amount shall satisfy all and discharge Respondent's responsibility for home healthcare services provided to Petitioner by his spouse for the period 11/5/16 through 3/25/22 only. It shall not have any effect on Respondent's obligation to pay for home healthcare services which Petitioner may require subsequent to 3/25/22.

The parties further stipulate that Respondent is entitled to a credit for all medical bills paid through its group medical plan pursuant to Section 8(j) of the Act, and that Petitioner is entitled to temporary total disability benefits from 11/6/16 through 3/23/22, representing 280-6/7 weeks.

Respondent stipulates that Petitioner is entitled to permanent total disability benefits pursuant to Section 8(e)18 of the Act for loss of use of both eyes. Therefore, Respondent shall pay Petitioner statutory permanent and total disability benefits of $**1,008.40**/week for life, commencing **3/25/22,** because the injury caused 100% loss of use of the **left eye** and 100% loss of use of the **right eye**, as provided in Section 8(e)18 of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) of the Act.

Petitioner sustained five transverse fractures in the lumbar spine at L1, L2, L3, L4 and L5, and a spinous process fracture at L4. Therefore, Respondent shall pay Petitioner permanent partial disability benefits of $**775.18 (Max. rate)**/week for **21 weeks**, as provided in Section 8(d)2 of the Act.

Respondent shall further pay Petitioner permanent partial disability benefits of $**775.18 (Max. rate)**/week for **300** weeks, because the injuries sustained caused **60**% loss of use of Petitioner's body as a whole, as provided in §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.

_____ **JUNE 15, 2022**

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARIBTRATION DECISION

DAVID MCCAIN, JR.,	)	
	)	
Employee/Petitioner,	)	
	)	
	)	**Case No.: 17-WC-008440**
v.	)	
	)	
	)	
THE AMERICAN COAL COMPANY,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACTS

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on March 25, 2022. On March 21, 2017, Petitioner filed an Application for Adjustment of Claim alleging injuries to multiple body parts as a result of a crushing injury on November 5, 2016. The parties stipulate that Petitioner sustained injuries on 11/5/16 that arose out of and in the course of his employment with Respondent and that Petitioner's injuries are causally connected to the work accident. The parties stipulate that all medical expenses have been paid and Respondent agrees to hold Petitioner harmless for any Medicaid and Medicare conditional payments for reasonable, necessary, and causally related treatment. Petitioner agrees to cooperate and assist Respondent if it raises defenses to the Medicaid and Medicare liens.

Respondent agrees to pay Petitioner $35,000.00 for home healthcare benefits provided to Petitioner by his spouse. By stipulation of the parties, payment of this amount shall satisfy all and discharge Respondent's responsibility for home healthcare services provided to Petitioner by his spouse for the period 11/5/16 through 3/25/22 only. It shall not have any effect on Respondent's obligation to pay for home healthcare services which Petitioner may require subsequent to 3/25/22.

The parties further stipulate that Respondent is entitled to a credit for all medical bills paid through its group medical plan pursuant to Section 8(j) of the Act, and that Petitioner is entitled to temporary total disability benefits from 11/6/16 through 3/23/22, representing 280-6/7th weeks. Respondent stipulates that Petitioner is entitled to permanent total disability benefits pursuant to Section 8(e)18 of the Act for loss of use of both eyes.

The sole issue in dispute is the nature and extent of Petitioner's injuries. Respondent disputes Petitioner is entitled to permanent partial disability benefits under Sections 8(d)2, 8(c), and 8(e) of the Act.

TESTIMONY

Petitioner was 42 years of age, divorced, with five children at the time of arbitration. Petitioner was hired by Respondent in 2002 and was a Long Wall Sheer Operator on the date of accident. Petitioner testified that on 11/5/16 he was caught in between a 20-ton chunk of steel and a coal block that crushed his stomach. Petitioner was airlifted to Deaconess Hospital where he underwent several abdominal surgeries including a partial colon resection that resulted in a colostomy bag. Petitioner lost vision in both eyes while being life flighted. Upon discharge from the hospital, he spent several weeks at a rehab facility.

Petitioner underwent additional surgeries, including gallbladder removal and removal of the colostomy bag. He treated with Dr. Sophia Chung who opined Petitioner would be permanently blind in both eyes.

Petitioner currently lives at home and has since divorced. He is taking Lorazepam for anxiety, pain medication, heartburn medication, and stool softeners. Petitioner explained that Dr. Dennon Davis recently prescribed Hydrocodone for pain in his back, hip, and stomach. Petitioner testified he sustained fractures in his back as a result of the accident. He currently experiences mild-to-extreme low back and left hip pain. His symptoms increase with prolonged standing, walking, and sitting. He stated his symptoms ruin his life. He has difficulty sitting at his kids' ballgames. He experiences stinging and numbing pains in his hands and arms.

Petitioner testified that removal of the colostomy bag was a terrible experience. He has limited control of his bowels. He averages 5 to 15 bowel movements per day. The urgency is difficult, particularly after he eats as he cannot always finish a meal before needing to relieve himself. He sacrifices a lot, including limiting outings with his children because he is embarrassed of having an accident or finding a bathroom in time. Petitioner testified he is scared to death of embarrassing his children by having an accident due to lack of bowel control. Petitioner attempted different medications and currently takes an over-the-counter stool softener. Petitioner testified he is able to eat what he wants, but it impacts his bowel movements, and he is very careful to eat light if he has plans to be away from home.

Petitioner has constant pain in his abdomen from below his upper chest to his waist. He does not have any muscle in the area and has numbness down the entire right side of his abdomen.

The Arbitrator observed Petitioner's abdominal incision and residual scar. It starts below the breast area and is a vertical line to the waist. Petitioner no longer has a bellybutton. There is an indentation measuring three inches at the colostomy site. The right side of Petitioner's abdomen is distended from mesh placed at surgery. He has a scar from a thoracotomy in his right flank area between his right shoulder and waist. Petitioner has scar sensitivity.

Petitioner testified he had nightmares of being crushed to death after the accident. He continues to have occasional nightmares about being late for work. His sleep is very restless, and he sleeps only two hours at a time. Petitioner testified he still suffers from depression because he cannot do the things he could before the accident. He was very active with his children prior to

the accident, but now he cannot engage in sports with them, including golf, basketball, riding 4-wheelers, fishing, etc. Petitioner stated he is not able to teach his children how to fix things around the house or mow the lawn and he has to hire help. He notices that his disability has affected his children. He takes Celexa for depression.

Petitioner testified that COVID and the fear of not controlling his bowels has prevented him from utilizing resources to help live with his blindness. He feels that the blindness overshadowed his other physical injuries because everyone assumed he would never work.

MEDICAL HISTORY

Petitioner was admitted to Deaconess Hospital from 11/5/16 through 12/7/16. (PX2) He underwent the following surgeries:

1. Right posterolateral thoracotomy on 11/5/16;
2. Exploratory laparotomy, small bowel resection, right colon resection, sigmoid colon resection, and placement of trauma dressing with packing on 11/5/16;
3. Second look exploration, removal of old laparotomy pads, washout, primary closure of traumatic abdominal wall hernia and sigmoid colon resection, and placement of trauma dressing on 11/8/16;
4. Second look laparotomy, abdominal washout, ileocolic anastomosis, descending colostomy, and wound vac placement on 11/11/16;
5. Repeat exploratory laparotomy with removal of abdominal wall vacuum, partial colectomy, drainage of intra-abdominal infection and debridement of right retroperitoneum and abdominal wall, repair of left diaphragmatic rupture, placement of G-tube, and placement of ABThera on 11/14/16; and
6. Exploratory laparotomy with irrigation and debridement and closure of abdomen with bridging technique utilizing mesh and wound vac placement on 11/16/16.

Petitioner suffered bilateral hemispheric infarctions leading to blindness. He sustained lumbar spine fractures including transverse spinous fractures from L1 to L5, a spinous process fracture at L4, and left SI joint diastasis. (PX4) Petitioner suffered temporary renal failure in the setting of septic shock. (PX3)

Petitioner was transferred to Herrin Hospital rehab where he was admitted from 12/8/16 through 1/27/17. Upon discharge, Petitioner reported low back pain and some numbness and tingling in all extremities. He still had a wound vac in place and was completely blind. Physical examination revealed muscle atrophy in the upper and lower extremities. Petitioner required supervision with bathing, grooming, eating, dressing, and minimal assistance with using the bathroom. He could walk up to 150 feet with assistance. (PX6)

On 2/1/17, Petitioner was examined by Dr. Fehrenbacher for his pelvis and SI joint. Petitioner was using a walker to ambulate. Dr. Fehrenbacher assessed dislocation of the SI joint and traumatic rupture of symphysis pubis. (PX7) On 3/21/17, it was noted Petitioner changed medications from Lexapro to Trintellix for depression. He had days of staying in bed and not taking phone calls. (PX7)

On 4/25/17, Petitioner was examined by neuro-ophthalmologist, Sophia Chung. She opined Petitioner was permanently blind and was unlikely to recover. (PX9)

In February 2018, Petitioner was readmitted to Barnes Hospital under the care of Dr. Jeffery Blatnik for abdominal injuries. (PX10) Petitioner underwent a myofascial advancement flap of the posteriorectus sheath and transversus abdominis muscle on the left and right, repair of incarcerated incisional and parastomal hernia, mesh placement, cholecystectomy, exploratory laparotomy with adhesiolosis, abdominal wall reconstruction, and gallbladder removal with colostomy closure. He was discharged after some complications on 2/10/18. Petitioner was followed by the infectious disease team through 4/3/18 and required post-operative drains. (PX10, 11)

On 8/10/18, Petitioner reported ongoing loose bowel movements but no evidence of infection or recurrent hernia. On 10/29/18, Petitioner saw Dr. Weis and reported 10 to 12 bowel movements per day. Dr. Weis recommended physical therapy and medication.

On 9/13/19, Petitioner reported he was doing well but had occasional abdominal cramping. The incisions were well healed. On 9/18/20, Petitioner reported right upper abdominal discomfort. There was no evidence of recurrent hernia. He was told to follow up as needed. (PX10)

On 10/16/18, Petitioner was examined by Dr. James Coyle pursuant to Section 12 of the Act. (PX13) Petitioner was able to ambulate unassisted from a musculoskeletal standpoint. Petitioner used a cane due to visual impairment. Petitioner complained of left-sided flank pain, pain in a band-like pattern at the belt line, anterior pain above the pubis, left-sided hip pain, and left-sided medial groin pain in the left trapezius and pectoral area. Petitioner reported that his symptoms were worse with moving and stretching. A cervical CT scan showed no evidence of fracture with minimal spondylosis. Dr. Coyle diagnosed probable sacroiliac joint disruption with possible lumbar plexus injury. He recommended a pelvic CT scan and EMG/NCS.

Petitioner returned to Dr. Coyle on 11/8/18. The pelvic CT scan showed subtle signs of a minimally displaced pelvic injury with no significant displacement observed. The EMG/NCS was negative for brachial plexus injury or lumbar radiculopathy. Dr. Coyle opined that no surgical intervention was warranted but recommended continued physical therapy for the pubis injury. (PX13)

On 8/20/20, Petitioner was examined by NP Gabriel Martin for depression, anxiety, and PTSD. He reported worsening anxiety and mood using Trintellix. He was going through a divorce. The doctor noted his work accident with numerous health complications and loss of vision. NP Martin diagnosed depression, generalized anxiety disorder, and PSTD. Lexapro was prescribed. Petitioner treated with NP Martin consistently through 9/13/21 at which time he denied crying spells but was fatigued during the day and had continued nightmares related to the accident. NP Martin prescribed Citalopram and Lexapro. (PX12)

CONCLUSIONS OF LAW

Issue (L): What is the nature and extent of the injury?
Issue (O): Whether Petitioner is entitled to permanent partial disability benefits pursuant to Section 8(d)2 of the Act.

Pursuant to the stipulation of the parties, Respondent shall pay Petitioner statutory permanent and total disability benefits of $**1,008.40**/week for life, commencing **11/6/16**, because the injury caused 100% loss of use of the **left eye** and 100% loss of use of the **right eye**, as provided in Section 8(e)18 of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) of the Act.

Petitioner sustained five transverse fractures in the lumbar spine at L1, L2, L3, L4 and L5 (not less than 3 weeks), and a spinous process fracture at L4 (not less than 6 weeks) as a result of the accident. Therefore, Respondent shall pay Petitioner permanent partial disability benefits of $**775.18**/week for **21 weeks**, as provided in Section 8(d)2 of the Act.

The remaining issue is whether Section 8(e)18 precludes a concurrent award under Section 8(d)2 for Petitioner's unscheduled losses to his hip, spine, abdomen, and psychological injuries.

Section 8(e)18 provides:

> The specific case of loss of both hands, both arms, or both feet, or both legs, or both eyes, or of any two thereof, or the permanent and complete loss of the use thereof, constitutes total and permanent disability, to be compensated according to the compensation fixed by paragraph (f) of this Section. These specific cases of total and permanent disability *do not exclude other cases*. (Emphasis added)

Section 8(d)2 provides:

> If, as a result of the accident, the employee sustains serious and permanent injuries not covered by paragraphs (c) and (e) of this Section or having sustained injuries covered by the aforesaid paragraphs (c) and (e), he shall have sustained in addition thereto other injuries which injuries do not incapacitate him from pursuing the duties of his employment but which would disable him from pursuing other suitable occupations, or which have otherwise resulted in physical impairment; or if such 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 having resulted in an impairment of earning capacity, the employee elects to waive his right to recover under the foregoing subparagraph 1 of paragraph (d) of this Section then in any of the foregoing events, he shall receive in addition to compensation for temporary total disability under paragraph (b) of this Section, compensation at the rate provided in subparagraph 2.1 of

paragraph (b) of this Section for that percentage of 500 weeks that the partial disability resulting from the injuries covered by this paragraph bears to total disability.

In *Beelman Trucking v. Illinois Workers' Compensation Commission*, 233 Ill.2d 364, 380, 909 N.E.2d 818 (2009), the Supreme Court of Illinois held that a claimant may be entitled to specific loss and an award under 820 ILCS 305/8(e)18 as a result of a single accidental injury. In that case, claimant suffered an injury causing paralysis in both legs, paralysis in his left arm below the shoulder, and surgical amputation of his right arm above the elbow. The Commission awarded statutory permanent total disability under Section 8(e)18 for the loss of claimant's legs, as well as an award of 235 weeks of permanent partial disability for the loss of claimant's left arm, and 250 weeks of permanent partial disability for the loss of claimant's right arm, under Section 8(e)10 of the act. *Id.* at 368.

The Supreme Court held claimant did not seek to bypass recovery under Section 8(e)18 and recover for three specific losses, nor did he seek a double recovery for the loss of his legs under both Sections 8(e)18 and 8(e)12. *Id.* at 379. The court noted claimant's contention was that he could recover under Section 8(e)18 for the loss of both legs and recover under Section 8(e)10 for the loss of earning capacity as a result of the loss of each arm. *Id.* The Court held that the Act permits a claimant to recover for the loss of two members under Section 8(e)18 as well as for any additional scheduled losses beyond the two losses compensated under that section. *Id.* at 380.

The Supreme Court in *Beelman* did not address whether the Act permits or prohibits an employee from recovering benefits under Sections 8(e)18 and 8(d)2 arising from the same accident. In the present case, Petitioner seeks permanent partial disability benefits for unscheduled losses under Section 8(d)2, in addition to permanent total disability pursuant to Section 8(e)18 for loss of use of both eyes. Petitioner's medical records show he sustained injuries to his back, hip, abdomen, and head/psychological. Petitioner admitted that he did not have any medical treatment to scheduled losses, including his arms, hands, fingers, legs, or feet.

Petitioner's back, hip, abdominal, and head injuries fall under the person-as-a-whole provision, which is an unscheduled loss under Section 8(d)2. Section 8(d)2 of the Act is a catchall section, embracing not just the neck or back but also the head, torso, abdomen, etc. *See, e.g., Yellow Freight Systems v. Industrial Commission of Illinois*, 128 Ill. App. 3d 47, 469 N.E.2d 455 (1984) (sensory impairment).

Section 8(e)18 states that "the specific cases of total and permanent disability do not **exclude other cases**." In holding this provision does not prevent recovery for additional 8(e) scheduled losses arising from the same accident, denying compensation above and beyond the two members compensable by Section 8(e)18 would leave uncompensated additional losses that could further impact the employee's earning capacity. There is no reason or basis that the Court's holding should not also apply to losses pursuant to Section 8(d)2. An employee's spine, hip, abdomen, and psychological injuries can impact the employee's earning capacity just as equally as another employee's arm injury as in *Beelman*.

Further, Section 8(d)2 provides that if Petitioner sustained injuries covered by paragraph 8(e), which Petitioner has in the present case under Section 8(e)18 for the loss of use of both eyes, and he sustained other injuries which 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, he shall be entitled to additional compensation for that percentage of 500 weeks that the partial disability resulting from the injuries covered by this paragraph bears to total disability.

It is undisputed Petitioner sustained serious and permanent injuries covered by paragraph 8(e) as the result of a complete loss of vision. Petitioner also sustained injuries to his abdomen, hip, spine, and head (psychological) that partially incapacitated him from his underground mining duties for Respondent. Petitioner's abdomen consists of mesh as a result of the crushing injury, and he testified there is no muscle in the crushed area. Petitioner sustained numerous lumbar spine fractures and psychological injuries. There is no evidence that but for his loss of vision, the injuries to Petitioner's hip, spine, abdomen, or head resulted in a total incapacitation or impairment of earning capacity. Therefore, based on the plain language of Section 8(d)2, Petitioner is entitled to compensation for the permanent partial disability of his unscheduled body parts.

In line with the reasoning in *Bellman,* Petitioner should be allowed to recover for the loss of two members (eyes) under Section 8(e)18, as well as for any additional losses beyond the two losses compensated under that section. The Arbitrator finds that the statutory permanent total disability falls far short of addressing the full scope of Petitioner's injuries from this accident. Allowing Petitioner to recover under Section 8(d)2 for injuries to his hip, abdomen, spine, and head, while receiving a concurrent award under Section 8(e)18 for the loss of use of both eyes, does not result in a double recovery as the Illinois Supreme Court reasoned in *Beelman*.

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).

Level of Impairment: Neither Party submitted an AMA impairment rating. Therefore, the Arbitrator gives no weight to this factor.

Occupation: It is undisputed Petitioner's complete loss of vision caused permanent total disability. Consistent with Petitioner's testimony that the blindness overshadowed his other physical injuries because everyone assumed he would never work, there are no opinions in the record that Petitioner reached MMI with regard to his hip, spine, abdomen, or head/psychological injuries, or that such injuries, individually or collectively, resulted in permanent restrictions. The Arbitrator places significant weight on this factor.

Age: Petitioner was 37 years of age on the date of accident. He is a younger individual and must live with his disability for an extended period of time. Pursuant to *Jones v. Southwest Airlines*, 16 I.W.C.C. 0137 (2016) (wherein the Commission concluded that greater weight should have been given to the fact that Petitioner was younger [46 years of age] and would have to live with his disability for an extended period of time). The Arbitrator places greater weight on this factor.

Earning Capacity: It is undisputed Petitioner's complete loss of vision caused permanent total disability. As stated above and consistent with Petitioner's testimony that the blindness overshadowed his other physical injuries because everyone assumed he would never work, there are no opinions in the record that Petitioner reached MMI with regard to his hip, spine, abdomen, or head/psychological injuries, or that such injuries, individually or collectively, resulted in permanent restrictions and thus a loss of earning capacity. The Arbitrator places some weight on this factor.

Disability: Petitioner sustained severe injuries that required multiple surgeries, including a right posterolateral thoracotomy, exploratory laparotomies, small bowel resection, right colon resection, sigmoid colon resections, closure of traumatic abdominal wall hernia, ileocolic anastomosis, descending colostomy, wound vac placement, partial colectomy, drainage of intra-abdominal infection, debridement of right retroperitoneum and abdominal wall, and repair of left diaphragmatic rupture. Petitioner suffered bilateral hemispheric infarctions that lead to complete blindness. He sustained lumbar spine fractures including transverse spinous fractures from L1 to L5, a spinous process fracture at L4, and left SI joint diastasis. Petitioner suffered temporary renal failure in the setting of septic shock. (PX3)

Petitioner suffered dislocation of the SI joint and traumatic rupture of symphysis pubis. He subsequently underwent a myofascial advancement flap of the posteriorectus sheath and transversus abdominis muscle on the left and right, repair of incarcerated incisional and parastomal hernia, mesh placement, cholecystectomy, exploratory laparotomy with adhesiolosis, abdominal wall reconstruction, and gallbladder removal with colostomy closure. He had some postoperative complications that required infectious disease care.

Petitioner suffered from anxiety, depression, and PTSD for which he received counseling and medication. Petitioner testified he continues to take medication for anxiety, pain, heartburn, and stool softeners. He has recently been prescribed Hydrocodone for pain in his back, hip, and stomach. He has mild to extreme low back and left hip pain. His symptoms increase with prolonged standing, walking, and sitting. He experiences stinging and numbing pains in his hands and arms.

Petitioner testified he has limited control of his bowels and averages 5 to 15 bowel movements per day. His injuries have affected every aspect of his life and continue to cause him embarrassment and depression. He stated his symptoms ruin his life and controls his daily activities. Petitioner is very limited in his ability to play with his children and teach them as a father figure.

Petitioner has constant pain in his abdomen from below his upper chest to his waist. He does not have any muscle in the area and has numbness down the entire right side of his abdomen. His abdominal scar starts below the breast area and is a vertical line to the waist. Petitioner no longer has a bellybutton. There is an indentation measuring three inches at the colostomy site. The right side of Petitioner's abdomen is distended from mesh placed at surgery. He has a scar from a thoracotomy in his right flank area between his right shoulder and waist. Petitioner has scar sensitivity.

Petitioner testified that his post-accident nightmares of being crushed have improved, but he continues to have nightmares and can only sleep in 2-hour increments. He takes medication for depression and pain. The Arbitrator places significant weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 60% loss of his body as a whole, as provided under Section 8(d)2 of the Act.

Arbitrator Linda J. Cantrell DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC005635
Case Name	Jason Higgins v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0012
Number of Pages of Decision	11
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Jason Coffey
Respondent Attorney	Kenton Owens

DATE FILED: 1/9/2023

/s/Marc Parker, 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

Jason Higgins,

Petitioner,

vs. NO: 20 WC 5635

State of Illinois/Menard Correctional 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 temporary total disability, causal connection, permanent partial disability, medical expenses, prospective medical care, and notice, 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 4, 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.

January 9, 2023
MP:yl
o 1/5/23
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	20WC005635
Case Name	HIGGINS, JASON v. MENARD CORRECTIONAL CENTER
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Jason Coffey
Respondent Attorney	Kenton Owens

DATE FILED: 4/4/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 29, 2022 1.05%

/s/ William Gallagher, Arbitrator
Signature

CERTIFIED as a true and correct
copypursuant to820 ILCS 305/14

April 4, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

Jason Higgins
Employee/Petitioner

v.

Menard Correctional Center
Employer/Respondent

Case # 20 WC 05635

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, Herrin Docket, 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. ☐ 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 21, 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 $89,616.00; the average weekly wage was $1,723.38.

On the date of accident, Petitioner was 50 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.

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 4, 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.

Respondent shall pay Petitioner permanent partial disability benefits of $836.69 per week for 28.5 weeks because the injuries sustained caused the seven and one-half percent (7 1/2%) loss of use of the right hand and seven and one-half percent (7 1/2%) loss of use of the left hand, 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.

William R. Gallagher, Arbitrator

APRIL 4, 2022

ICArbDec p. 2

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment by Respondent. The Application alleged a date of accident (manifestation) of January 21, 2020, and that Petitioner sustained "Repetitive Stress/Trauma" to his "Bilateral Hands/Wrist" (Arbitrator's Exhibit 2). Respondent disputed liability on the basis of accident, notice and causal relationship (Arbitrator's Exhibit 1).

Petitioner became employed by Respondent in March, 1993, as a Correctional Officer at the Pontiac Correctional Center. In June, 1995, Petitioner transferred to the Menard Correctional Center where he continued to work as a Correctional Officer until 2010. At that time, Petitioner became an Information Services Specialist. He continued to work for Respondent in that capacity until he retired in April, 2020.

Petitioner testified regarding his job duties as both a Correctional Officer and Information Services Specialist. As a Correctional Officer, Petitioner would engage in "bar rapping" using a two foot piece of rebar in which he would strike every metal bar in the cells to make certain they were secure. Petitioner estimated he would strike 400 to 500 bars once every shift. Petitioner used both hands during this process and it caused vibration the both hands.

As a Correctional Officer, Petitioner also used Folger Adams keys to open and secure cells. A Folger Adams key is much larger than a normal key and Petitioenr had to twist his entire arm to turn the key. Petitioner was required to use Folger Adams keys when he was assigned to the segregation unit and each cell door required using a Folger Adams key. Petitioner was assigned to the segregation unit for approximately eight years.

When Petitioner became an Information Services Specialist, he continued to perform hand intensive duties. Petitioner testified he had to set up data networks, closed circuit television networks and cable television systems. This required the use of power tools, drills, hammer drills and a grinder. Petitioner said the job tasks required a significant amount of gripping, grasping and exposure to vibration. Petitioner was required to perform these various tasks approximately four to six hours per day. Petitioner testified this position was more hand intensive than the duties of a Correctional Officer.

Petitioner began to experience symptoms in both of his hands while working. Petitioner initially sought medical treatment from Dr. Wendell Becton, an orthopedic surgeon, on December 31, 2019. At that time, Petitioner complained of bilateral numbness/tingling in both hands which began several years prior which had been getting progressively worse. Petitioner advised that during the workday, he would have to take breaks and wait for the symptoms to improve. Dr. Becton opined particular had carpal tunnel syndrome which was work-related. He prescribed medication, fitted Petitioner with a splint and ordered EMG/nerve conduction studies (Respondent's Exhibit 6).

The EMG/nerve conduction studies were performed on January 21, 2020 (date of manifestation). They were positive for mild/moderate median neuropathy which could be bilateral carpal tunnel

syndrome (Petitioner's Exhibit 2). Petitioner testified this was the first time he knew for certain that he had carpal tunnel syndrome.

On January 30, 2020, Petitioner completed and signed a Workers' Compensation Employee's Notice of Injury. Petitioner indicated a date of accident of January 21, 2020, and described the injury as being repetitive use of both hands/wrists (Petitioner's Exhibit 1). Respondent tendered into evidence a Supervisor's Report of Injury or Illness dated January 31, 2020, which also indicated Petitioner had carpal tunnel syndrome which was related to his job duties (Respondent's Exhibit 1).

Petitioner was seen by Dr. Becton on March 18, 2020. At that time, Dr. Becton reviewed the EMG/nerve conduction studies and agreed they were abnormal and positive for bilateral carpal tunnel syndrome. Because Petitioner had received conservative treatment for the condition, but still had experienced worsening symptoms, Dr. Becton recommended Petitioner be seen by Dr. George Paletta, an orthopedic surgeon with whom he was associated, for bilateral carpal tunnel surgery (Respondent's Exhibit 6).

Petitioner testified he determined that neither Dr. Becton nor Dr. Paletta were included in his group insurance plan. Because of this, Petitioner was subsequently treated by Dr. Steven Young, an orthopedic surgeon.

Dr. Young initially evaluated Petitioner on June 23, 2020. Petitioner advised Dr. Young the symptoms began as a result of repetitive motion and were moderate/severe. Dr. Young recommended Petitioner proceed with bilateral carpal tunnel surgery (Petitioner's Exhibit 3; Deposition Exhibit 2).

Dr. Young performed carpal tunnel surgery on Petitioner's right and left hands on July 8, 2020, and September 16, 2020, respectively. Petitioner was seen by Dr. Young following surgeries. When Petitioner was last seen by Dr. Young on October 28, 2020, Petitioner advised he had no numbness, tingling or pain other than a little soreness in his left palm (Petitioner's Exhibit 3; Deposition Exhibit 2).

Dr. Young was deposed on December 29, 2020, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Young's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. In regard to causality, Dr. Young testified the hand intensive work which included fine motor usage of the hands repetitively throughout the day was a causative factor of Petitioner's carpal tunnel syndrome condition (Petitioner's Exhibit 3; pp 14-15).

On cross-examination, Dr. Young agreed Petitioner had a BMI of 33 and was obese and this was an additional risk factor for developing carpal tunnel syndrome. He agreed Petitioner's age would also be a risk factor as well (Petitioner's Exhibit 3; pp 17-18).

At the direction of Respondent, Dr. Mark Cohen, an orthopedic surgeon, reviewed Petitioner's medical records, information regarding Petitioner's job duties and the transcript of Dr. Young's deposition. Dr. Cohen prepared a report dated August 29, 2021, in which he opined Petitioner's

bilateral carpal tunnel syndrome was not related to Petitioner's work activities. He opined carpal tunnel syndrome can be occupational; however, this is limited to jobs which require forceful and repetitive grasping and squeezing against resistance throughout the day. He also noted carpal tunnel syndrome could be caused by the use of heavy vibratory tools. Dr. Cohen opined that repetitive use of hands in computer and data entry was not a cause of carpal, syndrome. He also referenced the fact Petitioner was obese and this was a risk factor that can contribute to the development of carpal tunnel syndrome (Respondent's Exhibit 2).

Dr. Cohen was deposed on December 20, 2021, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Cohen's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. Specifically, Dr. Cohen testified Petitioner's carpal tunnel syndrome condition was not related to Petitioner's work activities because Petitioner did not perform any heavy repetitive gripping and squeezing against resistance and Petitioner had the further risk factor of being obese (Respondent's Exhibit 4; pp 11-12).

On cross-examination, Dr. Cohen agreed he did not see or examine Petitioner and did not obtain any information or description of Petitioner's work activities from Petitioner. He testified repetitive use of the hands does not cause carpal tunnel syndrome, but it could lead to a manifestation of symptoms (Respondent's Exhibit 4; pp 13-16).

At trial, Petitioner testified the symptoms in his hands were very much improved since undergoing the surgeries. His hands cannot fall asleep as much as they did prior. Petitioner also testified that, because he is retired, he does not engage in the activities that caused him to experience hand symptoms when he worked for Respondent.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner sustained a work-related repetitive trauma injury to his hands which manifested itself on January 21, 2020.

In support of this conclusion the Arbitrator notes the following:

Petitioner worked for Respondent as a Correctional Officer and Information Services Specialist from 1993 through 2020, a period of approximately 27 years. Petitioner's testimony regarding the repetitive use of both of his hands while working for Respondent was unrebutted.

Petitioner first sought medical treatment on December 31, 2019, when he was evaluated by Dr. Becton. At that time, Petitioner advised Dr. Becton of his work activities and Dr. Becton opined Petitioner had work-related carpal tunnel syndrome; however, Dr. Becton ordered EMG/nerve conduction studies.
The EMG/nerve conduction studies were performed on January 21, 2020, which was the date of manifestation alleged in the Application. Petitioner testified he did not know for certain that he had carpal tunnel syndrome until the day the EMG/nerve conduction studies were performed.

Based on the preceding, the Arbitrator finds the date of manifestation was January 21, 2020.

Both Dr. Becton and Dr. Young opined Petitioner's bilateral carpal tunnel syndrome was a work-related condition. Dr. Young specifically noted the fact Petitioner performed hand intensive work which included fine manipulation of his hands repetitively throughout the day.

Respondent's records review physician, Dr. Cohen, opined Petitioner's bilateral carpal tunnel syndrome condition was not work-related because Petitioner did not engage in forceful and repetitive grasping and squeezing against resistance and did not use heavy vibratory tools. However, Dr. Cohen agreed the repetitive use of the hands could lead to a manifestation of symptoms.

There is no question Petitioner was obese and this is a risk factor for development of carpal tunnel syndrome; however, there was no evidence this was because of Petitioner's bilateral carpal tunnel syndrome condition.

Given the preceding, the Arbitrator finds the opinions of Dr. Becton and Dr. Young to be more persuasive than that of Dr. Cohen.

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

The Arbitrator concludes Petitioner gave notice to Respondent within the time required by the Act.

In support of this conclusion the Arbitrator notes the following:

As noted herein, the Arbitrator determined the date of manifestation was January 21, 2020.

Petitioner prepared and signed the Workers' Compensation Employee's Notice of Injury on January 30, 2020, which is within the time limit for an employee to provide notice of a work-related injury to the employer.

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

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 4, 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 seven and one-half percent (7 1/2%) loss of use of the right hand and seven and one-half percent (7 1/2%) loss of use of the left hand.

In support of this conclusion the Arbitrator notes the following:

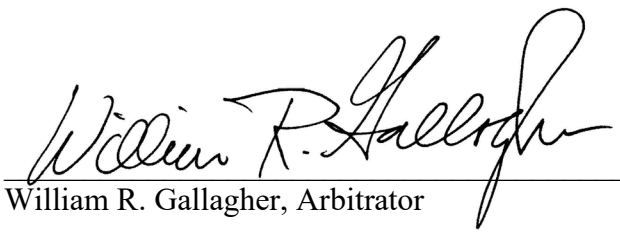
Neither Petitioner nor Respondent tendered an AMA impairment rating. The Arbitrator gives this factor no weight.

At the time Petitioner sustained the accident, he was employed by Respondent as an Information Services Specialist and would have been able to return to work to that job if he had not decided to retire. The Arbitrator gives this factor moderate weight.

Petitioner was 50 years old at the time he sustained the injury. As noted herein, Petitioner has retired, but he will have to live with the symptoms for the remainder of his natural life. The Arbitrator gives this factor moderate weight.

There was no evidence Petitioner sustained a diminished earning capacity as a result of the accident. The Arbitrator gives this factor moderate weight.

Petitioner had a good outcome following both hands surgeries. When Petitioner was last seen by Dr. Young on October 28, 2020, the numbness/tingling symptoms had resolved in Petitioner only had minimal complaints of pain. At trial, Petitioner testified his hands do not fall asleep the way they did prior; however, because of his retirement, Petitioner is no longer engaging in the work activities which caused him to sustain the accident. The Arbitrator gives this factor significant weight.



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC018425
Case Name	Joseph Waryck v. XPO Logistics, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0013
Number of Pages of Decision	28
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Gary Stone
Respondent Attorney	Katrina Robinson

DATE FILED: 1/9/2023

/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

Joseph Waryck,

Petitioner,

vs. NO: 18 WC 18425

XPO Logistics, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 8, 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.

January 9, 2023

MP:yl
o 1/5/23
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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	18WC018425
Case Name	Joseph Waryck v. XPO Logistics, Inc.
Consolidated Cases	
Proceeding Type	
Decision Type	Amended Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	25
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	Gary Stone
Respondent Attorney	Katrina Robinson

DATE FILED: 7/8/2022

THE INTEREST RATE FOR THE WEEK OF JULY 6, 2022 2.50%

/s/ Antara Nath Rivera, Arbitrator

Signature

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

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

AMENDED ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
AMENDED

Joseph Waryck
Employee/Petitioner

v.

XPO Logistics, Inc.
Employer/Respondent

Case # **18** WC **018425**

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 **Antara Nath Rivera**, Arbitrator of the Commission, in the city of **Chicago**, on **March 29, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On ***December 4, 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 ***$82,811.04***; the average weekly wage was ***$1,592.52***.

On the date of accident, Petitioner was ***47*** years of age, ***married*** with ***1*** dependent children.

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

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

Respondent shall be given a credit of ***$0*** for TTD, ***$0*** for TPD, $***0*** for maintenance, and ***$158,296.50*** for medical benefits, for a total credit of ***$158,296.50***.

Respondent is entitled to a credit of ***$6,994.99*** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, for a total of $24,626.90 which includes: medical bills from Improved Functions ($1,600.00), Northwestern Medicine ($884.00), Elmhurst Hospital ($14,779.00), Core Orthopedics ($225.00), and Athletico Physical Therapy ($3,607.00); as well as medical payment reimbursement for $3,531.93, amount paid by Petitioner to Elmhurst Hospital, Northwestern Medicine, Core Orthopedics, and Geneva Surgical Suites, 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 Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner TTD benefits at $1,061.68 per week for 58 weeks commencing February 6, 2019, through March 19, 2020, as provided in Section 8(b) of the Act.

Respondent shall not pay maintenance as Petitioner is not entitled to maintenance.

Respondent shall pay Petitioner PPD benefits of $790.64 per week for 200 weeks, because the injuries sustained resulted in Petitioner’s inability to return to his pre-injury employment, Petitioner’s experiencing a loss of earning capacity, and Petitioner’s loss of trade which resulted in 40% loss of use of the person as a whole as provided in Section 8(d)2 and 8(b)(2) of the Act.

Respondent shall be given a credit of $6,994.99 for medical bills paid through its group medical plan, as provided in Section 8(j) of the Act.

Respondent shall be given a credit of $158,296.50 for medical benefits paid, as provided in Section 8(j) of the Act.

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

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

_____ **JULY 8, 2022**

Signature of Arbitrator

STATEMENT OF FACTS

Joseph Waryck ("Petitioner") is a 51-year-old man, married, with a 19-year-old son who was employed by XPO Logistics, Inc. ("Respondent") working as a Driver Sales Representative ("DSR") (Arbitrator's Exhibit "AX" 1, Line 6; Transcript "T." 17-18) Petitioner testified that he worked for Respondent, as a DSR, for 25 years and last worked for Respondent in September 2019. (T. 17) Petitioner testified that his job duties involved performing pre-trip inspections, driving trucks and forklifts, performing pickups and deliveries, loading and unloading freight, putting boxes on pallets and shrink wrapping them, tipping drums to put them on the dollies or pallets, and soliciting business with customers. (T. 18-19) He testified that he was required to lift items that weighed 150 pounds and required to move items that weighed 500 to 600 pounds on a daily basis. (T. 19-20) Petitioner testified that for the heavier items, he would "tip it and just kind of manhandle it up onto a pallet." *Id*. He testified that he would then shrink wrap the pallet and move with a forklift. *Id*.

Petitioner testified that on December 4, 2017, he began working at 5:00 a.m.. (T. 26) He testified that he was unloading his trailer when he heard a "boom" from the trailer next to him and his coworker. (T. 27) Petitioner testified that he observed a shrink-wrapped pallet which had fallen over on its side. (T. 28) He testified that he then heard the coworker's tires spinning and saw his coworker trying to scoop up the pallet with his forks. (T. 27) Petitioner testified that he knew that what his coworker was doing would damage the freight and told his coworker of such. *Id.* Petitioner testified that he asked his coworker "to go around and put his forks against the pallet" and that Petitioner would "tip the skid up" so as to not damage the freight. *Id*.

Petitioner testified that he put both arms under the pallet, lifted it up with both palms up, and transitioned it because it was tall. (T. 28-29) He testified that as he transitioned to his right hand to push up, he lost his grip, but continued to force the pallet up with his left arm and to prevent it from falling. (T. 28-30) Petitioner testified that he felt "something kind of go" in his left arm at that moment. *Id*. Petitioner testified that he felt a pull in his left shoulder. (T. 30) Petitioner testified that the pallet weighed about 200-300 pounds. *Id.*

Petitioner testified that although he felt something sharp in his shoulder, and down into his biceps, he did not think it was bad at the time and tried to shake it out as he thought it was just a "stinger or something." (T. 31) He testified that when he went back to his truck, and pushed a bar of the intergraded decking system up to the top, he felt a pain shoot through his left shoulder and arm. (T. 32) Petitioner testified that prior to December 4, 2017, he never had any problems with his left arm and was working full duty for Respondent. (T. 34)

Petitioner testified that he told his supervisor, Frank Parelli, about the injury and was asked to fill out a report (T. 34-35) After completing the report, his supervisor sent him to Concentra (Occupational Health Centers) for medical treatment. (PX 1; T. 34-35)

On December 4, 2017, Petitioner was seen at Concentra. (PX 1 at 1-4) He reported that he was lifting a pallet and felt pain in the left shoulder anteriorly, radiating to the left arm. Petitioner was diagnosed with a left shoulder strain upon being examined and review of the x-rays. (PX 1 at 1-3) An MRI and physical therapy was ordered, and Ibuprofen was prescribed. (PX 1 at 3) Petitioner was released to return to work with light

duty restrictions. *Id.* Petitioner testified that he went back to work and was able to perform light duties such as answering phones and doing paperwork. (T 37-38)

On December 5, 2017, Petitioner began physical therapy. (PX 1 at 5-9) He continued with physical therapy for approximately one week. (PX 1 at 10-12, 16-18, 19-21, 25-27) Petitioner reported that he did not improve with physical therapy, that his symptoms were worsening, and that his pain was severe (PX 1 at 22)

On December 11, 2017, Petitioner underwent a left shoulder MRI, which revealed supraspinatus tendon fraying and a moderate-thickness undersurface partial tear. (PX 1 at 28; PX 5 at 96-97)

On December 13, 2017, Petitioner returned to Concentra. (PX 1 at 22-24) Petitioner was diagnosed with a rotator cuff tear and was referred to Dr. Theodore Suchy, an orthopedic surgeon.

On December 19, 2017, Petitioner presented to Dr. Suchy. (PX 1 at 28) Dr. Suchy examined Petitioner and recommended surgery to repair the rotator cuff injury. *Id.* Petitioner agreed to have the surgery because he wanted to get back to work (PX 1 at 28-29)

On January 19, 2018, Dr. Suchy performed a rotator cuff repair, biceps tenodesis, and debridement of the AC joint with resection of the distal clavicle. (PX 2 at 6-7, 67-68) The post-operative diagnosis was a degenerative tear of the labrum, partial tear of the biceps tendon, complete tear of the supraspinatus tendon, impingement syndrome, and internal derangement of the left acromioclavicular joint. (PX 2 at 6-7)

In February, March, and April of 2018, Petitioner underwent post-operative physical therapy. (PX 1 at 32-35, 37-54, 55-69, 71-103, 105-120) During this time, while some improvement was noted, he continued to have pain and limitations of motion. (PX 1 at 55, 74, 77) Petitioner testified that he tried to work light duty, but that it was difficult as Respondent had him do things that required the use of his left shoulder while his left arm was in a sling. (T. 42-43; PX 1 at 74)

On March 13, 2018, Petitioner was evaluated by Dr. Suchy who noted significant loss of motion and was concerned about postoperative adhesive capsulitis. (PX 1 at 70)

On April 14, 2018, Petitioner returned to Dr. Suchy with complaints of pain, discomfort, and loss of motion. (PX 1 at 104) Dr. Suchy diagnosed adhesive capsulitis, recommended a manipulation, and discussed anesthesia options. *Id.*

On May 9, 2018, Dr. Suchy performed a manipulation of the left shoulder under anesthesia. (PX 3) The post-operative diagnosis was adhesive capsulitis of the left shoulder and audible popping of adhesions. *Id.* Petitioner returned to physical therapy and continued visits in the weeks thereafter. (PX 1 at 128-148) Petitioner's limitation of motion and pain in his left shoulder worsened throughout this post-operative period. (PX 1 at 128-148) Petitioner testified that he went to three physical therapy sessions, but then he knew that there was something wrong in his shoulder. (T. 45)

On May 29, 2018, Dr. Suchy evaluated Petitioner and noted increased pain and loss of motion. (PX 1 at 149) Dr. Suchy recommended an arthrogram MRI. *Id*.

On June 7, 2018, Petitioner underwent an MR arthrogram of the left shoulder at MRAD Golf Imaging Center. (PX 4 at 28-29) The MRI showed partial tearing of the rotator cuff in an area more proximal than the pre-surgical partial tear. *Id*. Petitioner testified that he "didn't trust going back to Suchy" and decided to continue his treatment with Dr. Gregory Drake at Core Orthopedics. (T. 46) He testified that Dr. Drake previously treated Petitioner for a back surgery. (T 46-47)

On June 12, 2018, Petitioner presented to Dr. Drake. (PX 4, at 12-21) A review of the MR arthrogram revealed a recurrent tear, capsulitis, AC joint inflammation, and impingement. *Id.* Dr. Drake diagnosed bursitis of the left shoulder and a complete rotator cuff tear. He recommended arthroscopic revision rotator cuff repair, revision AC joint resection, and released Petitioner to return to light duty work. (PX 4 at 14; PX 11 at 12)

On July 16, 2018, Dr. Drake performed a revision rotator cuff repair with manipulation, subacromial decompression, distal clavicle excision, and labral debridement at Geneva Surgical Suites. (PX 4 at 47-49) Intra-operative findings included a two-centimeter tear of the supraspinatus to infraspinatus, significant bone spurring, AC joint arthritis, grade I chondral wear in the humeral head, significant erythema and thickening of the capsule anteriorly and inferiorly. *Id*. Following surgery, Petitioner testified that he returned to light duty work and underwent physical therapy. (T 49) Petitioner testified that Respondent did not have him doing too much due to his pain. (T. 50) Petitioner further testified that he developed carpal tunnel, around July 2018, in his right hand due to overcompensating for his left side. (T 50-51) Petitioner testified that he is right hand dominant. (T. 51)

On August 6, 2018, Petitioner began his post-operative physical therapy. (PX 4 at 63-73, 83-88, 100-105) He continued with physical therapy throughout August 2018. *Id*.

On August 14, 2018, Petitioner presented to Dr. Raymond Metz regarding right wrist symptoms that had been present for several months. (PX 4 at 74-82) Dr. Metz administered an injection and recommended an EMG. *Id.*

By August 22, 2018, Petitioner reported that his shoulder was feeling okay and that the continuous passive motion (CPM) machine relieved some of his pain. (PX 4 at 93) He complained of some stiffness and tightness but reported that his pain had greatly improved since before the surgery. *Id*.

On August 24, 2018, Petitioner reported to Dr. Drake that he was doing well. (PX 4 at 96-99) Petitioner continued to attend physical therapy through October 3, 2018. (PX 4 at 106-129, 130-131, 133-137)

On October 5, 2018, Dr. Drake noted that Petitioner was doing well and improving with therapy. (PX 4 at 138-140, 144) Petitioner continued with physical therapy throughout October 2018. (PX 4 at 142-143, 146-154, 158-159, 162-169, 174-182)

On October 16, 2018, Petitioner underwent a bilateral EMG/NCV, which revealed evidence of bilateral carpal tunnel syndrome, worse on the right. (PX 4 at 154-157)

On October 25, 2018, Dr. Metz performed a right carpal tunnel release. (PX 4 at 170-171)

On November 7, 2018, Petitioner followed up with Dr. Metz and reported that he was doing well. (PX 4 at 189) Petitioner continued with physical therapy for his left shoulder throughout November 2018. (PX 4 at 183-188, 190-195, 197-206, 215-235)

On November 16, 2018, Petitioner returned to see Dr. Drake. (PX 4 at 207-214) Petitioner completed the strengthening phase of physical therapy and reported that his shoulder was feeling better and that his strength was improving. *Id*. Dr. Drake administered a glenohumeral joint injection. Thereafter, Petitioner continued with physical therapy through December 2018. (PX 4 at 236-247, 248-271, 285-293) Petitioner testified that the injection initially helped him, but when it wore off, he felt like the same as before the injection. (T. 53) Petitioner testified that he was off of work during this time. *Id*.

On December 26, 2018, Petitioner returned to see Dr. Drake and reported that ibuprofen helped his pain but that he exhibited weakness in the left shoulder. (PX 4 at 272-284) On physical examination, Petitioner had mild subacromial tenderness and negative special tests for impingement, AC joint pain, SLAP, and biceps. *Id*. Dr. Drake ordered an MRI of the left shoulder to make sure Petitioner did not have an additional tear (PX 11 at 16-18)

On December 27, 2018, Petitioner appeared for an independent medical examination ("IME") with Dr. Kevin Walsh. (RX 1; T. 53) Petitioner testified that he was at the exam for 1.5 hours and was with Dr. Walsh for 3-5 minutes. *Id*. Petitioner testified that he informed Dr. Walsh of his problems. *Id*. In Dr. Walsh's December 27, 2018, IME report, he documented that Petitioner reported being a truck driver and sales representative. (Respondent's Exhibit "RX" 1 at 2) Petitioner reported lifting a heavy pallet of freight when he injured his left shoulder. (RX 1 at 1) Petitioner testified that Dr. Walsh asked Petitioner to lift his arms 90 degrees, Dr. Walsh grabbed his left arm, and pushed it. (T. 54) Petitioner testified that he felt a bad pain when Dr. Walsh pushed his arm. *Id.*

Dr. Walsh noted that Petitioner objectively had normal strength, and that there was no evidence of a recurrent rotator cuff tear, no evidence of recurrent osteoarthritis in the AC joint, and no evidence of ongoing bicipital tendonitis. (RX 1 at 9) He noted that Petitioner had subjective pain complaints without clear evidence of objective abnormalities. *Id.*

Dr. Walsh explained that the spurs in the subacromial space and the AC joint osteoarthritis were not causally related to the work accident, but were degenerative, preexisting, and unrelated conditions. (RX 1 at 9) He opined that it was not likely that the work injury described aggravated or accelerated those degenerative changes. *Id.* He further opined that the degenerative changes in the rotator cuff and biceps tendon were pre-existing and not related to the work accident. *Id.* He opined that Petitioner's care and treatment was reasonable, but such treatment was not all causally related to the work accident. *Id.*

Dr. Walsh did not review any MRI or MR arthrogram images. (RX 1 at 32) He opined that despite the pain and limitations, Petitioner required no further treatment, was at maximum medical improvement ("MMI"), and could return to work full duty. (RX 1 at 10; RX 1 at 43-45) He concluded that no further medical treatment was reasonable, necessary, and causally related to the work injury. Dr. Walsh noted that further treatment was unlikely to benefit Petitioner and noted that lack of objective findings that would account for Petitioner's subjective complaints. He concluded that Petitioner was capable of returning to work without restrictions. *Id.* Dr. Walsh assessed an impairment rating of 0%. (RX 1 at 11) As a result of Dr.

Walsh's opinions, Petitioner's workers' compensation benefits were terminated at the beginning of February 2019.

On January 2, 2019, Petitioner underwent an MRI of the left shoulder which revealed another partial thickness tear of the rotator cuff. (PX 4 at 294-296; PX 11, 18-19)

On January 11, 2019, Petitioner returned to see Dr. Drake. (PX 4, at 312-316) Petitioner reported that his shoulder had improved with physical therapy, but he complained of some intermittent pain at the lateral aspect with certain movements. *Id.* Dr. Drake thought the MRI demonstrated a possible subtle partial thickness tear, but he did not think Petitioner would require additional surgery. *Id.* He recommended a repeat glenohumeral joint injection for suspected adhesive capsulitis, however that was never done as it was not approved (PX 11 at 20-21)

From January 2019 and into early February 2019, Petitioner continued with physical therapy. (PX 4, at 297-311, 317-355)

On February 7, 2019, Petitioner's attorney sent Dr. Drake a letter along with Dr. Walsh's IME report. (RX 9)

On February 15, 2019, Petitioner again returned to Dr. Drake. (PX 4 at 356-361) Dr. Drake noted that Petitioner's range of motion decreased, and that Petitioner continued to have pain and weakness. (PX 11 at 21) Dr. Drake believed Petitioner would benefit from a cortisone injection and continued physical therapy. In his report, Dr. Drake documented that he disagreed with IME Dr. Walsh and referred him to Dr. Guido Marra for a second opinion. (PX 11 at 22-23; PX 4 at 357; T. 60) Dr. Drake imposed work restrictions of no overhead work and no lifting greater than 20 pounds. (PX 4 at 359)

On February 21, 2019, Petitioner presented to Dr. Marra (PX 5 at 87-89) Dr. Marra examined Petitioner, reviewed his history, the operative reports, and the left shoulder MRI scan. (PX 5, 87-88) The examination demonstrated significant limitations of the left shoulder. (PX 5 at 10) The records noted that Petitioner could only raise his left arm to 90 degrees, which is parallel to the ground, as well as limitations in other left arm movements. (PX 9 at 10-11) Dr. Marra's diagnosis was adhesive capsulitis or frozen shoulder, as well as persistent pain when compressing his rotator cuff. (PX 9 at 11) Dr. Marra recommended an MR arthrogram in which contrast material is injected inside the shoulder before an MRI scan is done to determine if there was a recurrent tear. (PX 5 at 82; PX 9 at 13) Dr. Marra kept Petitioner on work restrictions per his "treating physician." (PX 5)

Petitioner testified that he sent his light duty restrictions to Jessica Castillo in human resources. (T. 56-57; PX 14) Ms. Castillo's February 21, 2019, response noted that no light duty work was available at that time. (T. 57, PX 14)

On March 21, 2019, Dr. Marra wrote a letter to Petitioner's attorney. (PX 5 at 82-83) This letter was in response to correspondence that Petitioner's attorney had sent to Dr. Marra along with a tender of Dr. Walsh's IME report. Dr. Marra informed Petitioner's attorney that he had reviewed Dr. Walsh's December 27, 2018, report, and disagreed regarding future medical care. Dr. Marra thought that Petitioner had "the potential to improve with additional medical care."

On April 22, 2019, Petitioner returned to Dr. Drake. Dr. Drake recommended an MR Arthrogram. (PX 4 at 362-367, 371)

On May 6, 2019, Petitioner underwent an MR Arthrogram. (PX 4 at 375-377)

On May 14, 2019, Dr. Drake interpreted the MR Arthrogram as demonstrating a partial linear rotator cuff tear. (PX 4 at 378-382) He administered a left AC joint injection; however, it did not help Petitioner. (PX 11 at 27) Dr. Drake indicated that if Petitioner did not improve, Dr. Drake would consider a second revision surgery. (PX 4)

On May 23, 2019, Dr. Marra authored a report and interpreted the May 6, 2019, MR Arthrogram as showing evidence of a small full-thickness rotator cuff tear. (PX 5 at 75-76) He recommended non-surgical management (injections and physical therapy) or surgical management (arthroscopic capsular release with revision rotator cuff repair). *Id.*

On June 14, 2019, Petitioner returned to Dr. Drake and reported one day of relief from the AC joint injection as well as constant throbbing. (PX 4, at 383-391) Petitioner indicated that he wanted to proceed with surgery and understood that Dr. Drake might not be able to repair the tendon due to its poor quality. Dr. Drake kept Petitioner off work pending further evaluation (PX 4, p.386)

On June 21, 2019, Petitioner's group health carrier, Cigna, issued a letter that detailed its determination that the surgical procedures were not medically necessary. (PX 4 at 550-560)

On July 9, 2019, Petitioner was seen by Dr. Harold Rees at Dr. Marra's office. (PX 5 at 69-73) Petitioner reported that he was unable to work. *Id.* He had 90 degrees of active forward flexion but was passively able to get to 120 degrees. *Id*. He had 10 degrees of active and passive external rotation, was able to internally rotate to the gluteal region, and had elevation to 100 degrees. *Id.* Petitioner's subscapularis strength was 5/5 and his strength was 4/5 at the supraspinatus, infraspinatus, and teres minor. *Id.* He did not have any tenderness around the AC joint or the biceps. *Id.* He had a negative Speed's and negative cross body test. *Id.* Dr. Marra authored a report that documented Petitioner's understanding that the recommended arthroscopic capsular release was a "salvage procedure" with a significant chance of reoccurrence of stiffness and persistent pain. (PX 5 at 70) Dr. Marra authorized Petitioner off work until surgery. (PX 5 at 71)

On July 14, 2019, Dr. Walsh issued a second IME report. (RX 1, Exh 3) In his report, Dr. Walsh stated that he reviewed the MR arthrogram and opined that there was no clear evidence that Petitioner had a full thickness rotator cuff tear that requires additional surgical intervention. (RX 1 Exh 3 at 2) He noted a sliver of contrast within the distal anterior-superior supraspinatus, but no significant contrast leaking into the subdeltoid bursa. (RX 1 DepX 3 at 1) The infraspinatus, subscapularis, and labrum were intact and there was no fatty atrophy of the teres minor. *Id.* Dr. Walsh noted that the contrast on the MRI remained within the glenohumeral joint and that there was no evidence of extravasation into the subacromial space. (RX 1 DepX 3 at 2) Dr. Walsh concluded that the May 6, 2019, MRI did not change his previous opinions, including that Petitioner had reached MMI and was capable of returning to his regular work.

On July 24, 2019, Dr. Marra performed a left arthroscopic capsular debridement and extensive debridement of the subacromial space. (PX 5 at 65A-65B) The postoperative diagnosis was poor rotator cuff

tendon, left adhesive capsulitis, and left subacromial capture. *Id.* Thereafter, Petitioner underwent physical therapy at Athletico from July 25, 2019, to July 31, 2019. (PX 8 at 94-97, 98-99, 100-105, 114-117)

On July 29, 2019, Dr. Marra authored a letter where he indicated that Petitioner was unable to return to work as of July 9, 2019. (PX 5 at 63-64, 71)

On August 2, 2019, the physical therapist noted that Petitioner was progressing well, and strengthening with range of motion was added to his rehabilitation program. (PX 8 at 92-93)

On August 7, 2019, the physical therapist noted that Petitioner had improved stretching in all directions, and scapular strengthening was initiated. (PX 8 at 88-89)

On August 15, 2019, Petitioner returned to Dr. Marra. (PX 5 at 46-50) Dr. Marra noted that Petitioner was overall doing well. (PX 5 at 47) Petitioner had active elevation to 160 degrees, external rotation to 60 degrees, internal rotation to the gluteal region, and no impingement signs. *Id.* Dr. Marra recommended continued physical therapy.

Physical therapy records continued to show Petitioner's progress. By August 20, 2019, Petitioner reported to his therapist that he felt that his range of motion was getting better and that he could lift his arm overhead. (PX 8 at 76) However, he could not lift his arm "as high" because he felt weak. *Id.* The therapist noted that Petitioner continued to show improvement in range of motion and strength, and that he was making good progress. (PX 8 at 77)

On August 21, 2019, the physical therapist noted that Petitioner had improved abduction during passive range of motion. (PX 8 at 75) There was no catching or locking at the 90 degree point during movement, although Petitioner complained of subjective pain at the end range.

On August 23, 2019, the physical therapist noted that Petitioner made good gains in physical therapy and had begun aggressive stretching and strengthening of his shoulder. (PX 8 at 124) The physical therapist documented improvements in flexion, abduction, external rotation, and internal rotation. Petitioner's flexion was 145 degrees, abduction was 110 degrees, and external rotation was 45 degrees. (PX 8 at 126)

On August 27, 2019, Petitioner reported that his activities of daily living were getting easier. (PX 8 at 66) The therapist noted Petitioner had improved active and passive range of motion, and that he was making good progress with strengthening activities. (PX 8 at 67)

On August 28, 2019, Petitioner reported that his pain was decreasing and only complained of stiffness. (PX 8 at 64) The physical therapist noted that Petitioner's strength was progressing appropriately. (PX 8 at 65)

On August 30, 2019, Petitioner reported that he was feeling better, but complained of sharp and shooting pain in his left shoulder, particularly with functional activities. (PX 8 at 58, 62) Petitioner reported that he was able to sleep through the night and felt prepared to return to work despite his pain levels, which rated at 2 out of 10. *Id.* Petitioner's flexion was 155 degrees, abduction was 155 degrees, external rotation (at 90 degrees) was 60 degrees, and internal rotation was to L-1. (PX 8 at 58-59) He had full left shoulder strength, equal to that of the uninjured right shoulder. (PX 8 at 59) The therapist noted that Petitioner had

made good progress and that he had improvements with range of motion and strength in all directions. *Id.* The therapist recommended heavy lifting exercises.

Petitioner testified that physical therapy did not go well at all. (T 62) He testified that, as of September 2019, his left shoulder "always hurt," that he "always had shooting pains," and that "they just could not get the motion back." (T 64)

Petitioner further testified that despite the stiffness, pain, and trouble using his left arm, he asked Dr. Marra to return him back to work full duty because he was getting behind in his mortgage and had huge bills to pay and did not know what else to do. (T. 64-66) Petitioner testified that Dr. Marra recommended light duty to transition back to work, but that he told Dr. Marra that his supervisor said to either come back full duty or don't comeback at all. (T. 65) Petitioner testified that he told his physical therapist that he felt prepared to return to work at that juncture. (T. 97)

On September 12, 2019, Petitioner testified that he saw Dr. Marra and asked him for a full duty release to return to work. (T 64) Petitioner testified that Dr. Marra recommended light duty to transition him back to work, and further testified that he believed that he required a full duty release in order to return to work. (T 65) Petitioner claimed that he pressed Dr. Marra for the full duty release, and that Dr. Marra agreed and released him to full duty. (T 65-66) Dr. Marra released Petitioner from his care and indicated that he would be happy to see Petitioner should he have any further problems. *Id.* Dr. Marra issued a letter releasing Petitioner to return to work without restrictions. (PX 5 at 41-42) Dr. Marra further documented that Petitioner's elevation was 160 degrees, external rotation was 60 degrees, internal rotation was to the gluteal region, and there were no impingement signs. (PX 5)

Petitioner testified that on September 12, 2019, he tendered Dr. Marra's full duty release to Respondent's terminal manager, Mike Reidy. (T. 66) Petitioner testified that Mr. Reidy informed him that there was no longer a position available. (T. 66; PX 15) Petitioner testified that he had never been in that situation before because he has been working since he was 12 years old. (T. 67-68)

Petitioner testified that he received a termination letter from Respondent, dated September 13, 2019, thereafter. (T 68-69) Respondent's letter stated that the company held Petitioner's position open for 12 months, but that there were currently no open positions. (PX 15) As a result, Petitioner's active employment ended. *Id.* Petitioner testified that he tried to look for work and referred to his job logs. (T 69-70, PX 16)

The first two pages of his job logs documented 17 online contacts and one phone contact to prospective employers between September 13, 2019, and October 17, 2019. (PX 16) The third page listed nine online contacts between July 27, and August 4, with no year indicated. Several employers were listed multiple times on the logs. Petitioner testified that he never looked for any type of job in sales despite experience in soliciting business for Respondent. (T. 126) Petitioner testified that part of his job with Respondent was working as a driving instructor and forklift instructor. (T. 166) When asked if he tried to get a job as a CDL classroom instructor, or any sort of teaching position, Petitioner testified that he "made a few calls" to a few employers. (T. 117-118) Petitioner testified that his job logs only documented that he had sought work as a truck driver at those employers because he was looking for driver positions. (T. 117-118, 137)

Petitioner testified that the only missing prospective employer from his job logs was Connors Transportation. (T. 109-110) Petitioner testified that he was not able to perform the duties required such as driving a manual transmission vehicle where he would need to steer with his left arm which caused a lot of a pain (T. 71-73) He further testified that he occasionally worked as a painter-helper for a family friend, Rob. (T. 80-81) Petitioner testified that his right arm began hurting, and he could not even hold a paintbrush, so he stopped working for Rob. (T. 83-84)

Petitioner testified that his brother-in-law referred him to Connors "down in the city" and that he was invited for an interview. (T. 70-71) Petitioner testified that he performed a road test and pre-trip inspection.

On September 17, 2019, Petitioner accepted the position at Connors. (RX 14) He completed a New Employee Information form, a W-4 tax form, a Driver Statement of On-Duty Hours (For Newly Hired Drivers) form, and an Employee Alcohol and Drug Statement. (RX 14 at 16-18, 23-24) Further, Petitioner set up direct deposit with a copy of a voided check. (RX 14 at 10, 20)

On September 18, 2019, Petitioner sent an email to Connors and declined the job offer. (RX 14 at 3) Petitioner testified that "my left arm was hurting me really bad steering the truck, and then they took me to an empty lot that had some of their trailers. They had me backing in the trailers and dropping the trailers and picking them up a couple of times because that's what I was going to have to be doing. I was going to have to be driving all around picking up and dropping trailers all day and reaching under, grabbing the pin, doing the dolly legs, opening doors, getting myself up on the catwalk and everything just using my right arm and trying to use my left, but it was still hurting me really bad. I knew I wouldn't be able to do that." (T. 71)

Petitioner testified that he underwent his only other interview at Magnetic Inspection. (T. 121) Petitioner documented on his job log that he "couldn't do because of pain in shoulder." (PX 16) He testified that he could not do a shipping and receiving job and claimed that Magnetic Inspection did not need a truck driver. (T. 120-121) Petitioner testified that he did not attempt to do the shipping and receiving job, and that he only drove an automatic truck at the interview. (T. 122-123)

On October 24, 2019, Petitioner returned to see Dr. Marra. (PX 5 at 34; T. 73-74) Petitioner testified that he explained to Dr. Marra "the things I was going to have to be doing. I was not able to lift my arm up and have the strength without pain to be able to do those." (T. 74) He testified that he told Dr. Marra he was trying to look for work and went to a couple of interviews; and that was when Dr. Marra took him off work. (T. 74) Petitioner testified that he had reported increased difficulty once he got back to work. (T. 98) Petitioner admitted that Dr. Marra had discussed his lack of ability to tolerate heavy levels of work. (T. 99) Petitioner testified that he never looked for work after that appointment. (T. 125) Dr. Marra noted Petitioner's complaints of severe pain and limited motion and discussed a corticosteroid injection. (PX 5 at 34) Dr. Marra also recommended a functional capacity evaluation ("FCE") given Petitioner's "lack of ability to tolerate his heavy levels of work" and kept Petitioner off work. *Id.*

Petitioner testified that Dr. Marra performed an injection in November 2019. (T. 77) He testified that the injection helped temporarily, and that he remained off work. *Id.*

On January 9, 2020, Petitioner returned to Dr. Marra with complaints of pain. (PX 5 at 16-18) Petitioner reported that he had improved, but complained of pain with overhead motion. *Id*. On physical examination, Petitioner demonstrated elevation to 140 degrees, external rotation to 40 degrees, and internal rotation to the low lumbar region. *Id.* He had positive Neer's and Hawkins' as well as a positive painful arch. He had no AC joint tenderness and negative crossover, Speed's, and O'Brien's tests. Dr. Marra recommended a left shoulder MR Arthrogram and, in the interim, imposed work restrictions of no lifting over 15 pounds and no overhead work. (PX 5 at 17-18)

On January 22, 2020, Petitioner underwent the MR Arthrogram at Elmhurst Hospital. (PX 7 at 117-118) The radiologist's findings included thickening tendons, supraspinatus tendinosis with fraying, osteoarthritis, bursitis, and a suggestion of a denervation injury to the teres minor. *Id.*

On February 13, 2020, Petitioner returned to Dr. Marra. (PX 5 at 1-2) Dr. Marra noted that Petitioner's MR Arthrogram demonstrated an intact rotator cuff and no structural abnormalities. (PX 5 at 2) He noted Petitioner's "limitations and pain with flexibility" and ordered an FCE. In the interim, he kept Petitioner's work restrictions in place. (PX 5 at 1-3)

On February 27, 2020, physical therapist Steven Sedlacek performed the FCE. (PX 10 at 1-6) Mr. Sedlacek found Petitioner capable of occasionally lifting 30 pounds and frequently lifting 15 pounds. *Id*. He noted that Petitioner could not lift 10 pounds above his waist without complaints of left shoulder pain. *Id*. Petitioner could occasionally carry 25 pounds and frequently carry 12.5 pounds. *Id*. Petitioner could push and pull 120 pounds. *Id*. Petitioner was reportedly unable to reach with his left arm, and he had stopped a walking exercise due to shoulder pain. *Id*. Mr. Sedlacek opined that Petitioner was capable of working in a medium strength capacity with additional restrictions of no walking for more than half a mile continuously, no reaching with the left arm, no use of the left arm above 80 degrees, and no crawling. Mr. Sedlacek further opined that Petitioner was unable to return to work as a truck driver, and he was unsure if Petitioner was able to return to work in any capacity. *Id*. By the end of the examination, Petitioner's pain level was 7/10. (PX 10 at 2)

On March 19, 2020, Dr. Marra reviewed the FCE report with Petitioner and placed Petitioner at MMI within the limits of the FCE. (PX 6 at 7)

On August 20, 2020, Respondent sent Petitioner back to Dr. Walsh for another IME and a report was completed. (RX 2) Dr. Walsh was provided with Dr. Marra's records as well as the FCE report. *Id*. Petitioner told Dr. Walsh that Dr. Marra recommended a trial of work activity, but that he was terminated. (RX 2 at 2) Petitioner informed Dr. Walsh he had a job interview with a new company driving a truck but that he could not perform the work activity. *Id*. Further, Petitioner stated he continued to have arm pain and the pain awakens him at night. *Id.* He described the pain as burning and shooting pain. *Id*. Petitioner did not participate in sports because of the pain and discomfort and takes Ibuprofen. *Id*. Petitioner reported that his condition was getting worse and that he developed right elbow tendinitis and left carpal tunnel syndrome. *Id*. Petitioner drew a pain diagram indicating burning and aching as well as stabbing of the left shoulder and stabbing pain in the left arm just above the elbow. *Id*. The diagram was not attached to the report. Petitioner related these problems to the lifting of freight that had fallen over. *Id*. Petitioner also reported low back pain and described his left shoulder pain as 10/10 at its worst, 6.5/10 on average, and 5/10 at its best. *Id*. Dr. Walsh's physical examination revealed limitations in motion, and movement elicited pain. (RX 2 at 6)

Dr. Walsh noted that Petitioner's rotator cuff was intact at the time of the fourth surgery. (RX 2 at 7) He opined that the intraoperative findings of mild degenerative changes in the glenohumeral joint, adhesions in the glenohumeral joint capsule and subacromial space, and dense adhesions on the undersurface of the acromion were new findings that were not present during the initial surgery and not related to the work injury. *Id.* He further noted that that Petitioner was doing quite well in physical therapy and that Dr. Marra released him return to work without restrictions in September 2019. Dr. Walsh specifically opined that the February 27, 2020, FCE restrictions were too restrictive and not reasonable, necessary, or a result of the work injury. (RX 2 at 8)

Dr. Walsh confirmed that Petitioner had reached MMI as of December 27, 2018. (RX 2 at 7, 9) He confirmed that the medical treatment, thereafter, including the fourth surgery, was not reasonable, necessary, or causally related to the work injury. *Id.* Dr. Walsh pointed out that the MR Arthrogram revealed only a thin sliver of extravasation of dye, and that Dr. Marra's July 2019 surgery revealed no evidence of a recurrent rotator cuff tear, nor were any repairs performed. (RX 2) Dr. Walsh assigned an American Medical Association ("AMA") impairment rating of 0%. (RX 2 at 9) Dr. Walsh confirmed that Petitioner could work without restrictions as of December 27, 2018. (RX 2 at 8)

On May 10, 2021, Petitioner underwent x-rays of his cervical spine, lumbar spine, and left shoulder. (PX 4 at 406-408) The radiologist's impression as to the left shoulder included a probable old partially united fracture of the greater tuberosity, four rotator cuff surgical anchors, a humeral neck defect, evidence of an old anterior dislocation, mild degenerative changes of the AC joint, and no joint space narrowing. (PX 4 at 408)

On June 1, 2021, Petitioner returned to Dr. Marra with complaints of intense left shoulder pain as well as right shoulder and right elbow pain which had become increasingly painful as he had been compensating for his left arm (PX 6 at 6; T. 84-85) Petitioner reported that his left shoulder pain had grown acutely worse over the prior week, and that his right elbow and shoulder pain was due to overcompensation. (PX 6 at 6) On physical examination of the left shoulder, active elevation was 160 degrees, external rotation was 60 degrees, and internal rotation was to the gluteal region. The right shoulder had elevation to 150 degrees, external rotation to 60 degrees, and internal rotation to the mid lumbar region. Petitioner had bilaterally positive Neer's and Hawkin's, and bilaterally painful arcs. (PX 6) Dr. Marra obtained x-rays of the right shoulder and right elbow, which were largely unremarkable. He reviewed the May 10, 2021, left shoulder x-ray, which he interpreted as showing evidence of a calcification in the subacromial space. *Id.* Dr. Marra noted Petitioner was provided with Dr. Walsh's August 20, 2020, IME report, and noted his disagreement with the same. Dr. Marra ordered a CT scan of the left shoulder. *Id.* In the interim, Petitioner could work within the limits of the FCE. *Id.* Petitioner testified that he did not know why he had reported that his symptoms had grown worse over the prior week, but that he had been hoping for another injection. (T. 84-85)

On June 12, 2021, Petitioner underwent a CT of the left shoulder. (PX 7 at 132-133) Per the radiologist, orthopedic anchors, and biceps tenodesis changes were present in the humeral head. *Id.* There was no acute osseous abnormality. (PX 7) In the subacromial region, there were well corticated nodular calcifications suggesting intraarticular loose bodies and/or changes of calcific tendinosis in the subacromial region. *Id.* Additional findings were mild acromioclavicular osteoarthritis, evidence of the prior cervical spine fusion, and evidence of prior granulomatous disease exposure within the mediastinum. *Id.*

On June 14, 2021, and June 16, 2021, Petitioner attended physical therapy at Athletico for his right shoulder. (PX 8 at 47-51)

On June 17, 2021, Petitioner returned to see Dr. Drake with complaints of neck pain, lumbar pain, and bilateral shoulder discomfort. (PX 4 at 425-427) Dr. Drake performed a cervical and lumbar physical examination, and obtained lumbar x-rays. *Id.* He prescribed a Medrol dosepak, a cervical epidural injection at C4-5, and physical therapy. *Id.*

A June 22, 2021, discharge note from Athletico documented that Petitioner had undergone two visits of physical therapy for his right shoulder. (PX 8 at 46) It was noted that Petitioner cancelled his remaining sessions to concentrate on another body part. *Id.*

On June 30, 2021, Petitioner underwent an MRI of the left shoulder. (PX 7 at 147-148) Per the radiologist, the imaging was slightly degraded by motion artifacts. *Id*. The radiologist's conclusion was an intact rotator cuff repair with supraspinatus and infraspinatus tendinosis including calcific tendonitis. *Id*. Mild bursal surface fraying was noted, but no tear. *Id*. Additional findings included biceps tenodesis; AC joint osteoarthritis with small joint effusion; small calcifications along the anterolateral margin of the acromion; and mild glenohumeral joint osteoarthritis. *Id*.

On August 5, 2021, Petitioner returned to Dr. Marra. (PX 6) Dr. Marra reviewed the MRI and noted Petitioner had evidence of calcific tendinitis in the setting of prior rotator cuff surgery as well as some manipulations under anesthesia for range of motion issues afterwards for a left shoulder injection. (PX 6 at 4-5) Petitioner complained of left shoulder pain and some issues with range of motion. *Id*. During the physical examination, Petitioner demonstrated active forward elevation to 130 degrees, external rotation to about 30 degrees, internal rotation to the gluteal region, positive Neer's and Hawkin's, and a painful arc. *Id.* Dr. Marra noted that Petitioner's MRI demonstrated intact rotator cuff tendons. *Id*. He noted evidence of calcific tendonitis involving the supraspinatus tendon, but no other significant degenerative changes. *Id*. Dr. Marra gave Petitioner a cortisone injection in the left shoulder. (PX 6 at 4)

Petitioner returned to Athletico for physical therapy for both shoulders which continued to March 2022. (PX 8; T. 88-89) Petitioner testified that therapy did not help. (T. 89)

On November 8, 2021, Dr. Shane Nho performed a second IME. (RX 3) Petitioner testified that, because Dr. Walsh had retired, he was sent to Dr. Nho for another IME. (T. 105) Petitioner reported that his pain was 2-8 out of 10 and described it as dull and achy. (RX 3 at 5) Petitioner reported that he "was currently off work since FCE parameters cannot be accommodated for a truck driver." *Id*. On physical examination, Petitioner had forward flexion to 135 degrees, external rotation to 40 degrees, and internal rotation to L4. *Id.* In abduction, he had external rotation to 65 degrees and internal rotation to 30 degrees. *Id.* The only tenderness was mild over the bicipital groove. *Id*. Petitioner had 4+/5 and 5/5 strength. He had six negative special tests and two positive tests. *Id*. Dr. Nho summarized his review of medical records, diagnostics, operative reports, and depositions. (RX 3 at 1-6) Dr. Nho did not recommend any formal medical treatment, but recommended home exercise stretches, over-the-counter anti-inflammatories, and ice. (RX 3 at 7) He opined that Petitioner could return to work as outlined in the FCE. *Id.* Dr. Nho placed Petitioner at MMI and assigned an AMA rating of 2% of the whole person impairment rating. *Id.*

On December 6, 2021, Petitioner was interviewed by Susan A. Entenberg, a certified rehabilitation counselor. (PX 12) Ms. Entenberg reviewed the operative reports, Dr. Marra's records, the FCE report, a recent note from Dr. Drake, the IME report from Dr. Nho, and job search logs. (PX 12 at 1) Ms. Entenberg interviewed Petitioner and learned about his experience, education, and physical capabilities as of the date of the interview. (PX 12 at 1-3) After considering all the information obtained, Ms. Entenberg determined that given Petitioner's lack of computer skills, limitations, lack of transferable skills, and work history, it is more likely than not he will be unable to secure stable and gainful employment even with the services of a rehabilitation professional. (PX 12 at 5)

Additionally, Petitioner reported to Ms. Entenberg that he was unable to pass the DOT physical in 2019. (PX 12, at 1) Petitioner testified that he passed two DOT physicals in 2019. (T. 111) Ms. Entenberg noted that despite that fact that Petitioner was video conferencing at the time, he reported that he did not know any computer programs or keyboarding other than checking email. (PX 12 at 2) Petitioner reported that he tried to look for truck driver work in 2019, online with his son's help, but that he was unable to pull himself up into the truck. (PX 12 at 4) Petitioner reported to Ms. Entenberg that he was recently awarded Social Security Disability benefits. (PX 12 at 1) He testified at trial that he began receiving those benefits in February 2022. (T. 113-114)

Ms. Entenberg did not think Petitioner was capable of returning to work as a semi-tractor-trailer truck driver. (PX 12 at 3) She thought Petitioner was a poor candidate for a vocational rehabilitation based, in part, on his lack of computer skills, subjective reports of abilities and inabilities, his neck condition, his migraines, and his right-hand condition. (PX 12 at 3-4) She did not think a stable labor market existed for Petitioner. (PX 12 at 4)

Petitioner testified that between August 2021 and January 2022, his left shoulder was getting worse. (T 87-88)

On January 27, 2022, Petitioner returned to Dr. Marra and complained of pain in both shoulders, left worse than right. (PX 6 at 1) Dr. Marra administered a left shoulder injection. (PX 6 at 2) He recommended physical therapy for Petitioner's bilateral shoulder range of motion and right shoulder rotator cuff syndrome.

On February 2, 2022, Petitioner began physical therapy at Athletico for his bilateral shoulders. (PX 8)

On February 7, 2022, Petitioner reported increased cervical symptoms caused radiating pain into his left upper extremity to the distal end of the biceps. (PX 8 at 31)

On February 9, 2022, Petitioner worked on bilateral upper extremity strengthening and had to rest due to pain in his cervical region and left shoulder. (PX 8 at 29)

On February 17, 2022, Petitioner reported that his neck flared up. (PX 8 at 19)

On February 18, 2022, Petitioner reported that his neck symptoms increased his left upper extremity symptoms, which woke him from his sleep. (PX 8 at 16)

On February 22, 2022, he again reported high level of pain in his cervical region and left upper extremity. (PX 8 at 13)

On February 24, 2022, the therapist noted some progress, but Petitioner saw no change in his left shoulder pain and reported other issues involving his neck and back. (PX 8 at 10)

On February 25, 2022, the therapist noted that Petitioner continued to progress with bilateral shoulder strength. (PX 8 at 5)

On February 28, 2022, the therapist noted that Petitioner completed all his exercise for left shoulder range of motion and bilateral shoulder strength and flexibility, although he did complain of left shoulder soreness as well as neck and back issues. (PX 8 at 1-2)

Petitioner testified that he currently has a commercial driver's license ("CDL") but cannot legally drive a truck because he was unable to pass the Department of Transportation ("DOT") physical. (T. 24) Petitioner testified that he tried to pass the DOT physical in late 2019 or early 2020 but failed the exam because he could not do some of the lifts. *Id.* Petitioner testified that he believed it was because of the lack of strength and motion of his inner and outer arm due to his surgeries. (T. 24-25) Petitioner further testified that his highest level of education is 10th grade, received his GED, and that he did not have any formal training in other fields. (T. 25; Petitioner's Exhibit "PX" 12) He testified that his computer skills consist of emailing only because of his inability to type due to his carpel tunnel and uses the keyboard with one finger. (T. 25-26)

Petitioner testified that a DOT physical is something that an employer sent him to, and that he would never undergo a DOT physical if it were not for an employer. (T. 111) He underwent a DOT physical on February 25, 2019, September 17, 2019, and February 24, 2020. (RX 10; RX 13 at 2-6, 14; T. 111-113) Petitioner testified that he passed the February 25, 2019, physical, passed the September 17, 2019, physical, and failed the February 24, 2020, physical exam.[1] (T. 111-113) Petitioner testified that during the physical exams he passed, all he was required to do was a urine test, blood pressure, a hearing test, a vision test, and be in compliance for his sleep apnea. (T. 131) Petitioner testified that he was determined to be physically capable of driving a commercial motor vehicle at that time. (T. 113) Petitioner testified that he failed the physical exam when the doctor tested his arms and told him to raise his arms. (T. 132) Petitioner testified that when he could not raise his arms, the doctor failed him. *Id.*

Petitioner testified that he missed working as a truck driver. (T. 93) Petitioner testified that he would like to return to work. *Id.* Petitioner testified that it is hard for him to work a steady job because he is in constant pain and that disrupts his concentration. (T. 94-95) Petitioner testified that his left arm pain shoots through his biceps into his hand and that his hands are always swollen. (T. 95)

[1] It is noted that, according to the records, Petitioner passed the February 24, 2020, DOT physical. (RX 13 at 2-6) Following an exam of Petitioner and upon reviewing of Petitioner's medical history, Dr. Theodore Viti documented "no effect on fitness for duty," and also documented "awaiting release from ortho." Dr. Viti's physical examination included the back/spine, extremities/joints, and neurological system. *Id.* He found that Petitioner's examination was normal, other than his high BMI. (RX 13 at 5) Dr. Viti noted that "awaiting a release from ortho" as to whether Petitioner met the physical standards required to drive a commercial motor vehicle. (RX 13 at 6) Dr. Viti obtained that release, and he completed and signed the certification that Petitioner met the physical standards required to drive a commercial motor vehicle. (RX 13 at 2)

Deposition of Dr. Gregory Drake

Dr. Drake testified via evidence deposition on June 18, 2019. (PX 11) Following the July 16, 2018, surgery, Dr. Drake testified that Petitioner initially progressed, but then plateaued around November 2018. (PX 11 at 14-15) Dr. Drake performed an injection and recommended more aggressive physical therapy. (PX 11 at 15) By December 26, 2018, Petitioner had improved forward flexion, a little bit of subjective shoulder weakness, and pain. (PX 11 at 16-17) Dr. Drake testified that the January 2, 2019, MRI showed a partial thickness tear to the supraspinatus. (PX 11 at 19) He admitted that the radiologist's impression of the MRI was postsurgical changes of the supraspinatus with tendinopathy, described as a small irregularity towards the bursal surface. Dr. Drake believed that Petitioner's pain was primarily due to capsulitis. (PX 11 at 20)

Dr. Drake agreed with Dr. Walsh that the AC joint arthritis was likely pre-existing, and thought that Petitioner's spurs could be a contributing factor to the tear. (PX 11 at 37) He admitted that the spurs were genetic and that impingement upon the rotator cuff was "wear and tear." (PX 11 at 39-40) As to whether Petitioner suffered an aggravation to a pre-existing condition, Dr. Drake could not comment as Dr. Suchy saw Petitioner initially. (PX 11 at 37)

Dr. Drake testified that Dr. Marra did not fully agree with him per Dr. Marra's March 21, 2019, note. (PX 11 at 24) As to Dr. Marra's May 23, 2019, letter to Petitioner's attorney, Dr. Drake was not in full agreement with Dr. Marra's surgical recommendation as Dr. Drake recommended two additional surgical procedures. (PX 11 at 68)

Dr. Drake testified that he recommended the MR Arthrogram in May 2019 because he felt that he was "missing something." (PX 11 at 25) He admitted that range of motion, weakness, and pain are all subjective factors, and that the MRI was the only objective evidence. (PX 11 at 53) Dr. Drake administered an injection in May 2019 because he thought, "why not try one more shot." (PX 11 at 27) He admitted that the injection did not help. Regarding surgery, Dr. Drake testified that told Petitioner he "could go in and clean up" the shoulder and "see how he does." (PX 11 at 26-27) Dr. Drake was hopeful that he could "get him better." (PX 11 at 27) He admitted that additional surgery posed risk of creating more scar tissue. (PX 11 at 47) He admitted that Petitioner's tendon was not of great quality and that the surgical result may not be what he or Petitioner want, but Dr. Drake believed "it's worth trying." (PX 11 at 48)

Dr. Drake did not think Petitioner could return to full duty work because he was in pain and his range of motion was poor. (PX 11 at 22-23) However, Dr. Drake testified that Petitioner had "a good strong right arm" and could return to work in some capacity. (PX 11 at 35)

Deposition of Dr. Guido Marra

Dr. Marra testified via evidence deposition on June 21, 2019. (PX 9) Dr. Marra testified that he recommended a cortisone injection and physical therapy, or arthroscopic capsular release and revision rotator cuff repair. (PX 9 at 14-15) He testified that it was Petitioner's choice whether to proceed non-surgically or surgically. (PX 9 at 15) Dr. Marra testified that Petitioner's prognosis was guarded due to his prior procedures. (PX 9 at 24-25) He testified that there was a risk that an additional surgery would not resolve the rotator cuff tear and that more surgery could cause more scar tissue. (PX 9 at 28)

Dr. Marra agreed with Dr. Walsh that the spurs in the subacromial space and the osteoarthritis in the AC joint were not related to the work accident. (PX 9 at 24) However, he thought that the work injury was more than those two issues. (PX 9 at 24) He disagreed with Dr. Walsh regarding future treatment and MMI. (PX 9 at 23-24) Dr. Marra also disagreed with Dr. Drake regarding his surgical recommendation. (PX 9 at 35-36)

Dr. Marra testified that Petitioner could work with no use of the left arm, and he thought it would be reasonable for Petitioner to drive, but not lift or load freight. (PX 9 at 22-23)

Deposition of Dr. Kevin Walsh

Dr. Walsh testified via evidence deposition on July 22, 2019. (RX 1) Dr. Walsh has been board certified in orthopedic surgery since 1990, and was first licensed to practice in 1984. (RX 1 at 2-3 DepX 1) Dr. Walsh testified that 90% of his practice was treating patients, and he performed surgery two full days per week. (RX 1 at 5) 15-20% of his practice dealt with patients with shoulder conditions. (RX 1 at 6)

Dr. Walsh testified as to his December 27, 2018, IME. (RX 1 at 7) He confirmed his review of the operative reports, surgical photographs, medical records, and diagnostics. (RX 1 at 7, 9-10, DepX 2 at 2-8) Dr. Walsh testified as to Petitioner's subjective report of his accident, medical treatment, and current complaints. (RX 1 at 8-9, DepX 2 at 1-2) He testified as to Petitioner's physical examination. (RX 1 at 10-11, DepX 2 at 8) As to Petitioner's negative results for the special tests, he explained that positive results for those tests would indicate impingement syndrome, a SLAP tear, and/or a bicep tendon problem. (RX 1 at 11-12) Dr. Walsh testified that the objective findings did not support or correlate to Petitioner's subjective complaints. (RX 1 at 12) He explained that Petitioner's range of motion was not within normal limits, but that the same reflected Petitioner's limitation due to self-reported pain and that he had no objective abnormalities. (RX 1 at 43)

Dr. Walsh diagnosed status-post subacromial decompression, arthroscopic release of adhesions, rotator cuff repair, and distal clavicle resection. (RX 1 at 13) He explained that the spurs in the subacromial space and the AC joint osteoarthritis were not causally related to the work accident, but were degenerative, preexisting, and unrelated conditions. He testified that it was not likely that the work injury described aggravated or accelerated those degenerative changes. (RX 1 at 14) Dr. Walsh testified that Petitioner's care and treatment was reasonable, but such treatment was not all causally related to the work accident. He explained that the subacromial decompression and clavicle resection were not related to the work injury as those procedures addressed Petitioner's pre-existing unrelated conditions. (RX 1 at 14-15) Dr. Walsh testified that it was possible that the rotator cuff tear and biceps tendon rupture could be causally related to the work injury, or could be degenerative changes. (RX 1 at 16) He could not state that those conditions, or the surgical procedures intended to address those conditions, were more likely than not related to the work injury. As to Petitioner' s subjective post-operative stiffness following Dr. Suchy's first surgery, Dr. Walsh opined that the same is usually due to scar tissue, or could be due to lack of compliance with post-operative therapy.

Dr. Walsh testified that Petitioner reached MMI as of December 27, 2018, and that no further medical treatment was reasonable, necessary, and causally related to the work injury. (RX 1 at 17) He testified that Petitioner could return to work without restrictions, and noted that there was no evidence that the rotator cuff had not healed. Dr. Walsh testified as to his 0% impairment AMA impairment rating and assessment. (RX 1 at 18-19)

Dr. Walsh testified that he later reviewed the May 6, 2019, MRI Arthrogram report and images, and authored a July 14, 2019, Addendum Report. (RX 1 at 19-20, DepX 3) Dr. Walsh testified that his review of the May 6, 2019, MRI Arthrogram did not change his prior opinions. (RX 1 at 21) He specifically noted that the contrast remained within the glenohumeral joint, and that there was only a sliver of contrast in the supraspinatus. (RX 1 at 36-37) Further, he testified that the imaging showed no evidence of adhesive capsulitis or a full thickness rotator cuff tear. (RX 1 at 40, 46-47) He confirmed that Petitioner could return to work truck driving, performing heavy lifting, and performing overhead activities. (RX 1 at 53-54) Dr. Walsh felt that it was possible that Petitioner suffered a rotator cuff tear and bicep tendon rupture as a result of the December 4, 2017, accident but did not include that opinion in his IME report (Rx 1 at 32-33)

AMENDED CONCLUSIONS OF LAW

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

Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission,* 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and found him to be a credible witness. Petitioner was calm, well-mannered, composed, and spoke clearly. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. The Arbitrator also noted Petitioner's emotions during his testimony.

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

Petitioner bears the burden of proving, by a preponderance of the evidence, every element of the claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). To obtain compensation under the Illinois Workers' Compensation 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. Causation between the work-related accident and condition of ill-being can be established by showing prior history of good health, followed by a work-related accident in which petitioner is unable to perform his physical duties. *Kawa v. Illinois Workers' Comp. Comm'n*, 991 N.E.2d 430, 448 (2013).

After hearing the testimony of Petitioner and reviewing Petitioner's medical records, the Arbitrator finds Petitioner's current condition of ill-being, with respect to his left shoulder and arm, is causally related to the accident of December 4, 2017. Petitioner underwent four shoulder surgeries and was diagnosed with adhesive capsulitis, debridement of the labrum, bicipital tenodesis, and rotator cuff tear. (PX 3, 4, 5, 6, RX 2) Petitioner reported that he initially performed light duty and then later informed by Respondent that light duty was not available. (PX 14) Petitioner also reported that his pain caused him difficulty sleeping and performing normal activities like showering and going to the bathroom. (T. 83-85) Petitioner testified that despite having surgery on his right arm in 2003 and a cervical fusion in 2009, he continuously worked full duty for Respondent. (T. 92) Petitioner testified that he did not have any problems with his left shoulder prior to the accident. (T. 27-28)

Additionally, Petitioner testified that he was able to answer phones and do paperwork when given the opportunity by Respondent. (T. 38) Petitioner testified that after he was terminated, he attempted to work with a friend doing painting from time to time. (T. 80-82) Petitioner testified, however, that after completing a few tasks, he could not perform all of the tasks with one arm due to his pain. (T. 82)

The Arbitrator notes that Dr. Drake found that the recurrent tear and the capsulitis were causally related to the work accident. (PX 11 at 38-39) Petitioner's second treating physician, Dr. Marra, indicated that Petitioner sustained complications from the previous surgeries in the form of stiffness and pain. (PX 9 at 20-21). Furthermore, the Arbitrator notes that following Dr. Drake's procedure, Petitioner continued to have stiffness and pain and there is evidence on the MRI that it still has not healed and he is still stiff. (PX 9, p.21) Dr. Marra opined that Petitioner's current left shoulder condition was causally related to the injury he suffered at work on December 4, 2017. (PX 9 at 21)

The Arbitrator notes that IME Dr. Walsh diagnosed Petitioner with post left shoulder subacromial decompression, arthroscopic release of adhesions, rotator cuff repair, and distal clavicle resection. (RX 1, Exh. 2 at 9) Dr. Walsh initially opined that it was not likely that the findings were causally related to the injury. (Rx 1, Exh. 2 at 9) The Arbitrator notes that, during his deposition, Dr. Walsh indicated that Petitioner strained his left shoulder and that Petitioner's rotator cuff tear and bicep tendon tear could possibly be related to the injury. (RX 1 Exh. 2 at 9; RX 1 at 15-16)

The Arbitrator considered Dr. Walsh's testimony but found it to be less persuasive than that of Petitioner's treating physicians. Based upon the Petitioner's testimony and the medical records and opinions of Dr. Drake and Dr. Marra, the Arbitrator finds the Petitioner's current condition of ill-being is causally related to the injury sustained on December 4, 2017.

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:

As the Arbitrator found that Petitioner's current condition of ill-being was causally connected to the work-related accident, the Arbitrator finds that the medical treatment, and services, Petitioner received was reasonable and necessary. (PX 3, 4) As such, the Arbitrator finds that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, and as outlined in AX 1, PX 17, PX 18, PX 19, PX 20, PX 22, and PX 23, for a total of $24,626.90 which includes: medical bills from Improved Functions ($1,600.00), Northwestern Medicine ($884.00), Elmhurst Hospital ($14,779.00), Core Orthopedics ($225.00), and Athletico Physical Therapy ($3,607.00); as well as medical payment reimbursement for $3,531.90, amount paid by Petitioner to Elmhurst Hospital, Northwestern Medicine, Core Orthopedics, and Geneva Surgical Suites; 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 Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), WHAT TEMPORARY BENEFITS ARE IN DISPUTE, THE ARBITRATOR FINDS AS FOLLOWS:

As the Arbitrator found that Petitioner's current condition of ill-being was causally connected to the work-related accident, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits ("TTD") commencing February 6, 2019, through March 19, 2020, the date Dr. Marra placed Petitioner on MMI. The Arbitrator notes that, on March 19, 2020, Dr. Marra reviewed the FCE report and returned Petitioner to work within the limits of the FCE. (PX 6 at 7) The Arbitrator notes that Petitioner provided evidence of off-work notes from Dr. Drake and Dr. Marra during that time period. (PX 4 at 315-316, 359-360, 365-366, 381-382, 386, PX 5 at 71, PX 14) Petitioner's last temporary total disability payment was received on February 5, 2019. (PX 13)

Accordingly, the Arbitrator finds that the Respondent shall pay Petitioner TTD benefits at $1,061.68 per week for 58 weeks commencing February 6, 2019, through March 19, 2020, as provided in Section 8(b) of the Act.

Additionally, the Arbitrator finds that, as there is no evidence Petitioner participated in a vocational rehabilitation program thereafter, Respondent shall not pay maintenance as Petitioner is not entitled to maintenance.

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

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

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

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

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that an AMA impairment rating was performed by IME Dr. Nho and IME Dr. Walsh. Dr. Nho did not recommend any formal medical treatment, but recommended home exercise stretches, over-the-counter anti-inflammatories, and ice. (RX 3 at 7) He opined that Petitioner could return to work as outlined in the FCE. *Id.* Dr. Nho assessed a 2% of the whole person impairment rating. (RX 3) Additionally, Dr. Walsh assigned an AMA impairment rating of 0%. (RX 2 at 9) The Arbitrator gives little weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record revealed that Petitioner was employed as a truck driver most of his life and has no formal training in any field. (T. 23, 25) Petitioner's resume reflects his limited work and education experience. (RX 14 at 37) Petitioner was working full duty for the Respondent for the years leading up to the accident of December 4, 2017. (T. 92, 139) The Arbitrator notes that Petitioner's injuries resulted in permanent work restrictions which could not be accommodated by Respondent. (PX 5, 10) Petitioner was not capable of returning to any line of employment he was able to perform prior to the accident. As such, the Arbitrator gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 47 years old at the time of the accident. (AX 1 at line 6) The Arbitrator gives some weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner sustained injuries and was not able to return to his prior line of employment and sustained loss of future earning capacity. Petitioner has a tenth-grade education. (T. 10, 25) He has been a truck driver most of his life and has no formal training in any field. (T. 23, 25) Petitioner's resume reflects his limited work and education experience. (RX 14 at 37) Petitioner's desire to return to work was exemplified by his actions following his request that Dr. Marra return him to work full duty. (T. 65-66) Petitioner immediately took Dr. Marra's full duty return to work note to his terminal manager, excited to at least try to get back to work, only to be told that there was no work for him. (T. 65-68) The Arbitrator notes that Petitioner became visibly upset during this portion of the testimony. Petitioner continued to look for work in the trucking industry as that was the one area he was familiar with. (PX 16) Petitioner interviewed at Connors Transportation. (T. 69-71) As part of the interview, Petitioner was asked to perform various tasks and a road test. (T. 71) Petitioner tried to use his left arm, but it hurt so bad that he used his right arm which was improper and unsafe. (T. 72-73) Although Petitioner was offered the job, and needed the job, his arm hurt so much that he was unable to perform the requisite job duties and had to decline the offer. (RX 14, at 3; T. 127) Petitioner tried to get other non-driving jobs, such as supervisor or dispatch, but he needed a college education. (T. 116-117, 137-138) Additionally, the result of the February 27, 2020, FCE was that Petitioner was unable to return to his previous job as a truck driver and due to his limitations. (PX 10 at 1) The specific restrictions included, among other things, no reaching with his left arm, no use of the left arm above 80 degrees, no crawling, and various lifting and carrying restrictions of minimal weight. *Id.* The Arbitrator further notes that Dr. Nho indicated limitations in motion of the left arm and found positive signs of impingement and a SLAP tear reflected by the positive Neer and O'Brien's signs (Rx 3 at 5; Rx 1 at 11-12) Dr. Nho opined that Petitioner is not capable of full duty work and recommended working within the parameters of the FCE and that these are permanent restrictions (Rx 3 at 7) Petitioner testified that lifting was an integral part of his job as a truck driver. (P. 130) Therefore, the Arbitrator gives greater weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner sustained injuries to his left shoulder and arm. Petitioner suffered a serious injury to his left shoulder and underwent four surgical procedures. (PX 1-PX 11) He did not recover well and still experiences physical pain and limitations that require him to continue to seek medical treatment

and therapy. (PX 6, PX 8, PX 24) The Arbitrator finds that Petitioner's testimony is corroborative of the medical records which indicated that Petitioner sustained these injuries as a result of the December 4, 2017, work related accident. Therefore, the Arbitrator gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Respondent shall pay Petitioner PPD benefits of $790.64 per week for 200 weeks, because the injuries sustained resulted in Petitioner's inability to return to his pre-injury employment, Petitioner's experiencing a loss of earning capacity, and Petitioner's loss of trade which resulted in 40% loss of use of the person as a whole as provided in Section 8(d)2 and 8(b)(2) of the Act.

WITH RESPECT TO ISSUE (N) WHETHER RESPONDENT IS DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that the Respondent shall be given a credit of $6,994.99 for medical bills paid through its group medical plan, as provided in Section 8(j) of the Act.

As stipulated, Respondent paid $158,296.50 in medical benefits, (AX 1 at line 9) Respondent shall be given a credit of $158,296.50 for medical benefits paid, as provided in Section 8(j) of the Act.

Antara Nath Rivera, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC027198
Case Name	Randy J Keller v. Archer Daniels Midland Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0014
Number of Pages of Decision	12
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Robert Javoronok
Respondent Attorney	Jessica Bell

DATE FILED: 1/10/2023

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RANDY J KELLER,
Petitioner,

vs. NO: 19 WC 27198

ARCHER DANIELS MIDLAND 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 accident, notice, causal connection, TTD, medical expenses, and 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 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.

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.

January 10, 2023
o: 01/05/23
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	19WC027198
Case Name	Randy J. Keller v. Archer Daniels Midland Company
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Charles Edmiston
Respondent Attorney	Jessica Bell

DATE FILED: 7/22/2022

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

/s/Edward Lee, Arbitrator

Signature

*****

STATE OF ILLINOIS)

)SS.

COUNTY OFSANGAMON)

☐ 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

Randy J. Keller
Employee/Petitioner

v.

Archer Daniels Midland Company
Employer/Respondent

Case # **19** WC **27198**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **2/23/2022 and 5/26/22**. 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 **March 14, 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 $**64,896.00**; the average weekly wage was $**1,248.00**.

On the date of accident, Petitioner was **53** years of age, ***married*** with **no** dependent children.

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

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**7,520.06** for other benefits, for a total credit of $**7,520.06**.
Respondent is entitled to a credit for Blue Cross Blue Shield payments on medical bills under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $832.00/week for 17 weeks, commencing 3/9/2020 through 7/6/2020, as provided in Section 8(b) of the Act.
Respondent shall be given a credit of $7,520.06 for net short term disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services of $127,311.69, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit of $91,936.03 for health insurance 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 the remaining balances pursuant to the fee schedule.

Respondent shall pay Petitioner permanent partial disability benefits of $748.48/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.

JULY 22, 2022

Edward Lee
Signature of Arbitrator

In ruling upon the disputed issues in this case, the Arbitrator considers the following facts:

Petitioner testified that on March 14, 2019 he was employed as a material handler for ADM Mechanical in Decatur, Illinois. Petitioner testified that his employment required that he shuffle jobs from one area to another and receive and store materials for the mechanics who were working on equipment that had been brought in. Petitioner testified that in moving these materials he would use a stand-up fork truck. Petitioner testified that you would enter the truck from the rear and that it would be operated with a steering wheel and a joy stick. Petitioner testified that while operating the fork truck he would be standing the entire time on a small metal surface. Petitioner testified that at the time of the accident there was no fatigue mat on the surface. Petitioner testified that the fork truck had hard plastic wheels that were not filled with air. Petitioner acknowledged that pictures submitted into evidence as Respondent's Exhibit 6 were consistent with the fork truck that he was driving on that date.

Petitioner testified that on March 14, 2019 was a regular work day and were fast paced due to the activities in the shop that day. Petitioner testified in the course of his duties that day, he hit a particularly rough spot where there was a seam in the concrete, that he described as a "little rut". Petitioner testified that when he drove across this seam it gave him a big jolt and "stopped me dead in my tracks and it took my breath away at the time." Petitioner testified that he felt a jolt when he ran over this particular spot and experienced pain in his low back that went down his leg to his knee and into his ankle. Petitioner testified that at the time of this incident he had been working at ADM for 15 years and conservatively estimated that he had been operating the forklift in question for a year-and-a-half or two years. Petitioner testified that prior to this specific incident he had been experiencing pain in his low back associated with that work. Petitioner testified that he would start out in the morning with a mild backache but by the end of the day he was sometimes miserable and would use ice and Ibuprofen to relieve his pain. Petitioner testified that the pain that he felt on March 14, 2019, was more severe, like a lightning bolt. Petitioner testified that prior to this incident he had not been experiencing pain going down his right leg and testified that he felt a pop at the time of the incident which he had not experienced before. Petitioner testified that he reported the injury immediately to his lead man who was standing right there and told him that he was not driving that fork truck any more. Joseph Coleman, the repair shop supervisor on the date of injury, was called to testify by Respondent and acknowledged that he was aware of the accident shortly after it happened, as Petitioner had reported it to his lead person who got the safety director, John Ferriosi, involved, who then informed Mr. Coleman.

Mr. Coleman described the floor of the building where Petitioner was working as "generally smooth" but volunteered that it was concrete and 100 years old so there was some wear. He acknowledged that there were expansion joints in the concrete. He denied that driving a stand-up fork lift necessarily caused bumping and jarring but acknowledged that it did not have any suspension. At the initial hearing, Respondent offered pictures of the fork truck and plant, and a video of a fork truck being operated, but not in the area where Petitioner was injured. At the Arbitrator's suggestion, the hearing was continued to allow an in person viewing of the site of the accident and watch the fork truck in question being driven over the area. Both parties offered videos of the fork truck being driven over the expansion crack that Petitioner testified caused his severe onset of pain on March 14, 2019. The videos demonstrate that driving the fork truck over this area would cause a loud noise and a visible bumping or jarring of the driver, who was Mr. Coleman in the video.

Petitioner testified that either that day or the next he was directed by his employer to go to Occupational Medicine for treatment. Petitioner testified that he continued working and followed up with his family doctor and also continued to follow up with Occupational Medicine. Petitioner testified that he did not recall ever seeking medical care for the more mild back pain that he had previously experienced while using that fork truck.

Records document that Petitioner was seen that day at Occupational Health department at HSHS and was seen by Jason Blanchetti, FNP. (PX 1, pp. 2-3) Petitioner reported back pain as a result of working on a stand-up forklift on 3/14/2019. Petitioner reported that he had been operating this forklift for the past year-and-a-half and had experienced increasing back pain. This back pain had now developed into a constant pain radiating down his right leg with some tingling. He reported that he must drive the forklift over very rough ground and that this jars his back. On examination, Petitioner was noted to have pain on movement and with palpation over the right lumbar paraspinal region with sciatic nerve pain radiating into the right leg posteriorly. Petitioner was diagnosed to be suffering from a strain of muscle, facia and tendon in his low back as well as right sciatica. He was released to work without restrictions and was advised to use biofeeze and heat as well as over the counter pain medications.

Petitioner saw his family doctor on March 18, 2019 for his low back pain, reporting that he had been experiencing worsening back pain over the last few months. (PX 9, pp. 3-7) He reported that the floor at his workplace was hard and rough and that the forklift would shake him violently while driving across it. He reported that over the counter medications recommended by the corporate doctor were not helping. On examination it was noted that Petitioner's forward flexion was limited and he was diagnosed with a strain of his lumbar paraspinal muscles and acute low back pain. Petitioner was prescribed Baclofen (a muscle relaxer) and use ice and rest, but to stay mobile.

Petitioner returned to Occupational Health on March 20, 2019 reporting some improvement but still suffering back pain. (PX 1, pp. 4-5) He indicated that the pain was not radiating into his right leg on that day. On examination, Petitioner still had pain on motion present from the mid-line into the right paraspinal muscle at the L3-L5 level. He was continued on regular duty, and was advised to pursue active release therapy (ART).

Petitioner returned to his family doctor on March 25, 2019 with persistent low back pain. (PX 9, pp. 9-13) He reported having to leave work early three days after his last appointment due to worsening back pain, and took the following day as vacation. He reported that the pain at that time was 10/10, and was 7-8/10 at the time of his appointment. He remained tender to palpation over the right lumbar paraspinal area and was prescribed prednisone and physical therapy.

Petitioner did undergo therapy from April 4 through April 25, 2019 with Douglas Zobrist for Active Release Treatment attending 6 of 6 visits. (PX 1, pp. 16-22) At the final visit, Petitioner continued to complain of 6/10 pain and was noted to have tightness in the right lumbar, sciatic and hamstring areas. After completing this therapy, Petitioner returned o Occupational Health and Wellness on April 29, 2019, reporting ongoing back pain related to his work on a stand-up fork truck on March 14, 2019. (PX 1, pp. 6-7) Petitioner reported he was no better and that his pain was now affecting his right knee, ankle and gait. He reported that he was still not on any formal restrictions at work though they were accommodating his pain. Petitioner reported pain on motion just proximal to the SI joint and along the right paraspinal muscle. He reported pain when walking for long periods of time. An MRI was discussed, but because Petitioner had some metal in his body, a CT scan was ordered. The doctor offered restrictions, but Petitioner said that he would rather work.

A CT scan was obtained on June 4, 2019 at Decatur Memorial Hospital which the radiologist read to show degenerative changes consisting of bulging discs and spondylosis at L2/3, ¾, and 4/5. (PX 1, pp. 12-13, PX 5) It was noted that there was mild foraminal encroachment bilaterally at L5 and unilateral right-sided spondylosis at L5.

Petitioner returned to Occupational Health and Wellness on June 7, 2019 reporting 7/10 right sided back pain with radiating pain into his right knee and foot. (PX 1, pp. 8-9) He reported increased pain with walking great distances and that his foot seemed to be turning out. Over the counter medications were not helping the pain. On examination, it was noted that pain was present on motion from L4 to S1 with radiculopathy into the right leg. Petitioner also had pain to palpation along the right paraspinal muscle. It was recommended that Petitioner

continued protective precautions in conjunction with the safety department at work and he was to be referred to a neurosurgeon.

Petitioner returned to his family doctor on June 26, 2019 for ongoing low back pain as well as bilateral knee pain. (PX 9, pp. 14-19) He reported that his work had been adjusted so that he was no longer using forklifts as he used to. The doctor recommended home exercise as he had learned in therapy with episodic use of Tramadol and Relafen.

On July 9, 2019, Petitioner was seen by Dr. Mohammed Rahman in the HSHS Medical Group Neurosurgery department, complaining of right sided low back pain that was radiating into the right anterolateral thigh, right knee and right calf. (PX 2, pp. 2-4) Petitioner reported that he had had symptoms for two years but that they had progressed on March 14, 2019, which Petitioner associated with driving a stand-up forklift for ten hour shifts on rough terrain. Dr. Rahman noted that six sessions of therapy had provided no relief. Dr. Rahman noted that the previous CT scan showed an L5 pars fracture on the right but that Petitioner had been unable to undergo an MRI. Dr. Rahman recommended a CT myelogram and physical therapy for core strengthening. If therapy failed to help, he indicated that he would recommend referral to pain management for an epidural transforaminal injection and possible trigger point injections.

Petitioner did undergo a CT myelogram on July 25, 2019 at St. Mary's Hospital in Decatur, which was read by the radiologist to show minimal disc bulging at L3/4 without significant stenosis, mild diffuse disc bulge at L4/5 without stenosis, and unilateral right-sided spondylosis defects with minimal grade 1 spondylolisthesis of L5 on S1. (PX 6, pp. 1-4) There was chronic degenerative disc disease with mild diffuse disc bulge and mild face degenerative change, without significant central or foraminal stenosis.

Petitioner returned to Dr. Rahman on August 1, 2019 for follow-up of his myelogram. (PX 2, pp. 2-5) Dr. Rahman note that the myelogram showed evidence of a right L5 pars defect and grade 1 spondylolisthesis. Treatment alternatives of continued therapy, epidural injections or surgery were discussed. Dr. Rahman recommended an L5/S1 transforminal lumbar interbody fusion. He noted that physical therapy and injections would provide only temporary relief. Petitioner was to return when he decided how he wanted to proceed.

Petitioner returned to Dr. Rahman on January 28, 2020, who reviewed their previous discussion of alternative treatment and his recommendation for lumbar fusion. (PX 2, pp. 10-13) Petitioner testified at the Arbitration hearing that the delay was due to delays in seeking worker's compensation coverage for the surgery. The medical records indicate that Petitioner continued to complain of right sided low back pain radiating down his right thigh, knee and calf. Dr. Rahman noted that Petitioner was there to discuss surgery and that his symptoms were getting worse. Petitioner returned again for further discussion of surgery on February 27, 2020. (PX 2, pp. 14-16) Dr. Rahman noted that due to Petitioner's obesity, he was at a higher risk of complications from an anterior approach, and there was an extensive discussion of the risks involved in the surgery. Petitioner thereafter underwent surgery by Dr. Rahman on March 9, 2020 consisting of a decompressive lumbar laminectomy and medial foraminotomy of L5/S1 for central and foraminal stenosis, bilateral pedicle screw fixation of L5/S1, transforaminal lumbar interbody fusion with biomechanical cage placement of L5/S1 using allograft. (PX 6, pp. 5-6) Petitioner followed up with Dr. Rahman on March 24, 2020, reporting improvement in his pre-operative symptoms but continued right leg pain that felt like muscle spasms. (PX 2, pp. 17-20) Petitioner was wearing a lumbar brace as had been prescribed. Petitioner returned to Dr. Rahman on May 5, 2020 for an 8-week post-op visit. (PX 2, pp. 21-25) He reported that his pre-surgery symptoms had improved, but he still had intermittent low back pain that radiated to his buttocks. Petitioner was wearing his lumbar brace and was using a cane to ambulate, but reported that he was gradually increasing his stamina. A referral was made to physical therapy.

Records show that Petitioner pursued physical therapy at Werner Hospital from May 12, 2020 through July 8, 2020. (PX 3) Petitioner had returned to Dr. Rahman on June 18, 2020 to discuss his return to work status.

(PX 2, pp. 26-32) Petitioner reported improvement in his pre-operative symptoms but expressed some discouragement at the speed of his recovery. Petitioner reported that he was eager to return to work but did not feel safe doing so in light of his pain level and activity tolerance. Dr. Rahman recommended four more weeks of therapy for strengthening and stretching, and he observed that if this did not relieve Petitioner's symptoms he may consider referral for pain management. Dr. Rahman gave Petitioner one last refill of Tramadol and gave him a projected return to work date of July 13, 2020 but advised an occupational health assessment to determine his work capacity. At his therapy visit on July 6, 2020, it was noted that Petitioner had passed his work fitness test that day and was cleared to return to work on the following day. (PX 3, pp. 59-61) However, it was noted that Petitioner had sharp tailbone pain that day while putting a 50-pound crate on a ledge. He wanted therapy to continue to monitor his pain after his return to work. It was noted that he was walking two miles with his back brace on and could walk ½ mile without it. It was noted that he could sit for two hours and stand for four hours. He was able to do light lifting and was described as "somewhat improved" functionally. In reviewing his four long term goals, it was noted that they were from 40% to 75% met. Petitioner returned to therapy on July 8, 2020, reporting that on his return to his first day of work he was having enough pain that he thought he wasn't going to make it through the workday. (PX 3, pp. 63-64) Most of his stiffness had returned and traveled down the posterior right thigh at its worst. He was able to make it through the two 8 hours shifts since his release, but with significant pain. His functional limitations were noted to be the same as at his previous appointment.

Petitioner offered the evidence deposition of Dr. Mahammed Rahman, M.D., Petitioner's treating neurosurgeon. Dr. Rahman testified that Petitioner had indicated that his symptoms had been present for two years but had progressed on March 14, 2019. (PX 7, p. 7) He testified that Petitioner described working on a stand-up forklift, which he operated on rough terrain for 10 hour shifts. (PX 7, p. 7) Dr. Rahman testified that the CT scan done of Petitioner's lumbar spine showed a pars fracture. (PX 7, p. 8) he testified that the pars bone connects one level of the spine to another and is a pretty dense bone at the L5/S1 level, where Petitioner had a fracture on the right side. (PX 7, p. 8-9) Since Petitioner was unable to get an MRI, he ordered a CT myelogram which confirmed the fracture on the right at the L5 level, with some slippage at the L5/S1 level. (PX 7, p. 9) Upon his examination of the Petitioner on August 1, 2019, Dr Rahman testified that Petitioner had intact strength but had right L5 radiculopathy, meaning that the nerve was irritated and shooting down his right leg. (PX 7, p. 10) His diagnosis at that point was right L5 pars fracture and spondylolisthesis at L5/S1. (PX 7 p. 10) Dr. Rahman testified that the symptoms that the Petitioner was suffering when he saw him on August 1, 2019, was the right L5 pars facture. (PX 7, p. 11) When asked a hypothetical question about Petitioner's work on the forklift and the incident of March 14, 2019, Dr. Rahman testified that there was definitely a fracture on the right at L5 and that this type of fracture usually results from a traumatic incident rather than through degeneration or chronic wear and tear. (PX 7, p. 12-13) He testified that assuming that Petitioner suffered the injury that was described at work, he would relate that to the symptoms that Petitioner was suffering. (PX 7, p. 13) He affirmed that the hypothetical description of riding on the stand-up forklift, hitting a bump and having a pop and severe pain in his back would be consistent with suffering this type of fracture. (PX 7, p. 13) Dr. Rahman testified that he pursued surgery on March 9, 2020, from a posterior approach due to Petitioner's obesity, and performed a lumbar laminectomy and interbody fusion at L5/S1. Dr. Rahman testified that Petitioner was taken off work at the time of the surgery on March 9, 2020 and remained off work until he was released to work on July 13, 2020. On re-direct, Dr. Rahman affirmed that if the Petitioner described a specific incident where he had jarring of his back with a pop and significantly increased pain, that would likely be the result of the pars fracture occurring. (PX 7, p. 31) He testified that there was no disc herniation at this level, so the fracture was the only explanation for those symptoms. (PX 7, p. 31-32) Dr. Rahman testified that without regard to whether the Petitioner experienced a "pop" in his back, a significant increase in pain would be consistent with a pars fracture. (PX 7, p. 33)

Respondent offered the evidence deposition of Dr. O'Boynick who performed a Section 12 examination of the Petitioner on November 11, 2019. (RX 1) Dr. O'Boynick testified that Petitioner provided a history of

back pain after his shifts driving a forklift with an incident of driving over a rough patch on the floor on the date of accident and experiencing a pop and significant pain in his low back. (RX 1, p. 10) On examination on that date, he noted pain in the posterior superior iliac spine, a mildly positive straight leg test on the right with numbness and tingling in the foot, a positive Gaenslen's test and pelvic rock test on the right. (RX 1, p. 11) He noted that the initial CT scan taken on 6/4/2019, though it was without contrast to show soft tissues, did show a pars fracture or spondylolysis on the right at L4/5 that he felt was chronic in imaging. (RX 1, p. 11-12) He noted that this fracture also showed on the subsequent CT myelogram done on 7/25/2019. (RX 1, p. 12) Dr. O'Boynick testified that his diagnosis on that date included low back pain, potential right lumbar radiculopathy and spondylolysis of the lumbar region. (RX 1, p. 13) Dr. O'Boynick opined that the Petitioner's description of driving over a bump while on a forklift would not cause or affect the radiculopathy. (RX 1, pp. 13-14) He also opined that the event described could not have caused the spondylolysis. (RX 1, pp. 14-15) Dr. O'Boynick did acknowledge that Petitioner required treatment to his back, recommending epidural steroid injections at L5, but denied that this treatment would be related to the work-related accident. (RX 1, pp. 15-16) On cross-examination, Dr. O'Boynick did acknowledge that the description of standing on a forklift and being bumped and jarred would place pressure on weight bearing joints including the lumbar spine, which bears the weight of the upper body. (RX 1, p. 22) He acknowledged that such an action would be expected to cause pain, and that such a mechanism could cause pain that would send a person to a doctor for treatment. (RX 1, pp. 23-24) He acknowledged that a lumbar fusion was a reasonable option for treatment of the Petitioner's condition. (RX 1, pp. 24-25) He acknowledged that the amount of pain that a person reported from this condition would be an important consideration in determining whether to pursue such surgery. (RX 1, pp. 24-25) He acknowledged that he could not specifically date the occurrence of a pars fracture from looking at a CT scan. (RX 1, p. 27)

Petitioner acknowledged that he had returned to work on July 7, 2020 after being released by Dr. Rahman. He testified that he was not 100% and wasn't the same as before. He testified that his management team had taken him off operation of the stand up fork truck, leaving him to walk up and down the aisles recording and specifying where some could get certain job numbers. He testified that even this walking required him to sit down periodically due to pain in his low back that would occasionally go into his right leg to his knee. He testified that if he sits too long or stands too long it hurts. Petitioner testified that at the time he returned to work he was still taking muscle relaxers and also pain pills when he returned home. He testified that at this time he was continuing to experience daily pain that he would rate at a 8/10 pushing a 9/10. He acknowledged that he had suffered a subsequent fall while fishing that led him to return to Dr. Rahman and obtain a subsequent x-ray to assure that his hardware was still intact. Petitioner acknowledged that his pain was initially worse after this fall, though it was in a different area, but that pain slowly went away so that he is now back to where he was before that fall. Petitioner testified that he continues to pursue exercises that he was taught in therapy and still takes a muscle relaxer daily. He continues to work at ADM but drives the stand-up fork truck on only a very limited basis. Petitioner testified that after his work accident on March 14, 2019 his employer took him off of all fork trucks until after his surgery. Petitioner acknowledged that while he was off work for his surgery, he received short term disability.

When asked about the impact of this injury upon his activity, Petitioner testified that Dr. Rahman had told him to avoid activities that cause him pain. Petitioner testified that he is no longer able to take his boat in and out of the water by himself. When hunting, he isn't able to walk as far, climb into a deer stand or sit for long periods while turkey hunting. He testified that he's unable to walk around with his grandsons.

Based on the foregoing facts, the Arbitrator makes the following findings on the disputed issues:

1. **Accident:** It appears undisputed that the Petitioner was in fact operating a stand-up fork truck on the date of accident, that travelled over an expansion joint in the concrete floor that is demonstrated to cause some jarring or bumping of the operator. Operating the fork truck was an essential function of the Petitioner's employment by Respondent. It appears that the the nature of the fork truck, without suspension and having hard plastic wheels, and the rough surface over which the fork truck was operated presented an increased risk of injury arising out of and in the course of employment of the Petitioner. The Petitioner has established that he suffered a work related accident.
2. **Causation:** Petitioner testified that he frequently suffered some pain in his back as a result of operating the fork truck in question over the rough surfaces in the work place. Petitioner testified that on the date of injury, he experienced a sharp increase in pain and a pop in his low back, and the radiation of pain into his right leg to his foot, with numbness in his foot. Petitioner testified that he had not prior to this incident previously experience pain of this severity or the radiating pain and numbness. He testified that he immediately stopped operating the fork truck after this incident and reported his pain to his immediate supervisor, and was directed to the employer's occupational health doctors for treatment. The Arbitrator finds the Petitioner's testimony credible, which provides a chain of events in support of causation. Further, the treating surgeon, Dr. Rahman testified that this description is consistent with the occurrence of pars fracture which led him to perform surgery on the Petitioner, and the Arbitrator finds this opinion more credible than the opinion of Dr. O'Boynick who was an examining doctor retained by Respondent for litigation purposes. Based upon the chain of events and Dr. Rahman's more credible opinions, the Arbitrator finds it more likely than not that the work related accident was causally related to the condition of Petitioner's low back and need for surgery.
3. **Notice:** Petitioner testified and Respondent's witness affirmed that Petitioner immediately reported his accident to his supervisors and was referred to Respondent's occupational health doctors on the date of accident. Petitioner has established notice.
4. **Medical expenses:** The Arbitrator finds that the medical bills submitted into evidence as Petitioner's Exhibit A are shown by the Petitioner's testimony and the medical records submitted into evidence to be reasonable and necessary and causally related to the Petitioner's work related accident. The Arbitrator awards payment of the $127,311.69 in medical bills subject to reductions under the Medical Fee Schedules and with credit for payments by Blue Cross Blue Shield, subject to Respondent's obligation to hold Petitioner harmless from any claim of reimbursement. Respondent shall resolve the outstanding balances.
5. **TTD:** The Petitioner testified and the medical records affirm that the Petitioner was off work from the date of surgery (March 9, 2020) through July 6, 2020, a period of 17 weeks. Having found in Petitioner's favor on accident and causation, the Arbitrator awards TTD for that period.
6. **Credit:** It is established that the Petitioner received short term disability benefits through the Respondent in the gross amount of $8,604.15 and the net amount of $7,520.06. Pursuant to *Navistar International Transportation Corporation vs. Industrial Commission et al*. 315 Ill.App.3d 1197 (1st Dist. IC Div. 2000) the Respondent is limited to credit for the net amount that the Petitioner actually received. Therefore, Respondent is granted a credit of $7,520.06.

Nature and Extent: In addressing an award of permanent partial disability, the Arbitrator must address the factors set forth in Section 8.1b of the Act:

a. AMA impairment evaluation: Neither part submitted an AMA impairment evaluation. This factor is given no weight
b. Occupation of the injured employee: Petitioner is engaged in the same occupation he was employed in at the time of his accident, though he now has greatly reduced the use of the stand-up fork truck that he used before. His employment does require extensive walking that does exacerbate his pain. This factor is given moderate weight.

c. Age of the employee at time of injury: At the time of the injury, Petitioner was 53 years of age and therefore has 12 or more years of continued employment during which to endure the residual pain and limitation of his injury. This factor is given moderate weight.
d. Employee's future earning capacity: Petitioner has returned to work for the same employer earning as much or more than he earned prior to his injury. This factor is given little weight.
e. Evidence of disability corroborated by medical records: Petitioner credibly testified to ongoing pain and limitation in walking, sitting and lifting associated with his injury, which is corroborated by the nature of his injury, the fusion that he underwent with retained hardware, and the limitations noted at the conclusion of his therapy. Petitioner testified to accommodations that are being made at his work place to allow him to continue his employment. This factor is given great weight.

Taking into account all of the above factors, the Arbitrator finds that the Petitioner has suffered permanent partial disability to the extent of 20% of a man-as-a-whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC002947
Case Name	Jozef Krol (Widower of Erol Krol Deceased) v. Stefania Rogulewski/Bernadette Service Inc & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0015
Number of Pages of Decision	47
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Peter Wachowski
Respondent Attorney	Dan Kallio

DATE FILED: 1/10/2023

/s/Kathryn Doerries, 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)
X Correction of scrivener's errors, mod language	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOZEF KROL, WIDOWER OF EWA KROL (THE DECEASED),

Petitioner,

v.

STEFANIA ROGULEWSKI, BERNADETTE SERVICE, INC. & STATE TREASURER AS EX-OFFICIO CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND (IWBF),

Respondents.

NO: 16 WC 02947

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent, Illinois State Treasurer, as Ex Officio Custodian of the Injured Workers' Benefit Fund (hereinafter referred to as IWBF), and notice given to all parties, the Commission, after considering the issues of average weekly wage/benefit rates, employer/employee, and Other-objection to entering evidence such as police report as exhibit, 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 caption on the Arbitrator's decision signature page, striking "Erol" and replacing it with "Ewa".

The Commission, herein, modifies the Arbitrator's decision, page 32, Section C, Accident, striking paragraph three on page 32, striking the entirety of page 33, and striking the first partial paragraph and first full paragraph on page 34.

The Commission, herein, modifies the Arbitrator's decision, page 34, paragraph 2, sentence one, striking the words, "Lastly" and "as well".

The Commission, herein, modifies the Arbitrator's decision, page 37, Section J, striking the entire sentence and replacing it to read, "The testimony of Decedent's husband, Jozef Krol, proves that he was dependent on Decedent at the time of death."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 3, 2022, is hereby, otherwise, affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay death benefits, commencing December 12, 2014, of $340.00/week to the surviving spouse, Jozef Krol, at a maximum amount of $500,000 or 25 years, whichever is greater, because the injury caused the employee's death, as provided in Section 7 of the Act. If the surviving spouse dies before the maximum benefit has been reached, and the children herein named still survive, Respondent shall continue to pay benefits until the youngest child reaches 18 years of age; however, if such child is enrolled as a full-time student in an accredited educational institution, payments shall continue until the child reaches 25 years of age. If any child is physically or mentally incapacitated, payments shall continue for the duration of the incapacity. If no children named herein are alive upon the death of the surviving spouse, payments shall cease. If the surviving spouse remarries, and no children remain eligible, Respondent shall pay the surviving spouse a lump sum equal to two years of compensation benefits; all further rights of the surviving spouse shall be extinguished. Respondent shall make payments for not less than six years to any eligible child under 18 years of age at the time of death.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay reasonable and necessary medical services, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act to the following medical providers:

- Advocate Lutheran General Hospital $233,335.00
- Midwest Diagnostic Pathology $ 8,396.00
- Advocate Medical Group $ 5,167.00
- Northbrook Fire Department $ 700.00

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $8,000.00 for burial expenses to the surviving spouse or the person(s) incurring the burial expenses as provided in §7(f) of the Act.

Commencing on the second July 15th after entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in §8(g) of the Act.

The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act. In the event the Respondent/Employer/Owner/Officer fails to pay

the benefits, the Injured Workers' Benefit Fund has the right to recover benefits paid due and owing the Petitioner pursuant to §5(b) and §4(d) of the Act. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that were paid to the Petitioner from the Injured Workers' Benefit Fund.

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.

January 10, 2023

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

o-12/13/22
KAD/jsf

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC002947
Case Name	KROL, JOZEF WIDOWER OF EROL KROL (THE DECEASED) v. STEFANIA ROGULEWSKI, BERNADETTE SERVICE, INC & STATE TREASURER AS EX - OFFICIO CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND
Consolidated Cases	
Proceeding Type	FATAL
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	43
Decision Issued By	David Kane, Arbitrator

Petitioner Attorney	Peter Wachowski
Respondent Attorney	Dan Kallio

DATE FILED: 3/3/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 1, 2022 0.67%

/s/ David Kane, 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
FATAL

Jozef Krol, Widower of Ewa Krol (The Deceased)
Employee/Petitioner

v.

Stefania Rogulewski, Bernadette Service, Inc. & State Treasurer as ex-officio custodian of the Injured Workers' Benefit Fund
Employer/Respondent

Case # **16** WC **002947**

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 **David Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **12/16/2019 and 1/25/22**. 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 Decedent's employment by Respondent?

D. ☒ What was the date of the accident?

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

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

G. ☒ What were Decedent's earnings?

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

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

J. ☒ Who was dependent on Decedent at the time of death?

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

L. ☒ What compensation for permanent disability, if any, is due?

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

N. ☐ Is Respondent due any credit?

O. ☒ Other **Insurance**

FINDINGS

On the date of accident, **12/11/2014**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Decedent's death ***is*** causally related to the accident.

In the year preceding the injury, Decedent earned $**26,520.00**; the average weekly wage was $**510.00**.

On the date of accident, Decedent was **52** years of age, ***married*** 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.

The Arbitrator finds that Decedent died on **12/12/2014**, leaving **1** survivor(s), as provided in Section 7(a) of the Act, including **Jozef Krol, husband/widower**.

ORDER

Respondent shall pay death benefits, commencing **12/12/2014**, of $**340.00**/week to the surviving spouse, ***Jozef Krol***, until ***$500,000 has been paid or 25 years***, whichever is greater, have been paid, because the injury caused the employee's death, as provided in Section 7 of the Act.

If the surviving spouse dies before the maximum benefit level has been reached, and the children herein named still survive, Respondent shall continue to pay benefits until the youngest child reaches 18 years of age; however, if such child is enrolled as a full-time student in an accredited educational institution, payments shall continue until the child reaches 25 years of age. If any child is physically or mentally incapacitated, payments shall continue for the duration of the incapacity. If no children named herein are alive upon the death of the surviving spouse, payments shall cease.

If the surviving spouse remarries, and no children remain eligible, Respondent shall pay the surviving spouse a lump sum equal to two years of compensation benefits; all further rights of the surviving spouse shall be extinguished.

Respondent shall make payments for not less than six years to any eligible child under 18 years of age at the time of death.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act to the following medical providers:

- Advocate Lutheran General Hospital $233,335.00
- Midwest Diagnostic Pathology $8,396.00
- Advocate Medical Group $5,167.00
- Northbrook Fire Department $700.00

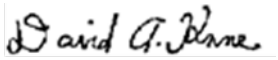
Respondent shall pay ***$8,000*** for burial expenses to the surviving spouse or the person(s) incurring the burial expenses, as provided in Section 7(f) of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund***, as provided in Section 8(g) of the Act.

The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of this Act. In the event the Respondent/Employer/Owner/Officer fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner pursuant to Section 5(b) and 4(d) of this Act. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jozef Krol, Widower of Ewa Krol (The Deceased), Employee/Petitioner	)	
v.	)	Case No. 16 WC 2947
Stefania Rogulewski, Bernadette Service, Inc. & State Treasurer as ex-officio custodian of the Injured Workers' Benefit Fund, Employer/Respondent	)	

Rider FINDINGS

I. PROCEDURAL BACKGROUND

An Application for Adjustment of Claim was filed by Petitioner, Jozef Krol, widower of the Decedent, Ewa Krol, on January 29, 2016, seeking relief under the Illinois Workers' Compensation Act from Respondent/Employer, Bernadette Service, Inc. This action sought further relief from the Illinois Workers' Benefit Fund (IWBF) because Respondent/Employer did not

maintain workers' compensation insurance at the time of the accident, December 11, 2014. Due to the fatal nature of the accident, the application listed man as a whole as the injured body part.

A hearing was held on December 16, 2019 in Chicago, Illinois before the Honorable David Kane. The Illinois Attorney General's Office appeared on behalf of the Illinois State Treasurer, as ex-officio custodian of the Illinois Workers' Benefit Fund (IWBF), and participated in the proceeding. Despite proper notice, neither Stefania Rogulewski nor Bernadette Service, Inc. appeared nor was represented by counsel at trial. The proceedings were conducted through the services of a sworn Polish-English interpreter. Petitioner Jozef Krol and witness Miroslaw Rudzinski testified through interpretation.

The parties appeared before the Honorable David Kane on January 25, 2022 to close proofs.

Respondent disputes liability. No benefits have been paid as a result of this claim.

The parties have agreed to waive the standard stenographic transcript and requested a full written decision by the Arbitrator.

The Illinois Workers' Compensation Commission Request for Hearing form was submitted by the parties and marked as Arbitrator’s Exhibit No. 1. Nearly all issues are in dispute.

II. TESTIMONY

TESTIMONY OF PETITIONER JOZEF KROL

Petitioner Jozef Krol testified, via Polish interpreter, that he is the widower of the Decedent, Ewa Krol. He testified that he was born on April 1, 1958, resides in Poland, and flew to the United States to testify at this trial. He testified that he has only been married once in his life, to the Decedent, Ewa Krol, and they had one child together, Daniel Krol. Mr. Krol did not remarry.

Mr. Krol confirmed that the Decedent's date of birth is November 17, 1962. Petitioner's Exhibit No. 15 is a copy of Ewa Krol's birth certificate. Petitioner's Exhibit No. 16 is a copy of Jozef Krol's birth certificate. Petitioner's Exhibit No. 17 is a copy of the marriage certificate from Poland, translated and certified. Petitioner's Exhibit No. 18 is a copy of a birth certificate of the parties' son, Daniel Krol, who is of legal age and self-sufficient.

Mr. Krol testified that his wife was employed as a cleaning lady in the United States for a cleaning service by the name of Bernadette Service, Inc. Petitioner testified that his wife was sending him money to Poland and on examination, he provided proof of same. Petitioner testified that the Decedent worked for Stefania Rogulewski and Bernadette Service, Inc. for around 10 years and was in good health prior to the accident.

Petitioner testified that he spoke with Ms. Stefania Rogulewski only once after the accident. They had one conversation, and the conversation

was about compensation with Mr. Krol understanding that there was a possibility of receiving some insurance compensation.

Mr. Krol understands that there were bills incurred for the ambulance and hospital in connection with the Decedent's accident, however, he never paid those bills, nor is he familiar with them.

Petitioner's Exhibit No. 19 is a copy of the American death certificate of Decedent Ewa Krol.

Petitioner's Exhibit No. 20, with a translation, is a copy of the Polish death certificate of Ms. Ewa Krol.

Petitioner testified that the Decedent was an organ donor and her body was cremated. Petitioner's Exhibit No. 21 are the funeral expenses for the cremation services in the U.S. and burial in Poland, which cost 2,370.00 PLN.

On cross-examination Petitioner testified that he was originally denied a visa to the United States while the Decedent was granted one and they decided that the Decedent would come to and stay in the United States and support the family. Their son was 5 years old at the time, therefore, Mr. Krol was taking care of him, and he was also taking care of his mother-in-law, Decedent's mother.

Petitioner testified that the Decedent was regularly sending money to Poland and supporting the family. Initially, they did not own a house and did not have a place to live. With the money sent by Decedent, they were able to purchase a house. Petitioner testified that sometimes Decedent would send money each month, and then when they were financing the purchase of the house, she sent the money once a year.

Petitioner testified that all throughout he and his wife had good relations and spoke every day at 5:00am.

TESTIMONY OF WITNESS MIROSLAW RUDZINSKI

Witness Miroslaw Rudzinski testified that he resides at 3330 North Overhill Avenue in Chicago, Illinois and that his date of birth is March 26, 1965. At the time of the accident, on December 11, 2014, he was married to Krystyna Rudzinski (see testimony below). He stated that he was familiar with Stefania Rogulewski and Bernadette Service, Inc. as he used to work for her. Witness testified that he was employed as a driver for the cleaning service. As part of his duties, witness was dropping the workers off at the houses and picking them up. He testified that he would pick them up from a designated meeting place in Chicago in the mornings. Witness stated that he was familiar with the Decedent, Ewa Krol, first through his ex-wife, and later through work as they worked together for Stefania Rogulewski and Bernadette Service, Inc.

Witness testified that in a typical day, he would pick up the cleaning ladies in the morning and then would drive them to the respective houses to clean. He was given a schedule, a list of all houses, from Stefania (Rogulewski), from Bernadette Service, Inc., every morning at the “sign-out.” Stefania would physically hand the list to him. The meeting was place Kurowski, a sausage shop, off of Milwaukee Avenue and Central Park in Chicago. The list would dictate who would clean a given house each day.

Witness testified that he worked with the Decedent, Ewa Krol, for

almost 2 years and that she worked on a full-time basis, which consisted of cleaning houses in the morning and then additional work in the afternoons. She would work the morning shift and the afternoon shift, six days per week. Witness believes the Decedent made around $500.00-$550.00 per week.

The cleaning ladies were paid by the homeowners, and then they (the drivers) had to pay the cleaning ladies. Witness testified that he was taking money collected by the cleaning ladies and was in charge of the money. The houses were typically cleaned for between $90.00 and $100.00, both in cash and checks. If they were paid in cash, the cleaning ladies were allowed to keep a part of it. Out of that $90.00 - $100.00, the cleaning ladies would keep $60.00.

A cleaning lady like the Decedent, who worked both shifts, would clean two houses per day and one house on Saturday, roughly 11 houses per week. If it was a big house, there were two people cleaning it. There were different fees in the afternoon. They were getting $30.00 each in the afternoon. In the morning, Decedent would typically clean the house by herself and earn $60.00. Decedent cleaned by herself in the morning during the week, Monday through Friday. She cleaned by herself in the morning, and she got to keep the $60.00 for herself. And in the afternoon, she cleaned with a partner, and each of them kept $30.00. On Saturday, she cleaned by herself and got paid $60.00. Therefore, Decedent received $90.00 per day Monday through Friday, and then another $60.00 on Saturday for a total of $510.00

Witness would pick up the cleaning ladies at 6:00am from the meeting place. When they were finished, witness would drop them off at the meeting

place by Kurowski's Deli, and some closer to the area where they lived. If they worked the afternoon shift also, they would be getting dropped off around 7:00pm, so they worked a 12-13 hour days.

Witness testified that besides his responsibilities as a driver, he also was responsible for calculating money and giving it to his boss, Stefania Rogulewski. Therefore, he did all the accounting and kept track of who cleaned which house and would then relay all this information to Ms. Rogulewski.

Witness stated that he is familiar with Charlene Rogulewski, that she is the daughter of Stefania Rogulewski, and that she also worked for the cleaning service. She would drive vans. Witness stated that he would drive a big van and that Ms. Rogulewski owned four (4) vans. Stefania Rogulewski and Bernadette Service, Inc. provided him with the van. Ms. Rogulewski would pay for gasoline, insurance, registration, and all other car-related expenses. Witness was solely responsible for driving the van and taking the van in for any repairs that were needed.

Witness stated that around 15-16 women would fit in the van. Witness stated that he worked for Stefania Rogulewski and Bernadette Service, Inc. for almost 2 years. He was fired by Ms. Rogulewski when they started having disagreements about fitting more women in the van than the allowed legal capacity. His understanding was that he got hired by Ms. Rogulewski and could be fired by her. The same held true for all the cleaning ladies. Mr. Rudzinski considered himself an employee of Bernadette Service, Inc.
He found out about the job via the Decedent, who told his wife about it. Witness was a full-time employee and he was paid by Ms. Rogulewski.

Witness testified that he was working on the date of the accident, December 11, 2014, however, did not pick up the cleaning ladies, including Decedent from the afternoon shift, as he had to take in his van for a repair. Witness stated that on the date of the accident, Decedent was being picked up by Charlene Rogulewski.

He stated that he would pick up the cleaning ladies from near the corner of Sanders and Dundee in Northbrook, from the parking lot, when it was cold. He stated that when he would pick up the cleaning ladies from Dundee and Sanders or near that intersection, he picked them up from the side where the stores are. There was a plaza and the cleaning ladies always waited there, which was on the opposite side of the street of Sanders of where the cleaning ladies would clean. The reason why they would ask the cleaning ladies to cross the street to where the stores were was to keep them warm in the winter. In case there were any delays with the vans picking them up, they could keep warm inside the stores. Also, it was easier for witness to go to the next houses from that location.

Another reason why the cleaning ladies were being picked up from the other side of the intersection near Sanders and Dundee in Northbrook, is because the other side of the intersection is dark, does not have any lights, and they would have to wait in the darkness. Also, when witness would go in the other direction, it would be harder for him to turn around because it was the end of the street. The area where they worked was dark. There was not much light in that area. It was better for him to drive into the brightly lit shopping plaza and pick up the women from that area.

There were 4 vans like the one driven by him and Bernadette Service,

Inc. had 4 drivers out at once. They all had different neighborhoods/routes and they were all responsible for their own accounting. Each driver received money from the ladies, they would count the money, and then would also give money to Bernadette Service, Inc.

Witness stated that he would pick up and drop off the same women on a given day, whatever he had on his list and whatever was delegated to him by Ms. Rogulewski. Additionally, sometimes he had to pick up women from the houses who were dropped off by Ms. Rogulewski when she did not have time to pick them up after work. Stefania Rogulewski would also drive the cleaning ladies. The ladies would rely on the drivers to get back to Chicago. He would pick them up and drop them off. They were not on fixed job sites, they were cleaning different houses each day. They all met at the meeting site, but then they went to different locations. Part of their duties was to travel between the different houses as designated by their employer.

The women had a time limit within which they had to clean a house, which was about 5-6 hours in the morning and around 3 hours in the afternoons. Witness would keep track of the houses they cleaned.
Sometimes, the cleaning ladies would carry cleaning supplies with them provided by Bernadette Service, Inc. if they knew a given house did not have them.

Witness testified that the cleaning ladies would receive more money in checks versus cash so it was ultimately up to Stefania Rogulewski to pay all the employees. Sometimes they would pay with checks addressed to Bernadette Service, Inc. and sometimes addressed to cash.

Witness stated that he learned about the accident of December 11,

2014 later that evening from Stefania Rogulewski.

TESTIMONY OF JOHN W. GEIGER

Mr. John W. Geiger testified that he is a fireman and a paramedic with the Northbrook Fire Department. He testified that he was on the response team on the date of the accident and was tasked with preparing the patient care report. He testified that they received a report of a pedestrian struck by an auto close to the intersection of Sanders and Dundee in Northbrook, Illinois. Mr. Geiger recalls that upon arrival on the scene, the Decedent was unresponsive on the pavement in the northbound lane of Sanders Road.

Witness testified that they did not note any gross deformities, nothing quite obvious at first, they did note facial trauma, including broken teeth, swelling to the forehead, and some swelling to Decedent's lower limb. He explained that some signs take minutes to come on, and perhaps by the time they were at the hospital, they become even more evident.

Upon arrival, Decedent was still breathing, though it was noted they were agonal breaths. An agonal breath might be several a minute. In other words, the body is still firing every so often to demand a breath. They noted about 4 breaths per minute in Decedent. When picking her up, the paramedics immobilized her, rolling her back over onto a backboard after putting a collar on her and getting her stabilized. They moved her to the ambulance, and at that point initiated full ELS care.

Normally, they start breathing with a mask for her, giving her straight oxygen, and go on to IV access in case any medications were needed. None

were called for because of her condition was not demanding any particular medications that they would carry. SPO2 is the level of oxygen within the blood, a fairly standard indicator of the perfusion, success in breathing. After the paramedics started breathing for her, it did come up to a normal level for an adult. BVM is a bag valve mask, which was utilized at which time it rose to 98 percent after the King Airway was placed. Ventilation continued for duration of call, which means they were physically manipulating her breathing.

The Decedent maintained NSR, her pupils were dilated, unresponsive. The Decedent was transported to Advocate Lutheran General Hospital, which is a Level I Trauma Center.

TESTIMONY OF OFFICER THOMAS FIEDLER

The evidence deposition Officer Thomas Fiedler of the Northbrook Police Department took place on December 10, 2019. Officer Fiedler was dispatched to the scene of the accident and drafted the Illinois Traffic Crash Report. Per the Officer's testimony:,

> "someone spoke with a witness Charlene Rogulewski on December 11, 2014, and the following is a summary of the conversation I had with Charlene, and this is not verbatim. Charlene is the owner of Bernadette Cleaning Services and she was picking up two employees at Dana Court in her vehicle, CA plate 57001497. It says Charlene parked her vehicle on Dana Court facing westbound towards Sanders.

Charlene observed two of her employees, Ewa and Bozena, were standing across the street on the west side of Sanders Road across from Dana Court. As Charlene was waiting in her vehicle, she observed Ewa and Bozena stop on the median that separates northbound and southbound Sanders Road. Charlene then observed Bozena stay behind as Ewa attempted to walk fast across Sanders Road approaching her vehicle. As Ewa approached the northwest curb at Sanders and Dana court, a vehicle later determined to be 2009 Toyota with Illinois license plate LJL 882 traveling northbound on Sanders Road in the curb lane struck Ewa. After Ewa was struck by this vehicle, Charlene said Ewa went into the air and landed on the street. Charlene advised Ewa and Bozena were dropped off at 4016 Dana Court on 11 December, 2014 approximately 14:40 hours to clean 4016 Dana court which was scheduled to take approximately three hours."

TESTIMONY OF WITNESS KRYSTYNA RUDZINSKI

The evidence deposition of witness Krystyna Rudzinski took place on October 12, 2021 via Zoom. The witness testified that she is familiar with Stefania Rogulewski and Bernadette Service, Inc. and that Ms. Rogulewski owns the cleaning service. She testified that Bernadette Service, Inc. is a cleaning company that hires a number of females to clean homes in the suburbs. Witness worked for Bernadette Service, Inc. and was recommend

for the job by her friend, Ms. Ewa Krol.

Ms. Rudzinski indicated that all employees were paid $60.00 per day for cleaning one house. She stated that she would only work one house, so that would be six hours until noon, but other women who wanted to make more money would also clean homes in the afternoons. Witness testified that on the date of the accident, Decedent, Ewa Krol, also worked the afternoon shift, in addition to the morning shift.

Witness testified that all employees were picked up from a designated meeting place. They had a designated meeting place, and usually Stefania (Rogulewski) would have everyone's schedule and she would tell every employee where each one of them is supposed to go. They were picked up and dropped off in vans. Stefania (Rogulewski) owned these vans, and she owned approximately five vans. Therefore, all employees would meet at one central location, and Stefania (Rogulewski), was there, and she would tell people where they were going to be cleaning.

Each van would typically fit 10 to 12 people. As such, between five vans of 12 people, around 60 women were being picked up and dropped off each day. Each person would be dropped off at the specific house they were to clean that day. After cleaning the house, they would get picked up by a driver, who was supposed to be there at a specific time. None of the employees drove their own cars to work.

Ms. Rudzinski testified that she was hired by Stefania Rogulewski and she understood that she could also be fired by her. Witness also testified that she also had a supervisor on the job and that supervisor was the driver. Additionally, Stefania Rogulewski would come and check up on the work that

was being done. She would oversee the work being done.

The majority of the women employed by Stefania Rogulewski would clean both in the morning and the second house in the afternoon. Typically, the morning work was being done by one person while the houses in the afternoon were cleaned by two women, who were paid $30.00 each. Therefore, if somebody worked morning and afternoon, they earned $90.00 per day and that is how Decedent, Ewa Krol, worked. The employees that opted to work on Saturdays would clean one house that day earning an additional $60.00. Decedent, Ewa Krol, worked on Saturdays as well. Witness testified that if somebody worked a full week, they would be making exactly $510.00.

The drivers were hired by Bernadette Service, Inc. and the vans were owned by Ms. Rogulewski. All the employees were always provided the means of transportation to and from the houses by Ms. Rogulewski. The cleaning ladies never worked at a fixed place; it changed every day. In order to clean the different houses, it was required for the cleaning ladies to be traveling to the different houses every day, and the driver would bring them over there. The homes were located in the Chicagoland area, in suburbs like Highland Park, Lake Forest, Libertyville.

Stefania Rogulewski would give instruction on what needed to be done at the homes and the supervisor driver would also come on the job sites to the homes to see what was done, and how it was done. Witness testified that she was picked up in the mornings where she would meet with all the other women at the same time every day. Witness confirmed that Decedent Ewa Krol worked regularly and continuously for Bernadette Service, Inc.

In terms of payments, if the check was made out to the business, Bernadette Service, Inc., they would hand it over to the driver. If they were paid cash, they would keep it. The checks or cash payments would be in the amount of $90.00. At the end of the week if money was owed, everything would get straightened out with Stefania (Rogulewski).

The drivers worked for Stefania (Rogulewski). The transportation that was provided by Stefania (Rogulewski) and Bernadette Service, Inc., was an essential part of her business. None of the employees used public transportation to get to the houses and they did not contribute money for gasoline. If a van would break down, the driver would call Stefania (Rogulewski), and she would either come herself and pick them up or her daughter would, and she would bring them home.

In terms of equipment and supplies, if the homeowner did not provide it, or for instance, a vacuum cleaner broke down, they always had a back-up vacuum cleaner in the van, same with cleaning supplies. Stefania Rogulewski owned the back-up vacuum cleaner and all the supplies. She was the owner of the cleaning service.

The employees never set up jobs with the homeowners directly. All of this was done by Stefania (Rogulewski), she would set everything up and assign it to each worker. Witness was not aware of any housekeeper that was employed by Ms. Rogulewski that used their own transportation and was not taken by a van. When people were picked up from the pick-up spot in the morning, they had to be dropped off later at the same location, they could not make other arrangements if they wanted. They had to return to the same place where the van was waiting for them.

Stefania (Rogulewski) would schedule the houses that were supposed to be cleaned. She had a list of houses that needed to be cleaned, and she would set who was going to clean the houses right from the location that employees were picked up at. After work, all employees were always dropped off at the same place when they were done with their morning session.

The earnings of $60.00 for the morning and $30.00 for the afternoons were set by Stefania (Rogulewski) and it was not negotiable.

Stefania (Rogulewski) advertised her business in newspapers and on the internet.

III. EXHIBITS

Petitioner went through various exhibits and laid foundations. Petitioner submitted exhibits 1 through 9 and exhibits 14 through 32 into evidence. Exhibits 10 through 13 were withdrawn. Petitioner's Exhibit A was the "Trial Exhibit List."

EXHIBIT NO. 1 NORTHBROOK FIRE DEPARTMENT AMBULANCE REPORT

(Bates Stamped Pages 1-6)

Petitioner's Exhibit Number 1 is the ambulance report of Northbrook Fire Department, which was dispatched to the scene of the accident at 17:49pm. Paramedics arrived on scene at approximately 17:52pm. Per the report:

We were called for a person struck by an auto. Pt was found prone on the pavement. Pt was not responsive. PT had agonal respirations at about 4 per minute. We immobilized her on a backboard and placed a c-collar as we moved her from the roadway. No gross deformities noted. Ventilation by BVM was started soon after. SpO2 rose with just BVM used. It rose then to 98% after King Airway was placed. Ventilation continued for duration of call. Pt maintained NSR. Further survey noticed facial trauma including broken teeth and swelling to her forehead. Swelling noted in her right lower leg as well. Both pupils were dilated and unresponsive. No further changes enroute to level I trauma center. Care transferred in ER.

EXHIBIT NO. 2 NORTHBROOK FIRE DEPARTMENT AMBULANCE BILL

(Bates Stamped Pages 1-2)

Petitioner's Exhibit Number 2 is the ambulance bill of Northbrook Fire Department in the amount of $700.00.

EXHIBIT NO. 3 MEDICAL RECORDS OF ADVOCATE LUTHERAN GENERAL HOSPITAL

(Bates Stamped Pages 1-846)

Petitioner's Exhibit Number 3 are the medical records of Advocate Lutheran General Hospital where the Decedent was taken immediately from the scene of the accident and where she was pronounced dead the next day.

EXHIBIT NO. 4 ITEMIZED BILLING OF ADVOCATE MEDICAL GROUP

(Bates Stamped Pages 1-6)

Petitioner's Exhibit Number 4 are the itemized bills of Advocate Medical Group in the amount of $5,167.00. Advocate Medical Group provides physician billing for physicians who attended Decedent at the hospital and is separate from the facility billing.

EXHIBIT NO. 5 ADVOCATE LUTHERAN GENERAL HOSPITAL BILLS

(Bates Stamped Pages 1-10)

Petitioner's Exhibit Number 5 is the itemized facility bill of Advocate Lutheran General Hospital in the amount of $233,335.00.

EXHIBIT NO. 6 ITEMIZED BILLS OF MIDWEST DIAGNOSTIC PATHOLOGY

(Bates Stamped Pages 1-25)

Petitioner's Exhibit Number 6 is the itemized bill from Midwest Diagnostic Pathology, which provides pathology billing for Advocate Lutheran General Hospital, in the amount of $8,369.00.

EXHIBIT NO. 7 NORTHBROOK POLICE DEPARTMENT POLICE REPORT

(Bates Stamped Pages 1-106)

Petitioner's Exhibit Number 7 is the police report of Northbrook Police Department, which investigated the accident.

EXHIBIT NO. 8 COOK COUNTY MEDICAL EXAMINER'S REPORT OF POSTMORTEM EXAMINATION

(Bates Stamped Pages 1-6)

Petitioner's Exhibit Number 8 is the Cook County Medical Examiner's Report of Postmortem Examination.

The examiner determined the manner of death an accident, stating that Decedent, Ewa Krol, died of multiple blunt force injuries received as a pedestrain struck by a car.

EXHIBIT NO. 9 NCCI CERTIFICATE OF NO INSURANCE

(Bates Stamped Pages 1-2)

Petitioner's Exhibit Number 9 is the National Council on Compensation Insurance's Certificate of No Insurance for Stefania Rogulewski and Bernadette Service, Inc.

EXHIBIT NO. 10 WESTERN UNION – TRANSACTION RECORDS

WITHDRAWN

EXHIBIT NO. 11 US MONEY EXPRESS – TRANSACTION RECORDS

WITHDRAWN

EXHIBIT NO. 12 STATEMENTS FROM BANK IN POLAND – PROOF OF RECEIVING MONEY

WITHDRAWN

EXHIBIT NO. 13 STATEMENTS FROM BANK IN POLAND – PROOF OF RECEIVING MONEY – SON

WITHDRAWN

EXHIBIT NO. 14 CORPORATION/LLC SEARCH – BERNADETTE SERVICE, INC.

(Bates Stamped Pages 1-2)

Petitioner's Exhibit Number 14 is a Certificate of Good Standing from the Illinois Secretary of State website showing that Bernadette Service, Inc. is an active corporation duly incorporated on June 29, 1984 and owned by Stefania Rogulewski.

EXHIBIT NO. 15 POLISH BIRTH CERTIFICATE OF EWA MARIA KROL (NEE SULKOWSKA) WITH ENGLISH TRANSLATION

(Bates Stamped Pages 1-4)

Petitioner's Exhibit Number 15 is the Decedent, Ewa Krol's, birth certificate with the certified English translation showing her date of birth as November 17, 1962.

EXHIBIT NO. 16 POLISH BIRTH CERTIFICATE OF HUSBAND, JOZEF KROL, WITH ENGLISH TRANSLATION

(Bates Stamped Pages 1-4)

Petitioner's Exhibit Number 16 is the Petitioner, Jozef Krol's, birth certificate with the certified English translation showing his date of birth as April 1, 1958.

EXHIBIT NO. 17 POLISH MARRIAGE CERTIFICATE OF EWA MARIA KROL (NEE SULKOWSKA) AND JOZEF KROL WITH ENGLISH TRANSLATION

(Bates Stamped Pages 1-4)

Petitioner's Exhibit Number 17 is the Marriage Certificate with the certified English translation. Said certificate proves that the Decedent Ewa Krol and Petitioner Jozef Krol were lawfully married on April 21, 1990.

EXHIBIT NO. 18 POLISH BIRTH CERTIFICATE OF SON, DANIEL STANISLAW KROL, WITH ENGLISH TRANSLATION

(Bates Stamped Pages 1-3)

Petitioner's Exhibit Number 18 is the Birth Certificate with the certified English translation of Petitioner and Decedent's son, Daniel Stanislaw Krol, born on September 29, 1993.

EXHIBIT NO. 19 ENGLISH DEATH CERTIFICATE OF EWA KROL

(Bates Stamped Page 1)

Petitioner's Exhibit Number 19 is the Cook County Certification of Death Record of Decedent Ewa Krol with a date of death of December 12, 2014 listing "multiple blunt force injuries and pedestrian struck by car" as causes of death.

EXHIBIT NO. 20 POLISH DEATH CERTIFICATE OF EWA KROL WITH ENGLISH TRANSLATION

(Bates Stamped Pages 1-3)

Petitioner's Exhibit Number 20 is the Polish Certificate of Death Record with the corresponding English translation showing that the Decedent, Ewa Krol, was married at the time of death to Petitioner Jozef Krol.

EXHIBIT NO. 21 POLISH FUNERAL COSTS (ASK FOR JUDICIAL NOTICE FOR THE EXCHANGE RATE AT THE TRIAL) WITH ENGLISH TRANSLATION

(Bates Stamped Pages 1-4)

Petitioner's Exhibit Number 21 are the funeral expenses incurred in relation to Decedent's death.

- Pietryka Funeral Home $1,400.00
- Funeral Expeneses in Poland (Coffin, Transportation, Wreath Flowers, Bouquets): 2,370 PLN ($590.00 USD).

Total Funeral Expenses: $1,990.00

EXHIBIT NO. 22 AFFIDAVIT OF HEIRSHIP

(Bates Stamped Pages 1-3)

Petitioner's Exhibit Number 22 is the Affidavit of Heirship listing Petitioner, Jozef Krol, and his son, Daniel Krol, as the only heirs of Decedent, Ewa Krol.

EXHIBIT NO. 23 STEFANIA ROGULEWSKI'S CRIMINAL DISPOSITIONS FOR CASE NUMBERS 12 CM 3203, 13 CM 3409, AND 15 CM 2505, ALL FOR RETAIL THEFT, A CRIME OF DISHONESTY

(Bates Stamped Pages 1-26)

Petitioner's Exhibit Number 23 are the criminal dispositions of

Employer/Respondent, Stefania Rogulewski, owner of Bernadette Service, Inc., case numbers 12 CM 3203, 13 CM 3409, and 15 CM 2505, all involving retail theft, crimes of dishonesty. These are provided to attack Respondent's credibility.

EXHIBIT NO. 24 EMPLOYEE RECORDS FROM THE RESPONDENT FROM THE DOA – DECEMBER 11, 2014

(Bates Stamped Pages 1-4)

Petitioner's Exhibit Number 24 are the employee records produced by Employer/Respondent from the date of accident, December 11, 2014, which clearly show and admit that Petitioner worked for Respondent and are an admission against intent.

EXHIBIT NO. 25 EMPLOYEE RECORDS FROM REGISTERED AGENT FOR 2013, 2014

(Bates Stamped Pages 1-53)

Petitioner's Exhibit Number 25 are the employees records produced by the registered agent of Bernadette Service, Inc. for the years 2013 and 2014.

EXHIBIT NO. 26 EVIDENCE DEPOSITION OF OFFICER THOMAS FIEDLER

(Bates Stamped Pages 1-60)

Petitioner's Exhibit Number 26 is a copy of the evidence deposition transcript of Northbrook Police Department responding officer, Thomas Fiedler, taken on December 10, 2019.

EXHIBIT NO. 27 NOTICE OF TRIAL – REGISTERED AGENT DAVID ROBBINS (Bates Stamped Pages 1-10)

Petitioner's Exhibit Number 27 is the certified mail receipt for registered agent of Bernadette Service, Inc., David Robbins, placing him on notice of the December 16, 2019 trial date.

EXHIBIT NO. 28 NOTICE OF TRIAL – STEFANIA ROGULEWSKI AS PRESIDENT OF BERNADETTE SERVICE, INC.

(Bates Stamped Pages 1-7)

Petitioner's Exhibit Number 28 is the returned/unclaimed envelope sent via certified mail and regular mail to Employer/Respondent Bernadette Service, Inc., placing it on notice of the December 16, 2019 trial date.

EXHIBIT NO. 29 NOTICE OF TRIAL – STEFANIA ROGULEWSKI, PERSONALLY (Bates Stamped Pages 1-7)

Petitioner's Exhibit Number 29 is the returned/unclaimed envelope sent via certified mail and regular mail to Employer/Respondent Stefania Rogulewski, placing her on notice of the December 16, 2019 trial date.

EXHIBIT NO. 30 EVIDENCE DEPOSITION OF KRYSTYNA RUDZINSKI

(Bates Stamped Pages 1-30)

Petitioner's Exhibit Number 30 is a copy of the evidence deposition transcript of witness Krystyna Rudzinski taken on October 12, 2021.

EXHIBIT NO. 31 ARBITRATOR'S DECISION IN CASE #16WC003953

(Bates Stamped Pages 1-16)

Petitioner's Exhibit Number 31 is a copy of the arbitration decision issued by Arbitrator Carolyn Doherty in connection with case number 16 WC 003953 brought by Petitioner Regina Wadolowska against the same Employer/Respondent, Bernadette Cleaning Service and the Illinois Injured Workers' Fund. The facts testified are almost identical regarding the circumstances regarding employment.

In Regina Wadolowska v. Bernadette Cleaning Services and the Illinois State Treasurer as ex-officio custodian of the Injured Workers' Benefit Fund, Case No. 16 WC 003953, Arbitrator Doherty found the Respondent to be an employer under the Act and Petitioner testified as follows:

Petitioner worked with Bernadette Cleaning Services, in a housekeeping position that she had found through a friend and began in 2004. Petitioner stated that she knew Respondent-Employer as "Bernadette." Respondent/Employer told Petitioner that she was required to do any house cleaning that a client required. On a typical day, Petitioner would be met on the street near her home by a van driven by a driver and taken to clients' homes in the suburbs. At the end of a cleaning shift, the same van would pick Petitioner up and drive her back to Chicago.

Petitioner stated that the van did not have any lettering or markings on the outside. The van would also pick up as many as 15 other housekeepers in Chicago and deliver them to job sites.

Petitioner worked six days per week. Petitioner would service one-to-two houses per day. If Petitioner cleaned one house per day, she would work six hours. If Petitioner cleaned two homes per day, she would spend an additional three hours at the second home. In a typical week, Petitioner worked at one home three days per week, and at two homes another three days per week. For a six-hour home cleaning, a homeowner would pay $100.00. Petitioner would keep $60.00 of that $100.00, and Respondent/Employer would receive the other $40.00. If Petitioner worked nine hours on a two-home day, she received $90.00 in pay. There was conflicting testimony as to whether the homeowners paid Petitioner directly, or if they paid Respondent/Employer, who then paid Petitioner in cash. Petitioner also testified that the homeowner would make a check out to Bernadette or would leave cash payment. Petitioner testified that the checks were never made out to Petitioner but rather to "cash" or to Bernadette. What was clear, however, is the fact that Respondent/Employer received a portion of the payment for home cleaning services, and Petitioner received the remainder. When Petitioner first started as a housekeeper at a given home, the driver would accompany Petitioner into the home, and translate into Polish the instructions for home cleaning given by the homeowner. Petitioner used cleaning supplies provided by the homeowner. On occasion, if a homeowner did not possess a certain cleaning tool (such as a vacuum), Respondent/Employer would provide the needed item. Typical home cleaning tasks included cleaning bathrooms, washing floors, washing windows, doing laundry, changing beds, and sometimes cleaning garages. All of Petitioner's testimony was uncontroverted. Respondent presented no

live testimony whatsoever. Deference must be given to the Petitioner's testimony. Petitioner was credible.

EXHIBIT NO. 32 APPLICATION FOR ADJUSTMENT OF CLAIM AND AMENDMENT WITH USPS GREEN CARD

(Bates Stamped Pages 1-7)

Petitioner's Exhibit Number 32 are copies of the original and amended Applications for Adjustment of Claim with a certified mail receipt signed by "Rogulewski" on behalf of Bernadette Service, Inc.

IV. FINDINGS OF LAW AND FACT

The above findings of fact are incorporated into the following conclusions of law.

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

Bernadette Service, Inc. is a corporation lawfully incorporated, and as such, was subject to the Illinois Workers' Compensation and Occupational Diseases Act on the date of accident on December 11, 2014.

Petitioner and witnesses testified that, as part of Respondent/Employer's business model, Respondent/Employer provided the Decedent and other housekeepers with transportation to and from private homes in the Chicagoland Area. Respondent/Employer's driver picked up Decedent and

others in a van. The Arbitrator finds these conditions sufficient to subject Respondent/Employer to the automatic coverage provisions of Section 3 of the Illinois Workers' Compensation Act. The Arbitrator finds that Bernadette Service, Inc. was operating under and subject to the Illinois Workers' Compensation and Occupational Diseases Act.

B. Was there an employer-employee relationship?

The existence of an employment relationship is a prerequisite for any award of benefits under the Act. There is no specific litmus test for determining whether an employer-employee relationship exists. Instead, there are multiple factors to consider when assessing the nature of the relationship between the parties. Ware v. Indus. Comm'n., 318 III. App. 3d 1117, 1122 (1st Dist. 2000). Among these are: (1) whether the employer may control the manner in which the person performs the work; (2) whether the employer dictates the person's schedule; (3) whether the employer pays the person hourly; (4) whether the employer withholds income and social security taxes from the person's compensation; (5) whether the employer may discharge the person at will; (6) whether the employer supplies the person with materials and equipment; and (7) whether the employer's general business encompasses the person's work. See Robertson v. Indus. Comm'n., 866 NE.2d 191, 200 (Ill. 2007). No single factor is determinative, and finding an employer-employee relationship rests upon the totality of the circumstances. Roberson, 866 NE.2d at 200.

In Illinois, "the most important factor in determining if a person

is an employee or an independent contractor is the amount of direction and control exercised by the employer." Rozmyslowicz v. Tony & Krystyna Cleaning Service, 98 IL.W.C.31232 (111.Indus.Com'n 2003) at 3. The Commission has held, however, that "[a]lthough direction of the work is an important factor in determining whether an employment relationship exists, cleaning houses is such an unskilled job that little direction can be necessary." Mazurek v. Anna Ptak Nosal DIB/A Crystal Cleaning et al., 10 I.W.C.C. 1295 (111.Indus.Com'n 2010) at 11. To establish whether in-home housekeepers were employees, the Commission has considered many factors beyond that of direction and control, such as how the employee first heard of the job, who set the schedule of houses to be cleaned, the provision of transportation, who provided the cleaning supplies, and who determined the rate of payment. See generally Rozmylowicz, 98 IL.W.C.31232; Mazurek, 10 I.W.C.C. 1295; Dratewska-Zator v. Iwona Wielonek, et al., 11 I.W.C.C. 0549 (Ill.Indus.Com'n 2011); Maziarz v. Alicja Cleaning Service, Inc., 07 LW.C.C. 0292 (Ill.Indus.Com'n 2007). The fact that taxes are rarely withheld from the housekeepers' paychecks in these situations does not necessarily disclaim an employer-employee relationship. Rozmylowicz, 98 IL. WC. 31232 at 3. The Commission has determined that housekeepers provided to homeowners through businesses like Respondent-Employer's are, in fact, employees of those businesses. See generally Rozmylowiez, 98 IL.W.C.31232; Mazurek, 10 IW.C.C. 1295; Dratewska-Zator, 11 IW.C.C. 0549; Maziarz, 07 I.W.C.C. 0292.

In Dratewska-Zator, the Commission found that the Petitioner qualified as an employee of Respondent-Employer's housekeeper-providing

service. Crucial to the Commission's decision were the facts that Respondent-Employer directed Petitioner to the homes in which Petitioner worked and set the rate of pay for each job, receiving a "cut" of the pay from each job. Dratewska-Zator, 11 I.W.C.C. 0549 at 2. Likewise, in Maziarz, the Commission held that the housekeeper worked as Respondent-Employer's employee where "[t]he respondent told her what houses to clean and provided her with a list of houses to clean... and respondent communicated with the homeowners and also gave them parameters as to how much money should be paid to the Petitioner for cleaning said houses." Maziarz, 07 I.W.C.C. 0292 at 2. In Rozmylowicz, the Commission deemed the Petitioner housekeeper an employee where "Respondent advertised for cleaning people, selected the houses to be cleaned, picked up Petitioner and other cleaning people at a designated place and took them to and from designated job sites. Petitioner was given six hours in which to do the work and Petitioner received $40.00 per house regardless of the amount of the payment made by the customer." Rozmylowicz, 98 IL. W.C. 31232 at 3.

The Commission held that these facts sufficiently established Petitioner as an employee rather than an independent contractor. Finally, in Mazurek, the Commission upheld the Arbitrator's determination that the housekeeper in that case was an employee. Mazurek, 10 I.W.C.C. 1295. Respondent obtained the specific job sites, assigning housekeepers when contacted by customers for a cleaning person. Petitioner was told the schedule of cleaning for the day when she was picked up in the morning by Respondent for transport to the job site. Respondent determined the rate of pay and received a "cut" of what was paid to Petitioner. Cleaning supplies

were sometimes provided by the homeowner, sometimes by Respondent. Mazurek, 10 I.W.C.C. 1295 at 11. The Commission held these facts sufficient to establish an employer-employee relationship, despite the fact that Respondent did not control the manner in which the Petitioner cleaned homes or withheld any taxes or social security. Id.

Under the precedent established by the Commission in cases concerning housekeepers working with entities like Respondent-Employer's business, the Arbitrator finds that at the time of the accident, the relationship between Decedent and Respondent-Employer was that of employee-employer. There is no dispute that direction for the housekeeping tasks came from individual homeowners. Respondent-Employer provided Decedent with the transportation to and from the job sites. Respondent-Employer also set Decedent's schedule, in that when homeowner called looking for a housekeeper at a certain time, Respondent-Employer would assign an available housekeeper to that time slot. The testimony specifically addressed who set the rate of pay as well as the fact that there was a standard rate of $60.00 per house cleaning, from which the housekeepers would keep $60.00 while Respondent-Employer received $30. The rate of pay was consistent across the enterprise. The facts at issue in this matter, particularly with regard to the nature of the enterprise operated by the Respondent-Employer, are virtually identical to those in Dratewska-Zator, Mazurek, Rozmylowicz, and Maziarz, all of which have found an employee/employer relationship. As such, the Arbitrator finds that on December 11, 2014, an employee/employer relationship existed between Decedent and Respondent-Employer.

All testimony provided indicates that Decedent was under the direct control and supervision of Respondent and that she was an employee of Respondent. The Arbitrator finds that an employee-employer relationship did exist between Decedent and Bernadette Service, Inc.

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

To be compensable under the Act, an injury must "arise out of" and be "in the course of" the employee's employment. Kochilas v. Industrial Comm 'n, 274 Ill.App.3d 1088, 1090 (1995). The burden of establishing that the injury "arose out of" and was "in the course of the employment" rests with the applicant. Rockford Cabinet Co. v. Industrial Comm 'n., 295 III. 332, 335 (1920). In this case, Decedent was crossing the street while heading toward the waiting van to transport her to Chicago at the end of her shift. The Arbitrator finds that Decedent's accident arose out of and occurred while in the course of her employment for Respondent. Clearly, Decedent was in the course of her employment just having finished cleaning and walking to the transportation scheduled to bring her back to Chicago. The transportation was part of her essential employment duties for Respondent. Walking to the van immediately upon completion of the cleaning duties was clearly within a foreseeable and reasonable time and place such that Decedent remained within the course of her duties at the time she was struck by a car.

The Arbitrator further finds that the Decedent's accident arose out of her employment. In determining whether the injury arose out of Decedent's

employment, the Arbitrator notes there are three types of risks to which employees may be exposed: (1) risks that are distinctly associated with employment; (2) risks that are personal to the employee, such as idiopathic falls; and (3) neutral risks that do not have any particular employment or personal characteristics. The Arbitrator notes that injuries resulting from a risk distinctly associated with employment, i.e., an employment-related risk, are compensable under the Act. The Arbitrator further notes that risks are distinctly associated with employment when, at the time of injury, the employee was performing acts she was instructed to perform by her employer, acts which she had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incidental to her assigned duties.

The Arbitrator further notes that "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." Orsini v. Industrial Comm 'n, 117 Ill. 2d 38, 45, 509 N.E.2d 1005, 1008 (1987).

Under the facts of this case, the Arbitrator finds that Decedent's accident arose out of her employment with Respondent as it arose from a risk distinctly associated with her employment, i.e., an employment-related risk. In so finding, the Arbitrator finds that the walk to the van awaiting to provide mandated transportation was an activity Decedent was instructed to perform by her employer and one that the Decedent might reasonably be expected to perform incidental to her assigned duties. Specifically, the Arbitrator notes that round trip transportation was not optional for the housekeepers. Rather, the transportation of the housekeepers provided a

direct benefit for Respondent as it allowed for immediate payment to the Respondent and specific control over the housekeeper's location and time spent on the job. The Arbitrator further notes that the mandated transportation provided clearly supports an employment relationship and therefore should equally support a finding that Decedent's accident which occurred on her way to the van arose out of her employment as a risk distinctly associated with her employment.

The Arbitrator finds that based upon these facts, Decedent's accident arose out of her employment with Respondent as it arose from an employment-related risk.

Lastly, the Arbitrator notes that a finding of accident is appropriate under a traveling employee analysis as well. While typically injuries that occur to employees as they come and go from a place of employment are not compensable, Venture-Newberg-Perini, Stone & Webster v. Ill Workers' Compensation Comm'n, 1 N.E. 3d 353, 359 (Ill 2013), an exception exists when the employee is a "traveling employee," an individual whose "duties require them to travel away from their employer's premises." Id. at 340. In such cases, "traveling employees may be compensated for injuries incurred while performing an act they were not specifically instructed to perform. The act, however, must have arisen out of and in the course of employment. To make this determination, the court considers the reasonableness of the act and whether it might have reasonably been foreseen by the employer." Id.

In this instance, the Decedent was required by her employer to travel to the different job sites, including the one at which Decedent sustained her

injury. In fact, Respondent-Employer facilitated and mandated the transportation to and from the job sites and pickup locations. As such, at the time of her injury, Decedent was a traveling employee. Furthermore, that Decedent would have to cross the street in order to reach the van pickup location would have been foreseeable to Respondent-Employer. Respondent-Employer established the pick-up/drop off route and schedule, and therefore would have expected Decedent to be at a certain spot at the job site at a certain time. It is certainly foreseeable that Decedent would have to walk some distance and cross a street to reach the pickup van. For these reasons, the Arbitrator further finds that Decedent did sustain an accident that arose out of and in the course of her employment with Respondent-Employer.

D. What was the date of the accident?

The ambulance, hospital and police records all confirm that this accident occurred on December 11, 2014. Thus, the Arbitrator finds the accident occurred on December 11, 2014. The date of death pursuant to the Death Certificate was December 12, 2014.

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

Employer-Respondent's daughter, Charlene Rogulewski, who happened to be the van driver on the date in question, testified to the reporting police officer that she witnessed the accident. No evidence or

testimony was presented to the contrary. Miroslaw Rudzinski, a driver for Respondent, testified that he learned of the Decedent's accident on December 11, 2014 form Stefania Rogulewski. As such, the Arbitrator finds that timely notice of the accident was given to Respondent-Employer.

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

The medical records of Advocate Lutheran General Hospital as well as the Death Certificate all state that Decedent died from blunt trauma as a result of this accident. As such, the Arbitrator finds that the Decedent's current condition of ill-being is causally related to the injury.

G. What were Decedent's earnings?

All the testimony confirms that housekeepers employed by Employer-Respondent were paid $60.00 for a six-hour job. On days where housekeepers worked two jobs, namely, one 6-hour job and one 3-hour job, they would earn $90.00 plus an additional $60.00 on Saturdays working six days a week. Testimony proves that Decedent worked six days per week, making $90.00 per day Monday through Friday plus $60.00 on Saturdays for a total average weekly wage of $510.00.

The Arbitrator finds that Decedent's average weekly wage at the time of accident was $510.00, and Decedent's earnings for the year prior to the accident would have been $ 26,520.00.

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

Petitioner's birth certificate and medical records indicate that Decedent's birthday is November 17, 1962. The Arbitrator therefore finds that Decedent was 52 years old at the time of the accident.

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

Decedent's widower, Jozef Krol, testified that he was lawfully married to the Decedent at the time of the accident. A copy of the marriage certificate between Ewa Maria Krol and Jozef Krol was submitted into evidence. No evidence or testimony having been presented to the contrary, the Arbitrator finds that on the date of accident, the Decedent was married.

J. Who was dependent on Decedent at the time of death?

Both testimony and copies of money transfers and bank statements prove that Decedent's husband, Jozef Krol, was dependent on Decedent at the time of death.

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

Immediately following the accident, Decedent was taken to Advocate Lutheran General Hospital by ambulance, where she was subsequently pronounced dead. The Arbitrator finds that the treatments sought by Decedent immediately after the accident were reasonable and necessary. The Arbitrator finds no evidence that Decedent has sought out or received excessive or unnecessary treatment. Petitioner tendered to the court several exhibits for medical bills incurred as a result of the December 11, 2014 accident.

Decedent did not have health insurance at the time of the accident, which would cover her medical bills. Respondent/Employer has not paid any of these bills. No evidence or testimony has been presented to the contrary. The Arbitrator therefore finds that Respondent/Employer has not paid any of Decedent 's medical expenses related to the December 11, 2014 accident. The Arbitrator finds that Respondent shall pay all reasonable, necessary and causally related medical expenses incurred in the care and treatment of Decedent's causally related injury pursuant to Sections 8 and 8.2 of the Act.

The Arbitrator finds that the credible evidence and testimony prove that the medical treatment as provided in Petitioner's exhibits was clearly reasonable and necessary. The Arbitrator further finds that Respondent has not paid any of the appropriate charges for all reasonable and necessary medical services. The following bills have not been paid by Respondent and it is Respondent's obligation to pay said bills for treatments that were reasonably rendered to Decedent in connection with this accident:

- Advocate Lutheran General Hospital…….$233,335.00
- Midwest Diagnostic Pathology…….$8,396.00
- Advocate Medical Group……..……$5,167.00
- Northbrook Fire Department…….……..$700.00

L. What compensation for permanent disability, if any, is due?

The Arbitrator finds that Respondent shall pay death benefits, commencing on 12/12/2014, of $340.00/week to the surviving spouse, Jozef Krol, until $500,000 has been paid or 25 years, whichever is greater, have been paid, because the injury caused the employee's death, as provided in Section 7 of the Act.

O. Other: Insurance and Liability of the IWBF

The Arbitrator finds that the NCCI certification tendered by Petitioner as Petitioner's Exhibit 9 demonstrates that on December 11, 2014, Respondent/Employer lacked workers' compensation insurance.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018945
Case Name	Steve Padilla v. George and Sons HVAC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0016
Number of Pages of Decision	22
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Ian Elfenbaum
Respondent Attorney	W. Britt Isaly

DATE FILED: 1/9/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Steve Padilla,

Petitioner,

vs. NO. 16WC 18945

George and Sons HVAC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, necessity of treatment, 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 November 18, 2021 is hereby affirmed and adopted.

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

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

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

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

January 9, 2023

SJM/sj
o-11/9/2022
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	16WC018945
Case Name	PADILLA, STEVE v. GEORGE AND SONS HVAC
Consolidated Cases	
Proceeding Type	8a &19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Ian Elfenbaum
Respondent Attorney	W. Britt Isaly

DATE FILED: 11/18/2021

/s/Kurt Carlson, Arbitrator

Signature

INTEREST RATE WEEK OF NOVEMBER 16, 2021 0.06%

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
8(A) & 19(B)

Steve Padilla
Employee/Petitioner
v.
George & Sons HVAC
Employer/Respondent

Case # **16** WC **018945**

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 **Chicago**, on **06-17-21**. 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. 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. ☐ 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, **05-04-16**, 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 $**41,880.28**; the average weekly wage was $**805.39**.

On the date of accident, Petitioner was **37** years of age, ***single*** 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 $**26,147.65** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**26,147.65**.

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

ORDER

Respondent shall authorize and pay for prospective medical care in the form of a trial spinal cord stimulator prescribed by Dr. Faris Abusharif.

Respondent shall pay the further sum of **$ 52,419.85** for necessary medical services as provided in Section 8(a) of the Act and subject to the fee schedule provisions thereof.

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.

Kurt A. Carlson

Signature of Arbitrator

November 18, 2021

State of Illinois)
)
County of Cook)

BEFORE THE
ILLINOIS WORKERS COMPENSATION COMMISSION

Steve Padilla,	)	
	)	
Petitioner,	)	**Setting: Chicago**
	)	
v.	)	**Arb. Kurt Carlson**
	)	
George & Sons HVAC,	)	**16WC 18945**
	)	
Respondent.	)	

Hearing under Section 8(a)

ARBITRATOR'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

The matter was heard before Arbitrator Kurt Carlson on June 17, 2021. The parties stipulated to the occurrence of an accident on May 4, 2016. (Arb. Ex #1) Currently, the issues in dispute are causal connection, authorization for trial placement of a spinal cord stimulator (cervical) and payment of medical bills. *Id*.

This unique case involves the placement of spinal cord stimulator for a patient who is presently working full-time and has not been diagnosed with "failed back syndrome."

A. FINDINGS OF FACT

1. Petitioner's Work History and Job Duties

Petitioner testified that he had worked as an HVAC technician for about ten years. He went to technical school for a year to learn this trade. (T. 9) The work involves troubleshooting and repairing equipment, removing old units and installing new ones. It requires moving heavy equipment such as compressors and furnaces, which can weigh over 60 pounds. (T.10) As a technician with George & Sons, he worked by himself, operating his own service truck, and also

with a crew at times. (T. 11) On the date of accident, May 4, 2016, Petitioner was not under any medical restrictions. *Id*.

2. Date of Accident: May 4, 2016

On that date Petitioner was working with a crew at a commercial building, installing a new furnace. (T. 11) Petitioner testified that he was injured while standing on a ladder, using both hands to operate a coring drill to bore a 4-inch hole in a wall. (T. 12, 42)

The drill got stuck, twisting his right arm and neck. Petitioner testified that he felt immediate stabbing pain in his neck with numbness and tingling down his arm. (T. 12) He called the supervisor and owner; told them he needed to "get to a hospital right away, because something is definitely wrong." He then drove himself to McNeal Hospital. *Id.*

3. Initial medical care

The emergency staff at McNeal Hospital diagnosed Petitioner with a shoulder strain, and prescribed ibuprofen and flexeril, a muscle relaxant. (PX #5, pp. 8, 9) Petitioner testified that he went to the Clearing Clinic for follow-up care on the insurance carrier's instructions. (T. 13-14) On May 6, 2016 Petitioner was examined by Dr. Davison at Clearing Clinic, who noted pain in the right upper back, neck and shoulder, with impingement signs in the right shoulder and muscle spasm. (PX #6, p. 42) He gave Petitioner light duty restrictions, including no lifting with the right arm. *Id*., p. 43. On May 10, 2016 Petitioner reported his pain had increased to 10/10, and the medications were not working. Dr. Davison ordered a cervical MRI; he also ordered physical therapy, and prescribed Norco for nighttime pain control. (T. 31-32)

Petitioner's cervical MRI was performed May 13, 2016. It showed a moderate right disc protrusion at C6-7, causing severe right foraminal and lateral recess stenosis as well as moderate central stenosis. (PX #6, pp. 19-20) On May 17, 2016 Dr. Davison reviewed the MRI and diagnosed Petitioner with cervical radiculopathy. He prescribed oral steroids along with Flexeril, Norco and physical therapy. *Id*., p. 15-16.

Petitioner recalled that the physical therapy was excruciating, as any lifting caused sharp stabbing pains in his neck and right arm. (T. 15) On June 10, 2016, after about a month of therapy, he went to St. James Hospital's ER for uncontrolled pain. (T. 16) & (PX #8) After this ER visit, he decided to see a doctor of his own choosing. (T. 16-17) He continued to work at his light-duty job, which included acting as a "runner" and other sedentary tasks. (T. 44) Petitioner testified that

his light duty assignment was discontinued in November 2016, and he began receiving TTD payments at that time. (ARB. EX #1) & (T. 19)

On July 18, 2016 Petitioner consulted Dr. Blair Rhode, an orthopedic surgeon. Dr. Rhode reviewed the MRI and ordered an EMG/NCV. (PX #1, Exh. 6, pp. 46-47) This was consistent with right C7 radiculopathy. *Id*., p. 44. Dr. Rhode then referred Petitioner to a spine specialist, Dr. Cary Templin of Hinsdale Orthopedics, for possible surgery. *Id*. p. 45.

Petitioner saw Dr. Templin on August 11, 2016. Dr. Templin diagnosed a herniated cervical disc, and prescribed an epidural injection at C6-7. (PX #1, Exh. 5, p. 3-4) On September 8, 2016 Dr. Templin noted that the injection had given Petitioner no sustained relief, and his pain level had returned to 10/10. He recommended fusion surgery. *Id*., p. 7.

On January 5, 2017, Respondent had Petitioner evaluated by its Section 12 examiner, spinal surgeon Dr. Babak Lami. Dr. Lami opined that the source of Petitioner's symptoms was a herniated cervical disc caused by his work accident, and agreed that the fusion surgery was medically necessary. (PX #1, Exh. 7)

4. <u>Surgery by Dr. Templin and post-surgical rehabilitation</u>

Petitioner testified that on Dr. Templin's instructions, he quit smoking to insure a good surgical outcome. This was not easy but it "had to be done." (T. 20) On April 6, 2017 Dr. Templin noted that Petitioner had been smoke-free for over six weeks. He ordered a test to confirm this, along with other pre-operative testing. (PX #1, Exh. 5, pp. 9-18)

On June 7, 2017 Dr. Templin performed an anterior cervical fusion at C6-7 using an interbody cage and anterior plate fixed with screws. (PX #1, Exh. 3) Petitioner spent the night at the surgical center. He wore a hard collar for 6-8 weeks. (T. 21) He recalled that immediately following the surgery the pain was gone, which was a big relief. *Id*.

On July 17, 2017 Pet started post-operative physical therapy on Dr. Templin's orders at ATI. This led to some renewed right shoulder pain, with positive impingement signs noted by Dr. Rhode on August 30. (PX #1, Exh. 6, p. 16). Dr. Templin also noted shoulder symptoms, which he attributed to "irritation" of the rotator cuff in physical therapy. (PX #1, Exh. 5, p. 28) By September 26, 2017, however, Petitioner was feeling better with just "some neck pain and stiffness," and rated his pain at 2/10. Dr. Templin cleared him to start work hardening. *Id*., p. 33. Dr. Rhode likewise commented that Petitioner's "aggravation" of shoulder pain had improved.

(PX #1, Exh. 6, p. 14)

Petitioner started work hardening on Sept. 29, 2017. The therapist noted an "excellent effort" by Petitioner, while also noting some *increased neck pain*. (PX #1, Exh. 5, p. 41) Reports dated October 17 and 24, 2017 noted that Petitioner's progress "exceeds expectations," along with a *further increase in neck pain*. He was advanced to the Medium-Heavy level. *Id*., pp. 40-41. On November 7, 2017 Dr. Templin noted that Petitioner rated his neck pain at 8/10, up from just 2/10 in late September, and that the pain was *getting worse with "advancing work conditioning."* *Id*., p. 43. Dr. Templin ordered a CT scan of Petitioner's neck to evaluate the status of the cervical fusion. *Id*.

Post-operative CT scan, November 14, 2017

Petitioner's CT scan was performed November 14, 2017. The radiologist's report noted straightening of the normal cervical curve which was suggestive of muscle spasms. It also noted foraminal narrowing on the right at C5-6, which was hard to evaluate because of the hardware, but could cause "possible neural impingement on the right." (PX #1, Exh. 5 p. 48) A disc protrusion at C4-5, with mild left foraminal narrowing and central canal stenosis was also noted. *Id*. However, the surgical hardware was in place and the fusion appeared solid. Accordingly, on December 11, 2017 Dr. Templin cleared Petitioner to complete work hardening. *Id*., p. 51.

On November 29, 2017 Petitioner's work hardening report noted that his participation continued to exceed expectations, but that his pain was also getting worse. *Id*., p. 50. The therapist suggested an FCE "in order to appropriately determine his functional capabilities due to his remaining pain levels." *Id*. Dr. Templin ordered the FCE on December 11, 2017, noting that Petitioner would be "returned to work as per the functional capacity evaluation." *Id*., p. 51.

5. Petitioner's FCE and release from care by Dr. Templin

Petitioner underwent the FCE on December 29, 2017. He testified that at the time of the FCE "something still didn't feel right." He would get pain with certain motions. (T. 24-25) The pain was in his neck, through the shoulder and part of the right arm. *Id*.

The FCE results were deemed valid, and the report noted that Petitioner put forth maximum effort. (PX #1, Exh. 4, p. 1) It rated Petitioner's lifting and carrying performance at

MEDIUM-HEAVY, below the DOT level of HEAVY required by his former job, with occasional over-the shoulder lifting of up to 46 pounds. His standing tolerance, however, was limited to 30 minutes, with a maximum of three hours standing per eight-hour shift. *Id*. Bending, stooping and climbing were limited to occasional only, or 0.5 to 2.4 hours in an eight-hour shift. Flexion and rotation of the neck were also limited to occasional, and Petitioner reported that looking down "kills him." *Id*., pp. 2, 5. The examiner noted that Petitioner's "pain reports increased as the assessment progressed" and concluded: "I recommend the client discuss all deficits and complaints demonstrated during FCA with his physician." *Id*., p. 1.

On January 16, 2018 Dr. Templin noted that Petitioner's neck pain continued to be 7/10, with limited cervical ROM. (PX #1, Exh. 5, p. 60) Dr. Templin noted the FCE was rated as Valid, and accordingly gave Petitioner permanent "MEDIUM-HEAVY" work restrictions. He further noted that he had no recommendations for further surgical intervention, and discharged Petitioner from his care with a recommendation for "pain management PRN." *Id*.

Petitioner testified that his last workers' compensation TTD check was January 3, 2018. He continued treating with Dr. Rhode for pain management. (T. 25-26) Dr. Rhode prescribed light-duty restrictions including a 20-pound limit on lifting. (T. 26) Petitioner testified that he went back to work at George & Sons for about six weeks under those restrictions. He did parts deliveries, light troubleshooting and "basically clipboard work," but no installations and no lifting of compressors or other heavy equipment. (T. 27)

Dr. Rhode also referred Petitioner to an orthopedic surgeon, Dr. Kukkar, who evaluated him on January 17, 2018. (PX #9) Dr. Kukkar's review of the November 14 MRI indicated adjacent-level disc degeneration at C5-6. He recommended an MRI and EMG, and concurred with Dr. Rhode's light work restrictions. Rhode kept him on Norco and Meloxicam. (T. 29) Dr. Rhodes' records indicate that as of March 2, 2018 he prescribed Fexmid 7.5 mg three times daily and Norco 7.5 mg. The Norco prescription was for "1-2 tablets every 4-6 hours PRN (as needed)," with 60 tablets to be dispensed. (PX #1, Exh. 6, p. 4)

6. <u>Pain Management with Dr. Abusharif</u>

In December 2018, Dr. Rhode referred Petitioner to a pain management specialist, Dr. Abusharif. (T. 29) His medications at that time included Fexmid, Mobic and Norco, but no gabapentin. (PX #4, p. 4) Petitioner testified that he still had pain and was still working light duty.

He would come home every day, take his pain meds and wait for them to kick in. (T. 30)

Dr. Abusharif first evaluated Petitioner on April 5, 2019. (PX #1, Exh. 1, p. 10) He described Petitioner's chief complaint as chronic cervical pain, shooting into the right shoulder and arm, since work accident in May of 2016. *Id*. Petitioner reported that his pain level was currently 8/10, and the average was 7/10. He was working light duty. Dr. Rhode had prescribed Flexeril and Norco. Dr. Abusharif found that neck flexion, extension and lateral bending were all limited by pain. His range of motion and strength were within normal limits in both arms, except for mild weakness in the right biceps and triceps. *Id*., p. 11. Dr. Abusharif prescribed a series of epidural steroid injections at C4-5, performed on April 15, April 29 and May 13, 2019. *Id*., pp. 1-9. On June 17, 2019 Petitioner reported that his pain had initially improved about 50%, but was now back to 7/10. *Id*., p. 15. Dr. Abusharif performed bilateral cervical facet injections at C4-C6, followed by a rhizotomy at the same level on July 10, 2019. *Id*., pp. 15, 21. On August 26, 2019 Petitioner reported that the rhizotomy gave him 85% pain relief, but only for a short time. *Id*., p. 24. His pain level was back up to 10/10, radiating down both arms with right hand spasms. Dr. Abusharif found normal range of motion and strength in both arms, but limited neck range of motion due to pain. *Id*., p. 25.

Dr. Abusharif recommends SCS trial

Petitioner testified that Dr. Abusharif had first mentioned SCS a month later, in September 2019. (T. 31-32) The September 30, 2019 progress note indicates this was discussed. (PX #1, Exh. 1, p. 29) On November, 2019 Petitioner reported "sore, achy stiff cervical pain that feels like bolts that go up and down his head." Dr. Abusharif gave him a Vertiflex brochure and advised him to consider SCS. *Id*., p. 30. At his next visit on January 10, 2020, Petitioner's pain level was at 8/10; he reported it was still consistently 6/10 or above. Dr. Abusharif formally prescribed a trial SCS implant. He noted that if the trial provided at least 50% pain relief, Petitioner would be a candidate for a permanent SCS. *Id*., p. 33.

Petitioner testified that he has been waiting for the workers' comp insurer to approve the SCS trial. (T. 32) He recalled that the injections had done him little or no good. The last one (the rhizotomy) had given him "temporary relief," but it wasn't for long. (T. 46) On cross, Petitioner confirmed that Dr. Abusharif had not ordered any new scans or EMG's. He had had all of these

previously. (T. 45)

On January 18, 2021 Petitioner reported to Dr. Abusharif that his pain was up to 10/10, with radiation into both shoulders and bilateral loss of grip strength. (PX #2, p. 15) Dr. Abusharif noted that SCS was the only remaining treatment option he could offer; that the workers' comp insurer would not approve it, and that "the patient suffers daily" as a result. *Id.* On February 28, 2021, Dr. Abusharif ordered a psychological evaluation which Petitioner completed in April 2021. (PX #3) He was found to be mentally stable, with no psychological barriers to utilizing SCS, and appropriate expectations for the procedure. *Id*., p. 3.

7. <u>Respondent's Section 12 Examiner, Richard Noren</u>

On June 10, 2020 Respondent had Petitioner evaluated by its examiner, Dr. Richard Noren. (RX #1, Exh. 2) Both Petitioner and Dr. Noren testified that this examination lasted about 15 minutes. (RX #1, p. 62); (T. 33)

Dr. Noren agreed that the fusion surgery was medically necessary and related to the work accident. However, he judged Petitioner's post-surgical pain management treatment, especially the injections, to be excessive. Also stating that the proposed spinal cord stimulator (SCS) was unnecessary. Dr. Noren opined that Petitioner had been at MMI since January 2018, when Dr. Templin released him from care. Therefore, there was no objective basis for his neck pain, which was probably malingered. Dr. Noren reported that his physical exam had found 3/5 strength in Petitioner's right arm, with only 65° right shoulder flexion, as well as other findings which were "inconsistent" with the findings of all treaters. The discrepancy with all other exams, in his opinion, indicated symptom magnification. Dr. Noren could not rule out a shoulder injury, based on Petitioner's alleged poor range of motion and strength at the right shoulder. If it existed, however, Dr. Noren opined that it would be unrelated to his injury, because he had found no reference in the record to any prior shoulder problems.

On March 23, 2021 Dr. Noren testified by evidence deposition. Dr. Noren repeated his opinion that Petitioner had had a successful cervical fusion and an FCE that indicated "return of function." Therefore, there was no objective basis for his complaints of neck pain. He testified that on his own exam Petitioner demonstrated limited right shoulder ROM, whereas the FCE and treaters' exams found full ROM, and testified that this was "consistent with symptom

magnification." However, he admitted the FCE was valid, and also admitted that no other doctor had questioned the validity of Petitioner's pain complaints. Id., pp. 60, 61. Dr. Noren testified that Petitioner's pain and physical limitations might be related to "some underlying shoulder problem." (T. 37) However, if so, it would be unrelated to his cervical injury, as none of his treating physicians had found "anything wrong with his shoulder." *Id*.

Dr. Noren testified the "literature" reported a low rate of success for spinal stimulation in cases like Petitioner's, especially "in the work comp arena." *Id*., p. 43. Physical function was unlikely to improve, and medication reduction was not "statistically significant." *Id*. Dr. Noren was unable to cite a specific study with such findings, or to produce a copy. *Id*., p. 45. He cited Petitioner's obesity as a predictor of poor outcome, including "lead migration and lead failure." This opinion had not been included in Dr. Noren's report, and Petitioner objected to his testimony. (T. 47) Dr. Noren testified that about half the SCS trials in his practice are "successful" based mainly on functional improvement. Asked, why not do a trial? he replied that Petitioner's pain was not from the herniation. He conceded that reasonable doctors could disagree. However, if Petitioner's trial of SCS were to be successful, he testified that he could still argue it was due to a "placebo effect." (T. 65) Dr. Noren also testified that he had never solicited medico-legal work; however, this was contradicted by a 2019 printout from his website. (RX #1, pp. 54, 76).

8. <u>Deposition testimony of Dr. Abusharif</u>

Dr. Abusharif testified by evidence deposition on October 6, 2020. (PX #1) He is a pain-management specialist with a large practice, but testified that he prescribes spinal cord stimulation (SCS) sparingly; perhaps 1% of his patients. *Id.,* pp. 6-7. When Dr. Abusharif first saw him, Petitioner was still in pain two years after his cervical fusion. *Id.,* pp. 7-8. The level of the pain could rise or fall depending on his activity level, but the location and character of the pain stayed consistent. *Id*., p. 18.

Dr. Abusharif testified that he <u>rarely</u> prescribed spinal cord stimulation (SCS) for patients with axial pain alone. (PX #1, p. 45) In Petitioner's case the combination of axial pain and radicular pain was a strong indication for SCS. *Id*., p. 27. He also testified that Petitioner was not a malingerer. In fact, he was "the opposite of that," because Dr. Abusharif seldom had patients with this level of pain who still went to work every day. *Id*., 27. Petitioner had done everything that doctors asked, kept every appointment and did not ask for extra medications. *Id*.

In Dr. Abusharif's opinion Petitioner's complaints reflected two problems: facet joint inflammation, and cervical radiculopathy. (PX #1, pp. 44-45) He testified that the results of facet injections were diagnostic as well as therapeutic. They had eased Petitioner's axial pain temporarily, as expected, but not the radiating pain. Reviewing Petitioner's November 2017 CT scan, Dr. Abusharif testified that the straightening of normal curvature in the neck was the result of muscle spasm and facet joint inflammation. *Id*., p. 31. The scan was consistent with a diagnosis of C6-7 radiculopathy, which affected both the C6-7 disc and the spinal levels just above and below the fusion. *Id.*, p. 32. It also explained the radiating pain into Petitioner's shoulder, which was a common symptom of cervical disc pathology of this type. *Id*., p. 33. Dr. Abusharif opined that such pain was unlikely to reflect a shoulder injury, as suggested in Dr. Noren's report. *Id*.

Dr. Abusharif further explained that SCS was not likely to expand Petitioner's work capacity, because increasing his work load beyond what he was already doing would cause further deterioration in his cervical spine. *Id*., pp. 50-51. Rather, it would provide pain relief and improve his quality of life. *Id*. There was no reason to believe it would reduce Petitioner's work capacity in any way. *Id*., pp. 34, 50. A trial stimulator implant would last 5-7 days, with a goal of "at least 50% pain relief or better." *Id.*, p. 24. Dr. Abusharif testified that 50% relief was a minimum standard for recommending a permanent stimulator, but he tended to look for more. A higher initial level of pain relief initially would provide confidence that the SCS would still deliver at least 50% relief after several years' use. *Id*, pp. 39-40. He testified that a trial of SCS allowed the patient himself to verify whether it gave him significant pain relief. In Petitioner's case a trial made perfect sense, because he met all the criteria. *Id*, p. 36.

9. <u>Petitioner's current condition</u>

Petitioner testified that he was still working with physical limitations as an HVAC technician. He has switched employers, and now works for King Heating in Frankfort. (T. 33, 46) He works a forty-hour week, but does not drive to the shop every day; he often goes straight to the jobsite. (T. 47) He took the HVAC certification test years ago, and has not been required to re-take it. (T. 57)

Petitioner testified that his pain interferes with many activities, including sleep. He tends to wake up early due to the pain, and sleeps no more than 3-4 hours a night. (T. 55) His daily routine consists of going to work and coming home. (T. 34) He then takes his pain meds and waits

for them to kick in so he can shower, eat dinner and hopefully relax. Some days he can't do even that. *Id*. On a busy day, he testified, the pain gets overwhelming, and it hurts all night. If he moves a certain way, he will get a migraine. (T. 58-59) It is a stabbing pain in his neck, shoulder and right arm. (T. 59) Sometimes the meds work to control it, and sometimes they don't. (T. 60)

Petitioner testified that before the accident he used to be in a bowling league, went fishing and played softball with his children. He can't do these activities anymore. (T. 34-35) As a result, he feels like he has not "been there" for his kids; they see that he's miserable, and he can't play with them. That kills him, Petitioner said, and he hopes the SCS will let him be more active. (T. 39) He estimated that he had gained about 70 pounds from lack of activity. (T. 35) The records of Clearing Clinic gave Petitioner's weight as 240 pounds in May 2016 (PX #6, p. 40) As of January 2021, Dr. Abusharif recorded his weight at 300 pounds (PX #2, p. 15)

Petitioner testified that he takes flexeril, hydrocodone and gabapentin. Unfortunately, he can't take them while working, because he doesn't want to be "under the influence." (T. 36) They also make him mentally foggy, which is a very bad idea at work. (T. 55) Sometimes he uses a heating pad, sometimes a TENS unit. (T. 36) Petitioner testified that he had offered to pay for the SCS himself if it would do any good. However, Dr. Abusharif told him that the money would have to be paid up front, and it was too much. (T. 38) He will keep working when he gets it, of course. (T. 37)

On cross, Petitioner was asked if his December 2017 FCE report said he could "work eight hours a day lifting 45 pounds above your shoulder." (T. 48-49) He responded that the pain would keep him from doing that; if he were to try, it would hurt even more. The same applied to carrying 52 pounds in his right hand and 70.8 pounds in the left. *Id*. Petitioner testified that he has not had another FCE since 2017. (T. 50) He can't open a jar with his right hand, because he doesn't have the grip strength. *Id*. He can carry groceries with his left hand, and can take out trash and do other chores he can perform one-handed. (T. 51)

Petitioner confirmed for the Arbitrator that he was doing only diagnostic HVAC work, mainly residential. (T. 64) He does not do any installations. He had not discussed with his doctors what his treatment options would be if the SCS did not work. Asked whether he would return to Dr. Templin if a second surgery were recommended, he said no. (T. 64-65) Petitioner testified that Dr. Abusharif had told him that "failure of the disc above the fusion" was one side effect of Dr. Templin's surgery. (T. 66) Dr. Abusharif was looking for non-surgical solutions, Petitioner

explained, because he needs to keep the range of motion in his neck. *Id.*

B. CONCLUSIONS OF LAW

The Arbitrator finds that Petitioner's current condition of ill-being, including his pain and physical restrictions, are causally connected to his work injury, and further finds that he is entitled to a trial of spinal cord stimulation (SCS) to treat his symptoms. In addition to the medical evidence, the Arbitrator relies heavily on the Petitioner's own credible testimony. The Arbitrator incorporates by reference the preceding findings of fact, and concludes as follows:

As to issue "F", whether Petitioner's present condition of ill-being is causally related to his injury, the Arbitrator finds as follows:

The Petitioner testified clearly and credibly to a workplace accident on May 4, 2016 in which he sustained a serious injury to his cervical spine. The occurrence of this accident was undisputed. Moreover, Respondent's own examiners concurred with the treating physicians that the accident had directly caused Petitioner's herniated disc, rather than simply aggravating a pre-existing condition. They also agreed that fusion surgery was medically necessary.

Prior to the accident, Petitioner had worked for ten years in a physically challenging trade without incident. Unfortunately, five years post-accident and four years after his cervical fusion surgery, Petitioner still has not returned to his pre-accident level of functioning. He remains with significant physical restrictions and in ongoing treatment for chronic pain. That pain has remained at a moderate to severe level despite two years of specialist treatment.

Petitioner's pain-management physician, Dr. Abusharif, has now recommended a trial implant of a spinal cord stimulator (SCS), which Respondent has refused to authorize. Respondent's medical examiner, Dr. Noren, maintains that Petitioner's "successful cervical fusion" resolved any objective basis for such symptoms, and that his December 2017 FCE proved his ability to work at a MEDUIM-HEAVY level. Petitioner's current pain complaints, which have persisted despite his restriction to a significantly lighter physical demand level than noted in his FCE, represent malingering in Dr. Noren's view. While Dr. Noren does not exclude the possibility of unrelated shoulder or neck pathology, he denies that Petitioner's pain is in any way related to his work accident.

However, the medical records in this case document that, far from malingering, Petitioner in fact put forth an impressive effort to cooperate with treatment and return to work in his former

occupation. Petitioner complied with instructions to quit smoking to maximize his chances for a successful surgery. His physical therapy records consistently recorded perfect attendance and maximal effort. The therapist in his subsequent work hardening program found that he consistently "exceeded expectations." His FCE results were likewise recognized as representing "maximum effort" on his part.

The same records also document that Petitioner's pain began to recur with his first efforts to increase his level of physical functioning. The initial sign was a return of shoulder pain in physical therapy, diagnosed as "nerve irritation" by Dr. Templin and noted by Dr. Rhode as well. Upon overcoming this, Petitioner began work hardening. His therapist noted impressive effort, accompanied by steadily increasing neck pain. His treating surgeon, Dr. Templin, found the neck pain to be getting worse as work hardening advanced, and ordered a cervical CT scan to evaluate. The CT scan confirmed that the surgical hardware was in place. However, the radiologist's report also noted evidence of muscle spasm, along with both left-sided stenosis at C4-5 and probable right-sided stenosis at C5-6. Having verified that the fusion itself remained solid, Dr. Templin cleared Petitioner to proceed with an FCE in December 2017.

Petitioner's FCE report, December 27, 2017

The FCE report (PX #1, Exh. 5) deemed Petitioner's performance VALID. At trial, Respondent asked Petitioner to confirm that this FCE had pronounced him capable of "working 8 hours a day lifting 45 pounds above your shoulder." (T. 50) In fact, the FCE report found that Petitioner could perform such lifts only "occasionally," or from one-half hour to 2-1/2 hours per day. Bending, climbing and neck flexion/extension were also limited to "occasional," and Petitioner's standing tolerance was rated at just 30 minutes, with a maximum of three hours' standing per eight-hour shift. Finally, the examiner noted that Petitioner's pain reports increased as the test progressed, and specifically recommended that he "discuss all deficits and complaints" reflected in the report with his doctor. In other words, despite Petitioner's ability to perform "occasional" MEDIUM TO HEAVY lifting with a maximal effort, returning to full-time work at this level might not be safe or realistic.

Petitioner's pain had not resolved on the date of Dr. Templin's "release"

Dr. Templin's note releasing Petitioner did not detail the specific findings of the FCE report. It simply noted that the FCE was verified as VALID, and produced a work-level rating of

MEDIUM-HEAVY. Dr. Templin did, however, note that Petitioner's neck range of motion was limited by pain, and his pain level remained at 7/10. He released Petitioner from further surgical care, while recommending "pain management as needed." Petitioner continued under the care of Dr. Rhode, who restricted Petitioner to "light" work with lifting limited to 20 pounds. Petitioner returned to work at this level, but continued to struggle with chronic neck pain. Eventually Dr. Rhode referred him to a pain management specialist, Dr. Abusharif, for further care.

Petitioner was able to find full-time work with an employer who could utilize his HVAC skills while honoring the physical restrictions set by Dr. Rhode. At trial, he credibly testified to a daily routine which revolved around completing an eight-hour work day while attempting to manage his chronic pain with medications in the evening, with varying success. He was no longer able to perform most household chores or to be active with his children on evenings or weekends. The medical records of Dr. Rhode and Dr. Abusharif confirm that both treating physicians agreed with Petitioner: his current activity level was the most he could tolerate. Given the combined weight of the medical evidence and Petitioner's credible testimony, the Arbitrator concurs, and finds that Petitioner continues to suffer chronic pain that is causally related to his May 2016 work accident and subsequent surgery.

Petitioner remained in active medical treatment for four years post-surgery

Dr. Abusharif had reviewed Dr. Noren's report and disagreed with its conclusions. Petitioner's pain, he testified, was not malingered or exaggerated, and it was not related to a separate rotator cuff injury. It was real and directly related to his cervical spine injury. Dr. Abusharif's conclusions were based on Petitioner's cervical CT images, which showed both muscle spasm, and post-operative stenosis both above and below the level of the cervical fusion. His opinions were consistent with the radiologist's report, as well as the opinion of Dr. Kukkar, who had found deterioration at the C5-6 level adjacent to the fusion. Dr. Abusharif's opinions were also supported by the results of the facet joint injections, which had temporarily relieved Petitioner's neck pain but not the radiating pain to his right shoulder.

In contrast, Dr. Noren's opinions relied on two factors. The first was the FCE report designating Petitioner's performance at "MEDIUM-HEAVY," and his release by Dr. Templin to return to work "per the FCE." As noted above, this rests on a superficial reading of both the FCE report and Dr. Templin's release, both of which confirmed significant ongoing chronic pain issues.

It also ignores the treating records of Drs. Abusharif and Rhode along with Petitioner's physical therapy and work hardening records, and Petitioner's own credible testimony that he continued to work full-time in spite of his chronic pain.

The second basis for Dr. Noren's opinions was his own physical examination, which he claimed had found sharply limited range of motion and significant weakness in Petitioner's right arm. Dr. Noren freely admitted that his own exam was at odds with that of every one of Petitioner's medical providers, all of whom had found full range of motion and normal or near-normal strength in the right arm. The logical conclusion, in Dr. Noren's opinion, was that Petitioner had been malingering at his Section 12 exam. It was also possible, he testified, that Petitioner had a specific shoulder disorder; however, this would be unrelated to his cervical injury, as Dr. Noren found no evidence of similar shoulder complaints in the records.

However, the Arbitrator notes a number of gaps and inaccuracies in Dr. Noren's report which do not support his exam findings. These include his cursory review of the FCE records and Dr. Templin's notes; his statement that Petitioner "discontinued physical therapy" two months post-surgery, and his equally inaccurate statement that Petitioner had no injections prior to surgery. They also include Dr. Noren's failure to notice that, contrary to his assertions, Petitioner had in fact complained of shoulder pain while reaching when he began physical therapy in 2017. Dr. Templin diagnosed it as "nerve irritation" related to Petitioner's cervical injury and surgery; Dr. Rhode noted it as well. At his deposition, Dr. Noren relied on a medical research paper that he could not cite. He also admitted to a substantial "IME" practice on behalf of employers, while denying that he ever solicited such work. His denials on this point were contradicted by the text of his own website. [1]

The Arbitrator concludes that Dr. Noren's account of Petitioner's physical condition is simply less credible than the unanimous findings of all the treating medical providers. Those records all agree that Petitioner had no weakness or mobility limitations in his right shoulder. Without those alleged findings, Dr. Noren's theory of malingering collapses for lack of evidence, as does his speculation that a real but unrelated "shoulder problem" might be a contributing cause of Petitioner's symptoms. The Arbitrator adopts the opinion of Dr. Abusharif that Petitioner's ongoing pain complaints are causally connected to his work accident of May 6, 2016, and the resulting cervical disc herniation and fusion surgery.

[1] See, e.g., Padgett v. Taco Bell, 15 IWCC 605 (Commission found Dr. Noren's opinions not credible).

As to issue "J", the reasonableness and necessity of medical care provided, the Arbitrator finds as follows:

The Arbitrator notes that Respondent's objections to medical charges for ongoing pain-management care are based on its dispute as to causation. Having found Petitioner's current condition to be causally related to his work accident, the Arbitrator therefore finds the medical charges in Petitioner's Exhibit 11, totaling $52,419.85, to be Respondent's liability, subject to the fee schedule provisions of the Act. Respondent is awarded a credit for any of such charges it can demonstrate that it has paid. (See, ARB EX # 1, exhibits A and B)

As to issue "K", Petitioner's entitlement to prospective medical care, the Arbitrator finds as follows:

Having found a causal connection between Petitioner's workplace accident and his ongoing chronic pain, the Arbitrator finds the trial spinal cord stimulator prescribed by Dr. Abusharif to be both reasonable and medically necessary. Dr. Abusharif explained that Petitioner's pain is cervical in origin, and that even partial relief of that pain will both improve Petitioner's quality of life and decrease his need for medication. He testified that SCS was not likely to increase Petitioner's work capacity, and in fact any attempt at more physically demanding work risked damage to Petitioner's cervical fusion. However, it would not limit or reduce his work abilities in any way, and would allow him to be more active at home in his non-work hours. Those findings are well-supported by Dr. Abusharif's own records, as well as the medical evidence as a whole.

In contrast, Dr. Noren's predictions that Petitioner would fail to benefit from the stimulator are not supported by the evidence. Dr. Noren could not even cite, much less produce, the medical studies he relied on for his opinion that SCS had a poor record of success, particularly in "the workers comp population." He further testified that even if Petitioner's condition did improve with SCS, he was prepared to attribute this in advance to a "placebo effect." Dr. Noren's argument that Petitioner's obesity would predict a poor outcome was entirely absent from his report, and further ignored the role of chronic pain and inactivity in his weight gain since the date of accident.

Finally, the Arbitrator views Petitioner's return to full-time employment, despite the physical cost, as a measure of his determination and character. In this instance, is not evidence of a full recovery or a lack of need for further treatment of his chronic pain. This is a unique set of

facts and as a result, Respondent is therefore ordered to authorize and pay for the trial spinal cord stimulator prescribed by Dr. Abusharif. Such treatment is considered to have been "incurred" when ordered by Petitioner's treating physician, as set forth in *Plantation Mfg. Co. v. Industrial Comm'n*, 294 Ill. App. 3d 705 (1997).

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC007474
Case Name	David Young v. Imperial Manufacturing Group
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0017
Number of Pages of Decision	16
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Keith Short
Respondent Attorney	Michael Karr

DATE FILED: 1/10/2023

/s/Christopher Harris, 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

DAVID YOUNG,

Petitioner,

vs. NO: 21 WC 7474

IMPERIAL MANUFACTURING GROUP,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care and temporary total disability (TTD) 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 hereby remands this case to the Arbitrator for further proceedings and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill. 2d 327 (1980).

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

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of

expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $10,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

January 10, 2023

CAH/pm
O: 1/5/23
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	21WC007474
Case Name	YOUNG, DAVID v. IMPERIAL MANUFACTURING GROUP
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Keith Short
Respondent Attorney	Michael Karr

DATE FILED: 4/12/2022

/s/ Jeanne AuBuchon, Arbitrator

Signature

INTEREST RATE WEEK OF APRIL 12, 2022 1.22%

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
19(b)

David Young
Employee/Petitioner

v.

Imperial Manufacturing Group
Employer/Respondent

Case # **21** WC **007474**

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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **12/8/21**. 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. ☒ 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, **3/2/21**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**25,453.60 (38 weeks)**; the average weekly wage was $**617.20**.

On the date of accident, Petitioner was **49** years of age, ***married*** 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 $**any paid** under Section 8(j) of the Act.

ORDER

Respondent shall pay the reasonable and necessary medical services in Petitioner's Exhibits 6-9, as provided in § 8(a) and § 8.2 of the Act. Respondent shall have a 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.

Respondent shall pay Petitioner temporary total disability benefits of $411.47/week for 14 and 1/7 weeks, for 3/22/21 through 6/29/21 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

April 12, 2022

ICArbDec19(b)

PROCEDURAL HISTORY

This matter proceeded to trial on December 8, 2021, on all disputed 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 bilateral carpal tunnel condition; 3) payment of medical bills; 4) entitlement to TTD benefits from March 22, 2021, through June 29, 2021; and 5) entitlement to prospective medical treatment.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 49 years old and employed by the Respondent in production since June 2020, working 40-58 hours per week. (AX1, T. 11) The Petitioner's job duties included taking sheet metal off of a cart and putting it in a machine to cut notches in it. (T. 13-14) He would put the sheet metal into a roller that rolls it into a circle shape, then he would hook the unnotched end into the notched end. (T. 14-15) He then put the metal into a dimpler, holding it with both hands while making dimples in the metal. (T. 15) After the dimpling process, the Petitioner would put the metal into a robot that cuts the tube into three sections, presses it to make an elbow and applies oil. (T. 15-16) The Petitioner then twists and turns the oiled sections by hand to make a 90-degree elbow. (T. 16) He said he grabs the tube at both ends and hold it very tightly – pinching, squeezing and twisting it. (Id.) The Petitioner testified that he also performed a guitar or slim fit, which entailed loading coils of metal into a machine that cuts the metal into sheets then putting the sheets into a bender that bends them into shapes. (T. 19-20) He would then take those to another machine that presses collars into the sheets. (T. 21) Then, he would fold the metal in half and put it in the dimpler. (Id.) The Petitioner worked on guitar from when he started working for the Respondent until the end of October and worked on elbows after that.

The Petitioner testified that in January 2021, his hands started bothering him, and he experienced burning and the feeling of pins and needles in his hands. (T. 24) About three or four weeks later, he started dropping things and had problems gripping the steering wheel of his car. (T. 41-42) He said he no prior hand problems, had never been diagnosed with diabetes, did not take thyroid or hypertension medications and that his weight remained the same for the past five years or so. (T. 12, 29-30) He did not have any hobbies involving the repetitive use of his hands. (T. 30) He acknowledged that his parents had carpal tunnel syndrome. (T. 40-41)

The Petitioner said he did not see a doctor until February because he didn't realize what the problem was. (T. 25) After informing his supervisor of his symptoms, the supervisor sent the Petitioner to Midwest Occupational Medicine, where he saw Dr. Panayiotis Ellinas, a family and occupational physician, on March 2, 2021. (T. 25-26, PX4) The Petitioner complained of numbness and tingling in both forearms and hands and in all fingers for a couple of months. (PX4) He reported sudden development of sharp pains in his arms on February 24, 2021, and grip strength loss. (Id.) He told Dr. Ellinas that since February 24, 2021, he found it difficult and painful to perform his job duties and had become extremely slow. (Id.) Dr. Ellinas allowed the Petitioner to return to work as tolerated and referred him to Dr. David Brown, an orthopedic surgeon at The Orthopedic Center of St. Louis. (Id.)

The Petitioner saw Dr. Brown on March 9, 2021, who examined the Petitioner and stated that the Petitioner had symptoms and findings suggestive of bilateral carpal tunnel syndrome. (PX3) He issued the Petitioner wrist splints, allowed the Petitioner to work his normal duties and ordered electrodiagnostic studies, which were performed that day by neurologist Dr. Daniel Phillips at the Neurological & Electrodiagnostic Institute, Inc., of St. Louis. (PX3, PX5) Dr. Philips found relatively moderate, right a little worse than left, predominantly demyelinative

sensorimotor median neuropathies across the carpal tunnels. (Id.) Dr. Brown recommended continuing with conservative treatment of wearing wrist splints over both wrists at night. (PX3)

The Petitioner testified that he did not return to Dr. Brown because he didn't like his bedside manner. (T. 28) He then saw Dr. Matthew Bradley, an orthopedic surgeon at DB Orthopedic Institute (now Metro-East Orthopedics), on March 22, 2021. (T. 28-29, PX2) The Petitioner testified that by the time he saw Dr. Bradley, his pain was worse, and he was having a lot of problems gripping. (T. 31) The Petitioner reported to Dr. Bradley that for a month or two before February 2021, he noticed the onset of numbness and tingling in his bilateral hands that went away at night and when he was not doing repetitive work. (PX2) He said that on February 24, 2021, he developed pain. (Id.) He also reported having difficulty grasping and holding onto objectives and that his symptoms had become constant. (Id.) In his registration forms, the Petitioner reported he was injured by gripping and holding parts and dimpling. (Id.) He reported continuous lifting and carrying up to 25 pounds, repetitive hand use 116 times per hour, pushing and pulling 116 times per hour and tool use. (Id.) In giving Dr. Bradley his history, the Petitioner said he was working with an elbow machine that vibrated significantly and that during the dimpling process, his hands were grasping while undergoing vibration. (Id.) Dr. Bradley reported that the Petitioner described multiple repetitive activities of grasping and holding objects tightly throughout his work routine. (Id.)

Dr. Bradley performed a physical examination, reviewed the EMG and nerve conduction studies and diagnosed the Petitioner with bilateral carpal tunnel syndrome. (Id.) He discussed operative and nonoperative treatment with the Petitioner, who opted for surgery to help relieve him of his pain, numbness and tingling and to allow him to return to his full work duties without

having to suffer from daily pain. (Id.) Dr. Bradley ordered the Petitioner off work until after surgery. (Id.)

On June 7, 2021, the Petitioner underwent a Section 12 examination by Dr. Mitchell Rotman, another orthopedic surgeon at The Orthopedic Center of St. Louis. (RX1, Deposition Exhibit B) The Petitioner told him that despite being off work for 2½ months, he had no change in his symptoms and had constant pins and needles and burning when he grips things. (Id.) The Petitioner's description of his work activities was identical to his testimony. (Id.) Dr. Rotman reviewed the Petitioner's medical records, performed a physical examination and had the Petitioner fill out a QuickDASH questionnaire. (Id.) He said the Petitioner's symptoms were uncharacteristic for carpal tunnel syndrome but acknowledged that the nerve studies showed carpal tunnel syndrome. (Id.) He said the Petitioner had a strong genetic predisposition to bilateral carpal tunnel and said his main risk factor was obesity. (Id.) Dr. Rotman was not convinced that the Petitioner's work activities were the type to be an aggravating factor for what he termed the Petitioner's "idiopathic carpal tunnel condition." (Id.) He did not see the activities the Petitioner demonstrated as gripping and did not see vibration as a factor. (Id.) He characterized the Petitioner's subjective complaints as "completely unreliable."

Dr. Rotman also wrote that it was "absurd" for Dr. Bradley to take the Petitioner off work at all, saying it was not the standard of care for bilateral carpal tunnel, "not even in Illinois." He said Dr. Bradley was not a hand surgeon. (Id.)

Regarding further treatment, Dr. Rotman stated that the Petitioner was not at maximum medical improvement and would benefit from carpal tunnel releases. (Id.)

The Petitioner testified that he asked Dr. Bradley to release him to go to work because he needed the income. (T. 32) Dr. Bradley issued the release on June 29, 2021. (PX2)

Dr. Bradley testified consistently with his reports at a deposition on September 17, 2021. (PX1) He said he generally performs one carpal tunnel release per week. (Id.) He felt that nonoperative treatment was not in the Petitioner's best interest because his symptoms had moved from intermittent to constant and from tingling and burning to pain and because he was having difficulties with day-to-day activities. (Id.) When provided a description of the Petitioner's work duties consistent what the Petitioner described to Dr. Bradley and consistent with the Petitioner's testimony, Dr. Bradley said it was very reasonable to conclude that the activities at least contributed to the development of bilateral carpal tunnel. (Id.) He explained that the Petitioner's activities of handling sheets of metal and pushing them into vibrating machines caused microtraumas. (Id.)

When asked about the Petitioner's family history of carpal tunnel syndrome, Dr. Bradley said the reason for his parents' developing carpal tunnel syndrome – whether it was idiopathic or from trauma – was unknown and speculative. (Id.) He said that even with a predisposition for carpal tunnel syndrome from obesity or familial history, it would take a significantly less event or repetition for him to develop the condition. (Id.) He said even with the predisposition without the job duties, he didn't know that anybody could say he definitely would have developed carpal tunnel syndrome. (Id.)

On cross-examination, Dr. Bradley said he reviewed Dr. Rotman's report and believed his description of the Petitioner's job activities was similar to what the Petitioner told him. (Id.) He said he believed four months of the activities that entailed use of the elbow machine would be sufficient for developing carpal tunnel syndrome with the Petitioner's predispositions. (Id.) Dr. Bradley said he ordered the Petitioner off work because the Petitioner was hoping to undergo surgery quickly and because the Petitioner's problems with gripping and dropping things created

a safety issue. (Id.) When asked about the return-to-work slip from June 29, 2021, Dr. Bradley believed that was prepared in anticipation of surgery and became part of the medical record by mistake. (Id.)

Dr. Rotman testified consistently with his report at a deposition on October 14, 2021. (RX1) He said the Petitioner's description of his work activities did not sound as though he was doing heavy gripping. (Id.) In his testimony, he emphasized the Petitioner demonstrating rolling the metal into a circle to connect the notches and holding his hands with a kind of wide-open stance, cupping his hands but not really grasping heavily. (Id.) Regarding the Petitioner's comorbidities of obesity and family history, Dr. Rotman said if a person has a predisposition to making a thick ligament, that has nothing to do with work. (Id.) He acknowledged that work brings out carpal tunnel symptoms but said that work has to be heavy gripping and high forces, which he did not see with the Petitioner. (Id.) He stated that the Petitioner not having relief after being off work for two months supported his opinion that the Petitioner's work had nothing to do with his symptoms. (Id.) On cross-examination, Dr. Rotman said he could not say whether the activities the Petitioner described stressed the hands more than activities of daily living.

The Petitioner testified that his hands have not gotten any better, and he wants to undergo surgery. (T. 32, 29, 33) In the meantime, the Respondent moved the Petitioner to a new position in which he does "unions," which he said also requires intensive use of his hands. (T. 33)

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)

The Petitioner gave consistent descriptions of his work activities to the doctors and in his testimony. There was no contrary evidence regarding his job duties. Dr. Rotman did not believe the activities were sufficient to cause carpal tunnel syndrome, but Dr. Bradley believed they contributed to the Petitioner's condition. Dr. Bradley pointed out that the Petitioner's comorbidities put him at a greater risk for developing carpal tunnel syndrome.

Dr. Rotman's emphasis on the Petitioner's symptoms being uncharacteristic of carpal tunnel syndrome is not crucial to this inquiry. He agreed that the Petitioner had carpal tunnel syndrome and that his best option was surgery. Dr. Rotman also was critical of Dr. Bradley, stating that he was not a hand surgeon. Although Dr. Bradley estimated that he performed only 50 carpal tunnel releases a year, there has been no indication that he not competent to diagnose or treat the condition.

Dr. Bradley's opinion that the Petitioner's work activities contributed to his development of carpal tunnel syndrome was logical in light of his symptoms developing in a relatively short

period of time after he began working on elbows. The activities the Petitioner described did involve considerable gripping on a repetitive basis. The Arbitrator disagrees with Dr. Rotman's characterization of the Petitioner's activities as not involving gripping. He appeared to ignore the repetitive gripping of the sheets of metal while feeding it into the various machines. Thus, the Arbitrator gives greater weight to Dr. Bradley's opinions than Dr. Rotman's. This case falls under the law as stated in the *Laclede Steel* case. The Petitioner may have been predisposed to develop carpal tunnel syndrome, but his physical structure gave way under the stress of his usual labor.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that the injuries to his bilateral hands occurred in the course of and arose out of his employment.

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

Based on the findings above, the Arbitrator finds that the Petitioner's current condition is causally related to his work activities.

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).*

There was no evidence to contradict that the treatment rendered was reasonable and necessary. Therefore, the Arbitrator finds the treatment was reasonable and necessary and orders the Respondent to pay the medical expenses contained in Petitioner's Exhibits 6-9 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): 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).

Based on the findings above regarding causation and Drs. Bradley and Rotman's opinions that carpal tunnel releases are the best options for the Petitioner, the Arbitrator finds that the Petitioner is entitled to prospective medical care as recommended by Dr. Bradley. The Respondent shall authorize and pay for such.

Issue (L): 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). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Id.* at 121.

Dr. Rotman was critical of Dr. Bradley excusing the Petitioner from work for 2½ months. However, Dr. Bradley was under the impression that the Petitioner would be undergoing surgery more quickly. He also believed that the Petitioner's gripping deficits would cause a safety risk.

Considering the Petitioner's work with sheets of metal and industrial machinery, this concern is not unreasonable.

Therefore, the Arbitrator finds the Petitioner is entitled to temporary total disability benefits pursuant to Section 8(b) of the Act for 14 and 1/7 weeks from March 22, 2021, through June 29, 2021.

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	21WC021065
Case Name	Zachary Schneider v. Gesell Oil Well Services
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0018
Number of Pages of Decision	6
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	James Keefe, Jr.
Respondent Attorney	Gregory Keltner

DATE FILED: 1/11/2023

/s/Marc Parker, 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 Accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ZACHARY SCHNEIDER,

Petitioner,

vs. NO: 21 WC 021065

GESELL OIL WELL SERVICES,

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, temporary total disability (TTD), temporary partial disability (TPD), and prospective medical care, and being advised of the facts and applicable law, reverses the Decision of the Arbitrator and finds that Petitioner did sustain an injury to his low back on April 15, 2021 that arose out of and in the course of his work duties and that he did provide Respondent timely notice of the injury. As a result, the Commission finds Petitioner is entitled to medical expenses, TTD, TPD, and prospective medical treatment related to his low back injury. 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).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner began working for Respondent as a rig hand performing heavy labor, pulling tubing and rods from oil wells, in October 2020. On April 15, 2021, he was picking up "slips"[1] when he felt a pop in the right side of his low back. He testified that he notified his supervisor, the rig operator, within minutes of the accident that his back did not feel right, his right leg was numb, and that he felt he needed medical attention. Petitioner further testified that his supervisor advised

[1] "Slips" weigh approximately 200 pounds and are part of the pipes and rods Petitioner was required to pull from the oil wells.

him to stop whining and get back to work or he would be replaced on the crew. Petitioner completed his 10-hour shift that day with worsening symptoms. He sought treatment in the local emergency room that same night but elected to leave without being seen due to the long wait.

Petitioner phoned Respondent's operational head, Mark Gesell, on his way to the doctor the next morning. When Mr. Gesell didn't answer, Petitioner left a text message at 5:19 AM, advising that he was seeking medical treatment that morning and would not be at work. Petitioner saw his primary care physician that day and complained of numbness in his back and right leg and pain shooting down his leg as the result of a lifting accident at work on April 15. The doctor provided an injection and pain medication and kept Petitioner off work through April 19, 2021. Petitioner testified that Mark Gesell phoned him on April 20, 2021, accused him of lying about his work accident, and terminated his employment. Mr. Gesell admitted that he had spoken with Petitioner on that date and had answered, "It would seem so," when Petitioner asked if he was being fired. Nevertheless, Mr. Gesell denied that they had discussed a work accident.

Petitioner began physical therapy as ordered by Carmi Family Clinic, but when it did not alleviate his pain, he was referred to a specialist at Prairie Pain and Spine Institute. On September 29, 2021, Dr. Kube took Petitioner off work and ordered injections at L4-5 and L5-S1. These helped only temporarily, and the doctor recommended an EMG and discogram for diagnostic purposes. Petitioner declined these tests because he did not wish to pursue a surgical option. Dr. Kube attempted to administer additional injections but was unable to accomplish this, as Petitioner could not tolerate the positioning necessary for epidural administration.

Respondent obtained a §12 examination on December 9, 2021. Dr. deGrange examined Petitioner, reviewed his medical records, and compared a 2017 MRI, taken after an ATV accident, with the 2021 post-work accident MRI. On Petitioner's 2021 MRI, he identified a small extruded fragment partially effacing the right traversing S1 nerve root. Dr. deGrange found this fragment or disc herniation demonstrated a change from Petitioner's 2017 post-ATV accident MRI. The earlier MRI showed a small bulge at L5-S1 but no displacement of the S1 nerve roots. He concluded that the "recent" fragment was the cause of Petitioner's current low back pain and radiculopathy and was likely due to the work accident Petitioner described. Dr. deGrange found Petitioner had not yet reached maximum medical improvement and required work restrictions. He recommended additional injections and noted surgery might be necessary if the injections failed. The doctor believed Petitioner would be able to return to work as a rig hand after completing treatment.

On March 2, 2022, Petitioner advised Dr. Kube's physician's assistant that he would like to return to work. A functional capacity evaluation (FCE) to determine what work restrictions should be imposed was ordered. At the time of hearing, Petitioner was awaiting an appointment for the FCE.

The Arbitrator found Petitioner and Respondent's witnesses (with the exception of the rig operator) to be of questionable credibility. She concluded that Petitioner had failed to prove accident and timely notice and denied all benefits. The Commission views the evidence differently.

The Commission is not bound by the Arbitrator's findings, and its province is "to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *City of Springfield v. Industrial. Comm'n*, 291 Ill. App. 3d 734, 740 (1997) (citing *Kirkwood v. Industrial Comm'n*, 84 Ill. 2d 14, 20 (1981)). Inconsistencies between the testimony of witnesses are for the Commission to weigh. *Shafer v. IWCC*, 2011 IL App (4th) 100505WC, ¶35; *Dig Right in Landscaping v. IWCC,* 2014 IL App (1st) 130410WC, ¶27. Where all of the witnesses exhibit some degree of bias, the Commission's function is to resolve evidentiary conflicts. See, for example, *Steel & Mach. Transp., Inc. v. IWCC,* 2015 IL App (1st) 133985WC ¶35 (where the claimant's testimony conflicted with that of the employer's three witnesses, it was within the prerogative of the Commission to credit claimant's testimony over that of the employer's witnesses).

In this case, Petitioner testified credibly that he immediately advised his supervisor of his injury and that he texted the operational manager that he was seeking treatment and would not be at work the following day. Both the alleged recipients denied receiving notice of an accident or of Petitioner's contemporaneous complaints of pain. However, Mark Gesell admitted that he spoke with Petitioner on April 20, 2021, and agreed that it "seemed" he was terminating Petitioner's employment at that time. Mr. Gesell denied that the conversation included a discussion of Petitioner's alleged accident, but the Commission finds Petitioner's testimony regarding that conversation more credible. The Commission notes that Petitioner's medical records contain a consistent history of the work accident. Respondent's own examiner found that Petitioner's disc herniation was "recent" and likely related to the work accident he described. For these reasons, the Commission reverses the Arbitrator's finding that Petitioner failed to prove that he suffered an accident arising out of and in the course of his employment.

The Arbitrator also concluded that Petitioner had failed to provide Respondent timely notice of the accident. The Commission is persuaded that Petitioner did provide timely notice to both the rig operator and Mark Gesell. The rig operator denied witnessing the accident or hearing a report of accident or complaints of pain following the accident. However, Petitioner testified in detail as to the operator's response to his initial report of accident and his subsequent complaints of back and leg pain. Mark Gesell admitted to speaking with Petitioner on April 20, 2021 and terminating him at that time but denies that they discussed the accident. The Commission finds Petitioner more credible with regard to these conversations and concludes that he provided timely notice of the accident.

Having proved accident and notice, Petitioner is entitled to medical and temporary total disability benefits, as well as prospective medical treatment.

Petitioner claimed the reasonable and necessary medical bills related to his low back injury, as supported by Petitioner's Exhibit 7. Respondent offered no proof that Petitioner's treatment thus far

has been unreasonable or unnecessary. Respondent's §12 examiner found that Petitioner was not at MMI and required additional treatment as a result of his work-related injury. Therefore, Respondent is ordered to pay Petitioner for the medical expenses documented in Petitioner's Exhibit 7, pursuant to Section 8(a) and Section 8.2 of the Act. Respondent is further ordered to authorize and pay for the functional capacity evaluation recommended by Dr. Kube's physician's assistant.

Petitioner's primary care physician took him off work completely from April 16-19, 2021. From September 29, 2021 through March 15, 2022, Dr. Kube restricted Petitioner to light or moderate activity, which Respondent did not accommodate. The periods covered by work status restrictions from the Carmi Family Clinic and from Dr. Kube total 24-4/7 weeks. Petitioner is entitled to temporary total disability for that period.

Petitioner began working restricted duty for a new employer and began earning $500 per week on March 15, 2022. The §19(b) hearing was held on March 25, 2022. Petitioner is entitled to 1-5/7 weeks of temporary partial disability of $185.75/week or a total of $318.43.

Petitioner failed to provide proof that he was unable to work or that his work was restricted by his treating physicians from April 20, 2021 through September 29, 2021. Therefore, the Commission awards no TTD or TPD for that period.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed May 25, 2022, is hereby reversed. The Commission finds Petitioner sustained an accident on April 15, 2021 that arose out of and in the course of his employment.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner provided Respondent timely notice of the accident, as provided under Section 6(c) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the reasonable and necessary medical expenses incurred for treatment and listed in Petitioner's Exhibit 7, 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 temporary total disability benefits of $519.08 per week for 24-4/7 weeks, from April 16 through April 19, 2021, and from September 29, 2021 through March 15, 2022, those being the periods of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary partial disability benefits of $185.75 per week for 1-5/7 weeks, from March 15, 2022 through March 25, 2022, that being the period of temporary partial disability for work under Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the functional capacity evaluation recommended by Dr. Kube's office, as provided under Section 8(a) and Section 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under Section 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 $13,200.00. 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.

January 11, 2023

MP/dak
o-1/5/23
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	19WC029969
Case Name	Matthew Browne v. State of Illinois - Illinois State Police
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0019
Number of Pages of Decision	11
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Joel Block
Respondent Attorney	Joseph Blewitt

DATE FILED: 1/12/2023

/s/ Thomas Tyrrell, Commissioner

Signature

23IWCC0019

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Matthew Browne,

Petitioner,

vs. NO: 20 WC 003721

State of Illinois / Illinois State Police,

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 permanent partial disability ("PPD") and medical expenses, 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 modifies the Arbitrator's award as to the nature and extent of the injury from 6% to 4% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act. The Commission affirms the Arbitrator's award of 85 weeks of permanent partial disability because the injuries sustained caused the disfigurement of the face, as provided in Section 8(c) of the Act.

In support thereof, the Commission separates the analysis of permanent partial disability for loss of use of the person as a whole and disfigurement as follows:

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Commission modifies the Arbitrator's Decision to reflect that Petitioner worked as a "building engineer," not an "operating engineer."

Under Section 8.1b(b)(iv), the Commission strikes the sentence beginning, "With regards to disfigurement…"

The Commission corrects the clerical error in the Arbitration Decision to reflect that the fifth factor is "Under Section 8.1b(b)(v)." Under this paragraph the Commission strikes the remainder of the paragraph after "The medical records are consistent…"

The Commission then inserts the following paragraph with the Arbitrator's analysis regarding disfigurement prior to the last paragraph on page 4 of the Arbitration Decision: "With regards to his disfigurement, although Petitioner is currently employed, per *Superior Mining Co.*, "where a man has suffered serious injuries to his … face, it is often true that they are of such a character as to place a man at a decided disadvantage when applying for work…" 141 N.E. at 165-66. The medical records are consistent with the Arbitrator's inspection of Petitioner's facial scars which are fairly reflected in Petitioner's Exhibit 5. In addition to the measurements taken of Petitioner's facial scars on the forehead and lip area, the Arbitrator noted discoloration and indentation of the skin surface as well. The Stroger Hospital records confirm facial lacerations that extended through the oral mucosa into the oral cavity. The Petitioner testified to drooling from the left corner of his mouth when he lies down because of the lack of sensation in his lips."

On page 2 of the Arbitration Decision, paragraph 7, the Commission strikes the first sentence beginning, "The Petitioner testified…" The Commission also strikes the word "further" from the following sentence. Thus, paragraph 7 now reads, "He testified that the pain in his left shoulder will frequently wake him up at night if he sleeps on his left side."

The Commission modifies the Arbitrator's award of medical expenses. The medical bill entered from Cook County Health & Hospital System had a zero balance. Thus, $4,512.50 for Stroger Hospital should not have been awarded. 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.

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 29, 2021, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED that Respondent pay to Petitioner the sum of $836.69 per week for a period of 20 weeks, as provided in §8(d)2 of the Act, for the reason that the injury sustained caused the loss of use of 4% of the person.

IT IS FURTHER ORDERED that Respondent pay to Petitioner the sum of $836.69 per week for a period of 85 weeks, as provided in §8(c) of the Act, for the reason that the injury sustained caused the disfigurement of the face.

IT IS FURTHER ORDERED that Respondent pay to Petitioner medical expenses associated with the care Dr. Jack Grela and Premier PT rendered, as provided in Sections 8(a) and 8.2 of the Act.

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.

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).

January 12, 2023

o: 11/22/2022
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	19WC029969
Case Name	BROWNE, MATTHEW v. ILLINOIS STATE POLICE
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Joel Block
Respondent Attorney	Joseph Blewitt

DATE FILED: 12/29/2021

/s/ Rachael Sinnen, Arbitrator
Signature

INTEREST RATE WEEK OF DECEMBER 28, 2021 0.21%

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

December 29, 2021

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

Matthew Browne
Employee/Petitioner

v.

Illinois State Police
Employer/Respondent

Case # **19** WC **29969**

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 **10/21/2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **10/2/2019**, 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*** 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 $**113,360.00**; the average weekly wage was $**2,180.00**.

On the date of accident, Petitioner was **56** 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 to Petitioner directly reasonable and necessary medical services, pursuant to the medical fee schedule, of **$4,512.50 (Stroger Hospital), $259.00 (Dr. Jacek Grela), $790.00 (Premier PT)**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $**836.69**/week for **30** weeks, because the injuries sustained caused the **6% loss of the person as a whole**, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **$836.69**/week for **85** weeks, because the injuries sustained caused the disfigurement of the **face**, as provided in Section 8(c) 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 **December 29, 2021**

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Matthew Browne	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 19WC29969
Illinois State Police	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on October 21, 2021 in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing. Nature and extent is the only issue in dispute (Arbitrator's Exhibit "AX" 1).

The Petitioner was employed by the Respondent on October 2, 2019 as an operating engineer. His job duties included and consisted of maintenance and repairing of machinery, office equipment, furniture, and other equipment at the facility where he worked.

While at work on October 2, 2019, he was assigned to repair a desk, which had a broken leg. He crawled under the desk to repair the leg, and as he was in the process of standing up, a credenza/bookcase which had not been attached to the desk, fell over and struck him in the face and left shoulder, causing him to fall to the floor onto his right shoulder.

The impact of the credenza/bookcase caused severe lacerations to his face and injured his left shoulder. The fall to the floor onto his right shoulder also caused an injury to his right shoulder and cervical spine.

The Petitioner was immediately transported to John H. Stroger Hospital. He was taken to the oral surgery clinic, where a diagnosis of traumatic lacerations to the upper right lip, right cheek, scar laceration to the right half of his mouth, that went through the oral mucosa, a six (6) centimeter laceration to his forehead and scalp laceration, was rendered. Additionally, there was a complaint of left shoulder pain (Petitioner's Exhibit "PX").

Repairs of the lacerations were done with 3-0 deep vicryl sutures placed in the dermal layer, 5-0 nylon sutures to the approximate the dermal layer, and a 3-0 chromic gut to repair the intra oral mucosa (PX1). The Petitioner testified that approximately 45-50 sutures were necessary to close the wounds.

The Petitioner followed up at Stroger Hospital for his wound care, and then went to Midwest Orthopaedic Consultants on November 12, 2019, with continued complaints of bilateral shoulder pain, greater on the left than on the right (PX2).

The Petitioner reported that the pain rating as 9/10 and is severe. The pain was localized to the superior and posterior shoulder radiating up the trapezius into the neck (PX 2,3).

Additionally, the Petitioner reported posterior cervical neck pain and pain in the right shoulder. Upon clinical examination, Dr. James Leonard opined that the Petitioner had impingement in the left shoulder. Additionally, a strain of the right rotator cuff and cervical neck sprain (PX 2,3).

Physical therapy was recommended and a subacromial injection was administered to the left shoulder.

The Petitioner was ultimately placed at MMI by Dr. Leonard on February 27, 2020, after completing a course of physical therapy at Premier Physical Therapy from November 21, 2019 through February 20, 2020 (PX 4). Petitioner returned to work full duty.

At the request of the Petitioner, the Arbitrator viewed the scars on Petitioner's face that have resulted from the lacerations that he sustained and also used a ruler to measure the scars. The Arbitrator noted the Petitioner had a 3-inch scar on the right side of his lip with 2 additional scars, each of them being 1.5 inches in length branching off the lip. The Arbitrator also noted that there was another scar about 2 inches in length which was about 0.5-centimeter-thick, on his forehead.

The Petitioner testified that he still experiences pain in his left shoulder on a daily basis and is careful at work so as not to aggravate the left shoulder. He further testified that the pain in his left shoulder will frequently wake him up at night if he sleeps on his left side.

The Petitioner gave further testimony that because of the scars and lack of sensation on the corner of the left side of his mouth, he is unable to control the "drooling" which occurs when he lies down.

Finally, the Petitioner presented bills from Stroger Hospital ($4512.50), Dr. Grela ($259.00), and Premier Physical Therapy ($790.00), which to his knowledge have not been paid, and were for treatment related to this accident and injury. Respondent agrees to liability of outstanding bills (AX 1).

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 L, the nature and extent of the injury, the Arbitrator finds as follows:

Petitioner claims he is entitled to permanent partial disability "PPD" benefits for his bilateral shoulders and neck under Section 8(d)2 of the Illinois Workers Compensation Act ("Act") as well as PPD benefits for disfigurement under Section 8(c) of the Act. Under Section 8(c), disfigurement to the face must be serious and permanent and determined not less than 6 months after the date of the accidental injury. "A disfigurement is that which impairs or injures the beauty, symmetry or appearance of a person or thing; that which renders unsightly, mis-shapen or imperfect or deforms in some manner." Superior Mining Co. v. Industrial Com., 141 N.E. 165, 166 (1923).

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 the Petitioner worked as an operating engineer which is a hands-on job as he is required to maintain and repair machinery, office equipment, furniture, and other equipment at the facility where he worked. The Arbitrator therefore gives moderate 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 56 years old at the time of the accident. Although Petitioner is towards the end of an average working career, he is less likely to recover from injuries as well as a younger man. The Arbitrator therefore gives some weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes that Petitioner returned to work full duty and there is no evidence that his earnings were negatively affected upon his return to work. With regards to his disfigurement, although Petitioner is currently employed, per Superior Mining Co., "where a man has suffered serious injuries to his … face, it is often true that they are of such a character as to place a man at a decided disadvantage when applying for work…" 141 N.E. at 165-66. The Arbitrator therefore gives some weight to this factor.

Under Section 8.1b(b)(iv), evidence of disability corroborated by the treating medical records, the Arbitrator give significant weight to this factor. Regarding the left shoulder, it was determined that he had impingement of the left shoulder, which ultimately required the administration of a subacromial injection, he also participated in about 3 months of physical therapy. Regarding the right shoulder and the cervical spine, Petitioner was diagnosed with a strain. Petitioner testified that his left shoulder still causes him pain on a daily basis and that he has to modify his work activities to avoid an increase in pain. He further testified that the pain in his left shoulder will wake him up at night when he rolls over on his left side. The medical records are consistent with the Arbitrator's inspection of Petitioner's facial scars which are fairly reflected in Petitioner's Exhibit 5. In addition to the measurements taken of Petitioner's facial scars on the forehead and lip area, the Arbitrator noted discoloration and indentation of the skin surface as well. The Stroger Hospital records confirm facial lacerations that extended through the oral mucosa into the oral cavity. The Petitioner testified to drooling from the left corner of his mouth when he lies down because of the lack of sensation in his lips.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that, pursuant to §8(d)2 of the Act, Petitioner sustained permanent partial disability to the extent of 6% loss of use of man as a whole which corresponds to 30 weeks of PPD benefits at a maximum weekly rate of $836.69. In addition, pursuant to §8(c) of the Act, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 85 weeks of permanent partial disability benefits at a maximum weekly rate of $836.69.

It is so ordered:

Arbitrator Rachael Sinnen

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC017378
Case Name	Steven Bossany v. Kramer Foods
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0020
Number of Pages of Decision	10
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Crystal Figueroa
Respondent Attorney	Robert Maciorowski

DATE FILED: 1/12/2023

/s/ Deborah Baker, 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

STEVEN BOSSANY,

Petitioner,

vs. NO: 21 WC 17378

KRAMER FOODS,

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 sustained an accidental injury arising out of and occurring in the course of his employment on December 29, 2020, whether Respondent was given proper notice, whether Petitioner's current right shoulder condition of ill-being is causally related to his accident, entitlement to incurred medical expenses, and entitlement to prospective medical treatment, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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 May 5, 2022 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to the Petitioner reasonable, related and necessary medical expenses in the amount of $19,451.00, pursuant to §8(a) and subject to §8.2 of the Act. Payment shall be tendered directly to the Petitioner.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for prospective medical care recommended by Petitioner's treating physicians, including the proposed right shoulder surgery recommended by Dr. Park and any reasonable and necessary post-surgical care related to Petitioner's right shoulder condition, as provided in §8(a) of the Act.

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

IT IS FURTHER ORDERED BY THE COMMISSION that 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 $44,600.00. 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.

January 12, 2023

DJB/wde

O: 12/14/22

43

/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	21WC017378
Case Name	BOSSANY, STEVEN v. KRAMER FOODS
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Haris Huskic
Respondent Attorney	Robert Maciorowski

DATE FILED: 5/5/2022

THE INTEREST RATE FOR THE WEEK OF MAY 3, 2022 1.42%

/s/ Gerald Granada, Arbitrator

Signature

23IWCC0020

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

- ☐ 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)

Steven Bossany
Employee/Petitioner

v.

Kramer Foods
Employer/Respondent

Case # **21** WC **017378**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Wheaton**, on **March 29, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **12/29/20**, 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 $**61,422.40**; the average weekly wage was $**1,181.20**.

On the date of accident, Petitioner was **59** years of age, ***single*** 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** 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

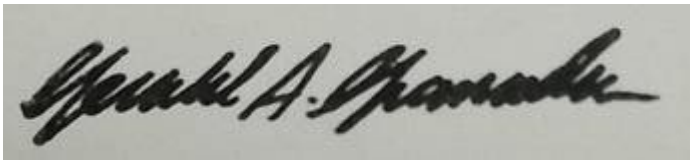
Respondent shall pay to the Petitioner reasonable, related, and necessary medical services in the amount of **$19,451.00** as provided in Sections 8(a) and 8.2 of the Act, subject to the Fee Schedule. Payment shall be tendered directly to the Petitioner.

Respondent shall approve and pay pursuant to the Fee Schedule for prospective medical care recommended by Petitioner's treating physicians, including the proposed right shoulder surgery, as recommended by Dr. Park. This also includes any reasonable and necessary post-surgical care related to Petitioner's right shoulder condition.

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

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

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



Signature of **Arbitrator Gerald Granada**

FINDINGS OF FACT

This case involves Petitioner Steven Bossany, who alleges to have sustained injuries while working for the Respondent Kramer Foods on December 29, 2020. Respondent disputes Petitioner's claim, with the issues being: 1) accident; 2) notice; 3) causation; 4) medical expenses; and 5) prospective medical treatment.

Petitioner has worked for Respondent for approximately 30 years. At the time of this hearing, Petitioner was working as a backroom boss, with various job duties including: managing the place; loading and unloading meat; cutting pieces of meat; and physical labor. On December 29, 2020, he was lowering a 90–100 lb. box full of meat from above shoulder level down to below waist level when he experienced pain in the anterior aspect of his right shoulder. Petitioner testified that he reported his injury right away to his boss, Mr. John Bowe. Petitioner testified that prior to December 29, 2020, he did not have any complaints or seek medical treatment for his right shoulder.

On April 19, 2021, Petitioner sought initial treatment at Hinsdale Orthopaedics complaining of right shoulder pain. (PX. 1, p.2) Petitioner testified that he did not seek treatment immediately following the accident because he thought his body/injury would heal itself. Since his job required a lot of physical labor, Petitioner assumed that the pain in his shoulder was just temporary. Petitioner informed Dr. Marc Fajardo that he injured his right shoulder at work on December 29, 2020, while lifting a heavy box. Petitioner reported that the pain in the right shoulder was intermittent during the day but kept him from sleeping at night. Dr. Fajardo noted that Petitioner had limited range of motion and strength in the right shoulder. During that visit, Petitioner underwent an x-ray of the right shoulder. Additionally, due to the on-going pain that Petitioner was experiencing, Dr. Fajardo ordered an MRI of the right shoulder and released Petitioner back to light duty work restrictions (no weight bearing over the right upper extremity).

On May 5, 2021, Petitioner underwent a right shoulder MRI at Hinsdale Orthopaedics. (PX. 1, p. 6-7) With respect to the MRI, it revealed the following: (1) Mild acromioclavicular degenerative change; (2) Full-thickness rupture of the supraspinatus tendon with retraction. The infraspinatus tendon demonstrates partial thickness undersurface tearing with no evidence of full-thickness rupture or retraction. Partial tear is also demonstrated at the infraspinatus myotendinous junction; (3) Focal undersurface delamination tear along the superior subscapularis tendon insertion; (4) SLAP tear with associated paralabral cyst; and (5) Mild supraspinatus and infraspinatus muscular atrophy. On May 18, 2021, Petitioner returned to see Dr. Fajardo to review the right shoulder MRI findings. (*Id*, p. 8-9) In response to the findings, Dr. Fajardo recommended that Petitioner proceed with right shoulder surgery. However, that surgery was denied by Respondent.

On July 8, 2021, Petitioner presented to Dr. Samuel Park of Specialty Orthopaedics, LLC for a second opinion regarding the right shoulder. (PX. 2, p.7-8) At that visit with Dr. Park, Petitioner reported having injured his right shoulder at work on December 29, 2020, and since then, he was experiencing shoulder pain, especially when griding meat at work and that his shoulder felt tight. Petitioner also informed Dr. Park that he had difficulty lifting and moving his right arm and that he had to hold his right elbow/forearm with his left hand in order to do certain activities such as brushing his teeth or eating with his right hand. At that visit, Dr. Park reviewed Petitioner's right shoulder x-ray (dated April 19, 2021) and right shoulder MRI (dated May 5, 2021). After reviewing the diagnostic imaging and conducting a

physical examination, Dr. Park diagnosed Petitioner with the following: (1) Traumatic complete tear of the right rotator cuff and (2) Superior glenoid labrum lesion of the right shoulder. Dr. Park noted that the MRI revealed a massive supraspinatus/infraspinatus tear with retraction to mid-humeral head and mild atrophy that was pre-existing, however, Petitioner was asymptomatic before the work accident on December 29, 2020. Dr. Park recommended that Petitioner proceed with a rotator cuff repair and also a biceps tenotomy/tenodesis with labral debridement due to the SLAP tear. However, in the meantime, Dr. Park recommended and administered a subacromial injection to relieve some of the right shoulder pain that Petitioner was experiencing. Dr. Park also ordered physical therapy 3 times a week for 4 weeks. Petitioner was released back to work with the following restrictions: no lifting, carrying, pushing, or pulling over 8 pounds and no overhead work.

On July 13, 2021, Petitioner presented to Team Rehabilitation Physical Therapy and started his therapy sessions per Dr. Park's order. (PX. 3, p.4) Petitioner followed up with Dr. Park on August 9, 2021, complaining of persistent shoulder pain and weakness. (PX. 2, p.11-12) Petitioner reported that his right shoulder felt partially improved after the subacromial injection on July 8, 2021, but the pain never fully resolved, and it fully recurred at that visit. Petitioner reported persistent pain with movement, lifting, reaching, and overhead movement. Petitioner informed Dr. Park that he had continued working for Respondent, but he had been getting help from his co-workers with lifting, carrying, pushing, and pulling. In response to Petitioner's continued pain, weakness, disability, and failure of non-operative treatment, including activity modifications, physical therapy, analgesics, and injections, Dr. Park recommended an arthroscopic rotator cuff repair, subacromial decompression, labral debridement, possible biceps tenotomy and/or tenodesis. Dr. Park noted that if Petitioner were to have surgery, he would require the following: shoulder abduction brace, game ready ice unit for 4 weeks, physical therapy for 6 months and that Petitioner would reach maximum medical improvement (MMI) status around 6 months post-surgery. At that visit, Dr. Park ordered an additional 4 weeks of therapy (3 times weekly) and released Petitioner back to work with the same restrictions as before of no lifting, carrying, pushing or pulling over 8 pounds and no overhead work.

On August 30, 2021, Petitioner was seen by Respondent's Section 12 examiner, Dr. Prasant Atluri of Hand to Shoulder Associates, S.C. Dr. Atluri's Independent Medical Evaluation ("IME") report noted that Petitioner had a massive rotator cuff tear in his right shoulder and that it warranted a surgical intervention including a right shoulder arthroscopic rotator cuff repair with a subacromial decompression, possible distal clavicle excision and possible biceps tenotomy or tenodesis. Dr. Alturi noted that Petitioner's MMI would be anticipated by 8-10 months postoperatively. In addition, Dr. Alturi noted that Petitioner "likely had a pre-existing chronic massive rotator cuff tear which may have been aggravated by this patient's usual work activities." However, Dr. Alturi stated that the rotator cuff tear was not caused by the December 29, 2020, accident.

On September 13, 2021, Petitioner returned to see Dr. Park with the same complaints of shoulder pain and weakness. Like with the previous visits, Dr. Park recommended surgery to address the shoulder injury, ordered another 4 weeks of therapy and released Petitioner back to work with the same light duty restrictions. Petitioner's last session of therapy at Team Rehabilitation was on October 22, 2021. Petitioner followed up with Dr. Park on October 25, 2021, with complaints of persistent pain with movement, lifting, reaching, and overhead. At that visit, Dr. Park reviewed Dr. Prasant Atluri's IME report dated August 30, 2021. Dr. Park again noted that Petitioner was a candidate for right shoulder

surgery which was directly related and cause by the December 29, 2020 work-related accident. Dr. Park released Petitioner back to work with the same light duty restrictions as before. Petitioner followed up with Dr. Park on December 6, 2021; January 24, 2022; and March 7, 2022. At all three visit, Petitioner's complaints (right shoulder pain and weakness) and Dr. Park's surgical intervention and work restrictions remained the same as the previous visits.

Petitioner testified that he still has pain and discomfort in his right shoulder. Petitioner testified that the worst part about his injury is that he cannot lift things like he used to prior to the accident. Petitioner also testified that he has trouble driving his vehicle due to the shoulder injury. While working light duty, Petitioner testified that he was using his left hand to do the lifting and any other physical activity.

Dr. Park also testified as to his treatment and opinions in this matter. (PX. 4) Dr. Park testified that he reviewed Petitioner's diagnostic images of the right shoulder, which he noted to be a full thickness supraspinatus and infraspinatus tears with traction to the mid humeral head; stage 1 supraspinatus atrophy, stage 2 infraspinatus atrophy, a slap tear; and a paralabral cyst and acromial clavicular joint osteoarthritis. (PX 4, p.14) Dr. Park testified that Petitioner is a candidate for a rotator cuff repair and labral debridement. (*Id*, p. 27) Dr. Park testified that Petitioner's current condition of ill being is casually related to the work accident of December 29, 2020, and the shoulder surgery would also be casually related. Dr. Park testified that even though Petitioner's rotator cuff tear might have happened in the past, the condition was well compensated until the December 29, 2020, accident at work occurred, which necessitated the need for a surgical intervention. (*Id*, p. 25)

CONCLUSIONS OF LAW

1. With regard to the issue of accident, the Arbitrator finds that the Petitioner has met his burden of proof. In support of this finding the Arbitrator relies on the Petitioner's unrebutted testimony and the medical evidence – which both show that Petitioner sustained an injury to his right shoulder while he was handling a box of meat weighing approximately 90 to 100lbs above shoulder level on December 29, 2020. This history is consistent throughout Petitioner's medical records. There was no evidence offered to rebut Petitioner on this issue. Based on these facts, the Arbitrator concludes that the Petitioner sustained an accident arising out of an in the course of his employment with Respondent on December 29, 2020.

2. Regarding the issue of notice, the Arbitrator finds that the Petitioner has met his burden of proof. In support of this finding, the Arbitrator relies on the Petitioner's unrebutted testimony that immediately following his accident on December 29, 2020, he reported his injury to his right shoulder to his boss, Mr. John Bowe. There was no evidence offered to rebut Petitioner on this issue. Accordingly, the Arbitrator finds that the Petitioner provided proper notice of his December 29, 2020 accident to Respondent.

3. With regard to the issue of causation, the Arbitrator finds that the Petitioner has met his burden of proof. In support of this finding, the Arbitrator relies on the medical evidence that show Petitioner sustained a torn right rotator cuff. The Arbitrator finds persuasive the opinions of Petitioner's treating physicians on this issue. Although Respondent's IME, Dr. Atluri opined that the Petitioner's torn rotator cuff pre-existed the injury, he did indicate that the condition may have been aggravated by Petitioner's work activities. Petitioner credibly

testified that he did not need any medical treatment for his right shoulder and was able to perform his job duties with no problems prior to the December 29, 2020 accident. Following this incident, all the doctors agree that the Petitioner needs surgery to repair his rotator cuff. Based on these facts, the Arbitrator concludes that the Petitioner's current condition of ill-being in his right shoulder is causally connected to his December 29, 2020 work accident.

4. Consistent with the Arbitrator's findings above, the Arbitrator finds that the medical treatment received for Petitioner's right shoulder has been reasonable and necessary to address his work-related condition. Accordingly, the Arbitrator finds that Respondent shall pay directly to the Petitioner the reasonable and necessary medical expenses incurred in the care and treatment of his causally related right shoulder injury pursuant to Sections 8 and 8.2 of the Act, subject to the Fee Schedule, including expenses from the following providers: 1) Team Rehabilitation Physical Therapy for $16,535.00; and 2) Specialty Orthopedics for $2,916.00. (See PX 5)

5. Consistent with the findings above, the Arbitrator further finds that the Petitioner's request for prospective medical treatment is both reasonable and necessary in addressing his work-related right shoulder condition stemming from his December 29, 2020 work accident. In support of this finding, the Arbitrator relies on all the medical evidence indicating Petitioner needs surgery for his right shoulder. Accordingly, the Arbitrator awards Petitioner his request for prospective medical care and the Respondent shall authorize and pay pursuant to the Fee Schedule for the prospective medical care recommended by Petitioner's treating physicians, including the proposed surgery by Dr. Park involving a rotator cuff repair and labral debridement, and any ancillary reasonable and necessary services in connection with the surgery.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC025357
Case Name	Lindsey Bolanos v. State of Illinois - Centralia Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0022
Number of Pages of Decision	15
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	James Keefe, Jr.
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 1/12/2023

/s/Christopher Harris, 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

LINDSEY BOLANOS,

Petitioner,

vs. NO: 20 WC 25357

STATE OF ILLINOIS,
CENTRALIA CORRECTIONAL 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 causal connection, medical expenses, prospective medical treatment, temporary total disability (TTD), permanent partial disability (PPD), and whether the Petitioner has reached maximum medical improvement (MMI), 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 May 5, 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.

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.

January 12, 2023

CAH/tdm
O: 1/5/23
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	20WC025357
Case Name	BOLANOS, LINDSEY v. STATE OF ILLINOIS/CENTRALIA CORRECTIONAL CENTER
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	James Keefe, Jr.
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 5/5/2022

THE INTEREST RATE FOR THE WEEK OF MAY 3, 2022 1.42%

/s/ Linda Cantrell, Arbitrator

Signature

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

May 5, 2022

/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
19(b)

LINDSEY BOLANOS
Employee/Petitioner

Case # **20-WC-025357**

v.

Consolidated cases:

STATE OF ILLINOIS/CENTRALIA CORRECTIONAL CENTER
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 **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **2/17/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **8/28/20**, 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 full pay $**9,062.10**; the average weekly wage was $**1,006.90**.

On the date of accident, Petitioner was **38** years of age, **single** 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 $**15,332.10** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** in other benefits, for a total credit of $**15,332.10.**

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

ORDER

Respondent shall pay the medical expenses outlined in Petitioner's Exhibit 11, as provided in Section 8(a) and Section 8.2 of the Act, directly to the medical providers and pursuant to the medical fee schedule or PPO agreement, whichever is less. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties stipulate that Respondent shall receive credit for all medical expenses paid through Respondent's group medical plan under Section 8(j) of the Act.

The Arbitrator finds Petitioner has not reached maximum medical improvement. Respondent shall authorize and pay for prospective medical treatment, including, but not limited to, a three-level disc replacement at C4-5, C5-6, and C6-7, including any preoperative and postoperative treatment until Petitioner reaches maximum medical improvement.

Respondent shall pay Petitioner temporary total disability benefits of $**671.27**/week for **33-1/7th** weeks, representing the period **7/1/21 through 2/17/22**, as provided in Section 8(b) of the Act. Respondent shall receive credit of $**15,332.10** in TTD benefits paid.

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

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

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

MAY 5, 2022

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

LINDSEY BOLANOS,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 20-WC-025357
	)	
STATE OF ILLINOIS/CENTRALIA CORRECTIONAL CENTER,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on February 17, 2022, pursuant to Section 19(b) of the Act. The issues in dispute are causal connection, medical bills, temporary total disability benefits, prospective medical care, and whether Petitioner has reached maximum medical improvement. All other issues have been stipulated.

TESTIMONY

Petitioner is 39 years old, married, with two dependent children. Petitioner was employed with Respondent as a correctional officer for three years at the time of accident. Her job duties varied from sitting at a desk pressing buttons, opening and closing heavy doors, and physically restraining inmates.

Petitioner testified that on 8/28/20 she was performing CPR on a new mannequin during recertification training. The training course is conducted by an independent company that is certified in CPR training. Petitioner had just returned from a leave of absence related to nonoccupational knee and shoulder surgeries and her certification had expired. She stated the mannequin was on a table that required her to stand on her tiptoes to perform CPR. She is 5'2" tall. As she was performing a chest compression, she felt her muscles pulling because the mannequin was too stiff, and she had to stop due to pain. She felt pain in the base of her neck with an immediate migraine headache. The pain radiated from the back of her head to the front. Petitioner reported the injury and asked permission to go to her car to take medication. She testified she had Percocet and Diazepam prescribed by Dr. Lehman for her right shoulder injury. She applied ice to her neck, but the pain did not subside. Petitioner did not complete her work shift and took the next day off work due to a migraine. She completed an accident report when she returned to work.

Petitioner testified she returned to Dr. Lehman who performed her prior surgeries. Petitioner underwent knee surgery in 2019. She underwent a right shoulder surgery in March 2020 to repair a rotator cuff and labral tendon tear. She underwent postoperative physical therapy and the use of weights during therapy caused some neck pain and headaches. Dr. Lehman placed Petitioner back off work in April 2020 due to cervical pain. She described her prior neck pain and headaches as being very different from what she experienced after her accident on 8/28/20. Petitioner testified that when she lifted weights during therapy is caused neck spasms and triggered headaches. She stated the neck pain and headaches subsided as her shoulder healed. She stated Dr. Lehman never ordered a cervical MRI or recommended treatment for her neck prior to 8/28/20.

Petitioner testified she returned to full duty work without restrictions on 7/13/20. She returned to performing calisthenics, including wall push-ups, lifting a gallon of milk, and body squats until she was injured on 8/28/20. Following Petitioner's accident, Dr. Lehman did not believe Petitioner's symptoms were related to her shoulder.

Petitioner was examined by Dr. Gornet who ordered an MRI and light duty restrictions. Respondent accommodated the light duty restrictions and placed Petitioner at a desk job. She was initially placed in the day room where she had to open 100 heavy doors per day and her symptoms increased so she was repositioned. Petitioner kept a diary of her migraines and the number of days she took off work. (PX 9 &10). Petitioner stated she took as many days off as she had available.

Petitioner underwent a cervical injection that provided a few weeks of relief and improved her migraines. She attended Section 12 examinations by Dr. Emmanuel and Dr. Bernardi. She underwent work conditioning per Dr. Bernardi's recommendation. She testified that therapy improved the strength in the right side of her neck and behind her shoulder and the range of motion in her neck also improved. Petitioner testified that Dr. Gornet recommends a three-level disc replacement.

Petitioner testified she has sharp, throbbing pain that radiates from her neck down her spine and into her shoulder blade. She stated her migraines curl around her entire head affecting her vision. The migraines cause her to lay down in a dark room and she applies icepacks to her head. The migraines and neck pain interferes with her ability to care for her children who are 5 and 7 years old. She has intermittent pain, tingling, and numbness in two fingers if she uses her arm. She has never been diagnosed with carpal or cubital tunnel syndrome. Petitioner does not believe she could work full duty as a correctional officer with her current symptoms. She is not able to perform any of the activities she did prior to her accident, including crocheting, driving a Jeep, bicycling, exercising, cooking, or washing her hair. She stated she has her hair washed once a week. She desires to undergo cervical surgery. She is taking Meloxicam prescribed by Dr. Gornet which she never took prior to the accident. Petitioner also takes Tramadol and Imitrex prescribed by her primary care physician Dr. Kaufman which she did not take prior to her accident. Petitioner testified that Respondent is not accommodating her current work restrictions became she has maximized the allowed time for working light duty and she is receiving TTD benefits.

Petitioner filled out a Notice of Injury when she returned to work on 8/31/20. (RX1) Petitioner reported that on 8/28/20 she was performing CPR on a training dummy when her neck (back) and upper back muscles started to hurt a lot. She tried to ice the area immediately and took Ibuprofen, but it did not help much and triggered a migraine that lasted two days. She reported the pain progressed to her right shoulder causing muscle spasms and pulling into the front and back of her neck and upper chest muscles. The pain was located in her right upper back and the front and back of the right side of her neck.

Petitioner also prepared an Incident Report on 8/31/20 stating the back of her neck, upper back, and right shoulder began hurting quite a bit. She was able to finish CPR compressions with numerous stops and starts. Petitioner stated her pain became unbearable and she asked permission to go to her car to take an anti-inflammatory/pain medication. She applied ice but the pain triggered a migraine on the right side of her head and neck. (RX1)

On 8/31/20, Petitioner's co-worker, Ian McKee, prepared a witness statement and stated he was sitting next to Petitioner when she told him the compressions were hurting her. Petitioner asked permission to go to her car to get medication. When Petitioner returned to the classroom, she had ice on her shoulder. (RX1)

On cross-examination, Petitioner testified she was taking Percocet and Diazepam prescribed by Dr. Lehman for her knee surgery, which she stopped taking until her right shoulder surgery. She stated she was just weaning herself off the medications when her accident occurred on 8/28/20. She stated she completed physical therapy two weeks before returning to full duty work and she was scheduled for a six month follow up with Dr. Lehman.

Petitioner testified she sustained another work-related accident while working light duty on 4/1/21. She followed up with Dr. Gornet on 4/8/21 who ordered additional imaging.

MEDICAL HISTORY

On 9/18/19, Petitioner underwent a nonoccupational arthroscopic surgery by Dr. Lehman consisting of partial lateral meniscectomy and PCL repair. (PX6) Petitioner told Dr. Lehman on 12/9/19 she was having some problems with her shoulder and neck. Dr. Lehman recommended strengthening for the shoulder and massage therapy for the neck. On 1/9/20, Petitioner reported right shoulder pain. Dr. Lehman ordered an MRI that demonstrated a supraspinatus rotator cuff tear. On 3/2/20, Dr. Lehman performed a right shoulder arthroscopy consisting of rotator cuff repair, labral repair, and subacromial decompression.

On 4/9/20, Petitioner reported to Dr. Lehman that her participation in physical therapy was hurting her neck. Her neck pain radiated up and around causing migraine headaches. She was working light duty. She had migraines when overloading her posterior cervical spine with palpation. Dr. Lehman performed a physical examination and noted tenderness posteriorly and in the paraspinals, pain with rotation, and mild popping. Dr. Lehman recommended that physical therapy for the neck be incorporated with the shoulder rehab, and he placed Petitioner off work. (PX6)

Petitioner returned to Dr. Lehman on 5/12/20 and reported falling and landing on her right elbow on 5/7/20 that caused increased shoulder pain. There was no mention of the neck. A right shoulder MRI did not reveal a new tear, but Dr. Lehman did not feel Petitioner should return to work. Petitioner began physical therapy at Apex on 5/29/20 for anterior and lateral right shoulder pain. (PX8). There was no mention of cervical problems. Petitioner underwent an injection on 6/9/20 and she reported improvement. No mention of neck pain was mentioned at that visit.

There was no neck pain documented in the next three therapy visits in June 2020. On 6/23/20, the therapist documented some right shoulder soreness and migraines over the weekend when putting doors on her Jeep. (PX8) On 6/25/20, Petitioner develop a migraine after working on her lawn mower. On 6/30/20, Petitioner reported she had not had a migraine for a while. On 7/2/20, Petitioner stated she no longer had to take pain pills and things were improving. On 7/7/20, Petitioner reported improvement in pain, range of motion, and strength and she wanted to return to work. (PX8).

Petitioner returned to Dr. Lehman on 7/9/20 and reported her shoulder had improved and she was ready to return to work. (PX6) There was no mention of the neck. On 7/16/20, the therapist documented a migraine and some increased pain since returning to work. (PX8) On 7/30/20, Dr. Lehman injected the right shoulder and ordered aggressive physical therapy. There was no mention of the neck. (PX6). At her final therapy visit on 8/12/20 Petitioner reported some right shoulder pain with certain movements and occasional migraines. She felt she might need another injection in her shoulder. (PX8)

On 9/9/20, Petitioner presented to Dr. Lehman with acute right shoulder pain and neck pain that caused migraines. Petitioner reported that on 8/28/20 she was performing CPR training and had a significant exacerbation of neck symptoms, which caused a three-day migraine. The symptoms continued and she was managing them with Toradol, Percocet, and Diazepam. (PX5) She advised she had been referred to Dr. Gornet for neck pain. Dr. Lehman noted Petitioner received a right shoulder Toradol injection on 7/30/20 that provided moderate relief. Dr. Lehman administered another Toradol injection to Petitioner's right shoulder.

On 10/22/20, Petitioner was examined by Dr. Gornet who documented a history of performing CPR on a mannequin on 8/28/20 when she developed neck pain with headaches and symptoms down the right upper extremity. She admitted to prior problems but stated they improved with physical therapy leading up to the accident. Dr. Gornet recommended a cervical MRI that revealed a clear central tear at C5-6, which he believed correlated with Petitioner's neck pain and headaches. He did not appreciate any significant herniations. He suspected a subtle protrusion at C4-5 which could account for some symptoms. (PX3) Dr. Gornet recommended an epidural steroid injection. He requested to review Petitioner's prior physical therapy records to make sure she did not have significant neck pain or headaches prior to rendering a causation opinion. He placed her on light duty restrictions. (PX2)

On 10/27/20, Dr. Lehman performed a physical examination and prepared a note in which he explained that prior to 8/28/20, Petitioner had some neck pain and headaches, but not to

the level she has experienced since the 8/28/20 work accident. Dr. Lehman noted the medical records clearly show a progression of neck pain and headaches, deltoid pain, exacerbation of neck pain, and significant limitations in range of motion in the cervical spine. He did not believe Petitioner reinjured her shoulder. He reviewed Dr. Gornet's note and agreed that the accident aggravated an underlying cervical condition. He recommended follow up with Dr. Gornet. (PX5)

On 11/24/20, Dr. Blake performed a right C5-6 injection. (PX4) Petitioner returned to Dr. Gornet on 1/28/21 and reported temporary relief from the injection with ongoing neck pain and headaches. Dr. Gornet opined that the level of severity of Petitioner's neck pain began on 8/28/20. He noted she had timed out on light duty and was currently off work. Dr. Gornet's main concern was the disc pathology at C4-5 and C5-6 and a small protrusion on the right at C6-7 and on the left again at C5-6 and C6-7. He opined that these low-level disc herniations and disc pathology tend to be associated with significant neck pain and headaches. Dr. Gornet discussed treatment options, including living with the symptoms or disc replacement surgery. Petitioner was kept on light duty work. (PX2)

On 4/8/21, Dr. Gornet documented Petitioner sustained another work injury while leaning back on a chair when it broke. Dr. Gornet ordered a new MRI that showed protrusions at C4-5, C5-6, C6-7. (PX3) He opined the new accident aggravated her condition and he continued light duty restrictions. (PX2)

On 5/18/21, Petitioner was examined by Dr. Robert Bernardi. Dr. Bernardi believed Petitioner was suffering from C6-7 radiculopathy; however, he did not have the MRI to review. He recommended review of the MRI scan and the pre-accident physical therapy records. (RX2) Dr. Bernardi reviewed the MRI and concluded Petitioner was not experiencing cervical radiculopathy and her symptoms were myofascial. He did believe Petitioner's accident caused her neck pain and parascapular complaints, but strongly opined a three-level disc replacement was not in Petitioner's best interest. He stated there was no medical society that recommends surgery to treat neck pain that is not associated with neurological features. Dr. Bernardi recommended four to six weeks of physical therapy. (RX3)

On 9/30/21, Dr. Gornet instructed Petitioner to discontinue Valium prior to undergoing surgery. He continued her light duty restrictions. (PX2)

Petitioner underwent twelve physical therapy sessions at Apex from 10/4/21 through 12/17/21. She reported some improvement in range of motion and strength, but she still had pain and right upper extremity symptoms. (PX7)

On 1/6/22, Petitioner returned to Dr. Gornet who continued to recommend disc replacement surgery at C4-5, C5-6, and C6-7. He placed Petitioner off work pending surgery. Dr. Gornet opined that a repeat MRI or CT scan may be necessary. (PX2)

On 3/1/21, Dr. Gornet testified by way of evidence deposition. (PX1) Dr. Gornet opined that the 8/28/20 accident contributed to Petitioner's cervical condition and need for surgery. He noted there was no documentation of neck pain in Petitioner's treatment records from May to August 2020. He agreed there is overlap between shoulder and neck pain. He opined that a three-

level disc replacement was medically reasonable and necessary. He explained the surgery will relieve Petitioner's headaches and neck pain as repair of the structural injury will resolve her muscle tension.

On 10/15/21, Dr. Bernardi testified by way of evidence deposition. (RX4). After review of the MRI films and records, Dr. Bernardi diagnosed neck pain of unknown etiology because he did not see any findings on the MRI to support Petitioner's symptoms. He felt Petitioner's symptoms were likely related to a muscular injury in combination to her prior shoulder injury. He disagrees with Dr. Gornet's opinion that axial neck pain should be treated with surgery. On cross-examination, Dr. Bernardi agreed that an inflammatory response can be caused by a disc that is not measured on MRI scan and that response can cause neck pain.

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 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 showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident is sufficient to satisfy the claimant's burden. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982).

There is no dispute Petitioner experienced some cervical symptoms and headaches prior to her work accident on 8/28/20. Petitioner complained of neck and shoulder pain in December 2019 while she was under the care of Dr. Lehman for a knee injury. Dr. Lehman recommended conservative treatment in the form of strengthening exercises and massage therapy. In early 2019, Dr. Lehman ordered an MRI of Petitioner's right shoulder that demonstrated a supraspinatus rotator cuff tear. On 3/2/20, Dr. Lehman performed a right shoulder arthroscopy consisting of rotator cuff repair, labral repair, and subacromial decompression. On 4/9/20, Petitioner told Dr. Lehman that physical therapy was causing neck pain and headaches. Physical examination revealed tenderness posteriorly and in the paraspinals, pain with rotation, and mild popping. He recommended that physical therapy for the neck be incorporated with the shoulder rehab and he placed Petitioner off work. (PX6)

Petitioner continued to treat with Dr. Lehman for her right shoulder condition and attended therapy through 8/12/20. There was no further mention of neck pain in any of the medical records. On 6/30/20, Petitioner reported she had not had a migraine for a while. On 7/2/20, Petitioner stated she no longer had to take pain pills and things were improving. On 7/7/20, Petitioner reported to her therapist she had improvement in pain, range of motion, and strength and she wanted to return to work. (PX8). On 7/9/20, Petitioner reported to Dr. Lehman that her shoulder had improved, and she was ready to return to work. (PX6) Petitioner returned to

full duty work without restrictions on 7/13/20. On 7/16/20, the therapist documented a migraine and some increased pain since returning to work. There was no mention of cervical pain. (PX8) On 7/30/20, Dr. Lehman injected the right shoulder and ordered aggressive physical therapy. There was no mention of the neck. (PX6). At her final therapy visit on 8/12/20, Petitioner reported some right shoulder pain with certain movements and occasional migraines. She felt she might need another injection in her shoulder. (PX8) She had no neck complaints.

The pre-accident medical records support that Petitioner had some cervical symptoms in December 2019 that Dr. Lehman attributed to Petitioner's shoulder. Based on positive MRI findings, he performed a right shoulder arthroscopy consisting of rotator cuff repair, labral repair, and subacromial decompression. Petitioner had a flare-up of cervical pain while participating in physical therapy for her shoulder. Dr. Lehman ordered physical therapy for her neck in April 2020. Following that recommendation, there is no mention of Petitioner's neck in any of Dr. Lehman's records or the physical therapy records until after Petitioner's work accident on 8/28/20.

Petitioner returned to her full work duties on 7/13/20 and worked without restriction for almost seven weeks without evidence of neck pain. She returned to Dr. Lehman on 9/9/20 and reported her accident of 8/28/20. She reported acute right shoulder pain and a significant exacerbation of neck symptoms, which caused a three-day migraine. Dr. Lehman documented that Petitioner's prior neck pain and headaches were not to the level she experienced after her work accident. He noted a clear progression of neck pain and headaches, with significant limitations in range of motion and pain. Dr. Gornet noted Petitioner had prior neck pain that resolved following physical therapy, which is consistent with the pre-accident medical records admitted into evidence and Petitioner's testimony.

Petitioner had not undergone any diagnostic studies on her cervical spine, and she was never referred to a spine specialist prior to 8/28/20. Dr. Gornet opined that the level of severity of Petitioner's neck pain began on 8/28/20. Dr. Gornet's main concern is the disc pathology at C4-5 and C5-6 and a small protrusion on the right at C6-7 and on the left again at C5-6 and C6-7. He opined that these low-level disc herniations and disc pathology tend to be associated with significant neck pain and headaches. While Dr. Bernardi disagrees about the extent of Petitioner's neck injury, he agreed the neck and parascapular complaints were causally connected to the accident and that all of the care and treatment Petitioner received was reasonable and necessary, including his recommendation for 4 to 6 weeks of physical therapy.

Based on the foregoing evidence, the Arbitrator finds that Petitioner's current condition of ill-being in her cervical spine is causally connected to her work accident that occurred on 8/28/20.

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

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

Issue (O): Has Petitioner reached maximum medical improvement?

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

Based upon the above findings as to causal connection, the Arbitrator finds that the care and treatment Petitioner received has been reasonable and necessary. Respondent shall therefore pay the medical expenses outlined in Petitioner's Exhibit 11, as provided in Section 8(a) and Section 8.2 of the Act, directly to the medical providers and pursuant to the medical fee schedule or PPO agreement, whichever is less. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties stipulate that Respondent shall receive credit for any medical bills paid through Respondent's group medical plan under Section 8(j) of the Act.

The Arbitrator further finds Petitioner is entitled to receive the additional care recommended by Dr. Gornet and that the C4-5, C5-6, C6-7 disc replacement surgery recommended by Dr. Gornet is medically reasonable, necessary, and causally related to the work accident. The Arbitrator finds the opinions of Dr. Gornet more persuasive than those of Dr. Bernardi. Dr. Gornet's interpretation of disc protrusions without nerve root compression is consistent with the radiologist. Dr. Gornet credibly testified that Petitioner's neck pain and headaches are explained by the MRI findings and have not responded to conservative measures.

The Arbitrator finds Petitioner has not reached maximum medical improvement. Respondent shall authorize and pay for prospective medical treatment, including, but not limited to, a three-level disc replacement at C4-5, C5-6, and C6-7, including any preoperative and postoperative treatment until Petitioner reaches maximum medical improvement.

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

The Arbitrator finds that Petitioner is entitled to temporary total disability benefits beginning on 7/1/21, when Respondent did not accommodate Petitioner's light duty work restrictions, through 2/17/22, representing 33-1/7th weeks, at the rate of $671.27/week. Respondent shall receive a credit of $15,332.10 in TTD benefits paid.

This award shall in no instance be a bar to further hearing and determination of any additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

Arbitrator Linda J. Cantrell DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC013973
Case Name	William Malone v. Veolia North America Inc/ CO United Suppliers Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0023
Number of Pages of Decision	25
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Mark Wilson
Respondent Attorney	Edward Januszkiewicz, Miles Cahill

DATE FILED: 1/12/2023

/s/Christopher Harris, 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

WILLIAM MALONE,

Petitioner,

vs. NO: 18 WC 13973

VEOLIA NORTH AMERICA,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the prevailing party, Respondent Veolia North America, and notice given to all parties, the Commission, after considering the issues of employer-employee relationship, accident, occupational disease, exposure, notice, causal connection, medical expenses, prospective medical care, 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 March 14, 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 in this claim. 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.

January 12, 2023

/s/ *Christopher A. Harris*
Christopher A. Harris

CAH/pm
O: 1/5/23
052

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC013973
Case Name	MALONE, WILLIAM v. VEOLIA NORTH AMERICA, INC.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Mark Wilson
Respondent Attorney	Miles Cahill

DATE FILED: 3/14/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 8, 2022 0.67%

/s/Bradley Gillespie, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Rock Island**)

☐ 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

William Malone
Employee/Petitioner
v.

Case # **18** WC **013973**

Veolia North America, 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 **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Rock Island**, on **7/14/21**. 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?
☒
☐ 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 **Was petitioner exposed to the hazards of an occupational disease.**

FINDINGS

On **12/18/2017**, Respondent Veolia North America, Inc. ***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 $**39,614.64**; the average weekly wage was $**761.82**.

On the date of accident, Petitioner was **41** years of age, ***single*** with **2** dependent children.

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

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

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

Respondent is not entitled to a credit for all benefits paid through group insurance.

ORDER

While Petitioner was employed by Respondent Veolia North America, Inc. on 12/18/2017, and Petitioner arguably was exposed to the hazards of his occupational disease on that date, he sustained subsequent exposures while working for Veolia North America, Inc.

Petitioner was exposed to the hazards of his occupational disease following 12/18/2017 while in the employ of Veolia North America, Inc.

Therefore, Respondent Veolia North America was not liable for the 12/18/2017 date of accident and no benefits are hereby awarded related to the 12/18/2017 date of accident.

Denied. No benefits are awarded.

See the attached Decision of Arbitrator.

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.

Bradley D. Gillespie **MARCH 14, 2022**

Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

WILLIAM MALONE,	)	
Petitioner,	)	
	)	
v.	)**Case No.: 18WC035049**	
	)	
VEOLIA NORTH AMERICA, INC.	) **Consolidated Case Nos.:**	**18WC013973**
and UNITED SUPPLIERS, INC.	)	**18WC030037**
Respondents.	)	

DECISION OF THE ARBITRATOR

These matters proceeded to hearing on July 14, 2021, in Rock Island, Illinois (Arb. 1). The following issues were in dispute:

- Accident
- Notice
- Causal Connection
- Earnings
- Temporary Total Disability
- Nature and Extent of Injuries
- Penalties

FINDINGS OF FACT

Owing to Petitioner's deteriorated health and the ongoing COVID-19 pandemic, this matter was submitted to the Arbitrator via written depositions and documentary evidence. All parties were advised of the potential disadvantages to this type of undertaking and agreed to proceeding in this manner. The Arbitrator notes that judging Petitioner's credibility under these circumstances is quite difficult and Petitioner's counsel was so advised. This matter arises under the Occupational Disease Act and involves alleged occupational exposures to certain chemical substances at a fertilizer manufacturing facility owned or operated by Respondents for distinct periods of Petitioner's tenure at the facility.

Petitioner's Deposition Testimony

Due to William Malone's [hereinafter "Petitioner"] deteriorating health, Petitioner testified via evidence deposition on October 9, 2019. (*See* PX #16) Petitioner began working at the fertilizer plant in October 2010 as a granulator operator when the facility was owned by Respondent United Suppliers, Inc. [hereinafter "United Suppliers"]. (PX #16, p.8) As a granulator operator, Petitioner's duties consisted of setting up the granulator and opening the chemical valves for anhydrous ammonia, sulfuric acid, phosphoric acid, fresh water, and processed water. *Id.* He was also responsible for checking the drum, checking materials coming out of the drum, checking materials going down the chute, belts and conveyors as well as running samples once per hour. (PX #16, pp. 8-9)

When he commenced his employment with United Suppliers in October 2010, Petitioner was provided a respirator to use at his discretion when the air quality was "not under control." (PX #16, p. 9) Petitioner testified that in a typical month he would use the respirator two to ten times. (PX #16 pp. 9-10) He was required to undergo annual breathing tests. (PX #16 p. 10) In March 2011, he was provided a different respirator that he would use throughout the remainder of his employment at the fertilizer plant. (PX #16, pp.10-11, 19-24).

On September 19, 2017, ownership of the fertilizer plant transferred from United Suppliers to Unity Biotech, managed by Veolia (PX #16 p. 11, *see also* PX #16, United Suppliers Exhibit #1). When Respondent Veolia [hereinafter "Veolia"] took over, Petitioner remained in the same position as a granulator operator working the same hours and carrying on the same duties and responsibilities as he did when he worked for United Suppliers. (PX #16, pp.11-12) Petitioner stated that he was making $16.25 per hour as of September 21, 2017. (PX #16, p. 12) Petitioner testified that he worked 12-hour mandatory shifts, alternating between 48 and 60 hours per week, while working as a granulator operator for Veolia. (PX #16, p. 12) Petitioner described his health condition as fair as of September 21, 2017. *Id.* He described having a cough occasionally as well as a "little bit of wheezing." (PX #16, p.13) Petitioner testified that, prior to September 21, 2017, he had only received treatment for respiratory problems on one occasion in June 2017. *Id.*

Petitioner testified that he began working as a control room operator in October 2017. (PX #16, p. 14) He stated that he went from $16.25 per hour to $18.25 per hour. (PX #16 p. 15) Petitioner claimed that he continued to work the same amount of hours and the hours were still mandatory. *Id.* As a control room operator, Petitioner's duties consisted of opening all the anhydrous ammonia valves to the reactors and spargers; running all auto valves, opening it up, and starting the mill up. *Id.* He was also responsible for conducting walk through hourly inspections of all anhydrous lines, sulfuric lines, phosphoric lines, water lines, drums, and elevators throughout the mill. *Id.* In his capacity as a control room operator, he worked the same hours and used a respirator with the same frequency as he did while working as a granulator operator. (PX #16, pp.15-16)

Petitioner testified that he sought treatment from a lung specialist some time after he began his position as a control room operator. (PX #16, p. 16) He claimed that he had been referred to Dr. Chittivelu by his primary care provider, Sarah Johnson. *Id.* Petitioner stated that he had chronic cough and a little bit of wheezing when he was referred to Dr. Chittivelu. (PX #16, p. 17) He continued working following his referral to the lung specialist. *Id.*

Petitioner testified that Mark Winters was his acting supervisor from September 2017 until he left the plant in June 2018. (PX #16, p. 17) He stated that Mr. Winters was the person that directly supervised him. *Id.* Petitioner stated that Mr. Winters was the next in his chain of command, that he had the authority to make recommendations that affected his employment, that Mr. Winters had the authority to make recommendations as to whether he was promoted or demoted and recommend whether he remained employed. (PX #16, p. 18) Petitioner testified that Mr. Winters was the person who communicated the expectations of his job and monitored whether he met those expectations. *Id.* Petitioner stated that Mr. Winters made inquiries on his behalf regarding his respirator. (PX #16, p. 19) He testified that Mr. Winters communicated with him verbally and in writing regarding an investigation into his respirator in April of 2018. *Id.* Petitioner stated that Mr. Winters provided him a letter regarding his inquiries. *Id.* A writing purporting to be such correspondence was appended to Petitioner's deposition as PX 4. (PX #16 p. 20, PX 4).

The above-mentioned letter was proffered which described a conversation between the Production Staff Supervisor, Mark Winters, the head of plant operations, and the head safety officer for the plant regarding Petitioner's personal full-face work respirator. (PX #16, Deposition Exhibit #4) In the letter, Mr. Winters indicates that he heard the head of safety indicate that 3M does not make a respirator cartridge for that model respirator that works with anhydrous ammonia and that his current cartridge was rated for dust only. *Id.* The head of safety indicated that whoever issued Petitioner the respirator should have never done so. *Id.* In a separate conversation weeks later, Mark Winters was informed that Petitioner's respirator was not going to be replaced, and that if he could not use a standard full face mask, he would not be allowed to do that job. *Id.*

Petitioner testified that he noticed that the filter for his respirator was changing colors, so he requested a new filter for it. (PX #16, pp. 20-21). Petitioner stated that when Mr. Winters attempted to obtain a replacement filter, they discovered a safety issue about the respirator itself. (PX #16, p. 21) Petitioner testified that the filter had changed from green to yellow. (PX #16 p. 22). Petitioner's counsel presented a manual which was identified by Petitioner to match his respirator. (PX #16, pp. 22-23, PX 5) Petitioner stated that the manual pertained to a Powerflow 3M Full-Face respirator. (PX #16, p. 23) Petitioner testified that the respirator had been given to him in 2010. *Id.* Petitioner stated that the manual was not given to him until Mr. Winters provided it and the letter described above. *Id.*

Petitioner testified that he last worked for Veolia on June 7, 2018. (PX #16, p. 24) He said that it was his weekend off when went home that day and he did not feel well so he laid down. *Id.* When he got up the next day, Petitioner testified that he still did not feel well, his left side hurt, and he was having trouble breathing. *Id.* He was taken to the hospital and admitted. *Id.* Petitioner testified that he has not returned to work since that time. (PX #16 p. 25).

Petitioner testified that he started smoking in 1996. (PX #16, p. 25) He said that he smoked about a half pack to a pack a day. *Id.* Petitioner indicated that he averaged a pack a day up until he stopped smoking. (PX #16, p. 26) Petitioner indicated that he quit smoking after he got out of the hospital because they put him on oxygen. *Id.* He said that he used nicotine patches to finally stop smoking. *Id.* Petitioner testified that he finished with the nicotine patch about a month and one half prior to his deposition. (PX #16, p. 27) Since June 10, 2018, Petitioner said that he had been hospitalized twice and was attending regularly scheduled doctor appointments including his lung specialist and his primary care provider. (PX #16, pp. 27-28). Petitioner stated that he was in the process of being evaluated for a lung transplant with Northwestern in Chicago. (PX #16, p. 28) Petitioner testified that he is on oxygen 24 hours a day, seven days per week and that it limits his mobility. (PX #16, p. 29)

Petitioner agreed that his last day for United Suppliers was September 19, 2017. (PX #16, p. 34, *see also* United Suppliers Exhibit No.1) Petitioner testified that his hire date for Veolia was September 19, 2017, as well. (PX #16, p. 35) He indicated that he was hired by Veolia North America as a full-time granulator operator. *Id.* Petitioner described his work area while working for United Suppliers as an open catwalk on a deck. *Id.* He said that when he monitored gauges, they were all the way around the drum. *Id.* Petitioner described the drum as a round cylinder about the size of a semi-trailer that turns and mixes the materials and acids together. (PX #16, p. 36) He described the job of a granulator operator to include mixing the fertilizer products with the chemicals to make the correct product. *Id.*

Petitioner testified that the anhydrous ammonia he worked with was in a liquid form. (PX #16, p. 37) He testified that the anhydrous ammonia had a strong smell of ammonia. *Id.* He said that the liquid was colorless. (PX #16, pp. 37-38) Petitioner explained that when the anhydrous ammonia comes out of the mill, it is present as a liquid and a gas depending on whether it is mixed with water. (PX #16, p. 38) Petitioner testified that the anhydrous ammonia was stored in a tank on the southeast corner of the mill and that was located in the outside part of the facility. *Id.* Petitioner explained that the anhydrous ammonia is transported to the drum through stainless steel lines. *Id.* He testified that the control room operator regulates that process. (PX #16, pp. 38-39) Petitioner agreed that the anhydrous ammonia is contained in a sealed and closed system. (PX #16, p. 39) However, Petitioner pointed out that the system does have valves on it. *Id.* Petitioner testified that he had seen people get their eyes burned by the substance. (PX #16, p. 40) Petitioner agreed that the reaction would be immediate, traumatic and acute. *Id.* Petitioner explained that if there is a leak, the anhydrous ammonia would be coming out as fumes. *Id.* He testified that if a leak was noticed, they would immediately don a respirator and shut down the mill. *Id.* Petitioner testified that, when he worked for United Suppliers, he had been present when events like this occurred where the mill had to be shut down.(PX #16, p. 41) He stated that he never sought medical treatment in relationship to those events. (PX #16 p. 41-42)

Petitioner testified that phosphoric acid is black acid. (PX #16, p. 42) He stated that it was a liquid and smelled strongly of rotten eggs. *Id.* Petitioner agreed that phosphoric acid is stored outdoors in liquid form and piped into the mixer. (PX #16, pp. 42-43) It was also regulated by the control room operator. (PX #16, p. 43) He likewise agreed that phosphoric acid is caustic and an individual exposed to the chemical would experience an immediate reaction. *Id.* Again, Petitioner recalled a specific event where a leak occurred in 2016 and he was called to shut down the mill. (PX #16, p 44) He testified that he did not seek medical attention at that time. *Id.* Petitioner was asked if sulfuric acid is the same substance as phosphoric acid and he indicated that it was. *Id.* Thereafter, Petitioner was asked about ammonia sulfate. Petitioner explained that it was a dry product that was used in the process of making certain products. (PX #16, p. 45) He stated that it was stored in the front bins. *Id.* Petitioner indicated that it was shipped in by semi-trucks or rail. (PX #16, p. 46) Petitioner explained that it was mixed through a scale, where the scale drops it onto a belt and the belt takes it to Elevator 2 where it is dropped into the back of the grain elevator. *Id.* Petitioner denied being exposed to this substance. (PX #16, pp. 46-47)

Petitioner testified that urea was shipped in to coated. (PX #16, p. 47) Petitioner explained that it was not a product that United Suppliers made but that it was used in their process. *Id.* He testified that it is dusty. *Id.* Petitioner testified that they were attempting to put a fine coating over it to keep the dust down and keep the urea from decomposing. (PX #16, p. 48) Petitioner explained that he had to check everything that came through the coating process to make sure that it was properly coated. *Id.* Petitioner stated that he had been directly exposed to anhydrous ammonia and phosphoric acid but not long enough to require medical treatment. (PX #16, p. 49)

Petitioner testified that he used the 3M Powerflow Full-face respirator when he worked for United Suppliers. (PX #16, p. 50) Petitioner testified that his position did not require mandatory use of the respirator. *Id.* Petitioner explained that if there was a breakdown to one of the drums, they had to check the air quality to see whether it was safe. (PX #16, pp. 50-51) When asked who determined the air quality, Petitioner responded that he as well as the supervisors tested the air quality. (PX #16, p. 51) He indicated that they would have to log their readings and fill out a confined space permit. *Id.* Petitioner indicated that if the air quality was poor, a supervisor had to make a decision from there. *Id.* Petitioner testified that if they had to tear apart the reactor, there

would be trace amounts of the substances they put through it including anhydrous ammonia and phosphoric acid still present. *Id.* Petitioner was asked again whether the measurements were taken by him, to which he responded, "Not always. It depends on who is doing the confined space permit. Yes, I've done my fair share of them." PX #16 pp. 52-53) Petitioner indicated that United Suppliers should have the readings from the air tests in their files. (PX #16, p. 53)

When asked whether the particulates present, whether anhydrous ammonia or phosphoric acid, were in a different state, Petitioner responded that it could be. (PX #16, p.53) When asked about the events where Petitioner had to wear a respirator, United Suppliers counsel implied that that it was not because Petitioner was exposed to anhydrous ammonia or phosphoric acid, to which Petitioner responded, "You're still dealing with fumes." (PX #16, pp. 53-54) Petitioner testified that the testers can show what chemicals are in the air. (PX #16 pp. 54-55)

Petitioner testified that he believed he was exposed to trace amounts of these chemicals daily while opening and shutting the valves. (PX #16, p. 90) As a granulator operator, he would open and shut the valves to each of these lines one to three times in a typical day. (PX #16, p. 91) As a control room operator, he continued to open and shut the valves to the anhydrous ammonia lines, but the other lines were opened and shut without him leaving the control room. (PX #16, p. 92) He testified that he knew he was exposed because he experienced slight burning of his eyes and nose. (PX #16, p.86) He did not seek medical treatment as he would usually feel fine after rinsing his mouth or splashing water on his face. *Id.*

Petitioner testified that he transferred to the control room in October 2017. (PX #16, p. 58) Petitioner was asked whether he recalled any events which required evacuation of the plant occurred while he worked for Veolia. He responded in the affirmative.(PX #16, p. 59) He testified that the management would have documented those incidents. (PX #16 p, 60) Petitioner testified that there were three different occasions. *Id.* He stated that on two occasions the local police came and had them shut down the mill due to anhydrous ammonia smell throughout the town of Henry. *Id.* Petitioner testified that on the first occasion the mill was down for about four hours. (PX #16, pp. 61-62) The second occurrence happened approximately three days later. (PX #16, p. 62) Following the second occurrence, they had to do a cleanup and shut the operation down for 24 hours. (PX #16, p 63) Petitioner testified that the scrubber was not working properly. *Id.*

Petitioner testified that he was not having any significant breathing problems when he was hired by Veolia. (PX #16, p. 65) He testified that he underwent a physical examination as part of the hiring process. (PX #16, pp. 65-66) Petitioner testified that he was doing fair physically when he was moved to the control room position. (PX #16, p. 68) He stated that the first time he sought treatment after moving to the control room was in December 2017. *Id.* Petitioner testified that he was only in the control room approximately 30 minutes of every hour. *Id.* Petitioner testified that he was on the floor the remainder of the time.(PX #16, pp. 68-69) He stated that he had to check the belts, drive shafts, drums, anhydrous ammonia lines, and phosphoric ammonia lines. (PX #16, p. 69)

Petitioner was questioned further about the letter attached as PX 4. (PX #16 pp. 72-80) Petitioner testified that he was given the letter by Mark Winters in March 2018. (PX #16, p. 72) He stated that he had not requested that letter to provide to his attorney. (PX #16, pp. 72-73) Petitioner denied that he had already filed a workers' compensation claim at that time. (PX #16, p. 73) Petitioner testified that he had not requested the letter and that Mr. Winters voluntarily provided it to him. *Id.* He reiterated that the meeting discussed in the letter took place when he

asked for filters for his respirator and his concern was taken to the safety director. *Id.* Petitioner was informed that that his mask was not suited for the purpose for which he received it and that it was only good for dust. (PX #16, p. 74) As such, the plant was no longer going to order filters, and just try to keep him out of those environments. *Id.* Petitioner testified that all respirators are supposed to be acceptable for use with fumes. (PX #16, p. 76) He stated the respirator in question was supposed to be for his safety when working around chemicals, acids and other substances. *Id.*

Petitioner testified that Mark Winters reported to Randy Artoli (phonetic) and Jessie, the safety director for Veolia. (PX #16 p. 78) Petitioner testified that he had not spoken to Jessie about the letter. *Id.* It was Petitioner's belief that Jessie knew that his mask did not protect him from the fumes. *Id.* Petitioner testified that other people in the plant do not have the same mask. (PX #16, p. 79) He indicated that the mask was purchased specifically for him. *Id.* Petitioner stated that he did not wear one of the masks that everyone else wore. *Id.* Petitioner said that he could not wear the other mask. *Id.* He was told that he needed the full airflow because of his breathing. (PX #16, p. 80) Petitioner indicated that they assigned him the mask due to his test results. (PX #16, p. 81)

Petitioner testified that he thought he was exposed to the previously discussed chemicals at times other than those calling for a shut down of the unit. (PX #16, p. 85) Petitioner testified that there are seeping valves everywhere and that occasionally valves spurt out when they are opened. *Id.* Petitioner disagreed with the proposition that if one was exposed to these chemicals you would need to seek immediate treatment. (PX #16, p. 86) Petitioner testified that he would rinse his mouth out and splash water on his face when exposed to small doses of ammonia. *Id.* Petitioner testified that with light does of the chemicals a person would experience a light burning of the eyes and burning of the nose. *Id.* Petitioner testified that he had annual breathing tests going back to when he started in 2010. (PX #16, pp. 86-87) He said that he never received copies of the results of the tests and was never told the results. (PX #16 p. 87)

United Suppliers witness Jeffrey Carr

United Suppliers presented Jeffrey Carr via evidence deposition on June 23, 2021. Mr. Carr testified that he was then employed by WinField United, Ames, Iowa. (United Suppliers Exhibit #4, p. 5) He began working for WinField in December 2017, after United Suppliers was acquired by a Land O' Lakes company, WinField. (United Suppliers Exhibit #4, pp. 5-6) Mr. Carr testified that he was Director of Operations during Petitioner's employment with United Suppliers. (United Suppliers Exhibit #4, pp. 7,10) Mr. Carr testified that United Suppliers owned the Henry, Illinois facility which was a dry fertilizer granular manufacturing facility and warehouse. (United Suppliers Exhibit #4, p. 8) Mr. Carr said that the Henry pant made a vast number of fertilizer products from raw materials. (United Suppliers Exhibit #4, pp. 10-11) He described the process as involving a T-reactor or manifold pipe where a number of ingredients were delivered into the manifold at one time and were transferred into a granulator or rotating drum emerging as a granulated finished product. (United Suppliers Exhibit #4, p. 11) Mr. Carr recalled that the ingredients included anhydrous ammonia, phosphoric acid, and sulfuric acid. (United Suppliers Exhibit #4, p. 12) He described anhydrous ammonia as being a compressed gas stored in pressurized tanks in a liquid state. (United Suppliers Exhibit #4, p. 13) Mr. Carr stated that when the product is released into the atmosphere it turns into a gas or vapor. *Id.* He described phosphoric acid as a liquid which remained in liquid stated even when not under pressure. (United Suppliers Exhibit #4, pp. 24-25) However, he did say that it produced unpleasant fumes. (United Suppliers

Exhibit #4, p. 25) He stated that the primary concern was with skin or eye contact. *Id.* Mr. Carr also described sulfuric acid to be in a liquid state stored in tanks similar to phosphorous tanks. (United Suppliers Exhibit #4, p. 28) He indicated that it is very toxic and can burn relatively quickly if it comes in contact with the skin. (United Suppliers Exhibit #4, p. 29). Mr. Carr denied having any knowledge of any leaks or exposures reported by Petitioner during his time as Director of Operations. (*See generally* United Suppliers Exhibit #4)

The job description of a granulator operator for United Suppliers states, "While performing the duties of this job, the employee is regularly exposed to moving mechanical parts and fumes or airborne particles." (United Suppliers' Exhibit #4, Carr Exhibit #1) Mr. Carr testified that the fumes and airborne particles being referenced in the job description are anhydrous ammonia, phosphoric acid, and sulfuric acid. (United Suppliers' Exhibit #4, p. 58) He testified a granulator operator is responsible for opening and closing the valve lines for these chemicals. *Id.* Mr. Carr testified that a granulator operator could be exposed to these chemicals when opening and closing the valve lines. (United Suppliers' Exhibit #4, pp. 58-59, 77-78)

Veolia North America witness Jeffrey Ellison

Veolia presented the testimony of Jeffrey Ellison via evidence deposition conducted on June 23, 2021. (Veolia Exhibit #4) Mr. Ellison testified that he was the Plant Manager for Veolia during Petitioner's employment with them. (Veolia's Exhibit #4, p. 6) He testified that he was familiar with Petitioner because he was involved in interviewing him as part of the start-up team and one of the first employees (Veolia Exhibit #4 p. 7) Mr. Ellison testified that Petitioner was responsible for the granulator. (Veolia Exhibit #4 p. 8) He stated that the granulator would adjust certain valves, water valves primarily, to affect the moister inside the granulator, walk around and inspect the belts to assure that the fertilizer was delivered to the proper location and assure that the chute to the oven was kept unobstructed. *Id.* He estimated Petitioner worked as a granulator operator for Veolia for approximately four months. (Veolia's Exhibit #4, pp. 8-9) He testified that one of Petitioner's job duties as a granulator operator was to open and close the valves for anhydrous ammonia, phosphoric acid, sulfuric acid, and aluminum sulfate. (Veolia's Exhibit #4, p. 45) He testified that a control room operator did 90 to 95 percent of his job within the control room but acknowledged there were four valves outside the control room Petitioner would have to open to which Mr. Ellison could not attest specifically. (Veolia's Exhibit #4, pp. 12, 14-15)

Mr. Ellison testified that he did not recall Petitioner ever reporting complaints of exposure or physical difficulties associated with exposure to chemicals (Veolia Exhibit #4 p. 32) Mr. Ellison testified that employees had to undergo pulmonary function tests annually to see whether they can safely don a respirator if necessary. (Veolia Exhibit #4 p. 46) Mr. Ellison confirmed that a conversation was held between himself, Mark Winters, and the head of safety regarding Petitioner's respirator around April 2018. (Veolia Exhibit #4, pp.46-48)

Medical Treatment

Treatment records from Perry Memorial Hospital were admitted into the record as Petitioner's Exhibit #2. On June 11, 2017, Petitioner presented to the emergency room with complaints of left-sided numbness and tingling for the previous three hours. (PX #2) He reported some trouble breathing and coughing for the past 3 days. *Id.* It was noted that he continued to smoke 1 pack of cigarettes per day. *Id* His cough was reported to be non-productive, and he stated

that he has had a little bit of chest pain recently. *Id.* Environmental History showed that he was exposed to chemicals and used a mask while at work. (PX #2) A chest x-ray showed COPD with mild bronchial wall thickening and right infrahilar haziness. *Id.* He was diagnosed with exacerbation of COPD with bronchospasm and paresthesia. *Id.* He was prescribed Albuterol to use as needed and told to follow up with personal physician. (PX #2)

On October 27, 2017, Petitioner was seen at Prompt Care for persistent productive cough with dyspnea for 5 days. (PX #4) Review of systems was positive for fatigue, malaise, dyspnea on exertion, and dyspnea at rest. *Id.* Upon physical exam, the chest exam findings were mild respiratory distress, bilateral faint wheezing, and diminished breath sounds. *Id.* A chest x-ray showed COPD with chronic infrahilar haziness and minimal atelectasis. The differential diagnoses were upper respiratory infection, bronchitis, and pneumonia. *Id.* A follow up appointment was made for him at the Henry Clinic. (PX #4)

On November 3, 2017, Petitioner was seen at the Henry Clinic. (PX #4) He reported chronic problems for the last couple years with breathing with activity, and audible breathing. *Id.* He stated that he was doing much better. *Id.* He had not seen a PCP for over 10 years. He reported 1 pack a day/25years and that he had decreased from over 2 packs/day. *Id.* Petitioner stated that he worked at a chemical plant for the last 8 years where he was exposed to fumes and has protective gear. (PX #4) Chest x-rays on 6/11/17 and 10/27/17 showed COPD. *Id.* He was on Augmentin and Prednisone with 3 days of medication therapy left and took an Albuterol inhaler as needed. He had not been evaluated for his COPD. *Id.* His symptoms included cough, dyspnea and increased work breathing. *Id.* He was unlimited in the ability to perform ADLs. His diagnoses were COPD, pneumonia, and smoker. (PX #4) He was prescribed Symbicort – 2 puffs 2 times daily and was prescribed Chantix for smoking cessation. *Id.* Lab work was ordered, and he was to follow up in 2 weeks. *Id.*

On November 17, 2017, Petitioner presented to the Henry Clinic and reported that he was still experiencing wheezing, productive cough, and URI symptoms. (PX #4) He had a pulmonologist appointment scheduled for December 20th. *Id.* His diagnosis was acute exacerbation of COPD with a differential diagnosis of pneumonia. *Id.* He was instructed to follow up in 1 week.

On November 24, 2017, Petitioner reported that he coughs only if running around a lot. (PX #4) He reported trying to quit smoking and was down to 3 to 4 cigarettes a day with Chantix. *Id.* He reported exposure to chemicals at work and wore a mask. *Id.* Symptoms experienced include cough, dyspnea, and wheezing. (PX #4) His diagnoses were acute exacerbation of COPD and pneumonia. *Id.*

On December 20, 2017, Petitioner attended an appointment with pulmonologist Dr. Chittivelu (from OSF Illinois Lung & Critical Care) for evaluation and management of COPD. (PX #3) He reported smoking for 20 plus years associated with a chronic bronchitis expectorating mucopurulent sputum, wheezing, dyspnea on exertion and chronic fatigue. *Id.* Petitioner reported working in a facility where he was exposed to chemicals such as hydrochloric acid, sulfuric acid, and other inhalant toxins. *Id.* Diagnosis included prolonged smoking history, chronic bronchitis, dyspnea on exertion, COPD, chronic fatigue and snoring. *Id.*

On June 10, 2018, he presented to Perry Memorial Hospital Emergency Room with shortness of breath for several hours. (PX #2) Petitioner reported that he came home short of

breath and tried breathing treatments which did not help him. *Id.* Upon physical exam, he was in acute distress. *Id.* Wheezing was noted bilaterally with no retractions. *Id.* He had decreased basilar breath sounds. (PX #2) A chest x-ray showed streaky retrocardiac opacity with a differential diagnosis that included atelectasis and infection as well as findings of obstructive lung disease. *Id.* He was put on a continuous nebulizer, which provided significant improvement with aeration and air exchange. *Id.* His diagnoses were COPD exacerbation and acute respiratory distress. *Id.* He was admitted for IV steroids and frequent nebulizer treatments. (PX #2) A physical exam conducted on June 11, 2018, indicated moderate respiratory distress as evidenced by use of accessory respiratory muscles of the neck intercostal retractions. *Id.* His heart was tachycardic without murmur lungs revealing diffuse expiratory wheezing scattered rhonchi. *Id* Upon discharge, he was instructed to wear oxygen at 2 L and to see Dr. Chittilevu as previously scheduled for follow up. *Id.* The discharge diagnosis was COPD exacerbation and acute respiratory distress. (PX #2) He was to remain off work until cleared by pulmonologist. Also instructed to follow up with his primary care physician. *Id.*

On June 22, 2018, Petitioner saw Dr. Chittivelu. (PX #3) He was noted to be significantly weak on 2 L of oxygen as he was dyspneic during conversation. *Id.* He had pulmonary symptoms of chronic cough, dyspnea, and fatigue. *Id.* The impression was COPD due to prolonged cigarette smoking. *Id.* He was unable to do any strenuous work and required oxygen. (PX #3) He was not allowed return to work for another week. *Id.* He was allowed to return to work on June 28, 2018, with use of oxygen. *Id.*

On June 25, 2018, Petitioner follow up with the Henry Clinic. (PX #4) Review of systems was positive for shortness of breath at all times. *Id* He reported he was ordered to wear oxygen every 3 hours at home and continuously while at work, per his pulmonologist. *Id.* He stated his employer will not allow him to wear oxygen while at work. *Id.* The assessments included COPD and chronic bronchitis. (PX #4)

Pulmonary function testing performed on June 29, 2018, showed severe obstructive lung defect; airways resistance increased; air trapping consistent with obstructive lung disease; and moderately reduced diffusing capacity. (PX #3)

Upon follow up with the Henry Clinic on August 15, 2018, review of systems was positive for shortness of breath and productive cough. (PX #4) The assessments were COPD with acute exacerbation and shortness of breath on exertion. *Id.*

On September 18, 2018, Petitioner presented to St. Margaret's Community Health Clinic with persistent productive cough, shortness of breath, and wheezing. (PX #7) Associated symptoms included diarrhea, vomiting, and chest discomfort. *Id.* He was given nebulizer treatment right away and his oxygen was temporarily increased to 4%, which improved his pulse. *Id.* After about 5 minutes, the oxygen was decreased to the normal 2% level. *Id.* He was given a Rocephin injection. (PX #7)

On October 18, 2018, Petitioner followed up with the Henry Clinic. His physical exam indicated diminished lung fields bilaterally and posteriorly. (PX #4)

Petitioner followed up for routine COPD check up with Illinois Lung & Critical Care on November 5, 2018. (PX #3) He appeared to be in exacerbation as he was wheezing and having

trouble walking down the hallway due to shortness of breath. *Id.* He reported he had been having increased shortness of breath and wheezing with clear sputum production for several days. *Id.* He was on 2 L oxygen. *Id.* The diagnoses included COPD exacerbation, gold IV severely severe chronic obstructive pulmonary disease, and chronic hypoxemic respiratory failure. (PX #3) He was to continue on Advair, stop Incruse, start Spiriva Respimat, switch Albuterol nebulizer treatments to Duo nebs, start Prednisone and taper to 16 days. *Id.* He was instructed to follow up in 1-2 weeks. *Id.* Petitioner returned on November 13, 2018. (PX #3) It was noted that Petitioner apparently used a respirator that was not approved for the particulate he was exposed to during his work, which may be contributing to the severity of his COPD at a young age. *Id.* The degree of his COPD was worse than expected given his smoking history. *Id.* He was interested in a lung transplant. *Id.* He was to continue Spiriva, Advair, and Duo nebs every 4-6 hours. (PX #3) He was to replace Albuterol HFA with Combivent Respimat. *Id.* He was to follow up with Dr. Chittivelu in 3 months. *Id.*

Petitioner presented to the emergency room on December 7, 2018, with shortness of breath. (PX #2) On examination, he had decreased air entry bilaterally and heart was slightly tachycardic. *Id.* A chest x-ray showed no acute abnormality; lung hyperinflation and upper lung zone hyperlucency most consistent with COPD; and mild streaky bibasilar opacities that likely represented mild atelectasis and scarring. *Id.* He was given a continuous nebulizer and a steroid and he was admitted to continue these treatments. *Id.* He was discharged the following day with a diagnosis of COPD exacerbation. (PX #2) An Alpha-1-Antitrypsin test performed on December 17, 2018 was found to be in the normal range. *Id.*

On December 26, 2018, Petitioner was seen at the Henry Clinic in follow up to his recent admission. (PX #4) He reported he does not have any shortness of breath, but he had a greenish to yellow phlegm and believed his cough was getting worse. *Id.* He also reported worsening sinus pain and pressure. *Id.* The assessments were acute sinusitis and COPD. *Id.* He was instructed to continue with inhaler treatment and nebulizer as prescribed and to follow up with pulmonologist. (PX #4)

On January 8, 2019, Petitioner returned to Illinois Lung & Critical Care for recheck on hypercapnic respiratory failure and severe COPD. (PX #3) He was working with Northwestern for a lung transplant and was going for testing next month. *Id.* His Alpha-1-Antitrypsin levels were within normal limits. *Id.* He had very severe COPD that was thought to be due to exposure to particulates at work with inappropriate respirator provided by his company. *Id.* His history included a hospitalized at the beginning of December due to COPD exacerbation. (PX #3) He had been having increased shortness of breath. *Id.* The impression was very severe gold 4 COPD likely secondary to a combination of smoking and long-term inhalation of chemicals at his former employer with provision of inadequate respirator. *Id.* It was agreed that he should follow up with Northwestern for lung transplant. *Id.*

On February 4, 2019, Petitioner was seen in consultation for lung transplant evaluation at University of Chicago Medicine. (PX #9) He was noted to have a history of chronic respiratory failure secondary to COPD, tobacco exposure, and occupational exposure. *Id.* Other than mild obesity, there were no contraindications to a lung transplant. *Id.* A CT of the chest showed severe emphysema with bronchial wall thickening and scattered areas of scarring and atelectasis. *Id.* He was deemed to be a high-risk patient. (PX #9)

Petitioner continued to receive follow up treatment with his primary care providers (PX #4 & PX #12) as well as with Illinois Lung & Critical Care. (PX.#3)

On September 13, 2019, an ambulance was dispatched to Petitioner's residence. (PX #2) Upon arrival, his daughter was standing outside stating that the Petitioner was in the kitchen having trouble breathing. *Id.* He was found standing in a tripod position against kitchen counter. *Id.* He was on home oxygen at 3.5 L. *Id.* He stated that he has had a respiratory infection the last 2 weeks and finished his antibiotic and steroids 1 week ago. (PX #2) He stated his symptoms got worse this morning about 4:00 a.m. *Id.* He was speaking 2-3 words per sentence. *Id.* He was transported to Perry Memorial Hospital. (PX #5) He was admitted with respiratory distress secondary to bronchospastic with COPD exacerbation. (PX #2) Significant findings noted were diffuse expiratory and inspiratory wheezing with poor air exchange. *Id.* Procedures and treatment provided consisted of IV steroid antibiotics, frequent nebulizer treatments and inhaled steroids. *Id.* He was discharged on September 19, 2019. *Id.*

On August 10, 2020, Petitioner transitioned from Illinois Lung & Critical Care to UnityPoint Pulmonary due to change in insurance. (PX #11) He had been on oxygen at 2 L all the time since July 2018. *Id.* He used a pulse oximeter as well. *Id.* He had very reduced exercise tolerance. *Id.* He used Wixela, Pulmicort, Incruse, Duonebs 3-4 times a day, and Albuterol 1-2 times a day. (PX #11) He was on chronic macrolide since October 2019 and daily Prednisone therapy for the past 1.5 years. *Id.* He used Proair for emergencies. *Id.* Humidity made his breathing worse. *Id.* His exercise tolerance was about 1 block. (PX #11) He rarely did stairs and used a walker when outside. *Id.* He complained of a chronic cough with productive sputum. *Id.* He provided a history that he worked in a chemical fertilizer plant from 2010 to 2018. *Id.* His diagnoses included chronic hypoxic respiratory failure and very severe gold stage IV COPD thought to be related to his chemical exposure. (PX #11) His Alpha-1 was normal. *Id.* He was to continue with current medications. *Id.* He was prescribed Daliresp once a day and he is to use 3L oxygen at all times. *Id.*

Petitioner was seen for follow up of COPD and chronic respiratory failure on June 10, 2021, at UnityPoint Pulmonary. (PX #11) Review of systems was positive for shortness of breath and cough without sputum. *Id.* On exam, scattered wheezing was noted throughout. *Id.* The assessments included chronic hypoxic respiratory failure and very severe COPD gold stage IV thought to be related to chemical exposure. *Id.* He had been evaluated by the University of Chicago for a lung transplant. (PX #11) This has been on hold due to the pandemic. *Id.* He was counseled and encouraged to reach out to the transplant team to re-evaluate the transplant process. *Id.* He was requalified for oxygen. *Id.* He was to follow up in 6 months or earlier if needed. (PX #11)

Expert Opinions and Deposition Testimony

A record review was conducted by Dr. Glennon Paul at the request of Petitioner's counsel. (PX #13) In his January 23, 2019, report, Dr. Paul diagnosed the Petitioner with far-advanced stage IV emphysema present on pulmonary function studies since at least the past three years and to some degree for the last 10 years. (PX #13 p. 3) Dr. Paul opined that there is a causal connection between his diagnosed condition and his work with hazardous chemicals. *Id.* He found Petitioner's medical care to be reasonable and necessary. *Id.* Dr. Paul opined that he would need future medical management on a chronic basis. *Id.* He stated that the only way he will be able to function in the future was by obtaining a lung transplant. (PX #13 p. 3) Dr. Paul commented that, "at his very

young age and his history of mild to moderate smoking in the last 20 years, suggest[s] that the chemicals he was exposed to at work play a very significant role in the development of this emphysema." *Id.* In an addendum to his report, Dr. Paul opined, "Even if he only had small amounts of exposure to these toxic gases, over a period of 8 years certainly would have contributed to the development of emphysema that he has. It is very unusual to have the degree of emphysema that this man has, at such a young age, in a person who has negative tests for alpha-1-antitrypsin deficiency, therefore his work environment either contributed to, or was the major cause of, his severe emphysema." (PX #13, p. 4)

On October 28, 2019, Petitioner attended an IME with Dr. Robert Cohen at the request of United Suppliers. (United Suppliers Exhibit #2) In his report, Dr. Cohen diagnosed Petitioner with severe COPD, noting his history of smoking for 25 years with varying reports of the quantity of cigarettes he smoked. (United Suppliers Exhibit #2, p. 9) He noted that the various medical histories report as little as one half pack per day and other records stating that he had just cut down to one pack per day from two acks per day. *Id.* He based his diagnosis upon spirometry findings that show an irreversible obstructive defect and chest imaging showing hyperinflation consistent with emphysema. *Id.* Dr. Cohen stated that Petitioner's occupational exposures were to chemical fumes from ammonium sulfate, phosphoric acid, sulfuric acid, anhydrous ammonia, potash, and urea, which are respiratory irritants that may exacerbate asthma or COPD. *Id.* Dr. Cohen believed that there was insufficient medical evidence sowing that these chemicals are a cause of COPD. (United Suppliers Exhibit #2, p. 9) He opined that Petitioner's smoking is more likely than not the cause of his COPD. (United Suppliers Exhibit #2, p. 10) Dr. Cohen went on to state that, "His work activities are not likely the cause of his COPD, however, a worker with severe COPD such as Mr. Malone would be susceptible to developing exacerbations if exposed to respiratory irritants." *Id.* He opined that the treatment Petitioner received for his exacerbation of COPD was reasonable, necessary, and appropriate, but he did not believe there was any relationship to any exposure at work. *Id.* He opined that these respiratory irritants "may exacerbate airways disease, but do not result in the parenchymal damage that causes emphysema." (United Suppliers Exhibit #2)

Dr. Glennon Paul testified via evidence deposition on March 10, 2020. (PX #14) Dr. Paul is Board Certified in internal medicine, allergy, immunology, and asthma. (PX #14, pp. 4-5) Dr. Paul opine that the chemicals Petitioner was exposed to "are causative in the development of his emphysema." (PX #14, p. 16) He testified that Petitioner's emphysema was a permanent condition. (PX #14, p. 16) With regard to Petitioner's ability to work, Dr. Paul testified that, "His symptoms are so bad he's oxygen dependent and there's no way he can go back to work." *Id.* He felt Petitioner was permanently and totally disabled. (PX #14, pp. 16-17) When presented with a hypothetical describing Petitioner's job duties and assuming Petitioner was exposed to trace amounts of anhydrous ammonia, sulfuric acid, and phosphoric acid while opening the valves to said chemicals, multiple times a day, from October 2010 to June 7, 2018, Dr. Paul opined his advanced stage IV emphysema was causally related to such work activity. (PX #14, pp. 21-24) Dr. Paul reviewed pulmonary function testing performed on Petitioner from 12/17/10 to 12/20/16 and opined that the rate of progression could not be solely related to cigarette smoking. (PX #14, pp. 125-128) He stated that this is the fastest progression of emphysema he has ever seen in 50 years of practicing medicine and "[i]t's got to be due to some other cause with it." (PX #14, p. 130)

Petitioner attended an IME with Dr. Edward Diamond at the request of Veolia on June 25, 2019. (PX #15, Ex. 2) Dr. Diamond reviewed the opinions of Dr. Cohen, Dr. Paul and the

pulmonary function testing performed on Petitioner from 12/17/10 to 6/25/19 and authored a report dated July 22, 2020. (PX #15, Ex. 3) Dr. Diamond opined "I believe that within reasonable medical certainty, Mr. Malone's dramatic decline in lung function was significantly impacted by his work exposure. I agree with Dr. Paul's statements that such an extremely rapid and dramatic decline in lung function would be very unusual to be caused by smoking alone. I disagree with Dr. Cohen's opinion as he states that these chemicals damage only the airways and do not advance to the small airways and alveoli, so that they would not cause COPD so that his COPD is solely caused by smoking. I believe that long term inhalation of the fumes from these chemicals can cause various forms of lung damage that would lead to COPD." (PX #15, Ex. 3)

Dr. Edward Diamond testified via evidence deposition on February 17, 2021. (PX #15) Dr. Diamond is Board Certified in internal medicine and pulmonary medicine. (PX #15, p. 3) Dr. Diamond diagnosed the Petitioner with extremely severe COPD with hypoxemia, which was a result of his exposure to the chemicals at work. (PX# 15, p. 8) Dr. Diamond testified that he cannot ever remember seeing such a dramatic fall as in the Petitioner's pulmonary function in his 38 years of practice simply from cigarette smoking. (PX #15, pp. 17-18) He strongly disagreed with Dr. Cohen's opinion that the chemicals could not have caused the damage to Petitioner's lung on their own. He stated when chemicals are being inhaled in lower concentrations on a daily basis, they get down into the lung and clearly could have caused the damage sustained by Petitioner. (PX #15, pp.18-19)

CONCLUSIONS OF LAW

In support of the Arbitrator's Decision related to (C.), Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, and (O.), was Petitioner exposed to the hazards of an occupational disease, the Arbitrator finds and concludes as follows:

Pursuant to Section 1(d) of the Occupational Disease Act, "An employee shall be conclusively deemed to have been exposed to the hazards to an occupational disease when, for any length of time however short, he or she is employed in an occupation or process in which the hazard of the disease exists."

Petitioner testified that he believes he was exposed to trace amounts of anhydrous ammonia, sulfuric acid, and phosphoric acid on a daily basis when opening and shutting the valves to these lines. (PX #16, p. 90) As a granulator operator, Petitioner would open and shut the valves to each of these lines one to three times in a typical day. (PX #16, p. 91) As a control room operator, he continued to open and shut the valves to the anhydrous ammonia lines, but the other lines were capable of being opened and shut without him leaving the control room. (PX #16, p. 92) Petitioner knew that he was exposed because he experienced a light burning in his eyes and nose. (PX #16, p. 86) He did not seek medical treatment as he would usually feel fine after rinsing his mouth or splashing water on his face. *Id.*

It is undisputed Petitioner worked as a granulator operator for the entire time he was employed by Respondent United Suppliers from October 2010 to September 17, 2017. It is also undisputed that he worked as a granulator operator for Respondent Veolia from September 19, 2017, until October 2017. This was corroborated by Respondent witness, Jeffrey Carr, the Director

of Operations for United Suppliers. The job description of a granulator operator for United Suppliers states, "While performing the duties of this job, the employee is regularly exposed to moving mechanical parts and fumes or airborne particles." (United Suppliers' Exhibit 4, Carr Exhibit 1) Mr. Carr testified that the fumes and airborne particles being referred to in that job duty description are anhydrous ammonia, phosphoric acid, and sulfuric acid. (United Suppliers' Exhibit 4, p.58) He testified a granulator operator is responsible for opening and closing the valves on the lines for these chemicals. *Id.* Mr. Carr testified that a granulator operator could be exposed to the aforementioned chemicals when opening and closing the valve lines. (United Suppliers' Exhibit 4, pp.58-59, 77-78)

Petitioner's testimony that he continued to open and shut the valves to the anhydrous ammonia lines when he got moved to the control room operator position was unrebutted as Jeffrey Ellison, Veolia's Plant Manager, acknowledged there were four valves that were outside the control room Petitioner would have to open for which Ellison could not attest to specifically. (Veolia's Ex. 4, pp.12, 14-15)

Petitioner's retained expert, Dr. Glennon Paul, diagnosed the Petitioner with far-advanced stage IV emphysema and opined that his work exposure has caused or aggravated the development of his emphysema. (PX #14, p. 16) Veolia's retained expert, Dr. Edward Diamond, diagnosed the Petitioner with extremely severe COPD with hypoxemia, which was a result of his exposure to the chemicals at work. (PX #15, p. 8)

Petitioner testified that he last worked for Veolia on June 7, 2018. (PX #16, p. 24)

Wherefore, the Arbitrator finds and concludes that the Petitioner was last exposed to the hazards of an occupational disease on June 7, 2018, while employed by Respondent Veolia North America, Inc. Furthermore, the Arbitrator concludes that Respondent United Suppliers, Inc. was not Petitioner's employer at the time of his last occupational exposure and thus has no liability for his occupational exposures.

In support of the Arbitrator's Decision related to (E.), Was timely notice of the accident given to Respondent, the Arbitrator finds and concludes as follows:

Under Section 6(c) of the Occupational Disease Act, notice shall be given to the employer of the disablement, "as soon as practicable after the date of disablement." That section further states, "no defect or inaccuracy of such notice shall be bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he or she is unduly prejudice in such proceedings by such a defect or inaccuracy."

The Act requires the employee to place the employer in possession of the known facts within the statutory period but allows that a defect or an inaccuracy in the notice is not a bar unless the employer is unduly prejudiced by the inaccurate notice. Because Respondent Veolia was aware of Petitioner's job duties and environment and the fact that he was experiencing breathing problems and was admitted into the ICU and put on 24-hour oxygen within the statutory period, it can be fairly said that Respondent Veolia was in possession of the necessary known facts to put them on notice pursuant to Section 6(c) of the Occupational Disease Act. Moreover, the Henry

Clinic medical record of June 25, 2018, states that his employer will not allow him to wear oxygen while at work thereby providing a presumption of notice within the statutory time period.

In support of the Arbitrator's Decision related to (F.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

According to Section 1(d) of the Occupational Disease Act, "The employer liable for the compensation in this Act provided shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease claimed upon regardless of the length of time of such last exposure."

It is undisputed Petitioner worked as a granulator operator for the entire time he was employed by Respondent United Suppliers from October 2010 to September 17, 2017. It is likewise undisputed that he worked as a granulator operator for Respondent Veolia from September 19, 2017 into October 2017. This was corroborated by Respondent witness Jeffrey Carr the Director of Operations for United Suppliers. The job description of a granulator operator for United Suppliers states, "While performing the duties of this job, the employee is regularly exposed to moving mechanical parts and fumes or airborne particles." (United Suppliers' Exhibit 4, Carr Exhibit 1) Mr. Carr testified that the fumes and airborne particles being referred to in that job duty description are anhydrous ammonia, phosphoric acid, and sulfuric acid. (Respondent United Suppliers' Exhibit 4, p.58) He testified a granulator operator is responsible for opening and closing the valve lines for these chemicals. *Id.* Mr. Carr testified that a granulator operator could be exposed to these chemicals when opening and closing the valve lines. (United Suppliers' Exhibit 4, pp.58-59, 77-78)

Petitioner's testimony that he continued to open and shut the valves to the anhydrous ammonia lines when he got moved to the control room operator position was unrebutted as Jeffrey Ellison, Veolia's Plant Manager, acknowledged there were four valves that were outside the control room Petitioner would have to open for which Ellison could not attest specifically. (Veolia's Ex. 4, pp.12, 14-15)

A record review was conducted by Dr. Glennon Paul at the request of Petitioner's counsel. In his report of January 23, 2019, Dr. Paul diagnosed the Petitioner with far-advanced stage IV emphysema. Dr. Paul opined that Petitioner's condition was causally connected to his working with anhydrous ammonia, phosphoric acid, sulfuric acid, ammonia sulfate, and urea while working as a granulator operator and control room operator. He opined that he is not able to return to work at this time or any time in the future. He found that the medical care provided has been reasonable and necessary and that he would need future medical management on a chronic basis for him to have at least a semblance of a life. He stated that the only way he will be able to function in the future was by obtaining a lung transplant. He added "at his very young age and his history of mild to moderate smoking in the last 20 years, suggests that the chemicals he was exposed to at work play a very significant role in the development of this emphysema…Even if he only had small amounts of exposure to these toxic gases, over a period of 8 years certainly would have contributed to the development of emphysema that he has. It is very unusual to have the degree of emphysema that this man has, at such a young age, in a person who has negative tests for alpha-1-antitrypsin deficiency, therefore his work environment either contributed to, or was the major cause of, his severe emphysema." (PX #13)

Petitioner attended an IME at the request of Respondent United Suppliers with Dr. Robert Cohen. In his October 28, 2019 report, Dr. Cohen diagnosed Petitioner with severe COPD based upon spirometry findings that show an irreversible obstructive defect as well as chest imaging consistent with emphysema. He stated that Petitioner's occupational exposures were to chemical fumes from ammonium sulfate, phosphoric acid, sulfuric acid, anhydrous ammonia, potash, and urea, which are respiratory irritants that may exacerbate asthma or COPD. He opined that Petitioner's smoking is more likely than not the cause of his COPD. "His work activities are not likely the cause of his COPD, however, a worker with severe COPD such as Mr. Malone would be susceptible to developing exacerbations if exposed to respiratory irritants." Dr. Cohen stated that it appeared Petitioner received good medical care for his COPD and that the treatment received for exacerbation of COPD was reasonable, necessary, and appropriate, but he did not believe there was any relationship to any exposure at work. He opined that these respiratory irritants "may exacerbate airways disease, but do not result in the parenchymal damage that causes emphysema." (United Suppliers Ex. 1)

Dr. Paul is Board Certified in internal medicine, allergy, immunology, and asthma. (Px. 14, pp.4-5) He testified via evidence deposition on March 10, 2020. When asked to assume a hypothetical that Petitioner was exposed to trace amounts of anhydrous ammonia, sulfuric acid, and phosphoric acid when adjusting the valves to such chemicals, multiple times a day from October 2010 to June 7, 2018, Dr. Paul opined his far advanced emphysema would be causally related to such work activity. (PX #14, pp. 21-24) Dr. Paul reviewed pulmonary function testing performed on Petitioner from 12/17/10 to 12/20/16 and opined that the rate of progression could not be solely related to cigarette smoking. (PX #14, pp. 125-128) He stated that this was the fastest progression of emphysema that he has ever seen in 50 years of practicing medicine and "[i]t's got to be due to some other cause with it." (PX #14, p. 130) The chemicals he was exposed to "are causative in the development of his emphysema." (PX #14, p. 16) He cannot return to work. (Id.) "His symptoms are so bad he's oxygen dependent and there's no way he can go back to work." (Id.) He is permanently and totally disabled. (PX #14, pp. 16-17)

Petitioner attended an IME with Dr. Edward Diamond at the request of Veolia on June 25, 2019. (PX #15, Ex. 2) Dr. Diamond reviewed the opinions of Dr. Cohen and Dr. Paul and the pulmonary function testing performed on Petitioner from 12/17/10 to 6/25/19 and authored a report dated July 22, 2020. (PX #15, Ex. 3) He provided a history in which Petitioner worked for United Suppliers as a granulator operator from 2010 to September 19, 2017, whereby chemicals including ammonium sulfate, phosphoric acid, sulfuric acid, anhydrous ammonia, potash, and urea are mixed and processed into fertilizer. *Id.* During that time, he was exposed to fumes from those chemicals. *Id.* On September 19, 2017, he was hired by Veolia and continued as a granulator operator for the first month after which his job was changed to a control room operator. *Id.*Dr. Diamond opined "I believe that within reasonable medical certainty, Mr. Malone's dramatic decline in lung function was significantly impacted by his work exposure. I agree with Dr. Paul's statements that such an extremely rapid and dramatic decline in lung function would be very unusual to be caused by smoking alone. I disagree with Dr. Cohen's opinion as he states that these chemicals damage only the airways and do not advance to the small airways and alveoli, so that they would not cause COPD so that his COPD is solely caused by smoking. I believe that long term inhalation of the fumes from these chemicals can cause various forms of lung damage that would lead to COPD." *Id.*

Dr. Diamond is Board Certified in internal medicine and pulmonary medicine. (PX #15, p.3) He testified via evidence deposition on February 17, 2021. (PX #15) Dr. Diamond diagnosed the Petitioner with extremely severe COPD with hypoxemia, which was a result of his exposure to the chemicals at work. (PX #15, p .8) Dr. Diamond testified that he cannot ever remember seeing such a dramatic fall as in the Petitioner's pulmonary function in his 38 years of practice simply from cigarette smoking. (PX1 #5, pp. 17-18) He strongly disagreed with Dr. Cohen's opinion that the chemicals could not have made the damage caused to Petitioner's lung itself, but when chemicals are being inhaled in lower concentrations on a daily basis, they get down into the lung and clearly could have caused the damage sustained by Petitioner. (PX #15, pp. 18-19)

The Arbitrator finds the opinions of Dr. Paul and Dr. Diamond are more credible than those expressed by Dr. Cohen. Therefore, based upon the causal connection opinions and testimony of Dr. Paul and Dr. Diamond, the Arbitrator finds that Petitioner's current condition of severe COPD/ emphysema requiring 24-hour oxygen causally related to his chemical exposures while working for Respondent Veolia until his last date of exposure on June 7, 2018.

In support of the Arbitrator's Decision related to (G.), What were Petitioner's earnings, the Arbitrator finds and concludes as follows:

Veolia's Exhibit #2 sets forth earnings statements covering Petitioner's employment from 9/17/17 to his last day of work on 6/7/18. Petitioner's assertion that overtime was mandatory was uncontested. After excluding the first earnings statement for the time period of 9/17/17 to 9/22/17 from the calculation because it is a partial week, Petitioner's gross earnings calculating overtime at straight time rate is $28,187.17 for a 37-week period. Dividing $28, 187.17 by 37 yields This $761.82.

Wherefore, the Arbitrator finds and concludes that Petitioner's average weekly wage is $761.82.

In support of the Arbitrator's Decision related 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 medical services, the Arbitrator finds and concludes as follows:

All three examining physicians, Dr. Paul, Dr. Diamond, and Dr. Cohen agreed that the treatment provided to the Petitioner was reasonable, necessary, and appropriate.

Therefore, the Arbitrator finds and concludes that the medical services provided to Petitioner were reasonable and necessary. The cost of the medical services related to the Petitioner's condition are $83,613.36 (Perry Memorial Hospital - $57,561.75; Henry Community Area Ambulance - $985.00; Central Illinois Radiology - $300.00; Peoria Tazewell Pathology - $113.60; St. Margaret's Clinic - $329.00; Illinois Lung & Critical Care - $2,394.00; Perry Health Clinic - $1,923.01; UnityPoint Clinics - $2,979.00; University of Chicago Medicine - $16,140.00; and University of Chicago Physicians - $888.00). Of this amount, the respondent paid $0.00; Petitioner's group health insurance paid $39,971.54; Medicaid paid $3,501.94; insurance discounts of $32,295.92 were received; and $6,843.96 remains unpaid. $46,815.50 shall be paid to the

petitioner. This amount represents the amount paid by his personal insurance and the unpaid remaining bills. Respondent shall satisfy the Medicaid lien.

In support of the Arbitrator's Decision relating to (K.), What temporary benefits are in dispute, the Arbitrator finds and concludes as follows:

Petitioner has been off work since his admission into Perry Memorial Hospital on June 10, 2018. Petitioner claims entitlement to temporary total disability benefits from June 10, 2018, through January 22, 2019, the day prior to Dr. Glennon Paul's report in which he opined Petitioner was not able to return to work at this time or any time in the future.

Petitioner was discharged from the hospital on June 11, 2018, and was to remain off work until cleared by a pulmonologist. Petitioner has been on 24-hour oxygen since that time. Respondent has made no claim Petitioner is capable of working.

Accordingly, the Arbitrator finds Petitioner was temporarily and totally disabled from June 10, 2018, through January 22, 2019, a period of 32 2/7 weeks.

In support of the Arbitrator's Decision relating to (L.), What is the nature and extent of the injury, the Arbitrator finds and concludes as follows:

Petitioner has been off work completely since his admission into Perry Memorial Hospital on June 10, 2018. He has been on 24-hour oxygen since that time. Respondent has made no claim Petitioner is capable of working. On January 23, 2019, Dr. Glennon Paul opined Petitioner was not able to work at this time or any time in the future. In his deposition, Dr. Paul testified Petitioner was permanently and totally disabled.

Based upon the foregoing, the Arbitrator finds and concludes that the evidence supports an award of permanent and total disability. Respondent shall pay Petitioner permanent and total disability benefits at the minimum PTD rate of $548.93 per week for life, commencing January 23, 2019, as provided in Section 8(f) of the Act.

In support of the Arbitrator's Decision relating to (M.), Should penalties or fees be imposed upon Respondent, the Arbitrator finds and concludes as follows:

The Arbitrator finds that Petitioner's Petition for Penalties and Attorney Fees are well taken. (PX #17) The Arbitrator finds Respondent Veolia's failure to pay benefits unreasonable and in bad faith. Its failure to disclose the opinions of its retained expert in a timely manner is particularly egregious. Specifically, Dr. Diamond examined the Petitioner in June 2019 and was told by Veolia's attorney that he was going to provide more evidence for him to review to incorporate into his report. (PX #15 p. 12) He never received any additional information and finally completed the report with the materials originally provided in June 2019. Dr. Diamond's opinions causally relate Petitioner's current condition of ill-being to his chemical exposure while working for Respondent Veolia.

Given the foregoing, the Arbitrator finds Respondent Veolia's failure to pay benefits unreasonable and in bad faith and assesses 19(k) penalties in the amount of $43,819.81. This amount is based on 50% of back TTD benefits totaling $16,827.64 from 6/10/18 to 1/22/19 using a TTD rate of $521.21; plus PTD benefits totaling $70,811.97 from 1/23/19 to 7/14/21 using the minimum PTD rate of $548.93. 19(l) penalties are assessed in the amount of $10,000.00. Section 16 Attorney Fees are assessed in the amount of $10,763.96 (20% of $43,819.81 plus $10,000.00).

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC004122
Case Name	Eric Rohach v. The American Coal Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0024
Number of Pages of Decision	14
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Kirk Caponi
Respondent Attorney	Kenneth Werts, Julie Webb

DATE FILED: 1/13/2023

/s/Christopher Harris, 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

ERIC ROHACH,

Petitioner,

vs. NO: 19 WC 4122

THE AMERICAN COAL COMPANY,

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 occupational disease, evidentiary issues, 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 February 28, 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 Circuit Court.

January 13, 2023

CAH/tdm
O: 1/5/23
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	19WC004122
Case Name	ROHACH, ERIC v. THE AMERICAN COAL COMPANY
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Bruce Wissore
Respondent Attorney	Kenneth Werts

DATE FILED: 2/28/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 23, 2022 0.71%

/s/Linda Cantrell, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

ERIC ROHACH
Employee/Petitioner

v.

THE AMERICAN COAL COMPANY
Employer/Respondent

Case # **19** WC **004122**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **December 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 **Sections 1(d)-(f) of the Occupational Diseases Act**

FINDINGS

On **March 27, 2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

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

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner's earnings were **$65,956.80** and the average weekly wage was **$1,268.40**.

On the date of accident, Petitioner was **43** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**0** 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

Based on the Arbitrator's findings as to accident and causal connection, permanent partial disability benefits are hereby denied.

The Arbitrator further finds that Petitioner failed to prove he suffered a timely disablement pursuant to Sections 1(e) and (f) of the Occupational Diseases 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.

FEBRUARY 28, 2022

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

ERIC ROHACH,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	**Case No.: 19-WC-004122**
	)	
THE AMERICAN COAL COMPANY,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on December 20, 2021 on all issues. An Application for Adjustment of Claim was filed in February, 2019 wherein Petitioner alleges he sustained an occupational disease of his lungs, heart, pulmonary system and respiratory tracts as the result of inhaling coal mine dust, including, but not limited to, coal dust, rock dust, fumes, and vapors for a period in excess of 10 years. The Application alleges a date of last exposure of March 27, 2017. The issues in dispute are accident, causal connection, nature and extent of Petitioner's injuries, and Sections 1(d)-(f) of the Occupational Diseases Act. All other issues have been stipulated.

TESTIMONY

Petitioner is 48 years old, divorced, with one dependent child. He has a high school diploma and attended Rend Lake College for a year and a half and received a certification in heating and air. Petitioner worked eleven years in the coal mines, all of which were underground. In addition to coal mine dust, Petitioner stated he was regularly exposed to and breathed silica dust, roof bolting glue fumes, and diesel fumes.

Petitioner last worked in the mines on March 27, 2017. On that day he worked for America Coal Company at their Galatia mine where he was exposed to coal dust that day. He was 39 years of age with a job classification of being on the long wall. This was his last day of work for Respondent as he was involuntarily terminated. After leaving mining, Petitioner worked for AISIN manufacturing car parts and was terminated for accumulated too many points. He worked for Timberline Fisheries for approximately one month performing maintenance duties before he quit because he was not a licensed electrician and he felt he was performing work he should not have been doing. Petitioner also performed some general construction work and worked at a friend's car garage and rehabbing rental properties.

Petitioner began his mining career in 2006. He was hired in as an outby worker delivering equipment to different areas of the mine. He also shoveled the belt, built stoppings, and rock dusted. He describes shoveling the belt as taking coal that has fallen off of the conveyor belt as it is leaving the mine and shoveling it back onto the belt. He testified that he was in dust all the time while shoveling the belts. Rock dusting is where you take silica dust and toss it onto the mine to help prevent fires. He described it as if you are feeding chickens using a machine that blows out the dust. Petitioner described working at the long wall as being very dusty. The long wall is a shear that cuts the coal from the face of the mine in place of the continuous miner. Petitioner said he worked the long wall for approximately ten years of his mining career. He testified that he only worked the other jobs for a few weeks.

Petitioner testified that he first noticed breathing problems a couple of years into his career. He started getting a real dry cough all of the time and more winded with exertion. His symptoms have stayed the same from the first time he noticed them until the present. He is not taking any breathing medication. Petitioner testified that his breathing difficulties affect his activities of daily living. It has affected his ability to hike, walk long distances, and squirrel hunt. He hikes one mile twice per week on hilly terrain. He bank fishes a dozen time per summer. He is not able to mow his lawn due to the amount of walking and breathing in dust. Petitioner testified he can walk two blocks on level ground at a normal pace before he has to rest. He can climb two flights of stairs before getting winded.

Petitioner's treating doctor is Dr. Buckley at Herrin Hospital. He said that he has spoken with his doctor a little bit about breathing difficulties, but he is a cigarette smoker and has smoked one half pack or less per day since 2006. He denied telling his primary care physician in February 2020 that he smoked one pack per day.

Petitioner stated he received chest x-rays every three years while working for Respondent. He testified he never received a Dust Letter from NIOSH stating he had black lung.

MEDICAL HISTORY

On 9/16/19, Petitioner was examined by Dr. Suhail Istanbouly. Dr. Istanbouly is board-certified in internal, pulmonary, and critical care medicine, and sleep apnea. He is associated with Southern Illinois Healthcare Hospitals in addition to all local hospitals including, Harrisburg, DuQuoin, Marion, and Sparta. Dr. Istanbouly diagnosed Petitioner as having early stage simple coal workers' pneumoconiosis (CWP) and chronic bronchitis. Dr. Istanbouly testified that the chronic bronchitis was multifactorial in its etiology and was related to long term coal dust inhalation, smoking, possibly GERD and allergic rhinitis. (PX1 p. 9-10). Dr. Istanbouly testified that Petitioner was a coal miner for 13 years with all of that time being underground. His diagnosis of chronic bronchitis in Petitioner was based on his history of coughing on a daily basis for about six years. Aggravating factors for his cough were exertion and strenuous activities. Dr. Istanbouly testified that there was sputum production, but it was mild. He testified that Petitioner might be clearing his throat or coughing but swallowing and not spitting out the sputum. Dr. Istanbouly testified that same would be enough production to qualify for having some sputum most days of the week for three months of the year for two consecutive years. Dr. Istanbouly testified that the coal dust inhalation would be an additive effect and would worsen

the impact of smoking on Petitioner's chronic bronchitis. He testified that if Petitioner had a 12 or 15 pack per year smoking history rather than the six pack per year history recorded in Dr. Istanbouly's report, the smoking would still be just a causative factor. Dr. Istanbouly testified that when he saw Petitioner, he listed his chronic symptoms to include daily cough and occasional wheezing. He testified that those are characteristics of bronchospasm which has multiple possibilities including asthma.

Dr. Istanbouly testified that if Petitioner underwent pulmonary function testing which revealed a mildly reduced diffusion capacity, that is something that can be seen with the scarring or fibrosis of CWP. He testified that Petitioner's pulmonary function test revealed no evidence of significant obstructive defect. Dr. Istanbouly testified that based on the diagnoses of CWP and chronic bronchitis, Petitioner could not have any further exposure to the environment of the coal mine without endangering his health.

Dr. Istanbouly testified that CWP requires a tissue reaction in addition to just the deposition of coal mine dust in the lungs. That reaction is commonly called scarring and fibrosis. Dr. Istanbouly testified that if one has CWP, it would be fair to say that at the site of each of the abnormalities, there would be an impairment of the function of the lung whether it is measurable by pulmonary function testing. Dr. Istanbouly testified that the gold standard for diagnosing CWP is pathologic review. When he reads an x-ray as being positive for CWP and knows the patient had a sufficient exposure to coal mine dust to cause that disease, those two things combined suffice for Dr. Istanbouly to make a diagnosis of CWP. If Dr. Istanbouly reads the chest x-ray as being negative, it does not necessarily rule out the existence of CWP. Dr. Istanbouly agreed that a recent study had shown that 50% or more of long-term coal miners are found to have CWP at autopsy even though during life it was not found radiographically.

Petitioner did not relate to Dr. Istanbouly a past history of respiratory disease. Petitioner did not identify smoke, dust, or fumes as a trigger for his cough. Petitioner's cough was mostly dry with no significant sputum. Dr. Istanbouly testified that mostly dry with no significant sputum did not mean there was no sputum production at all. He testified that Petitioner had no significant exertional dyspnea. Petitioner did not relate to Dr. Istanbouly leaving the mine when he did due to respiratory disease or because of an inability to complete his job duties. Dr. Istanbouly did not know why Petitioner left the coal mine. Petitioner was not taking any breathing medications and based upon the history Dr. Istanbouly obtained, he had never taken breathing medications in the past. Dr. Istanbouly testified that Petitioner had possible GERD and a runny nose which can be associated with a cough. Dr. Istanbouly testified that tobacco use is also associated with cough and there can be a progression in respiratory symptoms if one continues to smoke. Dr. Istanbouly did not review any treatment records regarding Petitioner.

Dr. Istanbouly's physical examination of Petitioner's chest revealed no signs of respiratory disease. Petitioner had a forced vital capacity of 107% predicted which was normal. His forced expiratory volume in one second of 113% of predicted was normal. His FEV1/FVC ratio of 83% was normal. Dr. Istanbouly testified that he is familiar with the *AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition* and specifically Table 5-4 of the *Guides*. Dr. Istanbouly testified that Petitioner's spirometry would place him in Class 0 impairment. If

Petitioner had a diffusion capacity of 75 or greater, he would remain in Class 0 impairment. Dr. Istanbouly testified that there was no indication in Petitioner's spirometry of restriction.

When Dr. Istanbouly met with Petitioner, he was presented with a chest x-ray taken December 7, 2018, along with Dr. Henry K. Smith's interpretation of same. Dr. Istanbouly has not seen any other chest imaging or chest interpretations for Petitioner other than that of Dr. Smith. When Dr. Istanbouly interprets a chest x-ray for pneumoconiosis, he determines whether the film is positive or negative for same, and if positive, he classifies what he sees as mild, moderate, or severe. He classified what he saw on Petitioner's chest x-ray as mild pneumoconiosis. Dr. Istanbouly could not say whether the film had 1/0 or 0/1 profusion. Dr. Istanbouly testified that one must be a susceptible host to develop pneumoconiosis. He testified that not all coal miners develop pneumoconiosis and a majority do not.

Dr. Henry K. Smith, a board-certified radiologist and B-reader, reviewed a chest x-ray of Petitioner dated December 7, 2018. Dr. Smith interpreted the chest x-ray as positive for pneumoconiosis profusion 1/0 with P/P opacities in the middle and lower lung zones bilaterally.

Dr. Cristopher Meyer testified by way of evidence deposition on 5/6/20. Dr. Meyer is a board-certified radiologist since 1992 and a B-reader since 1999. Dr. Meyer reviewed the chest x-ray of Petitioner dated December 7, 2018. He found the film to be quality 1. Dr. Meyer testified that there were no small or large opacities and his impression was no radiographic findings of CWP. He testified there were scattered calcified granulomas which were related to histoplasmosis. Dr. Meyer testified that histoplasmosis is a fungal infection that can be found in the Ohio and Mississippi River Valleys. He testified that often times it is carried in the feces of bats and starling birds. It is a fungal infection that the body isolates or walls off and the granulomas are what are left from the body's response in killing off the infection. Dr. Meyer testified that histoplasmosis is extremely common, with a quarter to one-third of the chest x-rays that he reviews have findings of histoplasmosis.

Dr. Meyer testified that the B-reader looks at the lungs to decide whether there are any small nodular opacities and based on the size and appearance of the small opacities they are given a letter score. Dr. Meyer testified that specific occupational lung diseases are described by specific opacity types. CWP is characteristically described by small round opacities. Diseases that cause pulmonary fibrosis, like asbestosis, are described as small linear opacities. The distribution of the opacities is also described because different pneumoconioses are seen in different regions of the lung. CWP is typically an upper lung zone predominant process. Idiopathic pulmonary fibrosis or asbestosis is a basilar or linear process. The last component of the interpretation is the extent of the lung involvement or so-called profusion. Dr. Meyer testified that the profusion is basically trying to describe the density of the small opacities in the lung.

Dr. Meyer testified that very rarely is CWP found in the mid and lower lung zones and not in the upper lung zones. Dr. Meyer testified that if he reads an x-ray as positive and the worker had a sufficient history to cause CWP, that would warrant a finding of CWP. Dr. Meyer testified that if he finds a chest x-ray negative, that would not necessarily rule out that the miner may have pneumoconiosis pathologically.

Dr. David Rosenberg testified by way of evidence deposition on 9/21/21. Dr. Rosenberg conducted a review of medical records and a film regarding Petitioner at the request of Respondent. Dr. Rosenberg is board-certified in internal medicine, pulmonary disease, and occupational medicine. Dr. Rosenberg has been a B-reader since July 2000. Dr. Rosenberg reviewed a chest x-ray for Petitioner dated December 7, 2018. He testified there were no parenchymal changes of pneumoconiosis. Dr. Rosenberg testified he observed scattered granuloma consistent with histoplasmosis. He gave the film a profusion of 0/0. Dr. Rosenberg testified that for a proper reading of a chest x-ray for pneumoconiosis, the reader first assesses the film quality and then determines if there are any opacities present. If they are present, the opacity type is identified as linear or rounded. Next the reader marks the lung zones where the opacities are found and then the profusion rating is given. Dr. Rosenberg testified that profusion is the degree of changes seen on the chest x-ray. The reader then outlines pleural abnormalities if they are present. The reader also marks any other abnormalities.

Dr. Rosenberg testified that the interpretation of the film is performed with side-by-side reading of the standard ILO films. Dr. Rosenberg testified that lung zones are important in completing the B-reader form because different disorders affect different lung zones. He testified that silicosis and CWP tend to involve the upper lung zones whereas a disorder such as asbestosis would be more likely to involve the lower lung zones. Dr. Rosenberg testified that profusion is important in the interpretation because it is the degree or intensity of the parenchymal abnormalities observed. Dr. Rosenberg testified that an individual would have significant parenchymal changes if the profusion is 1/0 or higher. He testified that a 0/1 film would be considered negative. Dr. Rosenberg testified that on his interpretation of Petitioner's chest x-ray emphysema was not present. He testified that none of the B-readers who interpreted Petitioner's chest x-ray found emphysema. He made this determination by looking at the markings of other abnormalities on Section 4b of the B-reader forms.

Dr. Rosenberg testified that a CT or high-resolution CT of the chest is more sensitive than a plain film for detection of opacities of pneumoconiosis. He testified that the same would be true in regard to emphysema. Dr. Rosenberg testified that Petitioner had a CT of the abdomen and pelvis performed on 2/18/20 which caught the lung bases. Dr. Rosenberg testified that the interpreter of that CT scan did not find the presence of pneumoconiosis. The interpreter did find calcified granuloma which are findings related to past infection like histoplasmosis, tuberculosis, or atypical mycobacteria infections. He testified that histoplasmosis would be the most common of those conditions. Dr. Rosenberg testified that a calcified granuloma is not a finding that one would expect from coal mine dust exposure. He testified that more likely than not CWP will not progress once the exposure ceases. He testified that subradiographic pneumoconiosis does not have any clinical significance. Dr. Rosenberg testified that he agreed with Dr. Istanbouly that one must be a susceptible host to develop CWP and that a majority of coal miners do not develop the disease.

Dr. Rosenberg testified that cough is not considered an objective determinant of pulmonary impairment. He testified that objective testing including pulmonary function tests and blood gases, if available, are required to determine whether an individual suffers from pulmonary impairment. He testified he is familiar with the *AMA Guides to the Evaluation of Permanence Impairment, Sixth Edition* which provides that chest imaging is not a key factor in the assessment

of impairment. Dr. Rosenberg agrees with the *Guides* that the correlation of chest x-ray interpretations and physiologic measurements of impairment are poor. Dr. Rosenberg testified that chronic bronchitis is cough and sputum production on a daily basis on the average of three months in two consecutive years. That definition is from the World Health Organization and the American Thoracic Society. Dr. Rosenberg testified that a history of cough with no significant sputum production is not consistent with that definition. Dr. Rosenberg did not see the diagnosis of chronic bronchitis in Petitioner's treatment records that he reviewed. He testified that Petitioner's records did not corroborate the diagnosis of chronic bronchitis made by Dr. Istanbouly. Dr. Rosenberg testified that the spirometry performed on Petitioner did not reveal the presence of an obstruction. The lung volume testing performed on Petitioner did not reveal the presence of restriction. Dr. Rosenberg testified that based upon the results from pulmonary function testing on Petitioner he would fall in Class 0 impairment under table 5-4 of the *AMA Guides*. Dr. Rosenberg testified that based on his pulmonary function testing, Petitioner would be capable of heavy manual labor.

Dr. Rosenberg testified that the records he reviewed revealed no chronic respiratory symptoms for Petitioner. He testified that Petitioner does not have chronic coughing, congestion, or even sputum production. The diagnosis of chronic bronchitis was not established in the file. Dr. Rosenberg testified that Petitioner's mildly reduced diffusing capacity was related to an elevated carboxyhemoglobin level from smoking. Dr. Rosenberg testified that Petitioner may also have chronic anemia and a correction for hemoglobin was not performed. Dr. Rosenberg concluded that Petitioner does not have a chronic respiratory disorder consequent to his coal mine employment.

Medical records of DuQuoin Family Practice were admitted into evidence. Petitioner was seen at Marshall Browning Hospital on 5/4/11 for complaints of right ear pain and sores on his tongue. He thought he had an allergic reaction to some gloves he was wearing. Physical examination of the chest revealed the lungs clear to auscultation. His review of systems respiratory was negative. (RX4 pp. 12-16).

On 8/27/12, Petitioner was seen at DuQuoin Family Practice for depression and anxiety. Medications were prescribed. (RX4 p. 11). On 12/5/12, Petitioner was seen for medication recheck. Physical examination revealed his lungs clear to auscultation. (RX4, p. 10). On 4/4/13, Petitioner was seen for medication recheck. He related passing out episodes and was told he was having seizures. Physical examination revealed Petitioner's lungs clear to auscultation. (RX4, p. 9). On 10/14/13, Petitioner was seen for complaints of coughing, scratchy throat, nasal discharge, and congestion for two weeks. Physical examination revealed the lungs clear to auscultation. The assessment was acute pharyngitis. (RX4 pp. 7-8). On 7/15/14, Petitioner was seen for checkup for sleep disorder. Physical examination of the chest revealed the lungs clear to auscultation. The assessment was shift work sleep disorder, GERD, and excessive daytime sleepiness. (RX4, pp. 5-6).

Medical records of Dr. Makhdoom were admitted into evidence. Petitioner was seen on 4/26/13 for complaints of intermittent epigastric burning pain, as well as periumbilical burning pain associated with occasional nausea without vomiting. He reported occasional acid reflux symptoms. Petitioner was a current everyday smoker of cigarettes and was noted to be a coal

miner. His review of systems respiratory was negative for cough, dyspnea, or shortness of breath with exercise. Physical examination of the chest was normal with no adventitious sounds. (RX5, pp. 3-5).

Medical records of Herrin Hospital were admitted into evidence. Petitioner was seen on 3/27/13 with complaints of right testicle pain. Review of systems respiratory was negative and physical examination of the chest was normal. Petitioner also complained of cough and as a consequence a chest x-ray was performed. Same was interpreted as revealing lungs clear except for calcified granulomatous changes. (RX6, pp. 60-61, 70). Petitioner was seen on 4/20/16 with a laceration to his ankle and received stitches for same. On that date he denied shortness of breath. His review of systems respiratory was negative for shortness of breath, cough, or wheeze. Physical examination of the chest revealed the lungs clear to auscultation. (RX6, pp. 52-57). Petitioner was seen on 2/19/20 for abdominal pain which began with lifting a car battery. Review of systems respiratory was negative for apnea. Physical examination of the chest revealed normal respiratory effort. CT of the abdomen and pelvis was performed which caught the lung bases. There were numerous granulomatous calcifications but otherwise the lung bases were clear. Petitioner gave a history of smoking a half a pack of cigarettes per day and smoking marijuana several times a day. (RX6, pp. 9-10, 18-20). Petitioner underwent chest x-ray on 2/20/20 that revealing the lungs were grossly clear. (RX6, p. 11).

CONCLUSIONS OF LAW

Issue (C): Did an occupational disease occur that arose out of and in the course of Petitioner's employment with Respondent?

With regard to the issue of coal workers' pneumoconiosis, all the physicians interpreted the chest x-ray of Petitioner dated 12/7/18. Dr. Rosenberg described the protocol for proper reading of a chest x-ray for pneumoconiosis. He testified that profusion is important because that is the determination of whether or not the x-ray is positive or negative. Dr. Istanbouly did not know the profusion of the film and could not say whether the film had a profusion of 1/0 or 0/1. Dr. Istanbouly testified that when he interprets a film for black lung, he determines whether it is positive or negative and if it is positive, he classifies it as mild, moderate, or severe. In Petitioner's case he characterized what he saw on the chest x-ray as mild pneumoconiosis. Dr. Istanbouly testified and Dr. Rosenberg agreed that the majority of coal miners do not develop pneumoconiosis.

Dr. Smith interpreted the chest x-ray of 12/7/18 as positive for pneumoconiosis, profusion 1/0 with P/P opacities in the mid and lower lung zones bilaterally. Dr. Smith, on his B-reading form, did not note any opacities in the upper lung zones. Dr. Meyer and Dr. Rosenberg testified there were no findings of CWP on the chest x-ray. Furthermore, Dr. Meyer testified that CWP is typically an upper lung zone predominant process and that very rarely is CWP found in the mid and lower lung zones and not in the upper lung zones. Dr. Smith's interpretation was not consistent with the general presentation and progression of coal workers' pneumoconiosis.

The Arbitrator notes the testimony of Dr. Istanbouly and Dr. Meyer that studies have shown that more than 50% of coal miners have CWP that was determined at autopsy that had not

reached the degree of severity to be seen on chest x-ray. The Commission has rejected reliance on such statistical evidence in the absence of other persuasive, medically accepted evidence establishing a causal connection. *Quinn v. The American Coal Co.*, 20 IWCC 0326, p. 17. The Arbitrator finds that the testimony of the experts that a negative chest x-ray would not rule out pneumoconiosis is not the same as saying that Petitioner in fact suffers from the disease. *Woolard v. The American Coal Co.*, 20 IWCC 0154, p. 17. It is not Respondent's duty to produce evidence that Petitioner did not have CWP. Rather the issue is whether Petitioner has proven that he does. *Quinn*, 20 IWCC 0326, p. 16.

The Arbitrator finds the opinions of Drs. Meyer and Rosenberg to be more persuasive and credible than those of Drs. Istanbouly and in the instant case. The interpretations of Drs. Meyer and Rosenberg regarding the 12/7/18 chest x-ray are corroborated by the independent interpretation of Dr. Cristopher Russell of the CT of Petitioner's abdomen and pelvis performed on 2/19/20 and the interpretation of Dr. Fred Harris of the chest x-ray performed on 2/20/20.

Dr. Istanbouly also diagnosed Petitioner with chronic bronchitis. He testified that Petitioner's chronic bronchitis was multifactorial in its etiology and was related to long term coal dust inhalation, smoking, possibly GERD, and allergic rhinitis. The diagnosis of chronic bronchitis was based on the history Petitioner provided of coughing on a daily basis for about six years. Dr. Istanbouly testified that Petitioner had no significant sputum production. Dr. Istanbouly did not review any treatment records regarding Petitioner. Dr. Istanbouly found that Petitioner's spirometry was within normal range. Dr. Rosenberg testified that cough is not considered an objective determinant of pulmonary impairment. Dr. Rosenberg reviewed treatment records for Petitioner. He testified that history of cough with no significant sputum production is not consistent with the definition of chronic bronchitis from the World Health Organization and the American Thoracic Society. Dr. Rosenberg testified that he did not see the diagnosis of chronic bronchitis in the treatment records that he reviewed and that the records did not corroborate the diagnosis of chronic bronchitis made by Dr. Istanbouly. Dr. Rosenberg testified that the records that he reviewed revealed no chronic respiratory symptoms for Petitioner, including no chronic coughing, congestion, or sputum production.

Based on the medical evidence, the Arbitrator finds Petitioner has failed to prove that he was exposed to an occupational disease that arose out of and in the course of his employment with Respondent.

Issue (F): Is Petitioner's current condition of ill-being causally related to his occupational exposure?

The Arbitrator finds that Petitioner failed to prove that his current condition of ill-being is causally connected to an occupational exposure with Respondent.

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

Based on the Arbitrator's findings as to accident and causal connection, permanent partial disability benefits are hereby denied.

Issue (O) **Whether Petitioner proved timely disablement pursuant to Sections 1(e) and (f) of the Occupational Diseases Act?**

Petitioner left work at Respondent due to an involuntary termination unrelated to an occupational disease. Petitioner did not relate to Dr. Istanbouly a past history of respiratory disease. Petitioner was not taking any breathing medications at the time of Dr. Istanbouly's examination and based upon the history Dr. Istanbouly obtained, Petitioner had never taken breathing medications in the past. There was no evidence that any physician ever restricted Petitioner from work as a result of an occupational lung disease. Dr. Rosenberg testified that based on his pulmonary function testing, Petitioner would be capable of heavy manual labor.

The Arbitrator finds that Petitioner failed to prove that he suffered a timely disablement pursuant to Sections 1(e) and (f) of the Occupational Diseases Act.

Linda J. Cantrell, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC005799
Case Name	Axcell Garcia Calderon v. Martam Construction
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0025
Number of Pages of Decision	14
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Andrew Makauskas

DATE FILED: 1/17/2023

/s/Maria Portela, 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

AXELL GARCIA CALDERON,

Petitioner,

vs. NO: 19 WC 5799

MARTAM CONSTRUCTION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, prospective medical treatment, temporary total disability benefits and Sections 19(l) and 19(k) penalties and Section 16 attorney's fees and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission affirms the decision of the Arbitrator, but modifies the fourth paragraph of page 7 under Issue (K) regarding Prospective Medical Treatment, to read as follows:

> Petitioner claims Dr. Ghadiali recommended OCT (Optical Coherence Topography) tests to assess the macula, OCTs to assess the optic nerve itself and repeat visual field assessments which were never authorized or performed. The tests were performed on April 5, 2019 with the results set forth under the section entitled "Imaging and Ancillary Testing" on page 17 of the Loyola records. (Px1, p. 17) They were also performed on January 31, 2019. A CT scan reported the brain and orbits were normal. (Px1, p. 17)

Under the section entitled "Order Summary – Future Labs/Procedures" are the tests Dr. Ghadiali ordered subsequent to her exam of Petitioner on April 5, 2019, with the Order expiring on April 5, 2020, one year after the April 5, 2019 exam date. It is these future tests which were not authorized or yet performed.

The Commission further corrects the scrivener's error at the bottom of p. 7 of the Arbitrator's Decision. The Commission replaces the heading: "With respect to issue "K" whether Petitioner is entitled to TTD benefits…" with "With respect to issue "L" whether Petitioner is entitled to TTD benefits…"

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $1,072.60 per week for a period of 4 weeks, from December 5, 2018 through January 1, 2019, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, 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 pay to Petitioner medical expenses identified in Petitioner's Exhibits 2, 3, 4 and Respondent shall also reimburse Petitioner for the Walgreens prescription bill (i.e. Px5) under §8(a) of the Act subject to the fee schedule in §8.2 of the Act.

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 $100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 17, 2023

/s/ *Maria E. Portela*

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

MEP/dmm
O: 112222
49

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC005799
Case Name	CALDERON, AXELL GARCIA v. MARTAM CONSTRUCTION
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Andrew Makauskas

DATE FILED: 12/9/2021

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

/s/Frank Soto, 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)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

AXELL GARCIA CALDERON
Employee/Petitioner

v.

MARTAM CONSTRUCTION
Employer/Respondent

Case # **19 WC 05799**

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 **Frank Soto**, Arbitrator of the Commission, in the city of **Wheaton**, on **October 12, 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, December 4, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $83,662.80; the average weekly wage was $1,608.90.

On the date of accident, Petitioner was 42 years of age, ***single*** with 2 dependent children.

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

Respondent shall be given a credit of $**4,290.40** for TTD, $**N/A** for TPD, $N/A for maintenance, and $N/A for other benefits, for a total credit of $**4,290.40.**

Respondent is entitled to a credit of $N/A under Section 8(j) of the Act.

ORDER

Petitioner's current condition of ill-being is not causally related to the work accident, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Petitioner's request for additional medical treatment is denied, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Petitioner was temporary and totally disabled from December 5, 2018 through January 1, 2019, a period of 4 weeks, totaling $4,290.40. Respondent has paid this amount so no TTD benefits are awarded, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Respondent shall pay medical expenses as identified in Petitioner's Exhibits 2, 3, 4 and Respondent shall also reimburse Petitioner for the Walgreens prescription bill (*i.e*. Px. 5), pursuant to Sections 8.2 and 8(a) of the Act, subject to medical fee schedule. Respondent shall be entitled to a credit for any medical bills Respondent previously paid, as set forth in the Conclusions of Law attached hereto and incorporated herein. (See Arb. Ex. #1 which shows that Respondent paid medical and pharmacy charges totaling $3,110.77)

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

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

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

By: /o/ *Frank J. Soto* **DECEMBER 9, 2021**
Arbitrator

ICArbDec19(b)

Procedural History

This case was tried on October 12, 2021 pursuant to Sections 19(b) and 8(a) of the Act. The disputed issues are whether Petitioner's current condition of ill-being is causally connected to his injury, whether Respondent is liable for unpaid medical bills, whether Petitioner is entitled to TTD benefits and prospective medical care. (Arb. Ex. 1).

Findings of Fact

On December 4, 2018, Petitioner was working for Respondent as a finisher doing concrete work and framing (Tr. pp. 10-11). While using a pick, Petitioner was struck in the left eye (Tr. p. 15). That same day, Petitioner was seen at Amita Health. The report from Amita states that Petitioner was working by himself, using a picker to pull out rods, when the picker struck his left eye. Petitioner reported that due to the force, he fell to the ground. At trial, Petitioner testified he lost consciousness and hit his head on the ground (Tr. pp. 13, 41-42). According to the Amita report, Petitioner denied hitting his head and losing consciousness but he did report feeling dizzy. Petitioner reporting waiting a few minutes but feeling difficulty with vision in his left eye. Petitioner complained of redness, pain in the left eye and pain on the left side of his head around the orbit. On examination, it was noted that Petitioner had a subconjunctival hemorrhage and slight bruising underneath the left eye (Rx. 2, p. 6). A CT scan of the head/brain was performed. The results were found to be negative for acute intracranial abnormality (Rx 3, p. 9). A CT scan of the orbits was also performed at Amita Health. The films were interpreted as showing no clear evidence of an orbital fracture (Rx 3, p. 8). Petitioner was diagnosed with subconjunctival hemorrhage of the left eye. He was referred to an ophthalmologist (Rx 2, p. 7).

Petitioner began treating with Dr. Foody, of Aurora Eye Clinic, who diagnosis was unspecified acute and subacute iridocyclitis. On January 2, 2019, Dr. Foody released Petitioner to work full duty work (Rx 3, p. 17; Tr. pp. 32-33). Petitioner testified that he has not been restricted from working since that date (Tr. p. 33).

On January 15, 2019, Petitioner was seen by ophthalmologist Shannon Hunt. At that time Petitioner reported being very photophobic with blurry vision with ghosting/shadowing. Dr. Hunt noted CT scan performed in the emergency room was negative and that Petitioner had also seen a retina doctor at Wheaton Eye Clinic who found no evidence of retinal pathology. After examination and testing, Dr. Hunt found no evidence of ocular pathology to explain his symptoms. (Rx 3, pp. 52-58).

On January 23, 2019, Petitioner returned to Dr. Hunt reporting his left eye was swollen this past week while shoveling snow and that he could not perform his work. Dr. Hunt diagnosed ocular

pain in the left eye. After her examination, Dr. Hunt wrote there was no obvious anterior or posterior segment pathology to explain Petitioner's symptoms. Dr. Hunt suggested an MRI of the brain and orbits for further evaluation (Rx 3 pp. 45, 49).

On January 31, 2019, Petitioner was seen by Dr. Ghandiali of Loyola. At that visit, Petitioner reported ongoing left eye pain, blurry vision, and unilateral left upper outer quadrant visual field deficit after blunt injury to left eye while at work. Petitioner also reported a loss of consciousness upon initial incident and that he lost vision in both eyes shortly after injury, but slowly regained vision, first with his uninvolved right eye, and then his left eye. Dr. Ghadiali recommended an MRI of the brain and orbits and a neurology consult. Dr. Ghadiali noted that Petitioner's visual defect appears to be secondary to brow ptosis (Rx 3, pp. 33-34).

On April 5, 2019, Petitioner returned reporting headaches especially around the left orbit with associated temple pain and left head pain. Petitioner also reported that moving his gaze quickly often seemed to trigger headaches. Petitioner rated his headache pain between 8-9/10 with associated light sensitivity, left eye pain, tearing and redness. Petitioner further reported that his visual acuity was blurry with headaches, pain with eye-movement, and photophobia and with activity (Px. 1, p. 16).

Dr. Ghadiali noted the MRI of the brain and orbits were done on February 26, 2019 and that the results were normal (Px. 1, p. 19). For the diagnoses of blurry vision/double vision of the left eye, Dr. Ghadiali stated that all the test results were normal and there is no ocular cause of Petitioner's subjectively decreased vision. There were no signs of optic neuropathy (Px. 1, p. 19). For the diagnosis of headaches/orbital pain, Dr. Ghadiali stated possible post-concussion syndrome. Neurology consult was recommended (Px. 1, p. 19). Dr. Ghandiali noted Petitioner's visual defect was improved with brow taping and did not appear to be neurological and that all test results were normal (Px. 1, p. 19).

Petitioner was seen for an Independent Medical Examination by Dr. Sepehr Sani, a board-certified neurosurgeon, on May 17, 2019. Dr. Sani diagnosed Petitioner as having sustained a mild concussion and orbital contusion as a result of the December 4, 2018 incident (Rx 1, p. 29). He said concussions of this type typically resolve within 24-48 hours of the incident and certainly felt the Petitioner's concussion should have resolved within a month of the injury (Rx 1, pp. 34, 62). The orbital contusion would have resolved within a few days to a few weeks after the incident (Rx 1, p. 35). He said the brow ptosis was not related to the incident (Rx 1, p. 31).

As to his current condition, Petitioner testified he takes medication every day for his eye and/or eyelid. (Tr., pp. 22). Petitioner testified he takes six to eight pills a day consisting of Tylenol,

Advil, and pain killers he purchases at the pharmacy. (Tr., pp. 22). Petitioner testified he continues to experience blurriness in both eyes with the left eye being worse than his right eye. (Tr., pp. 24). Petitioner testified the blurriness is worse when he works hard. (Tr., pp. 24). Petitioner also testified to experiencing daily headaches and light sensitivity. (Tr., pgs. 25, 26). Petitioner further testified he forgets things and experiences bouts of confusion since the accident. (Tr., pp. 29).

Conclusions of Law

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

With Respect to Issue "F", Whether Petitioner's current condition of ill-being is casually related to the work injury, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner failed to prove by the preponderance of the evidence that his current complaints of headaches and vision issues are related to the December 4, 2018 incident as set forth below.

The Arbitrator relies upon the testimony of Dr. Sani, the board-certified neurosurgeon involved in this matter. As a neurosurgeon, he treats diseases and pathology related to the human brain and spine. He assesses the same systems as a neurologist, with the difference being he performs surgery while a neurologist provides medication and non-operative treatment (Rx 1, p. 5). He treats patients with headaches, dizziness, blurred vision and facial nerve conditions. He sees patients in clinics. He treats patients who have undergone trauma in the emergency room. He teaches residents, fellows and medical students at Rush University and conducts research (Rx 1, pp. 5-6).

Dr. Sani diagnosed Petitioner with a mild concussion and orbital contusion (Rx 1, p. 29). He determined the concussion was mild because Petitioner was able to report independently what happened immediately before the incident and how he got hit. While he reported that he lost consciousness, he remembered all the events immediately upon coming back to consciousness. He said that if there was amnesia, it was brief and therefore the concussion was mild. Studies have shown that the most reliable indicator of the severity of a concussion is the duration of memory loss or amnesia at the time of the hit or traumatic event (Rx 1, p. 30). The Arbitrator notes that the report from the emergency room says Petitioner denied losing consciousness and, therefore, it is unclear whether or not he lost consciousness as a result of the incident (Rx 2, p. 6).

Dr. Sani also pointed to the results of the MRI of the brain and MRI of the orbits that showed no abnormalities as further support for his opinion that Petitioner sustained no more than a mild

concussion and orbital contusion (Rx 1, p. 31). He said the typical recovery time for a mild concussion is 24 to 48 hours. The patient's recovery time can linger a week or two. In extremely rare cases, where there are other significant confounding variables, or other medical problems coexisting, the symptoms of a concussion can linger longer (Rx 1, p. 34). He felt the concussion should have resolved within a month of the incident (Rx 1, p. 62). He had no neurosurgical explanation for why Petitioner had ongoing symptoms (Rx 1, p. 32). He did not believe Petitioner required any further treatment for the conditions he diagnosed. No activity restrictions were needed. He believed the mild concussion and orbital contusion had both resolved (Rx 1, p. 34).

The Arbitrator notes Petitioner has set forth no testimony contradicting the opinions of Dr. Sani as it pertains to the mild concussion or orbital contusion. When the question is one specifically within the purview of experts, expert medical testimony is mandatory to show the claimant's work activities caused the condition of which the employee complains. *Nunn v. Industrial Comm'n*, 157 Ill.App.3d 470, 478 (4th Dist. 1987), citing *Westinghouse Electric Co. v. Industrial Comm'n*, 64 Ill.2d 257 (1976).

According to Dr. Sani, the left eyebrow weakness, eyelid drooping and "pie-in-the-sky" upper-outer quadrant visual field defect of the left eye are also not related to the incident (Rx 1, p. 31). Dr. Sani explained that some people are born with one eyelid not raising to the normal level and therefore part of the upper eyelid covers the cornea and therefore blocks the upper/outer quadrant visual signals that are coming in. That occurs during birth and within the first two years of life, as a result of not getting any visual signal, that portion of the brain that was created processes the signal from the upper/outer visual field never actually develops and matures (Rx 1, p. 26).

In Petitioner's case, the left upper/outer quadrant never developed. The left eyebrow weakness, and what has been referred to in his medical records as ptosis, which is slight drooping of the left eyelid, explain the visual field defect in the upper/outer quadrant. Ptosis is known to happen to people congenitally during development for whatever reason (Rx 1, p. 25).

In further support of his opinion that the eyebrow weakness, eyelid drooping and visual field defect are not related to the incident, Dr. Sani found no abnormalities to the cranial nerves traveling to the forehead above the left eye (Rx 1, p. 19). According to Dr. Sani, it is medically impossible for the ptosis to have occurred by virtue of trauma as it was described. It is impossible to damage the nerve in that capacity unless there was a laceration or cutting of the nerve. That was not the case here as it pertains to the eyebrow raise weakness. Secondly, there was no loss of function. The eyebrow was asymmetric with weakness, meaning that it did raise. The nerve works. The muscle works. The

eyebrow raises. It is just not symmetric or the same as the other side. There are many people who have asymmetric eyebrow raising (Rx 1, pp. 23-24).

The December 4, 2018 report from Amita, discusses bruising underneath the left eye (Rx 1, p. 6). Petitioner admitted that he sustained no cuts at the top or above his eye (Tr. p. 34). There is nothing showing any nerve was cut. This is consistent with the normal findings Dr. Sani found when he examined Petitioner's cranial nerves (Rx 1, p. 19).

The patient reported he had not had any visual issues prior to the incident. Dr. Sani said that this is a very expected answer as anyone who has isolated "pie-in-the-sky" upper/outer quadrant field defect. This is otherwise referred to as unconscious loss of vision. The patient or individual is not aware that they have a field defect or that they cannot see a specific area because it is not obvious that there is a problem such as a black spot or black area or discoloration of any kind. Rather, it is such that is the portion of the brain that processes this information for that particular area of visual field (Rx 1, p. 24).

Petitioner never developed perception of not having vision and therefore he never knew he did not have the vision in his left upper/outer quadrant and thus it is correct for him to report he did not have any prior vision issues (Rx 1, p. 25). The Arbitrator notes that there is no medical testimony saying that the "pie-in-the-sky" visual defect is related to the work incident.

The Arbitrator also notes that there is no objective explanation for Petitioner's subjective complaints of blurry vision, double vision, and photophobia. The medical records reflect the following:

- On December 4, 2018, a CT scan of the Head/Brain was performed. The results were found to be negative for acute intracranial abnormality (Rx 3, p. 9).
- A retina doctor at Wheaton Eye Clinic found no evidence of retinal pathology (Rx 3, pp. 52-58).
- After examination and testing on January 15, 2019, Dr. Hunt found no evidence of ocular pathology to explain his symptoms (Rx 3, pp. 52-58).
- On January 23, 2019, Dr. Hunt found no obvious anterior or posterior segment pathology to explain his symptoms (Rx 3, p. 49).
- On April 5, 2019, Dr. Ghadiali noted that the MRI of the brain and orbits had been done on February 26, 2019 and that the results were normal (Px. 1, p. 19).

- For the diagnoses of blurry vision/double vision of the left eye, Dr. Ghadiali stated that all the test results were normal. There is no ocular cause of subjectively decreased vision identified. There were no signs of optic neuropathy (Px. 1, p. 19).

In addition to the objective findings not supporting Petitioner's subjective complaints, the Arbitrator points out some contradictions in the histories provided by Petitioner:

- The initial December 4, 2018 report specifically states that the Petitioner did not hit his head (Rx 1, p. 6). However, he testified at trial that he hit his head on the ground after falling (Tr pp. 41-42).
- Also inconsistent with the initial December 4, 2018 report is Petitioner's testimony, and report to Dr. Sani, that he lost consciousness at the time of the incident (Rx 1, p. 6)
- When he saw Dr. Ghadiali on January 31, 2019, he reported that he lost vision in both eyes after the incident. This is not set forth anywhere else in the medical records (Rx 3, pp. 33-34).

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 & Bayler/Hucks*, 08 IL.W.C. 004187 (Ill. Industrial Comm'n 2010).

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

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

The Arbitrator finds Petitioner proved by the preponderance of the evidence the medical treatment for the treatment rendered to Petitioner was reasonable and necessary to cure and alleviate Petitioner's condition through May 17, 2019, the Date of the Section 12 examination. As such, Respondent shall pay medical expenses as identified in Petitioner's Exhibits 2, 3, 4 and Respondent shall also reimburse Petitioner for the Walgreens prescription bill (*i.e.* Px. 5), pursuant to Sections 8.2 and 8(a) of the Act, subject to medical fee schedule. Respondent shall be entitled to a credit for any

medical bills Respondent previously paid. (Arb. Ex. #1 indicates that Respondent paid medical and pharmacy charges totaling $3,110.77).

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

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

Petitioner seeks prospective medical care consisting of a neurology consult to address possible symptoms related to post-concussion syndrome and other testing. As set forth above, the Arbitrator found Petitioner failed to prove that his current condition of ill-being is causally related to his work injury of December 4, 2018 and, therefore, Petitioner has failed to prove by the preponderance of the evidence that he is entitled to receive prospective medical care.

In addition, Dr. Ghadiali, in her April 5, 2019 report, recommended consultation to assess neurological issues potentially relating to Petitioner's post-concussion syndrome (Px 1, p.19). This was done through the examination by Dr. Sani, who found no neurological explanation to explain Petitioner's subjective complaints. He found Petitioner requires no further treatment and is at maximum medical improvement as it pertained to the mild concussion and orbital contusion diagnosed (Rx 1, pp. 29-34). He did not suggest that the Petitioner undergo any neurocognitive testing as there was no indication in his examination that this testing was warranted (Rx 1, pp. 64-65).

Petitioner claims that additional optical testing was ordered on April 5, 2019 and not done. However, it appears that the testing ordered, on that date, had been done. Page 22 of the Loyola records sets forth a list of tests ordered (Px 1, p. 22). This testing was done on April 5, 2019. The results of the optical coherence topography (OCT) testing, with results from April 5, 2019, are set forth on page 18 of the Loyola records. The results were normal (Px 1, p.18). In addition, the remaining tests are also listed as completed on April 5, 2019 (Px 1, p. 24).

With respect to issue "K" whether Petitioner is entitled to TTD benefits, the Arbitrator finds as follows:

Petitioner is seeking temporary total disability benefits from December 4, 2018 through October 12, 2021, the date of trial.

"The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of

the injury will permit, "*i.e.,* until the condition has stabilized." *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized, *i.e.,* reached MM.I. *Sunny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130028WC at 28 (June 26, 2014, Opinion Filed); *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003).

Dr. Sani testified the typical recovery time for a mild concussion is 24 to 48 hours. He felt the concussion certainly should have resolved within a month of the incident (Rx 1, p. 62). He had no neurosurgical explanation for why Petitioner had ongoing symptoms (Rx 1, p. 32). He believed the mild concussion and orbital contusion had both resolved (Rx 1, p. 34).

The Arbitrator finds Petitioner proved by the preponderance of the evidence that he was temporary totally disabled from December 5, 2018 through January 1, 2019, a period of 4 weeks, which Respondent previously paid.

The Arbitrator further finds Petitioner failed to prove by the preponderance of the evidence that he is entitled to TTD benefits from January 2, 2019 through October 12, 2021, the date of the trial. Petitioner testified he found work soon after his employment terminated with Respondent. (Tr. pp. 31). Petitioner testified he missed some time from work but no doctor had him off work. (Tr. pp. 31). As of January 2, 2019, Dr. Foody released Petitioner to return to work (Rx 3, p. 17). To show entitlement to temporary total disability benefits, a claimant must prove not only that he did not work, but also that he was unable to work. *Gallentine*, 201 Ill. App. 3d at 887; *see also City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (5th Dist. 1996).

By: /s/ *Frank J. Soto* December 9, 2021
Arbitrator Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC018572
Case Name	Shawn Lawson v. Ripco, Ltd
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0026
Number of Pages of Decision	24
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Matthew Heinlen, Nick Avgerinos
Respondent Attorney	Victor P. Shane

DATE FILED: 1/17/2023

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
ROCK ISLAND

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SHAWN LAWSON,

Petitioner,

vs. NO: 11 WC 18572

RIPCO, LTD.,

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, 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 March 7, 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.

IT IS FURTHER ORDERED BY THE COMMISSION that commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund***, as provided in section 8(g) of the Act.

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.

January 17, 2023

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

CAH/tdm
d: 1/5/23
052

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC018572
Case Name	LAWSON, SHAWN v. RIPCO, LTD
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Matthew Heinlen, Nick Avgerinos
Respondent Attorney	Gerald F. Cooper, Jr.

DATE FILED: 3/7/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 1, 2022 0.67%

/s/Kurt Carlson, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **ROCK ISLAND**)

☐ 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

Shawn Lawson
Employee/Petitioner /
v.
Ripco, Ltd.
Employer/Respondent/

Case # **11** WC **18572**

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 **December 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 **Authorization for medical services**

FINDINGS

On **October 21, 2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**35,880.00**; the average weekly wage was $**690.00**.

On the date of accident, Petitioner was **38** years of age, ***married*** with **5** dependent children.

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

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

Respondent shall be given a credit of $**37,720.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**37,720.00**.

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

ORDER

The Arbitrator finds that the Petitioner's back and neck conditions were and remain causally related to the work accident of October 21, 2010.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $460.00/week for 330-5/7 weeks, commencing March 29, 2011 through July 27, 2017, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $37,720.00 for temporary total disability benefits that have been paid. (Resp. Ex. 7)

Medical benefits

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $2,982.86 as provided in Sections 8(a) and 8.2 of the Act. (Pet. Exs. 11 and 12)

Respondent shall pay directly to Petitioner in the sum of $822.75 representing reimbursement for out-of-pocket medical expenses as provided in Section 8(a) and 8.2 of the Act. (Pet. Ex. 13)

Respondent shall pay directly to Petitioner in the sum of $243,478.93 representing medical bills and expenses set forth in Petitioner's Exhibits 9-10 that were paid under health care plans of the Petitioner's spouse for which the Respondent is not entitled to a credit, and for medical expenses and bills paid by the State HFC (Pet. Ex. 8), as provided in Sections 8(a) and 8.2 of the Act.

The Respondent shall provide the medical services and testing ordered by Dr. Lubenow on August 4, 2021.

Permanent Total Disability

Respondent shall pay Petitioner permanent and total disability benefits of $460.00/week for life, commencing July 29, 2017, as provided in Section 8(f) of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund***, as provided in Section 8(g) 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

MARCH 7, 2022

Statement of Facts

The Petitioner testified that he was born on April 15, 1972 in Dixon, Illinois which made him 49 years of age at the time of the arbitration hearing. (Arb. Tr. p. 6) The highest level of education that he attained was 7th grade. (p. 6) He does not have a GED, or any other schooling, licensing or certifications. (p. 6)

As for his occupational background, the Petitioner testified that all of his work experience has been in labor and acquired on the job. (pp. 7-8) His father owned a farm where the Petitioner did a lot of welding and working on farm equipment through which he was introduced to working with steel and into steel working jobs. (p. 7) He described the physical demand level of his work experience as ranging from light to heavy. (p. 8) The Petitioner also has work experience in painting and metal fabrication. (p. 8) He testified that he has worked regularly throughout his life. (p. 9)

The Petitioner commenced employment for the Respondent in 2001. (p. 9) He stated that Respondent's business included selling farm equipment to farms and farm dealers. He was hired to weld and for warehouse management that were jobs with which he was familiar. (p. 9) At the time he commenced employment for the Respondent he was not under any work restrictions and was taking no medication for treatment related to a back condition. (p. 10)

The Petitioner testified that he underwent back surgery in 1995, following which he was discharged from medical care and released without permanent restrictions. (p. 6) In the years that followed, the Petitioner indicated that he experienced back symptoms for which he received conservative medical care. (p. 11)

The Petitioner was hired by Respondent to work full-time. (p. 11) He did not believe he was given a pre-employment physical. (p. 11) His job duties required him to receive boxed shipments of parts used with grain bins and tractors. (p. 11) He indicated that the boxes weighed 10-100lbs. (p. 13) His duties also required him to manually lift boxes and place them on shelves, make parts, operate fork trucks, unload semis, track inventory, and complete paperwork. (p. 12) He testified that he was able to perform the essential functions of the job for which he was hired. He testified that the physical demand level of his job was light to very challenging. (p. 13)

The Petitioner testified that on October 21, 2010 he sustained a work-related accident when in the course of building pallet racks to stack boxes, the third shelf on which he was standing approximately 12' -15' high – collapsed and he fell, striking the I-beam that made up part of the rack. (pp. 13-14) The Petitioner stated that he struck the beam across the lower back, following which he experienced low back, neck, hip and leg pain. (p. 14) He did not experience any shoulder pain. (p. 14) He had previously undergone shoulder surgery. It was the Petitioner's testimony that what he experienced after the injury was a lot worse than what he had previously experienced after the first back surgery. (p. 15)

The Petitioner testified that following the accident he presented to the emergency department at CGH Medical Center. (Px 1) The records reflect a history of the Petitioner having fallen from a rack at work. He was diagnosed with a head injury, scalp laceration, facial laceration, elbow or forearm abrasion and contusion of the back. (Px 1, p. 5) A CT Scan of the cervical spine was negative, as was a CT Scan of the thoracic spine. (Px 2, p. 10-11) He subsequently had a LS MRI at CGH on January 20, 2011 which revealed mild degenerative disc disease with bulging at L4-5, and L5-S1. (Px 1, p. 16) He had a cervical MRI on January 21, 2011 which revealed mild degenerative changes with mild bulging.

On February 17, 2011, the Petitioner presented with back pain to CGH on referral from Gaye Page, the nurse practitioner who the Petitioner had been seeing. (Px 1, p. 22) He was prescribed narcotics. (Px 2, p. 25) He returned to CGH on February 19, 2011 with thoracic and neck pain. (Px 1, p. 26) An MRI of the thoracic spine demonstrated a subtle herniation at the T7-8 disc. (Px 1, p. 32) His condition was diagnosed as a thoracic herniated disc for which he was prescribed medication.

On March 3, 2011, the Petitioner was seen on referral by Gaye Page by Dr. Dongwoo Chang at St. Anthony Medical Center for medically intractable low back pain and right leg pain, and chronic low back pain. (Px 2, p. 4) Dr. Chang conducted an examination, reviewed the MRI's and noted the Petitioner had failed conservative care. He concluded the Petitioner was left with no option other than a laminectomy, foraminotomies, and fusion at L4-S1. The Petitioner indicated that the issue of neck surgery was discussed but he opted to pursue the

recommendation for low back surgery because the low back was hurting him more. (p. 19) He has not undergone neck surgery.

The Petitioner testified that following the accident he worked light duty until he underwent back surgery on March 29, 2011. (p. 15) On March 29, 2011 the Petitioner was admitted to St. Anthony Hospital and was discharged on April 1, 2011. During his hospitalization Dr. Chang performed the following: bilateral laminectomy, partial facetectomies, foraminotomies at L4-5, L5-S1, pedicle screw fixation, L4-S1 with autograft, fluoroscopy, and neuromonitoring with direct pedicle screw stimulation. (Px 2, p. 40; Px 6) During this time period, the Petitioner testified that he experienced neck, back and left hip pain extending down the back of his leg. (p. 16) The Petitioner stated that his employer indicated to him that if he had the surgery, they would let him go which is what occurred, and he never returned to work for the Respondent. (p. 20) The Petitioner stated that he has never returned to work anywhere. (p. 20).

The records reflect that the Petitioner returned to St. Anthony Medical Center for follow up appointments on April 8, May 23, and July 21, 2011. At each of the visits, the Petitioner was examined and instructed to continue with his medications, wear his back brace, and limit his activities to light duty. (Px 2, p. 59)

On June 17, 2011, the Petitioner had a cervical MRI, the results of which reflected minimal bulging of the annulus at C6-7. (Px 1, p. 41) On July 7, 2021 the Petitioner had a CT scan of the

LS spine. The impression from the imaging study was postoperative changes at the LS junction with no fractures, and mild degenerative changes at L5-S1. (Px 1, p. 54)

Following his discharge from the hospital the Petitioner also had regular follow-up appointments with nurse practitioner, Gaye Page, at CGH throughout the balance of 2011 and 2012. The clinical records indicate the Petitioner was experiencing cervical and lumbar pain for which Gaye Page indicated on November 11, 2011 that a referral would be made to a neurosurgeon. (Px 1, p. 65) There is no evidence as to whether the referral was made and whether the Petitioner was seen by a neurosurgeon. On July 9, 2012 Gaye Page noted in her clinical records that the Petitioner continued to experience lumbar and cervical pain and was still seeking a referral to a neurologist. (Px 1, p.80) He was provided with refills for Duragesic and a prescription for Norco. The clinical record from CGH of September 27, 2012 indicated the Petitioner had been seen by a spine specialist in the Quad-Cities who had not recommended surgery. (Px 1, p. 91)

The Petitioner continued receiving treatment at CGH Medical Center. On March 21, 2013, the Petitioner was seen by Gaye Page who recorded the Petitioner was experiencing cervical and back pain as well as migraines from the Petitioner. (Px 1, p. 95) The Petitioner had follow up appointments on August 5, 2013 and November 1, 2013 at which time it was noted the Petitioner continued to have neck and back pain but was also experiencing an increase in migraines. At the time of the November visit, Gaye Page indicated that a referral for pain management would be made. (Px 1, p. 101)

On March 2, 2015 Gaye Page ordered an MRI. (Px 1, p. 102) The MRI of the LS spine was conducted at CGH on March 11, 2015 and demonstrated stable postsurgical changes at L4-S1 and no recurrent disc herniation. (Px 1, p. 104)

On June 26, 2015, the Petitioner was seen by Dr. W.S. Minore at Medical Pain Management in Rockford. Dr. Minore examined the Petitioner and concluded that it was his belief most of the Petitioner's pain would be controlled by an intrathecal drug delivery system. He indicated that because of the chronic fusions and scar tissue the Petitioner would not be a good candidate for a spinal cord stimulator but would, instead, be more likely to benefit from a trial of intrathecal narcotics. (Px 5, p.1)

On July 28, 2015, the Petitioner was seen by Dr. Zhou at OSF in Peoria for a spine consultation. (Px 2, p. 66; Arb. pp. 23-23) Dr. Zhou examined the Petitioner's neck and back, reviewed the imaging and medical history and concluded the Petitioner had chronic neck pain, left occipital nerve neuralgia, and failed back surgery syndrome. (Px 2, p. 68) Dr. Zhou recommended chronic pain management, as well as an option for a spinal cord stimulator that could be addressed at the pain management clinic.

The Petitioner returned to Gaye Page on August 3, 2015 regarding the recommendation for pain management. The clinical notes show that a referral to a pain clinic would be made, as would a referral for a neurosurgeon. (Px 1, p. 105) The Petitioner returned to CGH on March 1, 2016 to discuss concerns with medications for his neck and lumbar pain. There is reference to the

Petitioner having been involved in a motor vehicle accident but there was no testimony regarding the incident or any medical records regarding such an event. The Petitioner was seen in follow up at CGH on April 14, 2016 and on May 24, 2016 on which date he was advised to check with his insurance company regarding an evaluation with a neurosurgeon. (Px 1, p. 122) The Petitioner had follow up visits in June and October 2016 regarding neck and back pain. In January, 2017, the Petitioner was seen by Gaye Page who offered a referral to a pain clinic. (Px 1, p. 167) Another follow up appointment took place on March 2, 2017.

The Rush Medical Center records reflect the Petitioner first saw Dr. Timothy Lubenow on May 10, 2017. (Px 3, p. 2) The history includes the Petitioner had experienced back and neck pain since 1995 when the Petitioner had partial disc removal, followed by a work injury in 2010 for which he underwent a lumbar fusion at L5-S1. Dr. Lubenow identified three problems which consisted of the low back, neck, and opioid use for 22 years. Dr. Lubenow diagnosed failed back syndrome, lumbar radiculopathy, cervical radiculopathy, chronic prescription opiate use, and flat affect. The doctor set forth a treatment plan of increased Gabapentin and Zoloft, continuation of Oxycodone and Diazepam, commencement of Mirtazapinc, and also recommended the Petitioner proceed with a spinal cord stimulator. A psychological evaluation and drug test chemical analyzer were also ordered.

The Petitioner was seen in follow up on June 9, 2017 at Rush by Dr. Mathew Jaycox who examined the Petitioner and ordered a refill of the medications and scheduled the next appointment with Dr. Lubenow . (Px 3, p. 11) The Petitioner was also seen at that time by

Patricia Merriman, PhD who conducted a psychological examination and found the Petitioner cooperative and engaging and with no psychosocial contraindications to proceed with the trial stimulator. (Resp. Ex. 1)

On July 10, 2017, the Petitioner was seen by Dr. Jaycox and on July 17 by Dr. Lubenow who performed an operative procedure to implant the spinal cord stimulator. (Px 3, p. 16)

The Petitioner testified that in July, 2017 he had the trial stimulator but experienced little relief which resulted in Dr. Lubenow's decision to proceed with an intrathecal pain pump in lieu of permanent placement of the stimulator. (p. 25) The July 20, 2017 clinical record of Dr. Lubenow indicates that following placement of the trial stimulator the Petitioner did not experience any relief with left hip pain or in the legs, inadequate relief in the neck, and improvement in the low back. Dr. Lubenow ordered removal of the stimulator leads (Px 3, p. 89) the procedure for which took place on July 26, 2017. Dr. Lubenow made arrangements for the Intrathecal pain pump given the severity of the Petitioner's pain. (Px 3, p. 91)

The implantation of the IT pump proceeded via an operation on September 27, 2017. (Px 3, p. 94) The Petitioner considered placement of the IT pain pump to have been successful. (p. 26) He based his assessment on the reduction of pain that he has experienced since the accident. Dr. Lubenow instructed the Petitioner to follow up with him in three months.

On November 1, 2017, the Petitioner returned to Dr. Lubenow for follow up and received a refill of the Oxycodone tablets to take as needed. The doctor also reviewed the Preventive Medicine checklist. The clinical records indicate the Petitioner had complied with annual registration in ILPMP, and consultation with the prescription drug monitoring program. (Px 3, p. 99) The Petitioner was given a pump refill, drug test chemical analyzer, and an electronic analysis of the programmable pump. (Px 3, p. 99) The medical records reflect the Petitioner had toxicology studies prior to and after implantation of the stimulator and pain pump. (Px 3, p. 159)

The Petitioner has continued seeing Dr. Lubenow at Rush since he commenced treatment. On April 3, 2019 Dr. Lubenow noted that the Petitioner's pain was slowly improving with the pump, and that he had weaned down the Oxycodone since implantation of the pump. (Px 3, p. 161)

He testified that the only medication that he takes is through the pain pump which is managed and maintained by a nurse who comes to his home every three months to refill the dosage and exchange information with the pump through a device. (p. 27) The petitioner indicated that while he would like to one day be off the pump, there are no plans to do so at the present time. (p. 27)

The Petitioner has maintained contact with Dr. Lubenow, either in person or through video chats. (p.28) At the time of his most recent appointment on August 14, 201 Dr. Lubenow ordered lumbar and thoracic spine MRI's. (Px 3, p. 188; pp. 28-29) The clinical record indicates the Petitioner had experienced a worsening of his back pain over the past six months. The Petitioner stated that the testing has not been approved and that if it were he would proceed. (p. 29) He

anticipates his follow up appointment with the doctor will be in January, and with the nurse who comes to his home on February 14. (p. 30)

He testified that on bad days he will require help from some family members in getting around the house to the bathroom. (p. 31) He also notices fatigue and lack of sleep, and pain in the low back and tailbone extending into the left hip. (p. 32) The Petitioner testified that he experiences neck pain, but it is light compared to his other symptoms. He also experiences migraine headaches. (p. 33)

The Petitioner indicated that it is his understanding from his treating doctor that he is not able to return to work. (p. 34)

The Petitioner testified that his wife's group health care plans paid medical expenses. (p. 34)

He testified that he was seen by Dr. Ghanayem for an evaluation by the Respondent. (p. 31) He indicated that the doctor recommended a pain pump. (p. 37)

On cross-examination, the Petitioner testified that he has and has always had a valid driver's license in Illinois. (p. 35) He indicated that he'd love to return to work but has not been allowed to do so by his treating doctor. (p. 36) He also indicated that he would be interested in vocational assistance.

Conclusions of Law

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

The Petitioner introduced into evidence medical expenses that were unpaid as set forth in Petitioner's Exhibits 11 & 12 totaling $2,982.86, out-of- pocket expenses of $822.75 as identified in Petitioner's Exhibit 13, a public aid payment summary with an amount of $556.25 as reflected in Petitioner's Exhibit 8, and medical bill payments made through the group health insurance carriers with whom the Petitioner had coverage through his spouse in the amounts of $191,427.70 as shown in Petitioner's Exhibit 9, and $51,494.98 as identified in Petitioner's Exhibit 10. All of these bills and expenses relate to the care and treatment of the injuries sustained by the Petitioner in the subject accident. The Respondent presented no evidence to the contrary and agreed that Respondent is liable for these expenses.

Based on the foregoing, the Respondent is responsible for and shall pay directly to the Petitioner the sum of $247,284.24 for the combined medical expenses reflected in Petitioner's Exhibits 8-13, inclusive.

The Petitioner has also claimed that Respondent provide additional medical services which have been requested but not approved, and which consist of the thoracic and lumbar MRI's and related treatment that Dr. Lubenow ordered at the time of the Petitioner's most recent medical appointment on August 4, 2021. The medical record from that office visit reflects a diagnosis of failed back syndrome with the presence of an intrathecal pump. (Px 3, p. 188) The doctor noted

that the Petitioner had experienced a worsening of low back and left hip pain over the past six months. The order for the thoracic MRI was to evaluate catheter granuloma. (Px 3, p. 188) The Petitioner testified that the IT pump includes a catheter. There was no evidence introduced by the Respondent that the recommended imaging was unreasonable, unnecessary or unrelated to the Petitioner's condition, or is in any way contraindicated.

Based on the foregoing, the Arbitrator finds that the medical treatment and testing recommended by Dr. Lubenow on August 4, 2021 is reasonable and necessary and shall be approved and provided by the Respondent pursuant to Section 8(a).

Issue K: **What temporary benefits are in dispute?**

Following the accident the Petitioner continued working in a light duty capacity until the day of the surgery on March 29, 2011. The Petitioner testified that the Respondent notified him that if he had surgery his employment would end which the Petitioner indicated was the outcome. There was no rebuttal testimony or evidence offered by the Respondent.

Following the lumbar fusion, the Petitioner had a number of follow up visits for which his post-op visits included a back brace, medications, wound care, x-rays, a request for a CT Scan, and instructions for light activity. (Px 2, pp, 48,49, 53-55, 59) On July 21, 2011, the Petitioner had a follow up appointment at OSF/St. Anthony's at which time a pain management referral was made. (Px 2, p. 64)

The medical records confirm that the Petitioner's medical care following the injury was uninterrupted and included a variety of medical treatment, as referenced in the Statement of Facts, culminating with the unsuccessful trial stimulator on in July, 2017 and removal of the leads on July 26, 2017. (Px 3, pp. 90-91) At that time, Dr. Lubenow concluded that arrangements for placement of the IT pump would be made. On September 18, 2017 implantation of the device took place. (Px. 3, p. 94) The Petitioner's medical care continues to include use of the IT pump with regular monitoring by Dr. Lubenow and Rush Medical Center, and by a nurse who comes to the Petitioner's home and attends to the medical device.

Based on the foregoing, the Arbitrator concludes that the Petitioner's condition reached a medical plateau on July 26, 2017 which is the date on or about which Dr. Lubenow removed the trial stimulator leads and indicated that the treatment thereafter would consist of the IT pump which was subsequently implanted and remains in place with regular monitoring by medical professionals. The Arbitrator further finds and concludes that the Petitioner was temporarily totally disabled for the period from March 29, 2011 – July 27, 2017, a period of 330 5/7 weeks

The Respondent has not disputed the claimed period of TTD from March 29, 2017 through July 7/27/2017. The Respondent paid a total of $37,720.00 in TTD benefits covering the periods set forth in Respondent's Ex. 7 which are: July 1, 2014 – November 3, 2014, November 15, 2014 - June 30, 2015, and July 29, 2015 – January 26, 2016. Based upon the Petitioner's TTD rate of $460.00 the number of weeks represented by the total paid would be 97-5/7 weeks in which case the credit would be $44, 882.20. Respondent's Ex. 7 offers no explanation for why amounts less

than the TTD rate were paid during these periods of time. Accordingly, the Arbitrator finds that the credit for TTD benefits due the Respondent against the award of weekly TTD benefits represents the monetary sum paid in the amount of $37,720.00 which is the sum agreed upon by the parties for which the Respondent shall receive a credit.

Issue (O): **Authorization for medical services**

Issue (L): **What is the nature and extent of the injury?**

The Arbitrator heard the Petitioner's testimony and observed his demeanor throughout the hearing. The Arbitrator found him to be candid and truthful and did not in any way exaggerate his testimony. As such the Arbitrator finds the Petitioner was very credible.

The Petitioner has a 7th grade education, no GED, and no special skills or qualifications beyond those acquired on his father's farm and through other employment. The Arbitrator finds the physical demand level needed to perform the duties for which he is qualified, and which would be considered to be labor intensive range from light to heavy. Notwithstanding the Petitioner's vocational background, neither Dr. Lubenow nor Dr. Ghanayem, who evaluated the Petitioner under Section 12 of the Act deems him capable of returning to work in any capacity based on the physical condition that resulted from and is causally related to the accident on October 21, 2010. The Arbitrator further finds that the opinions of these physician, which are in agreement, fully

support the Petitioner's claim that he is permanently and totally disabled for the injuries and conditions that were caused by the accident. There is no contrary medical opinion.

The Petitioner underwent a lumbar fusion on March 29, 2011. It was the Petitioner's testimony that a cervical surgery had also been recommended but he chose not to proceed. Following the surgery he has embarked on and received a very extensive course of medical care which culminated with an unsuccessful placement of a trial spinal cord stimulator and the successful placement of an intrathecal pain pump in September, 2017. The Petitioner remains under the care of Dr. Lubenow and has seen him both in person and via telemedicine visits. The Petitioner's status and his pain pump are also regularly monitored by a home health care nurse.

The Arbitrator finds that the evidence shows the Petitioner has been fully compliant with all of the treatment modalities and instructions that have been prescribed and ordered for him over the span of more than a decade since the accident. The medical records from Dr. Lubenow and Rush Medical Center indicate the protocols that the Petitioner is required to follow in conjunction with the treatment for the IT pump which include electronic analysis of the pump for intrathecal drug infusion, drug and chemical testing, and evaluations from Dr. Lubenow. There is nothing to indicate the Petitioner has been anything other than exemplary and a fully compliant patient.

Respondent's Exhibit 1 consists of a toxicology report that was conducted at the time and at the request of Dr. Lubenow of the initial evaluation on May 10, 2017. Presumably, the testing was conducted as part of the regular protocol that exists at some programs when a patient is evaluated

in a pain management setting. The Rush Medical Center records reflect that subsequent toxicology testing was routinely conducted as part of the treatment plan without any evidence of a problem. There was no evidence introduced by the Respondent to interpret the testing, or to demonstrate any probative value from this particular test or from any of the numerous other toxicology tests that were conducted in collaboration with the treatment protocol at Rush. The logical inference to be drawn is that if there were a problem with any of the lab results – of which, to be clear, there was none – Dr. Lubenow and the Rush pain treatment team would have documented the issue. The records contain no reference to any issue with the lab studies. The Arbitrator finds no significance from Resp. Ex. 1, a good portion of which is duplicative of Petitioner's Ex. 3)

Dr. Lubenow prepared a medical report which is dated July 17. 2019 which describes the Petitioner's relevant medical history and course of treatment that he provided which ultimately included permanent implantation of the intraspinal drug pump in September, 2017. (Px 4, p. 2) He described the Petitioner's condition as a failed back surgery syndrome of the lumbar spine, cervical radiculopathy, and ongoing lumbar radiculopathy. Dr. Lubenow stated that the only medications for the Petitioner were Valium twice a day and Oxycodone 1 tablet/day. He stated that the work accident of October 21, 2010 aggravated a previous lumbar spine condition from which the Petitioner had been able to return to work without significant interventional pain treatment. (Px 4, p. 2) He indicated that the Petitioner would need to be seen and managed by a qualified pain medicine physician for life, to have the pump replaced every six years, and receive drug pump refills approximately every three months. The doctor concluded with his opinion that the Petitioner had reached maximum medical improvement; that his condition has resulted in a

chronic, state of pain for which he will need an instraspinal pain pump; and, that he is permanently and totally disabled.

Dr. Alexander Ghanayem conducted a Section 12 examination of the Petitioner on February 27, 2014. (Px 7, p. 2) He observed a potentially objective basis for back pain given the spottiness of the lumbar fusion and facet joint impingement. He thought an updated CT scan to check on the fusion would be appropriate. He did not see any reason for the Petitioner to have thoracic or neck pain given the MRI findings.

A re-evaluation by Dr. Ghanayem was conducted on June 16, 2016. It was the impression of Dr. Ghanayem that the Petitioner had failed back syndrome for which use of an intrathecal pain pump would be a reasonable recommendation for medical treatment. (Px 7, p. 3)

The last evaluation conducted of the Petitioner by Dr. Ghanayem took place on October 17, 2019. Dr. Ghanayem noted that since his last visit there had been placement of the inflatable pain pump. Dr. Ghanayem stated that the Petitioner had reached maximum medical improvement with a diagnosis of failed back syndrome. His conclusion was that "Functionally, I think he is disabled from occupational activities) (Px 7, p. 7)

Based on the foregoing, the Arbitrator concludes that Petitioner is permanently and totally disabled pursuant to Section 8(f) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC011646
Case Name	Larry Hardwick v. Bahler Trucking
Consolidated Cases	
Proceeding Type	Remand from Circuit Court Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0027
Number of Pages of Decision	11
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Gary Stokes
Respondent Attorney	Jason Jording

DATE FILED: 1/20/2023

/s/ Deborah Baker, Commissioner

Signature

23IWCC0027

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LARRY HARDWICK,

Petitioner,

vs. NO: 16 WC 11646

BAHLER TRUCKING,

Respondent.

DECISION AND OPINION ON CIRCUIT COURT REMAND

This matter comes before the Illinois Workers' Compensation Commission ("Commission") pursuant to an order from the Circuit Court for the Eleventh Judicial Circuit of Illinois, dated August 30, 2018, in which the court reversed the decision of the Commission and remanded the matter to the Commission for further proceedings. Pursuant to the court's order, the Commission reverses the Decision of the Arbitrator and finds that Petitioner's current condition of ill-being is causally related to the stipulated December 2, 2015 work accident and awards benefits as ordered 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 (1980).

I. FINDINGS OF FACT

Background & Procedural History

This matter was tried before the Arbitrator on January 26, 2017. The parties stipulated that Petitioner sustained a work accident on December 2, 2015. Petitioner alleged that as a result of the work accident, he injured his sacroiliac joint ("SI joint"). The Arbitrator found that Petitioner sustained injuries to his low back and right buttocks at the time of the stipulated work accident,

but his condition resolved as of April 13, 2016, the date of Dr. Morris Soriano's Section 12 examination. The Arbitrator found further that Petitioner's low back and right buttocks conditions of ill-being were not causally related to said accident. The Arbitrator awarded reasonable and necessary medical expenses through April 13, 2016 only, awarded temporary total disability benefits from December 22, 2015, through April 13, 2016, and denied prospective medical care.

In reaching his decision, the Arbitrator found the testimony provided by Petitioner to be incredible and contradicted by the medical records. The Arbitrator also found the opinions of Section 12 examiner Dr. Soriano to be more persuasive than those of Dr. Jason Seibly, Petitioner's second opinion doctor, based on the medical evidence and the nature of the two doctor's relationship to this litigation. The Arbitrator adopted Dr. Soriano's opinions that Petitioner's work accident resulted in soft tissue injuries to the low back and a contusion to the right buttock, and that any work-related injuries had resolved by April 13, 2016. The Arbitrator also noted that no SI joint dysfunction diagnosis was rendered until August 29, 2016, thus it appeared to be a new condition. On October 10, 2017, the Commission affirmed and adopted the Arbitrator's decision in its entirety.

Petitioner appealed to the Circuit Court for the Eleventh Judicial Circuit of Illinois, and on August 30, 2018, said court reversed the Commission's decision, finding it to be against the manifest weight of the evidence. The circuit court remanded the instant case to the Commission "for further proceedings consistent with the reversal of the Commission's holdings."

Pre-Accident Medical Care

On April 3, 2006, Petitioner presented to UPMC Bedford Memorial after feeling a sharp stabbing pain in his back while tightening a load of steel on his flatbed truck. An examination revealed minimal right hip tenderness and tenderness in the midline and paravertebral lumbar spine area. Lower extremities were completely benign. X-rays revealed degenerative disc disease at L4-5 and "L5-S." He was diagnosed with a lumbosacral/hip strain. RX 5. On April 11, 2006, it was noted Petitioner suffered from low back pain radiating to his legs bilaterally with a burning sensation in his low back and buttocks. A lumbar MRI revealed normal results. RX 6. On April 19, 2006, Petitioner presented to Washington County Memorial Hospital complaining of low back pain radiating down his right leg to his foot. The onset was April 3, 2006 when he twisted his back while getting up onto a step on his truck. RX 7. In May 2006 Petitioner presented to Campbellsburg Family Health Care with complaints of continued low back pain. On August 7, 2006, Petitioner was prescribed a TENS unit. RX 8.

On November 10, 2008, Petitioner presented to Campbellsburg Family Health Care complaining of low back pain and sciatica. RX 8. On November 18, 2008, it was noted that Petitioner had low back pain and right leg radiculopathy. The records are somewhat illegible, but there appears to be a reference to Petitioner falling off a truck and hurting his back three years before, then hurting his back again on September 1, 2008. He received a caudal epidural pain block by Dr. James M. Brent on November 18, 2008. RX 9.

On February 12, 2014, Petitioner was a new patient as HCH First Capital Medical Group, and he requested a colonoscopy. He also noted tailbone pain "since last Friday." RX 9. On April

3, 2015, Petitioner presented to his family physician, Dr. Lisa Clunie at HCH for hypertension and abdominal pain. There was no mention of any low back pain. RX 9.

Stipulated Accident

On December 2, 2015, Petitioner was a truck driver for Respondent. That day, he hauled sows from Virginia to Peoria, Illinois, and he ate almonds while driving. Upon reaching the Illinois/Indiana state line, he began having a reaction to the almonds and pulled off the interstate to collect himself for several minutes. Shortly after Petitioner began driving again, he began experiencing shortness of breath and was unable to follow the curve of the ramp he was on and drove off the edge with the truck landing on its right side. Petitioner used his right leg to brace himself against the cab in order to unbuckle his seatbelt. He then used a hammer to break the windshield, but realized he was too large to climb out of the windshield hole. He then pushed overhead to open the driver side door and climbed out of the cab and down to the ground.

Petitioner called the State Police for assistance, and called Respondent to report the accident. An ambulance eventually came and transported Petitioner to Carle Hospital. Ambulance records indicated Petitioner had been ambulatory for some time but complained of worsening mid-back pain that was radiating down his right leg. PX 1. He was placed on a stretcher prior to being transported to the hospital.

Post-Accident Medical Care

Upon arriving at Carle Hospital emergency room on December 2, 2015, Dr. W. Ben Welch noted "Patient c/o BP [Patient complains of back pain]" at the beginning of the ER note, yet also wrote "no back pain" in the "associated symptoms" section of the ER note. Upon examination, Dr. Welch found normal range of motion with no edema or tenderness. He diagnosed a vehicle accident, buttock contusion, and ventral incisional hernia. An *Illness/Injury Report* indicated Petitioner was "not released to any form of work for today." Separately, a nurse noted Petitioner complained of pain and discomfort in his back, right hip, and right leg. Petitioner also complained to the nurse of constant aching, soreness, spasm, stabbing and throbbing. Petitioner indicated a pain rating of 10 out of 10, which was aggravated by activity, movement, palpation, and positioning. PX 2.

After being discharged from Carle Hospital, Petitioner was driven to his father's home in Indiana. On December 6, 2015, he reported to the Harrison County Hospital emergency room complaining of abdominal pain, back pain, and right hip pain that had been ongoing since an accident 5 days before. The "review of symptoms" section lists back pain and muscle pain, and his physical examination revealed lumbar tenderness. A CT scan of the abdomen was performed and revealed a ventral hernia, inguinal hernia, and chronic L5 pars defect. He was diagnosed with a ventral hernia and contusion. He was told to take Tylenol as needed for pain. Upon being discharged, it was reiterated that the reason for the visit was abdominal pain, hip pain-swelling, a motor vehicle crash, and back and stomach pain. PX 3.

On December 9, 2015, Petitioner visited his family doctor, Dr. Lisa Clunie, who noted abdominal pain along with joint and right hip pain after a motor vehicle accident. On December

21, 2015, Petitioner followed up with Dr. Clunie for sciatic nerve pain and right leg swelling. Dr. Clunie also noted complaints of back pain, which were increasing, and decreased range of motion. Dr. Clunie noted the pain was localized in the lumbar region and was aching, burning, sharp, shooting, spasmodic, and stabbing. The severity of pain was moderate. Dr. Clunie also noted the back pain was radiating down Petitioner's right leg. It was noted Petitioner had not received an off-work note to date, but that he had not worked since the accident date. The medical record also indicated Petitioner had "worse pain one right si joint [sic]," causing him to frequently switch from sitting to standing. Petitioner was taken off work until December 28, 2015 for this work-related condition. A diagnostic exam was also performed on this date, indicating grade 1 spondylolisthesis of L5-S1 with possible spondylotic defects. Dr. Clunie diagnosed acute low back pain. PX 5.

On December 30, 2015, Petitioner followed up with Dr. Clunie complaining of continued low back pain radiating down his right leg. Dr. Clunie again noted "worse pain one right si joint [sic]." Petitioner was kept off work through January 28, 2016 and was referred to a neurosurgeon. PX 5. Petitioner underwent a lumbar MRI the same day which revealed multilevel degenerative disc disease, facet joint disease, and grade 1 spondylolisthesis of L5 on S1. Dr. Clunie diagnosed acute low back pain and spondylolisthesis. PX 4.

On January 18, 2016, Petitioner began treating with neurosurgeon Dr. Joseph M. Finizio. On January 23, 2016, Petitioner continued his complaints of low back pain, and now had pain radiating to his left lower extremity in addition to his right lower extremity. Dr. Finizio reviewed the lumbar MRI and found L5-S1 spondylolisthesis and foraminal stenosis at L4-5. Physical therapy was recommended. PX 7. Petitioner underwent physical therapy at St. Vincent Hospital beginning on January 19, 2016. The record indicates Petitioner described his radicular lower extremity pain as an "electrical fence." PX 8. Dr. Finizio took Petitioner off work through February 15, 2016. RX 1.

On February 15, 2016, Petitioner returned to Dr. Finizio, who noted physical therapy had not decreased Petitioner's pain. Dr. Finizio recommended a course of lumbar epidural blocks. However, Respondent only authorized one injection, which was performed on March 31, 2016. PX 7, PX 9. On June 6, 2016, Petitioner reported ongoing low back pain and pain radiating into his right leg. Dr. Finizio stated Petitioner required three epidural injections to see if they would work. If they did not work, Petitioner would require an L5-S1 laminectomy and fusion. PX 7. Petitioner testified he never received the remaining recommended injections.

On April 13, 2016, Petitioner underwent a Section 12 examination with Dr. Morris Soriano, a board-certified neurosurgeon, at Respondent's request. Petitioner reported midline back pain radiating to his right buttock, thigh, calf, and big toe. Dr. Soriano noted Petitioner was using a TENS unit, which was helpful. After reviewing diagnostic testing and records, Dr. Soriano examined Petitioner, finding a normal neurological examination with normal gait and the ability to support his weight on his heels and toes. Dr. Soriano found self-limiting range of motion to 20 degrees flexion and 10 degrees extension. Faber's maneuver bilaterally produced low back pain and bilateral hip pain. Dr. Soriano found no tenderness and found 3 out of 5 positive Waddell's responses. Dr. Soriano diagnosed a soft tissue injury to the right buttocks and lumbosacral spine. He opined that Petitioner's preexisting spondylolisthesis was not aggravated, reasoning that Petitioner's onset of bilateral lower extremity pain was somewhat delayed, and that complaints of

bilateral lower extremity pain are inconsistent with an acute aggravation of spondylolisthesis. He also opined that Petitioner's alternating right and left lower extremity complaints did not correspond with his accident. He opined that physical therapy, medications, and work restrictions to date were reasonable, as was the epidural injection. Dr. Soriano opined Petitioner did not require any further work restrictions and could return to full duty. He found no permanent disability and opined Petitioner did not sustain any impairment based on the AMA Guides to the Evaluation of Permanent Impairment, as Petitioner had not undergone surgery, had no neurological deficit and demonstrated no other deficits. RX 1.

Dr. Soriano testified via deposition on July 26, 2016. He testified that he reviewed medical records and diagnostic images. On cross examination, he admitted that Petitioner's lower extremity complaints were not delayed. He also admitted that Petitioner did not have "alternating" lower extremity complaints, only that his occasional left lower extremity complaints were in addition to his right lower extremity symptoms. Dr. Soriano characterized this as referred pain and admitted that this could occasionally manifest within a patient. He testified his belief that Petitioner's lower extremity complaints after the accident were delayed, was a primary reason for his opinion that the accident did not aggravate Petitioner's preexisting spondylolisthesis.

On August 29, 2016, Petitioner was sent by his counsel to Dr. Jason Seibly, a board-certified neurosurgeon, for a second opinion. Petitioner presented with right low back and hip pain radiating down his leg to his hamstring with some paresthesia into his foot. He examined Petitioner and found tenderness over the right sacroiliac joint with positive sacroiliac joint provocation testing, a positive Faber test, and pain with thrust maneuvers, pelvic compression, and internal and external rotation of the right hip. Dr. Seibly reviewed Petitioner's radiological studies and medical records. Dr. Seibly found the lumbar MRI to be unremarkable with moderate degenerative changes in the lumbar spine. He also reviewed prior X-rays and ordered new flexion and extension X-rays, which revealed slight retrolisthesis at L5-S1 with extension and suggested spondylolysis at L5. Dr. Seibly also opined that the CT scan suggested spondylolysis at L5. Dr. Seibly did not believe Petitioner would benefit from a lumbar decompression, but opined most of Petitioner's pain was stemming from the right sacroiliac joint. He did not believe Petitioner had exhausted conservative measures, as Petitioner had only undergone one injection and physical therapy. Dr. Seibly recommended treatment for the right sacroiliac joint, including physical therapy with attention to pelvic stabilization and the right SI joint, a right sided steroid injection to be performed up to three times, and anti-inflammatories. Dr. Seibly opined that once symptoms improved, a functional capacity evaluation would be in order, as well as an examination by the Department of Transportation before Petitioner could return to working as a truck driver. Dr. Seibly restricted Petitioner to sedentary desk duty with no lifting, pulling, or pushing over 25 pounds and limited bending and twisting at the waist. He opined that Petitioner's current pain was due to the instant motor vehicle accident, which exacerbated a very mild preexisting condition. PX 14.

Dr. Seibly also testified via deposition on October 31, 2016. He testified that Petitioner's pain during his examination on August 29, 2016 was the same pain Petitioner had after the December 2, 2015 accident. He testified that the majority of tests performed during his examination revealed sacroiliac joint pathology rather than lumbar pathology. He testified that Petitioner had not been improving prior to seeing him because prior physicians had been incorrectly focusing on the lumbar spine rather than the sacroiliac joint. He testified that the

mechanism of injury was consistent with sacroiliac pain, as Petitioner was involved in a rollover accident while restrained in a seatbelt, which likely involved some twisting of the SI joint. Additionally, Petitioner using his right leg to try to force the truck door open also could have strained or caused inflammation of the SI joint. Dr. Seibly also testified that Petitioner's symptoms were consistent with his radiological studies, and that Petitioner's inability to sit for long periods and need to frequently switch from sitting to standing is an indication of SI pain rather than spondylolisthesis, which usually causes patients to *prefer* sitting rather than standing. PX 15.

On November 30, 2016, Respondent's Section 12 examiner Dr. Soriano drafted a report after reviewing the deposition and records of Dr. Seibly. Dr. Soriano disagreed with Dr. Seibly's diagnosis, opining that his testing was superficial and not in conjunction with acceptable standards for diagnosis of SI joint disease. Dr. Soriano did not change his causation opinion. RX 3.

II. CONCLUSIONS OF LAW

At the outset, the Commission disagrees with the Arbitrator and finds Petitioner was credible. *See R & D Thiel v. Illinois Workers' Compensation Commission*, 398 Ill. App. 3d 858, 866 (1st Dist. 2010) (when 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.") The Commission finds that the Decision of the Arbitrator contained numerous factual recitations that were not supported by the record and were inapposite to the record as-a-whole. However, when viewed in the proper light, the record demonstrates that Petitioner's testimony was consistent with the medical records.

A. Causal Connection

Determinative of this issue is whether Petitioner's undisputed December 2, 2015 work accident aggravated a pre-existing condition or caused a new traumatic injury, that remains unresolved. The Commission views the evidence differently than the Arbitrator and finds that Petitioner suffered a new traumatic injury on the date of the work accident which remains unresolved.

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 (911982). An accident need not be the sole or primary cause—as long as employment is a cause—of a claimant's condition. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 205 (2003). Furthermore, an employer takes its employees as it finds them (*St. Elizabeth's Hospital v. Illinois Workers' Compensation Commission*, 371 Ill. App. 3d 882, 888 (5th Dist. 2007)).

In the instant case, the record reflects that prior to the instant accident, Petitioner suffered low back injuries, and received conservative treatment, beginning as far back as April 3, 2006. Petitioner treated periodically over the next few years; however, there is no medical evidence that Petitioner was suffering from any back pain after February 12, 2014, a date nearly two years prior

to the instant accident. Moreover, there is no evidence Petitioner suffered from any SI joint pain, or pain in the surrounding area between February 2014 and December 2015. In the interim, Petitioner continued working as a truck driver until the instant motor vehicle rollover accident on December 2, 2015.

While there is no evidence showing that Petitioner was having any problems with his SI joint or the surrounding area prior to the instant accident, immediately after the accident, he had complaints of pain and discomfort in his back, right hip, and right leg, including constant aching, soreness, spasm, stabbing, and throbbing. These complaints were memorialized immediately following the accident in ambulance records as well as emergency room records at Carle Hospital. They were also corroborated by the Harrison County emergency room records dated December 6, 2015, and records from Petitioner's family physician Dr. Clunie dated December 9, 2015.

Petitioner's complaints were further corroborated by the deposition testimony of Respondent's own Section 12 examiner, Dr. Soriano. Although he initially opined in report and deposition testimony that Petitioner's lower extremity complaints were delayed, and that Petitioner's "alternating" lower extremity complaints did not correspond with his accident, on cross examination, Dr. Soriano admitted that Petitioner's lower extremity complaints were not in fact delayed, and that his "alternating" lower extremity complaints were actually just additional complaints on top of his right lower extremity pain, otherwise known as referred pain. Moreover, Dr. Soriano's opinion that Petitioner's complaints of bilateral lower extremity pain were inconsistent with an acute aggravation of spondylolisthesis is irrelevant to the claim, as the evidence shows Petitioner's injury is to his sacroiliac joint, not his lumbar spine. This is supported by the opinion of Dr. Seibly, who credibly testified that all of Petitioner's treatment prior to the August 29, 2016 appointment incorrectly focused on Petitioner's lumbar spine rather than his sacroiliac joint. Further support can be found for Petitioner's claim in the fact that Dr. Seibly opined the mechanism of injury was consistent with sacroiliac pain and that Petitioner's act of trying to force the truck door open with his right leg also could have strained or caused inflammation of the SI joint. He also opined that Petitioner's desire to frequently switch from sitting to standing to relieve his pain was consistent with an SI injury, and that Petitioner's symptoms were consistent with radiological studies.

The Commission finds Dr. Seibly's opinions to be more credible and persuasive than Dr. Soriano's opinions, as Dr. Seibly's opinions are supported by the medical evidence. In line with Dr. Seibly's opinion that Petitioner suffers from a SI joint injury, on 2 separate occasions in December 2015, Dr. Clunie noted Petitioner suffered from "worse pain one right si joint [sic]," an indication of the actual cause of Petitioner's pain. Further, the record supports a finding that Petitioner's complaints of low back pain radiating down his lower extremity have been consistent both leading up to his visit with Dr. Seibly, as well as thereafter. Having found the basis for Dr. Soriano's negative causation opinion to be in conflict with the evidence, the Commission finds the opinions of Dr. Seibly to be more persuasive. *Sunny Hill of Will County v. Illinois Workers' Compensation Commission*, 14 N.E. 3d 16, 25 (3d Dist. 2014) (noting expert opinions must be supported by facts and are only as valid as the facts that underly them). The Commission notes that although Dr. Soriano reviewed Dr. Seibly's opinions and disagreed, he did not provide a credible or persuasive basis for this opinion especially in light of his prior acknowledgement of having relied on inaccurate facts to form the basis of his previous opinions. The Commission finds

that Petitioner has proved by a preponderance of the evidence that his SI joint is causally related to the undisputed December 2, 2015 work accident based on a chain of events analysis and the opinions of Dr. Seibly.

B. *Temporary Disability*

Based on the above finding that Petitioner's sacroiliac joint condition is causally related to the stipulated December 2, 2015 accident, the Commission awards additional temporary total disability (TTD) benefits. The disputed periods of TTD are December 3, 2015 through December 21, 2015 (the date Petitioner was taken off work by Dr. Clunie), and April 14, 2016 through January 26, 2017 (the date of arbitration). Respondent stipulated to TTD benefits from December 22, 2015 through February 15, 2016[1].

With regard to the TTD period from December 3, 2015 through December 21, 2015, the Commission declines to award benefits for this period, as there is no medical evidence indicating Petitioner was incapable of work during this period. In fact, the December 2, 2015 record from Carle Hospital emergency room indicates that Petitioner was only taken off work for the remainder of that day only.

While the parties agree that Petitioner was entitled to TTD benefits from December 22, 2015 through, at a minimum, April 13, 2016 (see Respondent's Circuit Court Response Brief, p. 21-22), the record does not show that Petitioner was returned to work thereafter, with the exception of the April 13, 2016 Section 12 examination report of Dr. Soriano, which the Commission has found to be unpersuasive. Further, medical records subsequent to April 13, 2016 indicate Petitioner's condition remained ongoing. As such, the Commission finds Petitioner proved entitlement to the disputed TTD period of April 14, 2016 through January 26, 2017.

Petitioner's average weekly wage is $1,999.18. This yields a TTD rate of $1,332.79. Therefore, the Commission finds Petitioner is entitled to TTD benefits of $1,332.79 per week for a period of 57 & 3/7ths weeks (December 22, 2015 through January 26, 2017).

C. *Incurred Medical Expenses*

Based on the above finding that Petitioner's SI joint condition is causally related to the stipulated December 2, 2015 accident, the Commission awards additional medical expenses incurred after April 13, 2016. Petitioner offered into evidence medical bills for charges incurred subsequent to April 13, 2016. The Commission, finding the opinions of Dr. Soriano to be unpersuasive and unsupported by the evidence and law, finds that the medical treatment and charges for Petitioner's SI joint condition were incurred for treatment that was reasonable and necessary.

[1] It is unclear why Respondent only stipulated to TTD benefits through February 15, 2016 when Dr. Soriano did not perform a Section 12 examination until April 13, 2016. Despite this, the Arbitrator awarded TTD benefits through April 13, 2016.

D. Prospective Medical Treatment

Further, as Petitioner has yet to reach maximum medical improvement, the Commission orders Respondent to provide and pay for additional SI joint treatment as recommended by Dr. Seibly. The Commission notes the proposed treatment includes physical therapy with attention to pelvic stabilization and the right SI joint, anti-inflammatories, and a right-sided steroid injection to be performed up to three times. Dr. Seibly also opined that once symptoms improved, a functional capacity evaluation would be in order. The Commission finds these proposed treatments to be reasonably required to cure or relieve Petitioner of the effects of the accidental work injury to his sacroiliac joint that occurred December 2, 2015.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner's current sacroiliac joint condition of ill-being remains causally related to the December 2, 2015, accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 4, 2017, is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,332.79 per week for a period of 57 & 3/7ths weeks, from December 22, 2015 through January 26, 2017, this being the period of temporary total incapacity for work under §8(b) of the Act, and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall receive credit for temporary disability benefits paid in the amount of $22,276.64, and $8,768.96 for other benefits, for a total of $31,045.60.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical expenses detailed in Petitioner's Exhibits 12, 13 & 14, as provided in §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall receive credit for any medical bills paid, and 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.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the prospective medical treatment recommended by Dr. Seibly, as provided in §8(a) of the Act.

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

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

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

Bond for the removal of this cause to the Circuit Court by the Respondent is hereby fixed at the sum of $47,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 20, 2023

O: 11/23/22
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	19WC006774
Case Name	Tamara Greene v. Southwest Airlines
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0028
Number of Pages of Decision	22
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Richard Victor
Respondent Attorney	Thomas Cronin

DATE FILED: 1/20/2023

/s/ Kathryn Doerries, Commissioner

Signature

23IWCC0028

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

TAMARA GREENE,

Petitioner,

vs. NO: 19 WC 006774

SOUTHWEST AIRLINES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of accident including whether Petitioner's accident arose out of employment and did the accident occur in the course of employment, and being advised of the facts and law, reverses the Decision of the Arbitrator on the threshold issue of accident, and finds that Petitioner failed to prove she sustained accidental injuries arising out of and in the course of her employment with Respondent on February 12, 2019. Therefore, the Arbitrator's Decision is vacated and all compensation is denied for the reasons set forth below.

Findings of Fact

Testimony of Petitioner Tamara Greene

Petitioner was employed as a Customer Service Representative for Southwest Airlines on February 12, 2019, and had been employed as such for 5 years. (T. 8-9) On direct examination, Petitioner testified that her start time on February 11, 2019, was 9:30 a.m. (T. 9) Petitioner testified on cross-examination that her start time could have been 9:45 a.m. alleging that she had picked up a shift for someone. (T. 27)

Petitioner testified that she arrived at 9:10 a.m. and went upstairs to her workstation and set down the bag that contained all her materials. She proceeded to go downstairs. (T. 9) She was then asked to describe the setting, where the stairs were in relationship to where she entered that building. Petitioner testified that the stairs were located maybe three feet away from the entrance as you entered the building from the outside. Petitioner volunteered, "We had an ice storm that day. So it was wet outside and as you come in." Her attorney asked her then what she had said in terms of weather and Petitioner reiterated that, "[t]here was an ice storm that day. It was real icy outside." (T. 10)

Petitioner testified that after dropping her bag by her workstation she proceeded to go down the steps to go to the ATM. This was approximately 9:15 before she "clocked in." (T. 11) The footage contained on the flash drive, entered into evidence as Respondent's Exhibit No. 4, reveals that the Petitioner was coming down the stairs at approximately 9:28 a.m. (RX 4) Petitioner acknowledged that the flash drive entered as Respondent's Exhibit No. 4 was the footage of her coming down the stairs and of the incident described. (T.25)

The ATM was described as "[p]robably about three feet from the stairs because it is on the left side, on the left if you are coming down the steps." (T. 11-12) It is at the base after you go down the steps, in a little room. She testified that coworkers had done the same thing. As far as she knew, no one at Southwest Airlines had objected to her using the ATM machine. (T. 12) When she started to go down the stairs to use the ATM machine, she was carrying "a green purse, a backpack." (T. 12)

Petitioner testified that she believed that she was carrying her purse in one hand. She had her ATM card in her other hand as she had taken it out before she went downstairs. (T. 13) Petitioner testified that the stairs were concrete. When asked to describe the condition of the stairs, Petitioner testified, "That morning they were damp." (T. 13) When asked if she knew the reason that they were wet, Petitioner testified, "I believe because the traffic of the employees coming in and out to the building." (T. 14) She then testified in the affirmative when asked if it was wet outside. (T. 14) Petitioner testified "it" was tracked in from others. (T. 14) On cross-examination, Petitioner testified that she theorized that water had gotten tracked in from the outside. (T. 30) She testified that as she was starting to go down the stairs, she was speaking to the security guard. She testified she "was talking to him, making him aware that the steps were damp." (T. 14)

Petitioner testified that she was looking down as she started to go down the stairs. Petitioner testified that the reason that she was looking down was, "[t]o be careful, to make sure I didn't slip and fall, which I ended up doing anyway. So I was really cautious looking down." (T. 14-15) Petitioner testified that she was not looking at her purse, that she had no need to look at her purse as her debit card was in her hand. (T. 15) She then testified that she slipped and fell on the wet stairs. Everything fell out of her purse because her purse was still open but she was not looking at her purse when she fell. Petitioner testified that she fell about five stairs or so and injured her right ankle, her right arm and shoulder a bit. (T. 16)

Petitioner testified that she was taken by ambulance to McNeal emergency room. She was sent by her employer to Concentra Medical Centers and then she went on her own to Alpha Medical Center on February 21, 2019, where she was referred to Dr. Egwele. (T. 17) Petitioner saw Dr. Egwele starting on February 22, 2019 and continued to see him through January 27, 2020. (T. 17-18) She was sent for a course of physical therapy at Athletico, September 17, 2019 to

October 11, 2019. She was sent for an MRI on her right ankle on January 2, 2020. Dr. Egwele referred her to an orthopedic surgeon, Dr. Patel. She saw Dr. Patel February 14, 2020. (T. 18) She saw Dr. Patel intermittently thereafter and on September 3, 2020, underwent an MRI.

Dr. Patel performed surgery on Petitioner's right ankle on September 28, 2020. (T. 19) She then had a course of physical therapy, from February 18, 2020, on and off to February 26, 2021. She continued to see Dr. Patel until March 5, 2021, related to the fall of February 12, 2019. The treatment with Dr. Patel was paid by Medicaid. (T. 19) Petitioner was off work from February 13, 2019 through March 5, 2021, while under care and instructions of doctors. (T. 19-20) She received Long-term disability from May 13, 2019 that ran through February 27, 2021 through her employment with Respondent. (T. 20)

Petitioner testified that before this incident she had no other accidents or injuries involving her right ankle. Since her release from care she was involved in a motor vehicle accident on September 28, 2021, and injured both ankles. (T. 20) There was a fracture in the right ankle, the same ankle that was injured in the subject incident. (T. 21) She continues to treat with Dr. Patel for the new injury and was off work because of the auto accident. (T. 21)

Between her release from Dr. Patel on March 5, 2021 and the auto accident on September 28, 2021, Petitioner noticed a little pain in her right ankle if she stood on it for a long period of time or walked for a long period of time. (T. 22-23) Petitioner testified that during that period of time, if she did too much moving around, climbing stairs, going up and down, basically moving around, her ankle would swell. She would use over-the-counter Tylenol. (T. 24)

On cross-examination, Petitioner viewed the videotape of the incident. She testified she had seen the videotape with her attorney. (T. 25) Petitioner identified herself coming down the stairs as the videotape was played. She identified Henry as the security guard that worked at the desk. Petitioner testified that the video was an accurate depiction of the fall. (T. 26) Petitioner identified Pamela Hunter Wallace as the team lead in the building that she worked. (T. 27)

Petitioner testified that her shift could have been from 9:45 a.m. to 8:15 p.m. that day because she picked up a shift for someone. (T. 27) Petitioner agreed that the fall down the stairs happened just a little before 9:30, right around 9:30. When asked if she arrived shortly before the fall, Petitioner responded that she arrived early. (T. 28) She agreed that in the video she was still wearing a winter hat and jacket, and had not yet taken off her winter hat or jacket when she was going down to use the ATM. (T. 29) Petitioner testified that she was getting cash for a coworker who had picked up a previous shift for her. She had not clocked in yet. (T. 29) She had not started working yet when she went downstairs. (T. 29-30)

Petitioner testified that on direct she said it was an icy day and she had theorized that water had gotten tracked in from the outside. (T. 30) She had just arrived at work and had already gone up the same stairs. She agreed that she would have observed if they were wet when she came in. (T. 30) Petitioner testified that on her way down she told Henry, who is sitting at the front desk, that the stairs were wet. (T. 30-31) Petitioner testified that she kept walking down, holding an ATM card in one hand and her bag in the other. Petitioner agreed that she knew the stairs were wet when she arrived at work because she had gone up the stairs, but when she was coming down,

according to the video, she was not holding on to either railing but she was holding her bag. She denied looking into her bag just before she fell and agreed she was in no particular rush that morning. (T. 31)

Petitioner agreed that it is a well-lit area and there was no defect on the stairs. (T. 32) The stairs were in good working order. (T. 32) Petitioner testified that Henry Thomas told her that they only had one housekeeper that day and he was going to call upstairs, but she was making her rounds. (T. 32) Petitioner testified that she did not know when her conversation with Henry about the housekeeper took place. She testified that she and Henry had a conversation about the stairs being wet when she came into the building. She could not remember if he made the statement when she came into the building or when she was coming down the stairs. Petitioner testified, "But I know when I came in the building, I did make him aware that the stairs were wet as I proceeded to take my bookbag to my work station." (T. 33)

When asked to clarify whether or not she knew if she was talking to Henry, the security guard, on the way down, Petitioner testified she was talking to him as she was going down. She testified, "I said, Henry, these steps are wet." (T. 33) Petitioner did not remember when Henry stated that there was only one cleaning person before she started to go up to her work station or if he stated that when she fell. (T. 33) Petitioner testified that she worked at that location for five years. Henry had been there for a period of time. (T. 34) She did not know if Henry put out wet floor signs but the signs were there occasionally. Petitioner reiterated that she had her ATM card already out of her purse. (T. 34)

The bag that Petitioner was carrying was her personal purse/backpack. (T. 34-45) Petitioner testified that she was not looking at her purse when she was coming down the steps but she was looking down at the steps. (T. 35) Henry was the first to come to her after she fell. Petitioner testified that he called upstairs to the team leads and called 911. (T. 35) Petitioner agreed Henry was there and Pamela Hunter Wallace who also came down as a team lead. (T. 36) Petitioner testified several other teams leads came down as well. Pamela Hunter Wallace called Petitioner's aunt to let her know where she was taken by ambulance. (T. 36)

At Petitioner's release from Dr. Patel on March 5, 2021, she was told if she had further issues, she could come back to him. (T. 36) Petitioner did not go back to Dr. Patel between March 5, 2021, and the date of her motor vehicle accident on September 28, 2021. (T. 36-37) Dr. Patel did not place any physical restrictions on Petitioner when he released her on March 5, 2021. He encouraged her to do a home exercise program. (T. 37)

On redirect examination, Petitioner testified that she saw the video several times. She agreed the fall that is depicted in the video is consistent with how she remembered the accident happening. She testified that the video was consistent with her testimony that when she was going down the stairs she was looking down at the stairs. (T. 30) Petitioner's attorney asked her the following:

Q. Consistent with your holding your purse with one hand and your debit, although you couldn't really see it in the video, you were holding a debit card in the other?
A. Correct.

Q. Although you can't see the condition of the stairs in the video as you were walking down, it is your testimony that they were wet?
A. Yes.
Q. It is the wet stairs that caused you to fall?
A. Yes.
Q. This was just before you clocked in?
A. Correct. (T. 40)

On recross examination Petitioner confirmed the video contained the entire fall and the video showed the entire incident. (T. 42)

Testimony of Pamela Hunter Wallace

Pamela Hunter Wallace (Ms. Wallace) testified on behalf of Respondent. Ms. Wallace was employed by Southwest Airlines on the date of incident and had been employed by Respondent for 28 years. (T. 43-44) She was a Team Leader at 5035 West 55th Street in Chicago which was the Reservations Center in the hanger. She oversaw the Customer Service Representatives in their daily duties, phone calls and evaluations. Ms. Wallace retired in August of 2021. (T. 44)

Ms. Wallace testified that she was the only Team Lead present on February 12, 2019. (T.45) She started her shift at 6:30 a.m. on the morning of Petitioner's fall. She came in the building and went up the stairs. (T. 45)

When she came in the building that day, she did not notice anything unusual about the stairs. She did not notice any wetness on the stairs. If she did, she would have had to get the cleaning lady to come and clean it up. She would block off the stairs so no one could go up the stairs. On the day of the fall, when she arrived, none of that happened. (T. 46)

Ms. Wallace testified that after an associate paged her and told her what happened, she went downstairs to check and she saw Petitioner on the ground, on the floor. When she came down the stairs, she did not notice anything unusual about the stairs. They were neither damp nor wet. (T. 47) She looked at the stairs when she was speaking with her to make sure the mats had not come loose or if anything was wrong with the stairs. They looked like they were fine. They looked as if they were in regular working order. When Ms. Wallace looked up at the stairs, she did not see any wetness or dampness on the stairs. (T. 48)

If the stairs had been wet, Ms. Wallace would have had to get the cleaning person to come and clean it up or would have had to rope off the stairs or put a sign, that said, "please do not use." (T. 48) Ms. Wallace called Petitioner's aunt and stayed with Petitioner. She left only to talk with the cleaning lady and to tell the people upstairs. She returned downstairs and waited until the ambulance came. She spoke with the cleaning lady to ask where she cleaned up or to identify where the wetness was located. (T. 49) Ms. Wallace had not asked the cleaning lady to clean anything that day. (T. 50)

Ms. Wallace inspected the area after the Petitioner was taken by ambulance. She walked up the stairs. The stairs were not wet. The stairs were not damp. There were no defects on the

stairs. (T. 50) Ms. Wallace filled out the incident report, a 13R. Ms. Wallace testified that as team leader she was responsible for investigation. In this case, when she looked at the stairs and checked the stairs that was her investigation. The stairs were fine. (T. 51)

On cross-examination Ms. Wallace testified that the weather was clear the morning in question. She could not recall if in the following three hours after her arrival at work, and the time when Petitioner used the stairs, if she used the stairs. She was not outside the building. (T. 52) Ms. Wallace has known Petitioner for as long as Petitioner has worked at Southwest and never had any issues with Petitioner. (T. 52-53)

Testimony of Henry Thomas

Henry Thomas was called to testify, via WebEx, by Respondent. In February of 2019, Henry Thomas was employed by Whelan Security Company and was working at the Southwest Airlines' Reservation Center in the hanger. At that time, he was the Security Supervisor. As Security Supervisor, his responsibilities were to patrol the building and monitor the camera. (T.54-55)

Mr. Thomas' desk was located at the main entrance of the building near the front door with a staircase to the left. On the other side of his desk were the elevators. He had been working for Whelan Security for approximately two years. He had been assigned to the same location for the majority of that time. Henry Thomas testified that he also had the responsibility to keep daily logs for every hour of his shift. (T. 56-57)

Mr. Thomas recalled an employee of Respondent having a fall on the stairs in February 2019. He was sitting at his desk when it occurred. He heard someone coming down the stairs. He heard a fall. When he jumped up, they were already at the bottom of the stairs. He ran over to assist. (T. 57) He noticed a lady he recognized from seeing around the building had fallen down the stairs. Mr. Thomas testified that the morning of the fall, she did not talk to him to say the stairs were wet. Mr. Thomas testified she did not talk to him when she was coming down the stairs right before the fall. Mr. Thomas further testified that after the fall, he jumped up to see if she was okay. He asked her if she was okay. She was crying and in pain. She said she needed an ambulance. He called upstairs to her supervisors to let them know what happened. (T. 58)

Mr. Thomas stayed with her and after she was taken by the ambulance he walked up the stairs to see if there was anything that was in the way, see if it was wet or anything or anything was on the ground. He further testified that he did not see anything. The stairs were not wet. There was no debris on the stairs. Mr. Thomas testified that the stairs were well-lit. (T. 59-60)

Mr. Thomas confirmed that he could recall that there was a railing on each side of those stairs. He had worked in this location for approximately two years. His desk was located at the main entrance, inside a set of double doors. In his experience, in the past, he had observed the floor getting wet and the stairs getting wet in the past when it rains or snows. He testified that snow could get tracked in. In those situations, he would contact the cleaning lady because her office was directly across from his desk or he would grab a mop and mop the stairs if she was somewhere else in the building. He would then put a wet floor sign if he did notice it being wet and no one

was right there to clean it up. On the day of the fall he started his shift at 7:00 a.m. He recalled the fall occurred in the morning. Between the start of his shift at 7:00 a.m. and the time the fall occurred, he did not notice any wetness on the floor. He never called the cleaning lady to clean up anything on the floor or stairs. (T. 60-62)

Mr. Thomas then testified that after the fall, he did not notice anything that needed to be cleaned up. He looked around on the stairs and in the area to verify. He did not notice anything wet that was on the stairs. (T. 62)

On cross-examination, Mr. Thomas could not recall what the weather was on February 12, 2019, the date of Petitioner's fall. (T. 63) Between the time that he came in at 7:00 o'clock a.m. and when this fall happened assuming around 9:30, in the 2 1/2 hours or so, Mr. Thomas would have used the stairwell. As soon as he came in every day, he did rounds which involved going up the stairs, checking the break room, checking the upstairs and doing a walkthrough of the building in general. Mr. Thomas usually took the stairs. He could not recall prior to the fall how long a period of time since he had used the stairs. It usually took him about 45 minutes just to do the walkthrough and the rounds. Then he would come back to his desk. He agreed it could have been an hour or 45 minutes or "something like that" since he used the stairs before the fall. (T. 64-65)

Mr. Thomas testified on cross examination that the stairs are on a slant and the way his desk is situated, that he could not see Petitioner coming down the stairs before the fall. He testified that he could not see anyone until they got to the bottom of the stairs. Mr. Thomas testified that he heard Petitioner coming down the stairs, but he did not know who it was until she actually fell. He jumped up and ran over and that was how he knew who it was. He did not see her coming down the stairs but heard her coming down. He did not see her until he reviewed the camera. The person coming down the stairs was not speaking to Mr. Thomas. He heard the footsteps coming down the stairs and then someone fell. (T. 65-66)

On redirect examination, Mr. Thomas confirmed that from his desk, if he stood up or moved around, he could see the whole area in front of his desk including inside the doors and the bottom of the stairs. If someone had come in and told him the stairs were wet he would have contacted the cleaning lady or grabbed the mop and just cleaned it up and put a wet floor sign up. No one told him that day the stairs were wet. He checked the stairs and they were not wet. He did not see any wetness on the stairs. (T. 66-67)

Video Footage of Events of February 12, 2019

Respondent's Exhibit 4 was entered into evidence and contained footage of the incident in question, albeit a limited view. The videotape bears the initials MDW, HGR, and CSS, which, based on Ms. Wallace's testimony, confirmed the video was from the hanger. The footage clearly depicts Petitioner coming down the stairs, however, the stairs are not in plain view. The video confirms Petitioner is holding onto her purse with two hands in front of her against her body. At no point does the video show the Petitioner speaking with Henry Thomas or Henry Thomas speaking with her. At 9:28:27.76 A.M. CST the Petitioner is walking down with what appears to be both hands at the top of her purse directly in front of Petitioner at approximately waist height or slightly below. The images do suggest that Petitioner was doing something with her purse but it is not clear from the video what

she was doing with her purse.

The video also shows there is a mat outside at the front entrance, and inside the vestibule before the second set of entrance doors. Inside the front door, there is another mat and one more mat reaching from the point of the front door mat to the stairs. On the opposite side of the stairs, on the other side of the security guard's desk, there is no second mat, only what appears to be laminate or vinyl flooring after the first mat at the entrance way.

While descending the staircase, Petitioner appears to be looking directly down at her hands, into or at her purse. The security guard Henry is looking at his phone and there is clearly no conversation taking place. Petitioner fell forward at what appears to be close to the bottom stairs, but the stairs are not in view. Petitioner was not holding on to either handrail and she was holding her purse in front of her, approximately waist high or slightly below. The footage confirms that it would have been impossible for Petitioner to see the stairs in front of her while looking down based upon the position of the purse. Contrary to Petitioner's testimony, the video does not confirm that Petitioner was holding the bag in one hand, with her ATM card in the other. (RX 4)

After the fall, the video shows the security guard jumps up, checks Petitioner and picks up Petitioner's backpack/purse and what appears to be another object off of the floor and he places them on the table. The object appears to be glasses but definitely bigger than a debit card. At the time, the guard speaks to Petitioner and then makes phone calls. At 9:31:20:986 A.M. CST the guard takes notes and looks at the stairs again.

The video shows both Ms. Wallace and a short time later, the housekeeper, descend the same stairs. Ms. Wallace appears to briefly pause and look at the stairs about half way down. Neither appears to take note of water or wetness on the stairs and neither appears to try to avoid anything on the stairs. The housekeeper actually descends with a bag in her hand, looking at Petitioner. Neither Henry Thomas, the security guard, nor Ms. Wallace nor the housekeeper, put any sign to indicate that there are wet stairs and none of them mops or wipes the stairs. Petitioner remained on the floor.

In the video at approximately 9:34:32.976 A.M. CST two unidentified females appear at the entrance and Mr. Thomas holds the door and appears to explain that they must go to the elevator side of his desk. As they enter the building and go to the opposite side of the stairs, Petitioner is still lying on the floor. Only one of the two females wiped her feet on the large carpet mat upon entry, yet no wet footprint, drips or water is observed on the floor on any side or in front of the entrance mat even when these two people walked from the outside through to the other side of the security guard's desk and out of sight. (RX4)

Conclusions of Law

Accident

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, Petitioner 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, a claimant bears the burden of showing, by a preponderance of the evidence, that [s]he has suffered a disabling injury which arose out of and in the course of h[er] employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *Eagle Discount Supermarket v. Industrial Comm'n*, 82 Ill. 2d 331, 338, 412 N.E.2d 492, 45 Ill. Dec. 141 (1980). If the injury occurs within the time period of employment, at a place where the employee can reasonably be expected to be in the performance of his duties and while he is performing those duties or doing something incidental thereto, the injury is deemed to have occurred in the course of employment. *Id.*; see also *Sisbro*, 207 Ill. 2d at 203 (ruling that an injury occurs "[i]n the course of employment" when it "occur[s] within the time and space boundaries of the employment"). *Dukich v. Ill. Workers' Comp. Comm'n*, 2017 IL App (2d) 160351WC, P30, 86 N.E.3d 1161, 1169, 2017 Ill. App. LEXIS 590, *17, 416 Ill. Dec. 876, 884.

> An injury "arises out of" employment when "the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro*, 207 Ill. 2d at 203. To determine whether a claimant's injury arose out of her employment, we must first determine the type of risk to which she was exposed. *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 478, 949 N.E.2d 1151, 351 Ill. Dec. 56 (2011). There are three categories of risk to which an employee may be exposed: (1) risks that are distinctly associated with one's employment, (2) risks that are personal to the employee, such as idiopathic falls, and (3) neutral risks that have no particular employment or personal characteristics, such as those to which the general public is commonly exposed. *Springfield Urban League v. Ill. Workers' Comp. Comm'n*, 2013 IL App (4th) 120219WC, ¶ 27, 371 Ill. Dec. 384, 990 N.E.2d 284. "Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public." *Id.*; see also *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 45, 509 N.E.2d 1005, 109 Ill. Dec. 166 (1987) ("For an injury to have arisen out of the employment, the risk of injury must be a risk peculiar to the work or a risk to which the employee is exposed to a greater degree than the general public by reason of his employment."); *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 59, 541 N.E.2d 665, 133 Ill. Dec. 454 (1989) ("[I]f the injury results from a hazard to which the employee would have been equally exposed apart from the employment, or a risk personal to the employee, it is not compensable."). *Dukich v. Ill. Workers' Comp. Comm'n*, 2017 IL App (2d) 160351WC, P31, 86 N.E.3d 1161, 1169-1170.

Petitioner was running a personal errand before starting work in the downstairs of the building where she worked. The Commission finds that Petitioner's testimony that she was about

to use the ATM to pay a co-worker for covering her shift is not persuasive. (T. 29) The Commission can think of no circumstance in which an employee that asks a co-employee to cover her shift would be obligated to pay that co-employee. The Commission finds that Petitioner's testimony regarding the reason she was headed to use the ATM was contrived in order to make the errand somehow work-related and the Commission finds such a charge is unconvincing. Therefore, the Commission finds that Petitioner was on an errand purely personal in nature.

Essentially, Petitioner alleges that the occurrence happened on the employer's premise as a result of a hazardous condition, even though she had not yet started work. The general rule as stated in *Dukich* is "[t]he presence of a "hazardous condition" on the employer's premises renders the risk of injury a risk incidental to employment; accordingly, a claimant who is injured by such a hazardous condition may recover benefits without having to prove that she was exposed to the risk of that hazard to a greater extent than are members of the general public. *Archer Daniels Midland*, 91 Ill. 2d at 216; *Mores-Harvey*, 345 Ill. App. 3d at 1040; *Suter*, 2013 IL App (4th) 130049WC, ¶ 40. In other words, such injuries are not analyzed under "neutral risk" principles; rather they are deemed to be risks "distinctly associated" with the employment." *Dukich v. Ill. Workers' Comp. Comm'n,* 2017 IL App (2d) 160351WC, P40, 86 N.E.3d 1161, 1173, 2017 Ill. App. LEXIS 590, *26, 416 Ill. Dec. 876, 888.

However, in the subject case, the Commission explicitly rejects the Petitioner's testimony that the stairs were hazardous or wet based on the totality of the evidence. First, Petitioner testified that while she was descending the stairs, she was looking down to be careful, to make sure she did not slip and fall. She emphasized by saying, "So I was really cautious looking down." (T. 15) She went on to say she was aware the stairs were wet and specifically testified that she was not looking in her purse. (T. 15) She then testified that as she was going down everything fell out of her purse because her purse was still open. She then confirmed she was not looking at her purse when she fell. (T. 16) The Commission finds the video footage in Respondent's Exhibit 4 belies all of this testimony. Petitioner's purse is blocking Petitioner's line of vision to the stairs in front of her. Her purse is positioned approximately waist high or slightly below and instead of being hung on her shoulder or wearing the backpack on her back to free her hands to hold one or both railings, her hands were holding her purse directly in front of her. The Commission finds it would be impossible for Petitioner to see the stairs based on the way she is holding her purse and the way she was holding her purse is the opposite of being cautious. Further, the video footage does not show the contents of the purse strewn in any way. In fact, the security guard picked up her purse immediately after checking her and moved it to a table and at that time one object fell out, which the security guard picked up and put on the table beside the purse.

Next, Petitioner's credibility was also tainted by claiming she was conversing with Mr. Thomas, the security guard, as she was coming down the stairs. First, Petitioner testified that there was no defect on the stairs and the stairs were well lit. (T.32) Mr. Thomas confirmed the stairway was well-lit, there was no debris and there was a railing on each side of those stairs. (T. 59) Further, both before and after viewing the video, Petitioner testified that she was talking to the security guard when she was going down the stairs and telling him the stairs were wet. (T. 14, 30-31, 33) The Commission finds that this testimony is patently false. The video footage belies this testimony and proves that there was virtually no interaction with the security guard while Petitioner was descending the stairs. In the video, Mr. Thomas clearly has his back toward the staircase. He never rises and he appears to be looking at his phone. Mr. Thomas explicitly denied that Petitioner

ever talked to him the morning of the fall and denied Petitioner said the stairs were wet and he also explicitly denied any conversation between Petitioner and him as she was descending the stairs. (T. 58)

Finally, the video footage is clear and convincing that there is absolutely no evidence of moisture at the front door. The video shows that there is a mat outside before the first entrance door and there are rugs/mats in the covered entrance, a rug/mat immediately inside the entrance door, and another rug/mat from the first rug to the stairs. (RX4)

The Commission is further convinced that there was little chance that moisture was on the stairs when Petitioner fell after viewing the video footage at the point two unidentified females entered the building while Petitioner was lying on the floor, very shortly after her fall. The females were directed toward the elevators by the security guard. Only one of those females appears to wipe her feet on the inside front door rug/mat. Heading in the direction of the elevators, to the right of the security guard's desk, there is no additional second interior mat as there is on the stair side but also no visible footprint, drip or evidence of damp feet on the flooring after the two women pass through the entrance. Additionally, there does not appear to be precipitation on the glass windows. (RX4)

Ms. Wallace testified she worked for Respondent for twenty-eight years but was retired prior to the day of the trial. (T. 43-44) Ms. Wallace testified that on the day of the accident, it was a clear day. (T. 52) Ms. Wallace confirmed she knew Petitioner since she worked for Respondent, which according to Petitioner would have been five years, (T. 9) and she had no issue with Petitioner. (T. 52-53) When she was employed by Respondent, Ms. Wallace testified she was responsible for overseeing representatives in their daily duties, phone calls, and evaluations. (T. 44-45) The Commission finds that Ms. Wallace, as a retiree, is the most objective of the witnesses. Ms. Wallace testified that as a team leader, she investigated the stairs and they were not wet. (T. 47) Ms. Wallace testified that after speaking to Petitioner immediately after she fell, she looked at the stairs to make sure the mats had not come loose and to see if anything was wrong with the stairs and they looked fine to her. She saw no wetness or dampness on the stairs. (T. 48)

> In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Johnson v. Industrial Comm'n.*, 278 Ill. App. 3d 59, 63, 662 N.E.2d 156, 214 Ill. Dec. 802 (1996). *Dukich v. Ill. Workers' Comp. Comm'n.*, 2017 IL App (2d) 160351WC, P32, 86 N.E.3d 1161, 1170, 2017 Ill. App. LEXIS 590, *19, 416 Ill. Dec. 876, 885.
>
> We have repeatedly held that even though a claimant's testimony about an alleged accident might be sufficient, standing alone, to justify an award, it is not enough where a consideration of all the facts and circumstances shows the manifest weight of the evidence is against it. (*Allis-Chalmers Manufacturing Co. v. Industrial Comm'n.* (1961), 23 Ill. 2d 497.) *Caterpillar Tractor Co. v. Industrial Comm'n.,* 83 Ill. 2d 213, 218, 414 N.E.2d 740, 743, 1980 Ill. LEXIS 448, *6-7, 46 Ill. Dec. 687, 690.

> An award of compensation cannot rest on speculation or conjecture (*Osco Drug, Inc.* v. *Industrial Comm'n.*, 36 Ill.2d 361, 368), and the employee has the burden of proof. (*Osco; Allis-Chalmers Mfg. Co.* v. *Industrial Comm'n.*, 35 Ill.2d 367, 370.) While resolution of factual disputes and questions of credibility are ordinarily for the Commission (*Osco; State House Inn* v. *Industrial Comm'n.*, 32 Ill.2d 160, 164), where its findings are contrary to the manifest weight of the evidence it is our duty to set them aside. (*Rockford Clutch Div., Borg-Warner Corp.* v. *Industrial Comm'n.*, 37 Ill.2d 62, 67; *Arbuckle* v. *Industrial Comm'n.*, 32 Ill.2d 581, 586.) Where the sole support for an award rests upon the claimant's own testimony and claimant's actual behavior or conduct is inconsistent with that testimony, we have held the award cannot stand. (*Rockford Clutch* and cases there cited.) *McDonald v. Industrial Comm'n*., 39 Ill. 2d 396, 405, 235 N.E.2d 824, 829, 1968 Ill. LEXIS 491, *14-15.
>
> As this court has noted, "Even though a claimant's testimony, standing alone, would be sufficient to sustain an award, it is the duty of the Commission in the first instance, and of this court in the performance of its function, to consider all the facts and circumstances in evidence. (*Allis-Chalmers Mfg. Co.* v. *Industrial Comm'n.*, 23 Ill.2d 497; *Fisher Body Div., General Motors Corp.* v. *Industrial Comm'n.*, 20 Ill.2d 538.) The burden of proof is upon the claimant, and unless the evidence considered in its entirety shows the injury resulted from a cause connected with the employment there is no right to recover under the act. And an award which appears against the manifest weight of the evidence, upon a consideration of all testimony and circumstances, must be set aside. *Corn Products Refining Co.* v. *Industrial Comm'n.*, 6 Ill.2d 439; *Electro-Motive Div., General Motors Corp.* v. *Industrial Comm'n.*, 25 Ill.2d 467." *State House Inn* v. *Industrial Comm'n.*, 32 Ill.2d 160, 164-5. *Revere Paint & Varnish Corp. v. Industrial Comm'n.,* 41 Ill. 2d 59, 63, 242 N.E.2d 1, 3, 1968 Ill. LEXIS 272, *6-7.

The Commission, after considering the entire record including the testimony of the witnesses, the video evidence in Respondent's Exhibit 4 and the evidence introduced by both parties, reverses the Arbitrator's Decision, and finds that Petitioner failed to prove that the stairs were wet or defective for all of the reasons stated above. The Commission concludes that the testimony of Ms. Pamela Hunter Wallace regarding the condition of the stairs and the weather on the date of accident is more credible than the Petitioner's testimony. The testimony of both Ms. Wallace and Mr. Thomas together is more persuasive than Petitioner's testimony regarding the condition of the stairs because Mr. Wallace and Mr. Thomas actually inspected the stairs and testified the stairs were not wet or damp. The video belies much of Petitioner's testimony and adversely affects her credibility. Thus, the Petitioner failed to prove her accident arose out of a risk incidental to her employment. Therefore, the Commission vacates the Arbitrator's Decision and compensation is denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on February 15, 2022, is hereby reversed since the Petitioner failed to prove she sustained an accident that arose out of and in the course of her employment with Respondent and therefore, Petitioner's claim for compensation and medical expenses is hereby denied and all compensation

awarded by the Arbitrator is hereby vacated. All other issues are moot.

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

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(1) (West 2013)*. Based upon the denial of compensation herein, 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.

January 20, 2023

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/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	19WC006774
Case Name	GREENE,TAMARA v. SOUTHWEST AIRLINES
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Richard Victor
Respondent Attorney	Thomas Cronin

DATE FILED: 2/15/2022

THE INTEREST RATE FOR THE WEEK OF EBRUARY 15, 2022 0.77%

/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

Tamara Greene
Employee/Petitioner

Case # **19** WC **006774**

v.

Consolidated cases: _____

Southwest Airlines
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Charles Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **10/19/21**. 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 _____

FINDINGS

On **2/12/19**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**30,700.80**; the average weekly wage was $**590.40**.

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

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

Respondent is entitled to a credit of $**31,120.06** under Section 8(j) of the Act.

ORDER

MEDICAL BENEFITS

Respondent shall pay reasonable and necessary medical services of $37,962.00, as provided in Sections 8(a) and 8.2 of the Act.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $393.60/week for 106 1/7 weeks, commencing 2/22/19 through 3/5/21, as provided in Section 8(b) of the Act.

Permanent Partial Disability
The Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 25% loss of use of right foot pursuant to §8e 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.

FEBRUARY 15, 2022

FINDINGS OF FACTS

Petitioner testified that on February 12, 2019, when she arrived at Respondent for work shortly after 9:00 a.m., she went up the stairs to place her bag at her work station. Petitioner testified that there had been an ice storm overnight and she noticed the concrete stairs were wet from tracked in water from outside. Petitioner testified that before clocking in at 9:30 a.m. she went down the stairs to use an ATM to obtain cash to reimburse a co-worker. Petitioner testified this activity, which she and other co-workers had done previously, was known and permitted by Respondent. Petitioner testified she was carrying her purse with one hand and had her debit card, which she had already taken from her purse, in her other hand. Petitioner testified she could not recall if she told the security person, Henry Thomas, about the stair when she came into work, or as she was going down the stairs to use the ATM. Petitioner testified that since the stairs were wet, she was looking down at the stairs as she was going down, to avoid slipping. Petitioner testified she was not looking in her purse, that she had no need to, as she already was holding her debit card in her other hand. Petitioner testified that as she was going down the stairs, she slipped and fell down 5 stairs, with the contents of her purse, which was not closed, falling out. Petitioner injured her right ankle. Thereafter, both Henry Thomas and her team leader, Pamela Hunter Wallace, came to her and an ambulance was called.

Petitioner testified she saw the video depicting her fall both prior to and at the hearing (RX 4). Petitioner testified that the video was consistent with how she fell, specifically that she was looking down to avoid slipping on the wet stairs, and not looking through her purse when she fell, but that the contents of her purse then fell out. Petitioner testified that while the video depicted the fall, it did not show the condition of the stairs as wet.

Pamela Hunter Wallace testified for Respondent. Wallace testified that when she came into the building at 6:30 a.m., the stairs she observed were not wet. Wallace testified that after she came to Petitioner's aid after her fall, she conducted an investigation, and she observed the stairs were not wet. However, Wallace testified that she was not outside the building after coming in, through the time Petitioner fell, nor had she used the stair after coming in that morning until after Petitioner fell.

Henry Thomas also testified for Respondent. He also testified that when he used the stairs about 1 hour prior to Petitioner's fall, and after the fall, he did not observe the stairs were wet. Thomas testified he did not see Petitioner fall, just heard someone coming down the stairs, nor did he recall speaking with Petitioner. Thomas testified he did not recall what the weather was that morning.

Following Petitioner's fall, she was taken by ambulance to MacNeal Hospital (PX 1). Petitioner then was sent to Concentra Medical Center on February 18, 2019 (PX 2). Both MacNeal Hospital and Concentra Medical Center document Petitioner falling down wet stairs at work. Petitioner then sought treatment at Alpha Medical Center on February 21, 2019 and was referred to Dr. Egwele (PX 3). Petitioner treated with Dr. Egwele from February 22, 2019 to January 27, 2020. Dr. Egwele's records of February 22, 2019 document Petitioner falling on wet stairs at work. Petitioner had an MRI on January 21, 2020, which showed a high grade partial thickness ATLF tear. Petitioner was referred to a surgeon, Dr. Patel, at Northwestern Medicine (PX 6).

Petitioner treated with Dr. Patel for the February 12, 2019 fall at work from February 14, 2020 to March 5, 2021. Petitioner was sent for physical therapy, initially by Dr. Egwele, then Dr. Patel, at Athletico from September 17, 2019 to October 11, 2019, and February 18, 2020 to February 26, 2021 (PX 5). Petitioner had an MRI on September 3, 2020, which showed the partial ATFL tear. On September 28, 2020, Dr. Patel performed an arthroscopy and right deltoid ligament debridement and repair of posterior tibial tendon. On March 5, 2021, Dr. Patel placed Petitioner at MMI. Both Dr. Patel and Respondent's examining physician, opined that Petitioner's right ankle condition and surgery were causally related to her fall at work (PX 4 and RX 1,2,3).

Petitioner testified that she was off work per the instructions of Dr. Egwele and Dr. Patel as a result of the February 12, 2019 fall at work from February 22, 2019 through March 5, 2021. Petitioner testified she received long term disability through Respondent from May 13, 2019 to February 27, 2021. Petitioner testified that on September 28, 2021, she had a motor vehicle accident which resulted in a fracture to her right ankle and severe sprain to her left ankle. As a result, she returned to Dr. Patel for treatment, and was using a boot. Petitioner testified that between March 5, 2021 and September 28, 2021, she received no treatment and used a boot for her right ankle occasionally. Petitioner testified during this time, she continued to experience pain and

swelling in her right ankle as a result of the February 12, 2019 fall at work on prolonged walking, standing and climbing stairs.

CONCLUSIONS OF LAW

The Arbitrator adopts the Statement of Facts in support of the Conclusions of Law.

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d).

To obtain compensation under the act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim (O'Dette v. Industrial Commission, 79 Ill.2d 249, 253 (1980) including that the accidental injury both arose out of and occurred in the course of his employment (Horvath v. Industrial Commission, 96 Ill.2d. 349 (1983)) and that there is some causal relationship between the employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, I29 Ill. 2d 52, 63 (1998). Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e).

Credibility is the quality of a witness which renders her evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with her testimony. Where a claimant's testimony is inconsistent with her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972). While it is true that an employee's uncorroborated testimony will not bar a recovery under the Act, it does not mean that the employee's testimony will always support an award of benefits when considering all the testimony and circumstances shown by the totality of the evidence. Caterpillar Tractor Co. v. Industrial Commission, 83 Ill. 2d 213 (1980). The mere existence of testimony does not require its acceptance. Smith v. Industrial Commission, 98 Ill.2d 20, 455 N.E.2d 86 (1983). To argue to the contrary would require that an award be entered or affirmed whenever a claimant testified to an injury no matter how much her testimony might be contradicted by the evidence, or how evidence it might be that her story is a fabricated afterthought. U.S. Steel v. Industrial Commission, 44 Ill2d 207, 214, 254 N.E.2d 522 (1969); see also Hansel & Gretel Day Care Center v. Industrial Commission, 215 Ill. App. 3d 284, 574 N.E.2d 1244 (1991).

The Petitioner bears the burden of proving every aspect of her claim by a preponderance of the evidence. Hutson v. Industrial Commission, 223 Ill App. 3d 706 (1992). "Liability under the Workmen's Compensation Act may not be based on imagination, speculation, or conjecture, but must have a foundation of facts

established by a preponderance of the evidence…" Shell Petroleum Corp. v. Industrial Commission, 10 N.E.2d 352 (1937). The burden of proof is on a claimant to establish the elements of her right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment there is no right to recover. Revere Paint & Varnish Corp. v. Industrial Commission, 41 Ill.2d. 59 (1968). Preponderance of the evidence means greater weight of the evidence in merit and worth that which has more evidence for it than against it. Spankroy v. Alesky, 45 Ill. App.3d 432 (1st Dist. 1977).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her to be to be credible. Petitioner was well-mannered, composed, spoke clearly, and made normal eye contact with the Arbitrator. Her easy and direct manner of answering questions stood out as forthright and sincere. Her body language reinforced the Arbitrator's opinion that she was honest and convincing. Respondent had two witnesses, Henry Thomas and Pamela Hunter Wallace, testify at trial. Respondent's witnesses were both clear in their manner of speech and outwardly sincere. There was also a videotape of the fall which showed Petitioner fall on the stairs in a manner consistent with slipping because her feet came out from underneath her. The Arbitrator has a very tough decision in this case but must choose one account of why Petitioner slipped.

C - ACCIDENT

The Arbitrator finds Petitioner's testimony as to how the accident occurred, that the stairs were wet, and she was looking down to avoid slipping and not looking through her purse, to be credible, consistent and supported by the video of the fall and the history in the treating records following the accident. The Arbitrator adopts Petitioner's testimony as to how the accident occurred over the testimony of Respondent's witnesses. Therefore, the Arbitrator finds Petitioner had an accident that arose out of and in the course of her employment for Respondent. The Arbitrator notes that Respondent has stipulated as to causation of Petitioner's right ankle condition (leading up to her September 28, 2021 MVA) and the February 12, 2019 accident.

J - MEDICAL EXPENSES

Based on the Arbitrator's findings regarding accident, the Arbitrator awards the bills per the fee schedule:

Athletico	$36,307.00
Exchange Medical Center	$1,655.00

K – T.T.D.

Based on the Arbitrator's findings regarding accident and the treating records, the Arbitrator awards 106 1/7 weeks T.T.D. from February 22, 2019 through March 5, 2021. The Arbitrator finds Respondent is entitled to a credit of $31,120.06 for long term disability paid, under section 8j, and shall hold Petitioner harmless for same.

L – NATURE AND EXTENT

In evaluating the claimant's claim for PPD benefits, the Arbitrator has followed the standard set forth in Section 8.1b of the Illinois Worker's Compensation Act.

1. **The reported level of impairment due to subsection (a):** Neither party introduced a PPI rating from a medical physician so the Arbitrator assigns no weight to this factor;

2. **The occupation of the injured employee**: At the time of the accident Petitioner was a customer service representative, a sedentary job. The Arbitrator assigns some weight to this factor.

3. **The age of the employee at the time of the injury** The Arbitrator notes Petitioner was a 50 year old individual at the time of the accident. This is relatively young age, and the Petitioner is expected to have more than 15 years to participate in the work force. The Arbitrator assigns some weight to this factor.

4. **The employee's future earning capacity** The Arbitrator finds there is no testimony or evidence in the record that this accident has had any impact on Petitioner's future earnings. As such the Arbitrator assigns no weight to this factor;

5. **Evidence of disability corroborated by the treating records**. Petitioner suffered an injury to her ankle that ultimately resulted in surgery and an extended rehabilitation. She continues to be limited physically in that she does not wear high healed shoes and that her ankle swells if she walks long distances. Petitioner takes over the counter pain medication. She does not wear any type of brace or boot. The arbitrator assigns significant weight to this factor.

Based on the Arbitrator's findings regarding accident and the treating records, the Arbitrator awards a 25% loss of use of the right foot, or 41.75 weeks at $354.24.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC036296
Case Name	Patrick Branch v. Ed Miniat LLC
Consolidated Cases	20WC000389;
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	23IWCC0029
Number of Pages of Decision	27
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	John Powers
Respondent Attorney	Lloyd McCumber

DATE FILED: 1/23/2023

/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

PATRICK BRANCH,

Petitioner,

vs. NO: 19 WC 36296

ED MINIAT, L.L.C.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care and temporary total disability (TTD) benefits, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator which is attached hereto and made a part hereof.

The Commission affirms the Arbitrator's Decision finding that although Petitioner sustained an accident arising out of and in the course of his employment by Respondent, he failed to prove that his current condition of ill-being is causally related to the October 18, 2019 accident. Petitioner's claim for benefits under the Act is therefore denied and as such, Respondent is not entitled to a credit under Section 8(j) of the Act. The Commission strikes the award from the Arbitrator's Decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 4, 2022 is hereby modified as stated above and otherwise 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 in this claim. 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.

January 23, 2023

CAH/pm
O: 1/19/23
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	19WC036296
Case Name	BRANCH, PATRICK v. ED MINIAT L.L.C.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	John Powers
Respondent Attorney	Lloyd McCumber

DATE FILED: 4/4/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 29, 2022 1.05%

/s/Ana Vazquez, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Patrick Branch
Employee/Petitioner

v.

Ed Miniat, L.L.C.
Employer/Respondent

Case # **19** WC **036296**

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 **January 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. ☒ 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 18, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**39,113.36**; the average weekly wage was $**752.18**.

On the date of accident, Petitioner was **47** years of age, ***single*** with **2** dependent children.

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

Respondent shall be given a credit of $**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**.

Per stipulation, Respondent is entitled to a credit under Section 8(j) of the Act, for any causally related bills paid by Respondent's Group Health Insurance plan. (See Ax1 at 13, Rx3).

ORDER

Petitioner failed to prove that his current condition of ill-being is causally related to the October 18, 2019 accident. Therefore, temporary total disability benefits, medical benefits, and prospective medical treatment are denied.

See Arbitration Decision order for case number 20 WC 000389, incorporated herein by reference.

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

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

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

Ana Vazquez

APRIL 4, 2022

Signature of Arbitrator

PROCEDURAL HISTORY

This matter proceeded to trial on January 26, 2022, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act ("the Act"). This matter is consolidated with claim number 20 WC 00389, for which a separate decision has been issued. The issues in dispute regarding this claim are: (1) whether Petitioner sustained an accidental injury on October 18, 2019, (2) causal connection, (3) unpaid medical bills, (4) temporary total disability benefits for the time period of July 17, 2020 to January 26, 2022, and (5) prospective medical treatment. The Parties stipulated that Respondent is entitled to 8(j) credit for any causally related bills paid by Respondent's Group Health Insurance Plan. Arbitrator's Exhibit ("Ax") 1 at No. 13. All other issues have been stipulated. See Ax1.

FINDINGS OF FACT

Petitioner began working for Respondent in June 2014 or 2015. Tr. at 7. Respondent is a meat factory company and is in the business of distributing meat for different restaurants. Tr. at 8.

Job duties

In October 2019, Petitioner was employed as a Sanitation Technician at Respondent. Tr. at 8. His duties included breaking down, cleaning, and reassembling machines that cut, tenderize, season, and cook meat products. Tr. at 8-9. Breaking down machines involved Petitioner loosening screws, removing tooling, and lifting mechanical parts out of a machine in order to clean it entirely. Tr. at 9. The parts that Petitioner lifted out of a machine weighed between 50 and 75 pounds. Tr. at 9. Petitioner worked on approximately seven to eight machines in a workday. Tr. at 9.

October 18, 2019 accident

On October 18, 2019, Petitioner was transporting meat from one pallet to another, he stepped on a piece of meat, and slipped. Tr. at 10. He managed to catch himself before hitting the ground, but felt a sharp pain. Tr. at 10. Petitioner testified that he went inside on the stairs and gathered himself. Tr. at 10. A coworker came to him and asked Petitioner if he was alright, and Petitioner told the coworker that he was. Tr. at 10. Petitioner reported the accident to the lead that was on the floor, to his manager, and to the back office. Tr. at 10. Petitioner did not seek medical treatment on October 18, 2019. Tr. at 10. He testified that he did not think he needed medical treatment at that time. Tr. at 10.

October 25, 2019 accident

On October 25, 2019, Petitioner was cleaning a Vemag, which is a steel drum with wheel canisters at the bottom for rolling. Tr. at 11. The Vemag catches meat that spills out from a machine before hitting the floor. Tr. at 11. Respondent was having employees dump the Vemag out and throw the meat away at the end of the workday. Tr. at 11. A Vemag weighs between 150 to 200 pounds and is about four feet tall. Tr. at 11, 12. When Petitioner was pulling the Vemag back up onto its wheels, after rinsing it, he felt and heard a thump, and was stunned. Tr. at 11, 46. A coworker was walking past Petitioner, and Petitioner asked his coworker to get Tyrell, his lead. Tr. at 11. While waiting, Petitioner got up off the floor, and then went and told his supervisor what had happened. Tr. at 11. Petitioner's supervisor took Petitioner to the hospital in the supervisor's car. Tr. at 11.

Petitioner testified that prior to October 25, 2019, he was still seeing his surgeon for "the little pain that [he] was having." Tr. at 12. Petitioner testified that he sustained a prior back injury while working for Respondent on March 27, 2017. Tr. at 12, 30. Petitioner began treating for the March 27, 2017 accident on June 30, 2017 with Dr. Templin. Tr. at 12. Petitioner underwent a lumbar fusion on November 20, 2017 in connection with his previous injury. Tr. at 12, 31. Petitioner testified that he did not quit smoking for this lumbar fusion, he did not know that he had to, and he did not recall being told that he had to quit smoking for this procedure. Tr. at 31, 32. Following the lumbar fusion, Petitioner was prescribed Tramadol and Norco. Tr. at 37. Petitioner testified that "[t]he pills didn't work," the Tramadol injection did work, and that he had to take more of the Norco because it began to not work. Tr. at 37, 38. On April 11, 2018, Petitioner was examined by Dr. Vivek Mohan at Respondent's request. Tr. at 13. Petitioner agreed that Dr. Mohan's report indicated that Petitioner could return to work full duty as of June 1, 2018. Tr. at 13. Petitioner continued to treat with Dr. Templin after returning to work for Respondent in June 2018, had continued pain complaints, and underwent a CT scan on August 8, 2018 to determine whether his fusion was solid. Tr. at 13-14. Petitioner agreed that he continued to have chronic back pain following the November 2017 lumbar fusion. Tr. at 42.

Following his return to work at Respondent in June 2018, Petitioner was initially shredding paper and applying stickers to chemical containers. Tr. at 15. Petitioner then began a BioMist program, where he would BioMist the handles and panel boxes for the machines. Tr. at 15. Sometimes, Petitioner would be called to the floor, when they were short, to break down and clean

machines, which became his regular job duties. Tr. at 15, 47. Petitioner worked full duty, breaking down and cleaning machines, from June 1, 2018 through October 25, 2019. Tr. at 15, 48-49. Petitioner testified that Respondent was not honoring the work restrictions given to him by Dr. Templin, pursuant to the FCE, and which were still in place when he returned to work. Tr. at 47-48.

Treatment following October 25, 2019 accident

Following the October 25, 2019 accident, Petitioner sought initial treatment at the Emergency Room of Ingalls Memorial Hospital. Tr. at 16, Petitioner's Exhibit ("Px") 4 at 1. Petitioner presented with complaints of sudden onset low back pain, and reported that he felt and heard a pop in his low back while lifting a steel drum weighing over 100 pounds back onto its wheels, after rinsing it. Px4 at 7, 11. X-rays revealed (1) posterior spinal fusion and intervertebral body device at L5-S1; (2) no acute fracture, dislocation, or destructive osseous process in the lumbar spine; (3) mild facet sclerosis at L4-L5; and (4) the sacroiliac joints were unremarkable. Px4 at 9, 23-24. Petitioner was diagnosed with acute low back pain. Px4 at 9. Petitioner was discharged and was released to return to work with a 10-pound lifting and carrying restriction, as well as the restrictions of limited standing and bending, alternating sitting and standing, and no overhead work, pulling or pushing, or forceful gripping and grasping, kneeling, squatting, stooping or bending, stairs or inclines, or ladders. Tr. at 16; Px4 at 31.

On October 28, 2019, Petitioner reported to Dr. Kirincic for follow up. Px5 at 1. Petitioner reported a work incident occurring on October 18, 2019, where he slipped on a piece of meat. Px5 at 1. Petitioner reported a second incident occurring on October 25, 2019, while he rinsed a heavy "Vmac." Px5 at 1. Dr. Kirincic noted that Petitioner could barely transfer from sitting to standing, had difficulty walking, and was standing in forward flexion supported by his upper extremities and was leaning on the examining table. Px5 at 1. Petitioner had tightness in the left and right thoracic and lumbar areas. Px5 at 1. X-rays revealed minimal degenerative joint disease above a stable fusion at L5-S1 with no obvious shift in hardware on flexion/extension and minimal spondylolisthesis at L4-5. Px5 at 4. Petitioner's diagnoses included lumbar myofascial pain syndrome. Px5 at 4. Petitioner was provided with additional Norco in addition to Topamax and physical therapy was ordered. Px5 at 6. Dr. Kirincic continued Petitioner's 10-pound restriction. Px5 at 6.

Petitioner underwent an initial physical therapy examination at Ingalls Center for Outpatient Rehabilitation at South Holland on November 5, 2019. Px6 at 2. Petitioner was discharged on December 24, 2019, with two visits noted. Px6 at 2. The discharge note indicated that the primary therapist had put Petitioner's therapy on hold due to him being unable to tolerate treatment. Px6 at 9.

On November 21, 2019, Petitioner saw Dr. Templin and provided consistent histories of the October 18, 2019 and October 25, 2019 work incidents. Px5 at 8-9. Petitioner reported that he attempted physical therapy, however, "that made things worse" and that was the reason he presented for exam. Px5 at 9. Petitioner reported that the majority of his pain was in his back, which radiated into his right leg with numbness, tingling, and weakness. Px5 at 9. X-rays were taken on this date and demonstrated suspicion for a broken S1 screw and degenerative change at the L4-5 level, which was unchanged from previous films. Px5 at 9. On exam, Dr. Templin noted that Petitioner had some stiffness and discomfort almost immediately upon lumbar flexion and extension. Px5 at 9. Petitioner also had diffuse give-way in his right leg when compared to his left leg. Px5 at 9. Petitioner described some altered sensation down into his distal right leg and foot. Px5 at 9. Dr. Templin's impressions were acute flare up of low back pain with right leg radiculopathy with previous L5 to sacrum fusion and L4-5 disk degeneration. Px5 at 9. Dr. Templin recommended a CT scan of Petitioner's lumbar spine to assess his fusion status and whether Petitioner had a broken screw, as well as an MRI to assess Petitioner's radicular symptoms. Px5 at 9. Dr. Templin maintained Petitioner's light duty restrictions. Px5 at 9.

Petitioner followed up with Dr. Kirincic on November 25, 2019. Px5 at 10. Dr. Kirincic continued Petitioner's 10-pound restriction. Px5 at 15. On November 27, 2019, Petitioner underwent an MRI of his lumbar spine, with impressions being (1) L4-5 right paramedian inferiorly migrated extrusion impinging upon right lateral recess and right L5 nerve root and (2) L5-S1 postoperative changes but no stenosis. Px7 at 3. On November 30, 2019, Petitioner underwent a CT scan of his lumbar spine, with impressions being (1) postsurgical changes of posterior spinal fusion and decompressive laminectomy at L5-S1 without evidence for hardware failure, no appreciable bony bridging across the L5-S1 disc space; (2) right paracentral disc extrusion at L4-5 along its effect on the right lateral recess and spinal canal better seen on comparison MRI exam; (3) moderate disc dessication with height loss at L4-5; and (4) mild bilateral neural foraminal stenosis at L4-5 and mild-moderate bilateral neural foraminal stenosis at L5-S1. Px8 at 3.

Petitioner returned to Dr. Templin on December 10, 2019. Px5 at 17. Dr. Templin noted that Petitioner had re-aggravation of his back pain extending into the right leg after a work injury and was having continued reports of pain from the back and into the right leg. Px5 at 17. Petitioner reported that Respondent was not adherent to his restrictions, and that he continued to smoke cigarettes. Px5 at 17. On exam, Petitioner had pain with flexion and extension through the lumbar spine. Px5 at 18. Dr. Templin noted that the CT scan showed that there was instrumented fusion of L5-S1, the cage was appropriately positioned, there was good disc height, and there was no severe or significant foraminal stenosis. Px5 at 18. There appeared to be some loosening to the right-sided S1 screw, which was a new finding. Px5 at 18. Dr. Templin was unable to determine whether the screws were fractured, though the x-rays indicated that the screws were at least fractured on the right side. Px5 at 18. There was also evidence of a significant loss of disc height at L4-5 with a new herniation extending posterolaterally into the right lateral recess. Px5 at 18. The MRI showed the same as the CT scan, a herniation at L4, L5 and Modic endplate change in the L5-S1 endplates. Px5 at 18. Dr. Templin's assessment was suspected pseudoarthrosis, with adjacent segment degeneration at L4-5 with a herniated disk. Px5 at 18. Dr. Templin noted that he discussed with Petitioner that he could attempt to treat the herniated disk nonoperatively with an injection, but since Dr. Templin believed Petitioner had a nonunion at L5-S1, Petitioner would require a revision posterolateral fusion. Px5 at 18. Dr. Templin noted that he would perform a posterolateral fusion with iliac crest bone graft, as well as revision instrumentation to the ilium given the fractured screws, if he was unable to retrieve them. Px5 at 18. Dr. Templin further noted that Petitioner would also undergo a TLIF procedure at the L4-5 level given the significant degenerative change and herniated disk with radiculopathy. Px5 at 18. Dr. Templin also noted that he discussed with Petitioner that he would need to stop smoking as he did the previous surgery and would have to continue not smoking throughout the postoperative period, as smoking was a significant risk factor for him developing a nonunion. Px5 at 18. Dr. Templin continued Petitioner's 10-pound lifting restriction and noted bending and twisting to tolerance. Px5 at 18.

On December 2, 2019, at Respondent's request, Dr. Mohan examined Petitioner for a third time. Tr. at 23. Petitioner testified that Dr. Mohan indicated Petitioner could return to work with a 15-pound restriction, and Petitioner returned to work with that restriction. Tr. at 23. Petitioner testified that while under this restriction, he initially worked in the frock room passing out frocks and gloves, and then he was moved to the cafeteria, because he had a cane, where he wiped tables

and lockers. Tr. at 23. Petitioner testified that following his return to work with the 15-pound restriction, he continued to experience pain and spasming, and the pain continued to worsen. Tr. at 24, 25.

Petitioner returned to Dr. Templin on December 24, 2019. Px5 at 19. Dr. Templin noted that his concern was of a nonunion at L5-S1. Px5 at 19. He also noted that Petitioner was having worsening pain in the right leg because of the herniated disc at L4-5. Px5 at 19. Dr. Templin further noted that Petitioner tried to return to work, but he was unable to tolerate same. Px5 at 19. On exam, Dr. Templin noted that Petitioner's sensation was diminished over the right dorsum of his foot. Px5 at 19. Petitioner's straight leg raise was positive on the right and Petitioner had pain with flexion and extension through the lumbar spine. Px5 at 19. Dr. Templin's assessment was that Petitioner had fractured screws at S1 with an L5-S1 nonunion and a herniated disk at L4-5. Px5 at 20. Dr. Templin's plan was to proceed with a fusion of L4 to S1. Petitioner was kept off work. Px5 at 20.

Petitioner testified that he recalled Dr. Templin telling him about injections for treatment of the herniated disk, but he told Dr. Templin that he "[didn't] think that that was good for [him] because it didn't work the second time. Tr. at 46. Petitioner explained that the second injection he underwent following the November 2017 fusion provided him no relief. Tr. at 46. Petitioner testified that he was last physically examined by Dr. Templin in December 2019. Tr. at 47. Petitioner agreed that Dr. Templin recommended a revision of his lumbar fusion and that Petitioner wanted to hold off on that surgery until he quit smoking for some time. Tr. at 26.

Petitioner followed-up with Dr. Kirincic on January 6, 2020, February 14, 2020, and March 16, 2020. Px5 at 22-39. Petitioner reported continued pain, with increased symptoms, including pain in his buttocks and both legs, as well as difficulty standing from a seated position. Px5 at 28, 34. On March 16, 2020, Dr. Kirincic noted that Petitioner's attempts to stop smoking had been slow and unsuccessful. Px5 at 34. She also noted that Petitioner had started self-using a cane. Px5 at 34. On this date, Dr. Kirincic noted that Petitioner was released to work per previous restrictions, as Petitioner was not trying hard to quit smoking and had been court ordered to return to work prior to March 31, 2020. Px5 at 39.

On April 10, 2020, Petitioner presented to Dr. Templin via telehealth visit. Px5 at 40. Petitioner reported continued pain extending from his back and into his right leg. Px5 at 40. Dr. Templin noted that a surgical recommendation had been made, Petitioner had been instructed to

stop smoking, and that Petitioner had stopped smoking as of February 17, 2020. Px5 at 40-41. Dr. Templin noted that Petitioner had returned to work as of March 30, 2020 with restrictions. Px5. Petitioner reported that Respondent was not affording him a chair with back support and therefore, he was straining "things." Px5 at 41. Dr. Templin's diagnoses and treatment recommendations were unchanged. Px5 at 41. Dr. Templin noted that a 10-pound lifting restriction was reasonable and recommended a chair with back support be used, and that Petitioner be allowed to use his cane for support as well. Px5 at 41.

Petitioner was examined again by Dr. Mohan on May 29, 2020. Tr. at 25. Petitioner testified that following this exam, Dr. Mohan recommended an injection at L4-L5, otherwise he was at maximum medical improvement. Tr. at 25. Petitioner agreed that Dr. Mohan did not comment on his work restrictions at that time. Tr. at 25. Petitioner testified that he believed he had the same conversation with Dr. Mohan regarding injections that he had had with Dr. Templin, and ultimately declined injections. Tr. at 47.

Petitioner again saw Dr. Kirincic on June 15, 2020, August 17, 2020, September 28, 2020, October 5, 2020 (via telehealth), December 7, 2020, January 12, 2021 (via telehealth), and February 1, 2021. Px5 at 42, 47, 53, 58, 64, 71, 77. Petitioner's low back pain persisted and symptoms increased. Px5 at 42, 47, 53, 58, 77. On August 17, 2020, Petitioner reported having experienced several spasms. Px5 at 47. On this date, Dr. Kirincic also noted that Petitioner's attempts to quit smoking since he last saw Dr. Templin in April 2020 were "useless" and that Petitioner had "no drive to quit smoking to proceed with surgery." Px5 at 47. She also ordered a new FCE. Px5 at 51. Petitioner underwent an FCE at Associated Medical Centers of Illinois on September 23, 2020. Px9.

On September 28, 2020, Dr. Kirincic noted that Petitioner stated that he had not tried to stop smoking and wanted to undergo surgery while still smoking. Px5 at 53. On October 5, 2020, Dr. Kirincic noted that Petitioner had completed an FCE. Px5 at 58. Dr. Kirincic further noted that the FCE was valid and Petitioner was able to push 80 pounds occasionally, 40 pounds frequently and 16 pounds constantly. Px5 at 62. Petitioner was able to carry 20 pounds occasionally, 10 pounds frequently, and four pounds constantly. Px5 at 62. Petitioner was able to safely lift 24 pounds occasionally, 15 pounds frequently, and six pounds constantly. Px5 at 62, Px9 at 6. On February 1, 2021, Dr. Kirincic noted that she was able to wean Petitioner off of pain medications and that Petitioner had lost approximately 40 pounds in weight. Px5 at 77. Dr. Kirincic further

noted that Petitioner had reportedly been terminated on October 26, 2020, as his restrictions could not be accommodated. Px5 at 77. Petitioner was placed at maximum medical improvement from conservative treatment by Dr. Kirincic on February 1, 2021 and was released from her care. Px5 at 81. Dr. Kirincic noted that Petitioner's restrictions were permanent. Px5 at 82.

Petitioner's current condition

Petitioner testified that on July 16, 2020, Respondent informed him that his restrictions could no longer be accommodated and as a result, Petitioner was terminated. Tr. at 26. The parties, however, stipulated that Petitioner was terminated pursuant to a letter dated October 16, 2020, but that the last date worked by Petitioner was July 16, 2020. Tr. at 29. Petitioner began a self-directed job search in December 2020. Px11. Tr. at 27. Petitioner testified that he was not working as of the date of arbitration and that he had quit smoking on or about February 11, 2021. Tr. at 28.

Petitioner testified that from June 2018 to prior to the October 25, 2019 incident, he was still having pain and spasms all over his back and legs, but they were not as consistent as they were at the time of arbitration. Tr. at 17. Petitioner testified that prior to the incidents in October 2019, he was having daily spasms that were sporadic and lasted between 15 minutes and 20 minutes, they occurred one to five times per day, and he had difficulty walking and standing. Tr. at 18, 19. Petitioner testified that following the October 25, 2019 incident, the pain and spasms are stronger, more frequent, last 45 minutes, and occur when he does anything, including laughing and standing up. Tr. at 17-18, 19. Petitioner deals with the spasms by going out into the cold, putting his head in the freezer, or standing in front of air conditioning. Tr. at 20. Petitioner testified that after the October 25, 2019 incident, he walks with a cane and "It hurts moving. It hurts moving it all over my legs all the way down to my knees." Tr. at 21. Petitioner did not walk with a cane prior to October 25, 2019. Tr. at 21.

Petitioner testified that he sometimes loses his balance while trying to wash up or cook while having a spasm. Tr. at 27. He described the spasms as being painful. Tr. at 27. Petitioner testified that he is in constant pain and is taking Hydrocodone and Flexeril, and that his doctor had prescribed medical marijuana. Tr. at 28. Petitioner testified that he takes Hydrocodone up to three times per day and takes Flexeril up to twice a day. Tr. at 28. Petitioner testified that he wants to proceed with the surgery that has been recommended by Dr. Templin. Tr. at 28.

Pre-accident treatment

Petitioner presented to Dr. Templin on June 30, 2017 for follow up of a March 27, 2017 work injury. Px1 at 1. Petitioner complained of lower back pain that extended into the left and right leg, with pain more predominant on the left. Px1 at 1. Petitioner reported an injury that occurred on March 27, 2017 while he was lifting and pushing a conveyor belt to remove a pin. Px1 at 1. At that time, he felt severe pain in his back that extended into his buttock. Px1 at 1. Petitioner also reported a similar injury that occurred in July 2016, where he felt similar pain while lifting. Px1 at 1. Petitioner, however, reported that the pain from the July 2016 incident had abated until the March 27, 2017 incident. Px1 at 1. Petitioner reported that he was able to ambulate. Px1 at 1. The pain was reduced by taking muscle relaxants, pain medication and anti-inflammatories, including Norco and cyclobenzaprine. Px1 at 1. Petitioner reported that he had completed a course of therapy and was enrolled in work conditioning, however, he continued to report significant pain. Px1 at 1. Dr. Templin noted that the MRI revealed evidence of trace anterolisthesis at L5-S1, bilateral foraminal stenosis due to the uncovering of the disc, and a small rightward disc protrusion at the L4-L5 level with degenerative change, but with no significant stenosis or neural impingement at that level. Px1 at 2. Dr. Templin diagnosed Petitioner with an L5-S1 spondylolisthesis and foraminal stenosis and L4-L5 degeneration, which were aggravated by the lifting injury. Px1 at 2. Dr. Templin recommended Petitioner undergo an injection, bilaterally, in the L5 nerve root, and found him to be an excellent candidate for an L5-S1 transforaminal lumbar interbody fusion. Px1 at 2.

Petitioner underwent two injections prior to his follow up appointment with Dr. Templin on September 8, 2017. Px1 at 6. Dr. Templin noted that the first injection had provided Petitioner "significant benefit," while the second injection provided him with one day of relief. Px1 at 2.

On November 20, 2017, Petitioner underwent (1) L5-S1 combined transforaminal lumbar interbody fusion, posterolateral fusion; (2) application of posterior spinal instrumentation L5-S1 using the Spine Wave Sniper System; (3) application of interbody cage device at L5-S1 using the Globus system; and (4) application of local autograft and allograft bone for fusion. Px2 at 1. Petitioner's postoperative diagnoses were (1) L5-S1 spondylolisthesis, foraminal stenosis, radiculopathy; and (2) morbid obesity. Px2 at 1.

Petitioner followed up with Dr. Templin on December 27, 2017, February 8, 2018, and March 22, 2018. Px1 at 12-19. On February 8, 2018 and March 22, 2018, Dr. Templin noted that

x-rays of the lumbar spine demonstrated proper position, healing and alignment of Petitioner's L5 to sacrum fusion. Px1 at 16. No evidence of loosening, subsidence, or migration was noted. Px1 at 16, 19. There was no adjacent segment problems other than preexisting degeneration noted. Px1 at 19.

On May 10, 2018, Petitioner returned for follow-up with Dr. Templin. Px1 at 20. Dr. Templin noted that Petitioner was doing better, but had "had an episode where he was admitted to the hospital after straining his back." Px1 at 20. X-rays were read as showing no change in alignment with 100% reduction of spondylolisthesis with good disc height, and no loosening, subsidence or migration noted. Px1 at 21. Dr. Templin noted in his assessment that Petitioner was having some residual pain and he would have Petitioner continue sedentary restrictions. Px1 at 21.

On June 14, 2018, Petitioner reported that the pain in his lower back had increased. Px1 at 22. Petitioner was progressing through work conditioning and was working in a sedentary capacity. Px1 at 23. Petitioner returned to Dr. Templin on July 5, 2017. Px1 at 25. Petitioner reported that he continued to experience daily pain and felt that he could not return to work regular duty. Px1 at 23. Petitioner reported that he was working light duty, was experiencing spasms, and was having difficulty working light duty because of repetitive bending and reaching. Px1 at 25. Dr. Templin's impression noted that Petitioner had ongoing low back pain with radiculopathy and a new CT scan was ordered to better assess whether Petitioner was solidly fused due to Petitioner's ongoing pain. Px1 at 26.

On August 8, 2018, Petitioner underwent a CT scan of his lumbar spine, which revealed (1) status post fusion of the L5-S1 vertebral bodies with no significant abnormality in the hardware. No pseudoarthrosis or loosening was seen; and (2) multilevel spondylosis, which was incompletely characterized on CT, and a follow up MRI was clinically indicated. Px3 at 2. Petitioner underwent an FCE on August 30, 2018. Rx5.

Petitioner presented for follow up with Dr. Templin on November 29, 2018. Px1 at 27. Petitioner reported spasms in his back with twisting, turning, and with increase in activity. Px1 at 27. X-rays taken on that date showed a stable construct at L5-S1, and no loosening, subsidence, or migration was noted. Px1 at 28. Dr. Templin noted that review of the August 2018 MRI showed that there was no loosening of the screws, the cage was appropriately positioned, and there appeared to be fusion through the interbody cage device. Px1 at 28. At that time, Petitioner had

completed therapy, and Dr. Templin recommended an FCE, if one had not already been done. Px1 at 28. Dr. Templin released Petitioner to work with a 10-pound lifting restriction. Px1 at 28.

Petitioner returned to Dr. Templin on February 7, 2019, with reports of continued pain and spasms, which had taken him to the emergency room several times. Px1 at 29. Petitioner reported that since his November 2018 appointment, he had been working, however, "they" were making him work regular duty although he was on work restrictions. Px1 at 29. Petitioner reported that he was repetitively having to mop and clean toilets and bend and lift more than he was supposed to, which was aggravating his pain. Px1 at 29. Petitioner described the pain as radiating all the way up to his neck and down his legs. Px1 at 29. On exam, Petitioner transitioned positions slowly and moved in an antalgic fashion with pain almost immediately upon flexion and extension. Px1 at 30. Dr. Templin referred Petitioner to Dr. Kirincic for further conservative care due to his ongoing pain and noted that Petitioner was capable of returning to work per his FCE. Px1 at 30.

On February 25, 2019, Petitioner presented to Dr. Kirincic with complaints of constant pain that originated in his low back and radiated to his neck. Px1 at 31. He reported that he used hot water baths and Norco for pain relief. Px1 at 31. He further reported that sometimes the pain was so significant that it caused him nausea and vomiting. Px1 at 31. Petitioner also reported a history of spasms that lowered his self-esteem and made him feel uncomfortable in public. Px1 at 31. Dr. Kirincic noted that there had not been bad flare ups since 2018, and that Petitioner had "increased work demands with taking care of 24 tanks etc…dumping, scrubbing, lifting, etc." Px1 at 31. Dr. Kirincic's diagnoses were (1) contracture of muscle, multiple sites; (2) chronic pain; (3) lumbar fusion post interbody technique; (4) therapeutic drug monitoring; (5) morbid obesity due to excess calories; (6) body mass index 40.0-44.9; (7) nicotine dependence; (8) acquired lumbar spondylolisthesis; (9) connective tissue and disc stenosis of intervertebral foramina of lumbar region; and (10) degenerative disc disease, lumbosacral spine with radiculopathy. Px1 at 31-32. Dr. Kirincic prescribed CBD oil, Norco, and Flexeril; and she returned Petitioner to work at a medium physical demand level. Px1 at 32.

On March 25, 2019, Petitioner returned to Dr. Kirincic complaining of sharp, stabbing pain with radiation to the bilateral buttocks and calves. Px1 at 35. Dr. Kirincic noted that Petitioner had been in the ER one week prior due to pain. Px1 at 35. On exam, Petitioner ambulated without assistance. Px1 at 37. Petitioner's diagnoses remained unchanged. Px1 at 37. Petitioner underwent

a 15-minute acupuncture session, Duexis was prescribed in addition to previously prescribed medications, and his restrictions remained unchanged. Px1 at 38.

On April 22, 2019, Petitioner presented to Dr. Kirincic with complaints of continued sharp, stabbing pain, similar in intensity, with radiation to the bilateral buttocks and calves. Px1 at 38. Petitioner reported that he felt that he was working above and beyond restrictions and wanted Dr. Kirincic to specify his permanent FCE-based restrictions on work status for HR. Px1 at 41. Petitioner's diagnoses were unchanged. Px1 at 44. Petitioner received acupuncture, trigger point injections, and continued prescriptions for pain management. Px1 at 44-45.

Petitioner followed up with Dr. Kirincic on June 24, 2019, July 22, 2019, August 19, 2019, and September 30, 2019. Px1 at 44-68. Similar complaints of pain persisted throughout Petitioner's treatment with Dr. Kirincic until September 30, 2019. Px1 at 47-68. Petitioner also continued to report that he was not working within his restrictions. Px1 at 50, 52, 57, 63. On June 24, 2019, Petitioner filled out a THC card application, but it was not submitted. Px1 at 47, 52. Petitioner's diagnoses included neuropathic pain beginning on June 24, 2019; and swelling of bilateral fingers and long-term use of NSAIDs beginning on August 19, 2019. Px1 at 49, 54, 60, 66. Petitioner continued with acupuncture treatment and underwent additional trigger point injections. Px1 at 50, 55. Petitioner was given a lumbar brace on September 30, 2019. Px1 at 67.

Evidence deposition testimony of Respondent's Section 12 Examiner, Dr. Vivek Mohan

Dr. Vivek Mohan testified by way of evidence deposition on August 13, 2021, and the transcript of testimony was admitted as Respondent's Exhibit ("Rx") 6, without objection. Dr. Mohan testified as to his education and credentials as an orthopedic spine surgeon. Rx6 at 5-7.

Dr. Mohan saw Petitioner for independent medical examinations related to Petitioner's July 6, 2016 accident and issued two narrative reports dated April 11, 2018 and July 11, 2018. Rx6 at 7. Dr. Mohan testified that at the time of his July 11, 2018 report, Petitioner was six months post lumbar fusion and Petitioner still had pain in the middle of his back and his neck. Rx6 at 8-9. Dr. Mohan's diagnosis at that time was status post lumbar fusion with continued pain, and Dr. Mohan also noted that Petitioner was still smoking. Rx6 at 9-10. At that time, Dr. Mohan found Petitioner to be at maximum medical improvement and did not recommend any further treatment. Rx6 at 24-25. Dr. Mohan allowed Petitioner to return to work full duty at that time and this opinion was based on Dr. Mohan's exam. Rx6 at 12, 25.

Dr. Mohan testified that he was suspicious of a failed fusion or nonunion at the time of his July 11, 2018 exam because Petitioner was still having significant pain. Rx6 at 24. Dr. Mohan, however, then testified that he did not suspect a nonunion when he was asked why he did not recommend further treatment or additional diagnostic testing on July 11, 2018. Rx6 at 28. Dr. Mohan testified that his concern was that Petitioner was going into a nonunion at some point because Petitioner continued to smoke. Rx6 at 28-29.

Dr. Mohan next examined Petitioner on December 12, 2019. Rx6 at 12. Petitioner reported both the October 18, 2019 and the October 25, 2019 incidents. Rx6 at 13. At that time, Petitioner reported to Dr. Mohan that he was having significant pain in his lower back and trouble sitting or standing for prolonged periods of time. Rx6 at 13. Petitioner complained of tightness, more on the right side, and that the pain had worsened following the October 25, 2019 incident. Rx6 at 13. Dr. Mohan reviewed the MRI of November 27, 2019, which showed the prior L5-S1 fusion, but also a new L4-5 right-sided disc herniation impinging on the right L5 nerve root. Rx6 at 15. Dr. Mohan reviewed the CT scan of November 30, 2019, which showed no clear evidence of hardware failure or fracture and also no appreciable bony fusion in the disc space. Rx6 at 15. This finding showed that there was pseudoarthrosis or a failure to heal from the prior fusion. Rx6 at 15. The CT scan also showed the L4-5 disc protrusion on the right side. Rx6 at 15. Dr. Mohan did not review the CT scan of August 2018. Rx6 at 30. Dr. Mohan's diagnoses at that time were L4-5 disc herniation on the right side and lumbar pseudoarthrosis with radiculopathy at the L5-S1 level. Rx6 at 17.

At the time of his December 12, 2019 exam, Dr. Mohan opined that the October 18, 2019 incident did not cause any significant or permanent injury nor any injury that was pertinent to the L4-5 disc herniation or pseudoarthrosis at the L5-S1 level. Rx6 at 18. He further opined that the October 25, 2019 incident caused the L4-5 disc protrusion and onset of worsening symptoms in Petitioner's lower back with radicular symptoms on the right side. Rx6 at 18. Dr. Mohan recommended that Petitioner undergo injections for pain control for the L4-5 disc herniation, as the injections would alleviate some of the pain. Rx6 at 20. Dr. Mohan testified that there was no evidence that the October 25, 2019 incident caused, contributed, or aggravated the preexisting pseudoarthrosis at the L5-S1 level. Rx6 at 18. The pseudoarthrosis was already present because there was no evidence of healing at all on the CT scan. Rx6 at 18. The failure of a fusion is long-term process and not the result of a sudden trauma. Rx6 at 18.

Dr. Mohan testified that the significance of Petitioner's smoking is that smoking cigarettes and any use of nicotine inhibits vasculature and bony ingrowth at the fusion site. Rx6 at 19. Lumbar fusions may still not heal without smoking. Rx6 at 18. The healing rate in an ideal patient that is healthy and does not smoke is in the 90th or 95th percentile, whereas the fusion rate decreases to 40 to 50 percent once an individual smokes. Rx6 at 19.

Dr. Mohan examined Petitioner again on May 29, 2020. Rx6 at 20. Petitioner still had back pain and right leg pain, he could not walk for any distances, and was off work because of significant pain. Rx6 at 20. Petitioner reported that he had recently stopped smoking completely. Rx6 at 21. Petitioner had quit smoking in April with the use of nicotine patches. Rx6 at 21. Petitioner also reported that his back and left buttock were bothering him more than the right at that time. Rx6 at 21. This complaint was more significant of the L5-S1 level being the more predominant cause of pain and the L4-5 disc protrusion had improved. Rx6 at 21. Petitioner had a cane with him on this day. Rx6 at 22. Dr. Mohan's diagnoses were that the L4-5 disc protrusion and nerve pain had essentially resolved, as there was no evidence of radiculopathy and Petitioner had normal strength and no nerve tension signs; and Petitioner's primary issue at that time was the L5-S1 nonunion, which was taking a significant toll on his back and was related to his prior 2016 work injury. Rx6 at 23. At that time, Dr. Mohan opined that the L4-5 disc herniation was not causing or contributing to Petitioner's symptoms, and his primary complaints, which were left-sided, were related to L5-S1 nonunion, which was related to the prior injury of March 27, 2017. Rx6 at 23. Dr. Mohan did not recommend any further treatment for the L4-5 disc protrusion because it had improved. Rx6 at 24. Dr. Mohan opined that any treatment for the L5-S1 level was not related to the October 18, 2019 or October 25, 2019 incidents. Rx6 at 24.

Dr. Mohan testified that he believed that Dr. Templin diagnosed the broken screw in November 2019, which was when the nonunion was officially diagnosed. Rx6 at 31. Dr. Mohan testified that there is no evidence of the nonunion on an MRI, CT scan, or x-rays before November 2019. Rx6 at 31.

Dr. Mohan testified that from a medical standpoint, and without consideration of causation, Petitioner would need surgery to address the L5-S1 issue and work restrictions before and after surgery. Rx6 at 32. Petitioner did not require any further restrictions in relation to the L4-5 disc herniation.

Evidence deposition of Dr. Cary Templin

Dr. Cary Templin testified by way of evidence deposition on July 9, 2021 and the transcript of testimony was admitted as Petitioner's Exhibit 10 (Px10), without objection. Dr. Templin testified as to his education and credentials as an orthopedic spine surgeon. Px10 at 5-6.

Dr. Templin testified that Petitioner is his patient. Px10 at 7. He has performed surgery on Petitioner and has recommended that Petitioner have a revision surgery and an extension of his fusion. Px10 at 7. Dr. Templin began treating Petitioner on June 30, 2017. Px10 at 7. He performed a L5-S1 transforaminal lumbar interbody fusion on Petitioner on November 20, 2017. Px10 at 7. Dr. Templin testified to his continued follow-up with Petitioner through November 21, 2018, which included x-ray and CT evaluation of the results of the fusion. Px10 at 7-8. X-rays taken on December 27, 2017 showed that everything was in good alignment and there was not any loosening of screws. Px10 at 8. The CT scan of April 2018 was unremarkable and showed that the screws were solid and that there was progressive fusion. Px10 at 8-9. The CT scan of August 2018 showed that the cage was well positioned, Dr. Templin did not appreciate any loosening of the screws, and he thought that there was evidence of fusion through the cage. Px10 at 9.

Dr. Templin testified that when he saw Petitioner on November 21, 2019, he was complaining of worsening back pain and reported that he slipped on a piece of meat and strained his back on October 18, 2019 and that he was then reinjured when he had low back pain when he went to pull a steel drum back up after rinsing it. Px10 at 11. X-rays were taken that day, which showed degenerative change at L4-5 with loss of disc height and a fractured S1 screw. Px10 at 11-12, 27. A fractured S1 screw had not been revealed on x-ray prior to November 21, 2019. Px10 at 12. Dr. Templin testified that the significance of a broken screw was that it would be a fatigue fracture of the screw which would indicate that there was likely not a solid fusion. Px10 at 12. Dr. Templin explained that what he meant by a fatigue fracture was that as the body loads, bending, twisting, lifting, walking, or applying any weight to the body puts stress on the screws and over time, the repetitive stress will cause any metal object to fail or break and is not necessarily a post-traumatic finding. Px10 at 12, 22, 23. A fracture of a screw can also be caused by a specific trauma through lifting. Px10 at 12. Dr. Templin's concern at that time was for a pseudoarthrosis given the broken screw. Px10 at 12-13. Dr. Templin ordered an MRI and CT scan. Px10 at 13. The CT scan determined a pseudoarthrosis of L5-S1 and a herniated disc at L4-5, with loss of disc height and

degenerative change. Px10 at 13, 24-25. Dr. Templin testified that he felt the fracture was more compelling on the right side and did not rule out the left side being fractured as well. Px10 at 26.

Dr. Templin testified that he imposed additional work restrictions on Petitioner and recommended a revision fusion at L5-S1 and a fusion at L4-5 to remove the disc and revise the pseudoarthrosis. Px10 at 14. Dr. Templin testified that it was important to remove the disc at L4-5 because it was causing radiculopathy extending into Petitioner's right leg because of the pinched nerve. Px10 at 14-15. There was not ever any recommendation of a revision of Petitioner's lumbar fusion prior to the October 18, 2019 and October 25, 2019 incidents. Px10 at 20. At the time of his deposition, Dr. Templin continued to recommend a revision fusion of L5-S1 and a fusion of L4-5, with excision of the disc herniation at L4-5; and he recommended Petitioner be off work pending surgical intervention. Px10 at 20-21. Dr. Templin opined that since October 2019, Petitioner has not ever been able to return to work at full capacity. Px10 at 37.

Dr. Templin testified that the nonunion was present prior to October of 2019. Px10 at 16. He explained that CT scans are not a perfect indicator of a solid fusion, but if a patient appears to be fused and eventually breaks screws, then there was likely no fusion there. Px10 at 17. Dr. Templin further testified that although there was no evidence of nonunion before October 2019, it became evident after the fact. Px10 at 17, 21. Dr. Templin testified that the October 18, 2019 or October 25, 2019 incidents could have permanently aggravated Petitioner's condition of ill-being and either one could have caused the S1 screw to break. Px10 at 18. The need for the revision surgery was related to those two incidents, as well as the previous fusion surgery and the initial event. Px10 at 19. Dr. Templin explained that the herniated disc at L4-5 was directly related to the October 2019 incidents, and the pseudoarthrosis was permanently aggravated by those incidents as well. Px10 at 19. Dr. Templin explained that Petitioner likely had a stable pseudoarthrosis which became permanently aggravated, in addition to the development of a herniated disc at L4-5. Px10 at 19. The fractured S1 screw was a consequence of the pseudoarthrosis. Px10 at 29. Dr. Templin testified that he could not say whether the S1 screw fractured at the time of Petitioner's fall on October 25, 2019 or had been fractured and became aggravated at that time. Px10 at 29, 36. Dr. Templin testified that the pseudoarthrosis likely preexisted and his opinion as to aggravation after the October 2019 incidents was based on Petitioner's self-reported worsening of his pain and the veracity of Petitioner's complaints relative to an increase in his symptoms. Px10 at 34-35.

At the time of his deposition, Dr. Templin testified that he was aware that Petitioner was no longer smoking cigarettes. Px10 at 19. Petitioner was smoking in 2019, which had an impact on Dr. Templin's recommendation for surgery. Px10 at 20. Dr. Templin testified that Petitioner was informed that he needed to quit smoking before undergoing surgery and that smoking was likely a large factor in the pseudoarthrosis that he developed. Px10 at 20. Dr. Templin testified that smoking inhibits bone growth by inhibiting the generation of vasculature which is required for new bone growth. Px10 at 20. The exposure to nicotine inhibits the formation of new bone which is required to form a fusion Px10 at 20.

Dr. Templin testified that the incident which Petitioner described as involving a "popping" sensation was consistent with the diagnosis of the L4-5 disc herniation. Px10 at 30. Dr. Templin testified that he told Petitioner that he could try to treat the L4-5 disc herniation nonoperatively, but Dr. Templin felt that because of the nonunion, he needed a revision and "so if we were going in there we talked about doing the disc as well." Px10 at 27-28. Dr. Templin agreed that the inclusion of the L4-5 in the revision procedure was in part due to the presence of significant degenerative changes above the prior fusion. Px10 at 28. The degenerative changes at the L4-5 level could have been a result of Petitioner's obese stature, but were at least in part due to the adjacent segment fusion with instrumentation, which would put more strain on that level as well. Px10 at 29.

Dr. Templin agreed that the 2017 fusion was not a successful surgery to the extent that it did not produce the desired outcome, which is primarily pain relief. Px10 at 30. Dr. Templin testified that he was not sure if Petitioner continued to regularly treat for chronic pain following the 2017 fusion through October 2019. Px10 at 30. Dr. Templin explained that he knew that Petitioner was seeing Dr. Kirincic during that time, so there was some treatment, but he was not sure if it was for back pain or for leg pain. Px10 at 30. He believed it was for back pain. Px10 at 30. Dr. Templin testified that he believed that Petitioner's pain complaints since October 2019 were similar to his complaints since the FCE of 2018, and were not less severe. Px10 at 38. Dr. Templin agreed that it was a fair statement that Petitioner's continuing pain complaints following the 2017 fusion surgery could have been an indication of a symptomatic and unstable nonunion, despite the x-rays and CT scan showing that there was more stability than there was. Px10 at 31.

Dr. Templin testified that radiculopathy from a herniated disk could resolve spontaneously. Px10 at 33. Dr. Templin testified that, as of the date of his deposition, he had not physically

examined Petitioner since late December 2019. Px10 at 33. Dr. Templin had no personal knowledge at that time as to whether the L4-5 disc herniation remained symptomatic. Px10 at 34. Dr. Templin agreed that if the L4-5 disc was no longer symptomatic, there would not be the same level of indication for an extension of the fusion. Px10 at 34. He explained that if Petitioner did not have degenerative change or continued impingement of the nerve root, then he would not likely extend the fusion. Px10 at 34.

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission,* 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders his evidence worthy of belief. It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. Petitioner was calm, composed, and well-mannered. The Arbitrator also observed Petitioner ambulating with the use of a cane. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

Issue C, whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

In order for a claimant to be entitled to benefits under the Act, a claimant must prove by a preponderance of the evidence that he suffered an injury that arose out of and in the course of his employment. *McAllister v. Ill. Workers' Comp. Comm'n, 2020 IL 124848*, ¶32 (2020) citing *Sisbro, Inc. v. Industrial Comm'n.*, 207 Ill. 2d 193, 203 (2003). The "in the course of" element, refers to the time, place, and circumstances under which the injury occurred. *Id.* at ¶34 citing *Scheffer Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366-67 (1977). 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 October 18, 2019 that arose out of and in the course of his employment with Respondent. The Arbitrator relies on Petitioner's credible testimony that (1) in October 2019, he was employed as a Sanitation Technician at Respondent; (2) Respondent is in the business of distributing meat for different restaurants; and (3) on October 18, 2019, while transporting meat from one pallet to another, he stepped on a piece of meat, and slipped. The Arbitrator also relies on the records in evidence, which document and reflect a consistent accident history.

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 did not establish that his current condition of ill-being is causally related to the October 18, 2019 accident. Although Petitioner testified that he felt a sharp pain at the time of the accident, Petitioner further testified that he did not seek medical treatment and he did not believe that he needed medical treatment at that time. The Arbitrator

notes that the record shows that Petitioner continued to work full duty following the October 18, 2019 incident and did not seek medical treatment until October 25, 2019.

Based on the record as a whole, the Arbitrator finds that Petitioner failed to prove that his current condition of ill being is causally related to the October 18, 2019 accident.

The Arbitrator, however, finds that Petitioner's current condition of ill-being is related to the work accident of October 25, 2019, which is the subject of its companion case, 20 WC 000389, for which a separate decision has been issued.

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:

Having found that Petitioner failed to prove that his current condition of ill-being is related to the October 18, 2019 accident, medical benefits related to this accident are denied, and are found to be more appropriately awarded under its companion case, 20 WC 000389, for which a separate decision has been issued.

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

Having found that Petitioner failed to prove that his current condition of ill-being is related to the October 18, 2019 accident, prospective medical treatment as it relates to this accident is denied, and is found to be more appropriately awarded under its companion case, 20 WC 000389, for which a separate decision has been issued.

Issue L, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

Having found that Petitioner failed to prove that his current condition of ill-being is related to the October 18, 2019 accident, temporary total disability benefits are denied, and are found to be more appropriately awarded under its companion case, 20 WC 000389, for which a separate decision has been issued.

Issue N, whether Respondent is due any credit, the Arbitrator finds as follows:

Based on the Parties' stipulation, the Respondent is entitled to a credit under Section 8(j) of the Act for any medical paid by Respondent's group health plan and for any medical bills paid by Respondent's workers' compensation carrier and/or administrator. See Ax1 at 13, Rx3.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC000389
Case Name	Patrick Branch v. Ed Miniat LLC
Consolidated Cases	19WC036296;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0030
Number of Pages of Decision	28
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	John Powers
Respondent Attorney	Lloyd McCumber

DATE FILED: 1/23/2023

/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

PATRICK BRANCH,

Petitioner,

vs. NO: 20 WC 389

ED MINIAT, L.L.C.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care and temporary total disability (TTD) 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 hereby remands this case to the Arbitrator for further proceedings and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 4, 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 receive a credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of

expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $38,300.00. 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 the Circuit Court.

January 23, 2023

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

CAH/pm
O: 1/19/23
052

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC000389
Case Name	BRANCH, PATRICK v. ED MINIAT L.L.C.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	25
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	John Powers
Respondent Attorney	Lloyd McCumber

DATE FILED: 4/4/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 29, 2022 1.05%

/s/Ana Vazquez, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Patrick Branch
Employee/Petitioner

v.

Ed Miniat, L.L.C.
Employer/Respondent

Case # **20** WC **000389**

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 **January 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. ☒ 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 25, 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 $**39,113.36**; the average weekly wage was $**752.18**.

On the date of accident, Petitioner was **47** years of age, ***single*** 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 $**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**.

ORDER

Respondent shall pay Petitioner directly for any reasonable and necessary medical services, as provided in Petitioner's Exhibits 12, 13 and 14, pursuant to Sections 8(a) and 8.2 of the Act. Per stipulation, Respondent is entitled to a credit under Section 8(j) of the Act, for any causally related bills paid by Respondent's Group Health Insurance plan. (See Ax1 at 13 and Rx3).

Respondent is entitled to a credit in the amount of $4,513.10 (2% MAW) for a Permanent Partial Disability advance payment made to Petitioner on or about September 21, 2021, at the time that the nature and extent of the injury is considered and/or addressed. See Rx 2.

Respondent shall pay Petitioner temporary total disability benefits of $501.45/week for 79 6/7 weeks, commencing July 17, 2020 through January 26, 2022, as provided in Section 8(b) of the Act.

Respondent shall authorize and is liable for the prospective medical treatment plan recommended by Dr. Templin, which includes a lumbar fusion revision at L5-S1, and a TLIF procedure at L4-5, if Dr. Templin finds that the TLIF procedure is necessary, as provided in Section 8(a) and 8.2 of the Act.

See Arbitration Decision order for case number 19 WC 036296, incorporated herein by reference.

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

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

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

Ana Vazquez

APRIL 4, 2022

Signature of Arbitrator

ICArbDec19(b)

PROCEDURAL HISTORY

This matter proceeded to trial on January 26, 2022, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act ("the Act"). This matter is consolidated with claim number 19 WC 36296, for which a separate decision has been issued. The issues in dispute regarding this claim are: (1) causal connection, (2) unpaid medical bills, (3) temporary total disability benefits for the time period of July 17, 2020 to January 26, 2022; and (4) prospective medical treatment. The Parties stipulated that Respondent is entitled to 8(j) credit for any causally related bills paid by Respondent's Group Health Insurance Plan. Arbitrator's Exhibit ("Ax") 1 at No. 13. All other issues have been stipulated. See Ax1.

FINDINGS OF FACT

Petitioner began working for Respondent in June 2014 or 2015. Tr. at 7. Respondent is a meat factory company and is in the business of distributing meat for different restaurants. Tr. at 8.

Job duties

In October 2019, Petitioner was employed as a Sanitation Technician at Respondent. Tr. at 8. His duties included breaking down, cleaning, and reassembling machines that cut, tenderize, season, and cook meat products. Tr. at 8-9. Breaking down machines involved Petitioner loosening screws, removing tooling, and lifting mechanical parts out of a machine in order to clean it entirely. Tr. at 9. The parts that Petitioner lifted out of a machine weighed between 50 and 75 pounds. Tr. at 9. Petitioner worked on approximately seven to eight machines in a workday. Tr. at 9.

October 18, 2019 accident

On October 18, 2019, Petitioner was transporting meat from one pallet to another, he stepped on a piece of meat, and slipped. Tr. at 10. He managed to catch himself before hitting the ground, but felt a sharp pain. Tr. at 10. Petitioner testified that he went inside on the stairs and gathered himself. Tr. at 10. A coworker came to him and asked Petitioner if he was alright, and Petitioner told the coworker that he was. Tr. at 10. Petitioner reported the accident to the lead that was on the floor, to his manager, and to the back office. Tr. at 10. Petitioner did not seek medical treatment on October 18, 2019. Tr. at 10. He testified that he did not think he needed medical treatment at that time. Tr. at 10.

October 25, 2019 accident

On October 25, 2019, Petitioner was cleaning a Vemag, which is a steel drum with wheel canisters at the bottom for rolling. Tr. at 11. The Vemag catches meat that spills out from a machine

before hitting the floor. Tr. at 11. Respondent was having employees dump the Vemag out and throw the meat away at the end of the workday. Tr. at 11. A Vemag weighs between 150 to 200 pounds and is about four feet tall. Tr. at 11, 12. When Petitioner was pulling the Vemag back up onto its wheels, after rinsing it, he felt and heard a thump, and was stunned. Tr. at 11, 46. A coworker was walking past Petitioner, and Petitioner asked his coworker to get Tyrell, his lead. Tr. at 11. While waiting, Petitioner got up off the floor, and then went and told his supervisor what had happened. Tr. at 11. Petitioner's supervisor took Petitioner to the hospital in the supervisor's car. Tr. at 11.

Petitioner testified that prior to October 25, 2019, he was still seeing his surgeon for "the little pain that [he] was having." Tr. at 12. Petitioner testified that he sustained a prior back injury while working for Respondent on March 27, 2017. Tr. at 12, 30. Petitioner began treating for the March 27, 2017 accident on June 30, 2017 with Dr. Templin. Tr. at 12. Petitioner underwent a lumbar fusion on November 20, 2017 in connection with his previous injury. Tr. at 12, 31. Petitioner testified that he did not quit smoking for this lumbar fusion, he did not know that he had to, and he did not recall being told that he had to quit smoking for this procedure. Tr. at 31, 32. Following the lumbar fusion, Petitioner was prescribed Tramadol and Norco. Tr. at 37. Petitioner testified that "[t]he pills didn't work," the Tramadol injection did work, and that he had to take more of the Norco because it began to not work. Tr. at 37, 38. On April 11, 2018, Petitioner was examined by Dr. Vivek Mohan at Respondent's request. Tr. at 13. Petitioner agreed that Dr. Mohan's report indicated that Petitioner could return to work full duty as of June 1, 2018. Tr. at 13. Petitioner continued to treat with Dr. Templin after returning to work for Respondent in June 2018, had continued pain complaints, and underwent a CT scan on August 8, 2018 to determine whether his fusion was solid. Tr. at 13-14. Petitioner agreed that he continued to have chronic back pain following the November 2017 lumbar fusion. Tr. at 42.

Following his return to work at Respondent in June 2018, Petitioner was initially shredding paper and applying stickers to chemical containers. Tr. at 15. Petitioner then began a BioMist program, where he would BioMist the handles and panel boxes for the machines. Tr. at 15. Sometimes, Petitioner would be called to the floor, when they were short, to break down and clean machines, which became his regular job duties. Tr. at 15, 47. Petitioner worked full duty, breaking down and cleaning machines, from June 1, 2018 through October 25, 2019. Tr. at 15, 48-49. Petitioner testified that Respondent was not honoring the work restrictions given to him by Dr.

Templin, pursuant to the FCE, and which were still in place when he returned to work. Tr. at 47-48.

Treatment following October 25, 2019 accident

Following the October 25, 2019 accident, Petitioner sought initial treatment at the Emergency Room of Ingalls Memorial Hospital. Tr. at 16, Petitioner's Exhibit ("Px") 4 at 1. Petitioner presented with complaints of sudden onset low back pain, and reported that he felt and heard a pop in his low back while lifting a steel drum weighing over 100 pounds back onto its wheels, after rinsing it. Px4 at 7, 11. X-rays revealed (1) posterior spinal fusion and intervertebral body device at L5-S1; (2) no acute fracture, dislocation, or destructive osseous process in the lumbar spine; (3) mild facet sclerosis at L4-L5; and (4) the sacroiliac joints were unremarkable. Px4 at 9, 23-24. Petitioner was diagnosed with acute low back pain. Px4 at 9. Petitioner was discharged and was released to return to work with a 10-pound lifting and carrying restriction, as well as the restrictions of limited standing and bending, alternating sitting and standing, and no overhead work, pulling or pushing, or forceful gripping and grasping, kneeling, squatting, stooping or bending, stairs or inclines, or ladders. Tr. at 16; Px4 at 31.

On October 28, 2019, Petitioner reported to Dr. Kirincic for follow up. Px5 at 1. Petitioner reported a work incident occurring on October 18, 2019, where he slipped on a piece of meat. Px5 at 1. Petitioner reported a second incident occurring on October 25, 2019, while he rinsed a heavy "Vmac." Px5 at 1. Dr. Kirincic noted that Petitioner could barely transfer from sitting to standing, had difficulty walking, and was standing in forward flexion supported by his upper extremities and was leaning on the examining table. Px5 at 1. Petitioner had tightness in the left and right thoracic and lumbar areas. Px5 at 1. X-rays revealed minimal degenerative joint disease above a stable fusion at L5-S1 with no obvious shift in hardware on flexion/extension and minimal spondylolisthesis at L4-5. Px5 at 4. Petitioner's diagnoses included lumbar myofascial pain syndrome. Px5 at 4. Petitioner was provided with additional Norco in addition to Topamax and physical therapy was ordered. Px5 at 6. Dr. Kirincic continued Petitioner's 10-pound restriction. Px5 at 6.

Petitioner underwent an initial physical therapy examination at Ingalls Center for Outpatient Rehabilitation at South Holland on November 5, 2019. Px6 at 2. Petitioner was discharged on December 24, 2019, with two visits noted. Px6 at 2. The discharge note indicated

that the primary therapist had put Petitioner's therapy on hold due to him being unable to tolerate treatment. Px6 at 9.

On November 21, 2019, Petitioner saw Dr. Templin and provided consistent histories of the October 18, 2019 and October 25, 2019 work incidents. Px5 at 8-9. Petitioner reported that he attempted physical therapy, however, "that made things worse" and that was the reason he presented for exam. Px5 at 9. Petitioner reported that the majority of his pain was in his back, which radiated into his right leg with numbness, tingling, and weakness. Px5 at 9. X-rays were taken on this date and demonstrated suspicion for a broken S1 screw and degenerative change at the L4-5 level, which was unchanged from previous films. Px5 at 9. On exam, Dr. Templin noted that Petitioner had some stiffness and discomfort almost immediately upon lumbar flexion and extension. Px5 at 9. Petitioner also had diffuse give-way in his right leg when compared to his left leg. Px5 at 9. Petitioner described some altered sensation down into his distal right leg and foot. Px5 at 9. Dr. Templin's impressions were acute flare up of low back pain with right leg radiculopathy with previous L5 to sacrum fusion and L4-5 disk degeneration. Px5 at 9. Dr. Templin recommended a CT scan of Petitioner's lumbar spine to assess his fusion status and whether Petitioner had a broken screw, as well as an MRI to assess Petitioner's radicular symptoms. Px5 at 9. Dr. Templin maintained Petitioner's light duty restrictions. Px5 at 9.

Petitioner followed up with Dr. Kirincic on November 25, 2019. Px5 at 10. Dr. Kirincic continued Petitioner's 10-pound restriction. Px5 at 15. On November 27, 2019, Petitioner underwent an MRI of his lumbar spine, with impressions being (1) L4-5 right paramedian inferiorly migrated extrusion impinging upon right lateral recess and right L5 nerve root and (2) L5-S1 postoperative changes but no stenosis. Px7 at 3. On November 30, 2019, Petitioner underwent a CT scan of his lumbar spine, with impressions being (1) postsurgical changes of posterior spinal fusion and decompressive laminectomy at L5-S1 without evidence for hardware failure, no appreciable bony bridging across the L5-S1 disc space; (2) right paracentral disc extrusion at L4-5 along its effect on the right lateral recess and spinal canal better seen on comparison MRI exam; (3) moderate disc dessication with height loss at L4-5; and (4) mild bilateral neural foraminal stenosis at L4-5 and mild-moderate bilateral neural foraminal stenosis at L5-S1. Px8 at 3.

Petitioner returned to Dr. Templin on December 10, 2019. Px5 at 17. Dr. Templin noted that Petitioner had re-aggravation of his back pain extending into the right leg after a work injury and was having continued reports of pain from the back and into the right leg. Px5 at 17. Petitioner

reported that Respondent was not adherent to his restrictions, and that he continued to smoke cigarettes. Px5 at 17. On exam, Petitioner had pain with flexion and extension through the lumbar spine. Px5 at 18. Dr. Templin noted that the CT scan showed that there was instrumented fusion of L5-S1, the cage was appropriately positioned, there was good disc height, and there was no severe or significant foraminal stenosis. Px5 at 18. There appeared to be some loosening to the right-sided S1 screw, which was a new finding. Px5 at 18. Dr. Templin was unable to determine whether the screws were fractured, though the x-rays indicated that the screws were at least fractured on the right side. Px5 at 18. There was also evidence of a significant loss of disc height at L4-5 with a new herniation extending posterolaterally into the right lateral recess. Px5 at 18. The MRI showed the same as the CT scan, a herniation at L4, L5 and Modic endplate change in the L5-S1 endplates. Px5 at 18. Dr. Templin's assessment was suspected pseudoarthrosis, with adjacent segment degeneration at L4-5 with a herniated disk. Px5 at 18. Dr. Templin noted that he discussed with Petitioner that he could attempt to treat the herniated disk nonoperatively with an injection, but since Dr. Templin believed Petitioner had a nonunion at L5-S1, Petitioner would require a revision posterolateral fusion. Px5 at 18. Dr. Templin noted that he would perform a posterolateral fusion with iliac crest bone graft, as well as revision instrumentation to the ilium given the fractured screws, if he was unable to retrieve them. Px5 at 18. Dr. Templin further noted that Petitioner would also undergo a TLIF procedure at the L4-5 level given the significant degenerative change and herniated disk with radiculopathy. Px5 at 18. Dr. Templin also noted that he discussed with Petitioner that he would need to stop smoking as he did the previous surgery and would have to continue not smoking throughout the postoperative period, as smoking was a significant risk factor for him developing a nonunion. Px5 at 18. Dr. Templin continued Petitioner's 10-pound lifting restriction and noted bending and twisting to tolerance. Px5 at 18.

On December 2, 2019, at Respondent's request, Dr. Mohan examined Petitioner for a third time. Tr. at 23. Petitioner testified that Dr. Mohan indicated Petitioner could return to work with a 15-pound restriction, and Petitioner returned to work with that restriction. Tr. at 23. Petitioner testified that while under this restriction, he initially worked in the frock room passing out frocks and gloves, and then he was moved to the cafeteria, because he had a cane, where he wiped tables and lockers. Tr. at 23. Petitioner testified that following his return to work with the 15-pound restriction, he continued to experience pain and spasming, and the pain continued to worsen. Tr. at 24, 25.

Petitioner returned to Dr. Templin on December 24, 2019. Px5 at 19. Dr. Templin noted that his concern was of a nonunion at L5-S1. Px5 at 19. He also noted that Petitioner was having worsening pain in the right leg because of the herniated disc at L4-5. Px5 at 19. Dr. Templin further noted that Petitioner tried to return to work, but he was unable to tolerate same. Px5 at 19. On exam, Dr. Templin noted that Petitioner's sensation was diminished over the right dorsum of his foot. Px5 at 19. Petitioner's straight leg raise was positive on the right and Petitioner had pain with flexion and extension through the lumbar spine. Px5 at 19. Dr. Templin's assessment was that Petitioner had fractured screws at S1 with an L5-S1 nonunion and a herniated disk at L4-5. Px5 at 20. Dr. Templin's plan was to proceed with a fusion of L4 to S1. Petitioner was kept off work. Px5 at 20.

Petitioner testified that he recalled Dr. Templin telling him about injections for treatment of the herniated disk, but he told Dr. Templin that he "[didn't] think that that was good for [him] because it didn't work the second time. Tr. at 46. Petitioner explained that the second injection he underwent following the November 2017 fusion provided him no relief. Tr. at 46. Petitioner testified that he was last physically examined by Dr. Templin in December 2019. Tr. at 47. Petitioner agreed that Dr. Templin recommended a revision of his lumbar fusion and that Petitioner wanted to hold off on that surgery until he quit smoking for some time. Tr. at 26.

Petitioner followed-up with Dr. Kirincic on January 6, 2020, February 14, 2020, and March 16, 2020. Px5 at 22-39. Petitioner reported continued pain, with increased symptoms, including pain in his buttocks and both legs, as well as difficulty standing from a seated position. Px5 at 28, 34. On March 16, 2020, Dr. Kirincic noted that Petitioner's attempts to stop smoking had been slow and unsuccessful. Px5 at 34. She also noted that Petitioner had started self-using a cane. Px5 at 34. On this date, Dr. Kirincic noted that Petitioner was released to work per previous restrictions, as Petitioner was not trying hard to quit smoking and had been court ordered to return to work prior to March 31, 2020. Px5 at 39.

On April 10, 2020, Petitioner presented to Dr. Templin via telehealth visit. Px5 at 40. Petitioner reported continued pain extending from his back and into his right leg. Px5 at 40. Dr. Templin noted that a surgical recommendation had been made, Petitioner had been instructed to stop smoking, and that Petitioner had stopped smoking as of February 17, 2020. Px5 at 40-41. Dr. Templin noted that Petitioner had returned to work as of March 30, 2020 with restrictions. Px5. Petitioner reported that Respondent was not affording him a chair with back support and therefore,

he was straining "things." Px5 at 41. Dr. Templin's diagnoses and treatment recommendations were unchanged. Px5 at 41. Dr. Templin noted that a 10-pound lifting restriction was reasonable and recommended a chair with back support be used, and that Petitioner be allowed to use his cane for support as well. Px5 at 41.

Petitioner was examined again by Dr. Mohan on May 29, 2020. Tr. at 25. Petitioner testified that following this exam, Dr. Mohan recommended an injection at L4-L5, otherwise he was at maximum medical improvement. Tr. at 25. Petitioner agreed that Dr. Mohan did not comment on his work restrictions at that time. Tr. at 25. Petitioner testified that he believed he had the same conversation with Dr. Mohan regarding injections that he had had with Dr. Templin, and ultimately declined injections. Tr. at 47.

Petitioner again saw Dr. Kirincic on June 15, 2020, August 17, 2020, September 28, 2020, October 5, 2020 (via telehealth), December 7, 2020, January 12, 2021 (via telehealth), and February 1, 2021. Px5 at 42, 47, 53, 58, 64, 71, 77. Petitioner's low back pain persisted and symptoms increased. Px5 at 42, 47, 53, 58, 77. On August 17, 2020, Petitioner reported having experienced several spasms. Px5 at 47. On this date, Dr. Kirincic also noted that Petitioner's attempts to quit smoking since he last saw Dr. Templin in April 2020 were "useless" and that Petitioner had "no drive to quit smoking to proceed with surgery." Px5 at 47. She also ordered a new FCE. Px5 at 51. Petitioner underwent an FCE at Associated Medical Centers of Illinois on September 23, 2020. Px9.

On September 28, 2020, Dr. Kirincic noted that Petitioner stated that he had not tried to stop smoking and wanted to undergo surgery while still smoking. Px5 at 53. On October 5, 2020, Dr. Kirincic noted that Petitioner had completed an FCE. Px5 at 58. Dr. Kirincic further noted that the FCE was valid and Petitioner was able to push 80 pounds occasionally, 40 pounds frequently and 16 pounds constantly. Px5 at 62. Petitioner was able to carry 20 pounds occasionally, 10 pounds frequently, and four pounds constantly. Px5 at 62. Petitioner was able to safely lift 24 pounds occasionally, 15 pounds frequently, and six pounds constantly. Px5 at 62, Px9 at 6. On February 1, 2021, Dr. Kirincic noted that she was able to wean Petitioner off of pain medications and that Petitioner had lost approximately 40 pounds in weight. Px5 at 77. Dr. Kirincic further noted that Petitioner had reportedly been terminated on October 26, 2020, as his restrictions could not be accommodated. Px5 at 77. Petitioner was placed at maximum medical improvement from

conservative treatment by Dr. Kirincic on February 1, 2021 and was released from her care. Px5 at 81. Dr. Kirincic noted that Petitioner's restrictions were permanent. Px5 at 82.

Petitioner's current condition

Petitioner testified that on July 16, 2020, Respondent informed him that his restrictions could no longer be accommodated and as a result, Petitioner was terminated. Tr. at 26. The parties, however, stipulated that Petitioner was terminated pursuant to a letter dated October 16, 2020, but that the last date worked by Petitioner was July 16, 2020. Tr. at 29. Petitioner began a self-directed job search in December 2020. Px11. Tr. at 27. Petitioner testified that he was not working as of the date of arbitration and that he had quit smoking on or about February 11, 2021. Tr. at 28.

Petitioner testified that from June 2018 to prior to the October 25, 2019 incident, he was still having pain and spasms all over his back and legs, but they were not as consistent as they were at the time of arbitration. Tr. at 17. Petitioner testified that prior to the incidents in October 2019, he was having daily spasms that were sporadic and lasted between 15 minutes and 20 minutes, they occurred one to five times per day, and he had difficulty walking and standing. Tr. at 18, 19. Petitioner testified that following the October 25, 2019 incident, the pain and spasms are stronger, more frequent, last 45 minutes, and occur when he does anything, including laughing and standing up. Tr. at 17-18, 19. Petitioner deals with the spasms by going out into the cold, putting his head in the freezer, or standing in front of air conditioning. Tr. at 20. Petitioner testified that after the October 25, 2019 incident, he walks with a cane and "It hurts moving. It hurts moving it all over my legs all the way down to my knees." Tr. at 21. Petitioner did not walk with a cane prior to October 25, 2019. Tr. at 21.

Petitioner testified that he sometimes loses his balance while trying to wash up or cook while having a spasm. Tr. at 27. He described the spasms as being painful. Tr. at 27. Petitioner testified that he is in constant pain and is taking Hydrocodone and Flexeril, and that his doctor had prescribed medical marijuana. Tr. at 28. Petitioner testified that he takes Hydrocodone up to three times per day and takes Flexeril up to twice a day. Tr. at 28. Petitioner testified that he wants to proceed with the surgery that has been recommended by Dr. Templin. Tr. at 28.

Pre-accident treatment

Petitioner presented to Dr. Templin on June 30, 2017 for follow up of a March 27, 2017 work injury. Px1 at 1. Petitioner complained of lower back pain that extended into the left and right leg, with pain more predominant on the left. Px1 at 1. Petitioner reported an injury that

occurred on March 27, 2017 while he was lifting and pushing a conveyor belt to remove a pin. Px1 at 1. At that time, he felt severe pain in his back that extended into his buttock. Px1 at 1. Petitioner also reported a similar injury that occurred in July 2016, where he felt similar pain while lifting. Px1 at 1. Petitioner, however, reported that the pain from the July 2016 incident had abated until the March 27, 2017 incident. Px1 at 1. Petitioner reported that he was able to ambulate. Px1 at 1. The pain was reduced by taking muscle relaxants, pain medication and anti-inflammatories, including Norco and cyclobenzaprine. Px1 at 1. Petitioner reported that he had completed a course of therapy and was enrolled in work conditioning, however, he continued to report significant pain. Px1 at 1. Dr. Templin noted that the MRI revealed evidence of trace anterolisthesis at L5-S1, bilateral foraminal stenosis due to the uncovering of the disc, and a small rightward disc protrusion at the L4-L5 level with degenerative change, but with no significant stenosis or neural impingement at that level. Px1 at 2. Dr. Templin diagnosed Petitioner with an L5-S1 spondylolisthesis and foraminal stenosis and L4-L5 degeneration, which were aggravated by the lifting injury. Px1 at 2. Dr. Templin recommended Petitioner undergo an injection, bilaterally, in the L5 nerve root, and found him to be an excellent candidate for an L5-S1 transforaminal lumbar interbody fusion. Px1 at 2.

Petitioner underwent two injections prior to his follow up appointment with Dr. Templin on September 8, 2017. Px1 at 6. Dr. Templin noted that the first injection had provided Petitioner "significant benefit," while the second injection provided him with one day of relief. Px1 at 2.

On November 20, 2017, Petitioner underwent (1) L5-S1 combined transforaminal lumbar interbody fusion, posterolateral fusion; (2) application of posterior spinal instrumentation L5-S1 using the Spine Wave Sniper System; (3) application of interbody cage device at L5-S1 using the Globus system; and (4) application of local autograft and allograft bone for fusion. Px2 at 1. Petitioner's postoperative diagnoses were (1) L5-S1 spondylolisthesis, foraminal stenosis, radiculopathy; and (2) morbid obesity. Px2 at 1.

Petitioner followed up with Dr. Templin on December 27, 2017, February 8, 2018, and March 22, 2018. Px1 at 12-19. On February 8, 2018 and March 22, 2018, Dr. Templin noted that x-rays of the lumbar spine demonstrated proper position, healing and alignment of Petitioner's L5 to sacrum fusion. Px1 at 16. No evidence of loosening, subsidence, or migration was noted. Px1 at 16, 19. There was no adjacent segment problems other than preexisting degeneration noted. Px1 at 19.

On May 10, 2018, Petitioner returned for follow-up with Dr. Templin. Px1 at 20. Dr. Templin noted that Petitioner was doing better, but had "had an episode where he was admitted to the hospital after straining his back." Px1 at 20. X-rays were read as showing no change in alignment with 100% reduction of spondylolisthesis with good disc height, and no loosening, subsidence or migration noted. Px1 at 21. Dr. Templin noted in his assessment that Petitioner was having some residual pain and he would have Petitioner continue sedentary restrictions. Px1 at 21.

On June 14, 2018, Petitioner reported that the pain in his lower back had increased. Px1 at 22. Petitioner was progressing through work conditioning and was working in a sedentary capacity. Px1 at 23. Petitioner returned to Dr. Templin on July 5, 2017. Px1 at 25. Petitioner reported that he continued to experience daily pain and felt that he could not return to work regular duty. Px1 at 23. Petitioner reported that he was working light duty, was experiencing spasms, and was having difficulty working light duty because of repetitive bending and reaching. Px1 at 25. Dr. Templin's impression noted that Petitioner had ongoing low back pain with radiculopathy and a new CT scan was ordered to better assess whether Petitioner was solidly fused due to Petitioner's ongoing pain. Px1 at 26.

On August 8, 2018, Petitioner underwent a CT scan of his lumbar spine, which revealed (1) status post fusion of the L5-S1 vertebral bodies with no significant abnormality in the hardware. No pseudoarthrosis or loosening was seen; and (2) multilevel spondylosis, which was incompletely characterized on CT, and a follow up MRI was clinically indicated. Px3 at 2. Petitioner underwent an FCE on August 30, 2018. Rx5.

Petitioner presented for follow up with Dr. Templin on November 29, 2018. Px1 at 27. Petitioner reported spasms in his back with twisting, turning, and with increase in activity. Px1 at 27. X-rays taken on that date showed a stable construct at L5-S1, and no loosening, subsidence, or migration was noted. Px1 at 28. Dr. Templin noted that review of the August 2018 MRI showed that there was no loosening of the screws, the cage was appropriately positioned, and there appeared to be fusion through the interbody cage device. Px1 at 28. At that time, Petitioner had completed therapy, and Dr. Templin recommended an FCE, if one had not already been done. Px1 at 28. Dr. Templin released Petitioner to work with a 10-pound lifting restriction. Px1 at 28.

Petitioner returned to Dr. Templin on February 7, 2019, with reports of continued pain and spasms, which had taken him to the emergency room several times. Px1 at 29. Petitioner reported that since his November 2018 appointment, he had been working, however, "they" were making

him work regular duty although he was on work restrictions. Px1 at 29. Petitioner reported that he was repetitively having to mop and clean toilets and bend and lift more than he was supposed to, which was aggravating his pain. Px1 at 29. Petitioner described the pain as radiating all the way up to his neck and down his legs. Px1 at 29. On exam, Petitioner transitioned positions slowly and moved in an antalgic fashion with pain almost immediately upon flexion and extension. Px1 at 30. Dr. Templin referred Petitioner to Dr. Kirincic for further conservative care due to his ongoing pain and noted that Petitioner was capable of returning to work per his FCE. Px1 at 30.

On February 25, 2019, Petitioner presented to Dr. Kirincic with complaints of constant pain that originated in his low back and radiated to his neck. Px1 at 31. He reported that he used hot water baths and Norco for pain relief. Px1 at 31. He further reported that sometimes the pain was so significant that it caused him nausea and vomiting. Px1 at 31. Petitioner also reported a history of spasms that lowered his self-esteem and made him feel uncomfortable in public. Px1 at 31. Dr. Kirincic noted that there had not been bad flare ups since 2018, and that Petitioner had "increased work demands with taking care of 24 tanks etc…dumping, scrubbing, lifting, etc." Px1 at 31. Dr. Kirincic's diagnoses were (1) contracture of muscle, multiple sites; (2) chronic pain; (3) lumbar fusion post interbody technique; (4) therapeutic drug monitoring; (5) morbid obesity due to excess calories; (6) body mass index 40.0-44.9; (7) nicotine dependence; (8) acquired lumbar spondylolisthesis; (9) connective tissue and disc stenosis of intervertebral foramina of lumbar region; and (10) degenerative disc disease, lumbosacral spine with radiculopathy. Px1 at 31-32. Dr. Kirincic prescribed CBD oil, Norco, and Flexeril; and she returned Petitioner to work at a medium physical demand level. Px1 at 32.

On March 25, 2019, Petitioner returned to Dr. Kirincic complaining of sharp, stabbing pain with radiation to the bilateral buttocks and calves. Px1 at 35. Dr. Kirincic noted that Petitioner had been in the ER one week prior due to pain. Px1 at 35. On exam, Petitioner ambulated without assistance. Px1 at 37. Petitioner's diagnoses remained unchanged. Px1 at 37. Petitioner underwent a 15-minute acupuncture session, Duexis was prescribed in addition to previously prescribed medications, and his restrictions remained unchanged. Px1 at 38.

On April 22, 2019, Petitioner presented to Dr. Kirincic with complaints of continued sharp, stabbing pain, similar in intensity, with radiation to the bilateral buttocks and calves. Px1 at 38. Petitioner reported that he felt that he was working above and beyond restrictions and wanted Dr. Kirincic to specify his permanent FCE-based restrictions on work status for HR. Px1 at 41.

Petitioner's diagnoses were unchanged. Px1 at 44. Petitioner received acupuncture, trigger point injections, and continued prescriptions for pain management. Px1 at 44-45.

Petitioner followed up with Dr. Kirincic on June 24, 2019, July 22, 2019, August 19, 2019, and September 30, 2019. Px1 at 44-68. Similar complaints of pain persisted throughout Petitioner's treatment with Dr. Kirincic until September 30, 2019. Px1 at 47-68. Petitioner also continued to report that he was not working within his restrictions. Px1 at 50, 52, 57, 63. On June 24, 2019, Petitioner filled out a THC card application, but it was not submitted. Px1 at 47, 52. Petitioner's diagnoses included neuropathic pain beginning on June 24, 2019; and swelling of bilateral fingers and long-term use of NSAIDs beginning on August 19, 2019. Px1 at 49, 54, 60, 66. Petitioner continued with acupuncture treatment and underwent additional trigger point injections. Px1 at 50, 55. Petitioner was given a lumbar brace on September 30, 2019. Px1 at 67.

Evidence deposition testimony of Respondent's Section 12 Examiner, Dr. Vivek Mohan

Dr. Vivek Mohan testified by way of evidence deposition on August 13, 2021, and the transcript of testimony was admitted as Respondent's Exhibit ("Rx") 6, without objection. Dr. Mohan testified as to his education and credentials as an orthopedic spine surgeon. Rx6 at 5-7.

Dr. Mohan saw Petitioner for independent medical examinations related to Petitioner's July 6, 2016 accident and issued two narrative reports dated April 11, 2018 and July 11, 2018. Rx6 at 7. Dr. Mohan testified that at the time of his July 11, 2018 report, Petitioner was six months post lumbar fusion and Petitioner still had pain in the middle of his back and his neck. Rx6 at 8-9. Dr. Mohan's diagnosis at that time was status post lumbar fusion with continued pain, and Dr. Mohan also noted that Petitioner was still smoking. Rx6 at 9-10. At that time, Dr. Mohan found Petitioner to be at maximum medical improvement and did not recommend any further treatment. Rx6 at 24-25. Dr. Mohan allowed Petitioner to return to work full duty at that time and this opinion was based on Dr. Mohan's exam. Rx6 at 12, 25.

Dr. Mohan testified that he was suspicious of a failed fusion or nonunion at the time of his July 11, 2018 exam because Petitioner was still having significant pain. Rx6 at 24. Dr. Mohan, however, then testified that he did not suspect a nonunion when he was asked why he did not recommend further treatment or additional diagnostic testing on July 11, 2018. Rx6 at 28. Dr. Mohan testified that his concern was that Petitioner was going into a nonunion at some point because Petitioner continued to smoke. Rx6 at 28-29.

Dr. Mohan next examined Petitioner on December 12, 2019. Rx6 at 12. Petitioner reported both the October 18, 2019 and the October 25, 2019 incidents. Rx6 at 13. At that time, Petitioner reported to Dr. Mohan that he was having significant pain in his lower back and trouble sitting or standing for prolonged periods of time. Rx6 at 13. Petitioner complained of tightness, more on the right side, and that the pain had worsened following the October 25, 2019 incident. Rx6 at 13. Dr. Mohan reviewed the MRI of November 27, 2019, which showed the prior L5-S1 fusion, but also a new L4-5 right-sided disc herniation impinging on the right L5 nerve root. Rx6 at 15. Dr. Mohan reviewed the CT scan of November 30, 2019, which showed no clear evidence of hardware failure or fracture and also no appreciable bony fusion in the disc space. Rx6 at 15. This finding showed that there was pseudoarthrosis or a failure to heal from the prior fusion. Rx6 at 15. The CT scan also showed the L4-5 disc protrusion on the right side. Rx6 at 15. Dr. Mohan did not review the CT scan of August 2018. Rx6 at 30. Dr. Mohan's diagnoses at that time were L4-5 disc herniation on the right side and lumbar pseudoarthrosis with radiculopathy at the L5-S1 level. Rx6 at 17.

At the time of his December 12, 2019 exam, Dr. Mohan opined that the October 18, 2019 incident did not cause any significant or permanent injury nor any injury that was pertinent to the L4-5 disc herniation or pseudoarthrosis at the L5-S1 level. Rx6 at 18. He further opined that the October 25, 2019 incident caused the L4-5 disc protrusion and onset of worsening symptoms in Petitioner's lower back with radicular symptoms on the right side. Rx6 at 18. Dr. Mohan recommended that Petitioner undergo injections for pain control for the L4-5 disc herniation, as the injections would alleviate some of the pain. Rx6 at 20. Dr. Mohan testified that there was no evidence that the October 25, 2019 incident caused, contributed, or aggravated the preexisting pseudoarthrosis at the L5-S1 level. Rx6 at 18. The pseudoarthrosis was already present because there was no evidence of healing at all on the CT scan. Rx6 at 18. The failure of a fusion is long-term process and not the result of a sudden trauma. Rx6 at 18.

Dr. Mohan testified that the significance of Petitioner's smoking is that smoking cigarettes and any use of nicotine inhibits vasculature and bony ingrowth at the fusion site. Rx6 at 19. Lumbar fusions may still not heal without smoking. Rx6 at 18. The healing rate in an ideal patient that is healthy and does not smoke is in the 90th or 95th percentile, whereas the fusion rate decreases to 40 to 50 percent once an individual smokes. Rx6 at 19.

Dr. Mohan examined Petitioner again on May 29, 2020. Rx6 at 20. Petitioner still had back pain and right leg pain, he could not walk for any distances, and was off work because of significant

pain. Rx6 at 20. Petitioner reported that he had recently stopped smoking completely. Rx6 at 21. Petitioner had quit smoking in April with the use of nicotine patches. Rx6 at 21. Petitioner also reported that his back and left buttock were bothering him more than the right at that time. Rx6 at 21. This complaint was more significant of the L5-S1 level being the more predominant cause of pain and the L4-5 disc protrusion had improved. Rx6 at 21. Petitioner had a cane with him on this day. Rx6 at 22. Dr. Mohan's diagnoses were that the L4-5 disc protrusion and nerve pain had essentially resolved, as there was no evidence of radiculopathy and Petitioner had normal strength and no nerve tension signs; and Petitioner's primary issue at that time was the L5-S1 nonunion, which was taking a significant toll on his back and was related to his prior 2016 work injury. Rx6 at 23. At that time, Dr. Mohan opined that the L4-5 disc herniation was not causing or contributing to Petitioner's symptoms, and his primary complaints, which were left-sided, were related to L5-S1 nonunion, which was related to the prior injury of March 27, 2017. Rx6 at 23. Dr. Mohan did not recommend any further treatment for the L4-5 disc protrusion because it had improved. Rx6 at 24. Dr. Mohan opined that any treatment for the L5-S1 level was not related to the October 18, 2019 or October 25, 2019 incidents. Rx6 at 24.

Dr. Mohan testified that he believed that Dr. Templin diagnosed the broken screw in November 2019, which was when the nonunion was officially diagnosed. Rx6 at 31. Dr. Mohan testified that there is no evidence of the nonunion on an MRI, CT scan, or x-rays before November 2019. Rx6 at 31.

Dr. Mohan testified that from a medical standpoint, and without consideration of causation, Petitioner would need surgery to address the L5-S1 issue and work restrictions before and after surgery. Rx6 at 32. Petitioner did not require any further restrictions in relation to the L4-5 disc herniation.

Evidence deposition of Dr. Cary Templin

Dr. Cary Templin testified by way of evidence deposition on July 9, 2021 and the transcript of testimony was admitted as Petitioner's Exhibit 10 (Px10), without objection. Dr. Templin testified as to his education and credentials as an orthopedic spine surgeon. Px10 at 5-6.

Dr. Templin testified that Petitioner is his patient. Px10 at 7. He has performed surgery on Petitioner and has recommended that Petitioner have a revision surgery and an extension of his fusion. Px10 at 7. Dr. Templin began treating Petitioner on June 30, 2017. Px10 at 7. He performed a L5-S1 transforaminal lumbar interbody fusion on Petitioner on November 20, 2017. Px10 at 7.

Dr. Templin testified to his continued follow-up with Petitioner through November 21, 2018, which included x-ray and CT evaluation of the results of the fusion. Px10 at 7-8. X-rays taken on December 27, 2017 showed that everything was in good alignment and there was not any loosening of screws. Px10 at 8. The CT scan of April 2018 was unremarkable and showed that the screws were solid and that there was progressive fusion. Px10 at 8-9. The CT scan of August 2018 showed that the cage was well positioned, Dr. Templin did not appreciate any loosening of the screws, and he thought that there was evidence of fusion through the cage. Px10 at 9.

Dr. Templin testified that when he saw Petitioner on November 21, 2019, he was complaining of worsening back pain and reported that he slipped on a piece of meat and strained his back on October 18, 2019 and that he was then reinjured when he had low back pain when he went to pull a steel drum back up after rinsing it. Px10 at 11. X-rays were taken that day, which showed degenerative change at L4-5 with loss of disc height and a fractured S1 screw. Px10 at 11-12, 27. A fractured S1 screw had not been revealed on x-ray prior to November 21, 2019. Px10 at 12. Dr. Templin testified that the significance of a broken screw was that it would be a fatigue fracture of the screw which would indicate that there was likely not a solid fusion. Px10 at 12. Dr. Templin explained that what he meant by a fatigue fracture was that as the body loads, bending, twisting, lifting, walking, or applying any weight to the body puts stress on the screws and over time, the repetitive stress will cause any metal object to fail or break and is not necessarily a post-traumatic finding. Px10 at 12, 22, 23. A fracture of a screw can also be caused by a specific trauma through lifting. Px10 at 12. Dr. Templin's concern at that time was for a pseudoarthrosis given the broken screw. Px10 at 12-13. Dr. Templin ordered an MRI and CT scan. Px10 at 13. The CT scan determined a pseudoarthrosis of L5-S1 and a herniated disc at L4-5, with loss of disc height and degenerative change. Px10 at 13, 24-25. Dr. Templin testified that he felt the fracture was more compelling on the right side and did not rule out the left side being fractured as well. Px10 at 26.

Dr. Templin testified that he imposed additional work restrictions on Petitioner and recommended a revision fusion at L5-S1 and a fusion at L4-5 to remove the disc and revise the pseudoarthrosis. Px10 at 14. Dr. Templin testified that it was important to remove the disc at L4-5 because it was causing radiculopathy extending into Petitioner's right leg because of the pinched nerve. Px10 at 14-15. There was not ever any recommendation of a revision of Petitioner's lumbar fusion prior to the October 18, 2019 and October 25, 2019 incidents. Px10 at 20. At the time of his deposition, Dr. Templin continued to recommend a revision fusion of L5-S1 and a fusion of L4-5,

with excision of the disc herniation at L4-5; and he recommended Petitioner be off work pending surgical intervention. Px10 at 20-21. Dr. Templin opined that since October 2019, Petitioner has not ever been able to return to work at full capacity. Px10 at 37.

Dr. Templin testified that the nonunion was present prior to October of 2019. Px10 at 16. He explained that CT scans are not a perfect indicator of a solid fusion, but if a patient appears to be fused and eventually breaks screws, then there was likely no fusion there. Px10 at 17. Dr. Templin further testified that although there was no evidence of nonunion before October 2019, it became evident after the fact. Px10 at 17, 21. Dr. Templin testified that the October 18, 2019 or October 25, 2019 incidents could have permanently aggravated Petitioner's condition of ill-being and either one could have caused the S1 screw to break. Px10 at 18. The need for the revision surgery was related to those two incidents, as well as the previous fusion surgery and the initial event. Px10 at 19. Dr. Templin explained that the herniated disc at L4-5 was directly related to the October 2019 incidents, and the pseudoarthrosis was permanently aggravated by those incidents as well. Px10 at 19. Dr. Templin explained that Petitioner likely had a stable pseudoarthrosis which became permanently aggravated, in addition to the development of a herniated disc at L4-5. Px10 at 19. The fractured S1 screw was a consequence of the pseudoarthrosis. Px10 at 29. Dr. Templin testified that he could not say whether the S1 screw fractured at the time of Petitioner's fall on October 25, 2019 or had been fractured and became aggravated at that time. Px10 at 29, 36. Dr. Templin testified that the pseudoarthrosis likely preexisted and his opinion as to aggravation after the October 2019 incidents was based on Petitioner's self-reported worsening of his pain and the veracity of Petitioner's complaints relative to an increase in his symptoms. Px10 at 34-35.

At the time of his deposition, Dr. Templin testified that he was aware that Petitioner was no longer smoking cigarettes. Px10 at 19. Petitioner was smoking in 2019, which had an impact on Dr. Templin's recommendation for surgery. Px10 at 20. Dr. Templin testified that Petitioner was informed that he needed to quit smoking before undergoing surgery and that smoking was likely a large factor in the pseudoarthrosis that he developed. Px10 at 20. Dr. Templin testified that smoking inhibits bone growth by inhibiting the generation of vasculature which is required for new bone growth. Px10 at 20. The exposure to nicotine inhibits the formation of new bone which is required to form a fusion Px10 at 20.

Dr. Templin testified that the incident which Petitioner described as involving a "popping" sensation was consistent with the diagnosis of the L4-5 disc herniation. Px10 at 30. Dr. Templin

testified that he told Petitioner that he could try to treat the L4-5 disc herniation nonoperatively, but Dr. Templin felt that because of the nonunion, he needed a revision and "so if we were going in there we talked about doing the disc as well." Px10 at 27-28. Dr. Templin agreed that the inclusion of the L4-5 in the revision procedure was in part due to the presence of significant degenerative changes above the prior fusion. Px10 at 28. The degenerative changes at the L4-5 level could have been a result of Petitioner's obese stature, but were at least in part due to the adjacent segment fusion with instrumentation, which would put more strain on that level as well. Px10 at 29.

Dr. Templin agreed that the 2017 fusion was not a successful surgery to the extent that it did not produce the desired outcome, which is primarily pain relief. Px10 at 30. Dr. Templin testified that he was not sure if Petitioner continued to regularly treat for chronic pain following the 2017 fusion through October 2019. Px10 at 30. Dr. Templin explained that he knew that Petitioner was seeing Dr. Kirincic during that time, so there was some treatment, but he was not sure if it was for back pain or for leg pain. Px10 at 30. He believed it was for back pain. Px10 at 30. Dr. Templin testified that he believed that Petitioner's pain complaints since October 2019 were similar to his complaints since the FCE of 2018, and were not less severe. Px10 at 38. Dr. Templin agreed that it was a fair statement that Petitioner's continuing pain complaints following the 2017 fusion surgery could have been an indication of a symptomatic and unstable nonunion, despite the x-rays and CT scan showing that there was more stability than there was. Px10 at 31.

Dr. Templin testified that radiculopathy from a herniated disk could resolve spontaneously. Px10 at 33. Dr. Templin testified that, as of the date of his deposition, he had not physically examined Petitioner since late December 2019. Px10 at 33. Dr. Templin had no personal knowledge at that time as to whether the L4-5 disc herniation remained symptomatic. Px10 at 34. Dr. Templin agreed that if the L4-5 disc was no longer symptomatic, there would not be the same level of indication for an extension of the fusion. Px10 at 34. He explained that if Petitioner did not have degenerative change or continued impingement of the nerve root, then he would not likely extend the fusion. Px10 at 34.

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission,* 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders his evidence worthy of belief. It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. Petitioner was calm, composed, and well-mannered. The Arbitrator also observed Petitioner ambulating with the use of a cane. 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. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied if the claimant can show that a work-related injury played a role in aggravating his preexisting condition. *Id.* A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient 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 October 25, 2019 and his current lumbar spine conditions of ill-being. The Arbitrator relies on the following in support of her findings: (1) Petitioner's credible testimony regarding the worsening of his low back symptoms following the October 25, 2019 work accident; (2) Dr. Kirincic's treatment records, and (3) Dr. Templin's treatment records and testimony.

The Arbitrator notes that while Petitioner's pseudoarthrosis may have developed prior to the October 25, 2019 work accident, the record supports Dr. Templin's opinion that the pseudoarthrosis was stable until permanently aggravated by the October 25, 2019 work accident. Both Dr. Templin and Dr. Mohan agree that there was no evidence of a nonunion prior to October 25, 2019 and that both the nonunion and fractured S1 screw were diagnosed subsequent to the October 25, 2019 accident. More convincingly, Dr. Templin opined that the S1 screw was either fractured at the time of the October 25, 2019 accident or it was present prior to October 25, 2019 and aggravated by the accident. Px10 at 29, 36. The Arbitrator notes that both Dr. Templin and Dr. Mohan agree that the disc herniation at the L4-5 level was a new finding and causally related to the October 25, 2019 work accident.

The Arbitrator further notes and considers that although Petitioner continued to treat for low back pain and spasms following the November 20, 2017 fusion, Petitioner returned to work in June 2018 and had been working full duty for an extended period of time prior to the October 25, 2019 work accident. Petitioner also credibly testified that his low back symptoms significantly worsened following the October 25, 2019 work accident, and his testimony is corroborated by the medical records.

Based on the record as a whole, including Petitioner's testimony, medical records, and the medical opinions of Petitioner's treating physicians over those of Dr. Mohan, the Arbitrator finds that Petitioner has met his burden in proving a causal connection between his October 25, 2019 accident and his current lumbar spine 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 finding as to causal connection, the Arbitrator finds that the medical treatment Petitioner has had for his lumbar spine conditions is reasonable, necessary, and related to the work accident of October 25, 2019. Petitioner claims Respondent is liable for

unpaid medical bills from Hinsdale Orthopaedic Association ($8,481.00), AMCI ($711.00), and Injured Workers' Pharmacy ($31.11). See Px12, Px13, and Px14. The Arbitrator further finds that Respondent shall pay Petitioner directly for the outstanding medical bills for treatment of Petitioner's lumbar spine conditions, as provided in Px12, Px13, and Px14, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

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

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to prospective medical care, as recommended by Dr. Templin.

The Arbitrator considers the opinions of Dr. Mohan, but finds that they do not outweigh the opinions of Dr. Templin. As such, the Arbitrator relies on the opinions and treatment recommendations of Dr. Templin, noting that Dr. Templin has treated Petitioner since 2017, whereas Dr. Mohan has seen Petitioner on only four occasions, two of which followed the October 25, 2019 work accident. The Arbitrator notes that despite multiple medical exams, a recommendation for a revision of Petitioner's L5-S1 lumbar fusion or a TLIF procedure at the L4-5 level had not been made prior to October 25, 2019. Regarding the recommended TLIF procedure, the Arbitrator further notes that such procedure may not be necessary, per Dr. Templin's testimony, if Dr. Templin finds that the L4-5 disc is no longer symptomatic or if Petitioner does not have degenerative change or continued impingement of the nerve root. Px10 at 34.

Additionally, the Arbitrator notes that Petitioner credibly testified that he stopped smoking in February 2021 and there is no evidence to rebut his testimony. Tr. at 28. Further, Dr. Kirincic noted in her February 1, 2021 treatment record that Petitioner had been weaned off pain medications and had lost 40 pounds in weight. Px5 at 77. Thus, the Arbitrator finds Petitioner to be compliant with Dr. Templin's recommendation that Petitioner stop smoking prior to proceeding with the recommended surgical treatment.

Based on the Arbitrator's prior findings and the record as a whole, the Arbitrator finds that Petitioner is entitled to the lumbar fusion revision at L5-S1, as well as the TLIF procedure at the

L4-5 level, if Dr. Templin finds that the TLIF procedure is necessary, and all reasonable and necessary preoperative clearance, imaging, and postoperative care.

Issue L, whether Petitioner is entitled to temporary total disability, the Arbitrator finds as follows:

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits. At issue is the claimed TTD period of July 17, 2020 to January 26, 2022. (See Ax1, No. 8).

Per the Parties' stipulation, Petitioner last worked on July 16, 2020. Tr. at 29. Petitioner credibly testified that on July 16, 2020, Respondent informed him that his restrictions could no longer be accommodated, and Petitioner's testimony was unrebutted. Tr. at 26. The Arbitrator notes that subsequent to July 16, 2020, Petitioner underwent an FCE on September 23, 2020, which Dr. Kirincic found valid and noted those restrictions as permanent. Px5 at 62, 82. Dr. Templin has also kept Petitioner on restrictions, while continuing to recommend surgical treatment for Petitioner's condition. Px5 at 41, Px10 at 7, 37. Dr. Mohan has also recommended a 10-pound lifting restriction along with light duty status. Rx6 at Respondent's Deposition Exhibits 4 and 5. There is no evidence in the record that Respondent accommodated Petitioner's restrictions after July 16, 2020.

Based on the Arbitrator's prior findings and the record as a whole, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from July 17, 2020 through the date of arbitration, January 26, 2022.

Issue N, whether Respondent is due any credit, the Arbitrator finds as follows:

Per the Parties' stipulation, the Respondent is entitled to a credit under Section 8(j) of the Act for any medical paid by Respondent's group health plan and for any medical bills paid by Respondent's workers' compensation carrier and/or administrator. See Ax1 at 13, Rx3.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC033106
Case Name	Shanese Wyatt Samuels v. State of Illinois - Elgin Mental Health Center & Madden MHC
Consolidated Cases	18WC029340;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0031
Number of Pages of Decision	12
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Mark Lee
Respondent Attorney	Will Dimas

DATE FILED: 1/23/2023

/s/ Deborah Baker, 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

SHANESE WYATT SAMUELS,

Petitioner,

vs. NO: 16 WC 33106

ELGIN MENTAL HEALTH CENTER and
MADDEN MENTAL HEALTH CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's current condition is causally related to the September 3, 2016 work injury and the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. This case was consolidated for hearing with case number 18 WC 29340.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $518.20 per week for a period of 71.75 weeks, as provided in §8(e)9 of the Act, for the reason that the injuries sustained caused the 35% loss of use of the right hand.

Pursuant to Section 19(f)(1), this decision is not subject to judicial review.

January 23, 2023

/s/ *Deborah J. Baker*

DJB/mck
O: 1/11/23
43

/s/ *Stephen Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC033106
Case Name	WYATT SAMUELS, SHANESE v. ELGIN MENTAL HEALTH CENTER & MADDEN MHC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Mark Lee
Respondent Attorney	Will Dimas

DATE FILED: 3/31/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 29, 2022 1.05%

/s/Stephen Friedman, Arbitrator
Signature

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

March 31, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Shanese Wyatt Samuels
Employee/Petitioner

v.

Elgin Mental Health Center & Madden MHC
Employer/Respondent

Case # **16** WC **033106**

Consolidated cases: **See Decision**

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 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 **September 3, 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 $**44,910.32**; the average weekly wage was $**863.66**.

On the date of accident, Petitioner was **43** years of age, ***single*** 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 $**6,087.03** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**3,701.57** for other benefits, for a total credit of $**9,788.60**.

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $518.20/week for 71.75 weeks, because the injuries sustained caused the 35% loss of the Right Hand, 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/ Stephen J. Friedman **MARCH 31, 2022**

Signature of Arbitrator

Statement of Facts

This matter was tried in conjunction with consolidated case 18WC029340 (DOA: 5/17/18). A single transcript was prepared. The Arbitrator has issued separate decisions for each case. The parties stipulated that all lost time benefits and medical expenses had been or would be paid.

Petitioner Shanese Wyatt Samuels testified that she is currently employed as a caseworker for the Department of Human Services since 2019. She previously was employed by as a security guard for the State of Illinois in mental health facilities. She began that position April 4, 2015.

Petitioner testified that on September 3, 2016, she injured her right thumb when she was attempting to restrain a combative patient. She completed an injury report the same day (RX 6). Petitioner was seen at medical the next day. X-rays taken September 4, 2016 noted no acute fractures (PX 1, p 489). Petitioner saw Dr. Bendre on September 12, 2016. She reported that a combative resident grabbed her right thumb and twisted/hyperextended it. She had pain, swelling, and weakness to the right thumb MP joint. She was unable to hold a pen or use her hand. She reported a prior August injury to the right ring finger, but denied any prior problem with her right thumb. Dr. Bendre noted mild swelling, tenderness, and instability in the MP joint. He diagnosed a sprain and ordered an MRI. He released Petitioner to light duty work (PX 1, 487-490). The September 21, 2016 MRI impression was a torn ulnar collateral ligament (PX 1, p 481).

On October 3, 2016, Dr. Bendre reviewed the MRI. He diagnosed an ulnar collateral ligament rupture at the thumb MP joint. He stated that immobilization and rehabilitation may not be sufficient to appropriately heal the tear. He proposed surgery and Petitioner opted to proceed (PX 1, p 467-472). On December 12, 2016, Petitioner underwent a right thumb metacarpophalangeal joint ulnar collateral ligament repair for a tear of the right thumb metacarpophalangeal joint ulnar collateral tear. Dr. Bendre performed the surgery and used arthrex mini bio-pushlock anchors and K-wires to stabilize the healing process. She was discharged the same day (PX 1, p 409-411).

On January 13, 2017, Dr. Bendre removed the K wire. It was noted that there was diffuse swelling of her right thumb and some concern about cellulitis. The ulnar collateral ligament was healed well enough to allow MP joint motion and to send Petitioner to therapy for thumb. She was provided light duty restrictions with restrictions of avoiding strenuous pinching and forceful use of the thumb (PX 1, p 383-385). On February 15, 2017, it was noted that her thumb swelling had greatly decreased and there were no active or clinical signs of infection. The ulnar collateral ligament was healed enough to continue therapy and strengthening exercises. She was to continue using her splint. The expectation was that it would take approximately 6-12 months for complete resolution of the thumb pain symptoms after such a surgery (PX 1, p 363-366).

On March 22, 2017, Petitioner reported that her pain had been improving until she bumped her thumb into a wall, while not wearing her brace, the week of March 6, 2017. She noted additional 8/10 pain and swelling. Dr. Bendre notes she continues to have pain, swelling, and stiffness of the right thumb despite her surgery. She has pain diffusely along the dorsal aspect of the thumb of uncertain etiology. She has developed a lump over the dorsal aspect of the IP joint. Based on the persistence of pain and lack of improvement, he recommended repeating an MRI. Petitioner was given a light use restriction (PX 1, p 343-345). The March 29, 2017 MRI impression was status post repair of the ulnar collateral ligament of the thumb MCP joint, without a re-tear. There was mild volar subluxation of the joint with small residual effusion and no evidence of a mucous cyst at the IP joint (PX 1, p 335). On April 3, 2017, Dr. Bendre felt Petitioner has a dorsal capsular contracture of the

MP joint, and likely some extensor tendon adhesions. He was unsure of the cause of the IP joint pain and dorsal swelling. There was no significant tenderness over the MP joint at the time. He recommended further surgery using a dorsal approach to the MP joint with dorsal capsulectomy to decrease her extension contracture and a tenolysis to the extensor tendons (PX 1, p 322). On May 5, 2017, Dr. Bendre stated that her IP joint swelling was likely related to a Heberden's node over the dorsal aspect of the IP joint (PX 1, p 306).

On July 31, 2017, Petitioner underwent a right thumb metacarpophalangeal joint fusion, with extensor tenolysis surgery. She was discharged with a post-operative diagnosis of right thumb MCP joint post-traumatic arthrosis and extensor tendon adhesions. She was instructed to follow-up for hand therapy and was placed off work with a light use restriction (PX 1, p 213-220). On August 16, 2017, the MP joint alignment was excellent, and the thumb was stable. It was noted that a new course of therapy would likely be prescribed to include more aggressive range of motion and strengthening (PX 1, p 192). On September 13, 2017, Dr. Bendre worries about the failure of the MP joint fusion. He discussed options of complete immobilization with full-time splinting and possible revision surgery for revision of the internal fixation of the fusion site. Petitioner desired observation. Petitioner was to be seen at 3 months post-operative with x-rays (PX 1, p 178).

On November 1, 2017, there was some evidence of a lack of rigid fixation of the fusion site and proximal migration of the K wires. It was recommended that the progression be reviewed at the 6th month marker to confirm if a revision surgery was necessary. Petitioner was to remain in the thumb spica splint full time. Therapy was deferred. Petitioner was kept off work (PX 1, p 157). On December 13, 2017, x-rays showed a possible progression of the fusion. Dr. Bendre recommended a CT scan to evaluate the extent of the joint fusion. Petitioner was unable to return to work (PX 1, p 139). On February 1, 2018, Dr. Bendre noted CT images show that there was partial fusion of the joint and fixation appeared to be stable at the time. Petitioner was instructed to reduce her use of Norco. She was deemed able to return to work with light duty restrictions (PX 1, p 115-116).

Petitioner called the doctor on February 22, 2018 asking for an appointment before 3/02/2018 due to wanting to get a promotion. Petitioner said she was doing alright and wanted to be released from light duty (PX 1, p 108). On February 28, 2018, Petitioner reported that her right thumb was doing okay with some stiffness around the base. There was notable improvement in the MP and IP joint pain. It was opined that the MP joint fusion had been achieved. Fixation was stable. Dr. Bendre felt Petitioner still had some persistent IP joint pain related to a very sensitive osteophyte at the dorsoradial aspect of the distal phalanx base. He did not feel this would resolve with conservative management. The MP joint pain may be related to the hardware. He stated that the hardware would likely need to be removed but he would not want to do so until about 9 months post-operatively. He stated he would attempt to get the surgery approved (PX 1, p 101). On April 11, 2018, Petitioner reported that she was doing well overall with pain only happening when the weather changed. The doctor noted that her pain symptoms were largely resolved and that her joints were well-fused. Petitioner was released to work full duty, no restrictions. She was to follow up in three months for additional x-rays. Dr. Bendre stated that if symptoms recur it would be reasonable to consider repeat surgery to remove the hardware and to perform an IP joint arthrotomy and debridement (PX 1, p 84).

On May 3, 2018, Petitioner called, reporting increased pain in her right thumb. She was advised to continue using the bone stimulator and to observe the symptoms. Dr. Bendre notes that if the symptoms were distally about the IP joint, it was related to arthritic changes or possible bone spurs. If the symptoms were at the level of the MP joint fusion, it could be stemming from a hardware problem (PX 1, p 75-76). On May 11, 2018, Petitioner called seeking pain medication (PX 1, p 74).

Petitioner testified she returned to full duty work but remained at desk work for a while. She was transferred to different facility, Madden Mental Health on May 17, 2018. On that date, she was required to restrain a resident. She had to hold her leg and when she took her hand off, it swelled up again. Petitioner filled out an injury report that same day (RX 7). This event is the accident alleged in the consolidated case 18WC029340.
On May 17, 2018, Petitioner called Dr. Bendre reporting she was restraining a patient and had pain and swelling after releasing her grip. he advised her that she had no anatomical reason that she could not return to work (PX 1, p 70-71).

On May 22, 2018, Dr. Bendre noted that her thumb MP joint is well fused and overall, she is doing well. However, he felt that her current job predisposes her to further episodes of pain and swelling and that she is not able to adequately defend herself. He strongly felt that she needs to be transferred to a job which does not involve the potential for physical altercation. He diagnosed basilar arthritis and discussed further treatment options. Petitioner was placed on light duty/desk work (PX 1, p 61-63). On July 24, 2018, Dr. Bendre diagnosed basilar arthritis. He stated this is work related, given the fact that she has a fused MP joint which is putting more stress on the adjacent thumb CMC and IP joints. Petitioner received a steroid injection in the right thumb (PX 1, p 38-42). On August 3, 2018, it was noted that Petitioner had undergone the injection but that she did not feel a significant amount of relief. The on-call nurse reminded her that injections could take up to four weeks for maximum relief (PX 1, p 35).

On September 21, 2018, Dr. Robert Wysocki of Midwest Orthopaedics Hand & Shoulder Center at Rush performed an independent medical evaluation of Petitioner (RX 2). Dr. Wysocki reviewed Petitioner's medical records and films and performed a physical examination of Petitioner. Dr. Wysocki noted that there was some mild osteoarthritis and mild degenerative changes at the MCP joint. He noted some decreased grip and some lack of appreciable motion. Dr. Wysocki opined that there was a direct causal connection between the diagnoses and the September 4, 2016 injury. Regarding the May 17, 2018 injury, he believed that the etiology was unknown and that there was simply an increase in the underlying pain. No further treatment was necessary, and it was recommended that Petitioner undergo an FCE that "should have adequate validity and reliability assessment". Petitioner was deemed to be at MMI, and he placed her on an interim lifting restriction of 5 pounds and no repetitive use (RX 2).

On October 5, 2018, Dr. Bendre stated that her diffuse right thumb pain was of uncertain etiology. Her basilar thumb arthritis may be causing some pain symptoms. He indicated he agreed with Dr. Wysocki's assessment and recommended no further surgical intervention. He ordered an FCE. Dr. Bendre noted she needs to transfer to a different occupation which does not involve potential for physical altercate. He restricted her to on light duty until after the work restrictions were completed (PX 1, p 19).

On October 12, 2018, Petitioner underwent a Functional Capacity evaluation at Northwestern Medicine (RX 8). Maximum voluntary effort was consistent on 18/18 tests. The functional questionnaires scores were indicative of a high risk of prolonged disability. Quick dash scores indicated high perceived disability. McGill pain questionnaire score was indicative of inappropriate pain response. Rapid exchange grip test noted submaximal test effort. Petitioner's perception of her material handling abilities was significantly less than those she demonstrated the ability to actually do safely. Based upon the job description and Petitioner's explanation of her duties which included restraining or lifting patients weighing over 50 pounds, the evaluator estimated Petitioner's job in the Heavy PDL. Petitioner demonstrated a work tolerance of medium physical demand (25-50 pounds with occasional lifting). The evaluator noted that much of her lifting capability was limited by reports

of low back and knee pain, not by her right thumb complaints. It was also noted that some inconsistencies in the patient's performance indicate that the test results may not be a completely accurate representation of her current maximum functional capabilities (RX 8).

On October 15, 2018, Petitioner contacted Dr. Bendre to request referral for pain management. He noted either Dr. Candido or Dr. Tata (PX 1, p 14). On November 8, 2018, Dr. Bendre reviewed the FCE results. He noted that she was not capable of restraining individuals. He placed Petitioner on permanent restrictions of no lifting greater than 20 pounds and no involvement in situations where she may need to restrain an individual (PX 1, p 7). On March 1, 2019, Petitioner called Dr. Bendre requesting a release to work her new job. She advised that this was a desk job and requested a release to work full duty. Dr. Bendre sent the letter on March 4, 2019 (PX 1, p 2-3).

Petitioner testified that after receiving her permanent restrictions in November 2018, she did not return to her security job. They could not accommodate her. Petitioner took the test for her new job and found it on her own with the Department of Human Services as a caseworker. She testified that she applied to five jobs with the State of Illinois, none of which were in the field of criminal justice. She testified that she did not look for jobs related to criminal justice because they would require restraining individuals. Petitioner testified that her job at the time of injury was more physically demanding than her current position. Her previous position including transporting patients to court dates and restraining some patients. Her current position is processing food stamps, benefits, and other services for the clients. It is mostly deskwork. Petitioner testified that her current job is seniority basis, whereas her previous position was merit basis. Petitioner testified that her educational background is a BA in criminal justice and master's degree in public administration. She testified that she had intended to continue in the field of criminal justice but did not because of the injuries. She testified she had career goals to become a lieutenant at one of the mental health facilities. She testified that her educational background does not help her advancement in her current position.

Petitioner agreed that prior to the accident, she was making an average weekly wage of $863.66. She testified that when she began her new job she was making about the same as prior to the injury. She testified that she previously was eligible for 8 hours overtime and now was only eligible for 3 hours. RX 5 was qualified by Dan Melliere of the Illinois Department of Human Services as Petitioner's earnings since she was hired in March 2019. Petitioner made approximately $48,018 or an average weekly wage of $923.42 in her first year. She has received several salary rate increases since she began in March 2019 (RX 5). Overtime was not reported as mandatory.

Petitioner testified her thumb is functional. She can do her job as a caseworker. She testified she cannot bend her thumb or grasp. Typing irritates it. She has not had any further medical care. She was given a referral and checked it out.

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).

Petitioner sustained an undisputed accident on September 3, 2016 where she injured her right thumb. She had no prior injuries or treatment for the right thumb. She thereafter underwent a continuous course of care beginning the next day through her ultimate release from care in November 2018 including 2 surgeries to the right thumb. Dr. Bendre opined that her condition of ill-being was causally connected to her work. His records document the date of accident as September 2016 throughout his records. Dr. Wysocki also opined that Petitioner's condition of ill-being was causally connected to this accident.

Petitioner also has filed a second claim for reinjury of the right thumb for May 17, 2018. Both Dr. Bendre and Dr. Wysocki note her increase in symptoms following that injury. Petitioner was released to return to full duty work before this injury but worked only that day before having increased symptoms. Her accident description was that she was restraining a resident and when she released her, she had swelling and pain. The Arbitrator finds that this incident did not break the causal connection to the original accident on September 3, 2016.

The fact that other incidents, whether work related or not, may have aggravated claimant's condition is irrelevant. *Mendota Township High School v. Industrial Comm'n,* 243 Ill. App. 3d 834 at 837, 612 N.E.2d 77 at 79 (4th Dist. 1993). For an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition. *Global Products v. Workers Comp. Comm'n,* (2009) *392 Ill. App. 3d 408 at 411, 911 N.E.2d 1042 at 1046.* When an employee's condition is weakened by a work-related accident, a subsequent accident, whether work related or not, that aggravates the condition does not break the causal chain. *Par Electric v. Illinois Workers' Compensation Comm'n*, 2018 IL App (3d) 170656WC; *Jolen Electric and Communications*, Inc. v. IWCC/Maddox v. IWCC 1-21-0172WC & 1-21-0556WC (cons.)

The Arbitrator notes that Petitioner had not been fully released from care as of May 17, 2018. She had contacted Dr. Bendre with complaints of increased pain within the weeks before this injury and there were continued discussions of possible additional surgery. Following May 17, 2018, Petitioner continued with the same diagnosis and course of care. The imposition of restrictions thereafter was more a recognition of the dangers in her prior employment rather than any increase in the nature of her condition. Dr. Wysocki opined that the May 17, 2018 incident was simply an increase in the underlying pain.

In awarding permanent partial disability (PPD) benefits in a matter where Petitioner has sustained two separate and distinct injuries to the same body part and the claims are consolidated for hearing and decision, unless there is some evidence presented at the consolidated hearing to delineate and apportion the nature and extent of permanency attributable to each accident, it is proper for the Commission to consider all the evidence presented to determine the nature and extent of the claimant's permanent disability as of the date of the

hearing. *City of Chicago v. Illinois Workers' Compensation Commission*, 409 Ill, App. 3d 258. Based upon the facts in this matter, the Arbitrator finds Petitioner's condition of ill-being in the right thumb to be causally related to the initial injury on September 3, 2016 and will award permanent partial disability benefits on this date of accident.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that her condition of ill-being is causally connected to the accidental injury sustained on September 3, 2016, and permanent partial disability benefits will be awarded on this matter.

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 security guard at the time of the accident and that she is not able to return to work in her prior capacity as a result of said injury because of the restrictions placed upon her to avoid occupations where there may be altercations. The Arbitrator notes Petitioner has a degree in criminal justice which she testified is not relevant to her current employment, but also a master's degree in public administration. The Arbitrator finds her opinion that her education is of no benefit in her current occupation unpersuasive. The Arbitrator notes that she has received several increases in her salary rate since beginning her new position in 2019. Because of these facts, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 43 years old at the time of the accident. The Arbitrator notes that she would be considered a younger worker and would expect to be in the workforce 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 is currently earning more that she was at the time of her injury. She has received several increases in her salary rate since beginning her current position in 2019. The Arbitrator finds Petitioner's testimony that she could make more in security with the goal of becoming a lieutenant speculative. 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 suffered a tear of the ulnar collateral ligament of her right thumb. On December 12, 2016, Dr. Bendre performed right thumb metacarpophalangeal joint ulnar collateral ligament repair for a tear of the right thumb metacarpophalangeal joint ulnar collateral tear using arthrex mini bio-pushlock anchors and K-wires to stabilize the healing process. Petitioner had continued symptoms and on July 31, 2017, Petitioner underwent a right thumb metacarpophalangeal joint fusion,

with extensor tenolysis. On July 24, 2018, Dr. Bendre diagnosed basilar arthritis. He stated this is work related, given the fact that she has a fused MP joint which is putting more stress on the adjacent thumb CMC and IP joints. Dr. Wysocki noted that there was some mild osteoarthritis and mild degenerative changes at the MCP joint. He noted some decreased grip and some lack of appreciable motion. Following the FCE, Petitioner was given work restrictions by Dr. Bendre of no lifting greater than 20 pounds and no involvement in situations where she may need to restrain an individual. Because of these facts, the Arbitrator therefore gives greater weight to this factor.

Given the fusion at the MP joint, Dr. Bendre's note that the fusion placed stress on the CMC joint, the findings of lack of grip strength in the right hand and the restrictions placed on Petitioner, the Arbitrator finds that this matter should be properly assessed as a loss of use of the right hand.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 35% loss of use of right hand pursuant to §8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC029340
Case Name	Shanese Wyatt Samuels v. State of Illinois - Elgin Mental Health Center & Madden MHC
Consolidated Cases	16WC033106;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0032
Number of Pages of Decision	9
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Mark Lee
Respondent Attorney	Will Dimas

DATE FILED: 1/23/2023

/s/ Deborah Baker, 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

SHANESE WYATT SAMUELS,

Petitioner,

vs. NO: 18 WC 29340

ELGIN MENTAL HEALTH CENTER and
MADDEN MENTAL HEALTH CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's current condition is causally related to the May 17, 2018 work injury and the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. This case was consolidated for hearing with case number 16 WC 33106.

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

Pursuant to Section 19(f)(1), this decision is not subject to judicial review.

January 23, 2023

/s/ *Deborah J. Baker*

DJB/mck
O: 1/11/23
43

/s/ *Stephen Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC029340
Case Name	WYATT SAMUELS, SHANESE v. ELGIN MENTAL HEALTH CENTER & MADDEN MHC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Kevin Morrisson
Respondent Attorney	Will Dimas

DATE FILED: 3/31/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 29, 2022 1.05%

/s/Stephen Friedman, Arbitrator

Signature

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

March 31, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Shanese Wyatt Samuels
Employee/Petitioner

v.

Elgin Mental Health Center & Madden MHC
Employer/Respondent

Case # **18** WC **029340**

Consolidated cases: **See Decision**

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 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 **May 17, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**44,910.32**; the average weekly wage was $**863.66**.

On the date of accident, Petitioner was **45** years of age, ***single*** 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 $**6,087.03** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**3,701.57** for other benefits, for a total credit of $**9,788.60**.

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

ORDER

BECAUSE THE ARBITRATOR FINDS PETITIONER'S CONDITION OF ILL-BEING IS CAUSALLY CONNECTED TO THE ACCIDENTAL INJURY OF SEPTEMBER 3, 2016 AND NOT THIS ACCIDENT OF MAY 17, 2018, PETITIONER'S CLAIM FOR COMPENSATION IS DENIED. PERMANENT PARTIAL DISABILITY HAS BEEN ASSESSED IN THE CONSOLIDATED CASE NUMBER 16WC033106.

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 **MARCH 31, 2022**
Signature of Arbitrator

Statement of Facts

This matter was tried in conjunction with consolidated case 16WC033106 (DOA: 9/3/16). A single transcript was prepared. The Arbitrator has issued separate decisions for each case. The parties stipulated that all lost time benefits and medical expenses have been or would be paid. The Arbitrator incorporates by reference the Statement of Facts in the consolidated case 16WC033106 as if fully set forth herein.

Petitioner suffered an initial injury to the right thumb on September 3, 2016. She underwent treatment for that condition by Dr. Bendre including 2 surgeries as more fully set forth in the decision in consolidated case 16WC033106 and was released to return to work full duty by Dr. Bendre.

Petitioner testified she returned to full duty work but remained at desk work for a while. She was transferred to different facility, Madden Mental Health on May 17, 2018. On that date, she was required to restrain a resident. She had to hold her leg and when she took her hand off, it swelled up again. Petitioner filled out an injury report that same day (RX 7). On May 17, 2018, Petitioner called Dr. Bendre reporting she was restraining a patient and had pain and swelling after releasing her grip. he advised her that she had no anatomical reason that she could not return to work (PX 1, p 70-71).

On May 22, 2018, Dr. Bendre noted that her thumb MP joint is well fused and overall, she is doing well. However, he felt that her current job predisposes her to further episodes of pain and swelling and that she is not able to adequately defend herself. He strongly felt that she needs to be transferred to a job which does not involve the potential for physical altercation. He diagnosed basilar arthritis and discussed further treatment options. Petitioner was placed on light duty/desk work (PX 1, p 61-63). On July 24, 2018, Dr. Bendre diagnosed basilar arthritis. He stated this is work related, given the fact that she has a fused MP joint which is putting more stress on the adjacent thumb CMC and IP joints. Petitioner received a steroid injection in the right thumb (PX 1, p 38-42). On August 3, 2018, it was noted that Petitioner had undergone the injection but that she did not feel a significant amount of relief. The on-call nurse reminded her that injections could take up to four weeks for maximum relief (PX 1, p 35).

On September 21, 2018, Dr. Robert Wysocki of Midwest Orthopaedics Hand & Shoulder Center at Rush performed an independent medical evaluation of Petitioner (RX 2). Dr. Wysocki reviewed Petitioner's medical records and films and performed a physical examination of Petitioner. Dr. Wysocki noted that there was some mild osteoarthritis and mild degenerative changes at the MCP joint. He noted some decreased grip and some lack of appreciable motion. Dr. Wysocki opined that there was a direct causal connection between the diagnoses and the September 4, 2016 injury. Regarding the May 17, 2018 injury, he believed that the etiology was unknown and that there was simply an increase in the underlying pain. No further treatment was necessary, and it was recommended that Petitioner undergo an FCE that "should have adequate validity and reliability assessment". Petitioner was deemed to be at MMI, and he placed her on an interim lifting restriction of 5 pounds and no repetitive use (RX 2).

On October 5, 2018, Dr. Bendre stated that her diffuse right thumb pain was of uncertain etiology. Her basilar thumb arthritis may be causing some pain symptoms. He indicated he agreed with Dr. Wysocki's assessment and recommended no further surgical intervention. He ordered an FCE. Dr. Bendre noted she needs to transfer to a different occupation which does not involve potential for physical altercate. He restricted her to on light duty until after the work restrictions were completed (PX 1, p 19).

On October 12, 2018, Petitioner underwent a Functional Capacity evaluation at Northwestern Medicine (RX 8). Maximum voluntary effort was consistent on 18/18 tests. The functional questionnaires scores were indicative of a high risk of prolonged disability. Quick dash scores indicated high perceived disability. McGill pain questionnaire score was indicative of inappropriate pain response. Rapid exchange grip test noted submaximal test effort. Petitioner's perception of her material handling abilities was significantly less than those she demonstrated the ability to actually do safely. Based upon the job description and Petitioner's explanation of her duties which included restraining or lifting patients weighing over 50 pounds, the evaluator estimated Petitioner's job in the Heavy PDL. Petitioner demonstrated a work tolerance of medium physical demand (25-50 pounds with occasional lifting). The evaluator noted that much of her lifting capability was limited by reports of low back and knee pain, not by her right thumb complaints. It was also noted that some inconsistencies in the patient's performance indicate that the test results may not be a completely accurate representation of her current maximum functional capabilities (RX 8).

On October 15, 2018, Petitioner contacted Dr. Bendre to request referral for pain management. He noted either Dr. Candido or Dr. Tata (PX 1, p 14). On November 8, 2018, Dr. Bendre reviewed the FCE results. He noted that she was not capable of restraining individuals. He placed Petitioner on permanent restrictions of no lifting greater than 20 pounds and no involvement in situations where she may need to restrain an individual (PX 1, p 7). On March 1, 2019, Petitioner called Dr. Bendre requesting a release to work her new job. She advised that this was a desk job and requested a release to work full duty. Dr. Bendre sent the letter on March 4, 2019 (PX 1, p 2-3).

Petitioner testified that after receiving her permanent restrictions in November 2018, she did not return to her security job. They could not accommodate her. Petitioner took the test for her new job and found it on her own with the Department of Human Services as a caseworker. She testified that she applied to five jobs with the State of Illinois, none of which were in the field of criminal justice. She testified that she did not look for jobs related to criminal justice because they would require restraining individuals. Petitioner testified that her job at the time of injury was more physically demanding than her current position. Her previous position including transporting patients to court dates and restraining some patients. Her current position is processing food stamps, benefits, and other services for the clients. It is mostly deskwork. Petitioner testified that her current job is seniority basis, whereas her previous position was merit basis. Petitioner testified that her educational background is a BA in criminal justice and master's degree in public administration. She testified that she had intended to continue in the field of criminal justice but did not because of the injuries. She testified she had career goals to become a lieutenant at one of the mental health facilities. She testified that her educational background does not help her advancement in her current position.

Petitioner agreed that prior to the accident, she was making an average weekly wage of $863.66. She testified that when she began her new job she was making about the same as prior to the injury. She testified that she previously was eligible for 8 hours overtime and now was only eligible for 3 hours. RX 5 was qualified by Dan Melliere of the Illinois Department of Human Services as Petitioner's earnings since she was hired in March 2019. Petitioner made approximately $48,018 or an average weekly wage of $923.42 in her first year. She has received several salary rate increases since she began in March 2019 (RX 5). Overtime was not reported as mandatory.

Petitioner testified her thumb is functional. She can do her job as a caseworker. She testified she cannot bend her thumb or grasp. Typing irritates it. She has not had any further medical care. She was given a referral and checked it out.

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).

Petitioner sustained an undisputed accident on September 3, 2016 where she injured her right thumb. She had no prior injuries or treatment for the right thumb. She thereafter underwent a continuous course of care beginning the next day through her ultimate release from care in November 2018 including 2 surgeries to the right thumb. Dr. Bendre opined that her condition of ill-being was causally connected to her work. His records document the date of accident as September 2016 throughout his records. Dr. Wysocki also opined that Petitioner's condition of ill-being was causally connected to this accident.

Petitioner also has filed this claim for reinjury of the right thumb for May 17, 2018. Both Dr. Bendre and Dr. Wysocki note her increase in symptoms following that injury. Petitioner was released to return to full duty work before this injury but worked only that day before having increased symptoms. Her accident description was that she was restraining a resident and when she released her, she had swelling and pain. The Arbitrator finds that this incident did not break the causal connection to the original accident on September 3, 2016.

The fact that other incidents, whether work related or not, may have aggravated claimant's condition is irrelevant. *Mendota Township High School v. Industrial Comm'n,* 243 Ill. App. 3d 834 at 837, 612 N.E.2d 77 at 79 (4th Dist. 1993). For an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition. *Global Products v. Workers Comp. Comm'n,* (2009) *392 Ill. App. 3d 408 at 411, 911 N.E.2d 1042 at 1046.* When an employee's condition is weakened by a work-related accident, a subsequent accident, whether work related or not, that aggravates the condition does not break the causal chain. *Par Electric v. Illinois Workers' Compensation Comm'n*, 2018 IL App (3d) 170656WC; *Jolen Electric and Communications*, Inc. v. IWCC/Maddox v. IWCC 1-21-0172WC & 1-21-0556WC (cons.)

The Arbitrator notes that Petitioner had not been fully released from care as of May 17, 2018. She had contacted Dr. Bendre with complaints of increased pain within the weeks before this injury and there were continued discussions of possible additional surgery. Following May 17, 2018, Petitioner continued with the same diagnosis and course of care. The imposition of restrictions thereafter was more a recognition of the

dangers in her prior employment rather than any increase in the nature of her condition. Dr. Wysocki opined that the May 17, 2018 incident was simply an increase in the underlying pain.

In awarding permanent partial disability (PPD) benefits in a matter where Petitioner has sustained two separate and distinct injuries to the same body part and the claims are consolidated for hearing and decision, unless there is some evidence presented at the consolidated hearing to delineate and apportion the nature and extent of permanency attributable to each accident, it is proper for the Commission to consider all the evidence presented to determine the nature and extent of the claimant's permanent disability as of the date of the hearing. *City of Chicago v. Illinois Workers' Compensation Commission*, 409 Ill, App. 3d 258. Based upon the facts in this matter, the Arbitrator finds Petitioner's condition of ill-being in the right thumb to be causally related to the initial injury on September 3, 2016 and will award permanent partial disability benefits on that date of accident in case 16WC033106 decided in conjunction with this matter.

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

Based upon the Arbitrator's findings with respect to Causal Connection, no award of disability is made herein. The award of permanent partial disability is entered in the consolidated case 16WC033106 decided in conjunction with this matter.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC019287
Case Name	Charles Stambaugh v. Clifford-Jacobs Forging Co
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0033
Number of Pages of Decision	21
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Robert Maciorowski, Adam Maciorowski

DATE FILED: 1/23/2023

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Charles Stambaugh,
Petitioner,

vs. NO: 12 WC 19287

Clifford-Jacobs Forging Co.,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary disability, permanent disability, vocational training and maintenance 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 January 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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $56,200.00. 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.

January 23, 2023

o11/23/22
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	12WC019287
Case Name	STAMBAUGH, CHARLES v. CLIFFORD JACOBS FORGING COMPANY
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Adam Maciorowski

DATE FILED: 1/24/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 19, 2022 0.37%

/s/Edward Lee, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Charles Stambaugh
Employee/Petitioner

v.

Clifford Jacobs Forging Company
Employer/Respondent

Case # **12** WC **19287**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **10/18/21**. 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 _____

FINDINGS

On **3/7/12**, 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 $**59,839.50**; the average weekly wage was $**1,196.79**.

On the date of accident, Petitioner was **41** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**127,771.58** for TTD, $**692.16** for TPD, $**0.00** for maintenance, and $**6,957.80** (PPD advance) for other benefits, for a total credit of $**135,421.54,**.

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

ORDER

The Arbitrator finds that the Petitioner has met his burden of proof on the issue of accident relative to his 3/7/12 injury when a hammer struck his tongs.

The Arbitrator finds that the Petitioner has met his burden of proof for the issue of causation.

The Respondent shall pay all reasonable and necessary medical services as set forth in Petitioner's exhibits, as provided in Sections 8(a) and 8.2 of the Act.

The Respondent shall pay Petitioner maintenance benefits of $797.86 a week for 152 and 6/7 weeks, commencing 7/25/16 through 6/30/19, as provided in Section 8(a) of the Act.

The Respondent shall pay $63,328.00 for educational/vocational training per P EX 13.

The Respondent shall pay Petitioner permanent partial disability benefits of $695.78 a week for 100 weeks, because the injuries sustained caused the 20% 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.

Edward Lee
Signature of Arbitrator

JANUARY 24, 2022

Findings of Fact & Conclusions
12wc19287

The Petitioner was 50 years old as of the time of trial. The Petitioner has a Bachelor's Degree from Illinois State University. The Petitioner has lived in Rockford, IL since July of 2019.

The Petitioner was employed by the Respondent, Clifford Jacobs Forging Company in March of 2011. The Respondent is a manufacturer of steel products which are formed using a forging hammer process. The steel is heated up to 2,500 degrees, set into a hammer in between a set of dies, and forged using a steam powered ram.

The Petitioner began working for the Respondent on 11/8/10 as a heater trimmer. (AT 12) The Petitioner testified that he earned his way up into a hammer man position, or a hammer operator position, from his original heater trimmer position. (AT 13)

The Petitioner was a hammer operator in March of 2011. The Petitioners daily job duties included making sure that the furnaces were full of steel, putting dies in the hammer and ensuring that the prior shift had removed all of their equipment. (AT 14) The Petitioner described the hammer as the size of a table approximately 4 feet by 6 feet in size and 2 feet tall. The Petitioner would have to drive two large keys for each die in with a sledgehammer. The Petitioner testified that with each swing of the sledgehammer there would be vibration from the steel sledgehammer striking the steel key. The vibration would ring up through his arms into his hands. The Petitioner would also use a mobile ram. (AT 15-16) The Petitioner would also use tongs to manipulate the hot steel. The Petitioner testified that the pieces of steel could be anything from parts for a NASCAR to small gears for automobiles and even larger things such as 900 pound gears for Caterpillar machines. (AT 17) The Petitioner would have to manipulate the steel inside of the die so that it would mold correctly. To do this the Petitioner would use large tongs. (AT 17-18) The Petitioner described the different sizes and types of tongs that he would use. For the big hammer, the Petitioner would have tongs that had a 2.5 feet wide mouth and were approximately 6 feet in length. They weighed approximately 40 lbs. (AT 19-20)

The Petitioner thoroughly described the job duties that he performed while working for the Respondent. Admitted into evidence were also videos which demonstrated the type of work that the Petitioner performed for the Respondent. These videos were admitted as Petitioner's Exhibit 15 and provide a detailed analysis of the type of work that the Petitioner did for the Respondent. These videos also show the tools the Petitioner used as well as the physical nature of the Petitioner's position for the Respondent.

In addition to the heavy and laborious nature of the Petitioner's work, the Petitioner indicated that he is exposed to vibration the entire time he is in the building. (AT 25) The Petitioner was working between 5-6 days a week as a hammer operator. He worked 8 hours a day with some overtime. The Petitioner testified that in his work as a hammer operator he would be using his hands the entire time which included gripping and grasping. (AT 27-28) The Petitioner described the overall physical nature of his job with the Respondent as "very grueling and vicious." (AT29)

The Petitioner testified that he began to notice numbness and tingling in his hands up into his arms that radiated into his neck area in March of 2011. (AT 30-31) The Petitioner testified that he notified his employer of his symptoms in March of 2011. The Petitioner testified that he notified his foreman, Jason Shirkey, on 3/1/11. (AT 32-33)

The Petitioner initially presented to the Christie Clinic in March of 2011. The Petitioner had complaints in his cervical spine to the left side as well as his upper extremities. The Petitioner underwent an MRI of the cervical spine at the Christie Clinic on 3/2/11. It was noted the Petitioner had a mild disc bulge at C3-4, a small central disc protrusion at C4-5, a broad based central/left disc protrusion at C5-6 and a broad-based central disc protrusion at C6-7. (PX 17, p 219-220)

The Petitioner also underwent an EMG on 3/7/11 which was performed by Dr. Steven Thatcher. This study revealed severe left carpal tunnel syndrome. (PX 17, p 215-216) Dr. Thatcher recommended the Petitioner undergo cervical epidural steroid injections. (AT 17, p 213-214)

Dr. Thatcher performed an epidural steroid injection from C7-T1 on 3/14/11. (PX 17, p 208) Dr. Thatcher performed a repeat epidural steroid injection from C7-T1 on 3/2/11. (PX 17, p 204) Dr. Thatcher performed a third epidural steroid injection at C6-7 on 4/12/11. (PX 17, p 194)

The Petitioner did continue to participate in physical therapy during the time period he was receiving epidural steroid injections from Dr. Thatcher. The Petitioner testified that the injections helped very briefly. The Petitioner also testified that the physical therapy helped a little bit. (AT 34-35)

The Petitioner continued to participate in physical therapy through October of 2011. On 10/31/11 the physicians at the Christie Clinic recommended that the Petitioner have a second MRI of his cervical spine. (PX 17, p 158)

On 11/17/11 the Petitioner underwent a second MRI of the cervical spine at the Christie Clinic. This study revealed multilevel disc disease with moderate spinal canal narrowing at C5-6 and C6-7. (PX 17, p 155) The Petitioner was subsequently sent the Carle Spine Clinic.

The Petitioner saw Dr. Victoria Johnson at the Carle Spine Clinic on 12/16/11. The Petitioner was diagnosed with cervical spondylosis. Dr. Johnson did not believe that the Petitioner was a surgical candidate at that time. (PX 17, p 148-151)

The Petitioner testified that from the point he began noticing his symptoms in March of 2011 through March of 2012, that he continued to work in his hammer operator position. The Petitioner continued in this position full duty and was not placed on any work restrictions from March of 2011 through March of 2012. The Petitioner did the same job duties during that time frame and began to notice the numbness and tingling in his arms and neck progress as well as symptoms developing into his fingers and hands. (AT 35-37)

The Petitioner testified that he was working as a hammer operator on 3/7/12. The Petitioner testified that on 3/7/12 when he was pulling a part out of the trimmer the part got stuck and he

jerked it, pulled it and when he did this the part got caught and he felt a pop in his left shoulder. (AT 37-38) The Petitioner reported the incident to his supervisor and filled out an accident report. (AT 38-39) The Petitioner also reported the issues regarding his hands to his employer on 3/22/12.

Leading up to 3/7/12 the Petitioner testified that he was not having any left shoulder pain or problems. (AT 39) The Petitioner that before 3/7/12 he had not sought any medical care specifically for his left shoulder, nor was he taking any prescription medications for his left shoulder. (AT 40)

The Petitioner presented to Dr. Philbert Chen at the Department of Occupational Medicine at the Carle Clinic on 3/15/12. The Petitioner described the issues he was having with his left shoulder as well as his hands. The Petitioner was diagnosed with presumed bilateral carpal tunnel syndrome and was recommended to undergo an EMG study for his hands. The Petitioner was also diagnosed with a left shoulder injury and a potential biceps tendon tear. An MRI was ordered of the Petitioner's left shoulder. Dr. Chen's notes indicate that the Petitioner asked not to be placed on any work restrictions. The Petitioner testified that the reason not to be put on any work restrictions is he did not want to lose his job and he enjoyed his position with the Respondent. (AT 41) (PX 4, p 1-4)

The Petitioner followed up with Dr. Chen on 3/21/12. At this time Dr. Chen continued to diagnose left shoulder pain and bilateral carpal tunnel syndrome. Dr. Chen also placed the Petitioner on work restrictions of a 5lb restriction for material handling, avoid repetitive left shoulder movements, avoid forceful gripping with both hands, and avoid overhead work. (PX 4, p 6-7)

The Petitioner underwent the recommended EMG of his bilateral upper extremities on 3/22/12. This study revealed bilateral carpal tunnel syndrome left greater than right. (PX 4, p 9-11)

The Petitioner also underwent the recommended left shoulder MRI on 3/26/12. This study revealed advanced accelerated degenerative change of the glenohumeral joint with prominent inferior spurring and diffuse cartilage loss, subchondral cystic change of the inferior margin of the glenoid, diffuse labral degeneration, tendinosis of the rotator cuff without tear and moderate AC degenerative change. PX 4, p 12)

The Petitioner followed up with Dr. Chen following his EMG and left shoulder MRI. The Petitioner was referred to Dr. Kolb for further treatment of his left shoulder and bilateral hands. The Petitioner was maintained on his work restrictions at that time. (PX 4, p 8)

The Petitioner initially presented to Dr. Edward Kolb on 4/2/12. The Petitioner described his symptoms to Dr. Kolb and an examination was performed. Dr. Kolb recommended carpal tunnel release on the left hand and also discussed the Petitioner undergoing a surgery on his left shoulder. (PX 6, p 7)

Dr. Kolb performed a left carpal tunnel release procedure on 4/5/12. (PX 6, p 115-116)

The Petitioner followed up with Dr. Kolb on 4/16/12. The Petitioner noticed significant improvement in regards to his pain as well as his numbness and tingling in his left hand. Dr. Kolb recommended the Petitioner undergo carpal tunnel release on this right side at this time. (PX 6, p 6)

Dr. Kolb performed a right carpal tunnel release on 4/26/12. (PX 7, p 2)

The Petitioner followed up with Dr. Kolb on 5/7/12. The Petitioner was doing well and did not have any significant complaints of pain. The Petitioner did continue to have numbness in his left middle finger as well as expressed complaints regarding his left shoulder. Dr. Kolb continued to recommend left shoulder surgery. (PX 6, p 14)

On 5/22/12 Dr. Kolb performed a resurfacing arthroplasty of the Petitioner's left shoulder. (PX 8, p 11-14)

The Petitioner followed up with Dr. Kolb on 6/4/12. The Petitioner did report residual soreness in his left shoulder but the sharp constant pain in his left shoulder had improved. Dr. Kolb recommended the Petitioner begin postoperative physical therapy. Dr. Kolb also placed the Petitioner on work restrictions. (PX 6, p 15)

The Petitioner followed up with Dr. Kolb on 7/2/12. The Petitioner had been doing physical therapy at the Christie Clinic. Dr. Kolb continued to recommend physical therapy moving forward. (PX 6, p 16) The Petitioner testified however that he began to notice his symptoms getting worse in postoperative physical therapy. (AT 47)

When the Petitioner followed up with Dr. Kolb on 8/13/12, Dr. Kolb recommended the Petitioner increase his physical therapy to 3 times a week. The Petitioner was kept off of work at this time. (PX 6, p 17)

The Petitioner followed up with Dr. Kolb on 9/17/12. The Petitioner was not making significant progress in his postoperative physical therapy. Dr. Kolb however continued to recommend physical therapy and if the Petitioner's symptoms persisted they would possibly order an additional left shoulder MRI. There was also a discussion that the Petitioner may potentially be referred to another specialist. (PX 6, p 22)

The Petitioner did undergo a postoperative MRI of his left shoulder on 10/25/12 at the Christie Clinic. This study revealed biceps tendinosis and tenosynovitis, however the integrity of the Petitioner's rotator cuff could not be evaluated because of the significant metal artifact from the Petitioner's left shoulder surgery that was performed by Dr. Kolb in May of 2012. (PX 5, p 4)

The Petitioner followed up with Dr. Kolb on 10/29/12. Dr. Kolb the 10/25/12 MRI with the Petitioner. At this time Dr. Kolb referred the Petitioner to Washington University in St. Louis to see a shoulder specialist for further evaluation. (PX 6, p 23)

The Petitioner presented to Dr. Leesa Galatz at Washington University on 11/20/12. Dr. Galatz performed an examination and diagnosed the Petitioner with a painful hemiarthroplasty. Dr.

Galatz recommended the Petitioner undergo an ultrasound of the left shoulder and also discussed performing a Marcaine injection. (PX 26, p 4-5)

On 12/12/12 the Petitioner underwent an injection to his left shoulder at Washington University. This was a left glenohumeral joint injection under fluoroscopic guidance. (PX 26, p 11-12)

The Petitioner also continued to participate in physical therapy throughout this time at the Christie Clinic. The Petitioner participated in physical therapy through 2/27/13. (PX 17, p 8)

The Petitioner subsequently came under the care of Dr. Brian Cole at Midwest Orthopedics at Rush. The Petitioner was initially seen by Dr. Cole on 3/7/13. Dr. Cole performed an examination and diagnosed the Petitioner as status post left shoulder hemicap resurfacing of the humeral head. Dr. Cole recommended an additional procedure on the left shoulder. This would be a total shoulder arthroplasty. Dr. Cole also issued work restrictions of no lifting overhead more than 5 lbs. (PX 10, p 1-2)

On 8/20/13 Dr. Cole performed a revision left shoulder replacement, biceps tenodesis and removal of hardware. (PX 10, p 8-10) The Petitioner followed up with Dr. Cole on 8/30/13. At this time Dr. Cole recommended the Petitioner begin postoperative physical therapy. Light duty restrictions were issued. (PX 10, p 11)

The Petitioner followed up with Dr. Cole on 9/27/13. Dr. Cole continued to recommend light duty work.

The Petitioner then followed up with Dr. Kolb on 11/4/13 for continued complaints regarding his left hand. The Petitioner continued to have numbness and tingling throughout his left hand. Dr. Kolb performed an examination and recommended the Petitioner undergo a repeat EMG study. (PX 6, p 25)

The Petitioner did undergo the recommended EMG with Dr. Edward Pegg on 11/5/13. This study revealed severe right ulnar nerve entrapment at the elbow. (PX 9, p 1-2)

The Petitioner continued to follow up with Dr. Cole's office. The Petitioner next saw Dr. Cole on 11/8/13. Dr. Cole continued to recommend physical therapy and a home exercise program. The Petitioner's light duty restrictions were maintained that being working only with desk or seated duties with no pushing, pulling, or lifting with the left arm. (PX 10, p 19)

The Petitioner then followed up with Dr. Kolb on 11/11/13. Dr. Kolb reviewed the EMG with the Petitioner and recommended proceeding with a right elbow ulnar nerve decompression with anterior ulnar nerve transposition. The Petitioner did not undergo the recommended surgery on the right elbow. (PX 19, p 11)

The Petitioner testified that he continued to participate in physical therapy into 2014. (AT 53) The Petitioner also continued to follow up with Dr. Cole. The Petitioner next saw Dr. Cole on 10/6/14. Dr. Cole recommended additional physical therapy and then a Functional Capacity

Evaluation. The Petitioner was placed on light duty restrictions of no lifting more than 10 pounds over shoulder height and no repetitive overhead activities. (PX 10, p 26-27)

The Petitioner was participating in physical therapy at Advanced Physical Therapy. The Petitioner continued physical therapy through 12/3/14. (PX 11, p 2-4)

The Petitioner underwent the recommended Functional Capacity Evaluation at Advanced Physical Therapy on 12/16/14. This was a valid study for both consistency and legitimacy of effort. (PX 11, p 64-71)

The Petitioner followed up with Dr. Cole's office on 12/29/14. The FCE was reviewed, and the Petitioner was placed at maximum medical improvement at this time with permanent restrictions per the FCE. The Petitioner's permanent work restrictions were no lifting more than 29 pounds up to the waist level, and only 10 pounds with the left upper extremity up to shoulder level. (PX 10, p 30-32)

The Petitioner was not able to return to his position with the Respondent with the permanent restrictions as set forth by the FCE and Dr. Cole. (AT 56) The Petitioner testified that he requested accommodation of his permanent work restrictions and the Respondent did not provide him a job within his permanent work restrictions. (AT 56)

Shortly after the Petitioner was placed on permanent restrictions and released at MMI by Dr. Cole, the Respondent sent the Petitioner for an IME with Dr. Nathan Mall in St. Louis. The Petitioner was aware that Dr. Mall prepared a report following his examination as well as an addendum report in March 2015. The Arbitrator notes that the Respondent did not submit Dr. Mall's reports into evidence.

The Petitioner subsequently moved from the Champaign, IL area to the Canton, IL area. When the Petitioner moved to the Canton, IL area he established care with a new primary care physician, Dr. Renick at Graham Medical Group. (AT 57)

The Petitioner also testified that the Respondent later sent the Petitioner for a second Independent Medical Examination with Dr. Mitchell Rotman on 3/28/16. The Petitioner was only seen by Dr. Rotman one time. (AT 58)

The Petitioner testified that up to June of 2016 he had been receiving benefits from the workers' compensation carrier in the form of temporary total disability and then maintenance benefits. (AT 58) The Petitioner also testified that the Respondent had paid for his medical bills up to June of 2016. (AT 58)

The Petitioner was aware that surveillance was conducted in July of 2016. The Petitioner reviewed the surveillance films taken on 7/29/16. The Petitioner testified that he was moving a tub as some of the individuals he had hired to do work on one of his properties was unable to do so that day. The Petitioner testified that the tub he was moving was light weight and made of fiberglass. The Petitioner testified that he was not violating his permanent restrictions by moving

the tub. The Petitioner testified he has not violated his permanent restrictions at all since they were issued by Dr. Cole in December of 2014. (AT 58-61)

The Respondent cut the Petitioner's benefits off following obtaining the surveillance video and Dr. Rotman's Independent Medical Examination report. The Petitioner testified that in July of 2016 when his benefits were cut, he was 45 years old. Before the Respondent the Petitioner had done primarily factory and construction work. The Petitioner testified that he would not be able to do any of the work that he had done in the past due to his permanent work restrictions. (AT 62)

As a result, the Petitioner went to school to retrain and reeducate himself in an attempt to earn a higher wage. (AT 62-63) The Petitioner initially went to Illinois Central College in East Peoria, also known as ICC. The Petitioner attended ICC from September of 2015 through the Spring of 2017. The Petitioner obtained an Associate's Degree in Architectural Construction from ICC. (AT 63-64)

Subsequent to ICC the Petitioner attended Illinois State University and obtained his Bachelor's Degree in Construction Management. The Petitioner testified that he used student loans to pay for his schooling at both ICC and Illinois State University. The Petitioner's educational costs and retraining expenses were admitted into evidence as Petitioner's Exhibit 13.

After the Petitioner obtained his degree from Illinois State University he began looking for a job. The Petitioner did find work with William Charles Construction. (AT 65) The Petitioner is a Project Engineer for William Charles Construction doing both civil and rail work. (AT 66) The Petitioner testified that his new employer does excavation, groundwork, and other things and for railroad stations and depot's. (AT 66) The Petitioner began working for William Charles on 7/1/19. As of the time of trial the Petitioner still holds his Project Engineer position with William Charles Construction. (AT 67) The Petitioner testified that his current earnings with William Charles Construction are $1,250/week…. (AT 67)

The Petitioner testified that as of trial he continues to have problems with numbness and tingling in his left hand. He notices that he continuously drops things. The Petitioner testified that the numbness and tingling he notices is constant in his left hand. The Petitioner testified that his right hand is not as bad, and he is right hand dominant. The Petitioner testified that he has difficulty buttoning his shirts, buttoning his pants and even putting a belt on. The Petitioner testified that he used to work on cars and cannot do so anymore because of his hands and his left shoulder. The Petitioner must pay others to mow his yard.

The Petitioner testified that he also has constant pain in his left shoulder. The Petitioner is still taking up to 6 Norco's a day to be able to work. The Petitioner testified that he has difficulty sleeping because of pulling sensations in his neck and his shoulder as well as the numbness and tingling in his hands. (AT 67-70) The Petitioner testified that he does not believe that he could do the type of work that he was doing for Clifford Jacobs at the time of his accident. The Petitioner testified that he believed that his injuries took his life away from him and he was only 40 years old at the time of his first accident in March 2011. The Petitioner testified that he has suffered great financial difficulty as well as in his personal relationships. (AT 70-71)

Christopher Stead also testified at the time of trial. Mr. Stead is 46 years old and lives in Cuba, IL. Mr. Stead is personally familiar with the Petitioner was hired by the Petitioner to help him do some repair work on a house that the Petitioner owned in Canton, IL in July of 2016. Mr. Stead was involved in the work that is the subject of the surveillance video admitted into evidence by the Respondent. Mr. Stead testified that the tub that was being moved in the surveillance video was made of fiberglass and it weighed approximately 40-50 lbs. Mr. Stead testified that he did most of the moving and that anything that the Petitioner did was kind of bracing the tub in his opinion. Mr. Stead testified that he believed he was moving most of the tub and the Petitioner was doing little in the form of actually lifting the tub. (AT 139-141)

Delores Coulter also testified at the time of trial. Ms. Coulter is the Petitioner's fiancé and they have been together for 9 years. Ms. Coulter testified that she has helped the Petitioner throughout his workers' compensation case. This help has come in the form of financial aid as well as self care, helping the Petitioner with things such as yard work, shopping, dressing, eating and many other aspects of the Petitioner's daily life. Ms. Coulter has helped the Petitioner with things such as paying for his schooling, gas, as well as giving him a place to stay when the Petitioner was attending ICC and Illinois State University. (AT 144-146)

Mr. Steven Bone also testified at the time of trial. Mr. Bone is the owner of an agency called Advanced Investigative Services which is a private detective agency licensed in Illinois and 12 other states. Mr. Bone testified that he was the one who performed the surveillance on the Petitioner in July of 2016. Mr. Bone prepared a written report as well as the video surveillance.

Dr. Kolb's Deposition

Dr. Edward Kolb testified via evidence deposition on 3/23/18. Dr. Kolb went to Rush Medical Center in Chicago for both medical school and residency training. Dr. Kolb is a board-certified orthopedic surgeon. Dr. Kolb treats patients of various musculoskeletal problems. Dr. Kolb estimated that 50% of his practice is dedicated to work on the upper extremities. He performs 10-12 shoulder surgeries and 10-12 carpal tunnel release surgeries on average each month. (PX 2)

Dr. Kolb initially met with the Petitioner on 4/2/12. The Petitioner presented with left shoulder pain for the past month as well as bilateral hand numbness and tingling. Dr. Kolb took an extensive history and performed an examination. He also took x-rays and reviewed the Petitioner's 3/26/12 left shoulder MRI. Dr. Kolb diagnosed the Petitioner with severe osteoarthritis of the left shoulder and left sided carpal tunnel syndrome. Dr. Kolb believed that the most pressing issue at that time was the Petitioner's carpal tunnel syndrome for which he recommended a left carpal tunnel release. (PX 2)

Dr. Kolb performed a left carpal tunnel release procedure on 4/5/12. (PX 2)

In follow up Dr. Kolb noted the Petitioner had significant improvement regarding his pain as well as the numbness and tingling in his left hand. When the Petitioner followed up with Dr. Kolb on 4/16/12 he did note the Petitioner had evidence of right carpal tunnel syndrome. Dr. Kolb recommended the Petitioner undergo a right carpal tunnel release. There was also

discussion regarding the Petitioner undergoing a resurfacing procedure for his left shoulder symptoms. (PX 2)

Dr. Kolb performed a right carpal tunnel release procedure on 4/26/12. (PX 2)

In follow up on 5/7/12 the Petitioner did not have any significant pain in his bilateral hands. The Petitioner did have some numbness in the left middle finger which was residual from the pre-operative time frame. The Petitioner continued to have pain his left shoulder. The focus at this point shifted to the left shoulder and the plan was to proceed with a left shoulder resurfacing procedure versus a shoulder replacement type procedure. (PX 2)

On 5/22/12 Dr. Kolb performed surgery on the left shoulder. Dr. Kolb described the resurfacing procedure that he performed at that time as essentially resurfacing the humeral head and putting on an artificial or metal head to that portion of the joint. The resurfacing procedure is less invasive than a total shoulder replacement. (PX 2)

The Petitioner followed up with Dr. Kolb on 6/4/12. The Petitioner was doing fairly well but did have complaints of residual soreness in his left shoulder. The Petitioner did have some residual numbness and tingling in the left hand from his previous carpal tunnel syndrome. Physical therapy was to be initiated with some work restrictions to protect the shoulder. Dr. Kolb testified that following the shoulder procedure that he performed on the Petitioner, for the first six weeks after surgery he would have the Petitioner avoid any type of active internal rotation. Dr. Kolb would also recommend the Petitioner avoid excessive internal rotation and at approximately six weeks out to gradually increase range of motion and strengthening. (PX 2)

Dr. Kolb saw the Petitioner again on 7/2/12. The Petitioner's left shoulder pain had improved compared to pre-surgery but he did still notice stiffness. The Petitioner also continued to have decreased sensation in his middle finger on the left hand which was present secondary to his previous carpal tunnel syndrome. Dr. Kolb recommended continued physical therapy and to re-check the Petitioner in six weeks. In August of 2012 the Petitioner again noted improvement with his left shoulder. Physical therapy was increased to three times per week. (PX 2)

Dr. Kolb saw the Petitioner subsequently on 9/17/12. At this time the Petitioner continued to have discomfort and felt as though he had not made much progress over the past month. The Petitioner had pain over the front part of his shoulder radiating down to the elbow. Dr. Kolb recommended the Petitioner continue physical therapy and if at the next follow up the Petitioner did not show significant signs of improvement that an MRI would be ordered to insure healing of the soft tissues. (PX 2)

The Petitioner did undergo a subsequent left shoulder MRI on 10/25/12. The Petitioner followed up with Dr. Kolb subsequently on 10/29/12. From review of the MRI Dr. Kolb noted inflammation around the biceps tendon as well as evidence of a biceps tenodesis. However, Dr. Kolb did note that it was difficult to interpret the integrity of the rotator cuff tear secondary to the metal artifact which was the hardware from the initial left shoulder procedure. At this time Dr. Kolb did recommend the Petitioner seek a second opinion perhaps at Washington University in St. Louis. (PX 2)

The Petitioner later saw Dr. Kolb on 11/4/13. The Petitioner reported having residual numbness in his left hand. It was also noted that the Petitioner had been seen by Dr. David Fletcher who had performed an FCE and recommended further follow up with Dr. Kolb to discuss potential surgical options. On 11/4/13 the Petitioner also presented with complaints of numbness and tingling in his middle and ring finger with some hypersensitivity within the fourth web space extending approximately to the palmer aspect of the hand. Dr. Kolb performed an examination and diagnosed the Petitioner as status post left carpal tunnel release from a year and a half prior. Dr. Kolb recommended obtaining an updated EMG study to further evaluate the nerve function. (PX 2)

The Petitioner did undergo a subsequent EMG study performed by Dr. Pegg on 11/5/13. The Petitioner then followed up with Dr. Kolb on 11/11/13. Dr. Kolb reviewed the EMG which revealed evidence of severe right ulnar nerve entrapment at the right elbow. Dr. Kolb recommended the Petitioner undergo a right elbow ulnar nerve decompression with anterior ulnar nerve transposition. (PX 2)

Dr. Kolb testified to his knowledge the Petitioner had not underwent the right ulnar nerve procedure. (PX 2)

The Petitioner later followed up with Dr. Kolb on 3/6/18. The Petitioner reported that he had seen Dr. Brian Cole at Midwest Orthopedics at Rush who performed a hemi-arthroplasty procedure on the left shoulder. The Petitioner described Dr. Cole placing him on a permanent lifting restriction of 10lbs and the Petitioner was now back in school looking to transition to a more sedentary job given his permanent work restrictions. At the 3/6/18 visit the Petitioner continued to complain of pain in both shoulders with pain radiating into his neck region. The Petitioner described radicular complaints throughout his bilateral upper extremities as well as numbness and tingling in both hands and weakness in his bilateral upper extremities. Dr. Kolb performed an examination and recommended the Petitioner consider additional work up including a bone scan to rule out potential loosening of his humeral prosthesis. Dr. Kolb recommended the Petitioner further follow up potentially with the clinic at Southern Illinois University in Springfield given the complexity of his case. Dr. Kolb suspected that the majority of his complaints at this point may be stemming from his cervical spine and the Petitioner was offered additional formal physical therapy. (PX 2)

Dr. Kolb testified that he believed that the type of repetitive activities the Petitioner participated in as a laborer for the Respondent could at least aggravate, if not cause, his bilateral carpal tunnel syndrome. (PX 2, p 43)

Dr. Kolb also testified that he believed that the accident the Petitioner described of 3/7/12 appears to have been at least an aggravating factor as it pertains to his left shoulder condition and the need for subsequent treatment including surgery. (PX 2, p 44)

Dr. Kolb's opinions were based on his medical experience, treating patients who have these types of conditions in the past and his experience seeing who worked similar job duties as the Petitioner. Dr. Kolb also testified that his causation opinion as it relates to the Petitioner's left

shoulder was a combination of the type of work that the Petitioner performed as well as the specific accident of 3/7/12 that the Petitioner described. Dr. Kolb confirmed that there was no evidence of any treatment that the Petitioner had underwent for his left shoulder prior to March 2012. (PX 2, p 76)

Dr. Cole's Deposition

Dr. Brian Cole also testified via evidence deposition on 6/17/19. Dr. Cole is an orthopedic surgeon specializing in care of the shoulder, elbow and knee. Dr. Cole has been in practice for 23 years. He participated in a residency at the hospital for special surgery and is a professor at the Department of Orthopedics at Rush. Dr. Cole has been board certified in orthopedic surgery since 1997. Dr. Cole testified that approximately 50% of his practice is dedicated to treatment of shoulder conditions. Dr. Cole performs approximately 400 shoulder surgeries a year. Dr. Cole testified that he performs 50-60 shoulder replacements a year. (PX 3)

Dr. Cole initially saw the Petitioner on 3/7/13. Dr. Cole believed that the Petitioner was referred to him by his treating physician Dr. Kolb. The Petitioner presented with pain and stiffness in the left shoulder. Dr. Cole noted loss of range of motion and pain with the range of motion testing. Dr. Cole diagnosed a persistent painful left shoulder after undergoing a partial left shoulder replacement previously. Dr. Cole recommended the Petitioner undergo a revision total shoulder replacement. Dr. Cole issued light duty restrictions of no overhead lifting greater than 5lbs. (PX 3)

On 8/20/13 Dr. Cole performed a revision shoulder replacement with a biceps tenodesis. (PX 3)

The Petitioner followed up with Dr. Cole 10 days later on 8/30/13. The Petitioner was doing fine and had a standard post-operative physical examination. Dr. Cole issued restrictions of no use of the left arm. Dr. Cole testified the Petitioner would have needed to be off work entirely from the date of the surgery through the initial post-operative visit 10 days later. Dr. Cole also ordered physical therapy as of 8/30/13. (PX 3)

As of 9/27/13 Dr. Cole noted the Petitioner had progressed with increased range of motion as well decreased pain. Dr. Cole continued to recommend physical therapy and restrictions were issued of limited lifting, as well as overhead activity limited, essentially desk top duties only. These recommendations and restrictions were maintained as of the 11/8/13 visit with Dr. Cole. (PX 3)

The Petitioner then followed up with Dr. Cole on 10/6/14. The Petitioner explained that he had missed various appointments due to ongoing personal issues. Dr. Cole in October 2014 noted increasing range of motion and decreasing pain. He recommended continued physical therapy. Dr. Cole also discussed having the Petitioner undergo an FCE at the conclusion of physical therapy. Dr. Cole testified this was his standard practice. (PX 3)

The Petitioner did undergo an FCE at Advanced Rehab and Sports Medicine on 12/16/14. The overall classification of effort was considered valid due to the Petitioner performing consistently during a repeated measures protocol. Maximum weight achieved to waist height was bilaterally

49.12lbs, on the right 52.32lbs, and on the left 29.43lbs. The Petitioner met the material handling demands for a sedentary demand vocation per the Dictionary of Occupational Titles. (PX 3)

The Petitioner followed up with Dr. Cole on 12/29/14. This was the last visit the Petitioner had with Dr. Cole. Dr. Cole reviewed the FCE and noted that it was a valid study. Dr. Cole had no ongoing treatment recommendations for the Petitioner as of 12/29/14. Dr. Cole released the Petitioner at MMI with permanent restrictions as of this date. Permanent work restrictions issued by Dr. Cole were limit lifting with the left upper extremity to 29lbs up to waist level, up to 10lbs with the left upper extremity to shoulder, and only occasionally overhead use of the left upper extremity. Dr. Cole noted the Petitioner will likely continue to have left shoulder pain with any amount of lifting but is safe to work within these parameters. Dr. Cole testified that as of 12/29/14 the Petitioner was released at MMI with these permanent restrictions. Dr. Cole testified that he believed the Petitioner likely had a pre-existing condition in his left shoulder that was aggravated by the accident of 3/7/12. Dr. Cole believed that all the treatment was rendered to the Petitioner's left shoulder subsequently would be related to the 3/7/12 accident including the need for the permanent work restrictions that he issued. (PX 3, p 20-21)

Dr. Cole confirmed that the FCE is an objective test and can be used to confirm or deny the legitimacy or validity of subjective complaints. Dr. Cole did not believe that the Petitioner, given his permanent work restrictions, would be able to return to his original position that he held with the Respondent. (PX 3, p 34-35)

Dr. Rotman's Deposition

Dr. Mitchell Rotman testified on three occasions in this case. Dr. Rotman had seen the Petitioner for an IME on 3/28/16. Dr. Rotman was provided records to review including the original IME report from Dr. Nathan Mall. Dr. Rotman opined that there was objective correlation for the Petitioner's subjective complaints in regards to his left shoulder. Dr. Rotman indicated that he would advise the Petitioner avoid heavy overhead lifting but would not restrict him to any activities below shoulder level. Dr. Rotman did not believe that the Petitioner's left shoulder condition was caused by his job duties with the Respondent. Dr. Rotman had no issues with the treatment with the Petitioner had underwent for both his left shoulder condition as well as his bilateral carpal tunnel syndrome. Dr. Rotman opined that the incident at work described by the Petitioner from 3/7/12 was "merely a triggering factor for discomfort" in regards to the Petitioner's left shoulder. Dr. Rotman prepared an addendum report dated 6/10/16. Dr. Rotman was provided videos of the Petitioner's job duties for the Respondent. Dr. Rotman noted there was some heavy gripping involved in the forging activities. Dr. Rotman indicated that if the Petitioner was engaged in significant gripping while operating the hammer where he would be holding parts constantly and not letting go, that would be an aggravating factor for an idiopathic carpal tunnel syndrome.

Dr. Rotman prepared another addendum report dated 7/25/16. In this report Dr. Rotman indicated he did not believe the Petitioner's left shoulder end stage arthritis was caused, aggravated or accelerated by the Petitioner's employment with the Respondent. Dr. Rotman did not believe the Petitioner's carpal tunnel syndrome was caused or accelerated by the Petitioner's employment with the Respondent. Despite that, Dr. Rotman went on to state that it was difficult

and impossible to state with any reasonable degree of medical certainty whether the Petitioner's carpal tunnel condition was aggravated by his work since he did not see a long enough video segment to determine if the Petitioner was doing prolonged heavy gripping.

Dr. Rotman prepared an additional addendum report dated 9/6/16. This time Dr. Rotman was provided additional job videos which demonstrated the Petitioner's job duties as well as the surveillance video which had been conducted in July of 2016.

Dr. Rotman testified at the time of his 11/27/17 deposition that he performs 4-5 Independent Medical Examinations a week. Of these IMEs, over 90% are done at the request of Respondents. Dr. Rotman has been performing IMEs for over 20 years. Dr. Rotman charges $1,800.00 for an IME and each addendum report is another $250.00-$300.00.

Dr. Rotman confirmed that his 11/27/17 examination that his initial opinions in regards to the Petitioner's bilateral carpal tunnel syndrome and his left shoulder condition were based upon and inquiry that the Petitioner's injuries were all repetitive trauma both to his bilateral hands and left shoulder. In fact the Petitioner's left shoulder claim was not a repetitive trauma case and was instead two specific accidents which occurred on 3/7/12. Dr. Rotman did testify that a traumatic injury or incident can aggravate a preexisting arthritic condition of the shoulder. Dr. Rotman also testified that an aggravation of a preexisting condition can lead to surgery including a shoulder replacement. (RX 7, p 8-9)

Dr. Rotman later performed an additional addendum report dated 4/19/18. Dr. Rotman was provided additional medical records and at this time opined that he did not believe that the specific accidents suffered by the Petitioner on 3/7/12 were a causative, aggravating or accelerating factor in his left shoulder condition.

Dr. Rotman prepared his final addendum report on 8/18/20. Dr. Rotman was provided additional medical records to review which he stated did not change his original opinions in this case.

Conclusions of Law

12 WC 19287 (accident date 3/7/12; pulling valve casting from trimmer)

Accident:

The Arbitrator finds the Petitioner has met his burden of proof regarding the issue of accident for his 3/7/12 accident when he was pulling a valve casting from the trimmer. The Arbitrator notes that the Petitioner reported the accident the same day, the medical records after the accident provide a consistent and accurate history, and the Respondent presented no evidence to dispute this occurrence. The Arbitrator finds the Petitioner to be sincere, consistent and credible. The Petitioner's treating records corroborate that Petitioner's complaints in his left shoulder were symptomatic as a consequence of his accident of 3/7/12.

Given the sequence of events, the totality of the evidence, and the treatment records and opinions of Dr. Kolb and Dr. Cole, the Arbitrator finds that the Petitioner sustained a compensable accident arising out of and in the course of his employment with the Respondent on 3/7/12 when pulling a valve casting from a trimmer.

Causation:

As discussed above the above the Arbitrator finds that the Petitioner sustained a compensable accident arising out of and in the course of his employment with the Respondent on 3/7/12 when pulling a valve casting from a trimmer.

Petitioner's treating surgeons, Dr. Kolb and Dr. Cole, who both examined the Petitioner regularly, were in the best position to judge the cause of Petitioner's complaints. Dr. Kolb testified that the accident the Petitioner described of 3/7/12 appears to have been at least an aggravating factor as it pertains to his left shoulder condition and the need for subsequent treatment including surgery. (PX 2, p 44) Dr. Cole testified that he believed the Petitioner likely had a pre-existing condition in his left shoulder that was aggravated by the accident of 3/7/12. Dr. Cole believed that all the treatment to Petitioner's left shoulder would be related to the 3/7/12 accident including the need for the permanent work restrictions that he issued. (PX 3, p 20-21)

The Arbitrator notes that the Respondent paid for all Petitioners medical expenses and TTD stemming from his left shoulder condition, chose not to submit into evidence the IME report of their first section 12 physician Dr. Mall, and base their causation defense on their second IME physician Dr. Rotman. The Arbitrator notes that Dr. Rotman only examined the Petitioner one time on 3/28/16, which was 15 months after Petitioner had been placed at MMI by Dr. Cole. The Arbitrator is not persuaded by Dr. Rotman's opinions as to the nature of the Petitioner's work for the Respondent or his opinions on causation in this case.

The Arbitrator is persuaded by the sequence of events, the totality of the evidence, and the opinions of both Dr. Kolb and Dr. Cole. The Arbitrator finds that Petitioner's current condition of ill-being regarding his left shoulder to be causally related to his accident of March 7, 2012 when pulling a valve casting from a trimmer.

Wages:

The Petitioner's wages were admitted into evidence as Respondent's Exhibit 1. The Petitioner earned $59,839.50 in the 52 weeks before the accident, but only work 50 of those weeks. $59,839.50 divided by 50 gives and average weekly wage of $1,196.79. This would equate to a TTD rate of $797.86.

Also admitted into evidence were Respondent's payout sheets for TTD and maintenance. (RX 4) The payout sheets show that Petitioner was paid TTD and later maintenance at $797.86 a week.

The Arbitrator finds that the Petitioner's average weekly wage for his 3/7/12 accident is $1,196.79.

Medical Bills:

Based on the Arbitrator's findings on the issues of accident and causal connection, the Arbitrator finds the medical bills submitted into evidence by the Petitioner are causally related to his 3/7/12 accident when pulling a valve casting from a trimmer.

Maintenance Benefits and Vocational Rehabilitation:

Based on the Arbitrator's findings on the issues of accident and causal connection, the Arbitrator finds that the Petitioner is entitled to maintenance benefits.

The Arbitrator notes that the Petitioner was released at MMI with permanent work restrictions by Dr. Cole on 12.29.14, and these permanent work restrictions prevented Petitioner from returning to his position as a hammer operator with the Respondent. The Arbitrator also notes that the Respondent paid Petitioner maintenance benefits of $797.86 a week through 7/24/16. (RX 4) The Petitioners maintenance benefits were cut off at that time based on the IME report of Dr. Rotman and the Respondent's belief that Petitioner was violating his permanent restrictions per the surveillance video admitted into evidence.

The Arbitrator is not persuaded by the opinions of Dr. Rotman. Furthermore, the Arbitrator does not believe that the Petitioner was violating his permanent restrictions in the surveillance video. Both the Petitioner and Chris Stead testified that the tub being moved in the surveillance video was made of fiberglass and light weight. The specifications of the fiberglass tub were admitted into evidence as Petitioner's Exhibit 14 and confirm the testimony of the Petitioner and Mr. Stead. As such, Petitioner would still be entitled to maintenance benefits if he was actively participating in self-directed vocational rehabilitation.

The Arbitrator notes that at the time the Petitioner's maintenance benefits were cut in July of 2016, he was already enrolled in an Associates degree program at Illinois Central College. Therefore, when the Petitioners maintenance benefits were cut, he was actively participating in self-directed and self-motivated vocational rehabilitation. The Petitioner continued to engage in self-directed vocational rehabilitation until he was hired on by his current employer William Charles Construction on 7/1/19.

As such, the Respondent shall pay Petitioner maintenance benefits of $797.86 a week for 152 and 6/7 weeks, commencing 7/25/16 through 6/30/19, as provided in Section 8(a) of the Act.

In addition to maintenance benefits the Arbitrator also orders the Respondent to reimburse Petitioner for his vocational rehabilitation costs, here being the Petitioner educational expenses at set forth in Petitioner's Exhibit 13. Petitioner was in his early 40's when he was placed at MMI with permanent restrictions that prevented him from returning to work with not only the Respondent, but to any of the jobs he held in the past which were all laborer type positions. For this reason, and driven by the desire to earn a good wage, Petitioner returned to school and furthered his education. He obtained two degrees, an Associate's degree from ICC and a Bachelors degree from ISU. He then found a job making a a better job at a lighter labor work level making more money, $1,250/week, than he otherwise would have earned without the additional education.

The Arbitrator notes that the Petitioner included in his exhibits the amounts he incurred through student loan, tuition, books, and fee's. These expenses total $63,328.20. (PX 13 p. 1-16) In addition to the maintenance benefits awarded above, the Arbitrator also orders the Respondent to reimburse Petitioner an additional $63,328.20 for his educational/vocational retraining.

Nature & Extent

Based on the Arbitrator's findings on the issues of accident and causal connection, the Arbitrator finds that the Petitioner is entitled to permanency for his left shoulder condition.

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 at a heavy labor level as a hammer operator at the time of the accident and that he is not able to return to work in his prior capacity as a result of said injury. The Arbitrator finds that the Petitioner needed vocational rehabilitation to change trades, which he did. In fact the Petitioner found a better job with a lighter labor work level that pays ($1,250/week) which is more than he was making before. The Arbitrator therefore gives great weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 41 years old at the time of the accident. As of the date of his 3/7/12 accident, the Petitioner has a work-life expectancy of 26 years. The Arbitrator therefore gives minor weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner has suffered no loss of earnings capacity. Petitioner testified that he is earning about $1,250.00/week (AT 67) in his new job as a Project Engineer, whereas he earned $1,196.79/week (Stip Sheet) before the accident. The Arbitrator therefore gives greater weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner's testimony is consistent with the medical records and the evidence admitted at trial. The Arbitrator therefore gives great 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 man as a whole pursuant to §8(d)(2) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC019288
Case Name	Charles Stambaugh v. Clifford-Jacobs Forging Co
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0034
Number of Pages of Decision	20
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Adam Maciorowski, Robert Maciorowski

DATE FILED: 1/23/2023

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Charles Stambaugh,
Petitioner,

vs. NO: 12 WC 19288

Clifford-Jacobs Forging Co.,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary disability, permanent disability, vocational training and maintenance 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 January 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.

There is no bond for the removal of this cause to the Circuit Court by Respondent. 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.

January 23, 2023

o11/23/22
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	12WC019288
Case Name	STAMBAUGH, CHARLES v. CLIFFORD JACOBS FORGING COMPANY
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Adam Maciorowski

DATE FILED: 1/24/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 19, 2022 0.37%

/s/Edward Lee, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Charles Stambaugh
Employee/Petitioner

v.

Clifford Jacobs Forging Company
Employer/Respondent

Case # **12** WC **19288**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **10/18/21**. 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 _____

FINDINGS

On **3/7/12**, 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 $**59,839.50**; the average weekly wage was $**1,196.79**.

On the date of accident, Petitioner was **41** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**127,771.58** for TTD, $**692.16** for TPD, $**0.00** for maintenance, and $**6,957.80** (PPD advance) for other benefits, for a total credit of $**135,421.54,**.

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

ORDER

The Arbitrator finds that the Petitioner has met his burden of proof on the issue of accident relative to his 3/7/12 injury when a hammer struck his tongs.

The Arbitrator finds that the Petitioner has met his burden of proof for the issue of causation.

The Arbitrator finds that the Petitioner's average weekly wage for this case is $1,196.79.

The Arbitrator notes that the Petitioner sustained two compensable work accidents involving his left shoulder which occurred on 3/7/12 and they are docketed as case numbers 12 WC 19287 and 12 WC 19288. The Arbitrator awards the Petitioner all medical expenses, maintenance benefits and permanency to be paid under case number 12 WC 19287. As such no medical expenses, maintenance benefits or permanency is awarded under this case, which is 12 WC 19288.

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

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

Edward Lee
Signature of Arbitrator

JANUAR 24, 2022

Findings of Fact & Conclusions
12wc19288

The Petitioner was 50 years old as of the time of trial. The Petitioner has a Bachelor's Degree from Illinois State University. The Petitioner has lived in Rockford, IL since July of 2019.

The Petitioner was employed by the Respondent, Clifford Jacobs Forging Company in March of 2011. The Respondent is a manufacturer of steel products which are formed using a forging hammer process. The steel is heated up to 2,500 degrees, set into a hammer in between a set of dies, and forged using a steam powered ram.

The Petitioner began working for the Respondent on 11/8/10 as a heater trimmer. (AT 12) The Petitioner testified that he earned his way up into a hammer man position, or a hammer operator position, from his original heater trimmer position. (AT 13)

The Petitioner was a hammer operator in March of 2011. The Petitioners daily job duties included making sure that the furnaces were full of steel, putting dies in the hammer and ensuring that the prior shift had removed all of their equipment. (AT 14) The Petitioner described the hammer as the size of a table approximately 4 feet by 6 feet in size and 2 feet tall. The Petitioner would have to drive two large keys for each die in with a sledgehammer. The Petitioner testified that with each swing of the sledgehammer there would be vibration from the steel sledgehammer striking the steel key. The vibration would ring up through his arms into his hands. The Petitioner would also use a mobile ram. (AT 15-16) The Petitioner would also use tongs to manipulate the hot steel. The Petitioner testified that the pieces of steel could be anything from parts for a NASCAR to small gears for automobiles and even larger things such as 900 pound gears for Caterpillar machines. (AT 17) The Petitioner would have to manipulate the steel inside of the die so that it would mold correctly. To do this the Petitioner would use large tongs. (AT 17-18) The Petitioner described the different sizes and types of tongs that he would use. For the big hammer, the Petitioner would have tongs that had a 2.5 feet wide mouth and were approximately 6 feet in length. They weighed approximately 40 lbs. (AT 19-20)

The Petitioner thoroughly described the job duties that he performed while working for the Respondent. Admitted into evidence were also videos which demonstrated the type of work that the Petitioner performed for the Respondent. These videos were admitted as Petitioner's Exhibit 15 and provide a detailed analysis of the type of work that the Petitioner did for the Respondent. These videos also show the tools the Petitioner used as well as the physical nature of the Petitioner's position for the Respondent.

In addition to the heavy and laborious nature of the Petitioner's work, the Petitioner indicated that he is exposed to vibration the entire time he is in the building. (AT 25) The Petitioner was working between 5-6 days a week as a hammer operator. He worked 8 hours a day with some overtime. The Petitioner testified that in his work as a hammer operator he would be using his hands the entire time which included gripping and grasping. (AT 27-28) The Petitioner described the overall physical nature of his job with the Respondent as "very grueling and vicious." (AT29)

The Petitioner testified that he began to notice numbness and tingling in his hands up into his arms that radiated into his neck area in March of 2011. (AT 30-31) The Petitioner testified that he notified his employer of his symptoms in March of 2011. The Petitioner testified that he notified his foreman, Jason Shirkey, on 3/1/11. (AT 32-33)

The Petitioner initially presented to the Christie Clinic in March of 2011. The Petitioner had complaints in his cervical spine to the left side as well as his upper extremities. The Petitioner underwent an MRI of the cervical spine at the Christie Clinic on 3/2/11. It was noted the Petitioner had a mild disc bulge at C3-4, a small central disc protrusion at C4-5, a broad based central/left disc protrusion at C5-6 and a broad-based central disc protrusion at C6-7. (PX 17, p 219-220)

The Petitioner also underwent an EMG on 3/7/11 which was performed by Dr. Steven Thatcher. This study revealed severe left carpal tunnel syndrome. (PX 17, p 215-216) Dr. Thatcher recommended the Petitioner undergo cervical epidural steroid injections. (AT 17, p 213-214)

Dr. Thatcher performed an epidural steroid injection from C7-T1 on 3/14/11. (PX 17, p 208) Dr. Thatcher performed a repeat epidural steroid injection from C7-T1 on 3/2/11. (PX 17, p 204) Dr. Thatcher performed a third epidural steroid injection at C6-7 on 4/12/11. (PX 17, p 194)

The Petitioner did continue to participate in physical therapy during the time period he was receiving epidural steroid injections from Dr. Thatcher. The Petitioner testified that the injections helped very briefly. The Petitioner also testified that the physical therapy helped a little bit. (AT 34-35)

The Petitioner continued to participate in physical therapy through October of 2011. On 10/31/11 the physicians at the Christie Clinic recommended that the Petitioner have a second MRI of his cervical spine. (PX 17, p 158)

On 11/17/11 the Petitioner underwent a second MRI of the cervical spine at the Christie Clinic. This study revealed multilevel disc disease with moderate spinal canal narrowing at C5-6 and C6-7. (PX 17, p 155) The Petitioner was subsequently sent the Carle Spine Clinic.

The Petitioner saw Dr. Victoria Johnson at the Carle Spine Clinic on 12/16/11. The Petitioner was diagnosed with cervical spondylosis. Dr. Johnson did not believe that the Petitioner was a surgical candidate at that time. (PX 17, p 148-151)

The Petitioner testified that from the point he began noticing his symptoms in March of 2011 through March of 2012, that he continued to work in his hammer operator position. The Petitioner continued in this position full duty and was not placed on any work restrictions from March of 2011 through March of 2012. The Petitioner did the same job duties during that time frame and began to notice the numbness and tingling in his arms and neck progress as well as symptoms developing into his fingers and hands. (AT 35-37)

The Petitioner testified that he was working as a hammer operator on 3/7/12. The Petitioner testified that on 3/7/12 when he was pulling a part out of the trimmer the part got stuck and he

jerked it, pulled it and when he did this the part got caught and he felt a pop in his left shoulder. (AT 37-38) The Petitioner reported the incident to his supervisor and filled out an accident report. (AT 38-39) The Petitioner also reported the issues regarding his hands to his employer on 3/22/12.

Leading up to 3/7/12 the Petitioner testified that he was not having any left shoulder pain or problems. (AT 39) The Petitioner that before 3/7/12 he had not sought any medical care specifically for his left shoulder, nor was he taking any prescription medications for his left shoulder. (AT 40)

The Petitioner presented to Dr. Philbert Chen at the Department of Occupational Medicine at the Carle Clinic on 3/15/12. The Petitioner described the issues he was having with his left shoulder as well as his hands. The Petitioner was diagnosed with presumed bilateral carpal tunnel syndrome and was recommended to undergo an EMG study for his hands. The Petitioner was also diagnosed with a left shoulder injury and a potential biceps tendon tear. An MRI was ordered of the Petitioner's left shoulder. Dr. Chen's notes indicate that the Petitioner asked not to be placed on any work restrictions. The Petitioner testified that the reason not to be put on any work restrictions is he did not want to lose his job and he enjoyed his position with the Respondent. (AT 41) (PX 4, p 1-4)

The Petitioner followed up with Dr. Chen on 3/21/12. At this time Dr. Chen continued to diagnose left shoulder pain and bilateral carpal tunnel syndrome. Dr. Chen also placed the Petitioner on work restrictions of a 5lb restriction for material handling, avoid repetitive left shoulder movements, avoid forceful gripping with both hands, and avoid overhead work. (PX 4, p 6-7)

The Petitioner underwent the recommended EMG of his bilateral upper extremities on 3/22/12. This study revealed bilateral carpal tunnel syndrome left greater than right. (PX 4, p 9-11)

The Petitioner also underwent the recommended left shoulder MRI on 3/26/12. This study revealed advanced accelerated degenerative change of the glenohumeral joint with prominent inferior spurring and diffuse cartilage loss, subchondral cystic change of the inferior margin of the glenoid, diffuse labral degeneration, tendinosis of the rotator cuff without tear and moderate AC degenerative change. PX 4, p 12)

The Petitioner followed up with Dr. Chen following his EMG and left shoulder MRI. The Petitioner was referred to Dr. Kolb for further treatment of his left shoulder and bilateral hands. The Petitioner was maintained on his work restrictions at that time. (PX 4, p 8)

The Petitioner initially presented to Dr. Edward Kolb on 4/2/12. The Petitioner described his symptoms to Dr. Kolb and an examination was performed. Dr. Kolb recommended carpal tunnel release on the left hand and also discussed the Petitioner undergoing a surgery on his left shoulder. (PX 6, p 7)

Dr. Kolb performed a left carpal tunnel release procedure on 4/5/12. (PX 6, p 115-116)

The Petitioner followed up with Dr. Kolb on 4/16/12. The Petitioner noticed significant improvement in regards to his pain as well as his numbness and tingling in his left hand. Dr. Kolb recommended the Petitioner undergo carpal tunnel release on this right side at this time. (PX 6, p 6)

Dr. Kolb performed a right carpal tunnel release on 4/26/12. (PX 7, p 2)

The Petitioner followed up with Dr. Kolb on 5/7/12. The Petitioner was doing well and did not have any significant complaints of pain. The Petitioner did continue to have numbness in his left middle finger as well as expressed complaints regarding his left shoulder. Dr. Kolb continued to recommend left shoulder surgery. (PX 6, p 14)

On 5/22/12 Dr. Kolb performed a resurfacing arthroplasty of the Petitioner's left shoulder. (PX 8, p 11-14)

The Petitioner followed up with Dr. Kolb on 6/4/12. The Petitioner did report residual soreness in his left shoulder but the sharp constant pain in his left shoulder had improved. Dr. Kolb recommended the Petitioner begin postoperative physical therapy. Dr. Kolb also placed the Petitioner on work restrictions. (PX 6, p 15)

The Petitioner followed up with Dr. Kolb on 7/2/12. The Petitioner had been doing physical therapy at the Christie Clinic. Dr. Kolb continued to recommend physical therapy moving forward. (PX 6, p 16) The Petitioner testified however that he began to notice his symptoms getting worse in postoperative physical therapy. (AT 47)

When the Petitioner followed up with Dr. Kolb on 8/13/12, Dr. Kolb recommended the Petitioner increase his physical therapy to 3 times a week. The Petitioner was kept off of work at this time. (PX 6, p 17)

The Petitioner followed up with Dr. Kolb on 9/17/12. The Petitioner was not making significant progress in his postoperative physical therapy. Dr. Kolb however continued to recommend physical therapy and if the Petitioner's symptoms persisted they would possibly order an additional left shoulder MRI. There was also a discussion that the Petitioner may potentially be referred to another specialist. (PX 6, p 22)

The Petitioner did undergo a postoperative MRI of his left shoulder on 10/25/12 at the Christie Clinic. This study revealed biceps tendinosis and tenosynovitis, however the integrity of the Petitioner's rotator cuff could not be evaluated because of the significant metal artifact from the Petitioner's left shoulder surgery that was performed by Dr. Kolb in May of 2012. (PX 5, p 4)

The Petitioner followed up with Dr. Kolb on 10/29/12. Dr. Kolb the 10/25/12 MRI with the Petitioner. At this time Dr. Kolb referred the Petitioner to Washington University in St. Louis to see a shoulder specialist for further evaluation. (PX 6, p 23)

The Petitioner presented to Dr. Leesa Galatz at Washington University on 11/20/12. Dr. Galatz performed an examination and diagnosed the Petitioner with a painful hemiarthroplasty. Dr.

Galatz recommended the Petitioner undergo an ultrasound of the left shoulder and also discussed performing a Marcaine injection. (PX 26, p 4-5)

On 12/12/12 the Petitioner underwent an injection to his left shoulder at Washington University. This was a left glenohumeral joint injection under fluoroscopic guidance. (PX 26, p 11-12)

The Petitioner also continued to participate in physical therapy throughout this time at the Christie Clinic. The Petitioner participated in physical therapy through 2/27/13. (PX 17, p 8)

The Petitioner subsequently came under the care of Dr. Brian Cole at Midwest Orthopedics at Rush. The Petitioner was initially seen by Dr. Cole on 3/7/13. Dr. Cole performed an examination and diagnosed the Petitioner as status post left shoulder hemicap resurfacing of the humeral head. Dr. Cole recommended an additional procedure on the left shoulder. This would be a total shoulder arthroplasty. Dr. Cole also issued work restrictions of no lifting overhead more than 5 lbs. (PX 10, p 1-2)

On 8/20/13 Dr. Cole performed a revision left shoulder replacement, biceps tenodesis and removal of hardware. (PX 10, p 8-10) The Petitioner followed up with Dr. Cole on 8/30/13. At this time Dr. Cole recommended the Petitioner begin postoperative physical therapy. Light duty restrictions were issued. (PX 10, p 11)

The Petitioner followed up with Dr. Cole on 9/27/13. Dr. Cole continued to recommend light duty work.

The Petitioner then followed up with Dr. Kolb on 11/4/13 for continued complaints regarding his left hand. The Petitioner continued to have numbness and tingling throughout his left hand. Dr. Kolb performed an examination and recommended the Petitioner undergo a repeat EMG study. (PX 6, p 25)

The Petitioner did undergo the recommended EMG with Dr. Edward Pegg on 11/5/13. This study revealed severe right ulnar nerve entrapment at the elbow. (PX 9, p 1-2)

The Petitioner continued to follow up with Dr. Cole's office. The Petitioner next saw Dr. Cole on 11/8/13. Dr. Cole continued to recommend physical therapy and a home exercise program. The Petitioner's light duty restrictions were maintained that being working only with desk or seated duties with no pushing, pulling, or lifting with the left arm. (PX 10, p 19)

The Petitioner then followed up with Dr. Kolb on 11/11/13. Dr. Kolb reviewed the EMG with the Petitioner and recommended proceeding with a right elbow ulnar nerve decompression with anterior ulnar nerve transposition. The Petitioner did not undergo the recommended surgery on the right elbow. (PX 19, p 11)

The Petitioner testified that he continued to participate in physical therapy into 2014. (AT 53) The Petitioner also continued to follow up with Dr. Cole. The Petitioner next saw Dr. Cole on 10/6/14. Dr. Cole recommended additional physical therapy and then a Functional Capacity

Evaluation. The Petitioner was placed on light duty restrictions of no lifting more than 10 pounds over shoulder height and no repetitive overhead activities. (PX 10, p 26-27)

The Petitioner was participating in physical therapy at Advanced Physical Therapy. The Petitioner continued physical therapy through 12/3/14. (PX 11, p 2-4)

The Petitioner underwent the recommended Functional Capacity Evaluation at Advanced Physical Therapy on 12/16/14. This was a valid study for both consistency and legitimacy of effort. (PX 11, p 64-71)

The Petitioner followed up with Dr. Cole's office on 12/29/14. The FCE was reviewed, and the Petitioner was placed at maximum medical improvement at this time with permanent restrictions per the FCE. The Petitioner's permanent work restrictions were no lifting more than 29 pounds up to the waist level, and only 10 pounds with the left upper extremity up to shoulder level. (PX 10, p 30-32)

The Petitioner was not able to return to his position with the Respondent with the permanent restrictions as set forth by the FCE and Dr. Cole. (AT 56) The Petitioner testified that he requested accommodation of his permanent work restrictions and the Respondent did not provide him a job within his permanent work restrictions. (AT 56)

Shortly after the Petitioner was placed on permanent restrictions and released at MMI by Dr. Cole, the Respondent sent the Petitioner for an IME with Dr. Nathan Mall in St. Louis. The Petitioner was aware that Dr. Mall prepared a report following his examination as well as an addendum report in March 2015. The Arbitrator notes that the Respondent did not submit Dr. Mall's reports into evidence.

The Petitioner subsequently moved from the Champaign, IL area to the Canton, IL area. When the Petitioner moved to the Canton, IL area he established care with a new primary care physician, Dr. Renick at Graham Medical Group. (AT 57)

The Petitioner also testified that the Respondent later sent the Petitioner for a second Independent Medical Examination with Dr. Mitchell Rotman on 3/28/16. The Petitioner was only seen by Dr. Rotman one time. (AT 58)

The Petitioner testified that up to June of 2016 he had been receiving benefits from the workers' compensation carrier in the form of temporary total disability and then maintenance benefits. (AT 58) The Petitioner also testified that the Respondent had paid for his medical bills up to June of 2016. (AT 58)

The Petitioner was aware that surveillance was conducted in July of 2016. The Petitioner reviewed the surveillance films taken on 7/29/16. The Petitioner testified that he was moving a tub as some of the individuals he had hired to do work on one of his properties was unable to do so that day. The Petitioner testified that the tub he was moving was light weight and made of fiberglass. The Petitioner testified that he was not violating his permanent restrictions by moving

the tub. The Petitioner testified he has not violated his permanent restrictions at all since they were issued by Dr. Cole in December of 2014. (AT 58-61)

The Respondent cut the Petitioner's benefits off following obtaining the surveillance video and Dr. Rotman's Independent Medical Examination report. The Petitioner testified that in July of 2016 when his benefits were cut, he was 45 years old. Before the Respondent the Petitioner had done primarily factory and construction work. The Petitioner testified that he would not be able to do any of the work that he had done in the past due to his permanent work restrictions. (AT 62)

As a result, the Petitioner went to school to retrain and reeducate himself in an attempt to earn a higher wage. (AT 62-63) The Petitioner initially went to Illinois Central College in East Peoria, also known as ICC. The Petitioner attended ICC from September of 2015 through the Spring of 2017. The Petitioner obtained an Associate's Degree in Architectural Construction from ICC. (AT 63-64)

Subsequent to ICC the Petitioner attended Illinois State University and obtained his Bachelor's Degree in Construction Management. The Petitioner testified that he used student loans to pay for his schooling at both ICC and Illinois State University. The Petitioner's educational costs and retraining expenses were admitted into evidence as Petitioner's Exhibit 13.

After the Petitioner obtained his degree from Illinois State University he began looking for a job. The Petitioner did find work with William Charles Construction. (AT 65) The Petitioner is a Project Engineer for William Charles Construction doing both civil and rail work. (AT 66) The Petitioner testified that his new employer does excavation, groundwork, they build fuel and other things and for railroad stations and depot's. (AT 66) The Petitioner began working for William Charles on 7/1/19. As of the time of trial the Petitioner still holds his Project Engineer position with William Charles Construction. (AT 67) The Petitioner testified that his current earnings with William Charles Construction are right around $1,250/week…. (AT 67)

The Petitioner testified that as of trial he continues to have problems with numbness and tingling in his left hand. He notices that he continuously drops things. The Petitioner testified that the numbness and tingling he notices is constant in his left hand. The Petitioner testified that his right hand is not as bad, and he is right hand dominant. The Petitioner testified that he has difficulty buttoning his shirts, buttoning his pants and even putting a belt on. The Petitioner testified that he used to work on cars and cannot do so anymore because of his hands and his left shoulder. The Petitioner must pay others to mow his yard.

The Petitioner testified that he also has constant pain in his left shoulder. The Petitioner is still taking up to 6 Norco's a day to be able to work. The Petitioner testified that he has difficulty sleeping because of pulling sensations in his neck and his shoulder as well as the numbness and tingling in his hands. (AT 67-70) The Petitioner testified that he does not believe that he could do the type of work that he was doing for Clifford Jacobs at the time of his accident. The Petitioner testified that he believed that his injuries took his life away from him and he was only 40 years old at the time of his first accident in March 2011. The Petitioner testified that he has suffered great financial difficulty as well as in his personal relationships. (AT 70-71)

Christopher Stead also testified at the time of trial. Mr. Stead is 46 years old and lives in Cuba, IL. Mr. Stead is personally familiar with the Petitioner was hired by the Petitioner to help him do some repair work on a house that the Petitioner owned in Canton, IL in July of 2016. Mr. Stead was involved in the work that is the subject of the surveillance video admitted into evidence by the Respondent. Mr. Stead testified that the tub that was being moved in the surveillance video was made of fiberglass and it weighed approximately 40-50 lbs. Mr. Stead testified that he did most of the moving and that anything that the Petitioner did was kind of bracing the tub in his opinion. Mr. Stead testified that he believed he was moving most of the tub and the Petitioner was doing little in the form of actually lifting the tub. (AT 139-141)

Delores Coulter also testified at the time of trial. Ms. Coulter is the Petitioner's fiancé and they have been together for 9 years. Ms. Coulter testified that she has helped the Petitioner throughout his workers' compensation case. This help has come in the form of financial aid as well as self care, helping the Petitioner with things such as yard work, shopping, dressing, eating and many other aspects of the Petitioner's daily life. Ms. Coulter has helped the Petitioner with things such as paying for his schooling, gas, as well as giving him a place to stay when the Petitioner was attending ICC and Illinois State University. (AT 144-146)

Mr. Steven Bone also testified at the time of trial. Mr. Bone is the owner of an agency called Advanced Investigative Services which is a private detective agency licensed in Illinois and 12 other states. Mr. Bone testified that he was the one who performed the surveillance on the Petitioner in July of 2016. Mr. Bone prepared a written report as well as the video surveillance.

Dr. Kolb's Deposition

Dr. Edward Kolb testified via evidence deposition on 3/23/18. Dr. Kolb went to Rush Medical Center in Chicago for both medical school and residency training. Dr. Kolb is a board-certified orthopedic surgeon. Dr. Kolb treats patients of various musculoskeletal problems. Dr. Kolb estimated that 50% of his practice is dedicated to work on the upper extremities. He performs 10-12 shoulder surgeries and 10-12 carpal tunnel release surgeries on average each month. (PX 2)

Dr. Kolb initially met with the Petitioner on 4/2/12. The Petitioner presented with left shoulder pain for the past month as well as bilateral hand numbness and tingling. Dr. Kolb took an extensive history and performed an examination. He also took x-rays and reviewed the Petitioner's 3/26/12 left shoulder MRI. Dr. Kolb diagnosed the Petitioner with severe osteoarthritis of the left shoulder and left sided carpal tunnel syndrome. Dr. Kolb believed that the most pressing issue at that time was the Petitioner's carpal tunnel syndrome for which he recommended a left carpal tunnel release. (PX 2)

Dr. Kolb performed a left carpal tunnel release procedure on 4/5/12. (PX 2)

In follow up Dr. Kolb noted the Petitioner had significant improvement regarding his pain as well as the numbness and tingling in his left hand. When the Petitioner followed up with Dr. Kolb on 4/16/12 he did note the Petitioner had evidence of right carpal tunnel syndrome. Dr. Kolb recommended the Petitioner undergo a right carpal tunnel release. There was also

discussion regarding the Petitioner undergoing a resurfacing procedure for his left shoulder symptoms. (PX 2)

Dr. Kolb performed a right carpal tunnel release procedure on 4/26/12. (PX 2)

In follow up on 5/7/12 the Petitioner did not have any significant pain in his bilateral hands. The Petitioner did have some numbness in the left middle finger which was residual from the pre-operative time frame. The Petitioner continued to have pain his left shoulder. The focus at this point shifted to the left shoulder and the plan was to proceed with a left shoulder resurfacing procedure versus a shoulder replacement type procedure. (PX 2)

On 5/22/12 Dr. Kolb performed surgery on the left shoulder. Dr. Kolb described the resurfacing procedure that he performed at that time as essentially resurfacing the humeral head and putting on an artificial or metal head to that portion of the joint. The resurfacing procedure is less invasive than a total shoulder replacement. (PX 2)

The Petitioner followed up with Dr. Kolb on 6/4/12. The Petitioner was doing fairly well but did have complaints of residual soreness in his left shoulder. The Petitioner did have some residual numbness and tingling in the left hand from his previous carpal tunnel syndrome. Physical therapy was to be initiated with some work restrictions to protect the shoulder. Dr. Kolb testified that following the shoulder procedure that he performed on the Petitioner, for the first six weeks after surgery he would have the Petitioner avoid any type of active internal rotation. Dr. Kolb would also recommend the Petitioner avoid excessive internal rotation and at approximately six weeks out to gradually increase range of motion and strengthening. (PX 2)

Dr. Kolb saw the Petitioner again on 7/2/12. The Petitioner's left shoulder pain had improved compared to pre-surgery but he did still notice stiffness. The Petitioner also continued to have decreased sensation in his middle finger on the left hand which was present secondary to his previous carpal tunnel syndrome. Dr. Kolb recommended continued physical therapy and to re-check the Petitioner in six weeks. In August of 2012 the Petitioner again noted improvement with his left shoulder. Physical therapy was increased to three times per week. (PX 2)

Dr. Kolb saw the Petitioner subsequently on 9/17/12. At this time the Petitioner continued to have discomfort and felt as though he had not made much progress over the past month. The Petitioner had pain over the front part of his shoulder radiating down to the elbow. Dr. Kolb recommended the Petitioner continue physical therapy and if at the next follow up the Petitioner did not show significant signs of improvement that an MRI would be ordered to insure healing of the soft tissues. (PX 2)

The Petitioner did undergo a subsequent left shoulder MRI on 10/25/12. The Petitioner followed up with Dr. Kolb subsequently on 10/29/12. From review of the MRI Dr. Kolb noted inflammation around the biceps tendon as well as evidence of a biceps tenodesis. However, Dr. Kolb did note that it was difficult to interpret the integrity of the rotator cuff tear secondary to the metal artifact which was the hardware from the initial left shoulder procedure. At this time Dr. Kolb did recommend the Petitioner seek a second opinion perhaps at Washington University in St. Louis. (PX 2)

The Petitioner later saw Dr. Kolb on 11/4/13. The Petitioner reported having residual numbness in his left hand. It was also noted that the Petitioner had been seen by Dr. David Fletcher who had performed an FCE and recommended further follow up with Dr. Kolb to discuss potential surgical options. On 11/4/13 the Petitioner also presented with complaints of numbness and tingling in his middle and ring finger with some hypersensitivity within the fourth web space extending approximately to the palmer aspect of the hand. Dr. Kolb performed an examination and diagnosed the Petitioner as status post left carpal tunnel release from a year and a half prior. Dr. Kolb recommended obtaining an updated EMG study to further evaluate the nerve function. (PX 2)

The Petitioner did undergo a subsequent EMG study performed by Dr. Pegg on 11/5/13. The Petitioner then followed up with Dr. Kolb on 11/11/13. Dr. Kolb reviewed the EMG which revealed evidence of severe right ulnar nerve entrapment at the right elbow. Dr. Kolb recommended the Petitioner undergo a right elbow ulnar nerve decompression with anterior ulnar nerve transposition. (PX 2)

Dr. Kolb testified to his knowledge the Petitioner had not underwent the right ulnar nerve procedure. (PX 2)

The Petitioner later followed up with Dr. Kolb on 3/6/18. The Petitioner reported that he had seen Dr. Brian Cole at Midwest Orthopedics at Rush who performed a hemi-arthroplasty procedure on the left shoulder. The Petitioner described Dr. Cole placing him on a permanent lifting restriction of 10lbs and the Petitioner was now back in school looking to transition to a more sedentary job given his permanent work restrictions. At the 3/6/18 visit the Petitioner continued to complain of pain in both shoulders with pain radiating into his neck region. The Petitioner described radicular complaints throughout his bilateral upper extremities as well as numbness and tingling in both hands and weakness in his bilateral upper extremities. Dr. Kolb performed an examination and recommended the Petitioner consider additional work up including a bone scan to rule out potential loosening of his humeral prosthesis. Dr. Kolb recommended the Petitioner further follow up potentially with the clinic at Southern Illinois University in Springfield given the complexity of his case. Dr. Kolb suspected that the majority of his complaints at this point may be stemming from his cervical spine and the Petitioner was offered additional formal physical therapy. (PX 2)

Dr. Kolb testified that he believed that the type of repetitive activities the Petitioner participated in as a laborer for the Respondent could at least aggravate, if not cause, his bilateral carpal tunnel syndrome. (PX 2, p 43)

Dr. Kolb also testified that he believed that the accident the Petitioner described of 3/7/12 appears to have been at least an aggravating factor as it pertains to his left shoulder condition and the need for subsequent treatment including surgery. (PX 2, p 44)

Dr. Kolb's opinions were based on his medical experience, treating patients who have these types of conditions in the past and his experience seeing who worked similar job duties as the Petitioner. Dr. Kolb also testified that his causation opinion as it relates to the Petitioner's left

shoulder was a combination of the type of work that the Petitioner performed as well as the specific accident of 3/7/12 that the Petitioner described. Dr. Kolb confirmed that there was no evidence of any treatment that the Petitioner had underwent for his left shoulder prior to March 2012. (PX 2, p 76)

Dr. Cole's Deposition

Dr. Brian Cole also testified via evidence deposition on 6/17/19. Dr. Cole is an orthopedic surgeon specializing in care of the shoulder, elbow and knee. Dr. Cole has been in practice for 23 years. He participated in a residency at the hospital for special surgery and is a professor at the Department of Orthopedics at Rush. Dr. Cole has been board certified in orthopedic surgery since 1997. Dr. Cole testified that approximately 50% of his practice is dedicated to treatment of shoulder conditions. Dr. Cole performs approximately 400 shoulder surgeries a year. Dr. Cole testified that he performs 50-60 shoulder replacements a year. (PX 3)

Dr. Cole initially saw the Petitioner on 3/7/13. Dr. Cole believed that the Petitioner was referred to him by his treating physician Dr. Kolb. The Petitioner presented with pain and stiffness in the left shoulder. Dr. Cole noted loss of range of motion and pain with the range of motion testing. Dr. Cole diagnosed a persistent painful left shoulder after undergoing a partial left shoulder replacement previously. Dr. Cole recommended the Petitioner undergo a revision total shoulder replacement. Dr. Cole issued light duty restrictions of no overhead lifting greater than 5lbs. (PX 3)

On 8/20/13 Dr. Cole performed a revision shoulder replacement with a biceps tenodesis. (PX 3)

The Petitioner followed up with Dr. Cole 10 days later on 8/30/13. The Petitioner was doing fine and had a standard post-operative physical examination. Dr. Cole issued restrictions of no use of the left arm. Dr. Cole testified the Petitioner would have needed to be off work entirely from the date of the surgery through the initial post-operative visit 10 days later. Dr. Cole also ordered physical therapy as of 8/30/13. (PX 3)

As of 9/27/13 Dr. Cole noted the Petitioner had progressed with increased range of motion as well decreased pain. Dr. Cole continued to recommend physical therapy and restrictions were issued of limited lifting, as well as overhead activity limited, essentially desk top duties only. These recommendations and restrictions were maintained as of the 11/8/13 visit with Dr. Cole. (PX 3)

The Petitioner then followed up with Dr. Cole on 10/6/14. The Petitioner explained that he had missed various appointments due to ongoing personal issues. Dr. Cole in October 2014 noted increasing range of motion and decreasing pain. He recommended continued physical therapy. Dr. Cole also discussed having the Petitioner undergo an FCE at the conclusion of physical therapy. Dr. Cole testified this was his standard practice. (PX 3)

The Petitioner did undergo an FCE at Advanced Rehab and Sports Medicine on 12/16/14. The overall classification of effort was considered valid due to the Petitioner performing consistently during a repeated measures protocol. Maximum weight achieved to waist height was bilaterally

49.12lbs, on the right 52.32lbs, and on the left 29.43lbs. The Petitioner met the material handling demands for a sedentary demand vocation per the Dictionary of Occupational Titles. (PX 3)

The Petitioner followed up with Dr. Cole on 12/29/14. This was the last visit the Petitioner had with Dr. Cole. Dr. Cole reviewed the FCE and noted that it was a valid study. Dr. Cole had no ongoing treatment recommendations for the Petitioner as of 12/29/14. Dr. Cole released the Petitioner at MMI with permanent restrictions as of this date. Permanent work restrictions issued by Dr. Cole were limit lifting with the left upper extremity to 29lbs up to waist level, up to 10lbs with the left upper extremity to shoulder, and only occasionally overhead use of the left upper extremity. Dr. Cole noted the Petitioner will likely continue to have left shoulder pain with any amount of lifting but is safe to work within these parameters. Dr. Cole testified that as of 12/29/14 the Petitioner was released at MMI with these permanent restrictions. Dr. Cole testified that he believed the Petitioner likely had a pre-existing condition in his left shoulder that was aggravated by the accident of 3/7/12. Dr. Cole believed that all the treatment was rendered to the Petitioner's left shoulder subsequently would be related to the 3/7/12 accident including the need for the permanent work restrictions that he issued. (PX 3, p 20-21)

Dr. Cole confirmed that the FCE is an objective test and can be used to confirm or deny the legitimacy or validity of subjective complaints. Dr. Cole did not believe that the Petitioner, given his permanent work restrictions, would be able to return to his original position that he held with the Respondent. (PX 3, p 34-35)

Dr. Rotman's Deposition

Dr. Mitchell Rotman testified on three occasions in this case. Dr. Rotman had seen the Petitioner for an IME on 3/28/16. Dr. Rotman was provided records to review including the original IME report from Dr. Nathan Mall. Dr. Rotman opined that there was objective correlation for the Petitioner's subjective complaints in regards to his left shoulder. Dr. Rotman indicated that he would advise the Petitioner avoid heavy overhead lifting but would not restrict him to any activities below shoulder level. Dr. Rotman did not believe that the Petitioner's left shoulder condition was caused by his job duties with the Respondent. Dr. Rotman had no issues with the treatment with the Petitioner had underwent for both his left shoulder condition as well as his bilateral carpal tunnel syndrome. Dr. Rotman opined that the incident at work described by the Petitioner from 3/7/12 was "merely a triggering factor for discomfort" in regards to the Petitioner's left shoulder. Dr. Rotman prepared an addendum report dated 6/10/16. Dr. Rotman was provided videos of the Petitioner's job duties for the Respondent. Dr. Rotman noted there was some heavy gripping involved in the forging activities. Dr. Rotman indicated that if the Petitioner was engaged in significant gripping while operating the hammer where he would be holding parts constantly and not letting go, that would be an aggravating factor for an idiopathic carpal tunnel syndrome.

Dr. Rotman prepared another addendum report dated 7/25/16. In this report Dr. Rotman indicated he did not believe the Petitioner's left shoulder end stage arthritis was caused, aggravated or accelerated by the Petitioner's employment with the Respondent. Dr. Rotman did not believe the Petitioner's carpal tunnel syndrome was caused or accelerated by the Petitioner's employment with the Respondent. Despite that, Dr. Rotman went on to state that it was difficult

and impossible to state with any reasonable degree of medical certainty whether the Petitioner's carpal tunnel condition was aggravated by his work since he did not see a long enough video segment to determine if the Petitioner was doing prolonged heavy gripping.

Dr. Rotman prepared an additional addendum report dated 9/6/16. This time Dr. Rotman was provided additional job videos which demonstrated the Petitioner's job duties as well as the surveillance video which had been conducted in July of 2016.

Dr. Rotman testified at the time of his 11/27/17 deposition that he performs 4-5 Independent Medical Examinations a week. Of these IMEs, over 90% are done at the request of Respondents. Dr. Rotman has been performing IMEs for over 20 years. Dr. Rotman charges $1,800.00 for an IME and each addendum report is another $250.00-$300.00.

Dr. Rotman confirmed that his 11/27/17 examination that his initial opinions in regards to the Petitioner's bilateral carpal tunnel syndrome and his left shoulder condition were based upon and inquiry that the Petitioner's injuries were all repetitive trauma both to his bilateral hands and left shoulder. In fact the Petitioner's left shoulder claim was not a repetitive trauma case and was instead two specific accidents which occurred on 3/7/12. Dr. Rotman did testify that a traumatic injury or incident can aggravate a preexisting arthritic condition of the shoulder. Dr. Rotman also testified that an aggravation of a preexisting condition can lead to surgery including a shoulder replacement. (RX 7, p 8-9)

Dr. Rotman later performed an additional addendum report dated 4/19/18. Dr. Rotman was provided additional medical records and at this time opined that he did not believe that the specific accidents suffered by the Petitioner on 3/7/12 were a causative, aggravating or accelerating factor in his left shoulder condition.

Dr. Rotman prepared his final addendum report on 8/18/20. Dr. Rotman was provided additional medical records to review which he stated did not change his original opinions in this case.

Conclusions of Law

12 WC 19288 (accident date 3/7/12; hammer striking tongs)

Accident:

The Arbitrator finds the Petitioner has met his burden of proof regarding the issue of accident for his 3/7/12 accident when he a hammer struck his tongs. The Arbitrator notes that the Petitioner reported the accident, the medical records after the accident provide a consistent and accurate history, and the Respondent presented no evidence to dispute this occurrence. The Arbitrator finds the Petitioner to be sincere, consistent and credible. The Petitioner's treating records corroborate that Petitioner's complaints in his left shoulder were symptomatic as a consequence of his accident of 3/7/12.

Given the sequence of events, the totality of the evidence, and the treatment records and opinions of Dr. Kolb and Dr. Cole, the Arbitrator finds that the Petitioner sustained a compensable

accident arising out of and in the course of his employment with the Respondent on 3/7/12 when a hammer struck his tongs.

Causation:

As discussed above the above the Arbitrator finds that the Petitioner sustained a compensable accident arising out of and in the course of his employment with the Respondent on 3/7/12 when a hammer struck his tongs.

Petitioner's treating surgeons, Dr. Kolb and Dr. Cole, who both examined the Petitioner regularly, were in the best position to judge the cause of Petitioner's complaints. Dr. Kolb testified that the accident the Petitioner described of 3/7/12 appears to have been at least an aggravating factor as it pertains to his left shoulder condition and the need for subsequent treatment including surgery. (PX 2, p 44) Dr. Cole testified that he believed the Petitioner likely had a pre-existing condition in his left shoulder that was aggravated by the accident of 3/7/12. Dr. Cole believed that all the treatment to Petitioner's left shoulder would be related to the 3/7/12 accident including the need for the permanent work restrictions that he issued. (PX 3, p 20-21)

The Arbitrator notes that the Respondent paid for all Petitioners medical expenses and TTD stemming from his left shoulder condition, chose not to submit into evidence the IME report of their first section 12 physician Dr. Mall, and base their causation defense on their second IME physician Dr. Rotman. The Arbitrator notes that Dr. Rotman only examined the Petitioner one time on 3/28/16, which was 15 months after Petitioner had been placed at MMI by Dr. Cole. The Arbitrator is not persuaded by Dr. Rotman's opinions as to the nature of the Petitioner's work for the Respondent or his opinions on causation in this case.

The Arbitrator is persuaded by the sequence of events, the totality of the evidence, and the opinions of both Dr. Kolb and Dr. Cole. The Arbitrator finds that Petitioner's current condition of ill-being regarding his left shoulder to be causally related to his accident of March 7, 2012 when a hammer struck his tongs.

Wages:

The Petitioner's wages were admitted into evidence as Respondent's Exhibit 1. The Petitioner earned $59,839.50 in the 52 weeks before the accident, but only work 50 of those weeks. $59,839.50 divided by 50 gives and average weekly wage of $1,196.79. This would equate to a TTD rate of $797.86.

Also admitted into evidence were Respondent's payout sheets for TTD and maintenance. (RX 4) The payout sheets show that Petitioner was paid TTD and later maintenance at $797.86 a week.

The Arbitrator finds that the Petitioner's average weekly wage for his 3/15/12 accident is $1,196.79.

Medical Bills, Maintenance Benefits, **Nature & Extent:**The Arbitrator notes that the Petitioner sustained two compensable work accidents involving his left shoulder which occurred

on 3/7/12 and they are docketed as case numbers 12 WC 19287 and 12 WC 19288. The Arbitrator awards the Petitioner all medical expenses, maintenance benefits and permanency to be paid under case number 12 WC 19287. As such no medical expenses, maintenance benefits or permanency is awarded under this case, which is 12 WC 19288.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC023913
Case Name	Maria Delgado v. Smithfield Foods Inc DBA Armour-Eckrich Meats LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0035
Number of Pages of Decision	26
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Kenneth Wolfe
Respondent Attorney	Heather Boyer

DATE FILED: 1/23/2023

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☐ 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: Up	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARIA DELGADO,

Petitioner,

vs. NO: 17 WC 23913

SMITHFIELD FOODS INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability and the nature and extent of Petitioner's 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.

Petitioner worked for Respondent processing meat products. Respondent stipulated that Petitioner sustained a work-related accident on March 27, 2017 in which she tripped over plastic and landed on her extended left hand. An MRI taken on April 12, 2017, showed a large Hill-Sachs impaction with associated contusion, anterior/inferior labral tear and anterior interior glenoid fracture, SLAP tear into biceps anchor and at the posterior inferior labrum, moderate glenohumeral joint effusion, loose intra-articular bodies, mild supraspinatus and moderate infraspinatus tendinosis, and intracapsular long head biceps tendinosis. Petitioner had three surgeries on her left shoulder. On June 20, 2017, Dr. Suchy performed arthroscopic biceps tenotomy, biceps capsulectomy/lysis of adhesions, manipulation of left shoulder under anesthesia, and labral repair for labral tear, partial biceps tendon tear with extensive tenosynovitis, and significant capsule scarring. On October 16, 2017, Dr. Suchy performed another manipulation of the left shoulder with injection of Marcaine for Adhesive capsulitis.

Sometime thereafter, Petitioner sought treatment from Dr. Marra. He ordered a repeat MRI which was taken on June 27, 2018. It showed "large recurrent SLAP lesion from 3-9:00," partial thickness articular surface supraspinatus insertion tear without full-thickness rotator cuff tear or associated atrophy, diffuse glenoid cartilage thinning, and suture anchors at the central articular surface of the glenoid. On September 24, 2018, Dr. Marra performed extensive arthroscopic debridement, capsule release, and removal of foreign material for osteoarthritis, presence of foreign bodies, and capsular contracture.

After post-operative physical therapy, on September 10, 2019, Dr. Marra noted that Petitioner had not improved much. She continued to have 3-4/10 pain but the cervical evaluation did not show neurologic compression. They discussed a shoulder arthroplasty. He explained that the prosthetic had finite longevity and Petitioner was 54. She wanted to delay surgery. Petitioner testified she did not have the shoulder replacement surgery at the time of arbitration.

Regarding the condition of her left shoulder at the time of arbitration, Petitioner testified that currently she had pain in her left shoulder every day, It has affected her "whole life." She has difficulties with activities of daily living; she had difficulty with dressing, hygiene, cooking, cleaning, sleeping, and it has affected her sex life. Her arm changes color and gets cold. The pain radiates to her fingers. She has gotten depressed.

Respondent sent Petitioner for three medical examinations with Dr. Atluri, pursuant to §12 of the Act. He first examined Petitioner on May 23, 2017. After his examination and review of the limited medical records to date, Dr. Atluri diagnosed left shoulder fracture dislocation post closed reduction (at an ER) and internal derangement. She had persistent mechanical abnormalities in her left shoulder.

Dr. Atluri opined that the objective findings included the fracture dislocation, persistent mechanical abnormalities in the shoulder, significant intraarticular fracture of the glenoid, multiple loose fragments, and a labral tear associated with the fracture. He opined that her condition was causally related to her accident noting that it was a "plausible" mechanism of injury, she reported sudden onset of pain, she had no prior problems with her shoulder, and the MRI was consistent with an acute trauma to the shoulder. The treatment she received was reasonable and appropriate for her work injury, she was not at maximum medical improvement, and prospective surgery was indicated. Petitioner could continue working with only one hand

Dr. Atluri examined Petitioner again on March 6, 2018, which was after her second surgery (manipulation under anesthesia). After his examination and review of available medical records, Dr. Atluri diagnosed left shoulder fracture dislocation post arthroscopy and possible brachial plexus injury. She had ongoing complaints despite extensive treatment including two surgeries.

Dr. Atluri noted that Petitioner had two fractures, the humeral head fracture and the intraarticular. "The fractures have consolidated; however, they were never reduced and have healed in a displaced position." He diagnosed possible brachial plexus injury based on her weakness, but that could be associated with the mechanical changes in her shoulder. Her left shoulder condition was "directly attributable" to her work injury. Her condition did not represent an aggravation of a pre-existing condition.

Dr. Atluri noted that the surgery she had did not adequately address her mechanical pathology. He recommended evaluation by shoulder reconstruction specialist for possible reconstruction/replacement. She could work light duty and restrictions may become permanent after she reached maximum medical improvement.

Dr. Atluri examined Petitioner a third and last time on May 2, 2019, after her last surgery with Dr. Marra. Dr. Atluri indicated that Petitioner had postsurgical/post traumatic glenohumeral arthrosis, which a misplaced suture contributed to. She also had a fracture of the inferior glenoid associated with her labral tear. He reiterated that the work accident was the direct cause of her left-shoulder condition. He also reiterated his belief that the initial surgery did not adequately address her pathology and the additional treatment thereafter was reasonable, appropriate, and related to the work injury.

Dr. Atluri thought prospective treatment was reasonable. She might eventually need shoulder replacement surgery, but he would not recommend that at that time, due to her relative youth. Permanent restrictions were reasonable at that time and she was not able to return to work at her prior job at full duty. She was at maximum medical improvement, despite the fact that she might need additional treatment in the future.

Petitioner submitted an exhibit of her job search logs. The exhibit consists of 194 pages. Many pages are incomplete and most indicate the contact was "in person" and many notations indicated that the employer was not hiring.

Petitioner was evaluated by two certified vocational rehabilitation counselors. Ms. Entenberg, from Vocamotive, met and evaluated her employability on her behalf on August 28, 2019. Ms. Schmidt, from Triune, evaluated her employability on September 13, 2019 but did not personally meet with her, on Respondent's behalf.

Ms. Entenberg indicated that she reviewed the operative reports, Dr. Atluri's reports, Dr. Marra's note from August 7, 2019, Respondent's letter of termination, and Petitioner's job search logs. Ms. Entenberg noted that Respondent's Section 12 medical examiner, Dr. Atluri, declared her at maximum medical improvement on May 2, 2019 and restricted her to no overhead lifting, no frequent reaching with the left arm, and no lifting over five pounds to waist level. For a while, Respondent accommodated her restrictions but eventually terminated her. Petitioner had an appointment with Dr. Marra on September 10, 2019 at which time they would discuss shoulder replacement.

Ms. Entenberg noted that currently Petitioner reported pain ranging between 4-7/10. She demonstrated very limited range of motion, had difficulty holding her arm at desk level, or holding a phone to her ear with her left hand for any prolonged period. She had difficulty with activities of daily living, did not have a computer, did not use e-mail, did not use Facebook, did not know any computer programs, and did not know how to type.

Ms. Entenberg also noted that Petitioner's job is considered to be at a medium physical demand level, unskilled, and had no transferable skills. Petitioner earned $18.40 an hour. She thought Petitioner was "an appropriate candidate for a vocational rehabilitation program, albeit, within a very limited market."

Ms. Entenberg wrote that Petitioner "has been doing a diligent job search; given her work history, limited education, lack of skills, lack of knowledge of how her restrictions impact the labor market and lack of computer and clerical skills. She has been making in-person contacts to factories, but is rejected when provided her restrictions." She recommended that Petitioner seek employment as sales attendant/cashier where the entry-level wages were $9.10 to $9.63 an hour.

Ms. Entenberg applied the criteria in *National Tea* and concluded Petitioner that lost earning potential due to her injury/restrictions, she had no vocational rehabilitation services, she was not an appropriate candidate for training due to her age, work history, and restrictions, she had no transferable skills, she performed a diligent job search, she had permanent restrictions, prognosis for placement was guarded, and the best she could get would be minimum wage jobs ($8.50 to $10.00 an hour).

Ms. Schmidt reviewed Dr. Atluri's medical reports, an analysis of Petitioner's job activities, Petitioner's job application for employment with Respondent, and a vocational rehabilitation evaluation by Ms. Entenberg. She did not meet with or interview Petitioner.

Petitioner sustained an injury to her non-dominant shoulder and according to Dr. Atluri she was at maximum medical improvement as of May 2, 2019, she should avoid overhead use of her left arm, avoid frequent reaching with her left arm, and was limited to lifting up to five pounds below shoulder level. Ms. Schmidt concluded that Petitioner had transferable skills to be able to work as quality control inspector, attendant, laundry attendant, light machine operator, and cashier. She identified 18 jobs for which she believed Petitioner was qualified.

The exhibit also includes a progress report dated May 5, 2020. Ms. Schmidt noted that Petitioner made a total of 248 in person-contacts, of those 145 did not indicate whether it was hiring, 93 reported they were not hiring, and only two indicted they were hiring. Petitioner reported 19 interviews. Of those interviews, four resulted in notations that the job exceeded restrictions but no specifics or job title was provided, three resulted in specific restrictions were exceeded: *i.e.* 40 lbs lifting or heavy lifting, but no job title was provided, five did not show job title or outcome of the interview, and seven provided job title but no other information.

Ms. Schmidt noted that Petitioner's job search comprised of making cold calls and visits to prospective employers with no effort to seek out companies that were hiring or had employment for which Petitioner would be qualified. Even though Petitioner made an effort to visit employers and complete applications, her job search effort was "very ineffective" and lacked any follow up.

Regarding the issue of temporary total disability benefits, the Arbitrator awarded Petitioner 41&1/7 weeks of benefits. In so doing the Arbitrator denied Petitioner's request to include seven months of benefits after her termination and into her independent job search. He did so based on his determination that Petitioner's testimony about her job search was not credible, she did not conduct a "diligent" job search, and it did not constitute a good faith effort to attain employment. He found the opinions of Respondent's vocational rehabilitation counselor, Ms. Schmidt, more persuasive than those of Petitioner's vocational rehabilitation counselor, Ms. Entenberg. We agree with that determination of the Arbitrator and affirm and adopt that aspect of the Decision of the Arbitrator.

On the issue of the nature and extent of Petitioner's permanent partial disability, the Arbitrator awarded Petitioner 175 weeks of permanent partial disability benefits representing loss of 35% of the person-as-a-whole. In so doing, the Arbitrator gave significant weight to the fact that Petitioner was employed as a packer/peeler and was unable to return to work at that occupation. He gave some weight to her age (54) which meant she had a "significant portion" of her work life to deal with the injury. He also gave significant weight to the fact that Petitioner suffered a loss of earning potential based on her work restrictions. Finally, the Arbitrator gave significant weight to evidence of disability corroborated by the medical records, noting that Dr. Atluri recommended significant permanent work restrictions and Petitioner's testimony about ongoing symptoms.

The Commission agrees with the Arbitrator that Petitioner did not sustain her burden of proving she was permanently and totally disabled from employment. As noted above, we agree with the Arbitrator that Petitioner's job search was less than diligent and that the opinions of Ms. Schmidt are more persuasive than those of Ms. Entenberg. We also note that although Ms. Entenberg concluded that Petitioner's prospects for obtaining employment were "guarded," she did not specifically opine that Petitioner was unemployable. On the other hand, the Commission is cognizant that Petitioner sustained a severe injury to her left shoulder which greatly impaired her ability to work and perform activities of daily living.

The Commission does not take issue with the relative value the Arbitrator placed on the individual statutory factors to be considered in awarding permanent partial disability benefits. However, we interpret those factors to arrive at a somewhat higher permanent partial disability award. It is clear that Petitioner now has extremely stringent permanent work restrictions. In addition, it appears that she will basically be limited to little more than minimum wage jobs and is likely to need shoulder arthroplasty in the future. The Commission finds that Petitioner has suffered loss of the use of 50% of the person-as-a-whole from her work related injuries.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Amended Decision of the Arbitrator dated February 3, 2022, is modified as noted above and is otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner temporary total disability benefits of $481.32 for 41&1/7 weeks, as provided in §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner permanent partial disability benefits of $433.19 for 250 weeks because the work-related injuries she sustained caused the loss of the use of 50% of the person-as-a-whole, as provided in §8(d)2 of the Act.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all 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.

January 23, 2023

DLS/dw
O-11/23/22
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	17WC023913
Case Name	DELGADO, MARIA v. SMITHFIELD FOODS, INC. D/B/A ARMOUR-ECKRICH MEATS, LLC.
Consolidated Cases	
Proceeding Type	
Decision Type	Amended Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Kenneth Wolfe
Respondent Attorney	Heather Boyer

DATE FILED: 2/3/2022

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

/s/Frank Soto, Arbitrator

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
AMENDED ARBITRATION DECISION

MARIA DELGADO,
Employee/Petitioner

Case #**17 WC 23913**

v.

Consolidated cases:

SMITHFIELD FOODS, INC. D/B/A ARMOUR-ECKRICH MEATS, LLC,
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 **FRANK SOTO**, Arbitrator of the Commission, in the city of **WHEATON**, on **November 30, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **3/27/2017**, 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 $**37,542.96**; the average weekly wage was $**721.98**.

On the date of accident, Petitioner was ***54*** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $19, 801.50 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $ **19, 801.50**. Respondent is entitled to a credit of $0.00 under Section 8(j) of the Act.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $**481.32**/week for **41-1/7** weeks, commencing **6/20/17-6/28/17; 7/6/17-7/12/17; 10/16/17-10/22/17; 9/24/18-11/19/18; 8/8/19** through **3/2/2020**, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $19,801.50 for temporary total disability benefits that have been paid. Petitioner request for maintenance benefits his denied, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Permanent Partial Disability: Person as a whole

Respondent shall pay Petitioner permanent partial disability benefits of $**433.19**/week for **175** weeks, because the injuries sustained caused the **35**% loss of the person as a whole, as provided in Section 8(d)2 of the Act, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Respondent shall pay Petitioner compensation that has accrued from March 27, 2017 through November 30, 2021, and shall pay the remainder of the award, if any, in weekly payments.

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

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

By: /o/ *Frank J. Soto* **FEBRUARY 3, 2022**

Procedural History

This case was tried on November 30, 2021 pursuant to Petitioner's Request for Hearing. The issues in dispute are whether Petitioner's current condition of ill-being is causally connected to this injury, whether Respondent is liable for unpaid medical bills, whether Petitioner is entitled to maintenance benefits and the nature and extent of the injury. (Arb. Ex. #1).

Findings of Fact

Testimony of Maria Delgado

Maria Delgado (hereinafter referred to as "Petitioner") testified she had been employed with Smithfield Foods (hereinafter referred to as "Respondent") since March 16, 2017, working as a Packer/Peeler. (T. 12). Petitioner testified she sustained an accident at work on March 27, 2017 around 9:30 p.m. while working on the East Cryovac machine. Petitioner testified a piece of salami was not lined up properly and while attempting to retrieve it she slipped on a bag falling onto her left out-stretched arm. (T. 12-14, 37-38). As a result of her fall, Petitioner testified she felt pain in her left shoulder. (T. 14). Petitioner denied experiencing pain in any other body part besides her left shoulder. (T. 39-40).

Following her accident, Petitioner reported the injury to Michael Tschannon, the Superintendent, who then took Petitioner to the nurse's office where she was given an ice pack. (T. 14-16). She was thereafter taken to Delnor Hospital, where her shoulder was relocated and placed into an immobilizer. (T. 15-16). Petitioner testified she was given work restrictions precluding her from driving or operating machinery. (T. 16).

The following day, Petitioner testified she was sent by Respondent to Tyler Medical Services where she told to continue use of the immobilizer, apply ice and to take pain medication. Petitioner was precluded from using her left are. (T. 17-18).

Petitioner returned to work performing inspections, which was within her work restrictions. (T. 18-19). Petitioner continued to treat at Tyler Medical Services from April 3, 2017 through April 13, 2017, until being referred to Dr. Theodore Suchy, an orthopedic surgeon. (T. 19). Petitioner testified she saw Dr. Suchy on April 13, 2017, who recommended surgery after reviewing the left shoulder MRI taken on April 12, 2017. (TX. Pg. 19).

Petitioner began physical therapy at Revolution Physical Therapy on May 11, 2017. (T. 20). While in physical therapy, Petitioner testified she underwent an IME on May 18, 2017 with Dr. Prasant Atluri. (T. 20). Petitioner testified the doctor agreed with the need for left shoulder

surgery and that it was related to her work accident. (T. 39).

Petitioner testified she underwent her first surgery with Dr. Suchy on June 20, 2017 at Suburban Surgical Care Center where he performed arthroscopic repair of the left shoulder. (T. 20, 38). Petitioner testified Dr. Suchy took her off work through June 28, 2017 and that she attended post-operative physical therapy at Revolution Physical Therapy. (T. 20). When she returned to Dr. Suchy on July 27, 2017, he changed her work restrictions to no lifting greater than five pounds and recommended additional physical therapy. (T. 21). By August 24, 2017, Petitioner testified Dr. Suchy was concerned about her motion and if she did not regain motion in the next four weeks, he would need to perform a manipulation under anesthesia. (T. 21).

Petitioner testified she underwent surgery with Dr. Suchy, for the second time, on October 16, 2017 which consisted of a manipulation under anesthesia. (T. 21). After that procedure, Petitioner was taken off work and she returned to physical therapy. (T. 21-22).

Petitioner testified she continued care with Dr. Suchy through January 18, 2018 at which time he recommended a second opinion. (T. 22-23). Dr. Suchy referred Petitioner to Dr. Sanjay Patari, whom she saw on February 5, 2018. (T. 23). Petitioner testified Dr. Patari recommended a nerve test/Doppler test because her left shoulder kept hurting and she was experiencing numbness and tingling from the left armpit to the left ring and pinky fingers. (T. 23-24).

Petitioner testified, on February 22, 2018, she was sent to a second IME with Dr. Prasant Atluri who said she did not heal properly following her first two surgeries and he recommended she see an adult reconstructive specialist as he thought she may need reconstructive surgery or a total shoulder replacement. (T. 24-25, 39-40). Thereafter, Petitioner obtained the nerve studies recommended by Dr. Patari. (T. 24).

Petitioner testified, on March 21, 2018, she received a recommendation from Dr. Suchy to see a pain specialist. (T. 24-25). Petitioner testified, on June 5, 2018, she underwent a second opinion with Dr. Marra who recommended a left shoulder MRI arthrogram which was completed on June 27, 2018. (T. 25). Petitioner underwent left shoulder arthroscopic repair surgery on September 24, 2018 performed by Dr. Marra. (T. 25, 38). Petitioner testified Respondent paid for all three surgeries and treatment related to her left shoulder. (T. 38).

On November 20, 2018, Dr. Marra released Petitioner to return to work in a light duty capacity with no use of the left arm which Respondent accommodated. (T. 28-30). Petitioner testified she returned to Dr. Marra on January 8, 2019 at which time he continued her physical

therapy and recommended an EMG, which she secured on February 11, 2019. (T. 30). On March 5, 2019, Dr. Marra recommended an MRI of her neck, which was performed on March 19, 2019. (T. 30). Petitioner denied experiencing pain in any other body part besides her left shoulder as a result of the work accident. (T. 39-40).

Petitioner underwent a third IME with Dr. Atluri on May 2, 2019. (T. 30, 40). Petitioner testified Dr. Atluri told her that she may need a total shoulder replacement but he found her to be at maximum medical improvement and issued permanent light duty restrictions consisting of no overhead lifting, no frequent reaching w with her left upper extremity and no lifting more than five pounds below her shoulder. (T. 40-41).

Petitioner returned to Dr. Marra on September 10, 2019 who recommended a reverse total shoulder replacement. (T. 32-33). Respondent approved the recommended surgery but Petitioner testified that she does not want the surgery. (T. 33, 47). Petitioner testified Respondent accommodated her right duty restrictions until August 6, 2019 and, at that time, her employment was terminated. (T. 30, 47). Petitioner testified she has not worked since August 7, 2019. (T. 30, 47).

Petitioner completed a Request for Disability Related Accommodation on June 11, 2019. (T.42; Rx. 9). After receiving her Request for Disability Related Accommodation, Petitioner admitted Smithfield Foods searched the open and available jobs within their system and found that no job existed within her permanent restrictions. (T. 45-46). At that point, Petitioner's employment was terminated. (T. 46).

Following her termination from Smithfield in August 2017, Petitioner was directed by her attorney to start a self-directed job search. (T. 31, 48). Petitioner acknowledged Respondent paid her lost time benefits for the first seven months of her job search from August 7, 2019 through March 2, 2020. (T. 33). Petitioner testified while receiving TTD benefits from Respondent, she was also granted SSDI benefits as of September 10, 2019. (T. 34).

Petitioner testified her job search included going to every factory she knew of and knocking on their doors to see if they were hiring. (T. 31). Petitioner testified she searched for jobs from August 2019 through September 3, 2021, when she ran out of places to apply. (T. 31-32). Petitioner testified she reached out to 1,162 employers, of which 712 were in person, resulting in 83 interviews but no job offers. (T. 31-32).

Petitioner was asked to confirm whether only 2 of the 248 jobs listed in her job logs from August 2019 through March 2020 were hiring when she applied and Petitioner responded that she did not recall. (T. 51). Petitioner also testified that she did not recall when asked to confirm whether 93 out of the 94 in-person contacts listed on her job log from August 2019 through March 2020 were not hiring at the time she made contact. (T. 51). When asked why Petitioner did not list the actual jobs sought/applied from her in-person contacts between August 2019 through March 2020, Petitioner responded that she did not recall. (T. 52).

Petitioner denied applying for jobs for which the potential employer was not hiring between August 2019 and March 2020. (T. 50-51). However, on re-direct, Petitioner testified that her job search consisted of reaching out to potential employers with no prior knowledge of whether the potential employer was hiring or the type of jobs available, if any. (T. 70).

Petitioner denied applying for jobs for which she had no experience or skill set for the first seven months of her job search. (T. 48). Petitioner denied applying for a job in accounting. (T. 48-49). However, Petitioner's job search log showed an entry, on December 18, 2019, with Chicago Glue, located at 750 Baker Drive, Itasca, Illinois 60143, where Petitioner applied for a job in Administration/Accounting. (Px. 7).

Petitioner testified her job search did not include contacting Work Force Illinois or any State employment office. (T. 53-55). Petitioner testified she also contacted staffing agencies between August 2019 and the date of trial. However, cross-examination, Petitioner testified that she did not contact the staffing agencies but that the staffing agencies contacted her after seeing her resume on a website. (T. 53, 78).

Petitioner testified she applied for a job at Tru Tone Finishing on June 16, 2021. (T. 55). Petitioner testified she spoke to a gentleman named Juan over the telephone and that she dropped off her resume. Petitioner testified she was asked to return for an interview. (T. 55-56). On cross examination, Petitioner was asked to verify whether she was asked to come in for an interview or whether she just walked into the facility, on June 16, 2021, asking if there were any openings. (T. 57-58). Petitioner initially denied the same but later confirmed that she only stopped in and spoke to Juan. (T. 58). When asked whether Juan told her that no openings exist but he encouraged her to leave her resume, Petitioner testified that she did not recall. (TX. Pg. 58). When asked to confirm whether she handed Juan a copy of her resume and a copy of a doctor's note with her work restrictions, Petitioner testified that she did not recall. (T. 59). When

asked to confirm whether during her interaction with Juan she was she holding her left arm and that she told Juan she couldn't lift her left arm. Petitioner responded that she did not recall. (T. 59). When asked, again, to confirm whether she went to Tru Tone Finishing for an interview or just stopped in, Petitioner testified that she could not recall. (T. 59).

Petitioner testified she was provided with a copy of Respondent's Labor Market Survey in September 2019. (T. 52; Rx 5). She confirmed the vocational counselor identified 16 open jobs. (T. 52-53). Petitioner testified she contacted 2 of the potential employers of the 16 potential employers and only applied to 1 of them. (T. 72-75, 80).

As to her current condition, Petitioner testified she continues to experience left shoulder pain every day and she can't do the things she could before. (T. 34). Petitioner testified she sometimes needs assistance undressing, scrubbing parts of her body and putting on deodorant. (T. 34). Petitioner testified she is unable to cook the foods she likes and that she can't clean her house as she did before. Petitioner testified she lost her freedom and that her sex life has been affected. (T. 34). Petitioner testified she also experiences trouble sleeping due to pain. (T. 35). Petitioner testified to experiencing pain running down her shoulder to her ring and pinker finger. Petitioner testified that she is unable to play with her granddaughter the way she would like. (T. 35).

The Arbitrator finds Petitioner's testimony regarding the scope and nature of her job search not to be credible but finds the rest of her testimony credible.

Medical Summary

On March 27, 2017, Petitioner presented to Northwestern Medicine Delnor Emergency Department following an accident at work the same date. Petitioner reported she slipped and fell with her left arm extended, landing on her arm, and injuring her left shoulder. She reported no numbness or weakness. She was right-hand dominant with no prior shoulder history. X-rays of the left shoulder revealed anterior displacement of the humeral head. Her shoulder was reduced, and she was to follow up with her primary care physician.

On March 28, 2017, Petitioner presented to Tyler Medical Services where she was diagnosed with a left shoulder dislocation and placed into an immobilizer. She was released to return to work with restrictions including no use of the left arm. Physical therapy was prescribed on April 3, 2017 followed by an MRI on April 11, 2021 to address a possible left rotator cuff tear.

Petitioner obtained the MRI of her left shoulder on April 12, 2017 at Community Imaging. The report revealed a large Hill-Sachs impaction fracture and associated contusion, anterior inferior labral tear, and an anterior inferior glenoid fracture. Petitioner had a SLAP tear which extended to the biceps anchor with additional tearing at the posterior inferior labrum. Moderate glenohumeral joint effusion and loose intra-articular bodies were noted. She also had mild supraspinatus and moderate infraspinatus tendinosis, as well as interscapular longhead biceps tendinosis.

After the MRI, Petitioner returned to Tyler Medical Services on April 15, 2017 where she was referred to Dr. Theodore Suchy in Orthopedics. Dr. Suchy saw her the same date and diagnosed a traumatic dislocation of the left shoulder with resultant labral tear and loose bodies intra-articular. He recommended left shoulder arthroscopy with labral repair, possible biceps tenodesis (depending on the extent of the SLAP lesion and removal of the loose bodies). Petitioner wished to proceed with the surgery. Dr. Suchy discontinued her sling and kept her on work restrictions. He also prescribed physical therapy to prevent stiffness.

On May 18, 2017, Petitioner was sent at the request of the Respondent for an Independent Medical Evaluation with Dr. Prasant Atluri. Petitioner reported injuring her left shoulder when she tripped while carrying a trash bag and landing on her left arm. She "felt something crack" in her left shoulder and experienced immediate pain and numbness. Dr. Alturi opined Petitioner's condition was causally related to the accident. He diagnosed a left shoulder fracture dislocation status post-closed reduction and left shoulder internal derangement. He agreed Petitioner required surgery.

Petitioner presented to Suburban Surgical Care Center on June 20, 2017, for arthroscopic surgery with Dr. Suchy, which included arthroscopic biceps tenotomy; arthroscopic biceps capsulectomy with lysis of adhesions; manipulation of left shoulder under anesthetic; arthroscopic labral repair utilizing Arthrex anchors and Fiber Tape.

Petitioner was thereafter released to return to work with no use of the left arm and ordered to stop wearing her sling effective July 6, 2017.

Petitioner attended therapy and follow up visits with Dr. Suchy through and including October 11, 2017 but was experiencing significant loss of motion and thereby developed adhesive capsulitis of the left shoulder. She was ordered to secure surgery in the form of manipulation of the left shoulder under anesthesia. Surgery proceeded on October 16, 2017.

Following surgery, Petitioner returned to Dr. Suchy on November 1, 2017 where examination revealed her range of motion was significantly improved but she had weakness. Dr. Suchy was concerned she may have some transient neuritis because of the weakness and if it continued, she would require an EMG/NCV. She was to continue working light duty and remain in therapy.

Petitioner's range of motion improved but her weakness remained. When Petitioner returned to Dr. Suchy on January 4, 2018 she complained of numbness and tingling down the left arm. Dr. Suchy did not know if it was neurological. He requested a diagnostic EMG/NCV, as well as an MRI of the left shoulder. She was to be kept on light-duty restrictions and return after updated diagnostic studies.

Petitioner was seen at Community Imaging for an MRI of the left shoulder on January 18, 2018. The report revealed interval post-surgical changes at the anterior inferior glenoid, interior superior and posterior superior labral tear. The posterior superior labral tear appeared more conspicuous in comparison to the prior exam. She had interval improvement of the previously noted tendinopathy of the supraspinatus and infraspinatus tendons. However, she had mild residual tendinopathy at the posterior supraspinatus and anterior infraspinatus tendon fibers. She had a subchondral impaction fracture noted at the superolateral humeral head, with interval resolution of previously noted edema associated with the fracture. She had mild acromioclavicular joint arthritis and previously noted intra-articular bodies within the glenohumeral joint were not visualized.

Following her updated MRI, Petitioner returned to Dr. Suchy, who opined the MRI showed only labral pathology, which was addressed surgically. He stated her symptomatology was in no way related to the labrum. He continued to recommend an EMG/NCV and stated Petitioner may need to get an Independent Medical Evaluation as a second opinion to determine what was causing her pain.

Petitioner thereafter sought a second opinion with Dr. Sanjay Patari at the Center for Sports Orthopedics on February 5, 2018. Dr. Patari diagnosed Petitioner with left shoulder arthrofibrosis and requested an EMG of the left upper extremity including the left shoulder to evaluate for possible thoracic outlet syndrome due to a diagnosis of left shoulder weakness. He also recommended she obtain a bilateral arterial doppler for a diagnosis of a cold left hand. In the interim, she could return to work the same day but was precluded from lifting or carrying

more than 15 pounds with the left arm and was precluded from reaching or lifting above the shoulder.

Petitioner was sent at the request of Respondent for an updated IME with Dr. Atluri on February 22, 2018. Petitioner told Dr. Atluri "My whole hand was numb" immediately post-operative. Therapy improved her symptoms, but she stated, "I couldn't lift my arm." She then began to feel pain at the medial aspect of her left elbow extending into the ulnar digits of the left hand. Her shoulder motion did not improve. X-rays of the left shoulder taken the same day revealed the glenohumeral joint was reduced. There was a fracture of the glenoid with depression of the inferior fragment and a Type 2 acromion. Dr. Atluri reviewed the MRI images of the left shoulder from January 18, 2018 which revealed an intra-articular defect in the glenoid from her prior fracture. The image quality was insufficient to clearly establish whether it was united, but the fracture appeared to be depressed and displaced. The rotator cuff was intact. He diagnosed Petitioner with left shoulder fracture dislocation status post-left shoulder arthroscopy and possible brachial plexus injury.

Dr. Atluri indicated the findings at the time of his exam reflected mechanical abnormalities associated with a fracture dislocation of the left shoulder. Petitioner suffered fractures of the humeral head, as well as the glenoid. The humeral head fracture (Hill-Sachs fracture) was an impaction fracture of the humeral head associated with a dislocation. Petitioner also suffered an intra-articular fracture of the anterior inferior glenoid. He confirmed the fractures consolidated but were never reduced and healed in a displaced position. Petitioner also had soft tissue injuries at the time of the arthroscopy, including a labral tear. The damage was frequently associated with a fracture dislocation of the shoulder and was addressed surgically.

The physician also felt Petitioner had some weakness which was suspicious for a brachial plexus injury, but it could also be due to the mechanical changes in her shoulder. He opined her treatment thus far had not adequately been addressed. When he previously examined her, he had recommended surgical intervention to address the intra-articular fracture involving her glenoid. However, documentation indicated she underwent a simple arthroscopy with a soft tissue repair which did not sufficiently address her mechanical pathology.

To move forward, the physician recommended evaluation by an adult reconstructive shoulder specialist, possibly in a university setting. The physician stated that Petitioner may require a reconstructive procedure such as a total shoulder replacement to adequately address the

mechanical deficits in her shoulder. He felt she would also benefit from electro-diagnostic testing to clarify whether there was a neurogenic component to her weakness and pain. Until that time, work restrictions would include avoidance of any overhead use of her left upper extremity, avoidance of frequent reaching, and two pounds of lifting below the shoulder level.

Petitioner returned to Dr. Patari on March 5, 2018 and reported she could not actively lift her left shoulder and her left hand became cold intermittently. The IME results were not yet available. Despite the same and without the benefit of an EMG/NCV test, Dr. Patari diagnosed CRPS type 1 of the left upper extremity with muscle weakness and arthrosis of the left shoulder. Further, he recommended Petitioner follow up with a pain management specialist for stellate ganglion blocks and renewed his request for the EMG/NCV.

The EMG/NCV was obtained on March 19, 2018 and was interpreted to reveal borderline abnormal electrodiagnostic study, consistent with mild left median neuropathy at the wrist or mild left carpal tunnel syndrome but no brachial plexopathy, no ulnar neuropathy and no cervical radiculopathy on the left side.

After securing the EMG/NCV, Petitioner returned to Dr. Suchy on March 21, 2018. Petitioner was still symptomatic and complained of pain and discomfort. She would not actively abduct or extend her shoulder. Dr. Suchy could passively bring her arm into full extension and she would hold it there actively, but she complained of pain with the maneuver. He could not explain her symptoms from a neurological or anatomic standpoint. Further the physician could not explain her subjective complaints of pain/discomfort or her significant weakness. Dr. Suchy indicated he would forward Dr. Patari copies of the recent EMG/NCV studies and he agreed with Dr. Patari's recommendation for a pain specialist.

Despite the recommendations of Drs. Suchy and Patari, Petitioner elected to follow the advice of Dr. Atluri, Respondent's IME and be seen by an adult reconstructive specialist in a University setting. She saw Dr. Guido Marra at Northwestern Medicine on June 5, 2018. On examination, her shoulder range of motion was tremendously limited. She was able to forward elevate to 30 degrees, externally rotate to five degrees, passively to 15 degrees and internally rotate to the trochanter. Strength was difficult to quantify, and she had giveaway weakness. Otherwise, she was neurovascularly intact to sensation and motor exam. However, she complained of subjective tingling and numbness diffusely in the left hand, worse in the small and ring finger.

On review of the X-rays and MRIs, Dr. Marra opined there were post-surgical changes, some degeneration within the joint, and then also most notably a suture anchor near the central face of the glenoid. He suspected she dislocated her shoulder and had resultant stiffness combined with the stabilization procedure which was plagued by worsening stiffness. He recommended an MR arthrogram to better evaluate the position of the suture anchors within her shoulder joint.

She was seen on June 27, 2018 for the left shoulder MR arthrogram. She returned to Dr. Marra on July 10, 2018 who confirmed the MR Arthrogram showed evidence of a suture anchor on the chondral surface of the glenoid. He recommended diagnostic arthroscopy, debridement, removal of suture anchors and potential capsule release. Petitioner wished to proceed.

On September 24, 2018. Dr. Marra performed left arthroscopic extensive debridement, arthroscopic capsule release, and arthroscopic removal of foreign material. Following the surgery, she would attend physical therapy to attend three times a week for six weeks. She was eventually released to return to work with no use of the left arm effective November 20, 2018.

Petitioner returned to Dr. Marra on January 8, 2019 but continued to report weakness and pain in the shoulder. Petitioner had complaints of subjective numbness as well in her arm. As a result, Dr. Marra felt she should continue with her physical therapy. He also recommended an EMG to evaluate her persistent numbness. Her physical therapy was to continue for six weeks. Additionally, her work status remained the same.

Petitioner obtained the EMG at Northwestern Neurology Testing Center on February 11, 2019. According to the radiologist, Petitioner had a normal study. There was no electrodiagnostic evidence for a left cervical motor radiculopathy or left upper extremity mononeuropathy.

After obtaining the EMG results, Petitioner returned to Dr. Marra on March 5, 2019. He opined Petitioner was post-left shoulder arthroscopy with capsular release who continued to experience post-operative left upper extremity numbness and weakness. Her exam showed primarily a C7 distribution. As she had a normal EMG, he wanted her to obtain a cervical MRI. He knew Petitioner had glenohumeral arthritis which was accounting for the shoulder pain. However, he was unable to determine the reason for the left upper extremity weakness. In the interim, she could work in a full-duty capacity but with no upper extremity work.

An MRI of Petitioner's cervical spine was taken on March 19, 2019. The radiologist

interpreted the report to reveal mild degenerative changes. On March 22, 2019 Dr. Marra's office contacted Petitioner to review the MRI scan of the cervical spine. Petitioner was told the MRI demonstrated cervical neck degenerative changes.

Petitioner was then sent at the request of Respondent for a third IME with Dr. Prasant Atluri on May 2, 2019. During examination, Petitioner had no trophic findings and distal motor function was intact. The physician reviewed the MR arthrogram images of the left shoulder taken on June 27, 2018 which he felt were of poor quality. He indicated the rotator cuff was intact and the glenohumeral joint was reduced. There was some fluid undercutting the superior labrum which was suspicious for a superior labral tear and mild AC arthritis. Petitioner had bony abnormality in the central glenoid along with a step-off consistent with a mal-united glenoid fracture.

Dr. Atluri diagnosed Petitioner with left shoulder fracture dislocation, left shoulder internal derangement, left upper extremity weakness with numbness and tingling and post-traumatic and post-surgical arthritis of the left shoulder. He indicated Petitioner's most recent MRI and shoulder arthroscopy revealed substantial post-traumatic and post-surgical changes in the shoulder including significant glenohumeral arthrosis. There was a suture anchor placed along the articular surface of the glenoid with protruding suture material which he felt contributed to the arthritic changes. Petitioner also had a fracture of the inferior glenoid associated with the labral tear. Finally, the physician concluded that Petitioner suffered a complication from surgery due to the mal position of a suture anchor in the glenoid face.

Dr. Atluri opined Petitioner should proceed with symptomatic care including over-the-counter medications and activity modification. He opined Petitioner may require reconstructive surgery such as a total shoulder replacement, but surgery was inadvisable at that time due to her young age and activity level.

Dr. Atluri further opined the more global weakness and numbness as well as tingling was of unclear etiology and not substantiated by any objective findings. As such he would not recommend any treatment for those conditions. He opined the need for future treatment for the mechanical shoulder pathology was attributable to the work injury. However, he did not identify any specific abnormality which was attributable to the overall weakness, numbness and tingling in the left upper extremity. He gave her permanent restrictions including avoidance of overhead use and frequent reaching with the left upper extremity and a five-pound lifting limit with the

arm below shoulder level which was reasonable.

Petitioner was last seen by Dr. Marra on September 10, 2019 at which time he recommended a total shoulder arthroplasty and released her to return to work with no use of the left arm. Petitioner declined the surgery Dr. Marra recommended.

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set for below. The claimant bears the burden of proving every aspect of her claim by a preponderance of the evidence. *Hutson v. Industrial Commission,* 223 Ill. App. 3d 706, 714 (Ill. App. 5th Dist. 1992). To obtain compensation under the Act, a claimant must prove that some act or phase of her employment was a causative factor in her ensuing injuries. Land & Lakes Co. v. Industrial Comm'n, 359 Ill. App. 3d 582, 592 (2005).

With respect to issue (F), whether Petitioner's current condition of ill-being is causally related to the Injury, the Arbitrator finds as follows:

Respondent stipulated that Petitioner's left shoulder condition was causally related to her work accident. (Arb. Ex. #1). However, Respondent denied that any left hand or cervical spine condition was causally related to her work accident. The Arbitrator notes no evidence was proffered at trial that Petitioner sustained a left hand and cervical spine injuries resulting from her work accident and those conditions were causally related to her work accident. The Arbitrator further notes Petitioner did not testify she sustained a left hand or cervical spine injury resulting from her work accident. As such, the Arbitrator finds that Petitioner proved by the preponderance of the evidence that only her current left shoulder condition injury is causally related ot her work injury.

With respect to issue (J) whether Respondent is liable for medical expenses, the Arbitrator finds as follows:

Respondent disputed all unpaid medical bills. At trial, no outstanding medical bills were claimed due and owing. As such, the Arbitrator finds that Respondent paid all reasonable and related medical bills.

With respect to issue (K) what, if any, temporary benefits are due, the Arbitrator finds as follows:

The parties stipulate Petitioner received TTD benefits for each period in which she was taken off work including June 20, 2017 through June 28, 2017; July 6, 2017 through July 12,

2017; October 16, 2017 through October 22, 2017 and September 24, 2018 through November 19, 2018. (Arb. Ex. 1). The parties further stipulate that Petitioner's employment terminated as of August 7, 2019 because Respondent could not accommodate her permanent light duty restrictions. (T. 46-47). Following her termination, Petitioner testified she was instructed by her attorney to begin a self-directed job search and that she received TTD benefits during the first seven months of her self-directed job search. The parties stipulate that Petitioner received TTD benefits from August 8, 2019 through March 2, 2020. (Arb. Ex. 1). Petitioner seeks maintenance benefits from March 3, 2020 through September 3, 2021. Respondent disputes additional maintenance benefits are due because Petitioner's job search was invalid. (Arb. Ex. 1). Respondent was granted SSDI benefits as of September 10, 2019. (T. 34).

The Arbitrator finds Petitioner failed to prove by the preponderance of the evidence that she was entitled to maintenance benefits from March 3, 2020 through September 3, 2021. As stated above the Arbitrator found Petitioner's testimony regarding her job search not to be credible. The Arbitrator further finds Petitioner's job search did not constitute a good faith attempt to seek employment. Petitioner's job search, during the period Petitioner is seeking maintenance benefits, consisted of contacting companies without any knowledge of whether or not those companies were hiring. Petitioner also applied for jobs outside of her restrictions. (PX. 7). Petitioner applied for jobs with which she admitted she had no education or skill set to perform. (T. 48). Petitioner was provided a list of 16 available jobs within her restrictions in Respondent's Labor Market Survey. Of the 16 jobs available jobs, Petitioner contacted only 2 of the jobs and applied to only 1 of the jobs. When asked whether Petitioner believed she could perform tasks listed by the other 14 jobs contained in Respondent's Labor Market Survey, Petitioner responded she did not think she could do the jobs. (T. 72-75). The Arbitrator finds Petitioner's conduct demonstrates a lack of performing a meaningful job search intended to obtain employment. Contacting companies that are not hiring or applying for jobs one is not capable or qualified to obtain is evidence of a lack of a meaningful job search and demonstrates a lack of good faith. The Arbitrator also notes that Petitioner attempted to mislead the Court when she testified that she was contacted by a company and asked to appear for an in-person interview when, in fact, she merely walked into a company, spoke to an individual, and dropped off a copy of her resume.

The Arbitrator finds the opinions of Respondent's vocational expert, Ms. Schmidt,

persuasive. Ms. Schmidt concluded that although Petitioner tried to visit employers and complete applications, there was a consistently low or no opportunity to acquire a job as a result. (Rx. 6). Further, although Petitioner appeared to acquire some interviews, she did not seem to acquire or document any information regarding positions interviewed for. (Rx. 6). Petitioner also did not appear to follow up on any of her applications or interview efforts, which could have enhanced her opportunities with companies applied for. (Rx. 6). Ms. Schmidt opined Petitioner could have acquired a job had she conducted a diligent job search. (Rx. 6).

The Arbitrator finds Petitioner testimony in the February 9, 2021 civil transcript compelling in terms of the credibility of her job search. In her February 9, 2021 deposition, Petitioner admitted to being offered jobs, only to ruin the offer by volunteering her restrictions. (Rx. 7). However, during direct examination in Workers' Compensation trial, Petitioner testified she was never offered a job after applying for 1162 jobs. (T. 31-32).

With respect to issue "L," the nature and extent of Petitioner's injuries, the Arbitrator makes the following conclusions:

Section 8.lb of the Illinois Workers' Compensation Act ("Act") addresses the factors that must be considered in determining the extent of permanent partial disability for accidents occurring on or after September 1, 2011. 820 ILCS 305/8.1b (LEXIS 2011). Specifically, Section 8.1b states:

> For accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:
>
> (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.
>
> (b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:
>
> (i) the reported level of impairment pursuant to subsection (a);
>
> (ii) the occupation of the injured employee;
>
> (iii) the age of the employee at the time of the injury;

(iv) the employee's future earning capacity; and

(v) evidence of disability corroborated by the treating medical records.

No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order. *Id.*

Considering these factors in light of the evidence submitted at trial, the Arbitrator addresses the factors delineated in the Act for determining permanent partial disability.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report was submitted into evidence and, as such, the Arbitrator gives no weight to this factor in determining permanent partial disability.

With regard to subsection (ii) of §8.lb(b), the occupation of the employee, Petitioner was employed as a Packer/Peeler which included putting cuts meat on a table, taking casings off, and putting it in containers. Petitioner was unable to return to her job due to her work restrictions. As such, the Arbitrator gives significant weight to this factor in determining permanent partial disability.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 54 years old at the time of the accident and she still has a significant portion of her work life remaining to endure from the effects of her injury. As such, the Arbitrator gives some weight to this factor in determining permanent partial disability.

With regarding to subsection (iv) Petitioner's future earning capacity. Petitioner was unable to return to her former occupation as a Packer/Peeler and has significant permanent work restrictions. Regardless of whether Petitioner conducted a good faith job search, her future earning capacity has been clearly adversely affected due to her work-related accident. Petitioner was unable to return to her prior occupation and has permanent significant work restrictions. As such, the Arbitrator gives significant weight to this factor in determining permanent partial disability.

With regard to subsection (v) evidence of disability corroborated by the treating medical records, Petitioner has significant work restrictions. Respondent's Section 12 Examiner also opined that Petitioner has significant work restrictions and he recommended that Petitioner

undergo a total shoulder replacement surgery. Petitioner testified she continues to experience pain and is unable to perform activities including those involving personal grooming and hygiene. As such, the Arbitrator gives significant weigh to this factor in determining permanent partial disability.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 35% loss of use of the person, pursuant to §8(d)(2) of the Act, for an injury resulting in a loss trade.

By: /o/ Frank J. Soto — February 3. 2022
Arbitrator — Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC022880
Case Name	Ruth McHugh v. City of Chicago
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0036
Number of Pages of Decision	44
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Michael Casey
Respondent Attorney	Anthony Gattuso

DATE FILED: 1/23/2023

/s/ Thomas Tyrrell, Commissioner

Signature

23IWCC0036

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Ruth McHugh,

Petitioner,

vs. NO: 11 WC 22880

City of Chicago,

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 causal connection and nature and extent, and being advised of the facts and law, modifies the Decision of the Arbitrator. The Commission affirms the Arbitrator's finding of causal connection, but modifies the Arbitrator's nature and extent award. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Findings of Fact

In the interest of efficiency, the Commission primarily relies on the Arbitrator's detailed recitation of facts in the Arbitration Decision. On June 1, 2011, Petitioner slipped and fell while walking down stairs at her assigned Streets and Sanitation facility. As the Arbitrator wrote, this case has an involved procedural background as there were two prior 19(b) hearings. The first 19(b) hearing proceeded on October 3, 2013, and addressed the issues of accident, causal connection, and temporary total disability ("TTD") benefits. The Commission issued a Decision on February 11, 2015, partially modifying the Arbitration Decision. The Commission notably affirmed the Arbitrator's conclusion that Petitioner's condition of ill-being regarding her bilateral knees was causally related to the work incident.

A second 19(b) hearing occurred on February 21, 2017, and addressed the issues of causal connection, TTD, and prospective medical treatment. On May 30, 2017, the Arbitrator filed a Corrected Arbitration Decision in which the Arbitrator concluded that Petitioner's condition of ill-being regarding her bilateral knees continued to be causally related to the work incident. The Arbitrator also awarded Petitioner prospective medical treatment in the form of the bilateral knee replacement surgeries recommended by Dr. Troy, Petitioner's treating physician. The matter was

not reviewed, and the Corrected Decision is final.

Petitioner underwent a right total knee replacement surgery in July 2017. The postoperative diagnosis was advanced degenerative joint disease of the right knee. Petitioner testified that shortly before this surgery she began using a walker. On the date of hearing, she continued to use a walker. By October 2017, Petitioner complained to Dr. Curtin, her neurologist, of slightly increased neuropathy in the right leg following the knee replacement. Petitioner underwent a left total knee replacement surgery in June 2018. The postoperative diagnosis was severe end-stage degenerative joint disease of the left knee with varus deformity. Petitioner attended extensive physical therapy following her knee replacement surgeries. By the end of July 2018, Petitioner told Dr. Troy that she was using a cane at home, but continued to use a walker outside of her house. On September 14, 2018, Petitioner returned to Dr. Troy for a follow up on her left knee as well as complaints of chronic low back pain. Dr. Troy wrote that Petitioner had almost full range of motion in the left knee with no instability. He also wrote that Petitioner continued to use a walker secondary to her chronic low back pain. A few days later, Petitioner returned to Dr. Troy with complaints of acute right knee pain. Petitioner was admitted to the hospital due to an infection in the right knee from September 18, 2018, through September 22, 2018. During that time, Dr. Troy performed a right knee procedure involving an irrigation and debridement of the right knee replacement, a tibial spacer exchange, and placement of an antibiotic bead. Cultures revealed that Petitioner's right knee was septic.

Petitioner continued to attend physical therapy and perform her home exercises once she recovered from the infection. In late January 2019, she complained of continued right knee pain and pain traveling down to her right foot. Despite the residual right knee pain, Petitioner's left knee was doing well. Dr. Troy prescribed another course of physical therapy. On March 1, 2019, Petitioner was still using the walker and reported losing 10 pounds. Dr. Troy noted that Petitioner still needed to lose over 100 pounds. He also prescribed additional physical therapy with the goal of weaning Petitioner off her dependence on the walker. On March 21, 2019, Petitioner told the physical therapist that her knees as well as her back felt better overall; however, she continued to take hydrocodone at night. Petitioner rated her right knee pain at 5/10 and her left knee pain at 3/10. The therapist wrote that while Petitioner had achieved the established goals regarding her bilateral knee range of motion and strength, she continued to require a rolling walker for safety. The therapist recommended discharging Petitioner with a home exercise program ("HEP). Petitioner continued to follow up with Dr. Troy with complaints primarily of right knee pain. In July 2019, Dr. Troy examined Petitioner and wrote that there was pain with palpation in the anteromedial aspect of the right knee consistent with a pes anserine bursitis. The left knee was asymptomatic and diffusely nontender to palpation. Dr. Troy administered a cortisone injection into Petitioner's right knee. He advised Petitioner to continue her HEP and to work extensively on losing weight. In December 2019, Dr. Troy wrote that Petitioner was unable to walk without assistance mainly due to her weight and her complaints of right knee pain.

In late February 2020, Petitioner complained of continued neuropathic pain in the bilateral legs that was greater in the right leg. After examining Petitioner, Dr. Troy wrote that while she was overall doing better, Petitioner had more subjectively based neuropathic-type pain. The doctor wrote that Petitioner developed tingling and numbness going down the right leg after the right knee infection. He wanted to reduce the amount of hydrocodone Petitioner used, and wrote that

Petitioner reported needing the medication because of the tingling and numbness in the right leg. Dr. Troy hoped that additional weight loss would resolve Petitioner's complaints. In July 2020, Petitioner reported continued mild pain over her right knee and numbness in the right leg. Petitioner reported taking gabapentin three times a day and Norco each night due to severe pain. Petitioner underwent an EMG/NCS of the right leg on August 12, 2020. After reviewing the results of that EMG/NCS, Dr. Curtin wrote:

> "…there is evidence of worsening of the patient's underlying neuropathy to now effect all of the sensory nerves with completely absent responses. This is most likely the etiology to her symptoms in the right leg…"

(PX 3). Petitioner told Dr. Curtin that her right leg symptoms worsened after she developed the infection.

In October 2020, Dr. Curtin determined that there were no treatable causes of Petitioner's neuropathy. The doctor wrote that Petitioner continued to complain of severe neuropathic pain in her legs despite taking numerous medications, including gabapentin and Norco. Dr. Curtin recommended medical cannabis as the best long-term option to control Petitioner's symptoms. However, Petitioner reported that she still had her CDL, and marijuana was a contraindication with her license. Petitioner reported that her balance was a constant issue and she remained dependent on her walker. In January 2021, Petitioner began another course of physical therapy focused on strength and gait training to hopefully wean Petitioner from using the walker.

Petitioner continued to follow up with Dr. Troy's office with complaints of ongoing right knee pain. In April 2021, Petitioner complained of right knee pain primarily over the medial and lateral aspect with occasional radiation down to her ankle. Petitioner reported her left knee was doing well. By that time, Petitioner reported taking gabapentin four times a day in addition to Advil and Norco. Petitioner also continued to take amitriptyline as prescribed by Dr. Curtin. In late April 2021, Petitioner told the physical therapist that her knees were painful and rated her knee pain at 8.5/10. The therapist wrote that while Petitioner had improved her stair climbing ability on 6-inch steps, she remained limited by pain. On May 7, 2021, Dr. Troy's examination of Petitioner revealed very good range of motion in the bilateral knees with chronic pain in the right knee secondary to numbness in the right leg. The doctor noted minimal complaints regarding Petitioner's left leg. Dr. Troy placed Petitioner at maximum medical improvement ("MMI"), and wrote:

> "In regards to returning back to work, she will have a significant difficulty returning back to work. I do not anticipate for her to be able return back to work secondary to the chronic problems she is having as well as the chronic anterior knee pain."

(PX 3). The doctor ordered a functional capacity evaluation ("FCE").

On June 1, 2021, Petitioner appeared for her FCE. However, the evaluation could not proceed because Petitioner was unable to walk across the clinic without using her walker or

grabbing the therapist for balance. The therapist deemed Petitioner a fall risk due to her inability to walk without assistance. On June 26, 2021, Dr. Troy wrote that Petitioner had very good range of motion in both knees and both knees were ligamentously stable. He wrote that Petitioner also suffered from chronic low back pain without radiculopathy. X-rays taken of Petitioner's knees revealed successful placement of all components with no signs of loosening, fractures, dislocations, or soft tissue or bony lesions. Dr. Troy confirmed that Petitioner was at MMI and told her to return every one to two years for follow ups regarding her knees. Petitioner was to return sooner if she experienced any increasing pain or discomfort.

Dr. Curtin examined Petitioner in early July 2021 and wrote that Petitioner was stable on her regimen of gabapentin and hydrocodone. Petitioner reported that while the pain in her legs was much improved, she continued to have significant balance issues. In an October 26, 2021, work status note, Dr. Troy wrote that Petitioner was permanently disabled and unable to complete her FCE. The doctor also wrote that Petitioner had reached MMI and was discharged from his care. This is the final office visit note in evidence.

In the years since the date of accident, Petitioner received treatment from Dr. Troy for numerous medical conditions, including those relating to her lumbar spine, bilateral wrists, and right shoulder. Petitioner underwent a lumbar fusion surgery in December 2015. The medical records reveal that Petitioner has continued to actively seek treatment particularly relating to her low back and right shoulder complaints. Petitioner also underwent injections in both her lumbar spine and right shoulder due her complaints of chronic pain. Dr. Troy also made it clear that Petitioner required the walker due to both her lumbar spine complaints and those relating primarily to her right knee. The medical records also indicate that while Petitioner took gabapentin and hydrocodone for her chronic knee complaints, the medications were also used to alleviate her chronic low back and right shoulder pain. In the June 1, 2021, office visit note, Dr. Troy wrote that while Petitioner had reached MMI regarding her work-related injury, she would continue to receive treatment for her ongoing issues regarding her back and shoulders. The doctor also wrote that Petitioner needed a right shoulder replacement, but wanted to avoid the surgery at all costs. The Commission notes that only Petitioner's bilateral knee condition is causally related to the June 2011 work incident.

Petitioner testified that she weighs 287 pounds, and weighed approximately 200 pounds on the date of accident. She testified that while she currently has pain in the left knee, her right knee is worse. Petitioner testified:

> "…the right knee, I get pain from the knee all the way down to the ankle where it gets so bad that I need the Norco. I try not to take the Norco, but if the pain gets so bad, I do need the Norco to subside the pain. And sometimes I put Vicks on it at night because sometimes the Norco doesn't work. So that's about it. I mean, the pain gets so bad I want to chop my leg off. So that's not good."

(Tr. at 25). She testified that her left knee pain is manageable. When asked how often she takes Norco for her right knee pain, Petitioner testified:

> "Every day, every evening. Evening is when it gets worse because the [g]abapentin seems to help during the day, but then towards the end of the day the pain gets really bad where I have to stand up. I'm banging it on the floor before the Norco kicks in. And once the Norco kicks in a little bit, at least it eases the pain."

(Tr. at 25-26). Petitioner testified that she continues to see Dr. Curtin every few months and that Dr. Curtin currently prescribes her medications.

Petitioner testified that she is unable to clean the house in the manner she used to, and cannot manage the snow and grass due to her chronic knee complaints. She testified that her knee pain prevents her from attending some of her grandchildren's baseball games, because the facilities may not be accessible due to her limitations. Petitioner testified that her children provide a lot of help. She testified that she is unable to use a ladder and cannot kneel. She testified that there are many activities she no longer engages in due to her knee pain. She testified that she used to be able to jump in and out of a truck and could drive anywhere without problems. She testified that now, if she drives, she is unable to drive very far without experiencing significant pain that causes her to pull over. She testified she can usually drive between 30-45 minutes. Petitioner testified that she is unable to drive to certain places because she is unable to drive while taking Norco. She testified that Dr. Troy advised that she not drive within 12 hours of taking Norco. Petitioner testified:

> "When I drive, I have to throw my leg in to get in the car because it's numb, the right knee all the way down to the ankle gets numb. So to get into the car, I have to throw my leg in to drive. Now, the driving like I said, I go short distances, but I can't take the Norco when I'm out. So by the time I get home at the end of the day or if I'm gone somewhere and it's getting late, I have to make sure I get home so I could take the Norco."

(Tr. at 28).

Petitioner testified that due to her knee pain she now must take the stairs one at a time and uses her walker. She testified that she needs to use her walker for support because her right knee is numb, and she cannot balance properly. She said her right leg numbness sometimes means she can barely feel the floor. Petitioner testified that while she still experiences some upper back problems, her back pain is not bad and is more like arthritis. She denied having any back pain after her lumbar fusion surgery in December 2015; however, she later admitted that she at times reported feeling back pain different from her pre-fusion pain. She testified that this is upper back pain. Petitioner has never returned to work. Under cross-examination, Petitioner testified that once she has completed her tasks during the day, she is able to relax. Petitioner testified that she then falls asleep if she can alleviate her pain. She testified that when she wakes up in the morning, her right knee hurts.

Petitioner testified that during her attempted FCE, the therapist did not explain the process. She testified: "…He just said, you know, 'Let's see what you could do without the walker.' And I said as long as he's there to pick me up if I fall, I will try and walk." (Tr. at 39-40). She testified

that the FCE did not proceed because she was unable to do anything that required standing without using her walker. She testified that before receiving the FCE results, Dr. Troy told her not to do anything that would cause her to hurt herself. When asked if Dr. Troy told her she was permanently totally disabled from working before July 2021, Petitioner testified:

> "He said I was limited—not limited. He just said that he didn't think I was able to go back to work and then by the time—at the end, he said he didn't want me back at work."

(Tr. at 41). She testified that Dr. Troy said she would never be able to drive a truck again. Her right knee pain worsens with movement compared to when resting. Petitioner testified that her left knee pain is tolerable. Petitioner continues to take gabapentin during the day plus Advil, if needed, between doses. Under cross-examination, the following exchange occurred:

> Q. Just for the benefit of the record, it's approximately 10:13 right now. Miss McHugh, is it fair to say we first saw each other this morning at approximately between 8:15 and 8:30. I believe you were sitting outside the venue when I arrived?
> A. Correct.
> Q. Okay. At that time, were you seated on the bench outside the Commission venue?
> A. Yes.
> Q. Okay. And then once the door opened, you came inside here with your attorney, and you sat in a different room in a chair, correct?
> A. Correct.
> Q. Is it fair to say since you arrived here between 8:15 and 8:30 or so this morning, you've been seated before standing to walk in here and you stood up just before my examination, correct?
> A. Correct.
> Q. Okay. And approximately how long was your ride here today?
> A. Actually it was pretty good. It only took us 40 minutes.

(Tr. at 43-44). Petitioner's son drove her to the hearing.

Regarding her chronic back pain, Petitioner testified, "I just have pain, but it doesn't keep me from doing stuff with the back, no." (Tr. at 45). Petitioner testified that she began working as a truck driver for Respondent in August 1984. Petitioner testified that she was laid off for a period and returned to work for Respondent in November 1986. Before working for Respondent, Petitioner was a school bus driver for a nursery school. Petitioner testified that she also previously worked in management at St. Vincent de Paul. She testified that she has performed a variety of jobs. She denied having any ongoing issues or complaints regarding her shoulders, hands, and arms.

Expert Opinions and Testimony

Dr. Brian Cole—Respondent's Section 12 Examiner

Dr. Cole examined Petitioner at Respondent's request on May 13, 2019. (RX 1). Petitioner's primary complaint was pain and numbness in the right leg from the knee down to her ankle. She reported having an overall good outcome regarding her left knee replacement. Dr. Cole noted that Petitioner is 5 feet 7 inches tall and self-reported her weight at 300 pounds. Petitioner complained of consistent pain in both knees. She also complained of feelings of instability and locking and catching in both knees. Petitioner described her knee pain as intermittent and rated it at 6/10. After examining Petitioner, Dr. Cole opined that Petitioner had reached MMI for both her right and left knees status post the bilateral total knee replacements.

Dr. Cole opined that Petitioner could work a sedentary job on a permanent basis. He also opined that Petitioner was at a stable endpoint with a good outcome from both knee replacements. He did not recommend any additional treatment for either knee. He wrote the following regarding Petitioner's work capabilities:

> "…in my opinion, [Petitioner] can work a sedentary-based job and is safe to do so from an [orthopedic] standpoint. I do find that the restrictions are related to the work injury on a more likely than not basis. I have reviewed the job description but it does not appear reasonable for the claimant to perform the regular[] job duties."

(RX 1). Dr. Cole recommended Petitioner continue her efforts with diet management and cardiovascular exercise with the intention of continued weight loss. He also recommended that Petitioner take nonsteroidal anti-inflammatories as needed.

On January 24, 2022, Dr. Cole authored an addendum report at Respondent's request. (RX 2). He wrote that he reviewed additional medical records including physical therapy records. Dr. Cole opined that Petitioner's ongoing treatment since his May 2019 examination was not due to "…a primary [orthopedic] 'knee condition' but rather generalized involvement of the claimant's body as a whole." (RX 2). He opined that Petitioner's knees had been static and likely unchanged since his 2019 exam. Dr. Cole further opined that while Petitioner's ongoing treatment was reasonable and necessary, it was no longer related to the work injury. He opined:

> "…[Petitioner] has substantial and numerous reasons to have less than optimal outcome and persistent pain given her morbid obesity, inclusion of the lumbar spine and involvement, and other health comorbidities. On a more likely than not basis, her ongoing impairment and need for permanent restrictions at the sedentary/office based-level are due to those comorbidities and her degenerative conditions and not the work injury that brought her to a need for total knee replacement sooner than otherwise would have been necessary…"

(RX 2). Dr. Cole further opined:

> "Specifically speaking with regard to the bilateral knees, from an orthopedic standpoint, I would submit that the claimant certainly is capable of a sedentary/desk-based job. I believe Dr. Troy is opining regarding the claimant's disability from a whole person standpoint and likely taking into consideration her other comorbidities. This being said, speaking strictly in regard to the bilateral knees from an orthopedic standpoint, the claimant certainly is employable and can certainly work at a desk with a small amount of movement around the workplace, i.e., sedentary duty. This opinion is with a high degree of medical and surgical certainty."

(RX 2).

MedVoc Rehabilitation, Ltd.—Respondent's Vocational Experts

On January 14, 2022, Jacqueline Bethell, a rehabilitation consultant, and Laura Roberts, a job placement specialist conducted a labor market survey at Respondent's request. (RX 3). They relied on Petitioner's work history as a motor truck driver and the sedentary work restriction Dr. Cole opined was appropriate when conducting the survey. The labor market survey found that Petitioner is qualified to perform work as a greeter, information clerk, and bench assembler with a mean entry-level hourly wage of $15.40. The survey targeted employers in the Chicago area.

The report states:

> "Each employer contacted was asked if an older individual with a lengthy work history as a motor truck driver qualified for the targeted position. Each employer was also asked if they could accommodate sedentary work. MedVoc Rehabilitation also discussed with these prospective employe[rs] entry-level wage ranges, job availability, and the essential job tasks of the positions targeted."

(RX 3). They contacted 50 prospective employers, but 34 of the prospective employers did not complete the survey. Sixteen prospective employers did complete the survey. One employer said Petitioner did not have the appropriate physical capabilities to be considered for its bench assembly position. Fifteen prospective employers responded positively and indicated Petitioner's work history qualified her for the targeted position and that they could accommodate Petitioner's current physical capabilities. Eleven of the employers were currently hiring for the position. Ms. Bethell and Ms. Roberts concluded:

> "[Petitioner] is an older individual in vocationally relevant terms, who has been given permanent sedentary work restrictions and is unable to return to her past work as a motor truck driver. It is this consultant's opinion that [Petitioner] would be appropriate for

> positions such as information clerk, greeter, and bench assembler. The labor market survey targeted these positions and found that [Petitioner] is qualified to perform this work and is capable given her sedentary work restrictions."

Conclusions of Law

Petitioner bears the burden of proving every element of her case by a preponderance of the evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). After carefully considering the totality of the evidence, the Commission affirms the Arbitrator's conclusion that the current condition of ill-being regarding Petitioner's right knee remains causally related to the June 1, 2011, work incident. However, the Commission modifies the Arbitrator's determination that Petitioner met her burden of proving she is permanently totally disabled.

Respondent did not dispute the causal relationship between the work incident and the current condition of Petitioner's left knee. However, it did dispute the causal relationship between the current condition of Petitioner's right knee and the work injury. After reviewing the evidence, the Commission agrees with the Arbitrator's conclusion that Petitioner met her burden of proving the current condition of her right knee remains causally related to her work injury. The Commission notes that there is no evidence that an intervening incident occurred that would sever the causal relationship between Petitioner's right knee condition and the work injury. Notably, Petitioner's right knee complaints increased after she developed an infection and underwent and required an additional procedure to clear out the infection. While Petitioner may have comorbidities that have some impact on her knee condition, the credible evidence shows Petitioner's chronic right knee complaints are due to her total knee replacement surgery and subsequent treatment relating to her post-surgery infection. Therefore, the Commission affirms the Arbitrator's conclusion that the current condition of ill-being regarding Petitioner's right knee is causally related to the work incident.

The Arbitrator also concluded that Petitioner is permanently totally disabled as a result of the June 1, 2011, work incident. In reaching this conclusion, the Arbitrator relied on the opinion of Dr. Troy, Petitioner's treating physician. The Commission views the evidence differently and respectfully disagrees with the Arbitrator's conclusion. After carefully considering all the evidence, the Commission agrees that Petitioner is unable to return to her original job as a truck driver due to her bilateral knee condition. However, the Commission finds the credible evidence supports a finding that Petitioner is not permanently totally disabled.

The Appellate Court has determined that an award of permanent total disability is appropriate "…when the employee can make no contribution to industry sufficient to earn a wage." *Lenhart v. Ill. Workers' Comp. Comm'n*, 2015 IL App (3d) 130743WC at ¶32 (citation omitted). The Commission's analysis must focus on the degree to which the claimant's medical disability impairs their employability. *Id*. Furthermore, a claimant is not entitled to permanent total disability benefits "…if [they] are qualified for and capable of obtaining gainful employment without seriously endangering [their] health or life." *Id*. (citation omitted). A claimant can meet their burden of proving they are permanently and totally disabled in three ways: 1) by a preponderance of the medical evidence; 2) by conducting a diligent but unsuccessful job search; or 3) by

demonstrating that due to their age, training, experience, education, and condition there are no jobs available to a person in their circumstance. *See e.g., ABB C-E Servs. v. Indus. Comm'n*, 316 Ill. App. 3d 745, 750 (2000).

In this matter, two surgeons have provided competing medical opinions regarding Petitioner's physical capacity to work. On May 7, 2021, Dr. Troy opined that Petitioner would have significant difficulty returning to work. He further opined that Petitioner would be unable to return to work "…secondary to the chronic problems she is having as well as the chronic anterior knee pain." (PX 3). His opinion did not change when he discovered that the FCE could not proceed because Petitioner was unable to walk without assistance. Dr. Troy did not address whether he believed Petitioner was permanently totally disabled solely due to Petitioner's bilateral knee condition. Dr. Troy also offered no explanation regarding how Petitioner's bilateral knee condition, or even the totality of her health conditions, rendered her unable to perform even sedentary work. Dr. Cole, Respondent's Section 12 examiner, opined that solely regarding Petitioner's bilateral knee condition, Petitioner is capable of working a sedentary or desk-based job. Notably, Dr. Cole's opinion regarding Petitioner's work capabilities is completely independent from his causation opinion. The Commission finds Dr. Cole's opinion regarding Petitioner's ability to work is more credible than that of Dr. Troy.

The totality of the evidence does not support a finding that Petitioner's condition—either relating solely to her bilateral knees or considering the totality of her health conditions—have rendered her unable to perform sedentary work. The evidence reveals that Petitioner is dependent upon using a walker at least partly due to her chronic knee complaints. The Commission certainly does not believe that Petitioner's inability to stand and walk without the use of a walker disqualifies her from performing sedentary work. Likewise, there is no medical evidence that any of Petitioner's health conditions, let alone her bilateral knee condition, have rendered her unable to sit for extended periods. Petitioner never complained of discomfort or an inability to remain seated during any of her numerous office visits and physical therapy sessions.

When asked to describe the ways in which her residual and chronic knee complaints limit her activities, Petitioner testified about her difficulties performing physical tasks such as climbing ladders, performing house and yard work, and kneeling. Petitioner gave no indication that she is unable to comfortably remain seated for extended periods. She testified that driving for long distances causes her right leg from the knee to the ankle to become numb. However, she comfortably rode in a car for the approximately 40-minute drive to the Commission on the date of the arbitration hearing. Petitioner was also able to sit for the duration of the hearing with a short break without any reported discomfort. Petitioner also testified that her pain worsens at the end of the day; however, there is no evidence that this incapacitates her from performing work. During her July 2021 visit, Dr. Curtin wrote that Petitioner's condition was stable with her use of gabapentin and hydrocodone. Petitioner notably reported that her leg pain was much improved, although she reported continued significant problems with her balance.

There is also no evidence that Petitioner's medications prevent her from performing sedentary work. In fact, Petitioner testified that her only restriction relating to her medication regimen is to not drive within 12 hours of taking hydrocodone. Petitioner also testified that her back pain is not significant and does not limit her activities. Petitioner was unable to undergo the

FCE due to her reliance on her walker when standing and walking. The therapist determined that Petitioner had a risk of falling and could not proceed solely for that reason. In this matter, the fact that Petitioner was unable to complete an FCE does not support a finding that she is unable to perform sedentary work. A close examination reveals a lack of credible evidence supporting Dr. Troy's opinion. For these reasons, the Commission finds Petitioner has failed to prove by a preponderance of the medical evidence that she is permanently totally disabled. Instead, the Commission finds Petitioner can perform sedentary work.

The evidence reveals that Petitioner relied entirely upon Dr. Troy's opinion that she is incapable of working. Thus, Petitioner did not introduce any evidence that she performed a diligent, but unsuccessful, job search. Petitioner also did not introduce any evidence that she is unemployable due to her age, training, experience, education, and physical condition. However, Respondent submitted a labor market survey addressing Petitioner's ability to find appropriate work within her sedentary work restrictions. Respondent's vocational experts, Ms. Bethell and Ms. Roberts, determined that Petitioner is qualified to perform sedentary work such as being a greeter, information clerk, and bench assembler. The report details the manner in which the survey was conducted. Ms. Bethell and Ms. Roberts contacted 50 prospective employers; however, only 16 of the employers completed the survey. Notably, 15 of the responsive prospective employers responded that Petitioner's work history qualified her for the identified positions. Furthermore, the 15 prospective employers responded that they would be able to accommodate Petitioner's sedentary restrictions. The labor market survey also determined that Petitioner could earn a mean entry-level hourly wage of $15.40. There is no evidence contradicting the results of Respondent's labor market survey, and the Commission finds the survey to be credible. Thus, the Commission finds a stable labor market exists for Petitioner and she is not permanently totally disabled.

It is undisputed that Petitioner is unable to return to her job as a truck driver. Thus, at a minimum, Petitioner has suffered a loss of trade due to the work incident. However, Illinois courts have expressed a preference for wage differential awards, and have held that the Commission must issue a wage differential award when there is sufficient evidence that Petitioner has sustained a loss of earning capacity. *See Lenhart*, 2015 IL App (3d) 130743WC at ¶49. In this matter, the parties stipulated that Petitioner's current hourly wage if she had remained in her position with Respondent would be $39.25. The labor market survey credibly opines that Petitioner currently can earn an entry-level hourly wage of $15.40. Thus, the Commission finds a wage differential award pursuant to Section 8(d)(1) of the Act is appropriate. Pursuant to Section 8(d)(1), a claimant incapacitated from pursuing their usual and customary line of employment shall receive compensation equal to 66-2/3% of the difference between the average amount they would be able to earn in the full performance of their normal job and the average amount they are capable of earning in suitable employment currently. If Petitioner were able to return to her regular job, her average weekly wage would be $1,570. Due to her work injury, she is now capable of earning an average weekly wage in the amount of $616.00. Therefore, Petitioner is now able to earn $954.00 less than she would in her position as a truck driver with Respondent. The Commission finds Petitioner is entitled to a wage differential award of $636.00 per week. Petitioner is entitled to this wage differential beginning May 7, 2021, the date Dr. Troy placed her at MMI. Additionally, as Petitioner's injury occurred before September 1, 2011, Petitioner is entitled to this wage differential for the duration of her disability.

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 April 15, 2022, is modified as stated herein.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner permanent partial disability benefits, commencing **May 7, 2021**, of $**636.00**/week for the duration of her disability, because the injuries sustained caused a loss of earnings, as provided in Section 8(d)(1) of the Act.

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.

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

Pursuant to 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 bond 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.

January 23, 2023

o: 11/22/22
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	11WC022880
Case Name	MCHUGH, RUTH v. CITY OF CHICAGO
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	31
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Michael Casey
Respondent Attorney	Anthony Gattuso

DATE FILED: 4/15/2022

THE INTEREST RATE FOR THE WEEK OF APRIL 12, 2022 1.22%

/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

Ruth McHugh Case # **11** WC **022880**
Employee/Petitioner
v.
City of Chicago
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Raychel A. Wesley, Arbitrator of the Commission, in the City of Chicago, on January 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. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On June 1, 2011, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**70,171.92**; the average weekly wage was $**1349.46**.

On the date of accident, Petitioner was **55** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**499,965.03** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**499,965.03**.

Respondent is entitled to a credit of $290,597.56 under Section 8(j) of the Act.

ORDER SEE ATTACHED ADDENDUM FINDING OF FACTS AND CONCLUSIONS OF LAW

The Arbitrator finds based upon the weight of credible evidence in this record that petitioner is permanently and totally disabled.

Respondent shall pay Petitioner permanent and total disability benefits of $**899.64**/week for life, commencing **January 29, 2022**, as provided in Section 8(f) of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) 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 **APRIL 15, 2022**

Signature of Arbitrator

ICArbDec p. 2

FINDING OF FACTS

The Arbitrator notes this case, on two previous occasions, was tried on Petitions filed by petitioner pursuant to Sections 19b and 8a. The first hearing was held on October 13, 2013. Arbitrator decision was rendered on January 13, 2014. Respondent filed a Review of that decision. A Decision of the Commission, 15 IWCC 0127, was filed on February 11, 2015. A copy of the Decision of the Commission was admitted in evidence as Petitioner Exhibit 1. In that decision the Commission found that Petitioner's condition of ill-being of her bilateral knees was causally related to the work accident which occurred on June 1, 2011. PX 1. The Commission found that Petitioner's condition of ill-being with regard to her low back was not causally related to the work accident. PX 1. The arbitrator notes that petitioner underwent low back surgery performed by Dr. Troy on December 27, 2015. PX 3, p 385-389. That condition of the low back and consequently the surgery to address that condition are not causally related to the petitioner's work accident of June 1, 2011. PX 1. The Arbitrator notes the case was also tried on a second occasion on February 21, 2017, on Petition pursuant to Sections 19b and 8a, raising issues different from those decided in the first hearing. A Corrected Decision of the Arbitrator in that second hearing was filed on May 30, 2017. No Review of that Corrected Decision was filed and therefore, pursuant to section 19(b), the Corrected Decision of the Arbitrator became the decision of the Commission. A copy of the Corrected Decision of Arbitrator was admitted in evidence as Petitioner Exhibit 2. The Corrected Decision of Arbitrator found: the condition of petitioner's bilateral knees as of the date of that second hearing was causally related to the work accident; temporary total disability was awarded; respondent was ordered to authorize and pay for prospective surgery consisting of bilateral knee replacement surgery as ordered by Dr. Daniel Troy. PX 2. The Arbitrator notes pursuant to *Help At Home v Illinois Workers' Compensation Commission*, 405 Ill. App. 3rd 1150 at 1152 (2020), " …'a court's unreversed decision on an issue that has been litigated and decided settles the question for all subsequent stages of the action.' *Ming Auto Body/Ming of Decatur, Inc., v. Industrial Commission*, 387 Ill App 3rd 244, 252 (2008). The principles underlying the doctrine apply to matters resolved in proceedings before the Commission. *Weyer v. Workers' Compensation Commission,* 387 Ill App 3rd 297, 307, (2008); *Irazzy v Industrial Commission,* 337 Ill App 3rd 598, 606-07, (2003)." This is commonly referred to as the "Law of the Case" doctrine.

The issues in dispute between the parties in this hearing are whether petitioner's current condition of ill-being is causally connected to this injury or exposure, and nature and extent of the injury.

Petitioner testified in open hearing before the Arbitrator who had opportunity to view her demeanor under direct examination and under cross-examination. The Arbitrator considered the testimony of the petitioner in consideration of all other evidence in the record. The Arbitrator finds petitioner was a credible witness.

Petitioner at hearing was 5 feet 6 and have inches tall and weighed 287 pounds. T9. On the accident date she weighed about 200 pounds. From the date of the last hearing on February 21, 2017 up until the date of this hearing she had not injured her right or left leg in any other accidents. T 10. Petitioner continued under the care and management of Dr. Troy after the date

of the last hearing on February 21, 2017. The medical records of Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD were admitted in evidence as Petitioner Exhibit 3. These records document the following.

On December 27, 2015 Dr. Troy performed an L4-S1 fusion on petitioner unrelated to her work accident.

On October 3, 2016 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document: petitioner was seen by Dr. Troy last week when she was complaining of bilateral knee pain. She has known bilateral knee osteoarthritis. Given an injection in her right knee by Dr. Troy last week. Today here for an injection in her left knee. Injection into the left knee administered. PX 3, p 334-335.

On December 9, 2016 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document: 61-year-old female comes into the office today for a cortisone injection into her left knee. She was scheduled for Supart injections but at this time, she is still pending authorization from her insurance company. Her last cortisone injection was on June 8, 2016. She currently ambulates with the assistance of a cane at times but mostly independently. She currently takes Norco 10/325 for some relief, along with over-the-counter NSAID S. In addition, she is using lidocaine patches in the a.m. and evening which also gives her relief. The patient is requesting repeat cortisone injection to her left knee since she is still pending the Supart injections through her insurance. Cortisone injection was administered to the left knee. PX 3, p 196-197.

On March 17, 2017 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD document the following. Presents today for follow-up for pain in the bilateral knees secondary to bilateral primary arthritis of the knees. Today the patient is in good spirits, ambulating with the assistance of a walker. With regard to her knees she reports recent flareup of her symptoms two weeks ago. She denies any falls, traumas or injuries to the area. She states that most of the pain is located in the medial compartments of the right leg currently being worse than the left. Patient has had cortisone injections to her bilateral knees in the past which did give her good amount of relief. She is currently requesting repeat cortisone injection to the right knee at this time. Currently taking gabapentin as well as Advil and Norco. Cortisone injection to the right knee was administered. PX 3, p 319-321.

On March 27, 2017 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document the following. Presents today with bilateral osteoarthritis of the knees requesting and intra-articular corticosteroid injection of her left knee. Today the patient is in good spirits, ambulating independently. On her last visit March 17, 2017 she received a cortisone injection to the right knee which she did note some improvement of her symptoms. She was also given prescription for topical Voltaren gel. States it did give some slight relief to the pain in her knee. In regard to left knee, she reports she continues to have pain primarily located diffusely in the anterior aspect with intermittent pain in the lateral compartment. She reports she continues to take gabapentin three times a day as well as Advil and Norco for pain. Continues exercise in an

attempt to lose more weight. She denies any recent fall, trauma or injuries to the area. Left knee injection aspiration of the joint bursa was performed. PX 3, p 328-329.

On May 30, 2017 the Corrected Decision of the Arbitrator was filed. No review of that decision was filed so that this became the decision of the Commission. PX 2. The Commission found that petitioner's current condition of ill-being of the bilateral knees was causally related to the work injury and that bilateral total knee replacement was reasonable, necessary and causally related treatment of that work injury. PX 2.

On June 9, 2017 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document: Ruth is a 61-year-old female who comes in today for evaluation. She is currently status post a lumbar fusion and doing overall well from that. She is not 100 but says she is about 60% improvement. She comes in today secondary to the fact that she has reached the point in time she can no longer take the pain to her bilateral knees. She would like to proceed with knee replacement surgery. She is currently ambulating with the use of a walker secondary to the knee pain. She is overall very happy with results of her back. At this point in time comes in to discuss her knee pain. The patient would like to proceed with the right knee first. Exam: she has end-stage arthritic changes of both the right and left knee. There are bone on bone changes affecting the patellofemoral joints bilaterally. Assessment: advanced tricompartmental arthritic changes end-stage of bilateral knees, right being more symptomatic than left. Plan: at this point in time we would like to proceed with right total knee replacement first. Norco and gabapentin were prescribed. PX 3, p 193-195.

On June 24, 2017 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records note: she has recently undergone an MRI of her right shoulder and comes in today to review the results. The MRI was discussed with her. She is using a walker secondary to her bilateral knees. PX 3, p 227-228.

On July 12, 2017 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document the following. She has advanced end-stage degenerative changes of bilateral knees, which was exacerbated by work injury. The patient has been approved for a right total knee replacement. Comes in today for preoperative visit. We refilled her Norco. She is currently ambulating with the use of a walker. She is doing better from the back standpoint. She is neurologically intact to bilateral lower extremities. She has 5/5 strength. She has no sensory or motor deficits. She continues to have chronic low back pain although markedly improved from preoperatively. Plan: we will proceed with total knee replacement. PX 3, p 205-206.

Petitioner testified that the reason that she started to use a walker was because she was off balance on the right knee and needed support to walk. T 13.

On July 27, 2017 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document following. Petitioner is scheduled for right total knee arthroplasty surgery. She has advanced end-stage degenerative changes which has been exacerbated by work injury in the past. The patient has tried all injections and therapy with no or too little relief. She wants to return to her work and ADLs so she wants to move forward with the surgery. After examination plan was proceed with right total knee arthroplasty. PX 3, p 229-231.

On July 30, 2017 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document petitioner underwent **surgery** performed by Dr. Daniel Troy described as: complex right cemented total knee arthroplasty utilizing the Zimmer Persona posterior stabilized total knee arthroplasty system. The postoperative diagnosis was: advanced degenerative joint disease of right knee. PX 3, p 547-550.

On August 15, 2017 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document petitioner presents today status post a right total knee arthroplasty done on July 30, 2017 by Dr. Troy. Today the patient is in good spirits, ambulating with the assistance of a walker, accompanied by her daughter. Regards to the patient's right knee she reports she is back at home at this time where she has physical therapy coming out to the house twice a week. Also doing home exercises. She reports intermittent pain over the anterior aspect of her right knee which she states is more pronounced after physical therapy as well as doing her home exercises. States she has been taking Norco tablets for pain. Requesting a refill. Taking Lovenox for DVT prophylaxis. Impression: pain in right knee; aftercare following joint replacement surgery; presence of right artificial knee joint. Plan: staples were removed; Steri-Strips were applied. RX physical therapy to the right knee. Discontinue Lovenox. Refill Norco for severe pain, for moderate mild pain recommend OTC Tylenol. RICE therapy as needed for inflammation. Do not drive or operate a motor vehicle while taking any of these medications. PX 3, p 317-318.

On August 29, 2017 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document the following. Presents today status post a right total knee arthroplasty done on July 20, 2017 by Dr. Troy. Patient is in good spirits, she is ambulating with the assistance of a walker. An outpatient therapy at ATI. Does report intermittent swelling down her right lower extremity, which she states is more pronounced after doing her exercises. Taking aspirin for DVT prophylaxis. Taking Norco as needed for pain which she states usually takes twice a day, especially on days when she has physical therapy. Impression: pain in the right knee. Presence of right artificial knee joint. Plan: order for venous Doppler ultrasound on bilateral lower extremities to rule out any type of DVT. Advised patient on compression stockings. Continue aspirin. Take Norco only for severe breakthrough pain. Do not drive or operate motor vehicle while taking any of these medications. Continue physical therapy. PX 3p 332-333

On September 13, 2017 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document the following. Comes to our office today for evaluation. Ruth is dealing with again status post right total knee replacement. She has a small eschar in the inferior aspect of the knee. There was concern about a possible infection and therefore she comes to the office today for evaluation. I examined the wound and it is overall well-healed. She has about 1 cm eschar in the distal aspect. Pushing all around the wound I did not get any pain. There is no fluctuance. There is no purulence. There is no drainage. Her knee is overall ligamentously stable. She is no instability. She has no pain throughout range of motion. Assessment: 62-year-old female status post right total knee replacement on July 30, 2015; doing overall well outside of one area on the inferior aspect of the wound where she has an eschar present without any drainage. Plan return in one week, keep an eye on her weekly. At this point in time no gross obvious signs of any type of infection. PX 3, p 211.

On September 19, 2017 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records note: comes in today for a wound check evaluation. The patient is status post right total knee arthroplasty surgery on July 30, 2017. She walks in today currently using a walker for assistance and appears to be in no acute distress. She denies any drainage, redness or any signs or symptoms of infection. Physical examination for wound check right lower extremity. She states that overall her pain is improved. She currently is taking Norco. Currently enrolled at ATI physical therapy. Has very little pain over her knee. We went ahead and removed the dressing from the distal aspect of her wound where there was approximately a 1 cm eschar of the distal aspect that is pink and healing up uneventfully. I went ahead and massaged and pushed all around the wound and did not get any further drainage and the patient did not express any increased pain. There again is no purulence, no drainage and no fluctuance. Her knee overall is ligamentously stable. She has no instability. She has no pain throughout the range of motion. Her calves and thighs are soft and tender. There are no signs of DVT and motor and sensation are intact to light touch with no clonus or spasms. Impression: pain in right knee; aftercare following joint replacement surgery; presence of right artificial knee joint; local infection of the skin and subcutaneous tissue, unspecified. Plan: instructed the patient to clean the wound once or twice a day with Betadine swabs. She will keep it covered and continue to keep an eye on it. PX 3, p 222.

On September 27, 2017 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD medical records document the following. Comes into the office today for wound check. Status post right total knee arthroplasty surgery performed on July 30, 2017. She currently is still using a walker for assistance outside otherwise a cane around the house. Denies any problem along the incision, no drainage, no redness and no signs or symptoms of infection. She ambulates into the office with the assistance of walker. Currently is overall doing quite well. She still has pain. She is still currently taking Norco currently enrolled in ATI physical therapy with very little pain over her knee. Impression: right local infection of the skin and subcutaneous tissue, unspecified; right presence of right artificial knee joint; right encounter for orthopedic aftercare. PX 3, p 239-240.

Admitted in evidence as Petitioner Exhibit 4 are excerpts of the records of Dr. Jeffrey Curtin, D. O. The records document the following.

On October 2, 2017 Dr. Jeffrey Curtin, D. O. Records document: chief complaint: neuropathy of her legs, she had a TKR on her right knee in July. Patient is here for follow-up since her last visit she's undergone a knee replacement on the right subsequent worsening of neuropathic symptoms on that site. She tells me she is doing well with gabapentin but may benefit from an increase to we will go to four times a day with 600 mg. Assessment/plan were: degenerative joint disease of right knee diabetic neuropathy with neurologic complication. PX 4, p 20-22.

On October 10, 2017 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records note the following. Presents today status post right total knee arthroplasty done on July 30, 2017 by Dr. Troy. Comes in by way of wheelchair. In regard to right knee the patient states she continues to do physical therapy at ATI. Continues to do her home exercises. Continues to

experience pain over the anterior aspect, which is more pronounced after her therapy and exercises. Continues to take gabapentin as well as Norco for pain. Requests refill of Norco. Impression: presence of right artificial knee joint; pain in the right knee; encounter for other orthopedic aftercare. Plan: continue physical therapy home exercises; refill Norco; should not drive or operate a moving vehicle while taking any of these medications. Remain off work. PX 3, p 307-308

On December 12, 2017 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD. notes. Comes in today for evaluation. She is currently status post right total knee replacement approximately six months out; doing okay, but not great. She reports intermittent pain to the knee. She still is in physical therapy. She also has been working on weight loss. Exam: right knee has a well-healed incision, range of motion from 0 to 120°, no instability with varus/valgus stressing. She has significant pain to her left knee secondary to advanced end-stage tricompartmental arthritic changes, in need of left total knee replacement. Plan: continue therapy for the right knee. She is in need of left total knee replacement and we will schedule her sometime in the March 2018. PX 3, p 207-208.

On January 9, 2018 Dr. Jeffrey Curtin, D. O. Records document: patient is here today for follow-up of her peripheral neuropathy in both her feet. She states that since increasing her dose of gabapentin to 600 mg QAD from TID she has received a little relief from her pain although she still wakes up in the middle of the night with some neuropathic pain still has to supplement her therapy with her Vicodin from time to time when the pain gets really bad. She tells me her neuropathy had gotten slightly worse after having right knee surgery done last July and is going to meet with her ortho Dr. Troy to work on the other knee. She will be meeting him in late January to determine future surgery date. She is also currently seeing a psychiatrist for depression. PX 4, p 23.

On January 30, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document presents today for evaluation. Currently status post multilevel lumbar fusion. She is dealing with bilateral lower extremity postoperative paresthesias and nerve root irritation. She underwent right total knee replacement and she is doing well from the standpoint. She reports this exacerbated her symptomology in her low back leading to more of her radicular type pattern to her lower extremities. At this point in time the patient is overall frustrated. She is still on Neurontin. She is still considering propagating to a possible total knee arthroscopy of the left lower extremity. From my standpoint, I think she should still wait another six weeks before considering this. PX 3, p 246-247.

On March 16, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document following. She is currently status post L4 to S1 posterior spinal fusion and instrumentation. She also has history of right total knee replacement. She at this point in time is dealing with chronic nerve pain to the right lower extremity. She is in need of a left total knee replacement. She is taking amitriptyline trying to improve some of the neck pain. She is on Neurontin. We are going to continue her on Neurontin and stop the amitriptyline and switch her

to Cymbalta to see if it helps. In addition, she is taking one or two Norco a day but has always been at baseline. She at this point in time is in need of a left total knee replacement. We are going to schedule her for left total knee arthroplasty and proceed with this. Exam: with regard to her bilateral lower extremities she is neurologically intact, 5/5 strength, no sensory or motor deficits. Impression: presence of right artificially joint; encounter for orthopedic aftercare; pain in left knee; unilateral primary osteoarthritis, left knee; arthrodesis status. Assessment: status post L4 to S1 lumbar fusion with instrumentation with the developing minimal grade L3-4 spondee; history of right total knee replacement, doing well; intermittent radiculopathy to the right lower extremity; morbid obesity; advanced degenerative changes of the left knee. Plan. We refilled her Norco; refill Neurontin; set her up for a total knee replacement. PX 3, p 216-218.

On April 27, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document. She is currently status post a L4 to S1 posterior spinal fusion with instrumentation, currently doing relatively well with that. She also has a history of right total knee arthroplasty and doing well with that with only occasional intermittent pain but mainly pain to the left knee. She comes in today and she is ambulating with the use of a walker. Her walker is markedly worn in areas that possibly look like they will give way and break. Secondary to that the patient would benefit from a new walker. She uses this walker because of her back as well as bilateral knee replacement surgery so we will get this approved through work comp. PX 3, p 234-236.

On June 8, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document: the patient returns to the office today to be issued and fitted with an adult walker with wheels. She is scheduled for surgery on 11 June at Palos Community Hospital to have performed a left total knee arthroplasty surgery. She walks in today currently using an old walker that she had picked up at garage sale which is fitting her incorrectly. We issued her new walker with wheels for her postop care. After exam impression was: left pain in the left knee; left unilateral primary osteoarthritis, left knee; encounter for other preprocedural examination. Plan: at this time patient was prescribed the adult walker by Dr. Troy for post op surgery. This mobility device is required due to the following reason that the patient is having surgery and mobility limitation will be limited and this will significantly impair the ability to participate in one or more mobility related activities of daily living in the house. The patient is at this time safely able to use the mobility device and is noted that the functional mobility deficit can be sufficiently resolved with the use of the mobility device. The patient was given written instructions as far as walking with a walker and its adjustments. She was advised should she have any problems or concerns to contact the office. PX 3, p 191-192.

On June 11, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document surgery performed by Dr. Troy described as complex left cemented posterior stabilized total knee arthroplasty system. The postoperative diagnosis was: severe end-stage degenerative joint disease of left knee with varus deformity. PX 3, p5-9.

On June 27, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document. Presents today status post-a left total knee arthroplasty done on June 11, 2018 by Dr. Troy. Patient in good spirits ambulating with the assistance of a walker. Does report occasional pain in both the medial and lateral aspect with intermittent swelling. Has been taking Norco as

needed for pain. Requesting to decrease the dose and drop-down to Norco 7.5. Also taking Lovenox for DVT prophylaxis. Doing physical therapy at home. Denies any numbness or tingling in her bilateral lower extremities. Impression: pain in the left knee. Plan: physical therapy for left knee, prescribed Norco, should not drive or operate a motor vehicle while taking any of these medications, refill gabapentin continue Lovenox. Continue with Polar Care machine for left lower extremity. PX 3, p 330-331.

On July 6, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document the following. Status post left total knee arthroplasty on June 11, 2018, by Dr. Troy. Comes in today with the assistance of a walker, appears to be in no acute distress. Does report and occasional pain in the lateral aspect with intermittent swelling. Currently has been taking Norco for pain. Currently on Lovenox twice daily for DVT prophylaxis. Plan: set her up with outpatient physical therapy. Continue Norco. Do not drive well taking these medications. PX 3, p 185-186.

On July 27, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document: comes into the office today for postop evaluation. She is status post left total knee arthroplasty on June 11, 2018, by Dr. Troy. She comes in today with the assistance of a walker, appears to be in no acute distress. She does use a cane at home but when out and about she uses the walker still for ambulation. She currently has been taking Norco 7.5/325 along with Celebrex and gabapentin twice daily. She still contains of some burning sensation in both bilateral lower extremities along the L5 distribution. She is currently in outpatient physical therapy where she is doing quite well and has been very happy with the outcome of the surgery. She denies any numbness in the bilateral lower extremities or any inability to move her lower extremities or bear weight. Plan: continue with outpatient physical therapy as ordered to help regain full range of motion and extension of the lower extremity. Continue Norco for severe pain and Tylenol for mild to moderate pain. Continue gabapentin.

On August 3, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document the following. Presents today status post a left total knee arthroplasty done on June 11, 2018, by Dr. Troy. Today the patient is in good spirits. She is ambulating with the assistance of a walker. In regards to the patient's left knee she does report she is currently enrolled in physical therapy at our Oaklawn office. She does state it is helping. However, she is requesting some more sessions at this time. She does report intermittent pain in the left knee. She states she has been taking gabapentin as well as Norco. The patient does have a complaint today of swelling in the left lower extremity from the knee down to the ankle. She denies any lower extremity radiculopathy. She does report intermittent numbness and tingling near her incision which she states has been present since her surgery. Plan: continue physical therapy and home exercises. Patient will be sent for venous Doppler ultrasound of the left lower extremity to rule out any type of DVT. Patient does report she has compression stockings at home. Advised her to wear these throughout the day removing them at nighttime. Continue baby aspirin regimen. Continue gabapentin and Norco for severe breakthrough pain and for mild to moderate pain recommend over-the-counter Tylenol. Patient will continue RICE therapy as needed for inflammation.

Patient will follow up in approximately one month for reevaluation at which point repeat radiographs of the left knee will be taken. Patient should not drive or operate a motor vehicle a taking any of the medications. PX 3, p 300-301.

On September 14, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document. 62-year-old female currently status post left total knee arthroplasty from June 11, 2018. Her wound is clean, dry and intact. She is ambulating with use of a walker secondary to low back pain. She has no pain no signs or symptoms of DVT. Assessment 63-year-old female status post left total knee arthroplasty on June 11, 2018, currently progressing accordingly. Plan: continue physical therapy. PX 3, p 25-27.

Petitioner testified she did not injure her right knee in any accident in 2018 or at any time. T 15-16. The right knee just started to swell up and she could not walk. She returned to Dr. Troy. T 16.

On September 18, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document the following. Patient is a 63-year-old female comes in today complaining of acute right knee pain. She states her knee pain started suddenly on Sunday. She denies any history of trauma. She does have a history of knee replacement. She states that it is very painful to walk on but is not giving out underneath her. She denies any numbness or tingling or radiating pain in her lower extremity. She has noted some cold sweats but has not noted any chills. She has also noted some bright urine but no burning with her urine and no recent illnesses. Exam: discomfort due to pain. Ambulating with a front wheeled walker today. Right knee range of motion limited from about -10 to about 90° due to swelling and pain. She does have tenderness to palpation over the anterior aspect as well as work to the touch. There is noted effusion on the knee. No gross instability. There are no open wounds. No erythema. No drainage from her prior incision site which is well healed. Impression: presence of right artificial knee joint. Pain in right knee. Plan: patient underwent aspiration of the right knee from which we collect about 60 cc of purulent fluid. Will be sent to the laboratory. Patient was admitted to Christ hospital and will be needing a washout of the right knee**.** All benefits and risks were discussed with the patient she will likely be on IV antibiotics. Aspiration of the right knee was performed. PX 3, p 342-343.

On September 19, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD. records document Surgery performed by Dr. Troy at Christ Medical Center described as: 1. Irrigation and debridement of right total knee arthroplasty; 2. Tibial polyethylene spacer exchange; 3. Antibiotic bead placement, manufactured of calcium sulfate/impregnated with tobramycin. Postoperative diagnosis was: again cultures were growing gram-negative bacilli from aspiration performed in the office, confirming a septic right total knee arthroplasty less than 5 days duration. PX 3, p 32-34.

On September 20, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document. Patient was seen and evaluated this a.m. Patient in bed doing well. Patient with history of TKA recent UTI. (The arbitrator interprets “UTI” to mean “urinary tract infection.”) Presented to office with sudden onset of swelling and pain aspiration done in office

sent directly to hospital. Plan: will continue on mechanical DVT prophylaxis; ambulate with PT; follow-up cultures. PX 3, p 26-27.

On September 21, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD document: patient seen and evaluated this a.m. Patient in bed resting overall comfortably states right knee pain is improving. Patient states she is confused regarding where the infection. Patient has UTI and it was explained to her that as discussed in the pre-op appointment from time of implant on whenever patient has a mouth or teeth infection or UTI it has a chance to seed in the implants. PX 3, p 28.

On September 22, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document: patient seen this a.m. Denies any chest pain and no SOB reported. Status post I & D for infection, awaiting final results. Patient already has PICC line awaiting final and definitive ABX. Plan: continue on chemical DVT prophylaxis; anticipate DC to rehab tomorrow. PX 3, p 30.

Petitioner testified after she was discharged from the hospital she was sent to a nursing home because she needed an IV with antibiotics every six hours. She was in the nursing home for six weeks. During those six weeks she underwent therapy directed to the right knee. She was confined in the nursing home unless she had a doctor's appointment and was able to leave only for the doctor's appointment. T 17-18. Petitioner testified that she followed up with Dr. Troy after the 2nd surgery on the right knee and continued to have pain in the right knee and continued to use the walker. T 18. She was also seeing Dr. Troy for her back and shoulder and for carpal tunnel syndrome. T 18.

On October 3, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document presents today status post I & D of an infected right total knee, tibial spacer exchange as well as antibiotic bead placement which was done on September 19, 2018 by Dr. Troy at Christ Medical Center. Today the patient is in good spirits ambulating with the assistance of walker. In regard to her right knee, she does note that she is currently residing at ManorCare where she has been undergoing physical therapy. She does have a PICC line in place. She has been following up with infectious disease, the doctor's name she cannot remember. She is currently receiving IV ampicillin as well as oral antibiotics. She does note that she has been taking Norco 7.5 as well as gabapentin as needed for pain. She reports that she is currently not on any blood thinners. The patient denies any purulence from her incision site, numbness, tingling, inability to move her bilateral extremities, inability to bear weight, calf pain, chest pain or shortness of breath. She is also status post a left knee arthroplasty which was done on June 11, 2018. She reports she is doing well in this regard. Plan: patient is a 63-year-old presents today status post I & D of infected right total knee, tibial spacer exchange. Continue physical therapy at Manor Care; continue IV oral antibiotics; prescribed Lovenox for DVT prophylaxis; continue her current pain medications;. Return for reevaluation at which time repeat radiographs of the right knee will be taken. PX 3, p 302-303.

On October 17, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document: presents today status post I & D of an infected right total knee, tibial spacer exchange

as well as antibiotic bead placement which was done on September 19, 2018 by Dr. Troy. Today patient is in good spirits ambulating with the assistance of a walker. Currently residing at Manor Care where she has been undergoing physical therapy. X-ray of the right knee demonstrate right total knee arthroplasty. All visualized components are in place with no loosening. There are no signs of periprosthetic fractures or dislocations. Plan: continue physical therapy at Manor Care. Continue IV and oral antibiotics; continue open expert DVT prophylaxis; remain off work; continue current medication; staples were discontinued. PX 3, p 322-323.

On November 9, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD medical records document the following. Patient is 63-year-old female presents today for evaluation. She is having left wrist pain as well as pain to the left knee. We are overall concerned about having a possible infection in her left knee. Therefore, we are going to perform an aspiration of her left knee. We are also going to give her a carpal tunnel injection to her left wrist. Exam. The patient has a history of bilateral total knee arthroplasties in the past. She is having increasing warmth and redness to her left knee. Plan. The patient underwent left knee aspiration. Also had cortisone injection in the left wrist. PX 3, p 42-43.

The arbitrator notes that the above office visit note of November 9, 2018 references concern about possible infection in her "left" knee and documents aspiration of her "left" knee. The arbitrator notes that the subsequent note of November 14, 2018 references that petitioner is "here today to review the results of right knee aspiration done on November 9, 2018 ." PX 3, p 212-213. The arbitrator further notes that another subsequent note of December 11, 2018 notes that, "she did undergo aspiration of the right knee on November 9, results of which came back negative." PX 3, p 309-310. The arbitrator interprets the reference to the "left" knee to be an error in identification of the knee and based upon the notes of November 14, 2018 and December 11, 2018 concludes there was an aspiration of the right knee performed to determine if there was ongoing infection in the right knee.

On November 14, 2018 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document following. Here today to review the results of right knee aspiration done on November 9, 2018. She rates her current pain as 10. She is mobilizing with a walker which she has been doing for the last year. She recently underwent a single stage I & D with polyethylene exchange to the right knee secondary to underlying infection. She recently stopped her antibiotics over the last two weeks. Repeat aspiration was performed in the office. The cell count was within normal limits and the culture for the last four days has been negative. Based on the studies, it appears that there is no underlying infection to the right knee. Exam: she is currently mobilizing with the use of a walker. She has undergone multiple surgeries including a multi-level lumbar fusion as well as bilateral total knee replacements. She recently developed an infection to her right total knee replacement. Impression: patient was given results of her intra-articular aspiration, negative for infection. Patient will start physical therapy working on the right knee arthroplasty as well as to the lumbar spine and left knee. Patient was kept off work. PX 3, p 212-213.

On December 11, 2018 Advanced Orthopedic & Spine Cen7ter/Dr. Daniel Troy MD records document the following. Presents today status post and I & D with polyethylene

exchange to the right knee done on September 19, 2018 currently covered under workers compensation. From the right knee standpoint, the patient reports she is currently in physical therapy. She also has been doing home exercises on a frequent basis. She states her pain is well controlled with Norco and gabapentin. She did undergo aspiration of the right knee on November 9, result of which came back negative. The patient denies any numbness or tingling purulence or drainage near her incision site. Plan: continue physical therapy home exercises gabapentin Norco RICE therapy for any inflammation; return in one month. PX 3, p 309-310. (The petitioner interprets RICE therapy to mean Rest, Ice, Compression, Elevation therapy).

On January 22, 2019 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document. Ruth is status post I & E right total knee arthroplasty done on September 19, 2018. The patient is having pain in her right knee and is currently done with physical therapy. The pain travels down to the foot. She is taking Norco and gabapentin for the pain along with icing it and using a heating pad. The patient also has lower back pain. The pain is about a 5/10. Exam: her left knee is doing very well status post total knee arthroplasty. Her right knee is currently status post I & D of a septic knee with retainment of components. Patient is doing well but continues having residual pain. The patient has pain no calf pain, no thigh pain, no signs or symptoms of DVT. Impression: pain in the right knee; presence of right artificially joint**.** Plan: patient will start physical therapy on her right knee; patient was given refill on her gabapentin; the patient was given refill on her Norco 5/325. The patient has been fully informed today by myself as well as the medical assistant in the room with us that when taking any type of medication such as a muscle relaxer, narcotic and even an anti-inflammatory, the medication could affect cognitive skills and therefore driving ability. The patient should not drive or operate a motor vehicle while taking any of these medications. The patient should wait at least 12 hours from the last dose of medication prior to operating a motor vehicle or operating any type of equipment. This is for the safety of the patient as well as others. The patient has been fully informed the above. PX 3, p 225-226.

On July 3, 2019 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document: comes in today for evaluation. She has recently undergone bilateral total knee arthroplasties. A recent IME report from Dr. Brian Cole was read and demonstrates that she is at MMI and had good results from bilateral knees and was released back to work in a sedentary duty fashion. From the standpoint of her low back, she has a prior history of lumbar fusion dating back to December 2015. **I**n regards to her back she has minimal complaints today. She is working on weight loss. She was approximately 290 pounds. Assessment: history of a L4 to S1 posterior spinal fusion doing overall well. History of bilateral total knee arthroplasties both doing well but has a pes anserine bursitis to the right knee. The patient at this point will proceed with a pes anserine bursa injections. Injection administered to the right knee. PX 3, p 48-49.

On October 22, 2019 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document: Presents today with a flareup of pain to the right shoulder secondary to primary osteoarthritis. Ambulating with the assistance of a walker. PX 3, p 50.

On December 28, 2019 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document the following. Comes into the office today for evaluation. She's dealing with chronic pain to the right knee. She has an I & D of the right knee but it is unchanged. She is on Neurontin 600 mg and takes one Norco every other day that has not changed. Assessment: 1. Status post multilevel lumbar fusion doing overall well; 2. Status post left total knee replacement doing well; 3. History of right total knee arthroplasty, taken back for an I & D, with chronic pain to the anterior aspect of the right tibia. Patient to continue with Neurontin; continue with Norco and informed patient should not drive or operate a motor vehicle while taking any of these medications. PX 3, p 53-54.

On February 28, 2020 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document the following. I had the pleasure performing a lumbar fusion as well as bilateral total knee arthroplasty on her. She is having neuropathic type complaints of pain greater in the right than the left lower extremity and comes in today for evaluation of all the above. Assessment: 64-year-old female who was significantly overweight, trying to work on weight loss, was permanently disabled from undergoing prior lumbar fusion as well as having bilateral total knee arthroplasties and an infected right knee and went through antibiotic cement spacer and reconstruction and is currently doing overall better but ever since that point in time, develop tingling and numbness going into the right lower extremity. Diagnosis: presence of artificial knee joint, bilateral. Plan: refill Norco taking Neurontin working on weight loss physical therapy has not helped. She can also consider spinal cord stimulator but we are going to hold off on that at this time. PX 3, p 58-59.

On April 7, 2020 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD document. Has lost about 14 pounds. History of bilateral total knee arthroplasty. Low back was deemed not to be Worker's Comp. She had an L4 to S1 posterior spinal fusion. She is currently walking with a walker. In regards to her wrist, she has a long-standing chronic scaphoid disruption leading to SLAC wrist. She also has end-stage degenerative changes of the right shoulder and a chronic rotator cuff tear, both being accentuated from using a walker and ambulating with use of a walker secondary to her back as well as her bilateral knees. She also is complaining of pain in both the right and left foot. Assessment: 64-year-old female with history of bilateral total knee arthroplasty with the right knee developing a postop infection 12-18 months postoperatively, currently doing okay with chronic discomfort. Plan: continue work and weight loss; at this time, she is currently disabled; we will see her back to 8 weeks from the knee standpoint; make a separate appointment for the shoulder wrist the back; follow-up with Dr. Dana Berns for foot and ankle care. RX Norco. PX 3, p 60-61.

On May 6, 2020 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document: she has a history of bilateral total knee arthroplasty. One, unfortunately became infected. She has chronic pain from arthroplasty and subsequent reimplant. She comes in today because of low back pain. PX 3, p 62.

On May 18, 2020 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document: she is status post bilateral total knee arthroplasties determined to be Worker's Comp. related. She did have an injection to her right knee and was taken back for I & D of her right

knee and polyethylene exchange years ago and was left with chronic pain to that knee since that infection. She takes Neurontin 3 times daily. She also occasionally takes ½ to one tablet of Norco daily. We have educated her on intermittent anti-inflammatories and Tylenol. She recently just caught her walker. She is using a walker not only because of knee pain but also because of her back. She caught her walker and suffered a fall, suffering a direct blow to her left knee and comes in today for evaluation. Assessment: 64-year-old female with history of bilateral total knee arthroplasties, undergoing I & D for an infected right knee in the past, overall doing well and back to baseline but does have chronic pain to the right knee secondary to that infection. Plan: refill Norco; reassured in regards to the fall to the left knee that there is no induced trauma outside of the superficial bruising and superficial abrasion; please know when she fell she broke her walker; we at this time are going to try to get another walker approved and ordered for her; see her back several weeks get her fitted with a walker and proceed from there. PX 3, p 67-68.

On July 14, 2020 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document. 64-year-old female presents today with history of prior right total knee arthroplasty and subsequent I & D due to infection, currently covered under workers compensation. Ambulating with the assistance of a walker. In regards to her right knee, she reports mild pain over the right knee; however her main complaint is numbness diffusely in the right lower extremity. She knows she has been taking gabapentin 3 times a day as well as Norco in the evenings for severe pain. Denies any lower extremity radiculopathy. Assessment: 64-year-old female with a history of prior right total knee arthroplasty with a subsequent I & D due to infection, now with diffuse numbness over the right lower extremity. Plan: sent for EMG/NCV of the bilateral lower extremities; continue gabapentin; continue Norco for severe breakthrough pain; work status off duty. She is permanently disabled. Follow-up post EMG NCV. PX 3, p 74-75.

On August 12, 2020 EMG was performed on petitioner by Jeffrey C Curtin, D. O. PX 3, p 76-77.

On August 12, 2020 Dr. Jeffrey Curtin DO records document: the patient presents because of complaints of numbness in both legs this has been going on for a few years right greater than left in fact the right is more significantly worse and she requests that we only do the right leg. She said that the numbness seems to get worse after her knee surgery and this was complicated by an infection. The patient had a previous study done of the lower extremities in 2016 and I will make comparison at the conclusion of the study and include it in the body of the report. Findings: based on today's electrodiagnostic study there is evidence of worsening of the patient's underlying neuropathy to now affect all the sensory nerves with completely absent responses. This is most likely the etiology of her symptoms in the right leg. The fact that there has been resolution of the denervation and the other muscles postoperatively suggest an improvement at least from a ventral radicular standpoint. PX 4, p 44-45.

On August 14, 2020 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document the following. Presents today with history of prior right total knee arthroplasty with subsequent I & D due to infection covered under workers compensation. She is here to review the results of an EMG of the right lower extremity. Is ambulating with the assistance of a walker.

In regard to the patient's right lower extremity she reports continued numbness diffusely in the thigh as well as the calf. She is taking gabapentin and Norco for severe pain. Assessment: 64-year-old female presents today to review the results of an EMG of the right lower extremity secondary to diffuse numbness, also status post a right total knee arthroplasty with subsequent I & D due to infection, covered under Worker's Compensation. An EMG of the right lower extremity was done at Palos Hospital on August 12, 2020. Impression: based on today's diagnostic study there is evidence of worsening of the patient's underlying neuropathy to now affect all the sensory nerves with completely absent responses area this is most likely to due to her symptoms in the right leg. The fact that there has been resolution of the denervation in the other muscles postoperatively suggest improvement at least from the ventral radicular standpoint. Plan: the EMG did demonstrate evidence of worsening neuropathy affecting all sensory nerves of the right lower extremity with completely absent responses. Secondary to this we are recommending a referral to a neurologist. She has seen Dr. Curtin in the past and would like to return him. Remain off work. Referred to Dr. Curtin. Continue gabapentin and Norco. Do not drive or operate a motor vehicle while taking these medications. PX 3, p 78-79.

On August 27, 2020 Dr. Jeffrey Curtin D. O. Records document: Ruth is here for follow-up I performed an EMG on her right lower extremity at Palos Hospital about 2 weeks ago and she did not know I was back in practice and wanted to follow up with me as I have been following her for her neuropathy in the past. The patient had an interesting finding on EMG in the sense that her neuropathy worsened including the axonal and demyelinating components but the denervation from the previous radicular process had almost completely resolve following her fusion. The patient's right leg has been the worst of the 2 and it has been that way since she developed an infection in her right leg at the site of her knee surgery. The neuropathy has gotten worse to the point where she is using a walker and I told her that at this point because of the progression in the demyelinating components we should probably go ahead and do the left lower extremity along with bloodwork and if necessary, a sural nerve biopsy. I have also recommended because she is getting no relief from any of the medications that she try cannabis. PX 4, p 19-20.

On September 29, 2020 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document ambulating with the assistance of a walker continues to experience diffuse numbness in the right lower extremity along with intermittent shooting pains. Has been seeing a neurologist Dr. Curtin who performed EMG/NCV on the left lower extremity. Taking gabapentin and Norco. Assessment 64-year-old status post right knee arthroplasty with subsequent I & D due to infection, with continued numbness diffusely in the right lower extremity. Continue gabapentin Norco amitriptyline continue physical therapy remain off work. PX 3, p 80-81.

On November 3, 2020 Advanced Orthopedic & Spine Center/Dr. Daniel Troy MD records document. Her knees have well healed incisions bilaterally. No effusions, lacerations, redness or erythema, more of an ache both to the right and left knee. Assessment: 1 history bilateral total knee arthroplasty with right knee being infected back in 2018; 2. History of L4-S1 spinal fusion; 3. History of neuropathy, right greater than left lower extremity. Diagnosis: presence of artificial knee joint, bilateral. Plan: therapy working on strengthening gait training trying to get her off the walker. PX 3, p 85-86.

Petitioner testified she continued to have numbness and pain in the right leg from the right knee down to her ankle for which she was taking gabapentin and Norco for the pain that would get so bad at night that she would have to take that Norco to be rid of the pain. T 19. Petitioner testified she also was having pain in her back for which she was being treated by Dr. Troy. T 20. The pain in the back never radiated down into her legs. T 21.

On December 1, 2020 Advanced Orthopedic & Spine Care/Dr. Daniel Troy MD. records document: presents today with history of bilateral total knee arthroplasties done in 2018 by Dr. Troy, also with the prior lumbar fusion at the L4 to S1 level currently covered under workers compensation. She comes in ambulating with assistance of a walker. In regards to the patients bilateral knees, she reports she continues to experience intermittent pain in the right greater than left knee. She reports minimal pain at rest but does note increased pain with activity. She states at times the pain in the right knee can reach an 8/10 at its worse. During her previous appointment, she was given an updated order for physical therapy focusing on her balance and gait training to hopefully wean her off the walker. However, we are still awaiting approval for physical therapy through workers compensation. We do, at this point in time, feel the patient would benefit from more physical therapy sessions with the ultimate goal of discontinuing the walker. Otherwise, the patient reports she has been taking Norco intermittently has needed for her pain. She otherwise also has history of neuropathy to bilateral lower extremities and has been following up with Dr. Curtin, her neurologist. She does report the right lower extremities more affected than the left. She otherwise denies any inability to move her bilateral lower extremities, ability to bear weight, neck pain, chest pain or shortness. Exam: there is diminished sensation over the lateral aspect of the right calf when compared to the left. No signs of DVT. Diagnosis: presence of artificial knee joint, bilateral. Assessment: patient is a 65-year-old email presents today with a history of bilateral total knee arthroplasty is covered under workers compensation. Plan: 1. Would benefit from more physical therapy to work on her balance and gait training to wean off the walker. We are currently awaiting approval for Worker's Compensation. 2. Patients work status was updated indicating she will remain off work at this time. 3. Continue her Norco as needed for severe breakthrough pain. 4. Discussed over-the-counter Tylenol for mild to moderate pain. 5. Discussed RICE therapy as needed for any inflammation. 6. Follow-up in 6 weeks. PX 3, p 90-91. Work status: may not return to work; additional recommendations currently firmly disabled, physical therapy. Recommend more physical therapy focusing on gait and balance training. PX 3, p 580.

On January 7, 2021 Advanced Orthopedic & Spine Care/Dr. Daniel Troy MD. PHYSICAL THERAPY, patient reports soreness after last treatment and had pain in right knee last night. States she felt crunching in the right knee during today's treatment though it was not painful. Assessment/plan: Patient presents with abnormal gait and decreased strength in lower extremity. Further skilled therapy required to decrease pain and return to PLOF. PX 3, p 92-93.

On January 26, 2021 Advanced Orthopedic & Spine Care/Dr. Daniel Troy MD. records note the following. Presents today with history bilateral total knee arthroplasties which were done in 2018 by Dr. Troy also with history prior L4 to S1 fusion covered by workers

compensation. Comes in by way of walker. Reports she was recently hospitalized on 11 January for gallbladder attack and had a cholecystectomy performed at Palos Community Hospital. She reports she has been off physical therapy at this point secondary to her surgery. In regard to patient's bilateral knees, she reports what she describes as nerve pain in the right knee from the lateral aspect down to the right ankle. She does reports she has been taking gabapentin 600 mg 4 times a day as well as Norco for severe breakthrough pain which she states does help. She is requesting a refill Norco at this time. Otherwise, the patient states she has been ambulating at home as much as she can tolerate. Diagnosis: other abnormalities of gait and mobility; presence of artificial knee joint, bilateral; pain in the right knee. Assessment: patient is a 65-year-old female presents today with a history of bilateral total knee arthroplasty done in 2018 by Dr. Troy, as well as a prior posterior L4 to S1 fusion covered under Worker's Compensation. Plan refill Norco. Continue gabapentin. Resume therapy. RICE therapy as needed. remain off work. Follow in 6 weeks. PX 3, p 94-95. Work status: may not return to work; additional recommendations permanently disabled, physical therapy, Norco, gabapentin. PX 3, p 581.

On March 9, 2021 Advanced Orthopedic & Spine Care/Dr. Daniel Troy MD. records document the following. Presents today with history bilateral total knee arthroplasties which were done in 2018 by Dr. Troy as well as a prior L4 to S1 fusion covered under workers compensation. Ambulating with the assistance of the walker. Reports a flareup of pain to the right knee. She localizes her pain to the medial aspect. Denies any inciting falls, trauma or injuries to the area. Updated radiographs today of the right knee. No loosening or peri-prosthetic fractures. Clear to resume therapy next week by her G.I. doctor. Taking Norco for severe breakthrough pain as well as gabapentin. Requesting a refill Norco at this time. Diagnosis: right knee pain. Presence of artificial joint, bilateral. Plan: reassurance all components of the right knee are in place with no loosening. Cleared to resume physical therapy. Refill Norco. Discussed over-the-counter Tylenol for moderate pain. Continue gabapentin. PX 3, p 99-100. Work status: remain off work. Work status: may not return to work. Additional recommendations permanently disabled, physical therapy, Norco gabapentin. PX 3, p 582.

On April 20, 2021 Advanced Orthopedic & Spine Care/Dr. Daniel Troy MD records document the following. Presents with a history of bilateral total knee arthroplasties with peri-prosthetic infection of the right knee covered under workers compensation who comes in today for follow-up. Ambulating with the assistance of walker. In regard to the bilateral knees, she reports continued pain in the right knee which she states is primarily located over the medial and lateral aspect with occasional radiation down to the ankle. She reports the pain feels nerve related. Had been taking gabapentin 600 mg 4 times a day and is requesting a refill at this time. Also has been using Advil as well as Norco. Has been seeing her neurologist Dr. Curtin who has her on amitriptyline. She does report some relief with these medications. Otherwise she notes she is in continuing physical therapy. Her last day is tomorrow. She has been compliant with home exercise. She does report continue stiffness in the right knee. Patient reports no pain in the left knee and states she is doing well in this regard. States intermittent numbness and tingling in the toes of her left foot. Otherwise, she denies any inability to move her bilateral lower extremities. Diagnosis: pain in the right knee; presence of artificial knee joint, bilateral. Assessment: 65-year-old female presents today with history bilateral total knee arthroplasties subsequent

periprosthetic right knee infection, status post a revision covered under workers compensation. Plan: 1. Order for physical therapy of her bilateral knees importance of doing home exercise. 2. Continue amitriptyline per recommendations of Dr. Curtin. 3. Refill Norco as well as gabapentin. 4. Over-the-counter Tylenol and Advil. 5. Remain off work. 6. Follow-up with Dr. Troy after therapy is completed. PX 3, p 101-102 Work status: may not return to work; recommend physical therapy, gabapentin, Norco PRN. PX 3, p 583.

On May 7, 2021 Advanced Orthopedic & Spine Care/Dr. Daniel Troy MD. record documents: history bilateral total knee replacements. She said the right knee was infected 1-2 years after the surgery. She was taken back for debridement of the knee. Assessment: history of both right and left total knee replacement, with a postop infection of the right knee, requiring additional surgery. Diagnosis: Pain in the right knee. Presence of artificial knee joint bilateral. Pain in the left knee. Plan: 1. From our standpoint we do not plan to do anything further with regards to the right and left knee. 2. She will be placed at MMI. 3. In regards to returning back to work, she will have a significant difficulty returning back to work. I do not anticipate for her to be able to return back to work secondary to the chronic problem she is having as well as the chronic anterior knee pain. 4. I am going to send her for a baseline functional capacity evaluation. The patient will see me back in the office thereafter. 5. When she returns, we will need final AP lateral views of the bilateral knees. 6. All questions addressed. PX 3, p 103-104.

June 1, 2021 ATI Physical Therapy. Ms. McCue presented for FCE at ATI Physical Therapy with the aid of a walker. Clinician attempted to have the patient walk across the clinic without using her walker and the patient was unable to do so without grabbing onto the clinician to maintain balance. Due to the patient being a fall risk the FCE was held (sic, the Arbitrator interprets this as a typographical error that should read "was not held") at this time to avoid causing any potential injuries. PX 3, p 148.

June 26, 2021 Advanced Orthopedic & Spine Care/Dr. Daniel Troy MD. records document: presents today for evaluation. Has history of both right and left total knee replacement. One, unfortunately, did get infected and she needed to have revision surgery. She also has a history of prior lumbar fusion. She is currently working on weight loss but having difficulty losing weight. She was sent for an FCE secondary to a work comp injury affecting both knees. Exam: the patient is a 65-year-old female who appears her stated age. She has very good range of motion of both knees from zero to 110°, ligamentously stable. No calf or thigh pain. She has no sensory or motor deficits. She has chronic low back pain without radiculopathy. She is currently walking with a walker. The FCE states that they could not do the FCE evaluation because she is walker dependent. Assessment: 65 year-old female who is walker dependent secondary to undergoing low back surgery as well as secondary to undergoing bilateral knee placement. Diagnosis: presence of artificial knee joint, bilateral. Pain in the left knee. Pain in the right knee. Plan: 1. Patient is going to be made MMI from a work comp standpoint. 2. She will continue with treatment. We do want to see her back every 1 to 2 years regard to both knees. 3. If she has any increasing pain or discomfort, she needs to see us back sooner. 4. She is being taken care at our office for other orthopedic measures in regard to her shoulders and back and will continue to see us on a regular basis for those. PX 3, p 105-106. Work status: may not return to

work; permanent disability; unable to complete FCE; discharge maximum medical improvement; will need further follow-up. PX 3, p 584.

June 26, 2021 Advanced Orthopedic & Spine Care/Dr. Daniel Troy MD. Ruth presents today for evaluation. She has a history of lumbar fusion as well as bilateral knee replacements. She is currently using a walker, therefore aggravating her right shoulder. She is having increasing pain to her right shoulder. She fully understands she is in need of shoulder replacement. She is trying to avoid this at all costs. Her shoulder has been aggravated secondary using a walker. Assessment: needs total shoulder replacement. Injection in the right shoulder. PX 3, p 107-108. Petitioner testified she last saw Dr. Troy on June 26, 2021 and was directed by him to come back in a year or two. T 24.

At the time of hearing petitioner testified she continues to have pain in her right and left knee. T 24. In the left knee she gets pain in the knee and in the right knee she gets pain from the knee all the way down to the ankle where it gets so bad, she needs to take Norco. She tries not to take the Norco but if the pain is bad, she does take Norco to lessen the pain. Sometimes she uses Vic's on it at night because sometimes Norco doesn't work. The left knee is not as bad as the right knee. The pain in his manageable in the left knee. She takes Norco for the pain in the right knee every evening. The gabapentin seems to help during the day towards the end of the day the pain gets really bad, or she has to stand up and she has to take Norco. T 25-26. She was referred by Dr. Troy to Dr. Jeffrey C Curtin. He gave her nerve test down her legs and prescribes medicine and monitors her on the pain. Instead of going to Dr. Troy she now goes to see Dr. Curtin every couple of months, and he prescribes the medicine. T 26. As result of the pain in her right and left knee she now no longer cleans her house; she no longer shovels the snow; she no longer cuts the grass. The pain keeps her from going to some of her grandkids baseball games because they are not handicapped accessible. Her children come over and help her. As result of the pain, she can no longer use a ladder; she does not kneel down because if she kneels down, she cannot get up. Before the accident she was able to jump in and out of the truck and go anywhere. Now if she drives, she doesn't drive far because the pain gets so bad she has to pull over. She cannot take Norco and drive. She can drive for one half hour to 45 minutes. T 26-27. Dr. Troy had directed her not to drive within 12 hours of taking Norco and she followed that instruction. T 27-28. When she drives now, she has to throw her leg in to get into the car because it is numb, the right knee all the way down to the ankle gets numb. Now she drives short distances but cannot take Norco when she is doing that. The short distances that she drives are 20 minutes to go to the grocery store or the doctor's office. T 28-29. She goes upstairs one at a time. The snow is treacherous getting out. She goes one at a time with a walker down the stairs. T 29. She continues to use the walker and had it at the time of hearing. She testified that without the walker she could not walk. The reason is because her right knee is numb. She can't balance. The numbness in the right knee keeps her from feeling the floor. When she tries to walk she is not sure in walking because of the numbness in her knee to her ankle in her right leg. T 29-30. She continues to have pain in the upper back which she described as not really bad. She described that pain as more like arthritis T 30-31. After she had the surgery there were occasions when she did have a different type of back pain from what she was having before the surgery. T 31. She has not returned to work. T 31.

Petitioner testified that she weighed approximately 300 pounds when she saw Dr. Cole on May 13, 2019. T 33. She currently is taking gabapentin and Norco. She indicated to Dr. Cole that she had right knee pain and had a good outcome for the left knee. T 34. She bought a walker at a garage sale before she had her right knee replacement surgery. T 35. To the best of her knowledge the treatment for everything except her knees is not related to her workers' compensation case. T 35. Dr. Troy told her she should not be driving a vehicle within 12 hours of taking Norco and she takes the Norco when she is done with what she needs to do during the day to get rid of the pain and go to sleep. T 35-36. She tries to lose weight, but it is hard. T 37. After the knee replacement she was able to go through hour-long session of physical therapy. T 37. She has been able to complete what the physical therapists requested of her. T 37-38. She gave full effort because she wants to get better, and she doesn't want to walk like she is now walking. She wants to retire and enjoy life. T 38. When she arrived for the FCE the therapist told her he wanted to see what she could do without the walker. She said she would try as long as he was there to pick her up if she falls. She could not go any farther because she could not stand up without the walker. T 39-40. Dr. Troy had told her don't do anything that would hurt yourself, that would put her in jeopardy of hurting yourself, to be more careful. T 40. He told her not to lift anything and use common sense when she is out with the walker, so she does not get hurt. T 40-41. At the end Dr. Troy told her he didn't think she was able to go back to work. He said she would never be a truck driver again. T 41. Her right knee hurts more with movement. T 41-42. The left knee is tolerable; it's okay; it's not as bad as the right knee. T 42. During the day she takes gabapentin and Advil to relieve her right knee pain. T 42. Dr. Curtin is her current doctor exclusively for her medication. She sees him every 3 months. T 42-43. Petitioner was seated from the time of arriving at the Commission from 8:15 AM until the time of the hearing, approximately 10:13 AM. T 43. Petitioner's son drove her to the Commission for the hearing; it took about 40 minutes. T 44. Petitioner believes her back pain is from an arthritic condition. T 44. It is not the back pain that limits her from doing things around the house, shoveling, general maintenance. T 44-45. Prior to being a truck driver for the respondent she drove the school bus for nursery school. T 45. She enjoys interacting with people, even in her post-accident condition. T 45-46. Petitioner had carpal tunnel years before the accident. T 46. It is better now. T 47.

Admitted in evidence as Petitioner Exhibit 5 is the stipulation of the parties to the wage petitioner would be earning currently in the job which she had with respondent at the time of the accident. The parties stipulate that the wage petitioner would be earning now in the job she had with respondent at the time of the accident would be $39.25 per hour for 40-hour week that she would be working. PX 5.

No witnesses were called by respondent.

Admitted in evidence as Respondent Exhibit 1 is the IME report of Dr. Brian Cole dated May 13, 2019. At the request of respondent, Dr. Cole performed independent medical evaluation of petitioner's bilateral knees on May 13, 2019. Dr. Cole documents the history of petitioner working as a City of Chicago motor truck pull driver. Dr. Cole took history of the accident that on June 1, 2011, she slipped and fell three stairs, hitting both knees against the stairs. He noted the history of the surgery for total knee replacement of the right knee on July 30, 2017, and left

total knee replacement on June 12, 2018. He noted her right knee recovery was complicated by postoperative infection and required a washout on September 19, 2018, with subsequent IV antibiotics. He noted that as of her most recent office visit of March 2019 she was using a walker for ambulation and attempting transition to a cane. Dr. Cole noted that the IME appears to be requested in order to address treatment plan, MMI status and restrictions for the bilateral knees. He noted petitioner remains on gabapentin 3 times per day and Norco 5 milligram tablets from Dr. Troy in addition to Advil. She is no longer in therapy but is still using a walker. She has been advised to lose weight. He noted petitioner chief complaint was right knee pain and numbness down to the ankle. Petitioner gave history that her left knee is overall a good outcome. After review of medical records Dr. Cole conducted examination and review x-rays of left and right knee. Dr. Cole opined: petitioner is at MMI of both knees with good outcomes after total knee replacements; there is some mild range of motion limitation and warmth and swelling in the right knee as objective findings and his examination; no further treatment or testing of the bilateral knees is necessary; the claimant's fall down stairs at work did incite a posttraumatic pain response related to her pre-existing osteoarthritis and brought her to a need for care sooner than otherwise would have been necessary absent of the injury in question; claimant may work in a sedentary-based job and is safe to do so from an orthopedic standpoint; restrictions are related to the work injury on a more likely than not basis; job description does not appear reasonable for the claimant to perform regular job duties. I suggest continued efforts at diet management, cardiovascular exercise with the intention of continued weight loss and recommended nonsteroidal anti-inflammatories as needed on her own. RX 1.

Admitted in evidence as Respondent Exhibit 2 is the IME addendum report of Brian Cole M.D. dated January 24, 2022. Dr. Cole states he reviewed medical records provided by respondent identified in the report. No examination of petitioner was conducted by Dr. Cole as part of this report. Dr. Cole opined: looking at the timeline of her complaints and nature of her complaints as well as significant comorbidities of morbid obesity and concurrent injuries involving the lumbar spine and neurologic involvement, I would submit that her ongoing care subsequent to my IME has not been due to primary orthopedic "knee condition" but rather generalized involvement of the claimant's body as a whole. I would submit that the knees have been static and likely unchanged since I last evaluated. I understand she alleges persistent right knee pain in the records, but I do not see any information to suggest that the claimant has specific complication related to Dr. Troy's surgery done in response to the work injury. I would agree that treatment since my last report has been reasonable and necessary, but no longer due to the claimant's work injury in question. The claimant's work injury in question simply brought her to a need for treatment of the knee sooner than otherwise would have been necessary. It is my strong opinion that the claimant's ongoing impairment beyond my last IME is more related to her other comorbidities and BMI over 40, and her work injury that brought her to a need for total knee replacement sooner. She had a significant diathesis for symptomatic osteoarthritis in both knees and happened to have been brought to a need for total knee replacement sooner as result of a fall on the stairs at work. She has substantial and numerous reasons to have less than optimal outcome and persistent pain given her morbid obesity, inclusion of the lumbar spine and involvement of other health comorbidities. On more likely than not basis, her ongoing impairment and need for permanent restrictions at this sedentary/office space level are due to

those comorbidities and her degenerative conditions and not to work injury that brought her to a need for total knee replacement sooner than otherwise would have been necessary, as I opined in my prior IME report. I have no basis for opinion to believe that petitioner is magnifying her symptoms given that I have not seen the claimant for evaluation in over 2 ½ years**.** In regard to the bilateral knees, from an orthopedic standpoint, I would submit that the claimant certainly is capable of a sedentary/disc base job. I believe Dr. Troy is opining regarding the claimant's disability from a whole person standpoint and likely taking into consideration her other co-morbidities. This being said, speaking strictly in regard to the bilateral knees from an orthopedic standpoint, the claimant certainly is employable and can certainly work at a desk with a small amount of movement around the workplace, i.e. sedentary duty. This opinion is with a high degree of medical and surgical certainty. RX 2.

Admitted in evidence as Respondent Exhibit 3 is the labor market survey report dated January 14, 2022, of MedVoc Rehabilitation Ltd. In that report Jacqueline R. Bethell, MS, CRC rehabilitation consultant, stated that the labor market survey utilized petitioner's past work history as a motor truck driver and the restrictions placed on her by Dr. Cole's 5/19/13 (sic, the Arbitrator interprets this is a typographical error which should be 5/13/19) independent medical evaluation. The rehabilitation consultant noted that per Dr. Cole, petitioner was capable of returning to sedentary work. Telephonic labor market survey was conducted. A total of 50 prospective employers were contacted of which 34 did not complete the survey. There were 16 prospective employers that completed the survey. Of those 16 prospective employers, 15 said they could accommodate petitioner's restrictions and one prospective employer indicated petitioner did not have the appropriate physical capabilities for their bench assembly position. A mean entry-level wage was calculated to be $15.40 per hour. The consultant opined that petitioner would be appropriate for positions as an information clerk, greeter, and bench assembler. The rehabilitation consultant opined that petitioner can anticipate entry level wage of $15.40 per hour for these positions. RX 3.

CONCLUSIONS OF LAW

The issues in dispute between the parties are whether petitioner's current condition of ill-being is causally connected to this injury or exposure, and nature and extent of the injury.

The Arbitrator notes this case was, on two occasions, previously tried on Petitions pursuant to Sections 19b and 8a. The first hearing was held on October 3, 2013. The Arbitrator decision was rendered on January 13, 2014. Respondent filed a Review of that decision. The Decision of the Commission, 15 IWCC 0127, was filed on February 11, 2015, a copy of which was admitted in evidence as Petitioner Exhibit 1. In that decision the Commission found that petitioner's condition of ill-being of her bilateral knees was causally related to the work accident. PX 1. The Commission found petitioner's condition of ill-being with regard to her low back was not causally related to the work accident. PX 1. The Arbitrator notes that petitioner underwent low back surgery performed by Dr. Troy on December 27, 2015. PX 3, p 385-389. That condition of the low back, and consequently the surgery to address that condition, are not

causally related to the petitioner's work accident of June 1, 2011. PX 1. The Arbitrator notes the case was also tried on a second occasion on February 21, 2017, on Petition pursuant to Sections 19b and 8a, raising issues different from those decided in the first hearing. A Corrected Decision of the Arbitrator in that second hearing was filed on May 30, 2017. No Review of that Corrected Decision was filed and therefore, pursuant to Section 19(b), the Corrected Decision of the Arbitrator became the Decision of the Commission. A copy of the Corrected Decision of Arbitrator was admitted in evidence as Petitioner Exhibit 2. The Corrected Decision of Arbitrator found: the condition of petitioner's bilateral knees as of the date of that second hearing was causally related to the work accident; temporary total disability was awarded; respondent was ordered to authorize and pay for prospective surgery consisting of bilateral knee replacement surgery as ordered by Dr. Daniel Troy. PX 2. The Arbitrator notes pursuant to *Help At Home v Illinois Workers' Compensation Commission*, 405 Ill. App. 3rd 1150 at 1152 (2020), " …'a court's unreversed decision on an issue that has been litigated and decided settles the question for all subsequent stages of the action.' *Ming Auto Body/Ming of Decatur, Inc., v. Industrial Commission*, 387 Ill App 3rd 244, 252 (2008). The principles underlying the doctrine apply to matters resolved in proceedings before the Commission. *Weyer v. Workers' Compensation Commission,* 387 Ill App 3rd 297, 307, (2008); *Irazzy v Industrial Commission,* 337 Ill App 3rd 598, 606-07, (2003)." This is commonly referred to as the "Law of the Case" doctrine.

Petitioner testified in open hearing before the Arbitrator who had opportunity to view her demeanor under direct examination and under cross-examination. The Arbitrator considered the testimony of the petitioner in consideration of all other evidence in the record. The Arbitrator finds petitioner was a credible witness.

F. Is Petitioner's Current Condition of Ill-being Causally Related to the Injury?

As of the date of the Corrected Decision of the Arbitrator filed on May 30, 2017, the condition of ill-being of petitioner's bilateral knees and the need for bilateral total knee replacement was causally related to the work accident. This is the Law of the Case. The issue before the arbitrator here is whether petitioner's current condition of ill-being is causally related to the injury. That requires an analysis of the evidence to determine whether there is, subsequent to May 30, 2017, an accident or illness which would break the chain of causal connection between petitioner's condition of ill-being of her bilateral knees on May 30, 2017 and her condition of ill-being on the date of this hearing. There is no evidence in this record that petitioner sustained any accident after May 30, 2017 which resulted in new, additional, or different injury to her bilateral knees. There is evidence in the record that subsequent to the right total knee replacement performed by Dr. Troy on July 30, 2017, petitioner's right knee became infected and that required a 2nd surgery on the right knee, performed by Dr. Troy on September 19, 2018. That surgery was described as an irrigation and debridement (I&D) of right total knee arthroplasty; tibial polyethylene spacer exchange; antibiotic bead placement manufactured of calcium sulfate/impregnated with tobramycin. PX 3, p 32-34. After that surgery and discharge from the hospital, Petitioner was transferred from the hospital to the Manor Care nursing home for a continued regimen of intravenous antibiotics and physical therapy. PX 3, p 302-303. T 17-

18; PX3, 302-303. The right knee infection occurred more than a year after the right total knee replacement. Dr. Troy's office visit notes document, when explaining to petitioner how the infection occurred, that, "patient has UTI and it was explained to her that as discussed in the pre-op appointment from time of implant on, whenever patient has a mouth or teeth infection or UTI it has a chance to seed the implants." PX 3, p 28. The arbitrator interprets "UTI" to mean urinary tract infection. Dr. Troy states that it was the presence of the right total knee implant in petitioner's body which caused the urinary tract infection to seed and infect the right total knee implant which required the second surgery on the right knee. Additionally, respondent's IME, Dr. Cole in his report dated May 13, 2019, stated that, "her right knee recovery was complicated by postoperative infection and she required a washout on September 19, 2018 with subsequent IV antibiotics." RX 1. Dr. Cole in that same IME report stated, "treatment has been reasonable, necessary, and prudent in response to the injury in question." RX 1. Both Dr. Troy and Dr. Cole opined that the surgery performed on petitioner's right knee to address the right knee infection was causally related to the right total knee arthroplasty which the Commission in its prior decision found to be causally related treatment of the work injury. The Arbitrator concludes, based upon the weight of credible evidence in this record, that the infection of petitioner's right total knee arthroplasty and the surgery to address that infection, were causally related to the work accident.

The records of Dr. Troy document that he was treating petitioner for nonwork-related back, shoulder, and wrist complaints at the same time he was treating the work-related bilateral knee injuries. Dr. Troy performed nonwork-related lumbar surgery consisting of L4-S1 fusion on December 27, 2015. PX 3, p 385-389. The records of Dr. Troy document that although petitioner continued to have some low back pain after that surgery, petitioner is "…overall very happy with the results of her back." OV note June 9, 2017; PX 3p 193-195. Petitioner testified that although she continues to have back pain, it is not back pain which keeps her from doing her job and doing activities of daily living. T 30-31; T 44-45. Petitioner testified that the back pain never radiated down into her legs. T 21. Petitioner testified that she started to use a walker because she was off balance on the right knee and needed support to walk. T 13. The records of Dr. Troy document petitioner's first use of a walker on June 9, 2017 when he notes that, "she is currently ambulating with the use of a walker secondary to the knee pain." PX 3, p 193-195. Dr. Troy again notes on June 24, 2017 that, "she is using a walker secondary to her bilateral knees." PX 3, p 227-228. On April 27, 2018 Dr. Troy notes, "she comes in today and she is ambulating with the use of a walker. Her walker is markedly worn in areas that possibly look like they will give way and break. Secondary to that the patient would benefit from a new walker. She uses this walker because of her back as well as bilateral knee replacement surgery so we will get this approved through work comp." PX 3, p 234-236. On April 7, 2020 Dr. Troy notes, that petitioner is "… ambulating with use of a walker secondary to her back as well as her bilateral knees." PX 3, p 60-61. On May 18, 2020 Dr. Troy notes, "she is using a walker not only because of knee pain but also because of her back." PX 3, p 67-68. Dr. Troy further notes on May 18, 2020, "64-year-old female with history of bilateral total knee arthroplasties, undergoing I & D for and infected right knee in the past, overall doing well and back to baseline but does have chronic pain to the right knee secondary to that infection." PX 3, p 67-68. On July 14, 2020 Dr. Troy notes, "64-year-old female with history of prior right total knee arthroplasty with the subsequent I & D

due to infection, now with diffuse numbness over the right lower extremity." PX 3, p 74-75. In that office visit of July 14, 2020 Dr. Troy noted that petitioner was, "permanently disabled" and recommended EMG/NCV. PX 3, p 74-75. Dr. Troy noted on August 14, 2020 after reviewing the EMG/NCV that, "based on today's diagnostic study there is evidence of worsening of the patient's underlying neuropathy to now affect all the sensory nerves with completely absent responses area this is most likely to do to her symptoms in the right leg…. The EMG did demonstrate evidence of worsening neuropathy affecting all sensory nerves in the right lower extremity with completely absent responses." PX 3, p 78-79. Dr. Troy records note on April 20, 2021 that, "patient reports no pain in the left knee and states she is doing well in that regard." PX 3, p 101-102. On May 7, 2021 Dr. Troy noted, "on examination, the patient is a 65-year-old female who is currently using a walker. Bilateral knees demonstrate very good range of motion 0 to 125° with chronic pain in the anterior aspect of the right knee with secondary numbness in the lateral, going to the disc to aspect of the right lower extremity. Left lower extremity has minimal complaints. In regard to the left lower extremity, she is neurologically intact, 5/5 strength, no sensory or motor deficits. In regard to the right lower extremity she is neurologically intact distally, proximally she has about 3+-4/5 strength with regards to the quadriceps and iliopsoas." PX 3, p 103-104. In that office visit note of 5/7/21, Dr. Troy noted, "from our standpoint we do not plan to do anything further with regard to the right and left knee; she will be placed at MMI; in regards to returning back to work, she will have a significant difficulty returning back to work; I do not anticipate for her to be able to return back to work secondary to the chronic problems she is having as well as the chronic anterior knee pain; I am going to send her for a baseline functional capacity evaluation; the patient will see me back in the office thereafter; when she returns, we will final AP and lateral views of the bilateral knees." PX 3, p 104. Due to the patient being a fall risk when walking without the walker, ATI Physical Therapy directed that the FCE not proceed. PX 3, p 148. Thereafter in June 2021 as Dr. Troy noted, "she was sent for an FCE secondary to a Worker's Comp. injury affecting both knees…. She has chronic low back pain without radiculopathy. She is currently walking with a walker… The FCE states they could not do the FCE evaluation because she is walker dependent. Assessment: 65-year-old female who is walker-dependent secondary to undergoing low back surgery as well as secondary to undergoing bilateral knee placement. Diagnosis: presence of artificial knee joint, bilateral. Pain in the left knee. Pain in the right knee…. Patient is going to be made MMI from a Worker's Comp. standpoint; she will continue with treatment we want to see her back every 1 to 2 years regarding to both knees…. Work status: may not return to work; permanently disabled; unable to complete FCE; discharge maximum medical improvement; will need further follow-up." PX 3, p 584.

The records of Dr. Troy document from the date of that 2nd surgery on the right knee on September 19, 2018 to address the infected right knee implant, petitioner developed what Dr. Troy described "chronic pain" to her right knee for which Dr. Troy prescribed and has continued to prescribe gabapentin and Norco. PX 3, p 60-61; PX 3, p 62; PX 3p 67-68; PX 3, p 53-54. Dr. Troy causally relates the tingling and numbness in the right lower extremity to the 2nd surgery to treat the infected right knee arthroplasty. PX 3, p 67-68; PX 3, p 74-75; PX 3, p 103-104. Dr. Troy notes that petitioner is ".. permanently disabled from undergoing prior lumbar fusion as well as having bilateral total knee arthroplasties and an infected right knee and went through antibiotics cement spacer and reconstruction and is currently doing overall better but ever since

that point in time, develop tingling and numbness going into the right lower extremity." PX 3, p 58-59. Dr. Troy recommended petitioner consider a spinal cord stimulator to address pain from the bilateral total knee arthroplasties and an infected right knee after which she developed tingling and numbness going into the right lower extremity. PX 3, p 58-59. Dr. Troy causally relates the current condition of pain and numbness and tingling from the right knee down the leg to the 2nd surgery on the right knee to address the infection of the previously implanted total knee replacement. Dr. Troy causally relates petitioner's dependence on the walker to both the non-work-related back surgery and to the work-related condition of petitioner's bilateral knees. Dr. Troy causally relates the chronic pain in the right knee to the infection in the right knee in his May 18, 2020 office visit note, "64-year-old female with history of bilateral total knee arthroplasties, undergoing I & D for and infected right knee in the past, overall doing well and back to baseline but does have chronic pain to the right knee secondary to that infection." PX 3, p 67-68.

In a Medical Records Review report dated January 24, 2022, respondent IME, Dr. Cole, opined," looking at the timeline of her complaints and nature of her complaints as well as significant comorbidities of morbid obesity and concurrent injuries involving the lumbar spine and neurologic involvement, I would submit that her ongoing care subsequent to my IME has not been due to a primary orthopedic 'knee condition' but rather generalized involvement of the claimant's body as a whole. I would submit that the knees have been static and likely unchanged since I last evaluated. I understand she alleges persistent right knee pain in the records, but I do not see any information to suggest that the claimant had a specific complication related to Dr. Troy surgery done in response to the work injury. I would agree that the treatment since my last report has been reasonable and necessary, but no longer due to the claimant's work injury in question. The claimant's work injury in question simply brought her to a need for treatment of the knees sooner than otherwise would have been necessary." RX 2. The arbitrator notes that in the first IME report of Dr. Cole dated May 13, 2019, he causally relates all the treatment including the surgery to address the infection of the right knee total knee implant to the work injury. And the medical records document that after that 2nd surgery on the right knee to address the infection of the implant, petitioner developed chronic pain in the right knee and numbness and tingling down the knee which Dr. Troy causally related to the work accident. PX 3, p 67-68. That increase in pain in the right knee and numbness and tingling began, according to the documented records of Dr. Troy and petitioner's testimony after the 2nd surgery on the right knee and continued up to the date of hearing. Dr. Cole opines that the current condition of petitioner's right knee pain and numbness and tingling "is more related to her other comorbidities and BMI over 40, and her work injury that brought her to a need for total knee replacement sooner." (Emphasis added). RX 2, p 3. Dr. Cole opines the cause of petitioner's current condition of ill being is "generalized involvement of the claimant's body as a whole." Dr. Cole suggests it could be her body weight, it could be her back, it could be some other neurological cause or something else to do with her whole body, but he opines it is not anything to do with the work injury to her knees. Dr. Cole does not explain how after the first right knee surgery, the total knee arthroplasty, the records document she had a good outcome and had minimal complaints of right knee pain after the first right knee surgery. Dr. Cole does not explain the timing of the onset of the numbness from her knee down her leg and pain that arose with and has been present ever

since the 2nd right knee surgery to address the infected right knee arthroplasty. Dr. Cole stated that, "I understand she alleges persistent right knee pain in the records, but I do not see any information to suggest that the claimant had a specific complication related to Dr. Troy's surgery done in response to the work injury." RX 2, p3. However, the medical records in evidence document petitioner had an infection of the right knee arthroplasty that occurred more than a year after the right knee arthroplasty surgery, requiring a 2nd surgery to address the infected right total knee arthroplasty, with petitioner being transferred from the hospital after that 2nd right knee surgery to a nursing home for a six-week confinement for a regiment of intravenous antibiotics and physical therapy to the right knee, with an onset of numbness and pain in the right knee down the leg after that surgery. And the Arbitrator notes that in his first report dated May 13, 2019, Dr. Cole noted "… her right knee recovery was complicated by postoperative infection and she required a washout on September 19, 2018, with subsequent IV antibiotics. RX 1, p 1. Dr. Cole opined, "it is my strong opinion that the claimant's ongoing impairment beyond my last IME is more related to her other comorbidities and BMI over 40, and her work injury that brought her to a need for total knee replacement sooner." RX 2. Dr. Cole's use of the phrase "more related" can be interpreted as meaning petitioner's current condition of ill-being is related to both her other comorbidities and BMI over 40 and to her work injury, but that the other comorbidities and BMI over 40 have a stronger causal connection than the work injury.

The Arbitrator finds that the opinions of Dr. Troy, who has treated petitioner from the beginning of this accident on June 1, 2011 to the present, to be consistent with all the facts of this case as documented in the medical records and the other evidence in this record. The petitioner has remained off work and unable to work from the day of the accident to present. The Arbitrator finds the opinions of Dr. Troy to be more credible than the opinion of Dr. Cole who saw petitioner on one occasion and whose opinions do not explain the timing of the onset of the chronic pain and numbness in petitioner's right knee down the right leg, the initial good outcome after the first right knee surgery, the continuing debilitating outcome of the right knee after the 2nd right knee surgery to address the infected right knee implant, and the relatively good outcome of the single left knee surgery.

Additionally, the law is clear that respondent takes petitioner as it finds her. *Baggett v Industrial Commission,* 201 Ill. 2nd 187, 199 (2002). It is necessary that the claimant show that a work-related accident was a causative factor in the claimant's condition of ill-being. S*ysbro, Inc. v Industrial Commission,* 207 Ill. 2nd 193, 205 (203). It is not, however, necessary that the employee demonstrate that the injury was "the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being." *Land & Lake Co., 359 Ill. App. 3rd 582, 592 (2005).* That petitioner's obesity may have played a role in the complication of her work-injury to her right knee does not break the chain of causal connection. The Arbitrator finds that petitioner's current condition of her right knee and leg is causally related to the work accident. The Arbitrator finds that petitioner's current condition of ill-being of her left knee is causally related to the work accident.

L. What Is the Nature and Extent of the Injury?

Dr. Cole opined "it is my strong opinion that the claimant's ongoing impairment beyond my last IME is more related to her other comorbidities and BMI over 40, and her work injury that brought her to a need for total knee replacement sooner." RX 2, p 3. Based on that conclusion Dr. Cole opined that petitioner could return to work in a sedentary position. The Labor Market Survey admitted in evidence as Respondent Exhibit 3, relied on Dr. Cole's assessment of sedentary work restriction to determine if there were jobs available to petitioner within her restrictions.

Dr. Troy has opined that petitioner is permanently disabled from any work as a result of her current condition of ill-being from the work injury. The Arbitrator has found that Dr. Troy's opinion of the cause of petitioner's current condition of ill-being with regard to her bilateral knees is more credible than that of Dr. Cole. The Arbitrator therefore finds that the Respondent Labor Market Survey, RX 3, is based upon an incorrect assessment of petitioner's work restrictions. The Arbitrator gives no weight to Respondent Exhibit 3.

Therefore, the Arbitrator finds that Dr. Troy's opinion of petitioner's work restriction, that petitioner is permanently disabled from all work, is more credible than the opinion of Dr. Cole. The Arbitrator finds based upon the weight of credible evidence in this record, that petitioner is permanently and totally disabled. Respondent shall pay Petitioner permanent and total disability benefits of $899.64/week for life, commencing January 29, 2022, as provided in Section 8(f) of the Act. Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC031484
Case Name	Constance Fields v. Advocate Trinity Hospital
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0037
Number of Pages of Decision	18
Decision Issued By	Thomas Tyrrell, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	Randall Wolff
Respondent Attorney	Steven Jacobson

DATE FILED: 1/23/2023

/s/Thomas Tyrrell, Commissioner
Signature

DISSENT: /s/Kathryn Doerries, Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ 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

CONSTANCE FIELDS,

Petitioner,

vs. NO: 20 WC 31484

ADVOCATE TRINITY HOSPITAL,

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, total temporary disability, medical 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 December 17, 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 $54,900.00. 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.

January 23, 2023

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/s/Thomas J. Tyrrell
Thomas J. Tyrrell

/s/Maria E. Portela
Maria E. Portela

Dissent

I disagree with my colleagues that the Petitioner has sustained her burden of proving an accident on October 15, 2020, that arises out of her employment with Respondent. Petitioner did not meet her burden of proof under a neutral risk analysis or under the line of cases described in *McAllister* which contemplate everyday activities that are incidental to employment. In my opinion, the Petitioner's description of her accident does not meet the threshold for analysis under the *McAllister* line of cases since the everyday activity described herein does not fall under the umbrella of activities *McAllister* described. Thus I dissent from the majority's opinion based upon the following analysis.

In *McAllister,* the Illinois Supreme Court recites the well-established principles for proving accident:

> ***in order to obtain compensation under the Act, a claimant bears the burden of proving by a preponderance of the evidence two elements: (1) that the injury occurred in the course of claimant's employment and (2) that the injury arose out of claimant's employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003) (collecting cases). *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848, 2020 Ill. LEXIS 561.

There is no dispute that Petitioner was in the course of her employment when her injury occurred. The issue this court was tasked to address is the "arising out of" prong required to obtain compensation under the Act.

> "The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some *risk* (emphasis added) connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro*, 207 Ill. 2d at 203 (citing *Caterpillar Tractor*, 129 Ill. 2d at 58); see also *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 194, 775 N.E.2d 908, 266 Ill. Dec. 836 (2002) ("An injury 'arises out of' one's employment if it originates from a risk connected with, or incidental to, the employment, involving a causal connection between the employment and the accidental injury."). A risk is incidental to the employment when it belongs to or is connected with what the

> employee *has to do* (emphasis added) in fulfilling his or her job duties. *Orsini*, 117 Ill. 2d at 45. To determine whether a claimant's injury arose out of his or her employment, we must categorize the risks to which the claimant was exposed. *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848, P36.
>
> Risks fall into three categories: (1) risks distinctly associated with employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics. *McAllister*, P38. As to neutral risks, they have no particular employment or personal characteristics and include stray bullets, dog bites, assaults, street risks, lightning, and hurricanes. In the context of falls, neutral risks include falls on level ground or while traversing stairs. Whether a neutral-risk injury arises out of employment depends on whether the employee was exposed to a risk greater than that to which the general public is exposed. 1 A. Larson & L. Larson, Larson's Workers' Compensation Law § 4.03, at 4-2 to 4-3, § 7.04(1)(a), at 7-15 (1999). Thus, because the general public and employees alike are equally exposed to the risks of walking and traversing stairs, injuries resulting from these acts generally do not arise out of employment. *Illinois Consol. Tel. Co. v. Industrial Comm'n, 314 Ill. App. 3d 347, 353, 732 N.E.2d 49, 54.* See also *Elliot v. Industrial Comm'n, 153 Ill. App. 3d 238, 244, 505 N.E.2d 1062, 106 Ill. Dec. 271 (1987).* (By itself, the act of walking up a staircase does not expose an employee to a risk greater than that faced by the general public.)

While the *McAllister* court overturned *Adcock* and its progeny, it did not include "walking" or "traversing stairs" in its description of the "everyday activities" that were the subject of its decision. To include walking or traversing stairs would move Illinois to the precipice of becoming a positional risk state, if not fully embracing the positional risk doctrine, which has been repeatedly rejected by Illinois courts including *McAllister*.[1]

By adopting the *McAllister* analysis, the majority opinion blurs the distinction between arising out of the employment and in the course of employment that equates to compensating employees for positional risks that was foreshadowed in the debate by the lower court in *McAllister*. When that issue was before the Supreme Court, the justices chose not to include those daily activities in their description of common daily activities. The common daily activities such as walking across a normal surface or traversing up and down stairs will almost always be adjunct to an employee's job duties. A neutral risk analysis under either the

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1 Under the positional risk doctrine, an injury may be said to arise out of the employment if the injury "would not have occurred but for the fact that the conditions or obligations of the employment placed claimant in the position where he was injured by a neutral force, meaning by 'neutral' neither personal to the claimant nor distinctly associated with the employment." (Larson, *The Positional-Risk Doctrine in Workmen's Compensation*, 1973 Duke L.J. 761, 761.) This court has previously declined to adopt the positional risk doctrine, believing that the doctrine would not be consistent with the requirements expressed by the legislature in the Act. (See *Campbell "66" Express, Inc. v. Industrial Comm'n* (1980), 83 Ill. 2d 353, 355-56; *Decatur-Macon County Fair Association v. Industrial Comm'n* (1977), 69 Ill. 2d 262, 268.) For the reasons stated in *Campbell "66" Express* and *Decatur-Macon County Fair Association*, we continue to adhere to that view. *Brady v. Louis Ruffolo & Sons Constr. Co*., 143 Ill. 2d 542, 552-553, 578 N.E.2d 921, 925-926, 1991 Ill. LEXIS 36, *14-15, 161 Ill. Dec. 275, 279-280.

qualitative or quantitative umbrella avoids the collapse of that distinction between the two prongs required to prove accident under the Act.

Preliminarily, the *Elliott* Court provides the general rule for compensability when an employee falls on stairs while at work:

> Claimant argues that his employment significantly contributed to the injury because of the fact that he was on a stairway at work. More is required than the fact that an injury occurred at the employee's place of work. (See *Greater Peoria Mass Transit District v. Industrial Com.* (1980), 81 Ill. 2d 38, 405 N.E.2d 796; *Williams v. Industrial Com.* (1967), 38 Ill. 2d 593, 232 N.E.2d 744.) Claimant testified that he was "just walking down the stairs." The act of walking down the stairs itself does not establish a risk greater than those faced outside of work. (See *Oldham v. Industrial Com.* (1985), 139 Ill. App. 3d 594, 487 N.E.2d 693.) Claimant could have been walking downstairs in his home or anywhere, and the same injury might have occurred. *Elliot v. Industrial Comm'n*, 153 Ill. App. 3d 238, 244, 505 N.E.2d 1062, 1067, 1987 Ill. App. LEXIS 2157, *12-13, 106 Ill. Dec. 271, 276.

It is noted that the majority in the subject case compares the Petitioner's use of the stairs to the general public's use of the hospital stairs which is the not the standard set forth in *Elliot*. (Arb. Dec. 7) The yardstick is not this employer's set of stairs. Instead, the measurement should be against the general public's use of stairs. Further, although Petitioner testified that she used the stairs a number of times routinely, I do not find that testimony credible without further explanation since she was assigned to only one floor per shift. (T. 48-49). Petitioner also testified that she did not travel between floors to dispense medications. (T. 21)

Next, the majority opinion interjects an opinion that is also based on pure speculation. "Indeed, physicians, nurses and other staff used the stairs, *likely* to provide better patient care. (emphasis added) Petitioner's use of the stairs benefited her employer." (Arb. Dec. 7) In fact, when Petitioner was asked if she monitored the stairs when at work, she replied that she did not. (T. 51) Thus, the notation regarding the use of the stairs by other employees and their motivation is clearly conjecture. Further, in my opinion, Petitioner's testimony regarding the frequency of her use, and motivation for the use, of stairs versus elevator is simply not credible.

Under a neutral risk analysis, the standard has long been defined as follows:

> Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 163. Such an increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public. *Potenzo,* 378 Ill. App. 3d at 117, citing *Illinois Consolidated Telephone Co. v. Industrial Comm'n,* 314 Ill. App. 3d 347, 353, 732 N.E.2d 49, 247 Ill. Dec. 333 (2000)(Rakowski, J., specially concurring). M*etro. Water Reclamation Dist. of Greater Chi. v. Ill. Workers' Comp. Comm'n,* 407 Ill. App. 3d 1010, 1014, 944 N.E.2d 800, 804, 2011 Ill. App.

LEXIS 100, *8-9, 348 Ill. Dec. 559, 563.

Under a neutral risk analysis, I view the evidence differently than the majority, Petitioner's case fails under the qualitative standard because Petitioner never testified that there was some aspect of the employment that contributed to the risk of her falling. (See *Nabisco Brands v. Indus. Comm'n (Prendergast),* 266 Ill. App. 3d 1103 (1994). Benefits were awarded when Petitioner, a baker, was carrying three bakery knives that together weighed more than 50 pounds when walking the stairs at the employer's place of business.) (See also *Knox County YMCA v. Industrial Comm'n (Williamson*), 311 Ill. App. 3d 880, 725 N.E.2d 759, 2000 Ill. App. LEXIS 97, 244 Ill. Dec. 286. Benefits awarded where Petitioner was attending a mandatory CPR training class at the YMCA and fell down stairs carrying a drink and her purse, where there was no evidence that the stairway was poorly lit, that the stairs in question were defective, and that there was anything on the stairs that caused claimant to fall.)

In this case, Petitioner testified that she did not have anything in her hands when she fell. (T. 32) Petitioner testified that Petitioner's Exhibit 15 (sic) truly and accurately depict what the stairs looked like on the date of her accident. (T. 32-33) Petitioner took the pictures six months after the accident date, on April 9, 2021. (T. 54) The stairs appear to be well-lit, with treads and no defects. (PX14) Petitioner did not testify to any debris or other hazardous condition causing her to fall. In fact, Petitioner testified that she completed and electronically signed an injury report marked as Respondent's Exhibit 1. (T. 57) The injury form asked what she was doing at the time of injury and Petitioner answered, "[w]alking down the stairs." When asked her to describe the direct cause of injury, Petitioner answered, "[m]issed a step." (RX1)

Further, Petitioner's arguments also fail under a quantitative neutral risk analysis because there must be a showing that Petitioner was required or mandated to traverse stairs frequently as compared to use of stairs by the general public. For instance, in *Village of Villa Park,* the court found the case compensable based on the following:

> The evidence of record supports the Commission's finding that the claimant was "continually forced to use the stairway" both for his personal comfort and "to complete his work related activities." Specifically, the evidence established that the claimant was required to traverse the stairs in the police station a minimum of six times per day. This fact, coupled with evidence that the claimant informed his superiors, prior to his fall on April 5, 2007, that he had injured his knee and the testimony of Deputy Chief Budig that he had seen the claimant walk with a limp on numerous occasions prior to April 5, 2007, certainly supports the inference that the Village required the claimant to continuously traverse the stairs in the police station, knowing that he had an injured knee. *Vill. of Villa Park v. Ill. Workers' Comp. Comm'n,* 2013 IL App (2d) 130038WC, P21, 3 N.E.3d 885, 890-891, 2013 Ill. App. LEXIS 933, *13-14, 378 Ill. Dec. 320, 325-326, 2013 WL 6867380.

Any member of the general public living in a two story or higher residence traverses stairs multiple times per day. In this case, however, Petitioner testified that when she worked as a floater, she did not go between the floors on those days; she was assigned to one floor. (T. 48-49) If a need arose on another floor, then she would be required to go only as needed. (T. 48) Petitioner further testified that normally most of her work would be located on one floor on any

particular day. (T.48-49) Petitioner also testified that the day of the accident was the fourth day the Epic System was rolled out at Respondent's hospital. Everyone had a general understanding of Epic, Petitioner was just there to help if any questions arose. (T. 50) Although Petitioner testified that she took the stairs multiple times on the day of the accident, she did not monitor the stairs. (T. 51) Petitioner further testified that between the time the Covid protocol sign was put on the elevator doors and the date of her accident, she did use the elevator. Petitioner testified that she would use the elevator when she had to transport equipment, but *by choice* she would otherwise use the stairs. (T. 53) (emphasis added)

On direct examination Petitioner testified her nursing duties were to assess and monitor the patient's status, work with the interdisciplinary care team, update the doctors of any changes of the plan of care, provide medication and education to the patient as well as the patient's family members and to document in the Epic Charting System. (T. 17-18) None of those activities would require Petitioner to traverse the stairs on any routine given day. Prior to the introduction of Epic, she had to chart in Cerner as close to real time as possible. (T. 18) If there is a change in the patient's care, she testified she must notify the physician or emergency response. (T. 20)

Petitioner confirmed that she did not have to travel between the floors to administer medication to patients. (T. 21) Further, the majority, in finding that Petitioner adhered to time management practices, misinterpreted Petitioner's testimony regarding administration of patient medications. (Arb. Dec. 3) Petitioner actually testified she had a two hour window within the time period required by a patient's chart to give medications-whatever time the medication is timed in the chart, she has one hour before, and up to one hour after, to administer the medication. (T. 21-22) Petitioner also failed to describe her time constraints in the context of the number of patients she cared for each shift so there is a clear picture of Petitioner's actual schedule requirements per shift or, in particular, on the day of the accident.

We do know that on the date of accident, Petitioner was designated an "Epic Super User" since she had experience with Respondent's new system. (T. 24) Petitioner had also received training from Respondent to use the Epic System prior to the rollout on October 11 as did the other nurses receive training on the Epic System from Respondent prior to the rollout. (T. 50) Petitioner was there just to help if questions arose. (T. 50) Petitioner determined she would not be needed on 2 south or 2 North. (T. 27)

With the previous system, Cerner, the nurses had to document a patient's chart only once per shift unless there was a change. However, with Epic they were told to document twice per shift. (T. 29) Petitioner testified that as an Epic Super User she would be helping other nurses with the new charting system. She was expected to answer any questions as to where to chart information for nurses on the third and fourth floors on the day of the accident. (T. 26-27) The date of the accident was already the fourth day after the rollout of the new system. (T. 50) We can infer the fourth day would have less questions than the first three days given the nurses had all been given instructions as to how to use the system.

Nonetheless, Petitioner testified that nurses on 3 South had a question regarding the new Epic System. Petitioner testified that at some point during the morning she walked up from 3 South to 4. (T. 29) With Epic, the nurses were told to document each patient's chart twice per shift, whether there was a change in the patient's protocol or not. She went on to explain that she

did not have the answer regarding the mandated charting. Petitioner testified that she took the stairs to see Grace Walls, the nurse educator, who had an office on the fourth floor. She asked her what they needed to have –what in the Epic System that they needed to complete to meet the double charting requirement regarding individual patient care. Ms. Walls did not have the answer but informed Petitioner she would have it after a meeting later in the shift. (T. 30)

Petitioner testified that she spoke with Ms. Walls about 8:40 a.m. (T. 31) As she was returning to the third floor via the stairs, she mis-stepped and made the jump to the landing. She had started her shift at 7:00 a.m. (T. 17) Again, I do not find it credible that Petitioner would be required go between the third and fourth floors 10 times on the date of accident between 7:00 a.m. and 8:40 a.m.

I am also not convinced that there was any need for Petitioner to take the stairs to ask the nurse educator for an answer to that one question and Petitioner failed to explain her reasoning. Petitioner could have called the educator or could have used the elevator. Petitioner was never required to use the stairs, and not required to use the stairs at all on any given day or the day of the accident. When and if she used the stairs, Petitioner testified that it was because, "it was more convenient and faster to take the stairs." (T. 19)

When considering all of Petitioner's testimony, the most pertinent was her admission that she was assigned to one floor per shift except on the date of accident when a question was raised regarding the Epic System. Petitioner testified that she was going between the third and fourth floors on the accident date. (T. 27) Petitioner did not explain the reason the nurse educator was not available to other nurses for questions on the fourth floor if her office was there. Petitioner also testified to a litany of reasons why proper time management was imperative related to her nursing duties and charting, however, at the time she was injured she went simply to ask a question of the nurse educator, which, by any objective standard, was the opposite of conscientious time management.

Petitioner has not proven that she was required to traverse stairs between the third and fourth floors when the accident occurred. She could have taken the elevator despite her red herring testimony about time management and she easily could have phoned the educator on the other floor to get the answer to a question. Therefore, I respectfully dissent from my colleagues and would find Petitioner failed to prove she sustained an accidental injury arising out of her employment with Respondent.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC031484
Case Name	FIELDS, CONSTANCE v. ADVOCATE TRINITY HOSPITAL
Consolidated Cases	
Proceeding Type	19(b) Petition & 8a
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Randall Wolff
Respondent Attorney	Daniel Ugaste

DATE FILED: 12/17/2021

/s/ Jeffrey Huebsch, 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
19(b)/8(a)

Constance Fields Case # **20** WC **031484**
Employee/Petitioner

v.

Advocate Trinity Hospital
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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **August 10, 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 _____

C. Fields v. Advocate Trinity Hospital, 20 WC 031484

FINDINGS

On the date of accident, **10/15/2020**, 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 $68,016.26 and the average weekly wage was $**1,438.43**.

On the date of accident, Petitioner was **41** years of age, ***married*** with **1** dependent child.

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 $**7,444.87** under Section 8(j) of the Act for group disability benefits paid.

ORDER

Respondent shall pay Petitioner reasonable and necessary medical services of $42,140.99, as provided in Sections 8(a) and 8.2 of the Act, and as is set forth below.

Respondent shall pay Petitioner TTD benefits of $958.95/week for 21 weeks, commencing 10/20/2020 through 3/15/2021, in accordance with Section 8(b) of the Act, and as is set forth below.

Respondent shall authorize and pay for the 8 weeks additional PT services recommended by Dr. Steven Chandler, along with all related services, as is set forth below.

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

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

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

/S/Jeffrey Huebsch

Signature of Arbitrator

December 17, 2021

ICArbDec19(b)

FINDINGS OF FACT

Petitioner is employed by Respondent as a Registered Nurse and has been so employed since November of 2019. Her supervisor was Zara Porter, who was her supervisor throughout her entire employment with Respondent. Petitioner worked 36 hours/week, informing Zara Porter of the days that she was available, after which she would be scheduled whenever staffing was needed for those days. Petitioner was normally scheduled on the 7am-7pm shift by Porter. Petitioner was working an additional shift on the date of the accident, October 15, 2020. Petitioner functioned as a "floater." She would go between floors and work on the floors that she was required on an as-needed basis, primarily staying on the floor that she was assigned to on any given day. She was responsible for assessing and monitoring her patients' status, working with the interdisciplinary care team, updating the doctors on changes in plans of care, providing medication and education to patients and their family members, and documenting patient notes in the Epic Charting System.

At Respondent's hospital, Petitioner floated between the following floors from the time that she started until the time of her accident: 2 South, 2 North, 3 South, and 4 Northwest. To travel between the floors, Petitioner used the stairs because it was faster than elevator travel and because of a Covid protocol in place which limited elevator occupancy to two people. Petitioner's Exhibit 16 depicted signage posted outside Respondent's elevators, limiting elevator occupancy to two. The signs were on display at the time of the accident. Because patients, visitors, and various members of the hospital staff such as the dietary, EVS, and respiratory units tended to use the elevators. It was more convenient and faster for Petitioner to take the stairs. Petitioner was expected to chart notes as quickly as possible and was to avoid incurring overtime. Time management was critical. Medication also needed to be delivered to patients within an hour of when it is ordered in the chart.

On an average day, Petitioner would use the stairs 20-30 times. The stairs were used by doctors and other hospital staff. Petitioner did not recall seeing members of the public using the stairs, although, of course, she was not monitoring the stairs all day long.

Prior to its transition to the Epic Charting System, on October 11, 2020, Respondent used the Cerner Charting System. Petitioner was familiar with the Epic system through her prior nursing employment.

On October 15, 2020, the date of the accident, Petitioner was assigned to be an "Epic Super User", meaning that she was responsible for helping other nurses with the transition from Cerner to the new Epic charting system. Porter had asked Petitioner about her prior experience using Epic, which she had from working at Methodist Hospital, and requested that she help other nurses transition to Epic. Petitioner agreed to do so. Petitioner testified that this assignment was performed for the benefit of her employer. On her shift that day, between 7:00am and 3:00pm, Petitioner would go between the four floors that she normally worked (2 South, 2 North, 3 South, and 4 Northwest) to assist nurses with Epic. She clocked in on 10/15/20 between 6:53 and 7:00am, starting on the third floor, and saw that there was not an Epic Super User for that floor. She then went to the 4th floor and saw that they also did not have an Epic Super User for that day; both 2 South and 2 North already had Super Users for that day, so she would not have to go to the second floor for her shift.

By 8:40AM on 10/15/20, Petitioner had used the stairs about ten times, going between the third and fourth floors, answering charting system questions. At that time, Petitioner had a question for Nurse Educator Grace Walls on the 4th floor regarding what entries needed to be double-charted, which was important for her and other nurses to know in order for them to effectively manage their time. Grace Walls did not have an answer to Petitioner's question, but told Petitioner that she would get her answer when she attended an Epic meeting later in her shift.

After speaking with Walls, Petitioner went down the stairs to go back to the third floor. There were two flights of stairs, each with nine steps. Petitioner walked down the first flight of stairs without incident. She was

not carrying anything as she descended the stairs. When she walked down the second flight, after two or three steps, she slipped (missed a step) on her right foot, down two or three stairs. To prevent herself from falling, and possibly hitting her head, Petitioner jumped down the remaining five to six steps, landing on both her feet. She felt and heard a "pop" in her left leg. She was not able to walk. She was in pain. A fellow nurse brought Petitioner a wheelchair and took her to Respondent's ER.

In the ER, Petitioner received an x-ray, which she said showed swelling. She was given crutches and a brace and instructed to follow up with her PCP. (PX 10)

About a week later, Petitioner was seen by her PCP, Dr. Rochelle Hawkins. Dr. Hawkins examined Petitioner and instructed her to return in a week. Dr. Hawkins restricted Petitioner from working. Petitioner had continued complaints and was seen by Dr. Hawkins on two more occasions. She was then referred to an orthopedic surgeon, Dr. Steven Chandler. (PX 11)

Petitioner was first seen by Dr. Chandler on November 16, 2020. An MRI was ordered and it revealed a full thickness tear of the left quadriceps tendon. Dr. Chandler performed a surgical repair of the tendon on December 4, 2020 at Advocate Trinity Hospital. (PX 12, PX 10)

Petitioner then had post-op physical therapy and follow up visits with her surgeon. (PX 13, PX 12) Petitioner currently has difficulty with stairs. She does not run or walk swiftly. She maxed out the PT that was authorized by group insurance (24 weeks). Therapy consisted of strengthening, use of resistance bands and balls and leg presses. The surgery and PT has helped her condition. Dr. Chandler has recommended 8 more weeks PT. If more PT was made available, Petitioner would participate.

As workers' compensation had denied the claim, she put her medical bills through her husband's Railroad Union Employee's Health and Welfare Plan, under which she was covered. The Plan paid $20,823.19 of her $39,471.57 in medical bills. The Plan is claiming an ERISA lien against the file. (PX 18) There is a

current balance on her medical bills of $5,761.65. (PX 9) PX 17 shows out of pocket payments that Petitioner made for the MRI and to Dr. Chandler.

Respondent does not dispute that the medical treatment provided to Petitioner was reasonable, and necessary to cure or relieve the effects of the injury.

Petitioner claims TTD claim based upon her physician's restriction fromlease from work from 10/15/2020 until 3/16/21, when she returned to work light duty. (PX 12, pp. 13-14, 46-47; T. pp. 35-36; Arb X 1) She was given a return to light duty work release on 3/1/21, but could not get confirmation to return to work from Respondent until the 3/16/21 date. The Parties stipulated that Petitioner received group disability payments of $7,444.87, for which Respondent is entitled to a Section 8(j) credit. The group disability payments were for the time period of 10/26/2020 to 1/23/2021. Respondent did not offer Petitioner work during the time period of 1/23/2021 to 3/16/2021.

The last office visit with Dr. Chandler was in March of 2021. The last chart note in the medical exhibits is from December 17, 2020, when Petitioner was seen post-op by Dr. Chandler. Petitioner is scheduled to see Dr. Chandler on June 7, 2021.

Proofs were re-opened on August 10, 2021 to correct the RFH form and to admit additional exhibits regarding a medical bill (PX 20) and Petitioner's husband's group lien (PX 18, PX 19)

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 claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980)),

including that there is some causal relationship between his 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 sustained accidental injuries which arose out of and in the course of her employment by Respondent on October 15, 2020.

First, the accident occurred in the course of Petitioner's employment, as it occurred within the time and space boundaries of her employment by Respondent as a Registered Nurse, Epic Super User. She was on the clock and walking in Respondent's building, performing the work related task of returning to the 3rd floor from the 4th floor.

As to the issue of arising out of, the Arbitrator finds that Petitioner's use of Respondent's stairs to travel between floors in Respondent's hospital was a risk connected to her employment as a RN, Epic Super User. Thus, Petitioner's injury related to a slip while descending the stairs arises out of her employment. She was using the stairs to perform an employment related task (attempting to verify proper charting procedures and then getting back to her nursing/Super user job tasks on her assigned floor). Petitioner used the stairs to be more efficient in her Epic work duties and in her RN work duties by being able to travel floor to floor more quickly than if she used the elevators, which had been restricted in the number of passengers allowed to be in an elevator car. She obviously saved time in using the stairs. Therefore, she could help the other Epic users faster (making the user more available to provide patient care, etc.) and provide care to her patients more quickly than if she had to wait for an available elevator. Indeed, physicians, nurses and other staff used the stairs, likely to provide better patient care. Petitioner's use of the stairs benefited her employer. She had an increased risk of an injury on the stairs because of her increased use of the stairs as compared with the general public (20 to 30 times a day, approximately 10 times on the date of accident, as opposed to the public maybe using the stairs once to go up and once to go down on any specific day). The accident arose out of Petitioner's employment by Respondent. Kevin McAllister v. The Illinois Workers' Compensation Commission, 2020 IL 124848, Caterpillar Tractor Co. v. Indus. Comm'n, 129 Ill. 2d 52 (1989), Illinois Consol. Tel.

Co. v. Industrial Comm'n, 314 Ill. App. 3d 347 (2000), Village of Villa Park v. Ill. Workers' Compensation Comm'n, 2013 IL App (2d) 130038WC

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

Petitioner's current condition of ill-being regarding her left knee, to wit: status post surgical repair of torn quadriceps tendon, is causally related to the injury.

This finding is based upon the credible testimony of Petitioner and the medical records.

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:

The medical services that were provided to Petitioner were reasonable and necessary to cure or relieve the effects of the injury. Petitioner suffered a torn quadriceps as a result of her work related fall. She underwent emergency care, conservative treatment by her PCP and an orthopedic surgeon and eventual surgical repair of the torn tendon and appropriate follow-up.

Based on the Arbitrator's findings above on the issues of accident and causal connection, the following medical bills are awarded:

Advocate Trinity Hospital: **(DOS: 10/15/2020)**	**$2,261.00**	(Paid by WC)
Advocate Trinity Hospital: **(DOS:11/24/2020-12/4/2020)**	**$18,856.04**	(Paid $16,970.14 by OPTUM, Paid $943.84 by Discover, $942.02 unpaid Per PX 10)
DH Medical Group SC: **(DOS: 10/22/2020, 10/25/2020 And 11/5/2020)**	**$640.00**	(Per PX 11)
South Chicago Ortho Spec: **(DOS: 11/16/2020, 11/23/2020, 12/4/2020)**	**$1,925.76**	(Paid $1071.80 by OPTUM, per PX 12)
Chicago Ridge Medical Img.: **(DOS: 11/19/2020)**	**$1,230.00**	(Paid $362.78 by AmEx, per PX 17)
ATI PT **(DOS: 12/21/2020-4/1/2021)**	**$15,568.19**	(Paid $2,836.33 by OPTUM and discounts applied, with balance of $2,871.58, per PX13 and PX19)

Joliet Anesthesia Pr.: **(DOS: 12/4/2020)**	**$1,660.00**	(Paid $356.25 by OPTUM and discounts applied, per PX 20 and PX 19)
TOTAL:	**$42,140.99**	

It is noted that Petitioner paid some of the awarded bills out of pocket, some bills were paid/reduced by OPTUM (claimed amount: $20,823.19, per PX 19) and some were paid by WC. This award is made pursuant to Sections 8(a) and 8.2 of the Act, such that Respondent's liability is limited to the lower of the negotiated rate, Fee Schedule amount or actual charges. Respondent is also given a credit for all awarded bills that it has paid or satisfied.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS:

The Arbitrator finds that Petitioner is entitled to 8 weeks additional PT services as testified to by Petitioner. Accordingly, Respondent shall authorize and pay for the same, along with all related services.

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

Petitioner testified that she was authorized off work by Drs. Hawkins and Chandler from 10/20/2020 through 3/1/2021 and that Respondent's WC staff would not allow her to return to work at modified duty until 3/16/2021. This testimony was unrebutted. Accordingly, Respondent shall pay petitioner Temporary Total benefits of $958.95/week for 21 weeks, commencing October 20, 2020 through March 15, 2021.

Respondent is given a Section 8(j) credit of $7,444.87, for group disability benefits paid, per the agreement of the Parties.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC007993
Case Name	Thomas Murrell v. PDS Express
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0038
Number of Pages of Decision	15
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Matthew Belcher
Respondent Attorney	Mary Sabatino

DATE FILED: 1/23/2023

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Thomas Murrell,
Petitioner,

vs. NO: 18 WC 7993

PDS Express,
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 July 21, 2022, is hereby affirmed and adopted.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $60,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 23, 2023

012/14/22
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	18WC007993
Case Name	Thomas Murrell v. PDS Express
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Matthew Belcher
Respondent Attorney	Mary Sabatino

DATE FILED: 7/21/2022

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

/s/Frank Soto, Arbitrator

Signature

0993STATE OF ILLINOIS)
)SS.
COUNTY OF **KANE**)

☐ 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

THOMAS MURRELL
Employee/Petitioner

v.

PDS EXPRESS
Employer/Respondent

Case # **18** WC **07993**

Consolidated cases: _____

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

DISPUTED ISSUES

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

FINDINGS

On **September 19, 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 $**52,000.00**; the average weekly wage was **$1,000.00**.

On the date of accident, Petitioner was **60** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**74,575.15** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for permanent total disability benefits paid, for a total credit of $**74,575.15**.

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $600.00/week for one hundred (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.

Respondent shall pay Petitioner compensation that has accrued from September 19, 2017 through June 24, 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.

JULY 21, 2022

By: /o/ Frank J. Soto
Arbitrator

Procedural History:

This case proceeded to trial on June 24, 2022. The disputed issues involve whether Petitioner's current condition of ill-being is causally related to his work injury and the nature and extent of Petitioner's injury. (Arb. Ex. #1).

Findings of Fact:

Thomas Murrell (hereinafter referred to as "Petitioner") was employed by PDS Express (hereinafter referred to as "Respondent") as of September 19, 2017. As of September 19, 2017, Petitioner was sixty-years old, married, and had zero dependent children. (Id.). Petitioner testified that he began working for Respondent in March of 2017, which was approximately six months prior to his work accident. Respondent is a trucking company located in St. Charles, Illinois, and he drove an eighteen-wheel semi-truck for Respondent.

Petitioner testified that he drove a dedicated route for Respondent each week. He explained that his trips typically began on Sunday each week in his home state of South Carolina. He then drove from South Carolina to Georgia and to Alabama making several regular stops along the way.

The parties stipulated that Petitioner was injured in the course and scope of his employment by Respondent on September 19, 2017. (See Arb.Ex.1). On that date, Petitioner was operating a semi-truck for Respondent. He testified that he stopped at a rest area in Evergreen, Alabama. Petitioner testified that it was raining when he stopped at the rest area. He exited his truck and went into the rest stop to use the facilities. He testified that when he came back to his truck, it was wet due to the ongoing rain.

Petitioner began to climb back into his truck and grabbed the support handle with his right arm. As he did so, his foot slipped on the wet steps. Petitioner testified that his body rotated as he slipped but he continued to hold onto the support handle with his right arm. Petitioner testified that his right arm was jerked as he attempted to catch himself after slipping. He testified he felt pain in his right shoulder immediately after this accident. He completed his route that day before notifying Respondent of his accident the following morning. Petitioner testified that he was able to complete his weekly route before arriving back home in South Carolina.

Petitioner's Initial Medical Treatment

Once back home in South Carolina, Petitioner testified he sought his initial medical treatment at Atrium Health in Rock Hill, South Carolina. On that date, he treated with Dr. Walter James, III. (PX1 p. 511). At this initial visit, Dr. James noted that Petitioner was "…being referred by Worker's Comp. for evaluation of right shoulder injury." (Id.). Dr. James noted Petitioner sustained an injury to his right shoulder on September 19, 2017, when he was working. (Id.). He noted he was coming off a tractor when he fell and grabbed ahold of the tractor with his right arm and had a sudden yanking and intense pain with inability to full have a full range of motion to his right shoulder. (Id.). He noted no prior history of an injury to his right shoulder. (Id.). Dr. James performed a physical examination of Petitioner, focusing on his right shoulder. (Id. at 513-514).

Dr. James' initial impression was right shoulder rotator cuff syndrome, impingement syndrome, and a shoulder strain. (PX1 p. 515). He advised Petitioner he could work but with no use of his right arm. (Id.). He also provided Petitioner with an injection of Methylprednisolone and Xylocaine into his right subacromial bursa in his right shoulder. (Id. at 514). Dr. James further recommended Petitioner begin a course of physical therapy. (Id. at 515). He advised him to follow up in four weeks. (Id.). If his symptoms did not improve by the next visit, Dr. James indicated that an MRI would be in order. (Id.).

As recommended, Petitioner began a course of physical therapy at Chester Regional Medical Center in Chester, South Carolina. Petitioner's initial therapy visit was on October 2, 2017. (PX5 p. 79-80). He underwent seven therapy sessions before he returned to Dr. James' office on October 27, 2017. (PX1 p. 480, PX5 p. 72-80). Petitioner reported he was doing no better and was actually getting stiffer with physical therapy. (Id. at 480). Dr. James recommended an MRI of Petitioner's right shoulder. (Id. at 483). Petitioner testified the recommended MRI was completed on November 1, 2017, at Metrolina Diagnostic Center.

After completion of the MRI, Petitioner returned to Dr. James' office for a follow-up visit on November 8, 2017. (PX1 p. 449). He continued to complain of the same pains in his right shoulder, which he described as a constant ache and throbbing. (Id.). Dr. James reviewed the right shoulder MRI noting it revealed, "…partial tearing of the supraspinatus and infraspinatus tendons but no signs of full-thickness tear." (Id. at 452). He indicated Petitioner had not experienced any improvement with cortisone injections or physical therapy. (Id.). He was also

starting to develop adhesive capsulitis. (Id.). Dr. James recommended they proceed with a right shoulder arthroscopy and subacromial decompression and manipulation. (Id). He noted they would schedule this surgery as soon as possible. (Id.). Petitioner testified he wanted to proceed with the surgery as recommended but it was not authorized by Respondent.

Instead of the recommended surgery, Petitioner continued in physical therapy, which was approved by Respondent. He testified therapy did little to nothing to alleviate his right shoulder symptoms.

Section 12 Examination and Medical Records Review

At the request of Respondent, Petitioner testified he was examined by Dr. Bradley Aspey of Midlands Orthopaedic & Neurosurgery on January 31, 2018. Respondent did not move to admit Dr. Aspey's report at arbitration. Petitioner moved to admit Dr. Aspey's report as Petitioner's Exhibit Two, but Respondent objected to their own report as hearsay. Their objection was sustained by the Arbitrator and the exhibit was rejected. Petitioner testified that Dr. Aspey also recommended he proceed with right shoulder surgery but Respondent continued to deny authorization.

Respondent obtained another opinion from Dr. James Cohen at Midwest Orthopaedics at Rush. Petitioner testified he never met with or spoke to Dr. Cohen. Nonetheless, Dr. Cohen drafted a report dated April 24, 2018. (PX1 p. 424). Dr. Cohen testified by way of evidence deposition on July 25, 2018. The Arbitrator notes that Respondent did not move to admit Dr. Cohen's report or deposition testimony. His report, however, is contained in Petitioner's Exhibit Number One, was admitted without objection by Respondent. (PX1 p. 424-427).

Dr. Cohen attributed Petitioner's right shoulder condition to his work accident. (PX1 p. 426). He noted that the medical treatment provided to Petitioner had been, "…reasonable and necessary and causally related to the incident…" (Id.). He recommended Petitioner undergo another injection. (Id.). If the injection proved unsuccessful, he recommended manipulation of the shoulder under anesthesia. (Id.). Respondent continued to deny the right shoulder surgery recommended by Dr. James after receiving Dr. Cohen's report.

Petitioner's First Surgical Procedure

Petitioner returned to Dr. James' office again on June 5, 2018. (PX1 p. 417). Petitioner advised Dr. Cohen that he was not any better and was in the same amount of pain. (Id.). Dr. James' recommendations regarding treatment remained unchanged. (Id. at 419). He continued to

advise Petitioner to proceed with a manipulation under anesthesia as well as arthroscopic examination and subacromial decompression. (Id.).

In a fax dated June 14, 2018, Respondent notified Dr. James that the surgery he was recommending was not authorized. (PX1 p. 422). Respondent noted, "Per our IME an intraarticular steroid and lidocaine inj followed by 3 wks of PT was recommended and this is what we would authorize at this time." (Id.).

Dr. James reviewed Dr. Cohen's report and drafted a letter explaining his disagreements with it. (PX1 p. 428). He noted, "I have reviewed the chart and at this time still believe that my procedure of a shoulder manipulation and arthroscopic subacromial decompression would be appropriate for this patient." (Id.). He noted Petitioner's MRI was not normal and revealed fraying of at least fifty-percent of the tendon of the infraspinatus tendon as well as tendinopathy of the supraspinatus tendon and an acromion that was "low-lying" and coming into contact with the supraspinatus tendon, which he explained was impingement syndrome. (Id.). Dr. James explained that, contrary to what Dr. Cohen opined, a manipulation and capsulotomy would not take care of Petitioner's problem with his rotator cuff. (Id.). Dr. James did not recommend a capsulotomy. (Id.). He stood by his recommendation for an arthroscopic subacromial decompression and manipulation of the right shoulder. (Id.).

Petitioner once again returned to Dr. James' office for a follow-up visit on October 12, 2018. (PX1 p. 390). Dr. James notes he had been recommending, "… for a long time now ... a manipulation and then arthroscopic subacromial decompression" of Petitioner's right shoulder. (Id.). However, this continued to be denied by Respondent but they agreed to authorize another injection and another round of physical therapy. (Id.). Dr. James provided Petitioner with another right shoulder subacromial space injection at this visit as had been recommended and authorized by Respondent. (Id. at 392). Dr. James advised Petitioner to continue in physical therapy. (Id. at 393). However, he also noted that his recommendation of a right shoulder manipulation and right shoulder arthroscopy and subacromial decompression continued. (Id.). Petitioner testified that he continued in therapy as recommended. He testified that his right shoulder symptoms did not improve with the additional injection or therapy.

Petitioner again returned to Dr. James' office on November 15, 2018. (PX1 p. 373). Dr. James indicated that Petitioner's right shoulder had not improved with the previous injections and physical therapy and "prolonged period of time." (Id. at 375). His recommendation remained

unchanged, "I am recommending a right shoulder manipulation followed by arthroscopy and arthroscopic subacromial decompression to the right shoulder." (Id.). This procedure remained unauthorized by Respondent.

Petitioner continued to follow-up with Dr. James over the next several months with office visits on December 13, 2018, January 14, 2019, and January 29, 2019. (PX1 p. 294-371). At each visit, Dr. James continued to recommend the same surgical procedure but Respondent continued to deny the necessary authorization to proceed. (Id.). Dr. James eventually agreed to perform the only procedure authorized by Respondent, which was a manipulation of the right shoulder under anesthesia. (Id. at 298). On February 5, 2019, Dr. James performed the right shoulder manipulation under anesthesia. (PX3 p. 73-74).

Petitioner's Second Surgical Procedure

Petitioner returned to Dr. James' office for a post-manipulation visit on February 12, 2019. (PX1 p. 272). He reported he was doing better with his motion but was still in pain. (Id.). Dr. James recommended additional physical therapy. (Id. at 274). He indicated "time will tell" as to whether Petitioner's pain improved enough "to make him happy." (Id.). Petitioner testified that this procedure was not successful in alleviating his pain complaints. He continued to follow-up with Dr. James with office visits on March 12, 2019, April 9, 2019, May 7, 2019, June 20, 2019, and July 18, 2019. (PX1 p. 119-270). Dr. James noted Petitioner's pain remained following the manipulation under anesthesia and reiterated his prior surgical recommendation. (See PX1 p. 124, 153-154, 188, 215).

Respondent authorized the surgical procedure that Dr. James had recommended twenty months earlier at Petitioner's office visit of November 8, 2017. (See PX1 p. 449). On July 23, 2019, Dr. James performed the recommended surgery. (PX3 p. 38-39). The surgical procedure performed was: 1) Arthroscopy of the right shoulder; 2) Arthroscopic extensive debridement of synovitis to the right shoulder; 3) Debridement of degenerative glenoid labral tear; 4) Manipulation of right shoulder; and 5) Arthroscopic subacromial decompression to the right shoulder. (Id.).

Petitioner testified that his shoulder felt "much better" following completion of the surgery on July 23, 2019. His first post-surgical visit with Dr. James was on August 1, 2019. (PX1 p. 99). Dr. James indicated Petitioner was doing well following his right shoulder

manipulation and arthroscopic subacromial decompression. (Id.). He advised Petitioner to continue with physical therapy and to return in six weeks. (Id. at 102).

At his October 9, 2019, visit, Petitioner advised Dr. James that therapy seemed to be aggravating his shoulder and indicated the pain was in the AC joint anteriorly. (PX1 p. 52). Dr. James provided Petitioner with a corticosteroid injection into his right AC joint and rotator cuff. (Id. at 54-55). He also advised Petitioner to discontinue formal physical therapy and instead do the exercises on his own at home. (Id. at 55).

Petitioner returned to Dr. James' office once again four weeks later on November 12, 2019. (PX1 p. 26). Petitioner reported that he was now doing very well and had no pain complaints. (Id.). Dr. James performed a physical examination. (Id. at 28). He noted the right shoulder lacked full forward flexion of about five degrees but had "excellent internal and external rotation without limitations." (Id.). Dr. James stated Petitioner was "doing exceedingly well" in regards to his "work-related (right shoulder) injury and subsequent surgery." (Id. at 29). Dr. James released him to his regular work duties. (Id.). Petitioner had reached maximum medical improvement and could follow up as needed. (Id.).

Thirteen months after his right shoulder surgery, Petitioner returned to Atrium Health for a follow-up visit on August 21, 2020. (PX1 p. 4). Petitioner reported he was doing well with "great range of motion and has absolutely no pain or limitation." (Id.). He could continue to work without limitations and was to follow up as needed. (Id. at 6).

Petitioner testified he never returned to work for Respondent because his job was eliminated. He sought alternate employment and began working for Dean Brothers Construction, with whom he is still employed. Petitioner testified that he now drives a dump truck for Dean Brothers Construction. Petitioner testified his shoulder is stiff in the morning when he wakes up. As he performs his work duties, he testified he continues to notice stiffness in his right shoulder. He testified that it relaxes itself later in the day when he is done working. He testified that he cannot currently lift over twenty pounds with his right arm as a result of his work injury. Overall, he had a good result with his shoulder once the surgery his surgeon recommended was authorized by Respondent.

The Arbitrator find Petitioner's testimony credible.

Conclusions of Law

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

With respect to (f) Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds as follows:

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease such that the employee's current condition of ill-being can be said to have been causally-connected to the work-related injury and not simply the result of a normal degenerative process of a pre-existing condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n,* 89 Ill.2d 432, 60 Ill.Dec. 629, 433 N.E.2d 671 (1982). When an employee with a preexisting condition is injured in the course and of his employment the Commission must decide whether there was an accidental injury which arose out of the employment, whether the accidental injury aggravated or accelerated the preexisting condition or whether the preexisting condition alone was the cause of the injury. *Sisbro, Inc. Industrial Comm'n*, 207 Ill.2d 193, 278 Ill.Dec. 70,797 N.E.2d 665, (2003). Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989). "When the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 63-64 (1982).

The Arbitrator has carefully reviewed and considered all medical evidence along with all testimony. The Arbitrator concludes Petitioner has proven by the preponderance of the credible evidence that his current right shoulder condition is causally related to his work accident of July 19, 2017, as set forth more fully below.

Petitioner testified credibly regarding his accident, injuries, treatment, and ongoing issues related to his injuries. There is no evidence to suggest that Petitioner sustained any injuries prior to or after his work accident involving his right shoulder. In finding a causal connection, the

Arbitrator notes that the unrebutted timeline of events provides credible evidence that the condition of Petitioner's right shoulder was caused by his work accident. Additionally, Dr. James noted that Petitioner's right shoulder condition was "secondary to his work-related injury and subsequent surgery" in his November 12, 2019, office notes.

With respect to issue "L," the nature and extent of Petitioner's injuries, the Arbitrator finds as follows:

Section 8.lb of the Illinois Workers' Compensation Act ("Act") addresses the factors that must be considered in determining the extent of permanent partial disability for accidents occurring on or after September 1, 2011. 820 ILCS 305/8.1b (LEXIS 2011). Specifically, Section 8.1b states:

> For accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:
>
> (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.
>
> (b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:
>
> (i) the reported level of impairment pursuant to subsection (a);
> (ii) the occupation of the injured employee;
> (iii) the age of the employee at the time of the injury;
> (iv) the employee's future earning capacity; and
> (v) evidence of disability corroborated by the treating medical records.

No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order. *Id.*

Considering these factors in light of the evidence submitted at trial, the Arbitrator addresses the factors delineated in the Act for determining permanent partial disability.

With regard to subsection (i) of §8.1b(b) of the Act, the Arbitrator places no weight on this factor because neither party presented an AMA impairment rating.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes Petitioner's occupation was an eighteen-wheel truck driver. Petitioner was not able to return to his prior occupation for Respondent as his position had been eliminated while he was out of work due to his injury. Petitioner obtained alternate employment with a new employer in which he operates a dump truck. The Arbitrator gives significant weight to this factor because a truck driver must continually use his or her right arm and shoulder while operating a large commercial vehicle. Petitioner's right shoulder injury will affect him more than other employees in less physical occupations.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was sixty years old on the date of his accident and was sixty-five years old at the time of arbitration. As an older individual, his work life-expectancy is shorter than that of a younger worker. However, also as an older worker, his injury affects him more than a younger person as his injury is not likely to heal as well. The Arbitrator places some weight on this mostly neutral factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes there is no evidence to suggest Petitioner's wages will be affected in the future as a result of his work injury. Therefore, the Arbitrator gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes there is ample evidence within the medical records of Petitioner's ongoing disability. Overall, Petitioner had a good result following the second surgery performed by Dr. James on July 23, 2019. Petitioner reported significant improvement once the recommended arthroscopy was completed by Dr. James on July 23, 2019. That surgery included extensive debridement of the synovitis in his right shoulder, debridement of the glenoid labral tear, as well as manipulation of right shoulder, and arthroscopic subacromial decompression. Nonetheless, at his November 12, 2019, office visit, Dr. James' physical examination revealed the right shoulder lacked full forward flexion of about five degrees but had "excellent internal and external rotation without limitations." The Arbitrator notes that while Petitioner had a good overall result following this second surgery, his physical examination documented objective findings of ongoing disability with the injured right shoulder.

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 person as a whole, as pursuant to Section 8(d)2 of the Act. As such, Respondent shall pay Petitioner permanent partial disability benefits of $600.00/week for one-hundred (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.

By: /o/ Frank J. Soto — July 20, 2022

Arbitrator — Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC019284
Case Name	Charles Stambaugh v. Clifford-Jacobs Forging Co
Consolidated Cases	12WC019285;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0039
Number of Pages of Decision	21
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Robert Maciorowski, Adam Maciorowski

DATE FILED: 1/23/2023

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHARLES STAMBAUGH,

Petitioner,

vs. NO: 12 WC 19284

CLIFFORD JACOBS FORGING CO.,

Respondent.

DECISION AND OPINION ON REVIEW

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

Four claims were consolidated and arbitrated together. Two claims, the instant claim and 12 WC 19285, were repetitive trauma claims and two were acute trauma claims. In the instant claim the Arbitrator found that Petitioner proved a work-related repetitive trauma accident causing a condition of ill-being of bilateral carpal tunnel syndrome manifesting itself on March 1, 2011. He awarded Petitioner medical expenses submitted into evidence and 61.5 weeks of permanent partial disability benefits representing loss of the use of 15% of the left and right hands. In 12 WC 19285, the Arbitrator found Petitioner proved a work-related repetitive trauma accident causing a condition of ill-being of bilateral carpal tunnel syndrome manifesting itself on March 15, 2012, and awarded him loss of 15% of each hand, which became zero upon applying credit in the prior case.

The Commission agrees with the analysis of the Arbitrator regarding Petitioner sustaining his burden of proving repetitive traumatic accident, causation, temporary total disability, medical expenses, and the overall permanent partial disability award for these repetitive trauma claims.

However, we note that Petitioner was not at maximum medical improvement at the time of the arbitration hearing for the instant injury because he continued to treat for the same condition after the accident on March 15, 2012. Therefore, we vacate the permanency award in this claim in *lieu* of the permanency award in the companion repetitive trauma carpal tunnel claim, 12 WC 19285.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated January 24, 2022 is modified as stated above and otherwise is affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay all necessary and reasonable medical expenses set forth in Petitioner's exhibits, as provided under §8(a) of the Act subject to the applicable medical fee schedule as provided in §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the permanency award is vacated.

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 $10,000.00. 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.

January 23, 2023

DLS/dw
O-11/23/22
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	12WC019284
Case Name	STAMBAUGH, CHARLES v. CLIFFORD JACOBS FORGING COMPANY
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Adam Maciorowski

DATE FILED: 1/24/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 19, 2022 0.37%

/s/Edward Lee, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Charles Stambaugh
Employee/Petitioner

v.

Clifford Jacobs Forging Company
Employer/Respondent

Case # **12** WC **19284**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **10/18/21**. 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 _____

FINDINGS

On **3/1/11**, 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 $**43,373.46**; the average weekly wage was $**834.11**.

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

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

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

Respondent shall be given a credit of $**3,733.62** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**3,733.62**.

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

ORDER

The Arbitrator finds that the Petitioner has met his burden of proof on the issue of accident.

The Arbitrator finds that the Petitioner provided appropriate notice pursuant to the Act.

The Arbitrator finds that the Petitioner has met his burden of proof in regard to the issue of causation relative to his 3/1/11 accident.

The Respondent shall pay all reasonable and necessary medical services as set forth in Petitioner's exhibits, as provided in Sections 8(a) and 8.2 of the Act.

The Respondent shall pay Petitioner permanent partial disability benefits of $547.00 a week for 61.5 weeks, because the injuries sustained caused the 15% loss of use of the right hand and 15% loss of use of the left hand 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.

Edward Lee
Signature of Arbitrator

JANUARY 24, 2022

Findings of Fact & Conclusions
12wc19284

The Petitioner was 50 years old as of the time of trial. The Petitioner has a Bachelor's Degree from Illinois State University. The Petitioner has lived in Rockford, IL since July of 2019.

The Petitioner was employed by the Respondent, Clifford Jacobs Forging Company in March of 2011. The Respondent is a manufacturer of steel products which are formed using a forging hammer process. The steel is heated up to 2,500 degrees, set into a hammer in between a set of dies, and forged using a steam powered ram.

The Petitioner began working for the Respondent on 11/8/10 as a heater trimmer. (AT 12) The Petitioner testified that he earned his way up into a hammer man position, or a hammer operator position, from his original heater trimmer position. (AT 13)

The Petitioner was a hammer operator in March of 2011. The Petitioners daily job duties included making sure that the furnaces were full of steel, putting dies in the hammer and ensuring that the prior shift had removed all of their equipment. (AT 14) The Petitioner described the hammer as the size of a table approximately 4 feet by 6 feet in size and 2 feet tall. The Petitioner would have to drive two large keys for each die in with a sledgehammer. The Petitioner testified that with each swing of the sledgehammer there would be vibration from the steel sledgehammer striking the steel key. The vibration would ring up through his arms into his hands. The Petitioner would also use a mobile ram. (AT 15-16) The Petitioner would also use tongs to manipulate the hot steel. The Petitioner testified that the pieces of steel could be anything from parts for a NASCAR to small gears for automobiles and even larger things such as 900 pound gears for Caterpillar machines. (AT 17) The Petitioner would have to manipulate the steel inside of the die so that it would mold correctly. To do this the Petitioner would use large tongs. (AT 17-18) The Petitioner described the different sizes and types of tongs that he would use. For the big hammer, the Petitioner would have tongs that had a 2.5 feet wide mouth and were approximately 6 feet in length. They weighed approximately 40 lbs. (AT 19-20)

The Petitioner thoroughly described the job duties that he performed while working for the Respondent. Admitted into evidence were also videos which demonstrated the type of work that the Petitioner performed for the Respondent. These videos were admitted as Petitioner's Exhibit 15 and provide a detailed analysis of the type of work that the Petitioner did for the Respondent. These videos also show the tools the Petitioner used as well as the physical nature of the Petitioner's position for the Respondent.

In addition to the heavy and laborious nature of the Petitioner's work, the Petitioner indicated that he is exposed to vibration the entire time he is in the building. (AT 25) The Petitioner was working between 5-6 days a week as a hammer operator. He worked 8 hours a day with some overtime. The Petitioner testified that in his work as a hammer operator he would be using his hands the entire time which included gripping and grasping. (AT 27-28) The Petitioner described the overall physical nature of his job with the Respondent as "very grueling and vicious." (AT29)

The Petitioner testified that he began to notice numbness and tingling in his hands up into his arms that radiated into his neck area in March of 2011. (AT 30-31) The Petitioner testified that he notified his employer of his symptoms in March of 2011. The Petitioner testified that he notified his foreman, Jason Shirkey, on 3/1/11. (AT 32-33)

The Petitioner initially presented to the Christie Clinic in March of 2011. The Petitioner had complaints in his cervical spine to the left side as well as his upper extremities. The Petitioner underwent an MRI of the cervical spine at the Christie Clinic on 3/2/11. It was noted the Petitioner had a mild disc bulge at C3-4, a small central disc protrusion at C4-5, a broad based central/left disc protrusion at C5-6 and a broad-based central disc protrusion at C6-7. (PX 17, p 219-220)

The Petitioner also underwent an EMG on 3/7/11 which was performed by Dr. Steven Thatcher. This study revealed severe left carpal tunnel syndrome. (PX 17, p 215-216) Dr. Thatcher recommended the Petitioner undergo cervical epidural steroid injections. (AT 17, p 213-214)

Dr. Thatcher performed an epidural steroid injection from C7-T1 on 3/14/11. (PX 17, p 208) Dr. Thatcher performed a repeat epidural steroid injection from C7-T1 on 3/2/11. (PX 17, p 204) Dr. Thatcher performed a third epidural steroid injection at C6-7 on 4/12/11. (PX 17, p 194)

The Petitioner did continue to participate in physical therapy during the time period he was receiving epidural steroid injections from Dr. Thatcher. The Petitioner testified that the injections helped very briefly. The Petitioner also testified that the physical therapy helped a little bit. (AT 34-35)

The Petitioner continued to participate in physical therapy through October of 2011. On 10/31/11 the physicians at the Christie Clinic recommended that the Petitioner have a second MRI of his cervical spine. (PX 17, p 158)

On 11/17/11 the Petitioner underwent a second MRI of the cervical spine at the Christie Clinic. This study revealed multilevel disc disease with moderate spinal canal narrowing at C5-6 and C6-7. (PX 17, p 155) The Petitioner was subsequently sent the Carle Spine Clinic.

The Petitioner saw Dr. Victoria Johnson at the Carle Spine Clinic on 12/16/11. The Petitioner was diagnosed with cervical spondylosis. Dr. Johnson did not believe that the Petitioner was a surgical candidate at that time. (PX 17, p 148-151)

The Petitioner testified that from the point he began noticing his symptoms in March of 2011 through March of 2012, that he continued to work in his hammer operator position. The Petitioner continued in this position full duty and was not placed on any work restrictions from March of 2011 through March of 2012. The Petitioner did the same job duties during that time frame and began to notice the numbness and tingling in his arms and neck progress as well as symptoms developing into his fingers and hands. (AT 35-37)

The Petitioner testified that he was working as a hammer operator on 3/7/12. The Petitioner testified that on 3/7/12 when he was pulling a part out of the trimmer the part got stuck and he

jerked it, pulled it and when he did this the part got caught and he felt a pop in his left shoulder. (AT 37-38) The Petitioner reported the incident to his supervisor and filled out an accident report. (AT 38-39) The Petitioner also reported the issues regarding his hands to his employer on 3/22/12.

Leading up to 3/7/12 the Petitioner testified that he was not having any left shoulder pain or problems. (AT 39) The Petitioner that before 3/7/12 he had not sought any medical care specifically for his left shoulder, nor was he taking any prescription medications for his left shoulder. (AT 40)

The Petitioner presented to Dr. Philbert Chen at the Department of Occupational Medicine at the Carle Clinic on 3/15/12. The Petitioner described the issues he was having with his left shoulder as well as his hands. The Petitioner was diagnosed with presumed bilateral carpal tunnel syndrome and was recommended to undergo an EMG study for his hands. The Petitioner was also diagnosed with a left shoulder injury and a potential biceps tendon tear. An MRI was ordered of the Petitioner's left shoulder. Dr. Chen's notes indicate that the Petitioner asked not to be placed on any work restrictions. The Petitioner testified that the reason not to be put on any work restrictions is he did not want to lose his job and he enjoyed his position with the Respondent. (AT 41) (PX 4, p 1-4)

The Petitioner followed up with Dr. Chen on 3/21/12. At this time Dr. Chen continued to diagnose left shoulder pain and bilateral carpal tunnel syndrome. Dr. Chen also placed the Petitioner on work restrictions of a 5lb restriction for material handling, avoid repetitive left shoulder movements, avoid forceful gripping with both hands, and avoid overhead work. (PX 4, p 6-7)

The Petitioner underwent the recommended EMG of his bilateral upper extremities on 3/22/12. This study revealed bilateral carpal tunnel syndrome left greater than right. (PX 4, p 9-11)

The Petitioner also underwent the recommended left shoulder MRI on 3/26/12. This study revealed advanced accelerated degenerative change of the glenohumeral joint with prominent inferior spurring and diffuse cartilage loss, subchondral cystic change of the inferior margin of the glenoid, diffuse labral degeneration, tendinosis of the rotator cuff without tear and moderate AC degenerative change. PX 4, p 12)

The Petitioner followed up with Dr. Chen following his EMG and left shoulder MRI. The Petitioner was referred to Dr. Kolb for further treatment of his left shoulder and bilateral hands. The Petitioner was maintained on his work restrictions at that time. (PX 4, p 8)

The Petitioner initially presented to Dr. Edward Kolb on 4/2/12. The Petitioner described his symptoms to Dr. Kolb and an examination was performed. Dr. Kolb recommended carpal tunnel release on the left hand and also discussed the Petitioner undergoing a surgery on his left shoulder. (PX 6, p 7)

Dr. Kolb performed a left carpal tunnel release procedure on 4/5/12. (PX 6, p 115-116)

The Petitioner followed up with Dr. Kolb on 4/16/12. The Petitioner noticed significant improvement in regards to his pain as well as his numbness and tingling in his left hand. Dr. Kolb recommended the Petitioner undergo carpal tunnel release on this right side at this time. (PX 6, p 6)

Dr. Kolb performed a right carpal tunnel release on 4/26/12. (PX 7, p 2)

The Petitioner followed up with Dr. Kolb on 5/7/12. The Petitioner was doing well and did not have any significant complaints of pain. The Petitioner did continue to have numbness in his left middle finger as well as expressed complaints regarding his left shoulder. Dr. Kolb continued to recommend left shoulder surgery. (PX 6, p 14)

On 5/22/12 Dr. Kolb performed a resurfacing arthroplasty of the Petitioner's left shoulder. (PX 8, p 11-14)

The Petitioner followed up with Dr. Kolb on 6/4/12. The Petitioner did report residual soreness in his left shoulder but the sharp constant pain in his left shoulder had improved. Dr. Kolb recommended the Petitioner begin postoperative physical therapy. Dr. Kolb also placed the Petitioner on work restrictions. (PX 6, p 15)

The Petitioner followed up with Dr. Kolb on 7/2/12. The Petitioner had been doing physical therapy at the Christie Clinic. Dr. Kolb continued to recommend physical therapy moving forward. (PX 6, p 16) The Petitioner testified however that he began to notice his symptoms getting worse in postoperative physical therapy. (AT 47)

When the Petitioner followed up with Dr. Kolb on 8/13/12, Dr. Kolb recommended the Petitioner increase his physical therapy to 3 times a week. The Petitioner was kept off of work at this time. (PX 6, p 17)

The Petitioner followed up with Dr. Kolb on 9/17/12. The Petitioner was not making significant progress in his postoperative physical therapy. Dr. Kolb however continued to recommend physical therapy and if the Petitioner's symptoms persisted they would possibly order an additional left shoulder MRI. There was also a discussion that the Petitioner may potentially be referred to another specialist. (PX 6, p 22)

The Petitioner did undergo a postoperative MRI of his left shoulder on 10/25/12 at the Christie Clinic. This study revealed biceps tendinosis and tenosynovitis, however the integrity of the Petitioner's rotator cuff could not be evaluated because of the significant metal artifact from the Petitioner's left shoulder surgery that was performed by Dr. Kolb in May of 2012. (PX 5, p 4)

The Petitioner followed up with Dr. Kolb on 10/29/12. Dr. Kolb the 10/25/12 MRI with the Petitioner. At this time Dr. Kolb referred the Petitioner to Washington University in St. Louis to see a shoulder specialist for further evaluation. (PX 6, p 23)

The Petitioner presented to Dr. Leesa Galatz at Washington University on 11/20/12. Dr. Galatz performed an examination and diagnosed the Petitioner with a painful hemiarthroplasty. Dr.

Galatz recommended the Petitioner undergo an ultrasound of the left shoulder and also discussed performing a Marcaine injection. (PX 26, p 4-5)

On 12/12/12 the Petitioner underwent an injection to his left shoulder at Washington University. This was a left glenohumeral joint injection under fluoroscopic guidance. (PX 26, p 11-12)

The Petitioner also continued to participate in physical therapy throughout this time at the Christie Clinic. The Petitioner participated in physical therapy through 2/27/13. (PX 17, p 8)

The Petitioner subsequently came under the care of Dr. Brian Cole at Midwest Orthopedics at Rush. The Petitioner was initially seen by Dr. Cole on 3/7/13. Dr. Cole performed an examination and diagnosed the Petitioner as status post left shoulder hemicap resurfacing of the humeral head. Dr. Cole recommended an additional procedure on the left shoulder. This would be a total shoulder arthroplasty. Dr. Cole also issued work restrictions of no lifting overhead more than 5 lbs. (PX 10, p 1-2)

On 8/20/13 Dr. Cole performed a revision left shoulder replacement, biceps tenodesis and removal of hardware. (PX 10, p 8-10) The Petitioner followed up with Dr. Cole on 8/30/13. At this time Dr. Cole recommended the Petitioner begin postoperative physical therapy. Light duty restrictions were issued. (PX 10, p 11)

The Petitioner followed up with Dr. Cole on 9/27/13. Dr. Cole continued to recommend light duty work.

The Petitioner then followed up with Dr. Kolb on 11/4/13 for continued complaints regarding his left hand. The Petitioner continued to have numbness and tingling throughout his left hand. Dr. Kolb performed an examination and recommended the Petitioner undergo a repeat EMG study. (PX 6, p 25)

The Petitioner did undergo the recommended EMG with Dr. Edward Pegg on 11/5/13. This study revealed severe right ulnar nerve entrapment at the elbow. (PX 9, p 1-2)

The Petitioner continued to follow up with Dr. Cole's office. The Petitioner next saw Dr. Cole on 11/8/13. Dr. Cole continued to recommend physical therapy and a home exercise program. The Petitioner's light duty restrictions were maintained that being working only with desk or seated duties with no pushing, pulling, or lifting with the left arm. (PX 10, p 19)

The Petitioner then followed up with Dr. Kolb on 11/11/13. Dr. Kolb reviewed the EMG with the Petitioner and recommended proceeding with a right elbow ulnar nerve decompression with anterior ulnar nerve transposition. The Petitioner did not undergo the recommended surgery on the right elbow. (PX 19, p 11)

The Petitioner testified that he continued to participate in physical therapy into 2014. (AT 53) The Petitioner also continued to follow up with Dr. Cole. The Petitioner next saw Dr. Cole on 10/6/14. Dr. Cole recommended additional physical therapy and then a Functional Capacity

Evaluation. The Petitioner was placed on light duty restrictions of no lifting more than 10 pounds over shoulder height and no repetitive overhead activities. (PX 10, p 26-27)

The Petitioner was participating in physical therapy at Advanced Physical Therapy. The Petitioner continued physical therapy through 12/3/14. (PX 11, p 2-4)

The Petitioner underwent the recommended Functional Capacity Evaluation at Advanced Physical Therapy on 12/16/14. This was a valid study for both consistency and legitimacy of effort. (PX 11, p 64-71)

The Petitioner followed up with Dr. Cole's office on 12/29/14. The FCE was reviewed, and the Petitioner was placed at maximum medical improvement at this time with permanent restrictions per the FCE. The Petitioner's permanent work restrictions were no lifting more than 29 pounds up to the waist level, and only 10 pounds with the left upper extremity up to shoulder level. (PX 10, p 30-32)

The Petitioner was not able to return to his position with the Respondent with the permanent restrictions as set forth by the FCE and Dr. Cole. (AT 56) The Petitioner testified that he requested accommodation of his permanent work restrictions and the Respondent did not provide him a job within his permanent work restrictions. (AT 56)

Shortly after the Petitioner was placed on permanent restrictions and released at MMI by Dr. Cole, the Respondent sent the Petitioner for an IME with Dr. Nathan Mall in St. Louis. The Petitioner was aware that Dr. Mall prepared a report following his examination as well as an addendum report in March 2015. The Arbitrator notes that the Respondent did not submit Dr. Mall's reports into evidence.

The Petitioner subsequently moved from the Champaign, IL area to the Canton, IL area. When the Petitioner moved to the Canton, IL area he established care with a new primary care physician, Dr. Renick at Graham Medical Group. (AT 57)

The Petitioner also testified that the Respondent later sent the Petitioner for a second Independent Medical Examination with Dr. Mitchell Rotman on 3/28/16. The Petitioner was only seen by Dr. Rotman one time. (AT 58)

The Petitioner testified that up to June of 2016 he had been receiving benefits from the workers' compensation carrier in the form of temporary total disability and then maintenance benefits. (AT 58) The Petitioner also testified that the Respondent had paid for his medical bills up to June of 2016. (AT 58)

The Petitioner was aware that surveillance was conducted in July of 2016. The Petitioner reviewed the surveillance films taken on 7/29/16. The Petitioner testified that he was moving a tub as some of the individuals he had hired to do work on one of his properties was unable to do so that day. The Petitioner testified that the tub he was moving was light weight and made of fiberglass. The Petitioner testified that he was not violating his permanent restrictions by moving

the tub. The Petitioner testified he has not violated his permanent restrictions at all since they were issued by Dr. Cole in December of 2014. (AT 58-61)

The Respondent cut the Petitioner's benefits off following obtaining the surveillance video and Dr. Rotman's Independent Medical Examination report. The Petitioner testified that in July of 2016 when his benefits were cut, he was 45 years old. Before the Respondent the Petitioner had done primarily factory and construction work. The Petitioner testified that he would not be able to do any of the work that he had done in the past due to his permanent work restrictions. (AT 62)

As a result, the Petitioner went to school to retrain and reeducate himself in an attempt to earn a higher wage. (AT 62-63) The Petitioner initially went to Illinois Central College in East Peoria, also known as ICC. The Petitioner attended ICC from September of 2015 through the Spring of 2017. The Petitioner obtained an Associate's Degree in Architectural Construction from ICC. (AT 63-64)

Subsequent to ICC the Petitioner attended Illinois State University and obtained his Bachelor's Degree in Construction Management. The Petitioner testified that he used student loans to pay for his schooling at both ICC and Illinois State University. The Petitioner's educational costs and retraining expenses were admitted into evidence as Petitioner's Exhibit 13.

After the Petitioner obtained his degree from Illinois State University he began looking for a job. The Petitioner did find work with William Charles Construction. (AT 65) The Petitioner is a Project Engineer for William Charles Construction doing both civil and rail work. (AT 66) The Petitioner testified that his new employer does excavation, groundwork, they build fuel and other things and for railroad stations and depot's. (AT 66) The Petitioner began working for William Charles on 7/1/19. As of the time of trial the Petitioner still holds his Project Engineer position with William Charles Construction. (AT 67) The Petitioner testified that his current earnings with William Charles Construction are $1,250.00/week… (AT 67)

The Petitioner testified that as of trial he continues to have problems with numbness and tingling in his left hand. He notices that he continuously drops things. The Petitioner testified that the numbness and tingling he notices is constant in his left hand. The Petitioner testified that his right hand is not as bad, and he is right hand dominant. The Petitioner testified that he has difficulty buttoning his shirts, buttoning his pants and even putting a belt on. The Petitioner testified that he used to work on cars and cannot do so anymore because of his hands and his left shoulder. The Petitioner must pay others to mow his yard.

The Petitioner testified that he also has constant pain in his left shoulder. The Petitioner is still taking up to 6 Norco's a day to be able to work. The Petitioner testified that he has difficulty sleeping because of pulling sensations in his neck and his shoulder as well as the numbness and tingling in his hands. (AT 67-70) The Petitioner testified that he does not believe that he could do the type of work that he was doing for Clifford Jacobs at the time of his accident. The Petitioner testified that he believed that his injuries took his life away from him and he was only 40 years old at the time of his first accident in March 2011. The Petitioner testified that he has suffered great financial difficulty as well as in his personal relationships. (AT 70-71)

Christopher Stead also testified at the time of trial. Mr. Stead is 46 years old and lives in Cuba, IL. Mr. Stead is personally familiar with the Petitioner was hired by the Petitioner to help him do some repair work on a house that the Petitioner owned in Canton, IL in July of 2016. Mr. Stead was involved in the work that is the subject of the surveillance video admitted into evidence by the Respondent. Mr. Stead testified that the tub that was being moved in the surveillance video was made of fiberglass and it weighed approximately 40-50 lbs. Mr. Stead testified that he did most of the moving and that anything that the Petitioner did was kind of bracing the tub in his opinion. Mr. Stead testified that he believed he was moving most of the tub and the Petitioner was doing little in the form of actually lifting the tub. (AT 139-141)

Delores Coulter also testified at the time of trial. Ms. Coulter is the Petitioner's fiancé and they have been together for 9 years. Ms. Coulter testified that she has helped the Petitioner throughout his workers' compensation case. This help has come in the form of financial aid as well as self care, helping the Petitioner with things such as yard work, shopping, dressing, eating and many other aspects of the Petitioner's daily life. Ms. Coulter has helped the Petitioner with things such as paying for his schooling, gas, as well as giving him a place to stay when the Petitioner was attending ICC and Illinois State University. (AT 144-146)

Mr. Steven Bone also testified at the time of trial. Mr. Bone is the owner of an agency called Advanced Investigative Services which is a private detective agency licensed in Illinois and 12 other states. Mr. Bone testified that he was the one who performed the surveillance on the Petitioner in July of 2016. Mr. Bone prepared a written report as well as the video surveillance.

Dr. Kolb's Deposition

Dr. Edward Kolb testified via evidence deposition on 3/23/18. Dr. Kolb went to Rush Medical Center in Chicago for both medical school and residency training. Dr. Kolb is a board-certified orthopedic surgeon. Dr. Kolb treats patients of various musculoskeletal problems. Dr. Kolb estimated that 50% of his practice is dedicated to work on the upper extremities. He performs 10-12 shoulder surgeries and 10-12 carpal tunnel release surgeries on average each month. (PX 2)

Dr. Kolb initially met with the Petitioner on 4/2/12. The Petitioner presented with left shoulder pain for the past month as well as bilateral hand numbness and tingling. Dr. Kolb took an extensive history and performed an examination. He also took x-rays and reviewed the Petitioner's 3/26/12 left shoulder MRI. Dr. Kolb diagnosed the Petitioner with severe osteoarthritis of the left shoulder and left sided carpal tunnel syndrome. Dr. Kolb believed that the most pressing issue at that time was the Petitioner's carpal tunnel syndrome for which he recommended a left carpal tunnel release. (PX 2)

Dr. Kolb performed a left carpal tunnel release procedure on 4/5/12. (PX 2)

In follow up Dr. Kolb noted the Petitioner had significant improvement regarding his pain as well as the numbness and tingling in his left hand. When the Petitioner followed up with Dr. Kolb on 4/16/12 he did note the Petitioner had evidence of right carpal tunnel syndrome. Dr. Kolb recommended the Petitioner undergo a right carpal tunnel release. There was also

discussion regarding the Petitioner undergoing a resurfacing procedure for his left shoulder symptoms. (PX 2)

Dr. Kolb performed a right carpal tunnel release procedure on 4/26/12. (PX 2)

In follow up on 5/7/12 the Petitioner did not have any significant pain in his bilateral hands. The Petitioner did have some numbness in the left middle finger which was residual from the pre-operative time frame. The Petitioner continued to have pain his left shoulder. The focus at this point shifted to the left shoulder and the plan was to proceed with a left shoulder resurfacing procedure versus a shoulder replacement type procedure. (PX 2)

On 5/22/12 Dr. Kolb performed surgery on the left shoulder. Dr. Kolb described the resurfacing procedure that he performed at that time as essentially resurfacing the humeral head and putting on an artificial or metal head to that portion of the joint. The resurfacing procedure is less invasive than a total shoulder replacement. (PX 2)

The Petitioner followed up with Dr. Kolb on 6/4/12. The Petitioner was doing fairly well but did have complaints of residual soreness in his left shoulder. The Petitioner did have some residual numbness and tingling in the left hand from his previous carpal tunnel syndrome. Physical therapy was to be initiated with some work restrictions to protect the shoulder. Dr. Kolb testified that following the shoulder procedure that he performed on the Petitioner, for the first six weeks after surgery he would have the Petitioner avoid any type of active internal rotation. Dr. Kolb would also recommend the Petitioner avoid excessive internal rotation and at approximately six weeks out to gradually increase range of motion and strengthening. (PX 2)

Dr. Kolb saw the Petitioner again on 7/2/12. The Petitioner's left shoulder pain had improved compared to pre-surgery but he did still notice stiffness. The Petitioner also continued to have decreased sensation in his middle finger on the left hand which was present secondary to his previous carpal tunnel syndrome. Dr. Kolb recommended continued physical therapy and to re-check the Petitioner in six weeks. In August of 2012 the Petitioner again noted improvement with his left shoulder. Physical therapy was increased to three times per week. (PX 2)

Dr. Kolb saw the Petitioner subsequently on 9/17/12. At this time the Petitioner continued to have discomfort and felt as though he had not made much progress over the past month. The Petitioner had pain over the front part of his shoulder radiating down to the elbow. Dr. Kolb recommended the Petitioner continue physical therapy and if at the next follow up the Petitioner did not show significant signs of improvement that an MRI would be ordered to insure healing of the soft tissues. (PX 2)

The Petitioner did undergo a subsequent left shoulder MRI on 10/25/12. The Petitioner followed up with Dr. Kolb subsequently on 10/29/12. From review of the MRI Dr. Kolb noted inflammation around the biceps tendon as well as evidence of a biceps tenodesis. However, Dr. Kolb did note that it was difficult to interpret the integrity of the rotator cuff tear secondary to the metal artifact which was the hardware from the initial left shoulder procedure. At this time Dr. Kolb did recommend the Petitioner seek a second opinion perhaps at Washington University in St. Louis. (PX 2)

The Petitioner later saw Dr. Kolb on 11/4/13. The Petitioner reported having residual numbness in his left hand. It was also noted that the Petitioner had been seen by Dr. David Fletcher who had performed an FCE and recommended further follow up with Dr. Kolb to discuss potential surgical options. On 11/4/13 the Petitioner also presented with complaints of numbness and tingling in his middle and ring finger with some hypersensitivity within the fourth web space extending approximately to the palmer aspect of the hand. Dr. Kolb performed an examination and diagnosed the Petitioner as status post left carpal tunnel release from a year and a half prior. Dr. Kolb recommended obtaining an updated EMG study to further evaluate the nerve function. (PX 2)

The Petitioner did undergo a subsequent EMG study performed by Dr. Pegg on 11/5/13. The Petitioner then followed up with Dr. Kolb on 11/11/13. Dr. Kolb reviewed the EMG which revealed evidence of severe right ulnar nerve entrapment at the right elbow. Dr. Kolb recommended the Petitioner undergo a right elbow ulnar nerve decompression with anterior ulnar nerve transposition. (PX 2)

Dr. Kolb testified to his knowledge the Petitioner had not underwent the right ulnar nerve procedure. (PX 2)

The Petitioner later followed up with Dr. Kolb on 3/6/18. The Petitioner reported that he had seen Dr. Brian Cole at Midwest Orthopedics at Rush who performed a hemi-arthroplasty procedure on the left shoulder. The Petitioner described Dr. Cole placing him on a permanent lifting restriction of 10lbs and the Petitioner was now back in school looking to transition to a more sedentary job given his permanent work restrictions. At the 3/6/18 visit the Petitioner continued to complain of pain in both shoulders with pain radiating into his neck region. The Petitioner described radicular complaints throughout his bilateral upper extremities as well as numbness and tingling in both hands and weakness in his bilateral upper extremities. Dr. Kolb performed an examination and recommended the Petitioner consider additional work up including a bone scan to rule out potential loosening of his humeral prosthesis. Dr. Kolb recommended the Petitioner further follow up potentially with the clinic at Southern Illinois University in Springfield given the complexity of his case. Dr. Kolb suspected that the majority of his complaints at this point may be stemming from his cervical spine and the Petitioner was offered additional formal physical therapy. (PX 2)

Dr. Kolb testified that he believed that the type of repetitive activities the Petitioner participated in as a laborer for the Respondent could at least aggravate, if not cause, his bilateral carpal tunnel syndrome. (PX 2, p 43)

Dr. Kolb also testified that he believed that the accident the Petitioner described of 3/7/12 appears to have been at least an aggravating factor as it pertains to his left shoulder condition and the need for subsequent treatment including surgery. (PX 2, p 44)

Dr. Kolb's opinions were based on his medical experience, treating patients who have these types of conditions in the past and his experience seeing who worked similar job duties as the Petitioner. Dr. Kolb also testified that his causation opinion as it relates to the Petitioner's left

shoulder was a combination of the type of work that the Petitioner performed as well as the specific accident of 3/7/12 that the Petitioner described. Dr. Kolb confirmed that there was no evidence of any treatment that the Petitioner had underwent for his left shoulder prior to March 2012. (PX 2, p 76)

Dr. Cole's Deposition

Dr. Brian Cole also testified via evidence deposition on 6/17/19. Dr. Cole is an orthopedic surgeon specializing in care of the shoulder, elbow and knee. Dr. Cole has been in practice for 23 years. He participated in a residency at the hospital for special surgery and is a professor at the Department of Orthopedics at Rush. Dr. Cole has been board certified in orthopedic surgery since 1997. Dr. Cole testified that approximately 50% of his practice is dedicated to treatment of shoulder conditions. Dr. Cole performs approximately 400 shoulder surgeries a year. Dr. Cole testified that he performs 50-60 shoulder replacements a year. (PX 3)

Dr. Cole initially saw the Petitioner on 3/7/13. Dr. Cole believed that the Petitioner was referred to him by his treating physician Dr. Kolb. The Petitioner presented with pain and stiffness in the left shoulder. Dr. Cole noted loss of range of motion and pain with the range of motion testing. Dr. Cole diagnosed a persistent painful left shoulder after undergoing a partial left shoulder replacement previously. Dr. Cole recommended the Petitioner undergo a revision total shoulder replacement. Dr. Cole issued light duty restrictions of no overhead lifting greater than 5lbs. (PX 3)

On 8/20/13 Dr. Cole performed a revision shoulder replacement with a biceps tenodesis. (PX 3)

The Petitioner followed up with Dr. Cole 10 days later on 8/30/13. The Petitioner was doing fine and had a standard post-operative physical examination. Dr. Cole issued restrictions of no use of the left arm. Dr. Cole testified the Petitioner would have needed to be off work entirely from the date of the surgery through the initial post-operative visit 10 days later. Dr. Cole also ordered physical therapy as of 8/30/13. (PX 3)

As of 9/27/13 Dr. Cole noted the Petitioner had progressed with increased range of motion as well decreased pain. Dr. Cole continued to recommend physical therapy and restrictions were issued of limited lifting, as well as overhead activity limited, essentially desk top duties only. These recommendations and restrictions were maintained as of the 11/8/13 visit with Dr. Cole. (PX 3)

The Petitioner then followed up with Dr. Cole on 10/6/14. The Petitioner explained that he had missed various appointments due to ongoing personal issues. Dr. Cole in October 2014 noted increasing range of motion and decreasing pain. He recommended continued physical therapy. Dr. Cole also discussed having the Petitioner undergo an FCE at the conclusion of physical therapy. Dr. Cole testified this was his standard practice. (PX 3)

The Petitioner did undergo an FCE at Advanced Rehab and Sports Medicine on 12/16/14. The overall classification of effort was considered valid due to the Petitioner performing consistently during a repeated measures protocol. Maximum weight achieved to waist height was bilaterally

49.12lbs, on the right 52.32lbs, and on the left 29.43lbs. The Petitioner met the material handling demands for a sedentary demand vocation per the Dictionary of Occupational Titles. (PX 3)

The Petitioner followed up with Dr. Cole on 12/29/14. This was the last visit the Petitioner had with Dr. Cole. Dr. Cole reviewed the FCE and noted that it was a valid study. Dr. Cole had no ongoing treatment recommendations for the Petitioner as of 12/29/14. Dr. Cole released the Petitioner at MMI with permanent restrictions as of this date. Permanent work restrictions issued by Dr. Cole were limit lifting with the left upper extremity to 29lbs up to waist level, up to 10lbs with the left upper extremity to shoulder, and only occasionally overhead use of the left upper extremity. Dr. Cole noted the Petitioner will likely continue to have left shoulder pain with any amount of lifting but is safe to work within these parameters. Dr. Cole testified that as of 12/29/14 the Petitioner was released at MMI with these permanent restrictions. Dr. Cole testified that he believed the Petitioner likely had a pre-existing condition in his left shoulder that was aggravated by the accident of 3/7/12. Dr. Cole believed that all the treatment was rendered to the Petitioner's left shoulder subsequently would be related to the 3/7/12 accident including the need for the permanent work restrictions that he issued. (PX 3, p 20-21)

Dr. Cole confirmed that the FCE is an objective test and can be used to confirm or deny the legitimacy or validity of subjective complaints. Dr. Cole did not believe that the Petitioner, given his permanent work restrictions, would be able to return to his original position that he held with the Respondent. (PX 3, p 34-35)

Dr. Rotman's Deposition

Dr. Mitchell Rotman testified on three occasions in this case. Dr. Rotman had seen the Petitioner for an IME on 3/28/16. Dr. Rotman was provided records to review including the original IME report from Dr. Nathan Mall. Dr. Rotman opined that there was objective correlation for the Petitioner's subjective complaints in regards to his left shoulder. Dr. Rotman indicated that he would advise the Petitioner avoid heavy overhead lifting but would not restrict him to any activities below shoulder level. Dr. Rotman did not believe that the Petitioner's left shoulder condition was caused by his job duties with the Respondent. Dr. Rotman had no issues with the treatment with the Petitioner had underwent for both his left shoulder condition as well as his bilateral carpal tunnel syndrome. Dr. Rotman opined that the incident at work described by the Petitioner from 3/7/12 was "merely a triggering factor for discomfort" in regards to the Petitioner's left shoulder. Dr. Rotman prepared an addendum report dated 6/10/16. Dr. Rotman was provided videos of the Petitioner's job duties for the Respondent. Dr. Rotman noted there was some heavy gripping involved in the forging activities. Dr. Rotman indicated that if the Petitioner was engaged in significant gripping while operating the hammer where he would be holding parts constantly and not letting go, that would be an aggravating factor for an idiopathic carpal tunnel syndrome.

Dr. Rotman prepared another addendum report dated 7/25/16. In this report Dr. Rotman indicated he did not believe the Petitioner's left shoulder end stage arthritis was caused, aggravated or accelerated by the Petitioner's employment with the Respondent. Dr. Rotman did not believe the Petitioner's carpal tunnel syndrome was caused or accelerated by the Petitioner's employment with the Respondent. Despite that, Dr. Rotman went on to state that it was difficult

and impossible to state with any reasonable degree of medical certainty whether the Petitioner's carpal tunnel condition was aggravated by his work since he did not see a long enough video segment to determine if the Petitioner was doing prolonged heavy gripping.

Dr. Rotman prepared an additional addendum report dated 9/6/16. This time Dr. Rotman was provided additional job videos which demonstrated the Petitioner's job duties as well as the surveillance video which had been conducted in July of 2016.

Dr. Rotman testified at the time of his 11/27/17 deposition that he performs 4-5 Independent Medical Examinations a week. Of these IMEs, over 90% are done at the request of Respondents. Dr. Rotman has been performing IMEs for over 20 years. Dr. Rotman charges $1,800.00 for an IME and each addendum report is another $250.00-$300.00.

Dr. Rotman confirmed that his 11/27/17 examination that his initial opinions in regards to the Petitioner's bilateral carpal tunnel syndrome and his left shoulder condition were based upon and inquiry that the Petitioner's injuries were all repetitive trauma both to his bilateral hands and left shoulder. In fact the Petitioner's left shoulder claim was not a repetitive trauma case and was instead two specific accidents which occurred on 3/7/12. Dr. Rotman did testify that a traumatic injury or incident can aggravate a preexisting arthritic condition of the shoulder. Dr. Rotman also testified that an aggravation of a preexisting condition can lead to surgery including a shoulder replacement. (RX 7, p 8-9)

Dr. Rotman later performed an additional addendum report dated 4/19/18. Dr. Rotman was provided additional medical records and at this time opined that he did not believe that the specific accidents suffered by the Petitioner on 3/7/12 were a causative, aggravating or accelerating factor in his left shoulder condition.

Dr. Rotman prepared his final addendum report on 8/18/20. Dr. Rotman was provided additional medical records to review which he stated did not change his original opinions in this case.

Conclusions of Law

12 WC 19284 (accident date 3/1/11)

Accident:

The Arbitrator finds the Petitioner has met his burden of proof regarding the issue of accident for his repetitive trauma injuries which manifested themselves on 3/1/11. The Arbitrator notes that the job videos admitted into evidence as well as the Petitioner's testimony regarding his job duties establish the heavy laborious nature of his position with the Respondent. The Petitioner's jobs with the Respondent required heavy repetitive gripping and grasping as well as significant exposure to vibration.

The Arbitrator observed the Petitioner and found him to be sincere, consistent, and credible. Petitioner's testimony that his job as a hammer operator is a heavy-duty occupation that requires a high level of industrial athleticism is consistent with the job videos admitted into evidence and

supported by the medical records. Respondent alleges that Petitioner's complaints in his hands are chronic in nature, idiopathic, or only the consequence of degeneration. The record is clear, however, that Petitioner became symptomatic only when performing his heavy job duties day after day. Petitioner made a good faith effort to work through his pain in the hopes that it would abate, however, the pain did not resolve on its own. The law does not require that Petitioner work to collapse.

The Petitioner's treating records corroborate that Petitioner's complaints in his bilateral hands were symptomatic as a consequence of his work duties. Given the sequence of events, the totality of the evidence, and the treatment records and opinion of Dr. Kolb, the Arbitrator finds that the Petitioner sustained a compensable cumulative/repetitive trauma accident arising out of and in the course of his employment with the Respondent which manifested itself on 3/1/11.

Notice:

The Arbitrator finds that the Petitioner has established his burden of proof regarding the issue of notice for his 3/1/11 accident. The Petitioner testified that he provided notice to his supervisor Jason Shirkey on 3/1/11. (AT 32-33) The Arbitrator also notes that the Respondent did not present any evidence to dispute the Petitioner's testimony that he provided notice to Mr. Shirkey on 3/1/11. As such the Arbitrator finds that the Petitioner provided notice to his employer regarding his 3/1/11 accident within the timeframe as required by the Act.

Causation:

The Petitioner must show that some act or phase of employment was a causative factor in his resulting condition of ill-being. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 205 (2003). In repetitive trauma cases, the Petitioner generally relies on medical testimony to establish the causal connection between work activities performed and subsequent disablement. *Nunn v. Industrial Commission*, 157 Ill. App. 3d 470, 477 (1987). When a Petitioner alleges a repetitive trauma accident, it is for the Commission to determine whether the disability is solely the consequence of the degenerative process, or an aggravation of a pre-existing condition due to repetitive trauma. *Cassens Transport Co. v. Industrial Commission*, 262 Ill. App. 3d 324, 331 (1994).

As discussed above, the Arbitrator finds that the Petitioner sustained a compensable cumulative/repetitive trauma accident arising out of and in the course of his employment by the Respondent which manifested itself on 3/1/11.

Petitioner's treating surgeon, Dr. Kolb, who examined the Petitioner regularly, was in the best position to judge the cause of Petitioner's complaints. Dr. Kolb testified that work activities of the nature that Petitioner's job required could cause or aggravate bilateral carpal tunnel syndrome. (PX 2, p 43)

The Arbitrator notes that the Respondent paid for all Petitioners medical expenses and TTD stemming from his bilateral carpal tunnel syndrome, chose not to submit into evidence the report of their first IME physician Dr. Mall, and base their causation defense on their second IME

physician Dr. Rotman. The Arbitrator is not persuaded by Dr. Rotman's opinions on the nature of the Petitioner's work for the Respondent or his opinions on causation in this case. The Arbitrator does not find Dr. Rotman's opinions credible or consistent with the evidence in the record.

The Arbitrator is persuaded by the sequence of events, the totality of the evidence, and the opinion of Dr. Kolb, and finds that Petitioner's current condition of ill-being in his bilateral hands is causally related to his cumulative/repetitive trauma work injury manifesting on March 1, 2011. The Arbitrator finds that the Petitioner has met his burden of proof regarding the issue of causation.

Medical Bills:

Based on the Arbitrator's findings on the issues of accident, notice, and causal connection, the Arbitrator finds the medical bills submitted into evidence by the Petitioner are causally related to his 3/1/11 accident.

Nature & Extent:

Based on the Arbitrator's findings on the issues of accident, notice, and causal connection, the Arbitrator finds that the Petitioner is entitled to permanency for his bilateral carpal tunnel condition. Furthermore, because the date of manifestation in this case is before 9/1/11 the Arbitrator need not address the five factors as set forth in section 8.1b of the Act.

Based on the totality of the evidence the Arbitrator orders the Respondent to pay Petitioner permanent partial disability benefits of $547.00 a week for 61.5 weeks, because the injuries sustained caused the 15% loss of use of the right hand and 15% loss of use of the left hand as provided in Section 8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC019285
Case Name	Charles Stambaugh v. Clifford-Jacobs Forging Co
Consolidated Cases	12WC019284
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0040
Number of Pages of Decision	23
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Robert Maciorowski, Adam Maciorowski

DATE FILED: 1/23/2023

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHARLES STAMBAUGH,

Petitioner,

vs. NO: 12 WC 19285

CLIFFORD JACOBS FORGING CO.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by both the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causation, notice, temporary total disability, benefit rate, medical bills, 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.

Four claims were consolidated and arbitrated together. Two claims, 12 WC 19284 and the instant claim, were repetitive trauma claims and two were acute trauma claims. In 12 WC 19284, the Arbitrator found that Petitioner proved a work-related repetitive trauma accident causing a condition of ill-being of bilateral carpal tunnel syndrome manifesting itself on March 1, 2011. He awarded Petitioner medical expenses submitted into evidence and 61.5 weeks of permanent partial disability benefits representing loss of the use of 15% of the left and right hands. In the instant claim, the Arbitrator found Petitioner proved a work related repetitive trauma accident causing a condition of ill-being of bilateral carpal tunnel syndrome manifesting itself on March 15, 2012, and awarded him medical expenses submitted into evidence and loss of 15% of each hand, which became zero upon applying credit in the prior case.

The Commission agrees with the analysis of the Arbitrator regarding Petitioner sustaining his burden of proving repetitive traumatic accident, causation of bilateral carpal tunnel syndrome, temporary total disability, medical expenses, and the overall permanent partial disability award for these repetitive trauma claims.

As noted above, in his Decision the Arbitrator granted Respondent credit for the permanency award in the companion repetitive trauma carpal tunnel claim, 12 WC 19284. However, by separate decision, the Commission vacated the permanency award in that claim. Therefore, the Commission vacates the award of credit in this claim for the permanency award awarded by the Arbitrator in the companion repetitive trauma carpal tunnel claim.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated January 24, 2022 is modified as stated above, and otherwise is affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay all reasonable and necessary medical services as set forth in Petitioner's exhibits, as provided in §8(a), pursuant to the applicable medical fee schedule in §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner permanent partial disability benefits of $695.78 a week for 57 weeks, because the injuries sustained caused the loss of the use of 15% of the right hand and 15% of the use of the left hand, as provided in §8(e) of the Act.

IT ISFURTHER ORDERED BY THE COMMISSION, that the award of credit for the permanency award in companion claim 12 WC 12984 is hereby vacated.

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.

January 23, 2023

DLS/dw
O-11/23/22
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	12WC019285
Case Name	STAMBAUGH, CHARLES v. CLIFFORD JACOBS FORGING COMPANY
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Adam Maciorowski

DATE FILED: 1/24/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 19, 2022 0.37%

/s/Edward Lee, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Charles Stambaugh
Employee/Petitioner

v.

Clifford Jacobs Forging Company
Employer/Respondent

Case # **12** WC **19285**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **10/18/21**. 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 _____

FINDINGS

On **3/15/12**, 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 $**59,839.50**; the average weekly wage was $**1,196.79**.

On the date of accident, Petitioner was **41** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**3,733.62** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**3,733.62**.

Respondent is entitled to a credit of 15% of each hand from the award in case 12wc19284.

ORDER

The Arbitrator finds that the Petitioner has met his burden of proof on the issue of accident relative to his 3/15/12 accident.

The Arbitrator finds that the Petitioner has met his burden of proof on the issue of causal connection.

The Arbitrator finds that the Petitioner's average weekly wage for this case is $1,196.79.

The Respondent shall pay all reasonable and necessary medical services as set forth in Petitioner's exhibits, as provided in Sections 8(a) and 8.2 of the Act.

The Respondent shall pay permanent partial disability benefits of $695.78 a week for 57 weeks, because the injuries sustained caused the 15% loss of use of the right hand and the 15% loss of use of the left hand as provided in Section 8(e) of the Act. The Respondent is entitled to a credit of 15% loss of use of each hand from the award in case number 12wc19284 so the net award in this case is zero.

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

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

Edward Lee
Signature of Arbitrator

JANUARY 24, 2022

Findings of Fact & Conclusions
12wc19285

The Petitioner was 50 years old as of the time of trial. The Petitioner has a Bachelor's Degree from Illinois State University. The Petitioner has lived in Rockford, IL since July of 2019.

The Petitioner was employed by the Respondent, Clifford Jacobs Forging Company in March of 2011. The Respondent is a manufacturer of steel products which are formed using a forging hammer process. The steel is heated up to 2,500 degrees, set into a hammer in between a set of dies, and forged using a steam powered ram.

The Petitioner began working for the Respondent on 11/8/10 as a heater trimmer. (AT 12) The Petitioner testified that he earned his way up into a hammer man position, or a hammer operator position, from his original heater trimmer position. (AT 13)

The Petitioner was a hammer operator in March of 2011. The Petitioners daily job duties included making sure that the furnaces were full of steel, putting dies in the hammer and ensuring that the prior shift had removed all of their equipment. (AT 14) The Petitioner described the hammer as the size of a table approximately 4 feet by 6 feet in size and 2 feet tall. The Petitioner would have to drive two large keys for each die in with a sledgehammer. The Petitioner testified that with each swing of the sledgehammer there would be vibration from the steel sledgehammer striking the steel key. The vibration would ring up through his arms into his hands. The Petitioner would also use a mobile ram. (AT 15-16) The Petitioner would also use tongs to manipulate the hot steel. The Petitioner testified that the pieces of steel could be anything from parts for a NASCAR to small gears for automobiles and even larger things such as 900 pound gears for Caterpillar machines. (AT 17) The Petitioner would have to manipulate the steel inside of the die so that it would mold correctly. To do this the Petitioner would use large tongs. (AT 17-18) The Petitioner described the different sizes and types of tongs that he would use. For the big hammer, the Petitioner would have tongs that had a 2.5 feet wide mouth and were approximately 6 feet in length. They weighed approximately 40 lbs. (AT 19-20)

The Petitioner thoroughly described the job duties that he performed while working for the Respondent. Admitted into evidence were also videos which demonstrated the type of work that the Petitioner performed for the Respondent. These videos were admitted as Petitioner's Exhibit 15 and provide a detailed analysis of the type of work that the Petitioner did for the Respondent. These videos also show the tools the Petitioner used as well as the physical nature of the Petitioner's position for the Respondent.

In addition to the heavy and laborious nature of the Petitioner's work, the Petitioner indicated that he is exposed to vibration the entire time he is in the building. (AT 25) The Petitioner was working between 5-6 days a week as a hammer operator. He worked 8 hours a day with some overtime. The Petitioner testified that in his work as a hammer operator he would be using his hands the entire time which included gripping and grasping. (AT 27-28) The Petitioner described the overall physical nature of his job with the Respondent as "very grueling and vicious." (AT29)

The Petitioner testified that he began to notice numbness and tingling in his hands up into his arms that radiated into his neck area in March of 2011. (AT 30-31) The Petitioner testified that he notified his employer of his symptoms in March of 2011. The Petitioner testified that he notified his foreman, Jason Shirkey, on 3/1/11. (AT 32-33)

The Petitioner initially presented to the Christie Clinic in March of 2011. The Petitioner had complaints in his cervical spine to the left side as well as his upper extremities. The Petitioner underwent an MRI of the cervical spine at the Christie Clinic on 3/2/11. It was noted the Petitioner had a mild disc bulge at C3-4, a small central disc protrusion at C4-5, a broad based central/left disc protrusion at C5-6 and a broad-based central disc protrusion at C6-7. (PX 17, p 219-220)

The Petitioner also underwent an EMG on 3/7/11 which was performed by Dr. Steven Thatcher. This study revealed severe left carpal tunnel syndrome. (PX 17, p 215-216) Dr. Thatcher recommended the Petitioner undergo cervical epidural steroid injections. (AT 17, p 213-214)

Dr. Thatcher performed an epidural steroid injection from C7-T1 on 3/14/11. (PX 17, p 208) Dr. Thatcher performed a repeat epidural steroid injection from C7-T1 on 3/2/11. (PX 17, p 204) Dr. Thatcher performed a third epidural steroid injection at C6-7 on 4/12/11. (PX 17, p 194)

The Petitioner did continue to participate in physical therapy during the time period he was receiving epidural steroid injections from Dr. Thatcher. The Petitioner testified that the injections helped very briefly. The Petitioner also testified that the physical therapy helped a little bit. (AT 34-35)

The Petitioner continued to participate in physical therapy through October of 2011. On 10/31/11 the physicians at the Christie Clinic recommended that the Petitioner have a second MRI of his cervical spine. (PX 17, p 158)

On 11/17/11 the Petitioner underwent a second MRI of the cervical spine at the Christie Clinic. This study revealed multilevel disc disease with moderate spinal canal narrowing at C5-6 and C6-7. (PX 17, p 155) The Petitioner was subsequently sent the Carle Spine Clinic.

The Petitioner saw Dr. Victoria Johnson at the Carle Spine Clinic on 12/16/11. The Petitioner was diagnosed with cervical spondylosis. Dr. Johnson did not believe that the Petitioner was a surgical candidate at that time. (PX 17, p 148-151)

The Petitioner testified that from the point he began noticing his symptoms in March of 2011 through March of 2012, that he continued to work in his hammer operator position. The Petitioner continued in this position full duty and was not placed on any work restrictions from March of 2011 through March of 2012. The Petitioner did the same job duties during that time frame and began to notice the numbness and tingling in his arms and neck progress as well as symptoms developing into his fingers and hands. (AT 35-37)

The Petitioner testified that he was working as a hammer operator on 3/7/12. The Petitioner testified that on 3/7/12 when he was pulling a part out of the trimmer the part got stuck and he

jerked it, pulled it and when he did this the part got caught and he felt a pop in his left shoulder. (AT 37-38) The Petitioner reported the incident to his supervisor and filled out an accident report. (AT 38-39) The Petitioner also reported the issues regarding his hands to his employer on 3/22/12.

Leading up to 3/7/12 the Petitioner testified that he was not having any left shoulder pain or problems. (AT 39) The Petitioner that before 3/7/12 he had not sought any medical care specifically for his left shoulder, nor was he taking any prescription medications for his left shoulder. (AT 40)

The Petitioner presented to Dr. Philbert Chen at the Department of Occupational Medicine at the Carle Clinic on 3/15/12. The Petitioner described the issues he was having with his left shoulder as well as his hands. The Petitioner was diagnosed with presumed bilateral carpal tunnel syndrome and was recommended to undergo an EMG study for his hands. The Petitioner was also diagnosed with a left shoulder injury and a potential biceps tendon tear. An MRI was ordered of the Petitioner's left shoulder. Dr. Chen's notes indicate that the Petitioner asked not to be placed on any work restrictions. The Petitioner testified that the reason not to be put on any work restrictions is he did not want to lose his job and he enjoyed his position with the Respondent. (AT 41) (PX 4, p 1-4)

The Petitioner followed up with Dr. Chen on 3/21/12. At this time Dr. Chen continued to diagnose left shoulder pain and bilateral carpal tunnel syndrome. Dr. Chen also placed the Petitioner on work restrictions of a 5lb restriction for material handling, avoid repetitive left shoulder movements, avoid forceful gripping with both hands, and avoid overhead work. (PX 4, p 6-7)

The Petitioner underwent the recommended EMG of his bilateral upper extremities on 3/22/12. This study revealed bilateral carpal tunnel syndrome left greater than right. (PX 4, p 9-11)

The Petitioner also underwent the recommended left shoulder MRI on 3/26/12. This study revealed advanced accelerated degenerative change of the glenohumeral joint with prominent inferior spurring and diffuse cartilage loss, subchondral cystic change of the inferior margin of the glenoid, diffuse labral degeneration, tendinosis of the rotator cuff without tear and moderate AC degenerative change. PX 4, p 12)

The Petitioner followed up with Dr. Chen following his EMG and left shoulder MRI. The Petitioner was referred to Dr. Kolb for further treatment of his left shoulder and bilateral hands. The Petitioner was maintained on his work restrictions at that time. (PX 4, p 8)

The Petitioner initially presented to Dr. Edward Kolb on 4/2/12. The Petitioner described his symptoms to Dr. Kolb and an examination was performed. Dr. Kolb recommended carpal tunnel release on the left hand and also discussed the Petitioner undergoing a surgery on his left shoulder. (PX 6, p 7)

Dr. Kolb performed a left carpal tunnel release procedure on 4/5/12. (PX 6, p 115-116)

The Petitioner followed up with Dr. Kolb on 4/16/12. The Petitioner noticed significant improvement in regards to his pain as well as his numbness and tingling in his left hand. Dr. Kolb recommended the Petitioner undergo carpal tunnel release on this right side at this time. (PX 6, p 6)

Dr. Kolb performed a right carpal tunnel release on 4/26/12. (PX 7, p 2)

The Petitioner followed up with Dr. Kolb on 5/7/12. The Petitioner was doing well and did not have any significant complaints of pain. The Petitioner did continue to have numbness in his left middle finger as well as expressed complaints regarding his left shoulder. Dr. Kolb continued to recommend left shoulder surgery. (PX 6, p 14)

On 5/22/12 Dr. Kolb performed a resurfacing arthroplasty of the Petitioner's left shoulder. (PX 8, p 11-14)

The Petitioner followed up with Dr. Kolb on 6/4/12. The Petitioner did report residual soreness in his left shoulder but the sharp constant pain in his left shoulder had improved. Dr. Kolb recommended the Petitioner begin postoperative physical therapy. Dr. Kolb also placed the Petitioner on work restrictions. (PX 6, p 15)

The Petitioner followed up with Dr. Kolb on 7/2/12. The Petitioner had been doing physical therapy at the Christie Clinic. Dr. Kolb continued to recommend physical therapy moving forward. (PX 6, p 16) The Petitioner testified however that he began to notice his symptoms getting worse in postoperative physical therapy. (AT 47)

When the Petitioner followed up with Dr. Kolb on 8/13/12, Dr. Kolb recommended the Petitioner increase his physical therapy to 3 times a week. The Petitioner was kept off of work at this time. (PX 6, p 17)

The Petitioner followed up with Dr. Kolb on 9/17/12. The Petitioner was not making significant progress in his postoperative physical therapy. Dr. Kolb however continued to recommend physical therapy and if the Petitioner's symptoms persisted they would possibly order an additional left shoulder MRI. There was also a discussion that the Petitioner may potentially be referred to another specialist. (PX 6, p 22)

The Petitioner did undergo a postoperative MRI of his left shoulder on 10/25/12 at the Christie Clinic. This study revealed biceps tendinosis and tenosynovitis, however the integrity of the Petitioner's rotator cuff could not be evaluated because of the significant metal artifact from the Petitioner's left shoulder surgery that was performed by Dr. Kolb in May of 2012. (PX 5, p 4)

The Petitioner followed up with Dr. Kolb on 10/29/12. Dr. Kolb the 10/25/12 MRI with the Petitioner. At this time Dr. Kolb referred the Petitioner to Washington University in St. Louis to see a shoulder specialist for further evaluation. (PX 6, p 23)

The Petitioner presented to Dr. Leesa Galatz at Washington University on 11/20/12. Dr. Galatz performed an examination and diagnosed the Petitioner with a painful hemiarthroplasty. Dr.

Galatz recommended the Petitioner undergo an ultrasound of the left shoulder and also discussed performing a Marcaine injection. (PX 26, p 4-5)

On 12/12/12 the Petitioner underwent an injection to his left shoulder at Washington University. This was a left glenohumeral joint injection under fluoroscopic guidance. (PX 26, p 11-12)

The Petitioner also continued to participate in physical therapy throughout this time at the Christie Clinic. The Petitioner participated in physical therapy through 2/27/13. (PX 17, p 8)

The Petitioner subsequently came under the care of Dr. Brian Cole at Midwest Orthopedics at Rush. The Petitioner was initially seen by Dr. Cole on 3/7/13. Dr. Cole performed an examination and diagnosed the Petitioner as status post left shoulder hemicap resurfacing of the humeral head. Dr. Cole recommended an additional procedure on the left shoulder. This would be a total shoulder arthroplasty. Dr. Cole also issued work restrictions of no lifting overhead more than 5 lbs. (PX 10, p 1-2)

On 8/20/13 Dr. Cole performed a revision left shoulder replacement, biceps tenodesis and removal of hardware. (PX 10, p 8-10) The Petitioner followed up with Dr. Cole on 8/30/13. At this time Dr. Cole recommended the Petitioner begin postoperative physical therapy. Light duty restrictions were issued. (PX 10, p 11)

The Petitioner followed up with Dr. Cole on 9/27/13. Dr. Cole continued to recommend light duty work.

The Petitioner then followed up with Dr. Kolb on 11/4/13 for continued complaints regarding his left hand. The Petitioner continued to have numbness and tingling throughout his left hand. Dr. Kolb performed an examination and recommended the Petitioner undergo a repeat EMG study. (PX 6, p 25)

The Petitioner did undergo the recommended EMG with Dr. Edward Pegg on 11/5/13. This study revealed severe right ulnar nerve entrapment at the elbow. (PX 9, p 1-2)

The Petitioner continued to follow up with Dr. Cole's office. The Petitioner next saw Dr. Cole on 11/8/13. Dr. Cole continued to recommend physical therapy and a home exercise program. The Petitioner's light duty restrictions were maintained that being working only with desk or seated duties with no pushing, pulling, or lifting with the left arm. (PX 10, p 19)

The Petitioner then followed up with Dr. Kolb on 11/11/13. Dr. Kolb reviewed the EMG with the Petitioner and recommended proceeding with a right elbow ulnar nerve decompression with anterior ulnar nerve transposition. The Petitioner did not undergo the recommended surgery on the right elbow. (PX 19, p 11)

The Petitioner testified that he continued to participate in physical therapy into 2014. (AT 53) The Petitioner also continued to follow up with Dr. Cole. The Petitioner next saw Dr. Cole on 10/6/14. Dr. Cole recommended additional physical therapy and then a Functional Capacity

Evaluation. The Petitioner was placed on light duty restrictions of no lifting more than 10 pounds over shoulder height and no repetitive overhead activities. (PX 10, p 26-27)

The Petitioner was participating in physical therapy at Advanced Physical Therapy. The Petitioner continued physical therapy through 12/3/14. (PX 11, p 2-4)

The Petitioner underwent the recommended Functional Capacity Evaluation at Advanced Physical Therapy on 12/16/14. This was a valid study for both consistency and legitimacy of effort. (PX 11, p 64-71)

The Petitioner followed up with Dr. Cole's office on 12/29/14. The FCE was reviewed, and the Petitioner was placed at maximum medical improvement at this time with permanent restrictions per the FCE. The Petitioner's permanent work restrictions were no lifting more than 29 pounds up to the waist level, and only 10 pounds with the left upper extremity up to shoulder level. (PX 10, p 30-32)

The Petitioner was not able to return to his position with the Respondent with the permanent restrictions as set forth by the FCE and Dr. Cole. (AT 56) The Petitioner testified that he requested accommodation of his permanent work restrictions and the Respondent did not provide him a job within his permanent work restrictions. (AT 56)

Shortly after the Petitioner was placed on permanent restrictions and released at MMI by Dr. Cole, the Respondent sent the Petitioner for an IME with Dr. Nathan Mall in St. Louis. The Petitioner was aware that Dr. Mall prepared a report following his examination as well as an addendum report in March 2015. The Arbitrator notes that the Respondent did not submit Dr. Mall's reports into evidence.

The Petitioner subsequently moved from the Champaign, IL area to the Canton, IL area. When the Petitioner moved to the Canton, IL area he established care with a new primary care physician, Dr. Renick at Graham Medical Group. (AT 57)

The Petitioner also testified that the Respondent later sent the Petitioner for a second Independent Medical Examination with Dr. Mitchell Rotman on 3/28/16. The Petitioner was only seen by Dr. Rotman one time. (AT 58)

The Petitioner testified that up to June of 2016 he had been receiving benefits from the workers' compensation carrier in the form of temporary total disability and then maintenance benefits. (AT 58) The Petitioner also testified that the Respondent had paid for his medical bills up to June of 2016. (AT 58)

The Petitioner was aware that surveillance was conducted in July of 2016. The Petitioner reviewed the surveillance films taken on 7/29/16. The Petitioner testified that he was moving a tub as some of the individuals he had hired to do work on one of his properties was unable to do so that day. The Petitioner testified that the tub he was moving was light weight and made of fiberglass. The Petitioner testified that he was not violating his permanent restrictions by moving

the tub. The Petitioner testified he has not violated his permanent restrictions at all since they were issued by Dr. Cole in December of 2014. (AT 58-61)

The Respondent cut the Petitioner's benefits off following obtaining the surveillance video and Dr. Rotman's Independent Medical Examination report. The Petitioner testified that in July of 2016 when his benefits were cut, he was 45 years old. Before the Respondent the Petitioner had done primarily factory and construction work. The Petitioner testified that he would not be able to do any of the work that he had done in the past due to his permanent work restrictions. (AT 62)

As a result, the Petitioner went to school to retrain and reeducate himself in an attempt to earn a higher wage. (AT 62-63) The Petitioner initially went to Illinois Central College in East Peoria, also known as ICC. The Petitioner attended ICC from September of 2015 through the Spring of 2017. The Petitioner obtained an Associate's Degree in Architectural Construction from ICC. (AT 63-64)

Subsequent to ICC the Petitioner attended Illinois State University and obtained his Bachelor's Degree in Construction Management. The Petitioner testified that he used student loans to pay for his schooling at both ICC and Illinois State University. The Petitioner's educational costs and retraining expenses were admitted into evidence as Petitioner's Exhibit 13.

After the Petitioner obtained his degree from Illinois State University he began looking for a job. The Petitioner did find work with William Charles Construction. (AT 65) The Petitioner is a Project Engineer for William Charles Construction doing both civil and rail work. (AT 66) The Petitioner testified that his new employer does excavation, groundwork, they build fuel and other things and for railroad stations and depot's. (AT 66) The Petitioner began working for William Charles on 7/1/19. As of the time of trial the Petitioner still holds his Project Engineer position with William Charles Construction. (AT 67) The Petitioner testified that his current earnings with William Charles Construction are $1,250.00. (AT 67)

The Petitioner testified that as of trial he continues to have problems with numbness and tingling in his left hand. He notices that he continuously drops things. The Petitioner testified that the numbness and tingling he notices is constant in his left hand. The Petitioner testified that his right hand is not as bad, and he is right hand dominant. The Petitioner testified that he has difficulty buttoning his shirts, buttoning his pants and even putting a belt on. The Petitioner testified that he used to work on cars and cannot do so anymore because of his hands and his left shoulder. The Petitioner must pay others to mow his yard.

The Petitioner testified that he also has constant pain in his left shoulder. The Petitioner is still taking up to 6 Norco's a day to be able to work. The Petitioner testified that he has difficulty sleeping because of pulling sensations in his neck and his shoulder as well as the numbness and tingling in his hands. (AT 67-70) The Petitioner testified that he does not believe that he could do the type of work that he was doing for Clifford Jacobs at the time of his accident. The Petitioner testified that he believed that his injuries took his life away from him and he was only 40 years old at the time of his first accident in March 2011. The Petitioner testified that he has suffered great financial difficulty as well as in his personal relationships. (AT 70-71)

Christopher Stead also testified at the time of trial. Mr. Stead is 46 years old and lives in Cuba, IL. Mr. Stead is personally familiar with the Petitioner was hired by the Petitioner to help him do some repair work on a house that the Petitioner owned in Canton, IL in July of 2016. Mr. Stead was involved in the work that is the subject of the surveillance video admitted into evidence by the Respondent. Mr. Stead testified that the tub that was being moved in the surveillance video was made of fiberglass and it weighed approximately 40-50 lbs. Mr. Stead testified that he did most of the moving and that anything that the Petitioner did was kind of bracing the tub in his opinion. Mr. Stead testified that he believed he was moving most of the tub and the Petitioner was doing little in the form of actually lifting the tub. (AT 139-141)

Delores Coulter also testified at the time of trial. Ms. Coulter is the Petitioner's fiancé and they have been together for 9 years. Ms. Coulter testified that she has helped the Petitioner throughout his workers' compensation case. This help has come in the form of financial aid as well as self care, helping the Petitioner with things such as yard work, shopping, dressing, eating and many other aspects of the Petitioner's daily life. Ms. Coulter has helped the Petitioner with things such as paying for his schooling, gas, as well as giving him a place to stay when the Petitioner was attending ICC and Illinois State University. (AT 144-146)

Mr. Steven Bone also testified at the time of trial. Mr. Bone is the owner of an agency called Advanced Investigative Services which is a private detective agency licensed in Illinois and 12 other states. Mr. Bone testified that he was the one who performed the surveillance on the Petitioner in July of 2016. Mr. Bone prepared a written report as well as the video surveillance.

Dr. Kolb's Deposition

Dr. Edward Kolb testified via evidence deposition on 3/23/18. Dr. Kolb went to Rush Medical Center in Chicago for both medical school and residency training. Dr. Kolb is a board-certified orthopedic surgeon. Dr. Kolb treats patients of various musculoskeletal problems. Dr. Kolb estimated that 50% of his practice is dedicated to work on the upper extremities. He performs 10-12 shoulder surgeries and 10-12 carpal tunnel release surgeries on average each month. (PX 2)

Dr. Kolb initially met with the Petitioner on 4/2/12. The Petitioner presented with left shoulder pain for the past month as well as bilateral hand numbness and tingling. Dr. Kolb took an extensive history and performed an examination. He also took x-rays and reviewed the Petitioner's 3/26/12 left shoulder MRI. Dr. Kolb diagnosed the Petitioner with severe osteoarthritis of the left shoulder and left sided carpal tunnel syndrome. Dr. Kolb believed that the most pressing issue at that time was the Petitioner's carpal tunnel syndrome for which he recommended a left carpal tunnel release. (PX 2)

Dr. Kolb performed a left carpal tunnel release procedure on 4/5/12. (PX 2)

In follow up Dr. Kolb noted the Petitioner had significant improvement regarding his pain as well as the numbness and tingling in his left hand. When the Petitioner followed up with Dr. Kolb on 4/16/12 he did note the Petitioner had evidence of right carpal tunnel syndrome. Dr. Kolb recommended the Petitioner undergo a right carpal tunnel release. There was also

discussion regarding the Petitioner undergoing a resurfacing procedure for his left shoulder symptoms. (PX 2)

Dr. Kolb performed a right carpal tunnel release procedure on 4/26/12. (PX 2)

In follow up on 5/7/12 the Petitioner did not have any significant pain in his bilateral hands. The Petitioner did have some numbness in the left middle finger which was residual from the pre-operative time frame. The Petitioner continued to have pain his left shoulder. The focus at this point shifted to the left shoulder and the plan was to proceed with a left shoulder resurfacing procedure versus a shoulder replacement type procedure. (PX 2)

On 5/22/12 Dr. Kolb performed surgery on the left shoulder. Dr. Kolb described the resurfacing procedure that he performed at that time as essentially resurfacing the humeral head and putting on an artificial or metal head to that portion of the joint. The resurfacing procedure is less invasive than a total shoulder replacement. (PX 2)

The Petitioner followed up with Dr. Kolb on 6/4/12. The Petitioner was doing fairly well but did have complaints of residual soreness in his left shoulder. The Petitioner did have some residual numbness and tingling in the left hand from his previous carpal tunnel syndrome. Physical therapy was to be initiated with some work restrictions to protect the shoulder. Dr. Kolb testified that following the shoulder procedure that he performed on the Petitioner, for the first six weeks after surgery he would have the Petitioner avoid any type of active internal rotation. Dr. Kolb would also recommend the Petitioner avoid excessive internal rotation and at approximately six weeks out to gradually increase range of motion and strengthening. (PX 2)

Dr. Kolb saw the Petitioner again on 7/2/12. The Petitioner's left shoulder pain had improved compared to pre-surgery but he did still notice stiffness. The Petitioner also continued to have decreased sensation in his middle finger on the left hand which was present secondary to his previous carpal tunnel syndrome. Dr. Kolb recommended continued physical therapy and to re-check the Petitioner in six weeks. In August of 2012 the Petitioner again noted improvement with his left shoulder. Physical therapy was increased to three times per week. (PX 2)

Dr. Kolb saw the Petitioner subsequently on 9/17/12. At this time the Petitioner continued to have discomfort and felt as though he had not made much progress over the past month. The Petitioner had pain over the front part of his shoulder radiating down to the elbow. Dr. Kolb recommended the Petitioner continue physical therapy and if at the next follow up the Petitioner did not show significant signs of improvement that an MRI would be ordered to insure healing of the soft tissues. (PX 2)

The Petitioner did undergo a subsequent left shoulder MRI on 10/25/12. The Petitioner followed up with Dr. Kolb subsequently on 10/29/12. From review of the MRI Dr. Kolb noted inflammation around the biceps tendon as well as evidence of a biceps tenodesis. However, Dr. Kolb did note that it was difficult to interpret the integrity of the rotator cuff tear secondary to the metal artifact which was the hardware from the initial left shoulder procedure. At this time Dr. Kolb did recommend the Petitioner seek a second opinion perhaps at Washington University in St. Louis. (PX 2)

The Petitioner later saw Dr. Kolb on 11/4/13. The Petitioner reported having residual numbness in his left hand. It was also noted that the Petitioner had been seen by Dr. David Fletcher who had performed an FCE and recommended further follow up with Dr. Kolb to discuss potential surgical options. On 11/4/13 the Petitioner also presented with complaints of numbness and tingling in his middle and ring finger with some hypersensitivity within the fourth web space extending approximately to the palmer aspect of the hand. Dr. Kolb performed an examination and diagnosed the Petitioner as status post left carpal tunnel release from a year and a half prior. Dr. Kolb recommended obtaining an updated EMG study to further evaluate the nerve function. (PX 2)

The Petitioner did undergo a subsequent EMG study performed by Dr. Pegg on 11/5/13. The Petitioner then followed up with Dr. Kolb on 11/11/13. Dr. Kolb reviewed the EMG which revealed evidence of severe right ulnar nerve entrapment at the right elbow. Dr. Kolb recommended the Petitioner undergo a right elbow ulnar nerve decompression with anterior ulnar nerve transposition. (PX 2)

Dr. Kolb testified to his knowledge the Petitioner had not underwent the right ulnar nerve procedure. (PX 2)

The Petitioner later followed up with Dr. Kolb on 3/6/18. The Petitioner reported that he had seen Dr. Brian Cole at Midwest Orthopedics at Rush who performed a hemi-arthroplasty procedure on the left shoulder. The Petitioner described Dr. Cole placing him on a permanent lifting restriction of 10lbs and the Petitioner was now back in school looking to transition to a more sedentary job given his permanent work restrictions. At the 3/6/18 visit the Petitioner continued to complain of pain in both shoulders with pain radiating into his neck region. The Petitioner described radicular complaints throughout his bilateral upper extremities as well as numbness and tingling in both hands and weakness in his bilateral upper extremities. Dr. Kolb performed an examination and recommended the Petitioner consider additional work up including a bone scan to rule out potential loosening of his humeral prosthesis. Dr. Kolb recommended the Petitioner further follow up potentially with the clinic at Southern Illinois University in Springfield given the complexity of his case. Dr. Kolb suspected that the majority of his complaints at this point may be stemming from his cervical spine and the Petitioner was offered additional formal physical therapy. (PX 2)

Dr. Kolb testified that he believed that the type of repetitive activities the Petitioner participated in as a laborer for the Respondent could at least aggravate, if not cause, his bilateral carpal tunnel syndrome. (PX 2, p 43)

Dr. Kolb also testified that he believed that the accident the Petitioner described of 3/7/12 appears to have been at least an aggravating factor as it pertains to his left shoulder condition and the need for subsequent treatment including surgery. (PX 2, p 44)

Dr. Kolb's opinions were based on his medical experience, treating patients who have these types of conditions in the past and his experience seeing who worked similar job duties as the Petitioner. Dr. Kolb also testified that his causation opinion as it relates to the Petitioner's left

shoulder was a combination of the type of work that the Petitioner performed as well as the specific accident of 3/7/12 that the Petitioner described. Dr. Kolb confirmed that there was no evidence of any treatment that the Petitioner had underwent for his left shoulder prior to March 2012. (PX 2, p 76)

Dr. Cole's Deposition

Dr. Brian Cole also testified via evidence deposition on 6/17/19. Dr. Cole is an orthopedic surgeon specializing in care of the shoulder, elbow and knee. Dr. Cole has been in practice for 23 years. He participated in a residency at the hospital for special surgery and is a professor at the Department of Orthopedics at Rush. Dr. Cole has been board certified in orthopedic surgery since 1997. Dr. Cole testified that approximately 50% of his practice is dedicated to treatment of shoulder conditions. Dr. Cole performs approximately 400 shoulder surgeries a year. Dr. Cole testified that he performs 50-60 shoulder replacements a year. (PX 3)

Dr. Cole initially saw the Petitioner on 3/7/13. Dr. Cole believed that the Petitioner was referred to him by his treating physician Dr. Kolb. The Petitioner presented with pain and stiffness in the left shoulder. Dr. Cole noted loss of range of motion and pain with the range of motion testing. Dr. Cole diagnosed a persistent painful left shoulder after undergoing a partial left shoulder replacement previously. Dr. Cole recommended the Petitioner undergo a revision total shoulder replacement. Dr. Cole issued light duty restrictions of no overhead lifting greater than 5lbs. (PX 3)

On 8/20/13 Dr. Cole performed a revision shoulder replacement with a biceps tenodesis. (PX 3)

The Petitioner followed up with Dr. Cole 10 days later on 8/30/13. The Petitioner was doing fine and had a standard post-operative physical examination. Dr. Cole issued restrictions of no use of the left arm. Dr. Cole testified the Petitioner would have needed to be off work entirely from the date of the surgery through the initial post-operative visit 10 days later. Dr. Cole also ordered physical therapy as of 8/30/13. (PX 3)

As of 9/27/13 Dr. Cole noted the Petitioner had progressed with increased range of motion as well decreased pain. Dr. Cole continued to recommend physical therapy and restrictions were issued of limited lifting, as well as overhead activity limited, essentially desk top duties only. These recommendations and restrictions were maintained as of the 11/8/13 visit with Dr. Cole. (PX 3)

The Petitioner then followed up with Dr. Cole on 10/6/14. The Petitioner explained that he had missed various appointments due to ongoing personal issues. Dr. Cole in October 2014 noted increasing range of motion and decreasing pain. He recommended continued physical therapy. Dr. Cole also discussed having the Petitioner undergo an FCE at the conclusion of physical therapy. Dr. Cole testified this was his standard practice. (PX 3)

The Petitioner did undergo an FCE at Advanced Rehab and Sports Medicine on 12/16/14. The overall classification of effort was considered valid due to the Petitioner performing consistently during a repeated measures protocol. Maximum weight achieved to waist height was bilaterally

49.12lbs, on the right 52.32lbs, and on the left 29.43lbs. The Petitioner met the material handling demands for a sedentary demand vocation per the Dictionary of Occupational Titles. (PX 3)

The Petitioner followed up with Dr. Cole on 12/29/14. This was the last visit the Petitioner had with Dr. Cole. Dr. Cole reviewed the FCE and noted that it was a valid study. Dr. Cole had no ongoing treatment recommendations for the Petitioner as of 12/29/14. Dr. Cole released the Petitioner at MMI with permanent restrictions as of this date. Permanent work restrictions issued by Dr. Cole were limit lifting with the left upper extremity to 29lbs up to waist level, up to 10lbs with the left upper extremity to shoulder, and only occasionally overhead use of the left upper extremity. Dr. Cole noted the Petitioner will likely continue to have left shoulder pain with any amount of lifting but is safe to work within these parameters. Dr. Cole testified that as of 12/29/14 the Petitioner was released at MMI with these permanent restrictions. Dr. Cole testified that he believed the Petitioner likely had a pre-existing condition in his left shoulder that was aggravated by the accident of 3/7/12. Dr. Cole believed that all the treatment was rendered to the Petitioner's left shoulder subsequently would be related to the 3/7/12 accident including the need for the permanent work restrictions that he issued. (PX 3, p 20-21)

Dr. Cole confirmed that the FCE is an objective test and can be used to confirm or deny the legitimacy or validity of subjective complaints. Dr. Cole did not believe that the Petitioner, given his permanent work restrictions, would be able to return to his original position that he held with the Respondent. (PX 3, p 34-35)

Dr. Rotman's Deposition

Dr. Mitchell Rotman testified on three occasions in this case. Dr. Rotman had seen the Petitioner for an IME on 3/28/16. Dr. Rotman was provided records to review including the original IME report from Dr. Nathan Mall. Dr. Rotman opined that there was objective correlation for the Petitioner's subjective complaints in regards to his left shoulder. Dr. Rotman indicated that he would advise the Petitioner avoid heavy overhead lifting but would not restrict him to any activities below shoulder level. Dr. Rotman did not believe that the Petitioner's left shoulder condition was caused by his job duties with the Respondent. Dr. Rotman had no issues with the treatment with the Petitioner had underwent for both his left shoulder condition as well as his bilateral carpal tunnel syndrome. Dr. Rotman opined that the incident at work described by the Petitioner from 3/7/12 was "merely a triggering factor for discomfort" in regards to the Petitioner's left shoulder. Dr. Rotman prepared an addendum report dated 6/10/16. Dr. Rotman was provided videos of the Petitioner's job duties for the Respondent. Dr. Rotman noted there was some heavy gripping involved in the forging activities. Dr. Rotman indicated that if the Petitioner was engaged in significant gripping while operating the hammer where he would be holding parts constantly and not letting go, that would be an aggravating factor for an idiopathic carpal tunnel syndrome.

Dr. Rotman prepared another addendum report dated 7/25/16. In this report Dr. Rotman indicated he did not believe the Petitioner's left shoulder end stage arthritis was caused, aggravated or accelerated by the Petitioner's employment with the Respondent. Dr. Rotman did not believe the Petitioner's carpal tunnel syndrome was caused or accelerated by the Petitioner's employment with the Respondent. Despite that, Dr. Rotman went on to state that it was difficult

and impossible to state with any reasonable degree of medical certainty whether the Petitioner's carpal tunnel condition was aggravated by his work since he did not see a long enough video segment to determine if the Petitioner was doing prolonged heavy gripping.

Dr. Rotman prepared an additional addendum report dated 9/6/16. This time Dr. Rotman was provided additional job videos which demonstrated the Petitioner's job duties as well as the surveillance video which had been conducted in July of 2016.

Dr. Rotman testified at the time of his 11/27/17 deposition that he performs 4-5 Independent Medical Examinations a week. Of these IMEs, over 90% are done at the request of Respondents. Dr. Rotman has been performing IMEs for over 20 years. Dr. Rotman charges $1,800.00 for an IME and each addendum report is another $250.00-$300.00.

Dr. Rotman confirmed that his 11/27/17 examination that his initial opinions in regards to the Petitioner's bilateral carpal tunnel syndrome and his left shoulder condition were based upon and inquiry that the Petitioner's injuries were all repetitive trauma both to his bilateral hands and left shoulder. In fact the Petitioner's left shoulder claim was not a repetitive trauma case and was instead two specific accidents which occurred on 3/7/12. Dr. Rotman did testify that a traumatic injury or incident can aggravate a preexisting arthritic condition of the shoulder. Dr. Rotman also testified that an aggravation of a preexisting condition can lead to surgery including a shoulder replacement. (RX 7, p 8-9)

Dr. Rotman later performed an additional addendum report dated 4/19/18. Dr. Rotman was provided additional medical records and at this time opined that he did not believe that the specific accidents suffered by the Petitioner on 3/7/12 were a causative, aggravating or accelerating factor in his left shoulder condition.

Dr. Rotman prepared his final addendum report on 8/18/20. Dr. Rotman was provided additional medical records to review which he stated did not change his original opinions in this case.

Conclusions of Law

12 WC 19285 (accident date 3/15/12)

Accident:

The Arbitrator finds the Petitioner has met his burden of proof regarding the issue of accident for his repetitive trauma injuries which manifested themselves on 3/15/12. The Arbitrator notes that the job videos admitted into evidence as well as the Petitioner's testimony regarding his job duties establish the heavy laborious nature of his position with the Respondent. The Petitioner's jobs with the Respondent required heavy repetitive gripping and grasping as well as significant exposure to vibration.

The Arbitrator observed the Petitioner and found him to be sincere, consistent and credible. Petitioner's testimony that his job as a hammer operator is a heavy-duty occupation that requires a high level of industrial athleticism is consistent with the job videos admitted into evidence, and supported by the medical records. Respondent alleges that Petitioner's complaints in his hands are chronic in nature, idiopathic, or only the consequence of degeneration. The record is clear, however, that Petitioner became symptomatic only when performing his heavy job duties day after day. Petitioner made a good faith effort to work through his pain in the hopes that it would abate, however, the pain did not resolve on its own. The law does not require that Petitioner work to collapse.

The Petitioner's treating records corroborate that Petitioner's complaints in his bilateral hands were symptomatic as a consequence of his work duties. Given the sequence of events, the totality of the evidence, and the treatment records and opinion of Dr. Kolb, the Arbitrator finds that the Petitioner sustained a cumulative/repetitive trauma accident arising out of and in the course of his employment by the Respondent which manifested itself on 3/15/12.

Causation:

The Petitioner must show that some act or phase of employment was a causative factor in his resulting condition of ill-being. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 205 (2003). In repetitive trauma cases, the Petitioner generally relies on medical testimony to establish the causal connection between work activities performed and subsequent disablement. *Nunn v. Industrial Commission*, 157 Ill. App. 3d 470, 477 (1987). When a Petitioner alleges a repetitive trauma accident, it is for the Commission to determine whether the disability is solely the consequence of the degenerative process, or an aggravation of a pre-existing condition due to repetitive trauma. *Cassens Transport Co. v. Industrial Commission*, 262 Ill. App. 3d 324, 331 (1994).

As discussed above the above the Arbitrator finds that the Petitioner sustained a compensable cumulative/repetitive trauma accident arising out of and in the course of his employment by the Respondent which manifested itself on 3/15/12.

Petitioner's treating surgeon, Dr. Kolb, who examined the Petitioner regularly, was in the best position to judge the cause of Petitioner's complaints. Dr. Kolb testified that work activities of the nature that Petitioner's job required could cause or aggravate bilateral carpal tunnel syndrome. (PX 2, p 43)

The Arbitrator notes that the Respondent paid for all Petitioners medical expenses and TTD stemming from his bilateral carpal tunnel syndrome, chose not to submit into evidence the report of their first IME physician Dr. Mall, and base their causation defense on their second IME physician Dr. Rotman. The Arbitrator is not persuaded by Dr. Rotman's opinions on the nature of the Petitioner's work for the Respondent or his opinions on causation in this case. The Arbitrator does not find Dr. Rotman's opinions credible or consistent with the evidence in the record.

The Arbitrator is persuaded by the sequence of events, the totality of the evidence, and the opinion of Dr. Kolb, and finds that Petitioner's current condition of ill-being in his bilateral hands is causally related to his cumulative/repetitive trauma work injury manifesting on March 15, 2012.

The Arbitrator finds that the Petitioner has met his burden of proof regarding the issue of causation.

Wages:

The Petitioner's wages were admitted into evidence as Respondent's Exhibit 1. The Petitioner earned $59,839.50 in the 52 weeks before the accident, but only work 50 of those weeks. $59,839.50 divided by 50 gives and average weekly wage of $1,196.79. This would equate to a TTD rate of $797.86.

Also admitted into evidence were Respondent's payout sheets for TTD and maintenance. (RX 4) The payout sheets show that Petitioner was paid TTD and later maintenance at $797.86 a week.

The Arbitrator finds that the Petitioner's average weekly wage for his 3/15/12 accident is $1,196.79.

Medical Bills:

Based on the Arbitrator's findings on the issues of accident, and causal connection, the Arbitrator finds the medical bills submitted into evidence by the Petitioner are causally related to his 3/15/12 accident.

Nature & Extent:

Based on the Arbitrator's findings on the issues of accident and causal connection, the Arbitrator finds that the Petitioner is entitled to permanency for his bilateral carpal tunnel condition.

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 hammer operator at the time of the accident and that he is not able to return to work in his prior capacity as a result of said injury. The Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 41 years old at the time of the accident. As of the date of his 3/15/12 accident, the Petitioner has a work-life expectancy of 26 years. The Arbitrator therefore gives minor weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner has suffered no loss of earnings capacity. Petitioner testified that he is

earning about $1,250.00/week in his new job as a Project Engineer, whereas he earned $1,196.79/week. The Arbitrator therefore gives greater weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner's testimony is consistent with the medical records and the evidence admitted at trial. 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 15% loss of use of the right hand and 15% loss of use of the left hand pursuant to §8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC001299
Case Name	Frankie Williams v. Pierce Distribution Services Corp
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0041
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Michael Youkhana
Respondent Attorney	Lee Laudicina

DATE FILED: 1/25/2023

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WINNEGAGO

☐ 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

FRANKIE WILLIAMS,
Petitioner,

vs. NO: 21 WC 1299

PIERCE DISTRIBUTION SERVICES CORP.,
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 benefits 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, with a clerical correction stated as follows.

The Commission writes additionally to correct a clerical error in the Arbitrator's Order, which awards 575 6/7 weeks of temporary total disability benefits, and modifies the Order to reflect an award of 57 6/7 weeks of temporary total disability benefits, as correctly stated in the Arbitrator's Decision on page 10.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 13, 2022 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $3,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 25, 2023
o: 01/19/23
CMD/jm
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC001299
Case Name	FRANKIE WILLIAMS v. PIERCE DISTRIBUTION SERVICES CORP.
Consolidated Cases	
Proceeding Type	19(b)/8(A) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Michael Youkhana
Respondent Attorney	Lee Laudicina

DATE FILED: 7/13/2022

THE INTEREST RATE FOR THE WEEK OF JULY 12, 2022 2.68%

/s/Michael Glaub, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(A)

Frankie Williams
Employee/Petitioner

v.

Pierce Distribution Services Corp.
Employer/Respondent

Case # **21** WC **1299**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Glaub**, Arbitrator of the Commission, in the city of **Woodstock, Illinois**, on **May 5, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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, **September 9, 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 $**42,455.40**; the average weekly wage was $**816.45**

On the date of accident, Petitioner was **55** years of age, ***married*** 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 $**28,995.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**30,161.62** for other medical benefits, for a total credit of $**59,156.62**.

.

ORDER

Temporary Total Disability
Respondent shall pay Petitioner temporary total disability benefits of $544.57/week for575 6/7 weeks, commencing January 14, 2021, through January 9, 2022; February 8, 2022 through February 11, 2022; and February 14, 2022 through March 25, 2022, as provided in Section 8(b) of the Act and shall continue weekly until Petitioner's work status changes or until the Respondent has a valid reason under The Act to terminate benefits in the future.

Medical benefits
Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $395.00 to Nitrorthopaedics, as provided in Sections 8(a) and 8.2 of the Act.

Prospective Medical
Respondent shall authorize the left total knee arthroplasty and continued care recommended by Dr. Blint.

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

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

JULY 13, 2022

Michael Glaub
Signature of Arbitrator

ICArbDec19(b)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

FRANKIE WILLIAMS,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	21 WC 001299
	)	Rockford, IL
PIERCE DISTRIBUTION SERVICES,	)	
	)	
	)	
Employer/Respondent.	)	

ARBITRATOR'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact:

It is undisputed that on September 9, 2020, Petitioner, Frankie Williams, suffered a left knee injury that arose out of and in the course of her employment with Pierce Distribution Services. Petitioner testified that she was injured when she was loading a trailer and twisted her knee when she stepped down off a forklift. (Transcript 10-11, hereinafter, "T 10-11"). Petitioner testified about her typical workday which consisted of loading and unloading trailers, loading the lines, securing the building, and supervising other employees. T 10. She testified that when she is loading and unloading, she is driving a forklift and getting the skid off the trailer and on the trailer and loading the lines. *Id.* She testified that she never injured her left knee before this accident and never received left knee treatment. *Id.* at 11. She testified that immediately after the accident she experienced left knee pain and reported the injury to her operations manager. *Id.*

Petitioner testified that she eventually sought medical care at Physicians Immediate Care. *Id.* at 11-12. She testified that the doctors at Physicians Immediate Care prescribed physical therapy, prescribed a left knee MRI, and referred her to Dr. Andrew Blint. *Id.* On November 9, 2020, Petitioner presented to Dr. Blint complaining of left knee pain. (Petitioner's Exhibit 1,

page 62, hereinafter, "Pet. Ex 1, p. 62"). After his physical examination and review of the MRI, Dr. Blint diagnosed Petitioner with a left medial meniscus tear and recommended left knee arthroscopy, partial medial meniscectomy, partial synovectomy, debridement, and a steroid injection. *Id.* at 63-65.

On January 14, 2021, Ms. Williams presented to Dr. Blint to undergo the aforementioned surgery. *Id.* at 68-70. Petitioner testified that subsequent to the surgery she was placed off work and completed the recommended physical therapy prescribed by Dr. Blint. T 13. She testified that after completing post-surgical physical therapy, her knee kept popping, it was giving out, and there was continued swelling. *Id.* at 14.

On April 21, 2021, Petitioner underwent a left knee MRI. Pet. Ex. 1, p. 34-35. The MRI reflected partial thickness tear of the anterior cruciate ligament, tricompartmental osteoarthritis with multifocal chondromalacia, truncated medial meniscus with horizontal tear reaching the superior articular surface in the anterior horn, and inferior articular surface in the posterior horn and body. *Id.* Petitioner followed up with Dr. Blint who, after the physical examination and review of the MRI, recommended a left partial medial meniscectomy, partial synovectomy, debridement, and possible steroid injection. *Id.* at 35-36.

On June 25, 2021, Petitioner presented to Dr. Nikhil Verma for a Section 12 Examination. (Respondent's Exhibit 1, hereinafter, "Resp. Ex. 1"). Dr. Verma diagnosed Petitioner with left knee medial meniscal tear with subsequent progression of medial compartment arthrosis. *Id.* at 4. Dr. Verma opined that his diagnosis is related to the work injury and that following the meniscectomy, Petitioner had significant progression of the medial compartment arthrosis, which is a known complication of a meniscal surgery. *Id.* Dr. Verma opined that additional treatment is necessary for the left knee, but that it is highly unlikely that

any further arthroscopic surgery would result in any sustained and meaningful benefit to the left knee. *Id.* at 5. He opined that due to the significant progression of medial compartment arthrosis, the appropriate procedure would be a unicompartment replacement of the left medial side. *Id.* He opined that following surgery she would require therapy two to three times a week anticipated for 12-16 weeks. *Id.* He opined that she may work at a light duty capacity and that anticipated maximum medical improvement is approximately 6 months following the unicompartmental replacement. *Id.*

On July 22, 2021, Petitioner followed up with Dr. Blint complaining of left knee pain. Pet. Ex. 1, p. 27. The record reflects that Petitioner's knee was swollen and that she was hearing a pop. *Id.* Physical examination during that visit reflected: positive for effusion, positive for swelling, positive McMurray's, positive patella grind, positive patella crepitus, and positive for a limp. *Id.* at 29. Dr. Blint recommended that Petitioner undergo a total knee arthroplasty. *Id.* at 30. Dr. Blint also included an Addendum, which he opined that a left medial unicompartmental surgery has a high failure rate. *Id.* at 32. He opined that once the unicompartmental component has failed it would eventually need to be converted to a total knee arthroplasty.

Subsequently, a pre-trial occurred between the parties in front of Arbitrator Michael Glaub to discuss the issue related to Dr. Verma recommending a partial knee replacement and Dr. Blint recommending a full knee replacement. T 27. The record reflects that there was an understanding that both physicians agreed on causal relation. *Id.* To move the case forward, Arbitrator Glaub recommended a joint IME with a qualified physician. *Id.* Dr. Troy Karlsson was recommended by the Arbitrator and the parties agreed to have Dr. Karlsson examine Petitioner. At that time, the Arbitrator's understanding was that the examination with Dr. Karlsson was for the purpose of what medical procedure he would have recommended. *Id.* at 27-

28.

Subsequently, a Neutral Examination Stipulation was signed by all parties. Resp. Ex. 2. The Stipulation reflects that the parties agreed to seek the neutral opinion of Dr Karlsson and that they will follow the opinion of Dr. Karlsson. *Id.* at 1. Additionally, a Neutral Examination Letter was sent to Dr. Karlsson and signed by all parties. Resp. Ex. 3. The letter requests Dr. Karlsson to provide an opinion on Petitioner's diagnosis, whether her current condition is causally related to the incident, whether she needs additional medical treatment, whether she requires the unicompartmental knee replacement versus the total knee replacement, whether she is capable of working full duty, and whether she has reached maximum medical improvement. *Id.* at 3.

On December 20, 2021, Petitioner presented to Dr. Karlsson for the joint Independent Medical Examination. Resp. Ex. 5. Dr. Karlsson recommended a trial of injections, and that, if she fails to improve with injections, she would be a candidate for a total knee arthroplasty. *Id.* 8. Dr. Karlsson opined that Petitioner is a better candidate for the total knee arthroplasty compared to the unicompartmental because her tenderness was not isolated to the medial joint line, and she had arthritic changes noted on her MRI to be up to grade 4 in all 3 compartments of the knee. *Id.* He opined that while the greatest degree of involvement is the medial side, this would treat only a portion of her symptoms and pathology of tricompartmental osteoarthritis. *Id.* Dr. Karlsson opined that the aforementioned treatment would be unrelated to the work accident, but instead related to her degenerative osteoarthritis and the natural progression of it. *Id.*

Petitioner testified that she eventually returned back to work on January 10, 2022, due to her workers' compensation benefits being terminated, despite Dr. Blint recommended that she remain off work. T 19. She testified that she returned to work because she had no income. *Id.* Ms. Williams testified that she was taken off work again from February 8, 2022, through

February 11, 2022, due to complications with her left knee. *Id.* Petitioner was taken off work again by Dr. Blint from February 14, 2022, through March 25, 2022 due to issues with her left knee. *Id.* at 19-20. At trial, the Petitioner testified that her left knee pain is unbearable and that she tries to do work while sitting. *Id.* at 20. She testified that her pain is at a 9 or 9.5. *Id.* at 21. Ms. Williams testified that Dr. Blint is still recommending the left total knee replacement. *Id.*

Conclusions of Law:

In support of the Arbitrator's decision relating to (F), whether the petitioner's present condition of ill-being is causally related to the injury, the Arbitrator finds the following facts:

The Arbitrator finds Petitioner's current condition of ill-being is causally related to her work injury of September 9, 2020. Accordingly, based on the credible testimony of the petitioner as well as the medical records and opinions of Dr. Blint and Dr. Verma, the Arbitrator finds that the Petitioner has affirmatively demonstrated a causal relationship between her work-related injury on September 9, 2020, and her current condition of ill-being.

The Petitioner credibly testified that she was working full duty and without any restrictions on the date of the work-related injury. The mechanism of injury described is a competent cause to sustain a left knee injury. The Petitioner described the incident that caused her left knee injury when she testified that she was loading a trailer and twisted her knee when she stepped down off a forklift. Also, Petitioner testified that she never injured her left knee prior to the work-related accident. Moreover, the Petitioner consistently complained of left knee issues throughout her treatment.

The Arbitrator finds the medical opinions of Dr. Blint credible. The Arbitrator notes that Dr. Blint diagnosed Petitioner with a left medical meniscus tear and prescribed Petitioner pain medication, physical therapy, and operated on her left knee. The Arbitrator notes that Dr. Blint

recommended a left total knee arthroplasty due to the failure of conservative measures and the fact that Petitioner's condition did not improve subsequent to the left knee arthroscopic surgery. The Arbitrator notes that Dr. Blint recommended the left total knee arthroplasty because medial unicompartmental surgeries have a high failure rate, and that once the unicompartmental component has failed it would eventually need to be converted to a total knee arthroplasty. The Arbitrator agrees with Dr. Blint that the Petitioner's current condition of ill-being is causally related to the work injury, that the left total knee arthroplasty is warranted given the Petitioner's current symptomatology, and that her work status should be "off work".

The Arbitrator finds the causation opinion of the respondent's initial examining physician, Dr. Verma credible. The Arbitrator notes that Dr. Verma diagnosed Petitioner with diagnosed Petitioner with left knee medial meniscal tear with subsequent progression of medial compartment arthrosis and recommended a medial unicompartmental surgery. The Arbitrator notes that Dr. Verma opined that Petitioner's diagnosis is related to the work injury and that following the meniscectomy, Petitioner had significant progression of the medial compartment arthrosis, which is a known complication of a meniscal surgery.

The Arbitrator chooses not to adopt Dr. Karlsson's causation opinion. The Petitioner presented to Dr. Karlsson on December 20, 2021. At that time Dr. Karlsson opined that Petitioner's condition was not related to the work accident, but instead related to her degenerative osteoarthritis and the natural progression of it. The Arbitrator notes that Dr. Karlsson recommended a trial of injections, and that, if she fails to improve with injections, she would be a candidate for a total knee arthroplasty. The Arbitrator finds that Dr. Karlsson opined that Petitioner is a better candidate for the total knee arthroplasty compared to the unicompartmental because her tenderness was not isolated to the medial joint line, and she had

arthritic changes noted on her MRI to be up to grade 4 in all 3 compartments of the knee. *Id.* The Arbitrator notes that Dr. Karlsson opined that while the greatest degree of involvement is the medial side, this would treat only a portion of her symptoms and pathology of tricompartmental osteoarthritis.

The Arbitrator notes that a pre-trial hearing occurred between the parties related to whether Petitioner was entitled to the total knee arthroplasty or medial unicompartmental surgery. The Arbitrator notes that there was understanding that both physicians agreed on causal relation and that to move the case forward, Dr. Karlsson was recommended for the purpose of what type of medical procedure he would recommend.

Subsequent to the pre-trial a stipulation was signed by all parties which reflects that the parties agreed to follow Dr. Karlsson's opinion. Stipulations are construed like contracts. *People v. Nelson,* 2013 IL App (3d) 110581, ¶ 13. As such, the court's primary goal is to ascertain the intent of the parties. *International Supply Co. v. Campbell,* 391 Ill.App.3d 439, 452. The

The Arbitrator notes that at the time of the pre-trial, causal connection was not in dispute. The Arbitrator's finding on causal relation is based on the fact that petitioner did not have symptomology in her left knee. Petitioner's accident involving her left knee on September 9, 2020, was not disputed. Petitioner's initial surgery was not disputed. It does not appear petitioner's symptoms ever resolved following her initial surgery. It appears to the Arbitrator that the petitioner's undisputed accident and subsequent treatment, including the arthroscopic surgery, aggravated the petitioner's underlying (previously non-symptomatic) degenerative condition.

Therefore, based on the causation opinions of Dr. Blint and Dr. Verma, the Petitioner's testimony, the nature of the injury, and the mechanism of the injury, the Arbitrator concludes that

the Petitioner's current condition of ill-being is causally related to the work injury of September 9, 2020.

With respect to factual matters in cases in which compensation is sought under the Workers' Compensation Act, it is within the province of the Workers' Compensation Commission to judge the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence and draw reasonable inferences therefrom. Bolingbrook Police Dept. v. Illinois Workers' Comp. Comm'n, 2015 IL App (3d) 130869 WC. It is the function of the Industrial Commission in workers' compensation action to resolve disputed questions of fact, including those of causal connection, to decide which of the conflicting medical views is to be accepted, and to judge the credibility of the witnesses and draw permissible inferences from the evidence. Kishwaukee Cnty. Hosp. v. Indus. Comm'n, 356 Ill. App. 3d 915. Even if one medical witness in a workers' compensation proceeding is equivocal on the question of causation, it is for the Industrial Commission to determine which medical opinion is to be accepted, and it may attach greater weight to the treating physician's opinion. Homebrite Ace Hardware v. Indus. Comm'n, 351 Ill. App. 3d 333.

It is well settled that employers take their employees as they find them. Therefore, even though an employee may have a pre-existing condition which may make him more susceptible to an injury, compensation for the injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co., v. Industrial Comm'n*, 92 Ill. 2d 30, 36, 440 N.E.2d 861 (1982). Furthermore, an accidental injury need not be the sole causative factor, or even the primary causative factor as long as it was a causative factor in the resulting condition of ill-being. *Rock Road Construction Co., v. Industrial Comm'n*, 37 Ill. 2d 123, 127, 227 N.E.2d 65 (1967). Although this is well settled law in the state of Illinois, the

petitioner's work-related injury was the primary causative factor in the resulting condition of ill-being. If a pre-existing condition was asymptomatic prior to the injury and then became symptomatic as a result of the injury, aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Id* at 67-68.

Upon close examination of the medical records, this Arbitrator finds no inconsistent history, nor any evidence of any intervening cause for the petitioner's current condition. Additionally, the Arbitrator finds Dr. Blint's records credible and Dr. Verma's causation opinion credible. Therefore, the Arbitrator concludes that the Petitioner's current condition of ill-being is causally related to the work injury of September 9, 2020.

In support of the Arbitrator's decision relating to (J), Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds the following facts:

On November 9, 2020, the Petitioner presented to Nitrorthopaedics for treatment. At the time of the hearing on May 5, 2022, the Petitioner presented medical bills from Nitrorthopaedics. Pet Ex. 3. The Arbitrator finds that the treatment rendered by the physicians and medical staff was reasonable and necessary to treat Petitioner for the work-related injury she sustained on September 9, 2020. The Arbitrator also finds that since the Petitioner's condition of ill-being was causally related to her injury on September 9, 2020, the respondent is responsible for the medical charges and that such charges were generated as a result of treatment that was reasonable and necessary. The Arbitrator finds that the bills in Petitioner's Exhibit 3, totaling $395.00 are to be paid by Respondent according to the medical fee schedule.

In support of the Arbitrator's decision relating to (K), is the Petitioner entitled to any prospective medical treatment, the Arbitrator finds the following facts:

The Arbitrator finds that the Petitioner requires additional medical treatment and is entitled to prospective medical treatment. The Petitioner consistently complained of left knee pain, exhausted conservative care, underwent left knee arthroscopic surgery, and has not improved. The Arbitrator and the parties had an understanding that both physicians agreed on causal relation and that Dr. Karlsson was agreed upon to provide an opinion on the type of surgery Petitioner requires. Dr. Karlsson opined that Petitioner requires a left knee total arthroplasty. The Arbitrator chooses to adopt the medical opinions of Dr. Blint and Dr. Karlsson that a full left knee replacement would be a more effective surgical procedure as compared to a unicompartmental knee replacement. The Arbitrator finds that the respondent is responsible for the left knee total arthroplasty and continued care with Dr. Sokolowski. The Arbitrator also agrees with Dr. Blint that Petitioner should be "off work". Finally, the Arbitrator finds that payment for the treatment is also the responsibility of the Respondent.

In support of the Arbitrator's decision relating to (L), is the Petitioner entitled TTD benefits, the Arbitrator finds the following facts:

Having found an accident that arose out of an in the course of Petitioner's employment, and that Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator awards temporary total disability benefits to Ms. Williams. The medical records reflect that Ms. Williams had been off work from January 14, 2021, through January 9, 2022; February 8, 2022, through February 11, 2022; and February 14, 2022, through March 25, 2022. Based on the aforementioned, the Arbitrator finds that Ms. Williams is owed Temporary Total Disability benefits for 57 6/7 weeks for a total of $31,508.82. The parties stipulated that respondent paid $28,995 in Temporary Total Disability Benefits (Arbitrator Ex 1).

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC017489
Case Name	Delvis Santiago v. Rethink Electric
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0042
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	David Froylan
Respondent Attorney	Rich Lenkov

DATE FILED: 1/25/2023

/s/Carolyn Doherty, 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

DELVIS SANTIAGO,

Petitioner,

vs. NO: 19 WC 17489

RETHINK ELECTRIC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, and temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, clarifying only that the award of medical expenses is to be paid to the Petitioner. 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 September 6, 2022 is hereby affirmed and adopted, with the clarification that the award of medical expenses is to be paid directly to the Petitioner.

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 $46,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 25, 2023
o: 1/19/23
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	19WC017489
Case Name	Delvis Santiago v. Rethink Electric
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	David Froylan
Respondent Attorney	Rich Lenkov

DATE FILED: 9/6/2022

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

/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)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION
19(b)

Delvis Santiago
Employee/Petitioner

v.

Rethink Electric
Employer/Respondent

Case # **19** WC **017489**

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 **April 27, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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, **June 3, 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 $**31,213.52**; the average weekly wage was $**600.26**.

On the date of accident, Petitioner was **38** years of age, ***single*** with **1** dependent child.

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 Petitioner temporary total disability benefits of $400.17/week for 22 1/7 weeks, commencing June 7, 2019 through August 1, 2019, and May 6, 2020 through August 12, 2020 as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, as detailed in the Arbitrator's finding with respect to Medical herein, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for demonstrated medical benefits that have been paid to the listed providers.

Respondent shall authorize and pay for additional reasonable and necessary treatment consistent the recommendations of Dr. Mohan including either a C6-7 or C5-7 ACDF with instrumentation and allograft as he recommends, any post operative treatment, physical therapy, or other reasonable and necessary care causally related to the accident.

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.

SEPTEMBER 6, 2022

/s/ Stephen J. Friedman
Signature of Arbitrator

ICArbDec19(b)

Statement of Facts

Petitioner Delvis Santiago testified that he was employed by Respondent Rethink Electric in 2019. He testified he was in a non-work related motor vehicle accident on April 28, 2019. He was a passenger in an Uber. Petitioner was in the back seat. The air bags did not deploy. There were no air bags in the back seat. He does not know if the air bags went off in the other car. He testified that he suffered a herniated disc. He hit the headrest. He had headaches, lower back pain radiating down his left leg with numbness, and neck pain. He testified his back pain was worse than his neck pain. He sought treatment with Dr. Dabah.

Petitioner saw Dr. Dabah on April 30, 2019. He reported that the vehicle was rear ended on the expressway when the driver slammed on the brakes. He stated they were hit at 70 mph. He was taken by ambulance to the emergency room with normal x-rays. He complained of headache and back pain with pain levels of 7-8/10. He also had neck pain associated with headache when turning from side to side. Cervical examination noted tenderness and limited motion with pain. Neurological exam was normal. Dr. Dabah provided a Medrol dose pack and muscle relaxer and ordered physical therapy (PX 3, p 47-50). Petitioner began physical therapy at Athletico on May 7, 2019 (PX 5). The Initial Evaluation noted limited range of motion in the neck and back. Petitioner complained of pain in the neck and back with radiation through the hips (PX 5, p 124-125). Petitioner returned to Dr. Dabah on May 20, 2019 still complaining of neck pain, occipital headaches, and low back pain radiating into the left lower extremity. PT has not given too much improvement. Petitioner received occipital nerve blocks. He was advised to continue physical therapy and scheduled for MRIs of the cervical and lumbar spine (PX 3, p 43-46). Dr. Dabah placed Petitioner on a 20 pound weight restriction (PX 3, p 56, RX 5). Petitioner testified that surgery was never mentioned or discussed after the Uber accident

The May 23, 2019 cervical MRI impression was multilevel spondylosis, disc bulge with superimposed posterior central herniation at C5-6, disc bulge with posterior left foraminal 3.1 mm protrusion causing severe left foraminal and moderate right foraminal/central canal stenosis at C6-7, shallow annular bulges from C3-C5 impinging the ventral sac (PX 4, p 4-5). The May 23, 2019 lumbar MRI impression was multilevel mild spondylosis predominantly seen from L3-S1, posterior broad-based herniation at L4-5 causing mild to moderate foraminal stenosis and central canal stenosis, posterior broad-based herniation at L3-4 causing mild to moderate foraminal/central canal stenosis, straightening of the normal lumbar lordosis, correlate for muscle spasm versus strain (PX 4, p 7-8).

Petitioner continued his therapy through May 29, 2019. The progress note notes he was demonstrating normal back and neck AROM with pain. His ADLs were still limited mostly by pain. Petitioner reported pain has had minimal to no improvement. He had no change in his low back pain radiating to both legs and around the low back through the front of the abdomen, occasionally through the right groin and leg. Neck is better since the injection but is still stiff. Additional therapy was recommended (PX 5, p 98). Petitioner saw Dr. Dabah on May 30, 2019 with continued neck and back pain which had not improved. Dr. Dabah recommended continued therapy. He stated that in an effort to keep him from surgery, he recommended cervical epidural injection. He also discussed lumbar epidural steroid injections in the future, but would like to focus on the cervical spine first (PX 3, p 41-43). He continued Petitioner on his work restrictions (PX 3, p 58). Petitioner was scheduled for a follow up on June 12, 2019.

Petitioner testified that on June 3, 2019, he was running permits for the job sites. This required him to drive to different city halls to pick up permits. He was driving a company owned F-350 pickup truck when he was in a motor vehicle accident. Petitioner identified PX 15 as photographs of the truck taken after the accident. They

show damage to the front end of the truck. Petitioner testified he hit his head on the steering wheel. The air bags did not deploy. He testified that police arrived, and he was taken by ambulance to the hospital. The Illinois Traffic Crash Report was admitted as PX 14 and RX 2. The report states the other vehicle made a left turn in front of Petitioner and was struck. Petitioner reported the accident to his employer (PX 13, RX 2). The Aurora Fire Department report states that the paramedics found Petitioner sitting in the vehicle with a cervical collar in place. He complained of neck pain from a previous injury. He was traveling 15-20 mph. When he was moved to the cot, he stared complaining of low back pain, also from the previous injury (PX 1). Petitioner was seen at the emergency department at Presence Mercy Medical Center (PX 2). The history taken is Petitioner has a history of bulging discs to the cervical and lumbar spine, presenting with headache, neck pain, abdominal pain, after being in a motor vehicle crash. He was T-boned traveling 15-20 mph (PX 2, p 52). CT scans of the head, cervical spine, and abdomen, chest and pelvis were normal (PX 2, p 65-67). Petitioner was given morphine and prescribed Motrin and Tramadol. He was advised to see his doctor and discharged (PX 2, p 63). Petitioner testified he was told to take a few days off work. The Physicians Immediate Care Work Status Instruction Sheet dated June 3, 2019 released him to work without restrictions (PX 2, p 28). Petitioner testified that due to the excruciating pain, he called Dr. Dabah to get an appointment earlier than June 12, 2019.

Petitioner saw Dr. Dabah on June 7, 2019 with complaints of neck pain and radiating left arm pain with some finger numbness. He reported a June 3, 2019 motor vehicle accident. He reported constantly throbbing neck pain, shoulder numbness, and numbness in his left thumb and last 2 digits. His symptoms have increased in frequency and intensity since seen for the previous MVA at last visit. He also has low back pain radiating leg pain. Examination noted trapezius trigger point with tenderness at C5 and C6. There was limited range of cervical motion. In the low back there was tenderness at L5 with limited flexion and extension and pain on motion and positive straight leg raising. Dr. Dabah recommended continued therapy and repeat cervical and lumbar MRIs due to worsening exam findings and radicular symptoms more frequent and intense. He took Petitioner off work (PX 3, p 39-40). The June 8, 2019 cervical MRI impression was multilevel spondylosis, disc bulge with superimposed posterior central herniation at C5-6, disc bulge with posterior left foraminal 4.6 mm protrusion causing severe left foraminal and moderate right foraminal/central canal stenosis at C6-7, shallow annular bulges from C3-C5 impinging the ventral sac (PX 4, p 10-12).

Petitioner had cervical epidural steroid injections on June 12, 2019 and June 26, 2019. He reported 25% improvement for a week on July 2, 2019 (PX 3, p 23-37). Dr. Dabah performed a third injection on July 27, 2019 (PX 3, p 21-23). On August 1, 2019, Petitioner reported an additional 15% improvement and over all has 65% improvement from his injections He described neck pain that radiates to his right shoulder, aggravated the most when he looks down and turns right. Petitioner was released to return to work with a 20 pound lifting restriction (PX 3, p 18-19). Petitioner received lumbar epidural steroid injections on August 17, 2019 and September 6, 2019 with 20% improvement. Dr. Dabah continued Petitioner's work restrictions and referred him for an orthopedic consult (PX 3, p 5-16). Petitioner was discharged from physical therapy at Athletico. He was last treated on September 10, 2019. The discharge summary noted he was working full time with restrictions (PX 5).

Petitioner testified he was referred to Dr. Stanley. He saw him, but was not comfortable and was then referred to Dr. Mohan. Petitioner saw Dr. Mohan on October 8, 2019 for his neck. He provided the history of the June 2019 motor vehicle accident and complained of neck pain and radiating bilateral arm pain with numbness in his wrists and fingertips. He has been working light duty due to pain. Physical examination noted pain on range of motion. Spurling test was negative. Motor, sensory, and reflexes were normal. Waddell tests were negative.

After review of the MRI, Dr. Mohan stated that Petitioner has failed to improve with conservative treatment. He has developed radiculopathy in both arms at the C6-7 level. He recommended C6-7 anterior cervical discectomy and fusion. He released Petitioner to continue light duty until surgery with restrictions of no squatting, bending, lifting, pulling more than 10 pounds (PX 6, p 4-7). Petitioner saw Dr. Dabah on October 31, 2019 with complaints of neck pain that radiates to his right shoulder (PX 3, p 3).

Petitioner was seen for a Section 12 examination at Respondent's request by Dr. Frank Phillips on December 6, 2019 (RX 6). Dr. Phillips took Petitioner's history of the 2 motor vehicle accidents and reviewed the medical records through the October visits with Dr. Mohan and Dr. Dabah. Dr. Phillips opined that Petitioner did not sustain any significant cervical or lumbar injury on June 3, 2019. He may have sustained a temporary sprain/strain injury. He noted that Petitioner has a left sided cervical disc herniation, but no left sided radicular complaints. He opined that Petitioner's current condition is not causally related to the June 3, 2019 accident. Dr. Phillip's stated that Petitioner did not require further treatment related to the June 3, 2019 accident. He was at MMI and required no work restrictions as a result of the June 3, 2019 work accident (RX 6).

Petitioner testified that Respondent accommodated his restrictions. Petitioner testified he was terminated by Respondent in January 2020. He had a legal obligation to attend to. He was convicted of a felony. He has been convicted of multiple felonies. The last time was 2016. Petitioner testified he would still be working for Respondent except for his injuries. He is aware of the policy that if you do not show up for work you will be terminated.

Dawn Heid testified that she is the CEO of Respondent. She testified that there is a 3 day, no call, no show policy that results in termination. It is in the company handbook. RX 8 is the Petitioner's signature on the acknowledgement page of receiving the handbook. She testified that Petitioner was terminated for violating the 3 day, no call, no show policy. Respondent reached out by phone and sent a letter with no response. She testified that an HR representative would have contacted Petitioner. She did not do it personally. She does not personally know what number or address was used.

Dr. Dabah authored an undated narrative report opining that Petitioner's condition worsened and was aggravated following the second MVA and that the workup and treatment plan was medically necessary (PX 9). Dr. Dabah testified by evidence deposition taken November 12, 2019 (PX 10). Dr. Dabah testified to his treatment of Petitioner after the April 28. 2019 accident. He recommended physical therapy and limited Petitioner to 20 pound lifting. On May 20, 2019, Petitioner's complaints had not changed much. He still complained of headaches, neck pain, and back pain which was now radiating down his left leg. He ordered cervical and lumbar MRI studies, continued physical therapy, and an occipital nerve block. The MRI studies showed multiple herniated disc protrusions. The main area of concern was C6-7. On May 30, 2019, he could not rule out the possibility of surgery. He wanted to proceed with epidural injections. Petitioner was scheduled to come back on June 12, 2019 (PX 10).

Dr. Dabah testified that Petitioner returned on June 7, 2019, reporting another motor vehicle accident with worsening neck and low back pain. Neck pain had increased in frequency and intensity, and he began to have numbness in his left thumb and the last 2 digits of his left hand which he did not have previously. The numbness usually indicates the degree of nerve root impingement has increased. Physical exam noted his prior improvement in tenderness had regressed. He had diminished reflexes on the left side. He ordered new MRIs and took Petitioner completely off of work. He testified the cervical MRI showed worsening of the disc herniation at C6-7 (PX 10).

Dr. Dabah testified to performing the cervical epidural injections. On August 1, 2019, he allowed Petitioner to return to restricted work. Dr. Dabah opined that the June 3, 2019 accident aggravated the situation from the initial injury. This is based on the subjective and objective worsening on MRI consistent with the new symptoms of radiating left upper extremity pain and that he had to remain off work after the second injury. Dr. Dabah testified that he did not review the emergency room records. He does not recall reviewing the Athletico physical therapy records. Petitioner did not report in May 2019 that he had an EMG of the left hand for ulnar neuropathy. He agrees Petitioner had a symptomatic lumbar disc prior to the June 3, 2019 accident. He was not aware Petitioner had prior right shoulder surgery (PX 10).

Petitioner returned to Dr. Mohan on May 6, 2020. Dr. Mohan notes radiculopathy in both arms. He ordered a new cervical MRI and continued to recommend surgical intervention. He stated Petitioner should remain off work (PX 6, p 8-13). On May 20, 2020, Dr. Mohan noted that the cervical MRI will be completed when Petitioner gets his ankle bracelet removed. He also ordered a lumbar MRI. Petitioner was to remain off work (PX 6, p 18-19). Petitioner saw Dr. Mohan on July 1, 2020. Surgery was awaiting WC approval. Other options including additional physical therapy for 6 weeks were recommended. Petitioner was kept off work for 6 weeks (PX 6, p 25).

Dr. Mohan authored a narrative report dated January 25, 2021, reviewing the history and MRI studies, and opined that the June 3, 2019 accident caused further disc protrusion at the C6-7 level causing the bilateral worsening foraminal stenosis. He opined that the current condition is related to the accident on June 3, 2019. He recommends proceeding with the surgery (PX 11). Dr. Mohan testified by evidence deposition taken March 12, 2021 (PX 12). He testified to his initial visit with Petitioner on October 8, 2019, his review of the MRI studies and his recommendation for a cervical fusion at C6-7. He testified to his examination on May 6, 2020. Petitioner was worse with positive Spurling's test on both sides indicative of nerve compression. His surgical recommendation did not change. His diagnosis was cervical disc herniation and radiculopathy with early findings of myelopathy. He also had a diagnosis of low back disc herniation, but that is not the main concern at this time. Dr Mohan opined that the progressive disc herniation in his neck is caused by the accident in June 2019. He testified he measured the disc herniation on the left and the right side. The left side worsened in the foraminal region. The right side worsened significantly in the foraminal region. These coincide with his bilateral hand symptoms. It is his opinion that the June accident caused this change. Petitioner had a preexisting herniation that was documented. The June 3, 2019 accident caused a progression of it and the symptoms progressed also (PX 12).

Dr. Mohan testified that he reviewed his notes and narrative. He did not review the April 28, 2019 Presence Resurrection Medical Center records or the June 3, 2019 Mercy Medical Center records but did review records from Pain Therapy Associates, Dr. Frank Phillips IME report, and the 2019 and 2020 MRI films. Dr. Mohan's treatment notes do not state that Petitioner experienced a motor vehicle accident on April 28, 2019. He was aware of a motor vehicle accident in April 2019 during his treatment. It does not state that Petitioner was previously diagnosed with cervicalgia and radiculopathy in the lumbosacral region with respect to the prior motor vehicle accident. Petitioner reported that at that time he complained of numbness of the left 4th and 5th fingers and that he was diagnosed with left ulnar neuropathy. His recommendation for surgery has not changed until he gets the new MRI. Dr. Mohan agreed that the findings of the 5-23-19 and June 2019 cervical MRI findings were close but that there were changes based upon the measurements (PX 12).

Dr. Mohan saw Petitioner on March 20, 2021 for follow up. Petitioner reported neck and arm pain and more weakness in his hands with constant numbness. He is also having low back pain. He continued to recommend surgery and ordered an updated cervical MRI (PX 6, p 31-35). The March 27, 2021 MRI impression was C5-6 and C6-7 broad based central posterior disc protrusions, measuring 3 mm, with resultant effacement and flattening of the ventral cord contributing to mild to moderate central canal stenosis. There is mild to moderate bilateral neural foraminal narrowing at C6-7. There is mild to moderate left and mild right foraminal encroachment with a central posterior annular fissure at C5-6. At C3-4 there was a broad based central posterior disc protrusion measuring 2.5 mm with resultant effacement and flattening of the ventral thecal sac contribution to mild central canal stenosis and mild right and minimal left foraminal encroachment (PX 7). On April 10, 2021, Dr. Mohan reviewed the MRI. He stated the MRI shows disc protrusion on the left at C5-6 and bilateral disc protrusion on C6-7 worse on the right side. He recommends a C5-C7 ACDF with instrumentation and allograft (PX 6, p 36-41).

Dr. Phillips testified by evidence deposition taken June 22, 2021 (RX 7). He testified to the history he took of the two motor vehicle accidents. He testified Petitioner complained of neck pain and diffuse pain running down his entire right arm in a non-dermatomal pattern. He complained of mostly axial back pain with pain radiating down the right leg to the foot with diffuse numbness of the entire right leg in a non-dermatomal pattern. His physical examination noted tenderness in the cervical spine with pretty normal cervical range of motion. He had non-provocative tests for radicular symptoms. Neurologic exam was normal. Dr. Phillips notes flexion of the low back caused pain radiating up to his neck and numbness of the right arm. Neurologic tests were normal. Straight leg raise test was negative and caused back pain but did not seem to be reproducing any nerve symptoms in the legs. Spurling test was negative (RX 7).

Dr. Phillips read the lumbar MRI as essentially unremarkable. The cervical study noted a left paracentral disc herniation at C6-7. The June 8, 2019 cervical MRI was essential the same with no real changes. Dr. Phillips testified that Petitioner had a mild aggravation of symptoms after June 3, 2019 without any structural changes to his spine. Dr. Phillips testified that the C6-7 disc herniation was not significant because Petitioner had no radicular symptoms down the left arm. He opined that the conditions of neck pain and right arm pain were not causally related to the June 3, 2019 accident. The disc herniation was not caused by the June 3, 2019 accident. Petitioner is not in need of treatment due to the June 3, 2019 accident. He is capable of full duty work. Dr. Phillips testified that the MRI report mentions moderate foraminal stenosis on the right. If the central canal was pushing on the spinal cord, it causes very different symptoms from what we are dealing with in this case (RX 7).

Petitioner testified that when he returned to light duty work for Respondent, he was in the delivery warehouse picking parts for work crews although he worked less hours. He has not gone back to work since May 6, 2020. He has not attempted to return to any kind of employer because he cannot do the things that he was able to do. Petitioner testified that the employment he could get is physically demanding. He testified he had to stay home and watch the children. Petitioner testified he would have gone back to modified work for Respondent if it was offered. He did not look for modified work with other employers because he had to stay home and watch the kids. He could not afford daycare. He had no money and no transportation. He is of the opinion that no ither employer would hire him, but he does not know because he has not applied anywhere.

Petitioner is currently treating for neck pain with Dr. James Mok, a surgeon that he obtained through County Care Insurance. He has not had the surgery because his insurance is not good enough. He had to get insurance after he lost his work insurance and filed for Public Aid. Petitioner is receiving physical therapy at

NorthShore Hospital. His neck is painful. He must sit in place or lie down and not move much to make it feel better. Tying his shoes or throwing out the garbage make the pain worse.

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).

Petitioner was involved in an undisputed work-related motor vehicle accident on June 3, 2019. He was taken the emergency room with complaints of cervical and lumbar pain. At the time of this accident, Petitioner was already under active medical treatment for his lumbar and cervical spine by Dr. Dabah as a result of the previous April 28, 2019 motor vehicle accident. He had already undergone cervical and lumbar MRI studies and was in physical therapy. Dr. Dabah was discussing scheduling epidural injections, and had mentioned to possibility of surgery. Following June 3, 2019, Petitioner returned to Dr. Dabah with increased symptoms in both intensive and frequency. He began a course of treatment including injections and referral for a surgical consultation which resulted in a recommendation for a cervical discectomy and fusion. The dispute is whether the treatment following June 3, 2019 is causally related to the new work accident or a continued result of the original non-work related April 28, 2019 accident.

It is well-established that an accident need not be the sole or primary cause—as long as employment is a cause—of a claimant's condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Furthermore, 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). If the claimant had health problems prior to a work-related injury, he bears the burden of showing that the preexisting condition was aggravated by the employment and that the aggravation occurred as a result of an accident which arose out of and in the course of his employment. *Nunn v. Industrial Comm'n, 157 Ill. App. 3d 470, 476, 510 N.E.2d 502, 505, 109 Ill. Dec. 634 (1987)*. Cases involving aggravation of a preexisting condition concern primarily medical questions and not legal ones. That is, if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise

previous condition; it is the resulting deterioration from whatever the previous condition had been. *Nanette Schroeder v. The Illinois Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC (4th Dist., 2017).

Petitioner offered the records, narrative reports, and deposition testimony of the treating doctors, Dr. Dabah and Dr. Mohan. Both opined that the June 3, 2019 accident aggravated Petitioner's condition in the cervical and lumbar spine and Petitioner's current condition is causally related to the work related accident. Respondent offered the examination report and deposition testimony of Dr. Phillips, who opined that Petitioner suffered a temporary sprain of the neck and back on June 3, 2019, and that his current condition is not causally related to the June 3, 2019 work related accident.

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 the opinions of Dr. Dabah and Dr. Mohan more persuasive that those of Dr. Phillips. The Arbitrator notes that Dr. Dabah had the advantage of treating Petitioner before and after the June 3, 2019 accident, and was in the best position to evaluate the change in his condition. The Arbitrator notes the MRI findings that show an enlargement in the size of the disc herniation noted by the radiologist and by Dr. Mohan's testimony. The Arbitrator notes the strong reliance by Dr. Phillips of the radicular complaints being right sided with the disc herniation being left sided. The Arbitrator notes that the treating doctors had a greater number of interactions with Petitioner and at no time found positive Waddell signs or evidence of symptom magnification. The treating records document bilateral arm pain and the existence of findings on the right side of the cervical spine as well. 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).

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that his current condition in the cervical and lumbar spine is causally related to the accident on June 3, 2019.

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 on the Arbitrator's decision with respect to Causal Connection, reasonable and necessary treatment for Petitioner's cervical and lumbar spine would be compensable. The Arbitrator has reviewed the treating medical exhibit submitted (PX 1-7) and the deposition testimony of Dr. Dabah and Dr. Mohan, and finds the treatment provided to Petitioner was reasonable and necessary.

Arbitrator's Exhibit 2 includes Petitioner's claim of bills due and owing to the providers listed in PX 1-7. The Arbitrator has reviewed the exhibits. The bills claimed have not been reduced by the fee schedule or negotiated rate. The Arbitrator finds that the claimed bills owing to Pain Therapy Associates for $12,260.00 (PX 3), American Diagnostics for $1,950.00 (PX4), and Bright Light Imaging for $3,200.00 (PX 7) are documented in the exhibits.

With respect to the remaining bills claimed, the Arbitrator finds:
Aurora Ambulance (PX 1): The exhibit documents payment in full by Medicaid (after adjustments) for $172.72. This amount is the negotiated rate and the total owed by Respondent.
Presence Mercy Medical Center: The total billing (PX 2, p 82) notes a WC adjustment of $11,097.96.The balance owed of $9879.04 would be fee schedule or negotiated rate.
Athleticofor (PX 5): The total billing of 17,954.00 includes treatment before the date of accident. The balance due for treatment following and causally connected to the accident is $12,763.12.
Dr. Mohan (PX 6): Petitioner is claiming a bill of $3,133.08. The Arbitrator finds the treatment by Dr. Mohan to be reasonable, necessary, and causally related, but PX 6 does not contain any bills or statements concerning the charges for these services. The Arbitrator therefore is unable to award medical for these services.

The Request for Hearing form (Arb. Ex. 1) stated that Respondent paid $2,763.12 in medical expenses. The exhibits submitted do not documents any such payments. The Arbitrator does not know the dates or providers of such payments and whether they may have been made after the date the records were provided but before the trial date.

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 $12,260 to Pain Therapy Associates, $1,950.00 to American Diagnostics, $12,763.12 to Athletico, $3,200.00 to Brightline Imaging, $172.72 to Aurora Ambulance, and $9,879.04 to Presence Mercy Medical Center, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for medical benefits that are demonstrated to have been paid to theses providers.

In support of the Arbitrator's decision with respect to (K) Prospective 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 on the Arbitrator's decision with respect to Causal Connection, reasonable and necessary treatment for Petitioner's cervical and lumbar spine would be compensable.

As more fully addressed above with respect to Causal Connection, the Arbitrator finds the opinions of Dr. Dabah and Dr. Mohan persuasive. Dr. Mohan's records and testimony state that he was recommending Petitioner undergo a cervical discectomy and fusion at C6-7. He testified that this recommendation for surgery might change after review of the new MRI. Dr. Mohan reviewed the March 27, 2021 MRI and stated the MRI shows disc protrusion on the left at C5-6 and bilateral disc protrusion on C6-7 worse on the right side. He then recommended a C5-C7 ACDF with instrumentation and allograft. The Arbitrator finds Dr. Mohan's treatment recommendations reasonable, necessary, and causally related to the June 3, 2019 accident.

The Arbitrator notes that while Petitioner's lumbar condition is also causally related, no specific treatment has currently been recommended as the doctors wish to address the cervical condition first.

Respondent shall authorize and pay for additional reasonable and necessary treatment consistent the recommendations of Dr. Mohan including either a C6-7 or C5-7 ACDF with instrumentation and allograft as he recommends, any post operative treatment, physical therapy, or other reasonable and necessary care causally related to the accident.

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).

In order to prove his entitlement to TTD benefits, a claimant must establish not only that he did not work, but that he was unable to work. *Sharwarko v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 131733WC, ¶ 49. An employee is temporarily totally disabled from the time that an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990). Once an injured employee's physical condition stabilizes or he has reached MMI, he is no longer eligible for temporary total disability benefits. *Archer Daniels Midland Co.*, 138 Ill. 2d at 118. A claimant reaches MMI when he is as far recovered or restored as the permanent character of his injury will permit. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004). Factors to be considered in determining whether a claimant has reached MMI include whether he has been released to return to work, medical evidence, testimony concerning the claimant's injury, the extent of his injury, and whether the injury has stabilized. *Nascote Industries*, 353 Ill. App. 3d at 1072.

Petitioner was on restricted work with a 20 pound limit prior to June 3, 2019 as a result of the April 28, 2019 accident. The June 3, 2019 Emergency Room records allow Petitioner to return to regular work. Petitioner was

first taken off work by Dr. Dabah on June 7, 2019. Dr. Dabah released Petitioner to return to work with restrictions as of August 1, 2019. Respondent accommodated the restrictions and Petitioner continued to work within them until he began missing work for a person legal issue and was terminated for violating Respondent's attendance policy. At the time of his termination, Respondent was continuing to accommodate his restrictions, which were the same as his pre-injury restrictions. Based on the evidence provided, Petitioner was not entitled to temporary compensation until he returned to Dr, Mohan on May 6, 2020, at which time he was taken completely off of work.

Benefits under the Act may be suspended or terminated if an employee refuses work falling within the physical restrictions prescribed by his doctor. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 146, 923 N.E.2d 266, 337 Ill. Dec. 707 (2010). In determining what impact, if any, an employee's discharge might have on the employee's entitlement to TTD benefits, the appellate court first looked to Illinois case law and found two cases, *City of Granite City v. Industrial Comm'n, 279 Ill. App. 3d 1087, 666 N.E.2d 827, 217 Ill. Dec. 158 (1996)*, and *Schmidgall v. Industrial Comm'n, 268 Ill. App. 3d 845, 644 N.E.2d 1206, 206 Ill. Dec. 153 (1994)*, to be "instructive." From these cases, the appellate court determined that "the critical inquiry in determining whether the employee is entitled to TTD benefits after leaving the workforce centers on whether the departure was voluntary." *385 Ill. App. 3d at 1045*. We find that allowing an employee to collect TTD benefits from his employer after he was removed from the work force as a result of *volitional conduct* unrelated to his injury would not advance the goal of compensating an employee for a work-related injury." (Emphasis added.) *385 Ill. App. 3d at 1047*.

As of the May 6, 2020 visit, Dr. Mohan took Petitioner off of work and saw him through July 1, 2020. The July 1, 2020 notes continued Petitioner completely off work for an additional 6 weeks. This off work period (July 1 plus 42 days) would expire on August 12, 2020. Petitioner offered no evidence on continued total disability thereafter. He admitted that he sought no work through the date of trial. This is in part because he had to stay home and watch the kids, and had no money and no transportation, reasons unrelated to his physical limitations. He testified that he could have performed the light duty assignment with Respondent had he not been terminated due to his own volitional act of failing to comply with the attendance policy. Dr. Mohan' January 25, 2021 report states that Petitioner is able to work light duty. His subsequent office visits in March and April 2021 do not include any work status opinions. His deposition testimony did not include opinions on work status. Petitioner testified he is seeing Dr. Mok currently but offered no records or work status reports from him. Based on this evidence the Petitioner has not established that he is entitled to temporary total disability beyond the period outlined in Dr. Mohan's July 1, 2020 office notes.

Based on the record as a whole and the Arbitrator's finding with respect to Causal Connection, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he is entitled to temporary total disability for the period commencing June 7, 2019 through August 1, 2019 and May 6, 2020 through August 12, 2020, a period of 22 1/7 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC012341
Case Name	Richard Gaugert v. Menards
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0043
Number of Pages of Decision	25
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Jesse Lanshe

DATE FILED: 1/25/2023

/s/ Christopher Harris, Commissioner

Signature

23IWCC0043

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RICHARD GAUGERT,

Petitioner,

vs. NO: 15 WC 12341

MENARDS,

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 benefit rates, medical, temporary total disability (TTD), permanent partial disability (PPD), and whether the Arbitrator exceeded his authority under Section 19(f) of the Act, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission modifies the duration of the TTD award and finds that the Petitioner is entitled to TTD benefits from December 12, 2014 through December 13, 2017, representing 156-6/7 weeks of disability.

The duration of TTD benefits is a question of fact. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118-19, 561 N.E.2d 623, 149 Ill. Dec. 253 (1990). A claimant is entitled to TTD benefits from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injuries will permit. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 542, 865 N.E.2d 342, 310 Ill. Dec. 18 (2007). A claimant must not only show that he did not work, but also that he was unable to work as a result of his industrial accident. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 594, 834 N.E.2d 583, 296 Ill. Dec. 26 (2005).

The Petitioner sustained a work-related injury on November 26, 2014, which was the day before Thanksgiving. (T.21.) The Petitioner was off work for Thanksgiving and returned to work on Friday, November 28, 2014. (T.23.) He was then examined at Glenbrook Hospital on November 29, 2014 and was provided with a "work excuse note." (PX.1.) When questioned about this note, the Petitioner testified that he did not remember whether Glenbrook Hospital provided him with an off-work recommendation. (T.28.) It was not until after the Petitioner's December 12, 2014 examination with Orthopedic Associates that he was taken off work. (PX.2.) As the Petitioner worked after the accident and was not taken off work until December 12, 2014, the award of TTD benefits beginning November 26, 2014 is not supported by the evidence. Therefore, the Commission finds that the Petitioner is entitled to TTD benefits commencing December 12, 2014.

The Commission, herein, corrects the scrivener's errors appearing on pages 3 and 20 and 21 of the Arbitrator's Decision. In the order section on page 3, the Arbitrator awarded the Petitioner 45% loss of use of the person-as-a-whole as provided in Section 8(e) of the Act, representing 225 weeks of disability. Then, on pages 20 and 21 of the Decision, the Arbitrator awarded the Petitioner 55% loss of use of the person-as-a-whole, representing 225 weeks of disability, pursuant to Section 8(e) of the Act. The Commission corrects the Decision on pages 3 and 20 to reflect that the award is pursuant to Section 8(d)2 of the Act, not Section 8(e). Further, 225 weeks of disability pursuant to Section 8(d)2 of the Act represents 45% loss of use of the person-as-a-whole. Therefore, the Commission corrects page 21 of the Decision to reflect that the Petitioner is entitled to 45% loss of use of the person-as-a-whole, which is consistent with the order on page 3 of the Decision.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed March 30, 2022, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $284.59 per week for a period of 156-6/7 weeks, December 12, 2014 through December 13, 2017, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $256.16 per week for a period of 225 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused 45% loss of use of the person-as-a-whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $340,619.13 for medical expenses pursuant to Section §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.

January 25, 2023

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

CAH/tdm
O: 1/19/23
052

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC012341
Case Name	GAUGERT, RICHARD v. MENARDS
Consolidated Cases	
Proceeding Type	
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Jesse Lanshe

DATE FILED: 3/30/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 29, 2022 1.05%

/s/Charles Watts, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

RICHARD GAUGERT
Employee/Petitioner

v.

MENARDS
Employer/Respondent

Case # **15** WC 12341

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 **7/16/21**. 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 _____

FINDINGS

On **11/26/14**, 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 $**22,201.21**; the average weekly wage was $**426.94**.

On the date of accident, Petitioner was **20** years of age, ***single*** with **1** dependent children.

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

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

Respondent shall be given a credit of $**24,287.93** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**24,287.93**.

Respondent is entitled to a credit of $**5,287.36** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $284.59/week for 159 1/7 weeks, for the periods of November 26, 2014, to December 13, 2017, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $340,619.13, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $256.16/week for 225 weeks, because the injuries sustained caused the 45% loss of the Person as a Whole 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.

. **MARCH 30, 2022**

Signature of Arbitrator

MEMORANDUM OF DECISION OF ARBITRATOR

Findings of Fact

On November 26, 2014, Petitioner was employed at a Menards located in Mt. Prospect, Illinois. (T.9) He started working there on September 14, 2014. (T.9). His job duties involved unloading trailers, deliveries, stocking, and lifting up to 50 to 100 pounds. (T.10). He spent the vast majority of his workday on his feet. (T.10).

Petitioner testified that he worked less than 40 hours per week, averaging 25-30 hours per week, but that it was his understanding that he was a full-time employee. (T.12). He said he applied for a full-time position and that he was available to work 40 hours per week. (T.12). His manager set his schedule and he had no choice in the hours or days that he worked. (T. 12, 13).

Petitioner also testified to his earnings. Weekend pay was $1 - 2 more per hour, and was not overtime. The store was open regular hours on weekends. (T. 13). The supervisor determined whether he worked on a weekend versus a weekday. (T. 14). Petitioner also received additional pay as a forklift operator.

The accident occurred on November 26, 2014, at approximately 7:30 pm. (T.14). At the time of the accident, Petitioner was in the lumber yard unloading a forklift. (T.15). He said that it was actively snowing and the ground was slippery. (T.15). There was ice on the ground underneath the snow, which he was not aware of until after the accident. (T. 15).

Prior to the accident, Petitioner and a co-worker were unloading a 12-foot long board from a forklift. (T.16, 17). As he was unloading the board, Petitioner's right leg slipped on ice. (T.18). He testified that as his right foot slipped on ice, his right knee twisted and gave out, and he fell onto his knee. (T.18, 19). He heard a pop and felt immediate pain. (T.20). A coworker had to help him walk. (T.19). Petitioner was unable to continue working that day. (T.21). That night he applied ice to his knee and took Ibuprofen. (T.21).

The following day, November 27, 2014, was Thanksgiving. (T.22). The Petitioner testified that his pain was a "9 1/2" and that he applied ice to try to get the swelling down. (T.22).

Petitioner testified he was told he had to return to work on November 28, 2014, which was Black Friday, or he would be terminated. (T.23, 24). Petitioner returned to work, but worked with a limp, sat down frequently, and leaned on shopping carts for support. (T.25). From November 26, 2014, to November 29, 2014, Petitioner applied ice to his knee, took Ibuprofen, and soaked it in the bath. (T.25).

On November 29, 2014, Petitioner was seen at Glenbrook Hospital. (PX. 1). It is noted that he twisted his knee on ice and that there was an audible "pop" at the time of the occurrence. The diagnosis was knee strain. Petitioner was seen at Northshore on December 4, 2014 at which time an MRI was ordered. (PX. 1)

On December 12, 2014, Petitioner was examined at Orthopedic Associates by Dr. Moss. (PX. 2). It was reported he slipped on ice at work and twisted his knee. The diagnosis was likely meniscus tear and an MRI was ordered. Petitioner was also taken off work.

The MRI of the right knee was performed on December 29, 2014. (PX. 5). The MRI report revealed an MCL sprain with no evidence of acute meniscal tear.

On January 9, 2015, Dr. Moss diagnosed arthritis, pain in joint, contusion, and a sprain/strain, and started physical therapy. (PX. 2). Off work restrictions were continued. Petitioner underwent a workers' compensation evaluation at Athletico on January 16, 2015 at which time he was told to undergo therapy three times per week for 6 weeks. (PX. 8).

Petitioner returned to Dr. Moss on January 30, 2015. (PX. 2). Dr. Moss diagnosed arthritis, DJD, sprain/strain, and chondromalacia, instructed Petitioner to continue PT, and told him to remain off work.

On February 20, 2015, Dr. Moss administered a cortisone injection and discussed a possible arthroscopy. (PX. 2). The off-work restrictions were continued.

On March 11, 2015, Dr. Moss examined Petitioner and diagnosed possible meniscus tear. (PX. 2). He continued to keep him off work.

On April 29, 2015, Petitioner had a second opinion at Suburban Orthopedics with Dr. Chhadia. (PX. 3). Petitioner had complaints of knee pain. An injection administered and an MRI was ordered. Dr. Chhadia reported that Petitioner was unable to work.

On May 13, 2015, Petitioner returned to Suburban Orthopedics. (PX. 3). Physical therapy was ordered and it was again determined that Petitioner was unable to work.

Petitioner returned to Suburban Orthopedics on June 10, 2015, where he was again examined by Dr. Chhadia and complained of knee pain. (PX. 3). Dr. Chhadia kept Petitioner off work, prescribed pain medications and physical therapy.

On July 16, 2015 Dr. Chhadia performed an MPFL reconstruction with allograft. (PX. 3). The post-operative diagnosis was right knee patella instability and right knee synovitis.

On July 16, 2016, Petitioner was seen by Dr. Chhadia for a post-surgery follow up. (PX. 3). When Petitioner was seen at Suburban Orthopedics on July 22, 2015, was is noted that he reported having a lot of pain. (PX. 3). Physical therapy was recommended.

Petitioner was seen on August 19, 2015 by Dr. Chhadia at Surburban Orthopedics. (PX. 3). It is noted that he had been doing PT for one week and was unable to work.

On September 23, 2015, Dr. Chhadia noted that Petitioner had more pain than before surgery. (PX. 3).

On November 5, 2015, Dr. Chhadia performed a right knee revision and medial patella femoral ligament reconstruction. (PX. 3). The post-operative diagnosis was right knee patella instability after prior medial patellofemoral ligament reconstruction.

Petitioner followed up with Dr. Chhadia on November 18, 2015. (PX. 3). He reported a pain level of 8/10. It is noted that he was unable to work and to return in 4 weeks.

When he was seen by Dr. Chhadia on December 9, 2015, it was noted that Petitioner had difficulty walking due to pain in knee. (PX. 3). A cortisone injection was administered and Petitioner was kept off work.

On December 11, 2015, Petitioner underwent an Initial Evaluation at ATI physical therapy; however, he was soon discharged due to moving to a different state. (PX. 4).

On December 16, 2015, Petitioner was referred to Dr. Adler at Aurora Health for further treatment as he was moving to Wisconsin. (PX. 3).

On December 21, 2015, Petitioner was evaluated at Sport & Spine therapy where he was told to undergo physical therapy three times per week for 8-12 weeks. (PX. 9).

On January 5, 2016, Petitioner obtained a second opinion from Dr. Adler at Aurora Health. (PX. 6). At the time of the exam, the Petitioner's reported pain was 10 out of 10. A repeat MRI was ordered.

On January 7, 2016, a CT of the right knee was performed. (PX. 6). Post operation changes were observed. On January 14, 2016 an MRI was performed at Aurora. (PX. 6). Patellar instability of the right knee, a complete tear of patellofemoral ligament, and tendinosis were reported.

Petitioner was seen on January 20, 2016, by Dr. Adler, who diagnosed a complete tear of patellofemoral ligament and a failed MPFL allograft, and recommended surgery. (PX. 6). On February 8, 2016, Petitioner elected to proceed with surgery. (PX. 6).

On March 11, 2016, Dr. Adler performed an osteotomy, MPFL revision, and an arthroscopy. (PX. 6). The post-operative diagnosis was patellar instability of right knee.

On April 20, 2016, Petitioner was evaluated by Dr. Adler and complained of pain. (PX. 6). Vocational rehabilitation was discussed. Dr. Adler restricted Petitioner to sit down work only.

He followed up with Dr Adler on June 6, 2016. (PX.6). He reported pain with walking and a burning sensation. The diagnosis was patellar instability of the right knee. X-rays were taken and steroid injections were performed. Vocational training was also recommended.

On August 1, 2016, Petitioner was seen by Dr. Adler. (PX.6). He had complaints of right knee symptoms. A steroid injection was administered. He was instructed to return to therapy.

On September 12, 2016, when Petitioner was seen by Dr. Adler, it was noted he received no relief from the injection. (PX.6). He was told to continue physical therapy.

Petitioner returned to Aurora Health on October 24, 2016. (PX.6). He reported that his pain had persisted. A repeat MRI was discussed.

When Petitioner was seen by Dr. Adler on June 19, 2017, he reported knee pain and surgery was discussed. (PX.6).

On July 7, 2017, a right knee arthroscopy with osteochondral allograft, patellar chondroplasty, tibial tubercle hardware removal, and knee patella cartiform implantantion was performed by Dr. Adler. (PX.6).

Petitioner was evaluated on July 10, 2017 at Sport & Spine Physical Therapy where he was told to attend two to three times per week for 12-24 weeks. (PX.9). On July 17, 2017, he was examined by Dr. Adler and reported knee pain. (PX.6). He was told to remain off work. The off-work restrictions were continued on July 19. 2017.

On August 16, 2017, Dr. Adler prescribed outpatient physical therapy and was told to return in 6 weeks. (PX.6).

On October 2, 2017, Dr. Adler ordered an MRI to assess the patellar cartilage transplant and state that the petitioner could consider sit down work. (PX.6).

The MRI of the right knee was performed on October 12, 2017. It showed medial meniscus tears.

On October 30, 2017, Petitioner reported that his pain had increased. Dr. Adler proceeded with an injection. (PX.6).

When Petitioner was seen on November 1, 2017 at Aurora Health, it was noted that he received improvement with the physical therapy, that the injection and therapy helped, and that Petitioner would like to return to work. (PX.6).

On December 13, 2017, Petitioner reported that he felt great and that this is the best that his knee has felt in years. (PX.6). Dr. Adler reported he had reached MMI and assessed a 15% impairment. Dr. Adler opined that future treatment could include medications, bracing, therapy, injections, and surgery. He also recommended vocational rehabilitation. Dr. Adler gave Petitioner permanent restrictions of no kneeling, squatting, no use of ladders, and no lifting greater than 50 pounds.

On May 14, 2018, Petitioner returned to Dr. Adler. (PX.6). He reported pain over his patella while working. The diagnosis was post right knee patella cartiform implantation and hardware removal. Dr. Adler advised Petitioner to proceed with injections. There is an off work noted from Aurora dated May 22, 2018, which notes that Petitioner is unable to work from 5/21/18 - 5/27/18. (PX.6).

Petitioner was seen by Dr. Adler on November 19, 2018 for a follow-up. (PX.6). He reported improvement with the injection and a repeat Synvisc injection was discussed.

On May 22, 2019, Petitioner was re-examined by Dr. Adler and complained of knee pain. (PX.6). Moderate patellofemoral arthritis was diagnosed. It was recommended that he continue with Synvisc injections. He was again given work limitations of no lifting more than 50 lbs.

Petitioner returned to Aurora on December 2, 2019, and reported that he felt more clicking in knee. (PX.6). He stated that the Synvisc injection helped for 4 months. The diagnosis was right knee osteoarthritis. He was told to remain off work for one week. Dr. Adler again stated that a knee replacement in the future was possible. Dr. Adler also proceeded with the Synvisc injection.

On February 12, 2020, Petitioner underwent an initial evaluation at Sport and Spine PT for his right knee pain. (PX.9). He was told to undergo therapy for two times per week for 12 weeks.

When Petitioner was seen at Aurora February 12, 2020, he was diagnosed with patella femoral arthritis. (PX.6). Steroid Injections were recommended. It is also noted that he should delay the knee replacement until after he turns 40.

On February 13, 2020, an MRI of the knee was performed at Aurora. (PX.6). It found degenerative and post operative changes.

On June 10, 2020, Dr. Adler, reiterated the permanent work restrictions of no lifting more than 50 lbs. and repeated the Synvisc injection. (PX.6). On August 19, 2020, a cortisone injection was performed at Aurora Health. (PX.6).

Petitioner testified that he did not have knee injuries prior to November 26, 2014. (T.20). Petitioner testified that he continues to experience pain and loss of range of motion today. He said he cannot climb stairs without difficulty, has difficulty getting into his truck, cannot kneel, has difficulty sitting for long period of time, and feels vibrations inside of his knee. (T.51, 52). These limitations affect his ability to play with his child. (T.52). Prior to the accident, he claimed to be active and walked for miles. (T.51). When his knee is painful, he uses ice and takes muscle relaxers. (T.53).

Petitioner testified that he continues to undergo injections for his right knee. It is his understanding that he will continue to need the injections once every six months until he undergoes the total knee replacement.

Petitioner is currently employed at Keystone Our House Senior Living as Resident Assistant. (T.53). He started this position on January 18, 2018. (T.53). Petitioner testified that he is working within his restrictions. His job involves 50% desk work, 50% on his feet, with no lifting. (T.55). He is currently earning $11.50 per hour at Keystone. (T.56).

KYLE FRANTZEN

Kyle Frantzen is the current General Manager at the Mount Prospect Menards. (T.122). He did not know Petitioner and did not work at the Mount Prospect Menards at the same time as Petitioner (T.123).

Frantzen testified that the Petitioner's salary was $9.50 per hour, plus an additional $2.50 on the weekends, and an additional $.75 because he could drive a forklift, which the Petitioner earned all the time, regardless of whether or not he was operating a forklift during his shift. (T.131, 141). Petitioner 's salary ranged from $10.25 to $12.75 per hour.

Frantzen testified to the contents of a 7 Day Job Offer Letter. (Res. Ex. 1;T.127). Frantzen testified that a 7 Day Letter means that the Respondent could accommodate Petitioner's work restrictions and that Menard's expects the employee back in 7 days. (T.127). However, Frantzen testified that the job offered to Petitioner contemplated sitting, standing, and lifting. (T.140). Frantzen stated that if the letter did not accurately reflect the doctor's restrictions, then the letter itself would be incorrect and the job offer itself would be improper. (T.150.)

STEVE HENDRICKS

Hendricks is the general manager of the Sun Praire, WI Menards store. (T.154).
He testified that he interviewed Petitioner for an open position, but that he did not offer Petitioner a position. (T.167). The only position they were looking for at the time was a cashier position. (T.161). Hendricks admitted that Petitioner was able to the work hours that were offered and did not give a reason why the job was not offered. (T.166).

EVIDENCE DEPOSITION OF DR. GERARD ADLER

Dr. Adler testified that he is board certified in orthopedic surgery. (Adler, 7). He saw Petitioner at Aurora Health for a second opinion for a patellar dislocation, patella instability, the medial patella ligament, and patella subluxation. (Adler, 9, 10, 11). When he first saw Petitioner, the knee was noted to be very weak. (Adler, 10). Dr. Adler obtained X-rays, ordered a CT scan, ordered an MRI, and ordered a nerve study. (Adler, 10). Dr. Adler reviewed the diagnostic tests which showed that the patella was not centered in the groove. (Adler, 11). Dr. Adler determined that Petitioner's weakness was related to the injury, surgeries, and the rehabilitation. (Adler, 11).

Dr. Adler explained that the patella travels in a groove. (Adler, 11). He said that Petitioner's patella was outside of that groove and was unstable. (Adler, 11). Dr. Adler stated that when the patella is partially out of the groove, it is called a subluxation. (Adler, 11). Petitioner also had a bony anatomy issue. (Adler, 12). Dr. Adler explained that the alignment had to be corrected from a bony standpoint. (Adler, 12). The bony attachment of the patellar tendon had to be moved to the inside and forward, which improves tracking and reduces stress. (Adler, 12).

Dr. Adler testified that the conditions for which he treated Petitioner could be caused by a slip-and-twist accident, such as the one that Petitioner suffered. (Adler, 14). Dr. Adler stated that twisting injuries are the most common way that people dislocate their patella. (Adler, 14).

Dr. Adler believes that Petitioner injured his patella due to the work accident. (Adler, 14). Dr. Adler stated that it was his opinion that the surgical procedures performed by Dr. Chhadia were reasonable to treat Petitioner's injuries. (Adler, 16).

Dr. Adler determined that to correct Petitioner's patellar instability, the tibial tubercle had to be transferred and the ligament had to be reconstructed. (Adler, 16). It was also necessary to correct the bony anatomy and then revise the tendon graft. (Adler, 17). If not for the injury, there would not have been a need to correct Petitioner's tibia tubercle. (Adler, 19).

Petitioner was first seen by Dr. Alder on January 5, 2016. (Adler, 19). Dr. Adler diagnosed patellar instability and ordered a CT scan, an MRI, and a nerve study. (Adler, 21). When the petitioner returned on January 20, 2016, Dr. Adler diagnosed a failed MPFL graft, and recommended an arthroscopy, a tibial tubercle osteotomy, and a revision of the MPFL. (Adler, 22). Surgery was performed on March 11, 2016. (Adler, 24).

Dr. Adler had Petitioner restricted to light duty from January 5 - March 11, 2016. (Adler, 26). From the date of surgery, March 11, 2016, for two weeks, he was completely off work. (Adler, 26). He was returned to sedentary work following that two-week period. (Adler, 26). Dr. Adler subsequently discussed performing an arthroscopic smoothing of the patellar cartilage which had been damaged in the initial injury. (Adler, 29). They also discussed cartilage transplants. (Adler, 29).

In June of 2017, Petitioner continued to have pain and problems with walking and with stairs. (Adler, 31). Dr. Adler observed crepitus. (Adler, 32). A cartilage transplant was then discussed. (Adler, 32). The pain that Petitioner was experiencing was a continuation of the conditions he had been experiencing since the accident. (Adler, 33).

Surgery was performed on July 7, 2017 consisting of a Cartiform cartilage transplant and hardware removal. (Adler, 33, 34). Dr. Adler recommended vocational rehabilitation because it was his opinion that Petitioner was not going to be able to return to repetitive physical labor. (Adler, 37).

On December 13, 2017, Petitioner reported that he felt great, that the Synvisc injection helped, that the physical therapy helped, and that he was ready to return to work. (Adler, 37). Petitioner had full range of motion, there was a decrease in the amount of crepitus, and his strength was approaching normal. (Adler, 38).

Dr. Adler testified that Petitioner will need Synvisc injections every six months for until he turns 40, after which he will need an arthroplasty. (Adler, 39, 40). As of the date of Dr. Adler's testimony, Petitioner had undergone two injections in 2018, one in 2019, and one in 2020. (Adler, 41). Dr. Adler also stated Petitioner will also need 12 physical therapy visits per year, also up until the age of 40. (Adler, 40). The need for these future treatments is due to the November 26, 2014, accident. (Adler, 41).

Dr. Adler testified that the conditions for which he treated Petitioner - patellar instability, medial patellar ligament subluxation, and the tibial tubercle - were caused by the November 26, 2014, accident. (Adler, 42).

Dr. Adler testified that he is concerned that Petitioner will develop worsening patellofemoral arthritis and will require an arthroplasty. (Adler, 43). Dr. Adler testified that the need for the off work and light duty restrictions were due to the November 26, 2014 accident. (Adler, 45). He testified that the permanent restrictions are due to the November 26, 2014, accident. (Adler, 45).

The surgeries caused permanent structural changes to Petitioner's knee. (Adler, 45). Dr. Adler stated that the 4th surgery, the cartilage transplant, restored Petitioner's knee to its normal function. (Adler, 46).

Evidence Deposition of Dr. David Zoellick

Respondent's Section 12 witness Dr. Zoellick, an orthopedic surgeon with Adult and Pediatric Orthopedics, examined Petitioner on March 24, 2015 and December 12, 2016. (Zoellick, 5, 6). Dr. Zoellick testified that when he examined Petitioner on March 24, 2015, Petitioner reported that his knee would lock and give out, that he was wearing a knee brace, that he had limited motion, that he had pain with bending, that he was in constant pain, and that the pain increased when he was on his feet for a long period of time. (Zoellick, 7). Petitioner also said that he could stand for about an hour, that he could walk for an hour, that he could drive for two hours, that he could lift 30 pounds with difficultly, and that he could not squat or kneel. (Zoellick, 8).

Dr. Zoellick diagnosed right knee medial collateral ligament strain and a meniscal tear. (Zoellick, 9). Dr. Zoellick testified that, as a result of the accident, Petitioner suffered an MCL strain, a meniscal tear, and an aggravation of chondromalacia. (Zoellick, 10). Dr. Zoellick testified that the treatment up to that point in time had been reasonable. (Zoellick, 10).

When Petitioner was re-examined on December 12, 2016, Dr. Zoellick reviewed the MRI and noted lateral subluxation of the patella. (Zoellick, 15). Dr. Zoellick felt that Petitioner should be at MMI in April of 2017. (Zoellick, 16). He recommended work conditioning but did not recommend surgery. (Zoellick, 17). Dr. Zoellick agreed that the biannual viscosupplementation injections could be reasonable if they gave Petitioner a benefit. (Zoellick, 20).

Dr. Zoellick testified that there was a causal connection between the accident and the diagnosis, he agreed that the first three surgical procedures were reasonable and necessary, and that Petitioner will require permanent restrictions. (Zoellick, 25). Dr. Zoellick testified that the condromalacia could have been aggravated in the accident. (Zoellick, 24). Dr. Zoellick also agreed that Petitioner would not likely return to his pre-accident employment as a laborer. (Zoellick, 26).

Dr. Zoellick testified Petitioner would not need the cartilage transplant surgery. (Zoellick, 26). Dr. Zoellick agreed that it is an appropriate procedure in certain situations, but not for Petitioner

because Dr. Zoellick testified there was no chondral defect. (Zoellick, 28, 29). Dr. Zoellick testified he would try more conservative treatment at this moment. (Zoellick, 24).

Dr. Zoellick testified that if Petitioner underwent successful knee patella Cartiform implantation surgery, then it would have been appropriate. (Zoellick, 32).

Conclusions of Law

The Arbitrator adopts the Statement of Facts in support of the Conclusions of Law.

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d).

To obtain compensation under the act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim (O'Dette v. Industrial Commission, 79 Ill.2d 249, 253 (1980) including that the accidental injury both arose out of and occurred in the course of his employment (Horvath v. Industrial Commission, 96 Ill.2d. 349 (1983)) and that there is some causal relationship between the employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, I29 Ill. 2d 52, 63 (1998). Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e).

Credibility is the quality of a witness which renders her evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with her testimony. Where a claimant's testimony is inconsistent with her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972). While it is true that an employee's uncorroborated testimony will not bar a recovery under the Act, it does not mean that the employee's testimony will always support an award of benefits when considering all the testimony and circumstances shown by the totality of the evidence. Caterpillar Tractor Co. v. Industrial Commission, 83 Ill. 2d 213 (1980). The mere existence of testimony does not require its acceptance. Smith v. Industrial Commission, 98 Ill.2d 20, 455 N.E.2d 86 (1983). To argue to the contrary would require that an award be entered or affirmed whenever a claimant testified to an injury no matter how much her testimony might be contradicted by the evidence, or how evidence it might be that her story is a fabricated afterthought. U.S. Steel v. Industrial Commission, 44 Ill2d 207, 214, 254 N.E.2d 522 (1969); see also Hansel & Gretel Day Care Center v. Industrial Commission, 215 Ill. App. 3d 284, 574 N.E.2d 1244 (1991).

The Petitioner bears the burden of proving every aspect of her claim by a preponderance of the evidence. Hutson v. Industrial Commission, 223 Ill App. 3d 706 (1992). "Liability under the Workmen's Compensation Act may not be based on imagination, speculation, or conjecture, but must have a foundation of facts established by a preponderance of the evidence…" Shell Petroleum Corp. v. Industrial Commission, 10 N.E.2d 352 (1937). The burden of proof is on a

claimant to establish the elements of her right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment there is no right to recover. Revere Paint & Varnish Corp. v. Industrial Commission, 41 Ill.2d. 59 (1968). Preponderance of the evidence means greater weight of the evidence in merit and worth that which has more evidence for it than against it. Spankroy v. Alesky, 45 Ill. App.3d 432 (1st Dist. 1977).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. Petitioner testified in open hearing before the Arbitrator who viewed his demeanor under direct examination and under cross-examination. Petitioner's manner of speech, body language, and flow of answers to questions, when added together, showed sincerity. Petitioner was well-mannered, composed, spoke clearly, and made normal eye contact with the Arbitrator.

The credibility of other witnesses is discussed below.

F. Causation

The Arbitrator finds Petitioner's current condition of ill-being is causally related to the work accident he sustained on November 26, 2014.

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' injury. *International Harvesier v. Industrial Commission*, 93 III.2d 59, 63-64 (1982). Causal connection between work duties and an injured condition may be established by a chain of events including claimant's ability to perform duties before the date of an accident and inability to perform same duties following date of accident. *Darling v. Industrial Commission,* 176 III.App.3d 186, 530 N.E.2d 1135 (1988). Moreover, if a claimant is in a certain condition, an accident occurs, and following that accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. *Schroeder v. Comm'n*, 2017 IL App (4th) 160192 WC.

The chain of events in this matter demonstrates Petitioner had a previous condition of good health, an accident, and a subsequent injury resulting in disability, that sufficiently proves a causal nexus between the accident and Petitioner's injury. This finding is based upon the credible testimony of Petitioner and review of the medical records presented in this case.

Petitioner testified that prior to the November 26, 2014 accident, he did not have any right knee symptoms or injuries. Petitioner testified that following the accident on November 26, 2014, he experienced pain in his right knee. He testified his right foot slipped on ice, that he twisted his knee, and that he fell onto his knee. He said that he heard an audible pop at the time of the accident and felt immediate pain. Petitioner testified that following the accident a co-worker had to help him walk and that he was unable to continue working that day. When he returned to work on November 28, 2014, Petitioner worked with a limp and sat down frequently.

Petitioner testified he currently experiences right knee pain and loss of range of motion. When his knee is painful, he uses ice and takes muscle relaxers. Petitioner also testified that he continues to undergo injections for his right knee and believes he will continue to need the injections once every six months until possible total knee replacement surgery.

The medical records further support a conclusion that there is a causal nexus between the accident and Petitioner's injuries. When he was first seen at Glenbrook Hospital on November 29, 2014, Petitioner reported that he twisted his knee on ice and that he heard an audible "pop" at the time of the occurrence. He continued to express complaints of knee pain and limitations during the course of his treatment. No prior right knee complaints or limitations were noted.

Petitioner's treating physician's testimony also supports a finding that Petitioner's current condition of ill-being was related to the work accident of November 26, 2014. Dr. Adler testified that the conditions that he treated including patellar instability, medial patellar ligament subluxation, and the tibial tubercle procedure, were caused by the November 26, 2014, accident. (Adler, 14, 42). Dr. Adler stated that twisting injuries are the most common way that individuals dislocate their patella. (Adler, 14).

Respondent's Section 12 physician, Dr. Zoellick, also supports a finding that there is a causal relationship between the work accident and Petitioner's condition. Dr. Zoellick diagnosed right knee medial collateral ligament strain and a meniscal tear. (Zoellick, 9). Dr. Zoellick testified that, as a result of the accident, Petitioner suffered an MCL strain, a meniscal tear, and an aggravation of chondromalacia. (Zoellick, 10). Dr. Zoellick also agreed that the condromalicia could have been aggravated by the accident. (Zoellick, 24). Dr. Zoellick stated that there was a causal connection between the accident and the diagnosis, that the first three surgical procedures were reasonable and necessary, and that Petitioner will require permanent restrictions. (Zoellick, 25).

In this case, prior to the incident, Petitioner was fully performing his job duties as a laborer. An incident occurred on November 26, 2014, after which he underwent a course of medical treatment and was placed on work restrictions, for which he was unable to perform his job duties. The Arbitrator has carefully reviewed and considered all medical evidence along with all testimony. The Arbitrator concludes that Petitioner has proven by the preponderance of the credible evidence that a causal connection exists between the petitioner's current condition of ill-being and the work accident he sustained on November 26, 2014.

G. **Average Weekly Wage**

The Arbitrator finds that the appropriate method to calculate the petitioner's earnings is under the third method under Section 10 of the Act: where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee actually earned wages shall be followed. According to Sylvester, the third method under applies to those who do not work 40 hours per week consistently. Sylvester v. Ind. Comm'n, 197 Ill.2d 225, 756 N.E.2d 822 (2001).

Gordan v. Tri-County Personnel, 98 IL.W.C. 30, 51 I.W.C.C. 752 is instructive. In that case, Petitioner testified that he was available to work 40 hours per week. Petitioner worked a total of 1,133 hours in the year before the injury. Using the third method under Section 10 of the Act, because he was available 40 hours per week, the Commission determined that he had worked 28.32 weeks (1,133 divided by 40). The Commission then divided the annual earnings of $6,764 by 28.32 week to arrive at an average weekly wage of $239.

Turning to the instant case, Petitioner testified that he earned approximately $11 per hour. Kyle Frantzen testified that Petitioner's hours earnings were $9.50 per hour, plus an additional $2.50 on the weekends, and $.75 because he could drive a forklift. Petitioner's salary therefore ranged from $10.25 to $12.75 per hour. Petitioner testified that he was available to work 40 hours per week. He testified that his supervisor set his schedule and determined which hours he worked. This was not contradicted by the Respondent's employees. According to the Respondent's Payroll Hours History report (PX 13), Petitioner worked a total of 225.84 hours prior to the injury. Using the third method under Section 10 of the Act, 225.84 hours divided by 40 hours per week equals 5.64 weeks.

Petitioner's total earnings of $2,407.98 divided by 5.64 weeks equals an average weekly wage of $426.94. The Arbitrator finds that the average weekly wage is $426.94.

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

The Arbitrator finds that the medical treatment that Petitioner received is causally related to the work accident he sustained on November 26, 2014, and that the medical bills submitted as Petitioner's Exhibit 10 constitute reasonable and necessary medical treatment pursuant to Section 8(a) of the Act.

Section 8(a) of the Act states that the employer shall provide and pay 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.

The treatment rendered by ATI Physical Therapy, Molecular Imaging, Aurora Health, Orthopedic Associates, S.C., Oak Brook Surgical Center, Sport & Spine Clinic of Fort Atkinson, Suburban Orthopedics, and Glenbrook Hospital was reasonably required to relieve the effects of the injuries Petitioner sustained on November 26, 2014. Petitioner testified that following the November 26, 2014, accident, he underwent treatment on a regular and consistent basis until found to be at MMI on December 13, 2017. Both Dr. Adler and Dr. Zoellick agreed that the treatment prior to the fourth surgery was reasonable and necessary. Dr. Adler stated that it was his opinion that the surgical procedures performed by Dr. Chhadia were reasonable to treat the injuries. (Adler, 16).

The Arbitrator specifically finds that the need for the right knee arthroscopy with osteochondral allograft, and knee patella Cartiform implantantion which was performed by Dr. Adler July 7,

2017, was reasonable and necessary. Petitioner testified that following the third surgery, he was still in pain and continued to have loss of range of motion. He further testified that the fourth surgery is the surgery that helped his condition. (T.42, 43). He testified that he experienced improved movement, could lift and straighten his leg, gained more mobility, could "semi-walk" up stairs, and that he no longer experienced shooting pain. (T.43). Petitioner testified that following the fourth surgery, he was able to work with limitations. (T.45). This is supported by the medical records which note that following the fourth surgery, Petitioner reported that it was the best that his knee has felt in years.

Dr. Adler explained the reason the cartilage implantation surgery was necessary. He said that two things had to be done in order to correct Petitioner's patellar instability problem: the tibial tubercle had to be transferred and the ligament had to be reconstructed. (Adler, 16). It was necessary to correct the bony anatomy and then revise the tendon graft. (Adler, 17). He therefore recommended an arthroscopy, a tibial tubercle osteotomy, and a revision of the MPFL. (Adler, 22). Dr. Adler also testified that following that surgery, he observed crepitus in Petitioner's knee and that Petitioner continued to have pain and problems with walking and with stairs. (Adler, 31). A cartilage transplant was then discussed. (Adler, 32). Dr. Adler stated that the fourth surgery, the cartilage transplant, restored his knee to its normal function. (Adler, 46).

While, Dr. Zoellick disagreed with Dr. Adler's initial recommendation for the cartilage implantation surgery, Dr. Zoellick did not rule out that a fourth surgery may be needed in the future, but that he wanted to try more conservative treatment first. (Zoellick, 24). Dr. Zoellick also agreed that if Petitioner had the knee patella Cartiform implantation surgery, and if it provided relief, then it would have been appropriate. (Zoellick, 32). The fourth surgery was successful.

The Arbitrator therefore finds that the course of treatment, including the Cartiform cartilage transplant surgery, was reasonable and was required to provide relief from the effects of the November 26, 2014, work accident.

The Arbitrator finds that medical care that has occurred following the MMI date of December 13, 2017 up to the hearing date is awarded. The Arbitrator finds that care to be causally related to the work accident Petitioner sustained on November 26, 2014, and that the medical bills for that treatment constitute reasonable and necessary medical treatment pursuant to Section 8(a) of the Act.

As to future medical care beyond the MMI date and the hearing date, Dr. Adler testified that Petitioner would need Synvisc injections every six months until he turns 40, by which time he would likely need an arthroplasty. (Adler, 39, 40). Dr. Zoellick agreed that the biannual viscosupplementation injections could be reasonable if they were giving the petitioner a benefit. (Zoellick, 20). Dr. Adler also testified that Petitioner will also need 12 physical therapy visits per year, up until the age of 40. (Adler, 40). Regarding this recommendation, Dr. Zoellick testified that there was little benefit to future physical therapy and that home exercises should suffice. (Zoellick, 19) Dr. Zoellick stated, "I can't see where one session of therapy a month is going [to] make any difference in his condition." (Id. at 23).

The records show that Petitioner underwent treatment with Dr. Adler on May 14, 2018, November 19, 2018, May 22, 2019, December 2, 2019, February 12, 2020, February 13, 2020, June 10, 202, and August 19, 2020. The records also show that Petitioner underwent a course of physical therapy at Sport and Spine PT beginning on February 12, 2020.

The treatment rendered by Aurora Health and Sport and Spine PT following the MMI date of December 13, 2017, was reasonably required to relieve the effects of the injuries Petitioner sustained on November 26, 2014.

Petitioner's Exhibit 10 contains the medical bills incurred for this treatment. Each of those bills lists the total amount of the charges, which is itemized as follows:

- ATI $1,091.23
- Molecular Imaging. $1,835.60
- Aurora Health. $160,266.16
- Orthopedic Associates, S.C. $926
- Oak Brook Surgical Center. $36,963
- Sport & Spine Clinic of Fort Atkinson. $56,202
- Athletico. $31,694
- Suburban Orthopedics. $42,432
- Glenbrook Hospital $9,209.14

With respect to the bills, the Arbitrator finds that the bills constitute reasonable and necessary medical treatment pursuant to Section 8(a) of the Act. As noted above, Petitioner's treating physicians prescribed the treatment, which included diagnostic tests, therapy and surgery. Petitioner's Exhibit 10 consists of the bills and shows a total amount of charges of $340,619.13. Based on the above, the Arbitrator awards the petitioner the medical expenses in petitioner's exhibit 10 in the amount of the balance of $340,619.13 pursuant to the medical fee schedule in Section 8.2 of the Act.

K. **What amount of compensation is due for temporary total disability?**

The Arbitrator finds that the petitioner was restricted from work for a period of 159 1/7 weeks for the period of 11/26/14 to 12/13/17. This finding is based upon the credible testimony of Petitioner, review of the medical records and the testimony of Dr. Adler.

In order to recover TTD benefits, a claimant must prove by a preponderance of the evidence that the injuries arose out of and in the course of his employment, and that the claimant had a resultant incapacity to work. Pemble v. Ind. Comm'n, 181 Ill.App.3d 409. An award for TTD is justified even though the incapacity does not immediately follow an injury as long as the incapacity is directly traceable to and the result of the injury. Whitney Productions, Inc. v. Ind. Comm'n, 274 Ill.App.3d 28, 201 Ill.Dec. 770 (1995).

Petitioner testified that his duties as a laborer at Menards included lifting up to 100 pounds, loading, stocking and sweeping. He testified that almost all of his workday was spent on his feet.

Following the accident of November 26, 2014, Petitioner testified that when he attempted to work, he walked with a limp and had to sit down frequently.

Petitioner was subsequently taken off work by Dr. Moss on December 12, 2014. On April 29, 2015, Dr. Chaddia continued to keep him off work. The off-work restrictions were continued by Dr. Adler until Petitioner was released on December 13, 2017, with permanent restrictions of no kneeling, squatting, no use of the ladder, and no lifting greater than 50 pounds.

The Arbitrator finds that Menard's job offer did not terminate the petitioner's TTD benefits. The Petitioner testified that his workers' compensation benefits were terminated after he was seen by Dr. Zoellick on December 12, 2016. (T.67). Respondent's Exhibit 5 is a "7 Day Letter" dated January 9, 2017. Included with Exhibit 5 is a Certified Mail Receipt. The job offer listed in the letter was for a job with no squatting, kneeling, crawling, alternating sitting and standing, and no limiting more than 20 lbs. Petitioner admitted that he was generally aware of a job offer.

The Arbitrator notes that the job offer is not within Petitioner's physical restrictions. Dr. Alder's restrictions as of January 9, 2017, were for sit down work only. (PX. 6, 70; T.60). The job offer in the 7 Day Letter clearly contemplates that standing and lifting will be required, which was confirmed by the testimony of Kyle Frantzen. Moreover, Frantzen agreed that if the job's physical duties did not conform to the treating doctor's restrictions, that the 7 Day Letter would not be valid.

The Arbitrator also finds it significant that Respondent's Exhibit 6 is a Request for Non-Management Transfer dated April 17, 2017, which is dated after the 7 Day Letter. (RX.6). Petitioner testified that when he was advised that there was a potential job available, he requested a store transfer to a Wisconsin store. (T.75). Petitioner applied for a store transfer to a store located near him in Wisconsin. (T.60). He said that he drove from Wisconsin to the Mount Prospect, Illinois store, picked up the transfer letter, and then drove the letter to the Wisconsin store. (T.61). It was Petitioner's understanding that he would be allowed to work at a job within his restrictions. (T.61). The transfer was granted from the Mount Prospect store. (T.63). However, the Wisconsin store did not have a sedentary duty position available. (T.64). The store transfer was denied by Menards on April 26, 2017. (RX. 7). The Arbitrator noted that Hendricks testified that this form would not be completed for someone who was no longer an employee of Menards. (T.170). In other words, if Petitioner had been terminated due to the failure to respond to the 7 Day Letter, the Request for Non-Management Transfer would not have been completed.

Therefore, the Arbitrator finds the 7 Day Letter did not terminate the petitioner's employment with Menards and did not terminate Petitioner's entitlement to TTD benefits. The Arbitrator finds that the petitioner was restricted from work for a period of 159 1/7 weeks at a rate of $284.59 per week.

L. <u>What is the nature and extent of the injury?</u>

The Arbitrator finds that Petitioner has sustained loss of use of the person as a whole under Section 8(d)2 as a result of the injury he sustained on November 26, 2014.

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

a. A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion, loss of strength, measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment.

b. Also, the Commission shall base its determination on the following factors:

i.The reported level of impairment;
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 medical records.

With regard to (i) of Section 8.1(b) of the Act;

The Arbitrator notes that no AMA Impairment Rating pursuant to the 6th Edition of the Guides to the Evaluation of Permanent Impairment was submitted by either party in this case. Therefore, this factor has not been considered by the Arbitrator.

With regard to (ii) of Section 8.1(b) of the Act;

Petitioner's occupation on the date of the accident was that of a laborer. He testified that his duties as a laborer involved lifting up to 100 lbs., loading, stocking and sweeping. He also testified that he spent almost all of his workday on his feet.

Dr. Adler testified Petitioner could not return to that occupation. Dr. Adler testified that he recommended vocational rehabilitation because it was his opinion Petitioner was not going to be able to return to a repetitive physical labor job. (Adler, 37). Dr. Zoellick also agreed that he could not return to his pre-accident employment as a laborer. (Zoellick, 26).

Petitioner is currently working at a light duty position at Keystone Our House Senior Living as Resident Assistant. He testified the job involves 50% desk work and 50% on his feet with no lifting, and that he is working within his restrictions. Petitioner testified that he continues to experience pain and loss of range of motion today. When his knee is painful, he uses ice and take muscle relaxers.

Petitioner's right knee injury has an impact on his ability to perform his current light job duties and has prevented his return to his prior occupation as a laborer. Further, it has restricted the availability of career opportunities in the future. The Arbitrator assigns significant weight to this factor.

With regard to (iii) of Section 8.1(b) of the Act;

The work accident occurred when Petitioner was 20 years old. Petitioner will remain in the workforce for a significant period of time. As a result, this injury will impact him as he continues to work toward retirement. The Arbitrator assigns significant weight to this factor.

With regard to (iv) of Section 8.1(b) of the Act;

Petitioner's future earnings were not diminished in any way by this injury. Therefore, the Arbitrator assigns no weight to this factor.

With regard to (v) of Section 8.1(b) of the Act;

Petitioner has demonstrated evidence of his disability which is corroborated by the medical records. Petitioner testified that he continues to experience pain and loss of range of motion today. This is consistent with the medical record. He testified that when his knee is painful, he uses ice and takes muscle relaxers.

Petitioner was diagnosed with patellar instability of the right knee, a complete tear of patellofemoral ligament, tendinosis, a failed MPFL allograft, patellar dislocation, and patella subluxation. He underwent four surgical procedures for these injuries which included: an MPFL reconstruction with allograft, a right knee revision and medial patella femoral ligament reconstruction, an osteotomy, MPFL revision, and an arthroscopy, and a right knee arthroscopy with osteochondral allograft, and knee patella Cartiform implantation. Dr. Adler testified that the surgeries caused permanent structural changes to Petitioner's right knee. Respondent's section 12 witness Dr. Zoellick more or less agrees.

Dr. Adler released Petitioner with permanent restrictions of no kneeling, no squatting, no use of a ladder, and no lifting greater than 50 lbs. Dr. Adler also testified that it was his opinion that Petitioner was not going to be able to return to his occupation of repetitive physical labor.

Dr. Zoellick agreed that Petitioner will require permanent restrictions and agreed that the petitioner would not return to his pre-accident employment as a laborer. Petitioner testified that if he was not given permanent restrictions, he would have returned to his prior profession of working as a laborer. (T.69). He did suffer a loss of his occupation as a result of this accident because he lost the ability to work in his usual and customary trade. See Hubl v. IL Workers' Compensation Commission, 1-12-3051WC, in which that petitioner was awarded 50% Man as a Whole for an injury to his left forearm. The Arbitrator assigns significant weight to this factor.

The determination of an appropriate award of permanent partial disability under the Act utilizes all five factors as stated above and no single factor is the sole determinant in this analysis. Moreover, under Section 19(c) of the Act, prior Commission decisions may be used as precedent in determining awards for permanent partial disability. Accordingly, the Arbitrator has considered all five factors enumerated above and awards the petitioner the sum of $57,636.00 representing $256.16 per week for a period of 225 weeks, as provided in paragraph (e) of Section

8 of the Act, because the injury sustained caused serious and permanent injuries resulting in 55% loss of use of the person as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC013387
Case Name	Marian Lampkin v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0044
Number of Pages of Decision	24
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Adam Scholl
Respondent Attorney	Barrett Long, Daniela Roehm

DATE FILED: 1/25/2023

/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

MARIAN LAMPKIN,

Petitioner,

vs. NO: 18 WC 13387

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 accident, causal connection, temporary total disability, permanent partial disability, and whether the medical treatment was reasonably necessary, 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.[1]

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 16, 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.

[1] The Arbitrator opined that Petitioner's assailant violated several criminal statutes – findings which were not submitted into evidence at arbitration. The Commission cannot make any legal conclusions as to whether any criminal laws were violated. The Commission finds that Petitioner's testimony as to the accident and her resulting emotional state along with the medical records is sufficient evidence under the Act to support affirming and adopting the Arbitrator's decision.

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.

January 25, 2023

CAH/tdm
O: 1/19/23
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	18WC013387
Case Name	LAMPKIN, MARIAN v. CHICAGO TRANSIT AUTHORITY
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Adam Scholl
Respondent Attorney	Barrett Long

DATE FILED: 5/16/2022

/s/ Joseph Amarilio, Arbitrator

Signature

INTEREST RATE WEEK OF MAY 10, 2022 1.38%

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

MARION LAMPKIN
Employee/Petitioner

v.

CHICAGO TRANSIT AUTHORITY
Employer/Respondent

Case # **18** WC **13387**

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 **Joseph Amarilio**, Arbitrator of the Commission, in the city of **Chicago**, on **2/22/2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **4/19/18**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**1,324.93**; the average weekly wage was $**68,896.36**.

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*** 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 $**354.62** for other benefits, for a total credit of $**354.62**

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

ORDER

TEMPORARY TOTAL DISABILITY: RESPONDENT SHALL PAY PETITIONER TEMPORARY TOTAL DISABILITY BENEFITS OF $883.29/WEEK FOR 5 WEEKS, COMMENCING 4/20/18 THROUGH 5/8/18 AND 5/22/18 THROUGH 6/6/18, AS PROVIDED IN SECTION 8(B) OF THE ACT.

PERMANENT PARTIAL DISABILITY: RESPONDENT SHALL PAY PETITIONER PERMANENT PARTIAL DISABILITY BENEFITS OF $790.64/WEEK FOR 25 WEEKS, BECAUSE THE INJURIES SUSTAINED CAUSED A 5% LOSS OF THE PERSON AS A WHOLE, AS PROVIDED IN SECTION 8(D)2 OF THE ACT.

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

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

/s/ *Joseph D. Amarilio*

Signature of Arbitrator Joseph D. Amarilio

May 16, 2022

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MARION LAMPKIN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. **18 WC 013387**
	)	
CHICAGO TRANSIT AUTHORITY,	)	
	)	
Respondent.	)	

ATTACHMENT TO DECISION OF ARBITRATOR

I. Procedural History

Ms. Marion Lampkin (Petitioner) filed an Application for Adjustment of benefits under the Illinois Workers' Compensation Act for an injury sustained while working as a bus operator for the Chicago Transit Authority (Respondent). Petitioner claims that she sustained a psychological injury as a consequence of an assault by a passenger.

Prior to the 19(b) hearing, counsel for both parties completed a two-sided Request for Hearing form which was marked as Arbitrator Exhibit 1 (Arb X l) and admitted into evidence. The parties stipulated that 1) Petitioner and Respondent had an employee and employer relationship on April 19, 2018; 2) Petitioner sustained an accidental injury that arose out of the course of employment on April 19, 20218; 3) notice was timely provided; 4) the average weekly wage was $1,324.93; 5) Petitioner was 50 years old, single and had zero dependents; and 6) Respondent was not liable for unpaid medical bills.

The Respondent disputed that 1.) Petitioner's current condition of ill-being is causally connected to the claimed injury; 2.) liability for temporary total disability claimed (TTD) claimed; and 3,) the nature and extent of the injury. (Arb. Ex.1)

II. A Preliminary Matter

As a preliminary matter, the Arbitrator must address the issue of accident. It appears that Respondent disputes accident. The dispute is the foundation of its defense and yet it stipulated to accident. Respondent was bound by its stipulation to accident and Petitioner was entitled to rely on this stipulation in presenting her evidence. In drawing this conclusion, the Arbitrator relies on §9030.40 of the Rules Governing Practice Before The Illinois Workers' Compensation Commission which provides in pertinent part : "Before a case proceeds to trial on Arbitration, the parties (or their counsel) shall complete and sign a from provided by the Workers' Compensation Commission called Request For Hearing….The completed Request for Hearing form, signed by the parties (or counsel), shall be filed with the Arbitrator as the stipulation of the parties and a settlement of the questions in dispute in the case. " See also, § 7030.40 Section 7030.40 of Title 50 of the Illinois Administrative Code. As the Appellate Court noted in *Walker v. Industrial Commission*, 345 Ill.App.3d 1084, 1088, (41h Dist. 2004), the language of this section "indicates that the request for hearing is binding on the parties as to the claims made therein".

Stipulations are an integral part of practice at the Illinois Workers' Compensation Commission. Given the number of cases heard each year, and the statutory requirement of "simple and summary" proceedings, litigants and arbitrators need to be able to rely on the Request for Hearing form as an accurate representation of the issues at hand. The Arbitrator, therefore, finds that Respondent is bound by its stipulation to accident. The Arbitrator further finds that, regardless of the effect of the stipulation, the evidence as a whole supports the conclusion that the assault of April 19, 201 arose out of and in the course of Petitioner's employment.

III. FINDING OF FACT AND CONCLUSIONS OF LAW

Finding of Facts:

Petitioner was employed as full-time bus operator with Respondent on April 19, 2018. (T.9) She had worked as a bus operator for 11 years prior to that date. (T.9) On April 19, 2018, she was driving the 80 Irving Park route. The seat of her bus was equipped with a plexiglass shield that extended from the floor upward to a foot and half short of the ceiling of the bus. (T.11) The shield's width went from the back of her seat to the fare box. (T.11-12) There is a gap between the fare box and the windshield. (T.12) Petitioner testified that is it feasible for any individual to reach around the shield through the gap between the farebox and windshield. (T.12)

Petitioner testified that on the date of her accidental injury, a passenger was trying to get on the bus as the doors were closing. (T.12) The passenger got hit by the doors of the bus. (T.13) When he got on the bus, he directed all kinds of profane language including racial epithets towards Petitioner. (T.13-14) Petitioner testified that he appeared inebriated. (T.13) The passenger refused to pay his bus fare despite the fact that he was requested twice by Petitioner. (T.13) He responded with continued profane language towards Petitioner. (T.14) Pursuant to company policy, after asking twice, she required to continue in service which Petitioner did. (T.14,15)

As she drove the bus, the passenger stood by the wheel hub of the bus which was behind Petitioner approximately two feet. (T.15) Petitioner could not see him directly where he was standing but was able to see him through her mirror. (T.15) While he stood by the wheel hub, he continued to act belligerent and repeat his profane language. (T.16) Petitioner stated that the passenger's language was threatening to her, and it made her very nervous. This all occurred while she drove the bus. (T.16)

When Petitioner reached the next stop, some passengers got off the bus. (T.16) Petitioner stated that she asked the unruly passenger to get off as well and he refused. (T.17) At that point she called Control or her dispatch because she saw that he was becoming more irate and moving even closer to her. (T.17) Petitioner told Control that she had a disturbing passenger on the bus and had them request the police. (T.17-18)

Petitioner testified that the passenger came right up to the fare box, and she noticed that he had a black shiny object in his hand. (T.18) The passenger then reached around the shield with his hand holding the object. The Petitioner believed that the object in his hand was a gun. (T.18) Acting on instinct, she snatched the object from the perpetrator's hand and threw it out the driver's side window to her left. (T.18) After throwing the object out the window, Petitioner testified that she did not know immediately what the object was that she tossed. (T.19) The perpetrator then ran off the bus to retrieve the object and, in the process, he left his bag by the door. (T.19) Petitioner then closed the door of the bus, but it could not close all the way due to the bag left by the passenger. (T.19)

Petitioner stated that she subsequently became aware that the object was a cell phone after the perpetrator was screaming from the street at her. (T.20) Petitioner testified that at about that time, she saw the blue lights of the police car approaching. (T.20) The police subsequently apprehended the perpetrator. The police had Petitioner identify the perpetrator so that they could make an arrest. (T.21)

Petitioner stated that she was very shook up and nervous and her hands were shaking immediately following the incident. (T.22) A supervisor came to the scene and picked her up and took her back to the garage. (T.22) Petitioner filled out an accident report and was required to provide a urine sample and perform a breathalyzer. (T.22)

Petitioner went home afterward. (T.23) She testified that felt very shaken and nervous, jumpy and easily startled. (T.23) The following day, Petitioner was seen by the Concentra Occupational Health Clinic at the direction of Respondent. (T.23,24) Petitioner was seen by Jeanette Marinier, PA-C at Concentra. A history was taken which essentially mirrors Petitioner's testimony of the incident. (PX1, p.10) Petitioner reported that since the incident she had been crying, feeling afraid to leave her home, and in fear of her life. (Id.) She further reported issues with sleeping and eating. (Id.) It was Ms. Marinier's assessment that Petitioner had an acute stress reaction and she referred her for a psychiatric consultation. (Id. at 9) Ms. Marinier further indicated that Petitioner should be off of work. (Id.) Respondent did not authorize the psychiatric consolation. Petitioner testified that she tried to seek counseling after the Concentra visit but could not because she would have to pay out of pocket and could not afford it. Petitioner received $354.62 in nonoccupational indemnity benefits (T.25,26, Arb. X 1, p. 2)

Petitioner then sought medical care with her personal physician, Dr. Cory Chen on April 23, 2018. (T.26) Petitioner presented a history of being assaulted by a passenger and reported symptoms of confusion, decreased concentration, depressed mood, excessive worry, hyperventilation, insomnia, irritability, malaise, nervous/anxious behavior, obsessions, palpitations, panic, and restlessness. (PX4, p.8) Dr. Chen diagnosed Petitioner with severe anxiety and PTSD. (Id. at 9) Dr. Chen recommended that Petitioner be seen by a psychologist and a psychiatrist. (Id. at 7)

Petitioner returned to Dr. Chen on May 7, 2019. Petitioner continued to report similar symptoms as her previous visit. (Id. at 17) The symptoms were described as incapacitating. (Id.) Dr. Chen prescribed Lorazepam for her symptoms. (Id.) Dr. Chen also permitted Petitioner to

return to work with the limitation of not driving a bus. (T.28) Petitioner testified that she returned back to work for Respondent in a light duty position passing out pamphlets. (T.28)

Petitioner was next seen by Dr. Chen on May 23, 2018. Petitioner reported the same symptoms but described them as moderate in nature. (PX4, p. 31) Dr. Chen continued her on the Lorazepam. (Id.) Petitioner testified that she made a request to Dr. Chen to be released back to work because Respondent did not have any further light duty for her and she needed income to survive. (T.29, 30) Petitioner attempted to return to work, but Respondent would not allow her because of the Lorazepam medication. (T.30)

On May 26, 2018, Petitioner sought psychological counseling with Lori Andrews, M.S., LCPC. (T.31) Ms. Andrews's handwritten notes reflect that Petitioner reported issues with anger tearfulness, frustration, depressed and anxious, (PX2, p.12) Ms. Andrews provided counseling to help her with these issues. (T.31)

At Petitioner's third visit on June 4, 2019 with Ms. Andrews, she requested that she be released back to work because she was not receiving any income. (T.31) Ms. Andrews wrote a note to Dr Chen on a fax page indicating Petitioner's desire to return to work due to financial issues. (PX2, p.5) Ms. Andrews recommended that Petitioner should continue with counseling. (Id.)

Petitioner was seen by Dr. Chen the same day on June 4, 2019. Petitioner reported the same symptoms to Dr. Chen that she previously reported, mild in nature. (PX4, p. 40) Her diagnoses remained at post-traumatic stress disorder and anxiety. (Id. at 41) Petitioner asked Dr. Chen to take her off the Lorazepam so that she could return to work. (T. 32) Petitioner returned to work on June 7, 2018.

Respondent alleged that Petitioner received $354.00 in nonoccupational disabilty benefits for the 5 week time period in which she was authorized off work. (Arb.Ex. 1)

After her return to work, she felt very nervous and jumpy whenever someone was behind her and close to her. (T.33)

Petitioner had one last visit with Ms. Andrews on June 11, 2018. She stopped going to see Ms. Andrews, thereafter because she could not miss work to attend her appointments and could not afford the bills. (T.34)

Petitioner testified that as of the date of hearing that she still experiences nervousness, sleep issues, and troubles with people being close to her. (T.35) She does not go out anymore or want to be near crowds. (T.35) She feels that she is always watching over her shoulder. (T.35) She stated that she did not have these issues before the incident. (T.35)

On cross-examination, Petitioner restated several times that she did not know what the object the passenger was holding at the time she was threatened and when she grabbed it from him. She did not know until later it was a cell phone. (T.38) It was her belief that it might be a weapon. (T.40, 43, 44) The testimony was as follows:

Q. So when he was holding the object, that
object was in arm's reach of you?
A. Yes.
Q. When you grabbed the object, you testified
that you couldn't tell what it was; is that correct?
A. No.
Q. When you grabbed the object, what did it
feel like?
A. I just -- It happened so quickly, I didn't
even realize what it was. I just took it and threw
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it. It was just a reaction.

Q. Did it feel heavy, light, medium?
A. I don't recall.
Q. What was your belief was occurring when the passenger reached around the shield with this object?
A. That he was going to shoot me.

(Tr 36-37)

Petitioner's manager prepared a report the same day and she signed the document. *Respondent's Exhibit 1.* That document states in relevant part , "…OPERATOR STATED UNIDENTIED INTOCICATED MALE… HE REACHED AROUND SHIELD, WITH WHAT SHE THOUGHT WAS A WEAPON, OPERATOR GRABBED IT, THROWING IT OUT THE FRONT DOOR OF BUS, LATER DETERMINED WAS PASSENGER CELLPHONE, ATTEMPTING TO TAKE PICTURE." The perpetrator caused an 85 minute delay in service. The report goes on to note that the Chicago police officer stated that the criminal conduct of the perpetrator was "elevated to a hate crime due to the racial slurs used toward the operator."

On cross examination regarding the report, Petitioner acknowledged signing the report and did not agree with the that the perpetrator attempted to take a picture.

Q. Does this summary accurately describe what you relayed to your manager?
A. I didn't know if he was going to take -- I didn't know nothing about a picture because I thought it was a gun.
Q. So you don't believe that accurately describes what you told your manager?
A. Correct.
Q. Why did you sign the document if you didn't believe it accurately described the incident?
A. Because she told me I had to sign my interview record.
Q. Did you read the document before you signed it?
A. Yes.
Q. So you signed the document even though you
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disagreed with it?
A. I disagreed with the picture part because I told her that. How can I say it was a picture if I thought it was a gun?

(Tr. 38-39)

The report further notes that Petitioner was found not to be in violation of CTA Rules and Procedures or falsification of any written of verbal statement. The Petitioner returned on April 20, 2018 claiming mental and emotional stress and requested to go on injured on duty. She was referred to Concentra Health on Saturday, April 21, 2018 at 9:00. (RX 1) However, the Report is incorrect in that the Petitioner was seen at Concentra on April 20, 2018. (PX 1) The manager recording that the perpetrator reached around the shield to take Petitioner's picture makes no sense. If the Perpetrator in fact wanted to take a photograph, he could do so without reaching around the shield. Had he not done so, Petitioner would not have been able to throw the phone out of the bus. The Arbitrator concludes. that more likely than not, Petitioner did not state that the perpetrator was attempting to take her picture. It also reasonable to infer that the Chicago Police officers who arrested and charged the perpetrator did not do so if he was simply attempting to take a picture. The manager could well have recorded it error. Petitioner was still in a very agitated state when she gave a history of what occurred and was not of the best mind to carefully consider what was recorded when she signed the report.

IV. 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 Petitioner 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 the employment and the injury. *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill. 2d 52, 63 (1989). And, yet it also 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. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954). The Act is a remedial statute which should be liberally construed to provide financial protection for injured workers. *McAllister v. IWCC*, 2020 IL 124848 ¶ 32. The main purpose of the Act is to provide protection for injured workers. *Cassens Transport Co. v. Industrial Comm'n,* 218 Ill.2d 519, 524, (2006).The Act's provisions are to be read in harmony to achieve that goal. *Vaught v. Industrial Commission,* 52 Ill.2d 158, 165 (1972). Workers are entitled to "prompt, sure, and definite compensation, together with a quick and efficient remedy" with industry bearing the "costs of such injuries" rather than the injured worker. *O'Brien v. Rautenbush*, 10 Ill.2d 167, 174 (1956). Decisions of an Arbitrator shall be based exclusively on stipulation of the parties, the evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

In this matter, the parties have stipulated that the Petitioner did sustain an accidental injury arising out of and the course of employment. Wherefore, the only questions that need to be addressed by this decision are whether Petitioner's current state of ill-being is related to the stipulated accident, whether Respondent is liable to pay temporary total disability benefits for the

period of time stipulated by the parties, and whether Petitioner is entitled to an award for partial permanent disability benefits.

The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47 The Arbitrator viewed Petitioner's demeanor under direct examination and under cross-examination. The Arbitrator considered the testimony of Petitioner with the other evidence in the record. Petitioner's testimony is found to be credible. Petitioner does appear to be an unsophisticated individual and any inconsistencies in her testimony are not attributed to an attempt to deceive the finder of fact.

WITH REGARD TO ISSUE (F), WHETHER PETITIONER'S CURRENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR RENDERS THE FOLLOWING FINDINGS:

"In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim." R & D Thiel v. Illinois Workers' Compensation Comm'n, 398 Ill. App. 3d 858, 867 (2010). "'[A] preexisting condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment.'" *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, (2011), quoting *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36, (1982). Further, "[e]very natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability

or injury." *Vogel v. Ill. Workers' Comp. Comm'n*, 354 Ill. App. 3d 780 (2005). "That other incident, whether work-related or not, may have aggravated the claimant's condition is irrelevant." *Vogel,* 354 Ill. App. 3d at 786.

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 condition which made her more vulnerable to injury, recovery for an accidental injury will not be denied as long as she can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if 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 (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 (1982).

No evidence was introduced that Petitioner missed time off work because of a preexisting condition. No evidence was introduced that she requested any accommodation because of her prior condition of ill-being related to her being a victim to prior assaults or due to her prior mental health issues.

Petitioner worked for some time before her accident at issue. Following her work injury, Petitioner could no longer work as a bus driver and was taken off work and restricted work by the company clinic, her primary care physician and health care professional. She was prescribed with medication that prohibited operating a bus. There was no evidence presented of intervening or subsequent injuries that could explain Petitioner's current condition. Petitioner need not prove

what is the sole or proximate cause of his injuries, just that the work accident was a proximate cause of his injuries. Petitioner has met her burden for the reasons previously stated.

When the Respondent stipulated to accident, it agreed that Petitioner's psychological injury claim arose out of and in the course of her employment. In *Pathfinder* the Illinois Supreme Court held that a psychological injury in the absence of any physical trauma to the Petitioner arose out of and in the course of employment where the claimant suffered a "gruesome" experience and authorized recovery for a "mental-mental" injury, when the claimant suffers a "sudden, severe emotional shock, traceable to a definite time, place and cause which causes psychological injury or harm." *Pathfinder v. Industrial Commission*, 62 Ill. 2d 556, 563 (1976)

Respondent viewed the assault as a non-serious offense and, thus, one that could not cause a psychologic injury or PTSD. The Illinois legislators disagree. The law views an assault on a transit worker to be serious offense. Under Illinois law, Petitioner was the victim of an aggravated assault; a Class 4 felony. The Illinois (720 ILCS 5/12-2 Sec. 12-2. (b) (8) - Aggravated assault - applies to municipal transit workers performing their duties. The perpetrator in this case committed a Class 4 felony. The Arbitrator is mindful of the applicable criminal law and views this assault as intended by the Illinois legislators to be a serious crime, a felony. The Illinois appellate court held that words alone are not usually enough to constitute an assault. Some action or condition must accompany those words before there is a violation of the statute." *People v. Floyd*, 278 Ill. App. 3d 568, 570-571(1996) In *People v. Ward*, 302 Ill. App. 3d 550, 561 (1998) the defendant sprang off a couch with his arms back "as if 'ready to strike' was found to be a violation of the statute. When the perpetrator reached toward the Petitioner and reached behind the protective shield with a black object in hand while screaming threating, hostile and hostile vulgar words, the perpetrator violated the statute, and the Petitioner became a victim of an

aggravated assault. We do not have the benefit of video surveillance, a standard procedure on CTA buses. Petitioner did not have the benefit of instant replay to determine what was in hand. But she did learn shortly thereafter. Additionally, the Arbitrator notes that Petitioner was the victim of a hate crime. A hate crime is a felony. (720 ILCS 5/12-7.1)

In Illinois psychological injuries are compensable under one of two theories, either physical-mental, when the injuries are related to and caused by a physical trauma or injury, or mental-mental, when the injuries are caused by sudden severe emotional shock traceable to a definite time and place and cause even though no physical trauma or injury was sustained. Recovery for non-traumatically induced mental disability is limited to those employees who can establish that: (1) the mental disorder arose in a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience; (2) the conditions exist in reality, from an objective standpoint; and (3) the employment conditions, when compared with the nonemployment conditions, were the major contributing cause of mental disorder. Mental disorders which develop over time in the normal course of the employment relationship do not constitute compensable injuries. On the other hand, in dealing with the physical-mental category, even a minor physical contact or injury may be sufficient to trigger compensability. *Matlock v. Indus. Comm'n,* 321 Ill. App. 3d 167, 172 (2001)

In this instance, the Arbitrator concludes that Petitioner being the victim of a Class 4 felony and being the victim of a felony hate crime meets that requirement of Matlock on the issue of causation of her psychological injury to the stipulated accident. Even, if Respondent disputed accident, the Arbitrator would find in favor of the Petitioner on the issue accident.

In considering the testimony of the Petitioner and the medical records, it is clear that the Petitioner had a psychological response from her altercation and the assault committed by the

passenger on April 19, 2018. The records of Concentra, the company clinic, reflect that the day after the incident, Petitioner was nervous, anxious, weepy, and fearful. (PX1, p. 10) The company physician at the Concentra Occupational Clinic diagnosed her with an acute stress reaction. (Id. at 9) The company clinic and the Petitioner's treating physicians both opined that Petitioner would benefit from a psychiatric consult which Respondent refused to provide.

Petitioner had follow-up care with her primary physician, Dr. Cory Chen between April 23, 2018 through June 4, 2018. In that course of time, she exhibited similar symptoms and was treated with Lorazepam which is prescribed for anxiety, sleep disorder, and severe agitation. (PX4)

Petitioner also received limited counseling from a psychologist, Lori Andrews, M.S, LCPC. Ms. Andrews in her summary report indicated that Petitioner initially presented with PTSD, acute anxiety, depression, flashbacks, fear of going to work, impaired focus and concentration, difficulty with relaxing and sleeping, and appetite issues. (PX3) She also expressed anger towards Respondent as she did not feel they took the proper measures to protect its drivers. (Id.)

Petitioner testified that she discontinued her treatment due to the fact that she needed to return to work because she was not receiving an income from Respondent. She additionally testified that she could not personally afford the costs for further psychological care. (T.34) the amount she received in short term disability was a mere fraction of her weekly wages .

Petitioner credibly testified that she still has residual issues from the assault which included nervousness, anxiousness, and fear around people. Had she had the benefit of additional psychological care, her condition may have been made better. She was not afforded the chance.

Considering the testimony of the Petitioner and the medical records submitted, the Arbitrator finds that Petitioner's present condition of ill-being is causally connected to the incident on the bus that occurred on April 19, 2018. Causation in this matter is supported by a chain of

events analysis. Petitioner testified that she never had similar symptoms prior to that date. (T.35) The Arbitrator takes note that the medical summary of Lori Andrews mentioned that the incident of April 19, 2018 was not the first dangerous experience Petitioner has had working, however there was no evidence presented by either party that reflects that she had symptoms of PTSD, anxious, nervousness, fearfulness, or anger prior to the date of injury. Following the incident, it is clear from the medical records of Dr. Chen and Lori Andrews that she had an immediate psychological response reaction that has left her with residual psychological issues to this day. No evidence exists within the record that shows any break in the chain. Therefore, the Arbitrator concludes that Petitioner has satisfied her burden of proving, by a preponderance of the evidence, that her current condition of ill-being is causally connected to her work accident of April 19,2022.

WITH REGARD TO ISSUE (K), WHETHER PETITIONER IS ENTITLED TO TEMPORARY TOTAL DISABILITY BENEFITS, THE ARBITRATOR RENDERS THE FOLLOWING FINDINGS:

Respondent agrees with the time periods claimed that Petitioner claims to be off of work that being from April 20, 2018 through May 8, 2018 and from May 22, 2018 through June 6, 2018. Respondent dispute on the issue of TTD is based on liability. Given that Respondent stipulated that Petitioner incurred a work injury that arose out of and in the course of employment and that a causal relationship was found as stated in the foregoing, the Arbitrator finds that Respondent is liable to pay temporary total disability benefits and awards Petitioner temporary total disability benefits equal to 5 weeks at the rate of $883.29 or $4,416.45.

WITH REGARD TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR RENDERS THE FOLLOWING FINDINGS:

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that an impairment rate was not submitted into evidence. Consequently, the Arbitrator give no weight to this fact.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes Petitioner worked as a bus operator and continues to work in that capacity dealing with passengers every day. The Arbitrator therefore gives some 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 her age and the residual issues stemming from her work injury, 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 that Petitioner was able to return to work as a bus operator. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that petitioner credibly testified that she still experiences issues of anxiousness and nervousness, especially around other people which has changed her behavior and the desire to be around others. Her testimony is corroborated by the medical records. The Arbitrator is mindful that treatment was limited but also mindful that it was limited due to Respondent's failure to authorize treatment. Mindful that the recommendations of two medical providers that Petitioner receive a psychiatric consult did not occur due to a lack of authorization. Benefits denied became benefits deprived. Hence, the Arbitrator gives greater weight to this factor.

Based on the above factors, and the record taken as a whole as well as Commission precedent, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 5% loss of use of her person as a whole. Respondent shall pay to Petitioner 25 weeks of permanent partial disability benefits at the PPD rate of $794.96 per week pursuant to Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC033337
Case Name	Scott Grant v. Village of Rosemont
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0045
Number of Pages of Decision	19
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Michael Youkhana
Respondent Attorney	Robert Smith, Anthony J. Casale

DATE FILED: 1/25/2023

/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: Maintenance, Benefit rate, Average weekly wage, TTD	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SCOTT GRANT,

Petitioner,

vs. NO: 18 WC 33337

VILLAGE OF ROSEMONT,

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 Respondent's motion to dismiss the Petition for Review filed by Petitioner, waiver, temporary total disability, average weekly wage, benefit rate, maintenance rate, maintenance duration, and Respondent's TTD credit, and being advised of the facts of law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof.

I. Respondent's Motion to Dismiss, Jurisdiction, and Waiver

Following the Arbitrator's initial Decision, Petitioner filed a Petition for Review (PFR). Respondent filed a timely Motion to Correct Clerical Error pursuant to Section 19(f). Thereafter, the Arbitrator issued a Corrected Decision. Respondent then filed its PFR from the Corrected Decision. Petitioner failed to file a new PFR following the issuance of the Corrected Decision. Accordingly, Respondent filed a Motion to Dismiss Petitioner's Petition for Review asserting it was no longer a valid PFR following the issuance of the Corrected Decision and that the issues raised by Petitioner on the PFR were not properly before the Commission. Respondent argued that the only issues pending before the Commission were those raised on the Respondent's PFR filed after the issuance of the Corrected Arbitration Decision. Petitioner did not respond to Respondent's motion.

Section 19(f) of the Act provides that when a corrected decision is issued, a party seeking review must file a petition within the times specified by the Act after receipt of the corrected decision. 820 ILCS 305/19(f) (West 2022); *PPG Industries, Inc. v. Industrial Comm'n*, 91 Ill. 2d 438, 443 (1982). In this case, Petitioner's PFR of the original decision was without effect because the issuance of the corrected decision made the original decision a nullity. See *Garcia v. Industrial Comm'n*, 95 Ill. 2d 467, 469 (1983). Accordingly, the Commission grants Respondent's motion and dismisses Petitioner's PFR as premature and not in accordance with the Act. See *PPG Industries, Inc*., 91 Ill. 2d at 441, 444.

II. Maintenance Duration

In the Corrected Decision, the Arbitrator ordered Respondent to pay maintenance benefits from May 5, 2021, through July 31, 2021, and from August 3, 2021, through August 24, 2021. The Commission affirms the ruling of the Arbitrator because Petitioner sustained a work-related injury which caused a reduction in his earning power and Petitioner was entitled to maintenance while conducting a job search to restore that earning power. See *Greaney v. Industrial Comm'n*, 358 Ill. App. 3d 1002, 1019 (2005). The Commission also corrects a clerical error in the Corrected Decision to specify the maintenance period is 15 and 5/7ths weeks.

III. Maintenance Rate / Average Weekly Wage

In the original Decision, the Arbitrator ordered Respondent to pay Petitioner maintenance benefits at the rate of $871.16 per week, based on an average weekly wage of $1,306.09. However, in the body of the original Decision, the Arbitrator calculated that Respondent should pay Petitioner maintenance benefits at the rate of $258.01 per week, based on an average weekly wage of $387.02. Respondent sought to correct this clerical error via the 19(f) motion such that the order paragraphs mirrored the findings in the body of the original decision. Nonetheless, the error was not corrected and was further compounded as the Arbitrator issued a Corrected Decision, which found an average weekly wage of $387.02 but continued to order Respondent to pay Petitioner maintenance benefits at the rate of $871.16 per week.

Respondent did not seek a second 19(f) correction but rather filed a PFR to the Commission. Respondent raised the issues of temporary total disability extent, benefit rate, maintenance rate, maintenance duration, and Respondent's TTD credit in its PFR.

On review, Respondent argues that the Arbitrator correctly computed an average weekly wage of $387.02 and seeks to limit its request on review to that of maintenance benefit *rate* based on the average weekly wage of $387.02. Respondent asserts that the resulting benefit rate is the statutory minimum maintenance rate of $286.00 for two dependents. In so doing, Respondent asserts that Petitioner has waived any objection to the Arbitrator's calculation of the average weekly wage by failing to file a PFR from the Corrected Decision. Accordingly, Respondent asserts that the Commission is divested of jurisdiction to review Petitioner's average weekly wage and any calculation thereof.

The Commission disagrees. The Act grants the Commission jurisdiction over issues including the average weekly wage even when they are not specified in a PFR. See 820 ILCS

305/19(b) (West 2022). Of course, the fact that the Commission has *jurisdiction* to raise questions that are unraised in the PFR does not mean that the Commission has a *duty* to do so. See *Du Quoin Home Lumber v. Illinois Workers' Compensation Comm'n*, 2019 IL App (5th) 180541WC-U, ¶ 107 (and cases cited therein).[1] Rather, the decision to invoke the waiver doctrine falls within the discretion of the Commission. See *Jetson Midwest Maintenance v. Industrial Comm'n*, 296 Ill. App. 3d 314, 316-17 (1998). The Commission, in furtherance of its responsibility to provide a just result, may override considerations of waiver. *Klein Construction/Illinois Insurance Guaranty Fund v. Illinois Workers' Compensation Comm'n*, 384 Ill. App. 3d 233, 238 (2008). In this case, the Commission is confronted with an inconsistency between the average weekly wage and the maintenance rate which remained after the Arbitrator filed a Corrected Decision. The Commission is thus unable to determine the proper maintenance rate/award without also addressing the issue of average weekly wage in this specific instance. Accordingly, the Commission exercises its jurisdiction and discretion to review the calculation of Petitioner's average weekly wage to determine the proper maintenance benefit rate.

As our supreme court has noted, section 10 of the Act provides four different methods for calculating the average weekly wage:

> "(1) By default, average weekly wage is 'actual earnings' during the 52-week period preceding the date of injury, illness or disablement, divided by 52. (2) If the employee lost five or more calendar days during that 52-week period, 'whether or not in the same week,' then the employee's earnings are divided not by 52, but by 'the number of weeks and parts thereof remaining after the time so lost has been deducted.' (3) If the employee's employment began during the 52-week period, the earnings during employment are divided by 'the number of weeks and parts thereof during which the employee actually earned wages.' (4) Finally, if the employment has been of such short duration or the terms of the employment of such casual nature that it is 'impractical' to use one of the three above methods to calculate average weekly wage, 'regard shall be had to the average weekly amount which during the 52 weeks previous to the injury, illness or disablement was being or would have been earned by a person in the same grade employed at the same work for each of such 52 weeks for the same number of hours per week by the same employer.'" *Sylvester v. Industrial Comm'n*, 197 Ill. 2d 225, 230-31 (2001).

The Arbitrator found that in 52 weeks prior to the accident, Petitioner's earnings from Respondent were $20,125.00 (a figure implicitly accepted by Respondent in arguing that the Arbitrator correctly calculated the average weekly wage, and which Petitioner did not dispute in

[1] The Commission is aware that *Du Quoin Home Lumber* is an unpublished decision issued prior to January 1, 2021, and thus may not be cited as persuasive authority under Illinois Supreme Court Rule 23(e)(1). See Ill. S. Ct. R. 23(e)(1) (eff. Jan. 1, 2021). Nevertheless, *Du Quoin Home Lumber* relies on published precedents that the Commission finds applicable here. The Commission cites *Du Quoin Home Lumber* merely to avoid replicating the work of the appellate court without attribution.

his Statement of Exceptions to the original Decision).[2] The Arbitrator then calculated an average weekly wage of $387.02 based on the default method of calculation specified by section 10 of the Act $20,125.00/52= $387.02 (Corrected Decision, pp. 9-10). The maintenance benefit shall not be less than the temporary total disability rate determined for the employee. 820 ILCS 305/8(a) (West 2022). The Arbitrator's calculated maintenance rate of $258.01 per week in the body of the Corrected Decision, using an average weekly wage of $387.20, results in a maintenance rate that falls short of the minimum rate of $286.00 per week for a married claimant with a child, as Respondent recognizes and asserts is the rate to be used by the Commission.

The Commission finds that given the nature of the special events work, Petitioner's average weekly wage is to be calculated in accordance with the second method of calculation specified in section 10 of the Act, as elaborated by the Illinois Supreme Court in *Sylvester*. Based on the wage statement in Respondent's Exhibit 4, Petitioner worked 66 days in the 52 weeks prior to his accident and worked at least once on each of the days of the week, proving that he was available to work 7 days per week. Dividing the number of days worked (66) by the number of days he was available (7 days per week) results in 9.43 weeks of work. Dividing Petitioner's $20,125.00 in annual earnings from Respondent by 9.43 weeks results in an average weekly wage of $2,135.15 and a maintenance rate of $1,423.43 per week. Therefore, the Commission modifies the Corrected Decision to find an average weekly wage of $2,135.15 and a maintenance rate of $1,423.43 per week.

IV. TTD extent / TTD Credit

The Corrected Decision does not order Respondent to pay temporary total disability (TTD) benefits or reflect a credit for TTD already paid. In the Request for Hearing, the parties stipulated that Petitioner was entitled to TTD benefits for the period from October 29, 2018, through May 14, 2021, a period of 132 and 5/7ths weeks, and that Respondent paid $115,615.37 in TTD.

Respondent asserts that Petitioner's TTD period ended on March 15, 2021, when Petitioner's restrictions were initially imposed. However, Petitioner was not found to have reached maximum medical improvement until May 14, 2021. Moreover, Respondent is bound by its stipulation to May 14, 2021, as the end of the TTD period. *Walker v. Industrial Comm'n*, 345 Ill. App. 3d 1084, 1088 (2004).

Respondent also argues that it is entitled to a credit for TTD already paid. As noted above, the parties stipulated to such a credit. Accordingly, the Commission modifies the Corrected Decision to award the stipulated TTD benefits at a benefit rate of $1,423.43 per week, and the stipulated $115,615.37 credit for TTD already paid.

In all other respects, the Commission affirms and adopts the Corrected Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent's Motion to

[2] The parties do not contest the Arbitrator's exclusions of overtime pay and non-union earnings from this calculation.

Dismiss Petitioner's petition for review of the Original Decision is granted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Corrected Decision of the Arbitrator dated August 16, 2022, is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner's average weekly wage for this claim is $2,135.15.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,423.43 per week commencing from October 29, 2018, through May 14, 2021, a period of 132 and 5/7ths weeks, that being the period of temporary total incapacity for work under section 8(b) of the Act. Respondent is entitled to a $115,615.37 credit for temporary total disability benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner maintenance benefits of $1,423.43 per week for 15 and 5/7ths weeks, representing the period from May 5, 2021, through July 31, 2021, and from August 3, 2021, through August 24, 2021, as provided in Section 8(a) of the Act.

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

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

No county, city, town, township, incorporated village, school district, body politic or municipal corporation is required to file a bond to secure the payment of the award and the costs of the proceedings in the court to authorize the court to issue such summons. 820 ILCS 305/19(f)(2). Based upon the named Respondent herein, 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.

January 25, 2023
o: 1/19/23
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	18WC033337
Case Name	Scott Grant v. Village of Rosemont
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision - Corrected
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Michael Youkhana
Respondent Attorney	Robert Smith, Anthony J. Casale

DATE FILED: 8/16/2022

/s/Steven Fruth, Arbitrator

Signature

INTEREST RATE WEEK OF AUGUST 16, 2022 3.02%

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**
19(b)

Scotty Grant
Employee/Petitioner

v.

Village of Rosemont
Employer/Respondent

Case # **18 WC 33337**

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 **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **August 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 **Vocational Rehabilitation**

FINDINGS

On **October 8, 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 $**67,916.16**; the average weekly wage was $**387.02**.

On the date of accident, Petitioner was **52** 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 is entitled to a credit of $**0** under §8(j) of the Act.

Petitioner failed to prove that he is entitled to penalties and attorney's fees.

Petitioner failed to prove that he was entitled to vocational rehabilitative services.

ORDER

Respondent shall pay Petitioner $**871.16**/week for **14 & 1/7** weeks for maintenance benefits from **5/5/2021** through **7/31/2021** and from **8/3/2021** through **8/24/2021**.

Petitioner's claim for penalties and attorney's fees is denied.

Petitioner's claim for vocational rehabilitative services 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.

Signature of Arbitrator

Augusst 16, 2022

SCOTTY GRANT v. VILLAGE OF ROSEMONT
18 WC 33337

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were: ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***G:*** What were Petitioner's earnings?; ***K:*** What temporary benefits are in dispute? Maintenance; ***M:*** Should penalties be imposed upon Respondent?; **O:** Is Petitioner entitled to vocational rehabilitative services?

Petitioner claims an AWW of $1,306.09, which Respondent disputes. Respondent claims an AWW of $387.02.

FINDINGS OF FACT

It is undisputed that on October 8, 2018, Petitioner Scotty Grant suffered traumatic injury to his right shoulder and right elbow that arose out of and in the course of his employment with Respondent Village of Rosemont. It is also undisputed that Petitioner was an employee for Respondent., despite obtaining his job through his union. Petitioner testified that he was a Teamster for the Local 727 working at Allstate Arena.

Petitioner testified that as part of his duties as a Teamster, he is required to carry out the following tasks: loading, unloading, stacking, and unstacking equipment. He testified that the equipment consisted of rolls of carpet and padding and audio-video cases. Petitioner testified that the audio-video cases weigh between 200-400 pounds. He testified that there were occasions where he was required to load the audio-video cases above his shoulder and also unload the audio-video cases from his shoulder down to the ground.

Petitioner further testified that he was not a permanent employee for the Village of Rosemont. Petitioner testified that he was "on-call" out of his Teamsters Union Local. His union provided the opportunity to work for Respondent on the date of the accident. He earned $40.25/hour at the time of his accident but did not testify to how many hours a week he generally worked. He acknowledged that his workhours varied from week to week. He testified that he worked at venues other than Respondent's Allstate Arena. Petitioner testified that Respondent contacted his union hall, and the union would call members who are on a list for the job.

Petitioner testified that he sustained an accident on October 8, 2018 while working for Respondent at Allstate Arena. He was injured when he was unstacking a 200-pound case with a co-worker. He injured his right bicep and right shoulder when the case shifted, and he tried to catch it. Petitioner reported the accident to his union steward and a representative from Respondent. He also testified on cross-examination that he continued to work for another week.

On October 30, 2018, Petitioner presented to Dr. Theodore Suchy of Concentra Urgent Care complaining of right elbow and biceps pain (PX #5). A physical examination revealed no biceps tendon present, weak supination, weak flexion, and the biceps showing no palpation. Dr. Suchy recommended urgent surgical exploration of the rotator cuff along with repair biceps. Dr. Suchy performed surgery on November 3, 2018. surgery with repair of the distal bicep tendon (PX #4). The pre-operative and post-operative diagnoses consisted of acute rupture of the distal biceps tendon. Petitioner testified that following surgery he was prescribed and completed physical therapy and work conditioning. Petitioner testified that he was kept off work by Dr. Suchy throughout the time of that treatment.

Petitioner testified that he continued having issues with his right arm, despite completing the post-surgical physical therapy and work-conditioning. On May 6, 2019, Petitioner presented to Dr. Steven Chudik of Hinsdale Orthopaedics complaining of right elbow, shoulder, and biceps pain (PX #1). The physical examination revealed positive Neer's impingement and Hawkins impingement signs. The doctor's impression was right shoulder pain with concern for rotator cuff and labral tear as well as concern for s distal biceps repair. Dr. Chudik recommended MRIs of the right elbow and right shoulder and kept Petitioner off work.

Petitioner had the MRIs on May 15, 2019. The right shoulder MRI reflected a full thickness tear of the supraspinatus tendon anteriorly with retraction of the torn tendon fibers by 1.4 centimeters, severe tendinosis and interstitial tearing of the remaining central and posterior supraspinatus tendon, severe infraspinatus tendinosis, and a SLAP tear. The right elbow MRI reflected a suspicion of a bicep tendon re-tear, reactive marrow edema in the proximal radius, extensor tendinosis, and partial undersurface tear.

Petitioner followed up with Dr. Chudik on May 20, 2019. After physical examination and review of the MRI imaging, Dr. Chudik diagnosed right distal biceps rupture and right shoulder full thickness tear of the supraspinatus tendon with a partial tear of the posterior cuff. He recommended a right distal bicep revision with possible

autologous hamstring graft and arthroscopic rotator cuff repair. He related the injuries to Petitioner's work accident. Dr. Chudik performed the recommended right distal biceps repair, right long arm splint, right elbow HDW (hardware) removal, and right posterior nerve release (PX #2). The post-operative diagnoses consisted of right biceps rupture and right posterior interosseous nerve entrapment.

Petitioner followed up with Dr. Chudik on November 8, 2019. The doctor's impression was right shoulder full thickness supra tear. Dr. Chudik recommended right shoulder arthroscopy with rotator cuff repair and possible DCR (digital contact radiography). Dr. Chudik performed right arthroscopic subacromial decompression, distal clavicle resection, rotator cuff repair, and labral debridement on January 9, 2020. Following that surgery, Petitioner underwent physical therapy and work-conditioning at ATI Physical Therapy (PX #3).

On November 2, 2020, Petitioner followed up with Dr. Chudik. The doctor recommended a functional capacity assessment upon Petitioner completing his work conditioning program.

On November 17, 2020, Petitioner presented to ATI Physical Therapy for a Functional Capacity Assessment (PX #3). It was a valid assessment. The assessment noted Petitioner's occupational demand level as Heavy and that he demonstrated physical demand level of Medium. The FCA reflects that Petitioner could lift up to 28 pounds above the shoulder, 75.6 pounds from desk to chair, 75.6 pounds from chair to floor, carry 47 pounds with left arm, and carry 47 pounds with right arm.

On March 15, 2021 Dr. Chudik placed Petitioner on permanent restrictions consisting of an 8-hour maximum work day, no lifting more than 28 pounds above the shoulders with both arms, no lifting above 19.6 pounds with the right arm above shoulder, no lifting above 15.2 pounds with the left arm above shoulder, no lifting more than 75.6 pounds with both arms from desk to chair, no lifting over 37.2 pounds with the right arm from desk to chair, no lifting over 28.4 pounds with the left arm from desk to chair, no lifting over 75.6 pounds with both arms from chair to floor, no carrying more than 47 pounds with the right arm, and no carrying over 47 pounds with the left arm.

Petitioner testified that after he was placed on permanent restrictions and that Respondent was able to accommodate his permanent restrictions once but that he received only one call for a job since the time he was placed on permanent restrictions. Petitioner testified that he began searching for jobs that fit his permanent restrictions. He testified that he would apply to 5-10 a week. Petitioner identified Petitioner's

Exhibit #6, his Career Builders records of job searches. He testified that he never received maintenance benefits since he was placed on permanent restrictions. He received a call from his union related to a job with Respondent around August 1, 2021. He testified that the job did fit his permanent restrictions. Prior his work injury he would work between 15-20 jobs in the same time span in which he was placed on permanent restrictions up through the date of the trial.

Petitioner's Exhibit #7, comprising various paycheck stubs and checks covering a period of more than 52 weeks prior to the date of injury, was admitted in evidence. Paycheck stubs indicate overtime pay without evidence of mandatory overtime. Paychecks from Paladin Securities are for gross amounts only, with no deductions, and do not have any information of the hours worked or when. Petitioner did not testify about his work with Paladin Securities.

PX #7 also included a letter from Christopher Owoyemi, Staff Attorney for Teamsters Local 727, stating the job duties for tradeshow employees: loading and unloading trucks by hand forklift or pallet jack, able operate lift gates and ramps, able to lift 60 pounds, have a current forklift operators' card, and complete assigned tasks (without specific description).

Petitioner was examined by orthopedic surgeon Dr. William Heller pursuant to §12 of the Act. Dr. Heller's narrative reports dated May 16, 2019 (RX #1), August 6, 2019 (RX #2), and July 24, 2020 (RX #3) were admitted in evidence. Dr. Heller reviewed Petitioner's medical records in addition to performing clinical exams on May 6, 2019 and July 24, 2020. RX #1, RX #2, and RX #3 were admitted in evidence.

On May 16 Dr. Heller confirmed Petitioner's right distal biceps tendon rupture was causally related to his work accident on October 8, 2018. Dr. Heller had doubts whether the right shoulder pathology was causally related to the accident but did not dispute "causal linkage." He deferred a definitive causation opinion regarding the right shoulder pending a review of the MRI.

On August 6 Dr. Heller did not dispute the acute rotator cuff tear apparent on the MRI could Have been caused by or aggravated by the work accident. He also agreed with Dr. Chudik' s recommendations for surgery.

On July 24 Dr. Heller noted Petitioner was deconditioned and recommended additional work conditioning. He anticipated Petitioner could then return to full duty work but deferred to a June 29, 2020 treatment note limiting Petitioner to 50 pounds floor to waist, 25-pound overhead lifting, and 50-pound lifting/carrying.

Dr. Heller did not review the November 17, 2020 FCA restrictions or Dr. Chudik's March 15, 2021 permanent restrictions and therefore could not comment.

Respondent's Exhibit #4, an accounting of Petitioner's work hours from October 12, 2017 through October 8, 2018, was admitted in evidence. Respondent's Exhibit #7, an accounting of Petitioner's work hours from September 17, 2016 through October 22, 2018, was admitted in evidence. RX #7 was essentially duplicative of RX #4. These exhibits demonstrate that Petitioner worked an irregular schedule with irregular hours. These exhibits also demonstrate Petitioner's work at venues other than Respondent's Allstate Arena.

CONCLUSIONS OF LAW

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

The Arbitrator finds this issue was not genuinely disputed. Therefore, the Arbitrator finds that Petitioner proved his current condition of ill-being in his right arm and shoulder is causally related to the work accident. Respondent presented no credible rebuttal to Petitioner's causation claims.

G: What were Petitioner's earnings?

The Arbitrator finds that Petitioner failed to prove his AWW was $1,306.09. Petitioner testified that Respondent's Exhibit #4 was an accurate accounting of his hours worked in the 52 weeks prior to this accident. This ledger shows Petitioner worked 500 hours. He testified that he earned $40.25 per hour, for a total of earnings over the prior 52 weeks of $20,125.00. The AWW, taken over 52 weeks, is $387.02. Any overtime pay was not included for failure to prove the overtime was mandatory.

Petitioner admitted pay stubs in PX #8. The Arbitrator notes that these checks to not reflect the full 52 weeks prior to the injury. For the checks that were provided, the number of hours Petitioner worked as documented in PX #8 is consistent with the hours in RX #4.

The Arbitrator also finds that the wages to Paladin Securities are not included in the average weekly wage calculation. Petitioner testified that the checks received from Paladin Securities were not checks for jobs performed through his union. For concurrent wages to be included, Petitioner must show that he was employed by two or more employers on the date of accident and that the Respondent had knowledge of

the concurrent employment.

For these reasons, the checks from Paladin Securities are not included in the average weekly wage calculation. The most accurate accounting of Petitioner's hours with Respondent were from Respondent's Exhibit #4. The AWW is therefore $387.02.

K: What temporary benefits are in dispute? Maintenance

The Arbitrator finds that Petitioner is entitled to maintenance benefits. To be entitled to maintenance benefits, a claimant must be engaged in a rehabilitation program, which can be a formal job training or a self-directed job search. Petitioner was placed on permanent restrictions by Dr. Chudik based on a valid FCA. The evidence showed that after Petitioner was placed on permanent restrictions he applied for jobs within his restrictions.

The Arbitrator notes that Petitioner submitted job applications, PX #6, which corroborated his testimony regarding the job applications. The Arbitrator notes that the job applications submitted show that the Petitioner continues to be actively involved in an active job search and is therefore entitled to continued Maintenance benefits under the Act. The Arbitrator also notes that no events were held by Respondent at Allstate Arena from May 2021 through August 2021 due to the COVID-19 pandemic. The Arbitrator also notes that the COVID-19 pandemic likely hampered Petitioner's job search.

Petitioner offered evidence of a job duties description from his union, PX #7. The job duties description notes that a tradeshow employee should be able to lift 60 pounds, which exceeds Petitioner's permanent restrictions.

Petitioner did work one day for Respondent under his permanent restrictions, August 1, 2021. The Arbitrator found Petitioner's testimony credible that that particular assignment was within his restrictions. The Arbitrator also found Petitioner's testimony credible that no further accommodation of his restrictions was offered. The Arbitrator finds Respondent shall pay Petitioner the sum of $258.01/week for a further period of 14 & 1/7 weeks for maintenance benefits from May 5, 2021 through July 31, 2021 and from August 3, 2021 through August 24, 2021. Respondent shall be given a credit for any TTD and/or Maintenance benefits already paid to Petitioner up to the time of the trial.

M: Should penalties be imposed upon Respondent?

The Arbitrator finds that Petitioner failed to prove that he is entitled to penalties and attorney's fees.

The Illinois Supreme Court has long recognized the imposition of penalties is a question to be considered in terms of reasonableness. *Avon Products, Inc. v. Industrial Comm'n (Laura Larson)*, 82 Ill.2d 297 (1980). In *Avon*, the Court looked to Larson on Workmen's Compensation for guidance, noting that penalties for delayed payment are not intended to inhibit contests of liability or appeals by employers who honestly believe an employee is not entitled to compensation. *3 A. Larson, Workmen's Compensation*, §83.40 (1980).

This penalties and fees dispute centers on the one work assignment in August 2021, which was an accommodation of Petitioner's permanent restrictions. However, there were no further offers of accommodated work thereafter. Although the Arbitrator found that maintenance was still owed due to lack of accommodated work, it was not unreasonable or vexatious for Respondent to believe it had made a good faith accommodation.

Further, it cannot be ignored that tradeshow and concert events came to an abrupt halt due to the COVID-19 epidemic and not to the fault of Respondent. There was no work to be had during the epidemic lockdown.

O: Is Petitioner entitled to vocational rehabilitative services?

The Arbitrator finds that Petitioner failed to prove that he is entitled to vocational rehabilitation services.

The Illinois Supreme Court addressed entitlement to vocational rehabilitation in *National Tea Co. v. Industrial Comm'n*, 87 Ill.2d 424 (1983). It was held that vocational rehabilitation is generally appropriate where the employee suffers a reduction in earning power and there is evidence rehabilitation will increase earning capacity. Additional factors include the relative costs and benefits to be derived from the program, work life expectancy, ability, and motivation of the employee to undertake the program, the likelihood of obtaining employment upon completion of the program, previously unsuccessful rehabilitation programs, employee's existing skills, and potential loss of job security. Further, it is Petitioner's burden of proving the necessity of vocational rehabilitation.

Here, no evidence was offered to establish that rehabilitation would increase Petitioner's earning capacity or the relative cost and benefit of any such program or Petitioner's work-life expectancy. There was also no evidence concerning Petitioner's

desire or motivation to undertake the program. In fact, Petitioner did not testify that he was interested in pursuing vocational rehabilitation.

There is clear evidence that Petitioner has permanent restrictions which prevents him from resuming work as a tradeshow employee. The permanent restrictions placed by Dr. Chudik, in accord with the FCA, exceeded the job duties requirements described by Staff Attorney Christopher Owoyemi of Teamsters Local 727 in PX #7. The fact that Petitioner worked one day in August 2021 within his permanent restrictions does not rebut the inference that he is unable to return to full duty employment with Respondent.

Steven Fruth, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC021379
Case Name	Elizabeth Lamas v. Helping Hands Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0046
Number of Pages of Decision	24
Decision Issued By	Christopher Harris, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Michael Casey
Respondent Attorney	Brian Raterman

DATE FILED: 1/27/2023

/s/Christopher Harris, Commissioner
Signature

DISSENT: /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

ELIZABETH LAMAS,

Petitioner,

vs. NO: 17 WC 21379

HELPING HANDS CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability (TTD) benefits, permanent partial disability (PPD) benefits and all evidentiary and procedural rulings, 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 27, 2022 is hereby affirmed and adopted.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $73,200.00. 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 the Circuit Court.

January 27, 2023

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

CAH/pm
O: 1/19/23
052

/s/ *Marc Parker*
Marc Parker

DISSENT

I respectfully dissent from the Majority's decision. The Arbitrator analyzed this case using the principles of *Caterpillar Tractor and McAllister* to find that Petitioner sustained an employment-related risk when she was injured at work on June 19, 2017. I believe that this case falls within the parameters of Section 11 of the Act and would bar recovery for Petitioner in this case. Section 11 of the Act states:

> Accidental injuries incurred while participating in voluntary recreational programs including but not limited to athletic events, parties and picnics do not arise out of and in the course of the employment even though the employer pays some or all of the cost thereof. This exclusion shall not apply in the event that the injured employee was ordered or assigned by his employer to participate in the program. *820 ILCS 305/11.*

The Arbitrator believed that Section 11 did not apply to this case because Petitioner was not injured while participating in a voluntary recreational program or party. *Elmhurst Park Dist. v. Ill. Workers' Comp. Comm'n*, 395 Ill. App. 3d 404 (2009), helped define "voluntary recreational programs" and explained:

> Although [S]ection 11 provides several general examples of activities which may be considered 'recreational,' the Act does not expressly define the term. (Citation omitted). Absent statutory definitions indicating a different legislative intention, courts will assume that words have their ordinary and popularly understood meanings. (Citation omitted). In determining the ordinary meaning of a statutory term, it is appropriate to consult a dictionary. (Citation omitted). The term 'recreational' is derived from the word 'recreation.' *Webster's Third New International Dictionary 1899 (2002)*. The word 'recreation' in turn is defined as 'the act of recreating or the state of being recreated: refreshment of the strength and spirits after toil: DIVERSION, PLAY.' *Id.*; *Elmhurst Park Dist. v. Ill. Workers' Comp. Comm'n*, 395 Ill. App. 3d 404, 408-09 (2009).

Here, Petitioner was participating in a voluntary recreational activity at the time of her injury and she had not been ordered or assigned by Respondent to decorate for her supervisor's birthday, and as such, Petitioner's claim should be barred under Section 11 of the Act.

The case law provides a nuanced principle or concept for claims involving injuries during a voluntary recreational activity that brings a claim otherwise barred under Section 11 into the context of employment-related risk analysis. *Elmhurst Park Dist.* and *Calumet Sch. Dist. #132 v. Ill. Workers' Comp. Comm'n*, 2016 IL App (1st) 153034WC, illustrate two injuries during voluntary recreational activities that could have been arguably not compensable under Section 11 but the Court noted distinctions which made them compensable under an employment-related risk analysis. The Appellate Court stated that the claimants in both cases did not participate in their respective activities for their own "diversion" or to "refresh" or "strengthen" the spirits after toil. Rather, the claimants (a fitness supervisor and teacher) participated in activities (playing wallyball and participating in a student/teacher basketball game) to accommodate their employers – a fitness facility and a school. The Court determined that Section 11 did not apply because the claimants' injuries occurred while performing activities incidental to their job positions.

The present case is distinguishable from *Elmhurst Park Dist.* and *Calumet Sch. Dist. #132*. Petitioner was employed as a medical assistant at Respondent's facility – a learning center for special needs adults and children. Her job duties included answering phones, making appointments for the doctor, taking vitals, filing, faxing and assisting the doctor. Petitioner's act of decorating the office to celebrate her supervisor's birthday is not an act incidental to her assigned duties as a medical assistant.

Petitioner's primary argument is that her injury is work-related because it was the normal practice and her employer had knowledge of or acquiesced to past decorating activities in the office. However, our Appellate Court has previously affirmed the Commission's denial of benefits under the Act in claims related to a claimant's participation in a voluntary recreational activity even with the employer's support.

In *Kozak v. Indus. Comm'n*, 219 Ill. App. 3d 629 (1991), the employee died of a heart attack while participating in a tennis round-robin tournament conducted for the purpose of selecting a tennis team to represent the employer in a national invitational championship. *Id.* at 630. The employee organized the event during his regular working hours as personnel director and the employer paid wages and expenses associated with the competition. *Id.* at 631-632. Notwithstanding, the Appellate Court affirmed the Commission's determination that the employee suffered fatal accidental injuries during a voluntary event. *Id.* at 631. The Appellate Court also noted that the employer did not sponsor nor compel its employees to participate in the event. *Id.* at 632.

The Appellate Court emphasized that any alleged benefit derived from the contest by the employer (*e.g.*, improving employee morale or presenting a positive company image) was immaterial because Section 11 of the Act specifically excluded from compensation injuries which occurred "during various leisure activities in which employees participate with the employer's blessing." *Id.* The Appellate Court declined to consider whether the activities were incidental to the employment stating: "Except to the extent that an employee is ordered or assigned by the

employer to participate in the program, injuries occurring during the course of recreational events are simply not compensable irrespective of whether it may be said they arise out of and in the course of employment." *Id.* at 633; see also *Cary Fire Protection Dist. v. Indus. Comm'n*, 211 Ill. App. 3d 20 (1991) (Section 11 barred claim by volunteer fireman injured during voluntary water fight tournament notwithstanding he participated as a member of his fire protection District, he wore and used equipment supplied by his District, and he received extra practice handling a water hose and acquired feelings of camaraderie); *Outdoor v. Ill. Workers' Comp. Comm'n*, 2013 IL App (1st) 121418WC-U (sales assistant injured during a charity bowling event in which attendance was highly encouraged but not required by the employer, time at the event counted toward normal work hours and claimant felt she had to attend. The Court determined that the claim was barred under Section 11 as the event was recreational and bowling was not inherent to the claimant's position as a sales assistant).

In the specific case at bar, Petitioner was injured while engaged in a voluntary recreational activity. She was neither ordered nor assigned by Respondent to decorate on June 19, 2017 and decorating was not inherent to Petitioner's position as a medical assistant. The record additionally makes clear that Respondent had no standing orders or policies governing parties or decorating for parties at its facility. Petitioner's argument that decorating at the office was an implied, acceptable or normal practice does not alter the fact that Section 11 of the Act eliminates certain activities from compensation as they do not arise out of and in the course of the employment.

Based on the foregoing, Petitioner's claim for compensation should be denied and the Arbitrator's Decision reversed.

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC021379
Case Name	LAMAS, ELIZABETH v. HELPING HANDS CENTER
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Michael Casey
Respondent Attorney	Robert Cozzi

DATE FILED: 4/27/2022

THE INTEREST RATE FOR THE WEEK OF APRIL 26, 2022 1.37%

/s/William McLaughlin, 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

Elizabeth Lamas
Employee/Petitioner

v.

Helping Hands Center
Employer/Respondent

Case # **17** WC **021379**

Consolidated cases: **None**

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 J McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **3/1/2022**. 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 **6/19/2017**, 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 $; the average weekly wage was $**350.00**.

On the date of accident, Petitioner was **42** years of age, ***single*** with **2** dependent children.

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

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

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

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

ORDER SEE ATTACHED FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

Respondent is ordered to pay those bills listed in PX 15 pursuant to the fee schedule or the negotiated rate, whichever is less As Provided in Sections 8(a) and 8.2 of the Act and as stated in attached conclusions of law and order.

Respondent shall pay Petitioner temporary total disability benefits of $286.00/week for 13 weeks, commencing 6/20/17 through 9/19/17, as provided in Section 8(b) of the Act.

Based on the factors of Section 8.1b(b), and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 35% loss of use of the right foot pursuant to§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.

April 27, 2022

Signature of Arbitrator

Statement of Facts

On June 19, 2017, the Petitioner Elizabeth Lamas, was an employee of Respondent, Helping Hands Center, a learning center for special-needs adults and children, for 17 years. Petitioner's worked as a medical assistant in the nurses' office since 2010. As a medical assistant, Petitioner job duties included answering phones, making appointments for the doctor, taking vitals, filing, faxing and assisting the doctor. On June 19, 2017, Petitioner was decorating the office for the birthday of her immediate supervisor, Kathlyn Thompson. Petitioner was on top of a desk putting up streamers to decorate the office. She lost her balance as she was taping and fell on her right side. (T 11-12)

Prior to June 19, 2017, Petitioner had put up streamers for employees' birthdays and other occasions. Petitioner did not remember the number of times, but testified it was quite a few, and that the norm of their job was to celebrate each other's birthday or when someone was leaving for another job. Petitioner testified it was the normal to do this. (T 12). Petitioner had also decorated for coworkers' birthdays. Petitioner identified that she had decorated for Tami, for Janet a nurse when she left, and for Regina a nurse when she left. (T 13) Petitioner was instructed to put up decorations for Olga by her supervisor, Kathlyn Thompson. (T 13) Petitioner was called by Thompson the morning that Olga was leaving and was instructed by Thompson to go to Walmart to purchase the streamers, balloons and decorations and she would reimburse petitioner. Petitioner bought the decorations and decorated with streamers. (T 13-14) Petitioner testified that Petitioners Exhibit 11-1 and 11-2 were photographs of the decorations she put up when Olga was leaving Helping Hands and these photographs accurately reflect the decorations that petitioner put up the week before the date of the accident as instructed by her supervisor. (T 14-15)

On the day of the accident, June 19, 2017, when petitioner was putting up the decorations for Thompson's birthday, she had not been instructed to do that by Thompson. She used the decorations that were remaining from the week prior from Olga's leaving. Petitioner was standing on Thompson's desk when she fell. (T 15) There were 4 desks in the office. When putting up the decorations for a birthday, they would focus on putting the decorations on their side of the office. (T 16) The desk that she was standing on was about 4 feet high. Petitioner used a stepstool to get onto the desk. The stepstool was in the office because there were bins of medical supplies that were on top of cabinets, and they had to go up and reach up to bring them down as needed. The stepstool was not high enough to reach the ceiling so she had to step onto the desk to reach the ceiling. (T 16-17) Petitioner fell on her right side hitting her right hip first and then her whole body. She was not able to get up. One of her coworkers walked in and found her on the floor. (T 17) The coworker helped her up from the floor and helped her sit in a chair

and called the supervisor. Petitioner at that time could not put any weight on her right foot. She described the pain as severe. Kathlyn Thompson instructed the coworker to take petitioner to the emergency room at LaGrange Hospital.Medical records of LaGrange Memorial Hospital were admitted in evidence as Petitioner Exhibit 1.

On 6/19/17 Adventist LaGrange Memorial Hospital, emergency room, records reflect the following. History of present illness: this patient presents following a fall; 42-year-old female with history of HTN, thyroid disease, and anxiety presents to the ED for evaluation of a fall that occurred today; it was her boss's birthday and patient was decorating for her; she was standing on a desk (3 feet up) and lost her balance, falling off the desk and landing on the floor; she complains of right foot pain and swelling; she is not able to bear weight; she is currently on ABX for a UTI (urinary tract infection) but has not taken any medication to relieve her pain; patient denies LOC, abdominal pain, headache, numbness, weakness, neck or back pain, or striking her head/LOC; the onset was this morning; occurrence was single episode; fall is described as lost balance; occurred at work; right lower extremity pain; minimal at present. (PX 1, p 14) Examination revealed tenderness to dorsum base of 4th and 5th metatarsals with swelling and ecchymosis; skin is intact. Remainder of foot and ankle are within normal limits. (PX 1, p 15) X-ray foot: fracture at the proximal aspect of the 4th metatarsal is not significantly displaced; no other distinct appearing fracture demonstrated; there is some questionable widening seen between the first and second metatarsal bones and Lisfranc ligamentous injury cannot be excluded; soft tissue swelling is noted; MRI can be considered for further evaluation. (PX 1, p 16) Impression and plan: diagnosis: foot fracture. Plan: discharged to home follow-up ortho as referred, apply ice, elevate, avoid weight-bearing. (PX 1, p 16) Ibuprofen and tramadol were ordered. (PX 1, p 17) Petitioner was ordered off work. (PX 1, p 20) Petitioner testified that she was referred by her primary care physician, Dr. Charles T. Shaw, to Dr. Miklos. (T 20-21. PX 2, p 107) The medical records of Dr. Miklos/Miklos Foot & Ankle Specialists were admitted in evidence as Petitioner Exhibit 2.

On 6/21/17, Miklos Foot and Ankle Specialists, PC./Robert Miklos, DPM, records reflect the following, History: Elizabeth injury to foot and told it was broken to her right foot; incident took place 2 days prior to today's visit; occurred as a result from a fall at work; other associated symptoms reported by patient include swelling, skin discoloration, tenderness to touch, pain with limited range of motion and ecchymosis; severity 8/10; aggravated by weight-bearing; wearing ace wrap helps in relieving the problem; no previous injury to the foot; presented to LaGrange ER Monday, after the injury Monday morning; given 600 mg ibuprofen and tramadol for pain, surgical shoe and crutches; using an ace wrap for compression and ice which helps; patient fell again Monday night while using crutches and again put pressure on right foot. (PX 2, p 96) Physical examination: tenderness with palpation along the course of

the 2nd and 4th metatarsal of the right foot; there is not pain with MPJ ROM. (PX 2, p 97) Assessment and plan: Lisfranc fracture or dislocation right foot. Plan: x-rays taken discussed a conservative versus surgical treatment options. Applied Unnas boot to RLE; patient to continue NWB, using crutches; ordered MRI of right foot; further recommendations are pending MRI result. Patient to continue applying ice 15 minutes per hour, elevate RLE, take ibuprofen tramadol for pain; patient return to clinic in one week. (PX 2, p 97-98) ICD: Slipping, tripping and stumbling without falling due to stepping from one level to another, initial encounter. RX off work until further notice.(PX 2, p 99)

Petitioner testified she remained off work from the day of the accident. (T 21-22)
On 6/23/17, Family Care Associates of Chicago/Charles T Shaw MD, PCP, records document: history of present illness: patient is a 42-year-old female who presents with a foot problem; symptoms include foot pain (broken foot seeing Dr. Miklos); fell off table, awkwardly, onto right foot fractures noted; worrisome for Lisfranc fracture; needs referral to podiatry for opinion, no work, stay off it (on crutches) until then. Examination: right foot with ace wrap, using crutches. Assessment & plan: foot fracture; started ibuprofen; follow-up in 2 weeks or as needed. (PX 3, p 38-39)

The medical records of MacNeal Hospital were admitted in evidence as Petitioner Exhibit 4.
On 6/26/17 MacNeal Hospital records demonstrate MRI was performed. MRI lower extremity non-JNT right without contrast (MRI right foot). Indication: right foot fracture after fall. Impression: 1. 4th metatarsal base comminuted fracture; 2. Posterior tibial tendon slip tear at its expected insertion on the 4th metatarsal; 3. Suboptimal visualization of Lisfranc ligament, raising the concern for sprain/partial tear. Additional clinical correlation is required. (PX 4, p 15)
On 6/28/17 Miklos Foot and Ankle Specialists, PC./Robert Miklos, DPM. Records reflect: Patient here today for follow-up and consultation of the MRI of the right foot. Assessment and plan: nondisplaced fracture of the first right metatarsal bone with routine healing. Assessment: Lisfranc fracture 1st/2nd metatarsal base right foot. Fracture of the 4th metatarsal base right foot. Plan: reviewed MRI and x-ray of the right foot as compared to the x-ray of the left foot; there is definite diastasis of the 1st and 2nd MT base on the right foot; reviewed MRI which is not as clear to the definition of the ligament injury. Recommended ORIF of the Lisfranc fracture with screw placement into the 2nd MT base. Discussed the postop course and possible complications of the fracture and the proposed procedure. Patient would like to have surgery ASAP. ICD: nondisplaced fracture of 4th metatarsal bone of right foot routine healing. (PX 2, p 88-90)

On 7/3/17 Family Care Associates of Chicago/Charles T Shaw MD, PCP, patient is a 42-year-old female who presents for a pre-op visit; the procedure scheduled is a ORIF midtarsal joint right foot on 7/7/2017; surgeon for the procedure will be Dr. Miklos; all pre-op testing performed today at MacNeal. She has a right Lisfranc fracture of the right foot; no cardiac history; controlled hypertension; has tolerated general anesthesia before without issues. Assessment plan: your preoperative history and physical today suggest that you are at low risk for the planned procedure; remember however that all surgeries have risks, and that this exam today is no guarantee of a favorable outcome. (PX 3, p 37-38)
Petitioner testified she underwent surgery performed by Dr. Miklos on July 7, 2017, performed at MacNeal Hospital.

On 7/7/17, MacNeal Hospital-Dr. Robert Miklos, records document: SURGERY. Procedure: open reduction internal fixation of midfoot fracture dislocation, right foot. Postoperative diagnosis: Lisfranc's midfoot fracture dislocation, right foot. (PX 2, p 69-70; PX 4, p 51)
On 7/17/17, Miklos Foot and Ankle Specialists, PC./Robert Miklos, DPM. Records document: Status post-ORIF mid foot fracture right; date of surgery 7/7/17; duration since surgery is 10 days; pain medications are effective; patient's weight bearing status is currently non-weight bearing; patient compliant with homecare; RCM surgeon; patient just very anxious and weepy this date. Examination: cast is clean and dry without cast breakdown; negative homan sign, no pain on medial-lateral or anterior-posterior compression of the musculature, no warmth or palpable cords evident either bilateral extremity. Assessment and plan: status post ORIF midfoot fracture right foot x 10 days; plan: continue postop course and healing time; remain non-weight-bearing in BK cast and crutches and rollabout; patient to continue elevation and ice; use NSAID's and pain medication PRN discomfort; continue lower extremity range of motion exercises to decrease risk of DVT; return to office in 2 weeks for new x-rays. RX Norco and Valium this date; RX off work for at least 8-10 weeks since she is a MA and on feet all the time; patient to relax and decrease anxiety. ICD: nondisplaced fracture of 4th metatarsal bone of right foot with routine healing. (PX 2, p 58-60)

On 7/31/17, Miklos Foot and Ankle Specialists, PC./Robert Miklos, DPM records document: 3 weeks since surgery on 7/7/17; currently non-weight-bearing; compliant with homecare; sleeping well; one Aleve daily for pain; overall doing much better; concerned with being off work. Assessment and plan: patient remain non-weight-bearing in bk cast and crutches and rollabout; continue elevation and ice; use NSAID's and pain medication PRN; continue range of motion exercises; return in 2 weeks for cast removal and transition to cam boot; reviewed x-rays of the right foot this date; RX for PT at Total Rehab

to begin after visit for transition to weight bearing and range of motion exercises pending clinical exam. (PX 2, p 48-50)
On 8/15/17 Miklos Foot and Ankle Specialists, PC./Robert Miklos, DPM records document: 5 weeks postop. Currently non-weight-bearing; sleeping well; taking one Aleve daily for pain; doing much better; concerned with being off work. Assessment and plan: remain non-weight-bearing; continue elevation and ice; use NSAID and pain medication PRN; continue range of motion exercises. Plan: cast sutures removed; no signs of infection or postop complication; applied CAM boot to the right foot; patient remain non-weight-bearing in BK cast and crutches and rollabout; patient can shower today; patient to begin PT tomorrow. Patient to return to office in one week for reevaluation. (PX 2, p 42-44) RX off work. (PX 2, p 41)
On 8/29/1,7 Miklos Foot and Ankle Specialists, PC./Robert Miklos, DPM records document: Physical therapy did not start yet due to insurance issues; will start this Thursday 8/31/17. Assessment and plan: patient to continue with transition to weight bearing then regular shoes gear. Patient to start physical therapy at Total Rehab to begin after next visit. (PX 2, p 34-36) RX off work. (PX 2, p 38)

On 9/12/17, Miklos Foot and Ankle Specialists, PC./Robert Miklos, DPM records document: 9 weeks pos-top. Patient did start therapy but has only done 4 sessions. Assessment and plan: patient to remain weight bearing in CAM boot; transition to regular shoe as tolerated; continue elevation and ice NSAID's pain medication. New x-rays revealed good alignment of the previous fracture. Continue physical therapy. PX 2, p 27-29. RX work status: may return to work on Tuesday, September 19, 2017. Patient needs to continue wearing CAM boot at all times. (PX 2, p 31) From 9/18/17 through 10/16/17 MacNeal Hospital records document petitioner underwent physical therapy; patient missed two sessions and failed to return calls so discharged from physical therapy at this time due to not returning call. (PX 4, p 92-113; PX 2, p 10)
Petitioner testified that after she was released to return to work by Dr. Miklos she did return to work with respondent in the same job on September 19, 2017. (T 27) She worked 8 hours a day. (T 27)

On 10/3/17, Miklos Foot and Ankle Specialists, PC./Robert Miklos, DPM records document: Currently weight bearing in CAM boot; patient still doing physical therapy and has started to transition to regular shoe gear. Assessment and plan: continue full weight-bearing and regular shoe gear; continue elevation and ice, NSAID's and pain medication PRN, continue physical therapy. (PX 2, p 15-17)

On 10/17/17, Miklos Foot and Ankle Specialists, PC./Robert Miklos, DPM records document: 42-year-old patient presenting to the office with a chief complaint of right mid foot pain; patient states the pain is

located on middle top portion of the foot; pain has been present for one week and is getting worse; describes the pain as dull and throbbing and is increased by standing, walking; past treatment includes ORIF Lisfranc fracture right foot. Assessment and plan: capsulitis of right foot; mid foot capsulitis right foot mild pes planus right foot. Plan: discussed etiology of right foot pain; no active sign of issue; new x-rays revealed good alignment of the mid foot fracture; discussed pes planus and strain to the medial right foot; apply Spenco arch support bil/ft with patient relating immediate relief. Reevaluate 4 weeks. (PX 2, p 11-13)

On 11/2/17, Family Care Associates of Chicago/Charles T Shaw MD, PCP, records document: foot pain is described as the following: the course has been without change (explain that will take a year or 2 for her foot to fully heal and that it may never be the same; must continue at-home exercises; the foot pain was preceded by trauma and surgical repair of Lisfranc fracture**.** Assessment and plan: foot pain, right; impression after Lisfranc fracture/surgery/2017. (PX 3, p 34-35)

On 12/5/17, Miklos Foot and Ankle Specialists, PC./Robert Miklos, DPM records document: 42-year-old patient presenting to the office with a chief complaint of right mid-foot pain; pain is located on middle top portion of the foot and is getting better; is increased by standing walking; past treatment includes ORIF Lisfranc fracture right foot; previous pain that patient had has resolved; patient is wearing gym shoes without issue. Assessment & plan: mid foot capsulitis of right foot; mild pes planus right foot; no active sign of issue; patient to continue with Spenco arch support bil/ft and conservative shoe gear; patient released; reevaluate PRN. (PX 2, p6-8)
Petitioner testified that after Dr. Miklos released petitioner from his care, she followed up with her PCP Dr. Shaw. She testified her foot started hurting more and more. She testified she did not injure her foot in any other accidents. She was wearing an ace bandage and using crutches. (T 28) Petitioner testified after a while, it looked like the screw was coming out in her foot. It looked like a bone was sticking out and it looked deformed. (T 28) It looked different from her left foot. Petitioner testified that is still the condition of her foot at the time of the hearing because they were unable to remove the screw in her foot. (T 28-29)

On 12/14/17, Family Care Associates of Chicago/Charles T Shaw MD, PCP, records document: patient is 42-year-old female presenting with complaints of urinary tract infection. Musculoskeletal examination: note: right foot with ace wrap using crutches. PX 3, p 32-33.
Petitioner left her job at respondent beginning January 2018. (T 38)

On 3/20/18 Family Care Associates of Chicago/Charles T Shaw MD, PCP, records document: the patient is a 42-year-old female presents with anxiety. Musculoskeletal examination noted right foot with ace wrap, using crutches. (PX 3, p 30-31)
On 7/26/18, Family Care Associates of Chicago/Charles T Shaw MD, PCP, records document: patient is a 43-year-old female who presents with anxiety. Symptoms include anxiety and panic attacks. Musculoskeletal exam documents: right foot with ace wrap, using crutches. (PX 3, p 25-26)

On 8/21/18, Family Care Associates of Chicago/Charles T Shaw MD, PCP, records document: examination musculoskeletal: right foot with ace wrap, using crutches; assessment & plan: foot pain, right, after Lisfranc fracture/surgery. (PX 3, p 20-22)
Petitioner testified she followed up with Dr. Tomasz Szmyd, DPM at the European Foot & Ankle Clinic. Petitioner testified she did not return to Dr. Miklos because he did not accept her insurance anymore. Her insurance is Medicaid. She had a different insurance that Dr. Miklos had accepted when she had seen him in the past. (T 30) Petitioner called Dr. Miklos office to make appointment and was advised that they would not accept her current insurance. (T 31)
The medical records of European Foot & Ankle Clinic/Tomasz Szymd DPM were admitted in evidence as Petitioner Exhibit 7.

On 8/25/18, European Foot & Ankle Clinic/Tomasz Szymd DPM records document: 45-year-old presents complaining of painful right foot joint; pain is chronic in nature, present for at least 2 months aggravated upon ambulation and prolonged standing, partially relieved with rest and non-weight-bearing activity; patient has history of right foot injury with surgical treatment. Examination: diffuse pain on palpation to mid tarsal joint right foot; localized edema to midfoot medial aspect. X-rays postsurgical changes to first cuneiform 2nd MPJ base right foot with one screw noted. Assessment: post-traumatic capsulitis/bursitis right foot. Plan: radiographs reviewed; patient was nonspecific but surgical treatment based on x-rays probably involved stabilizing Lisfranc's ligament right foot; patient is electing for conservative treatment at this time; gives verbal consent for Corticosteroid Injection to pathologic area joint; this was performed under aseptic technique; instructions for home conservative treatment, rest, ice, elevation, take anti-inflammatories as instructed. Follow-up in 46 weeks. (PX 7, p 6)
Petitioner testified she chose conservative treatment injection rather than surgery because she was afraid to go through all of that pain again. (T 32) The cortisone injection helped for a while. (T 33) For the next 18 months the condition of her foot remained the same. She had the same pain and the foot continued looking deformed. There was no change. She waited 18 months to go back to see Dr. Szymd because she was afraid to go through the pain again and was scared to get another surgery. (T 33) Petitioner

testified that when she returned to see the doctor she had not had any recent trauma since her last visit. (T 33-34) She had no other injury to her foot during that 18 month gap. (T 34)

On 2/1/20, European Foot & Ankle Clinic/Tomasz Szymd DPM records document: Complaining of painful right foot; patient missed last appointment and was seen 18 months ago; states that pain to right foot persists with increased burning sensation to inside of right foot; no recent trauma since last visit. Examination: diffuse POP to mid tarsal joints right foot; localized edema to midfoot medial aspect; increased medial and dorsal bony prominence first Cuneiform-metatarsal joint as compared to previous visit; x-rays: postsurgical changes to first Cuneiform 2nd MPJ base right foot with one screw noted. Assessment: post traumatic capsulitis/bursitis right foot; exocytosis right foot; R/O neuritis right foot. Rx surgery, patient consents. (PX 7, p 7)

On 2/22/20, European Foot & Ankle Clinic/Tomasz Szymd DPM records document: Plan: treatment today consisted of podiatric H & P; discussed various treatment options including surgical options; patient is still considering surgery; today trigger point injection of 2 CC lidocaine with 0.5 mL Marcaine and 4% ETOH solution was administered around symptomatic joint right foot. Will monitor for changes. Return to clinic 4- 6 weeks. (PX 7, p 8)
Petitioner testified the injection given by Dr. Tomasz Szymd DPM helped for a little while. (T 34) She testified that the next treatment of the foot was in November 2021 with Dr. P Chan, DPM, Foot & Ankle Health Center. (T 34) This was approximately a year and ½ after she was last seen by Dr. Tomasz Szymd DPM. Petitioner testified she waited for a year and ½ because of Covid and because she was afraid to go through the surgery again. She was referred to Dr. Chan by her primary care physician. She did not return to Dr. Szymd because when she called that office, they did not accept her insurance anymore. Her insurance was public aid Aetna Better Health. (T 35) The medical records/bill of Dr. P Chan DPM Foot & Ankle Health Center were admitted in evidence as Petitioner Exhibit 8.

On 3/6/21, Dr. P. Chan DPM Foot & Ankle Health Center records document: patient complaining of painful right foot moderate pain about 4 years. Patient complaining of screw in the right foot from previous surgery. X-ray was performed. After examination assessment was: 1.exostosis right; 2. Screw. (PX 8, p 11; PX 8, p 2)
On 4/10/21, Dr. P. Chan DPM Foot & Ankle Health Center records document: patient return to clinic complaining of pain right foot moderate about one month. Patient said medicine did not help.(PX 8, p 12; PX 8, p3)

On 7/22/21, Dr. P. Chan DPM Foot & Ankle Health Center records document: patient complaining of painful right foot.(PX 8, p 13; PX 8, p 4)
On 11/11/21 Dr. P. Chan DPM Foot & Ankle Health Center records document: petitioner seen by Dr. Chan.(PX 8, p 14; PX 8, p 7)
On 11/22/21, Dr. P. Chan DPM Foot & Ankle Health Center records document Dr. Chan performed surgery on petitioner at South Shore Hospital**. O**perative procedure: 1. Excision of exostosis right foot 2. Foreign body screw in right foot. Postoperative diagnosis: exostosis right. (PX 8, p 16-17; PX 8, p 6; PX 9)
Petitioner testified she had one follow-up visit after the surgery with Dr. Chan and then she was discharged. (T 36)

On 12/2/2,1 Dr. P. Chan DPM Foot & Ankle Health Center records document patient returned to clinic complaining of moderate pain right foot about 2 weeks. No follow-up ordered. (PX 8, p 15; PX 8, p 5) Petitioner has sought no medical treatment after her last visit with Dr. Chan. At trial she testified that her right foot hurts but she is able to walk. She does not jog like she used to because it hurts. She does home treatments of the pain sitting and soaking and taking Advil and ibuprofen. She takes Advil almost every day. The pain in the foot is mostly on the top side. She never had that pain before the accident. The pain does limit her activities at home. Before the accident, she was able to clean for a long period of time but now she is required to take breaks. She used to walk her dog, but now she cannot walk as far. (T 37-38) She does not take any prescribed medication for her foot, only ibuprofen over-the-counter. (T 38) Petitioner testified when she came back to her job with respondent on September 19, 2017, they decorated the office and had a really nice welcome back with balloons and flowers. (T 38) Petitioner identified photographs identified as Petitioner's Exhibit 11-3, 11-4, 11-5 and 11-6 as photographs showing flowers, streamers and balloons for her welcome back when she returned to work. Those photographs were taken on the day she returned to work on September 19, 2017. (T 40-41) They accurately depict the office that was decorated when she came back to work. The streamers depicted in PX 11-6 were like the ones that she was putting up for Thompson's birthday. (T 41) Petitioner identified Petitioner Exhibit 12 as a photograph of her supervisor's desk area that shows the desk that petitioner was standing on when she lost her balance and fell. (T 42) Petitioner identified Petitioner Exhibit 10 as a photograph of her right foot taken the day of her injury. (T 43) There is also a photograph showing her right hip bruises and swelling that she had in the right hip. (T 44) These photographs show the condition of her right foot and hip at the time of the accident. (T 44) Petitioner identified Petitioner's Exhibit 13 is a letter from Helping Hands addressed to petitioner dated June 21, 2017. She received a copy of that letter. (T 44) Petitioner identified Petitioner Exhibit 16 as a letter dated July 21, 2017 from Human

Resources addressed to petitioner from respondent. She received a copy of that letter. Petitioner identified Petitioner Exhibit 17 at a disability certificate from Dr. Miklos dated July 17, 2017, that directed her to be off work. She gave a copy of that to her supervisor. (T 45-46)
Petitioner identified Petitioner Exhibit 18 as a letter from respondent HR indicating that respondent had received notification for request for FMLA but that it was denied. She received a copy of that letter. (T 46)

Petitioner remained off work from June 20, 2017 through September 19, 2017. (T 46) She was paid no salary and received no TTD during that time period she was off work at the direction of her doctors. (T 47) No one ordered or assigned petitioner to put up the decorations for Kathlyn Thompson's birthday on June 19, 2017. (T 48) Petitioner put those decorations up voluntarily on that date. No one ordered or assigned her to stand on the desk on that date. (T 48) Petitioner was not required to decorate for the celebratory event or party of June 19, 2017, but it was the normal. (T 52)
Kathlyn Thompson was called as a witness by respondent. Thompson is currently employed at the Carle Foundation Hospital, Champagne. On June 19, 2017, she was employed by Helping Hands Center as Associate Director of Nursing. Thompson was responsible for overall health and safety of the clients that lived in the houses, ordering their medications, making sure that they were seeing doctors at the scheduled intervals, maintaining their records, training staff to dispense medications in the homes, everything health-wise including diet. (T 57) Petitioner reported directly only to Thompson. Thompson testified she did not direct Petitioner to decorate the office for an office party or celebratory event on June 19, 2017.

Thompson did not tell Petitioner leading up to June 19, 2017, that it was okay to climb on top of a desk to hang decorations for that party or celebratory event. She never told anyone in the days leading up to June 19, 2017, that they should decorate for a party on that date. Thompson testified that in her entire days of employment with respondent, she did not ever direct, order or assign anyone to decorate the office for party or a celebratory event. (T 59) Thompson testified that she had hung decorations for a party or celebratory event at Respondent. She did that voluntarily. She would decorate for holidays, birthdays, babies, strictly in the office, holidays birthdays. Nobody was ever assigned to participate in those parties or celebrations. Those parties and celebrations were entirely voluntary. Decorating for those events was entirely voluntary. (T 60) Nobody at respondent was disciplined or reprimanded or fired for not participating in a party or celebratory event at Helping Hands. Nobody at respondent was reprimanded, disciplined or fired for not decorating appropriately or following any decorating activity at respondent. There were maintenance staff available by phone. (T 61) If anybody wanted to hang

something high on the wall or up on the ceiling, they would have to get a key from maintenance to get into this storage area. (T 62) Thompson testified she never ordered or assigned anybody to get up on a desk to hang decorations. (T 62) The witness was aware that there were a number of parties that took place before the incident on June 19, 2017. Thompson testified that there were frequent celebrations of birthdays and going away and babies in the office. The witness decorated the office for those celebrations and events. (T 63)

Admitted as Petitioner Exhibit 13 is a letter dated 6/21/17 from Respondent addressed to Petitioner, the letter indicates that the claimant has been determined to be non-compensable based on the following: "the act of jumping off of the desk is not part of your assigned work duties, nor was it something your employer instructed you to do as part of your work. Therefore, your injury does not meet the criteria for being work-related." (PX 13)

Admitted as Petitioner Exhibit 14, is a claim for reimbursement of medical payments summary made by Equian/public aid for identified medical bills. The claim for lien is in the amount of $3,458.37 for total amount billed by the identified medical providers in the amount of $37,206.95. (PX 14)

Admitted in evidence as Petitioner Exhibit 15, is a list of unpaid bills, with a copy of the bills from the subpoenaed records attached. The total amount of the payments of the bills to all the identified providers is $52,700.77 pre-fee schedule. (PX 15)
Admitted in evidence as Petitioner Exhibit 16, is a letter from respondent dated July 21, 2017, addressed to Petitioner, the letter indicates that Respondent is offering accommodated work restriction. (PX 16)

Admitted in evidence as Petitioner Exhibit 17, is a disability certificate dated July 17, 2017, for Petitioner from Dr. Miklos, indicating that the Petitioner is to remain off work for the next 8 to 10 weeks pending healing. (PX 17)
Admitted in evidence as Petitioner Exhibit 18, is letter from Respondent dated July 28, 2017, addressed to petitioner indicating that request for FMLA is denied based on the number of hours worked in the past year. The letter further states that respondent has a disability certificate from the doctor indicating petitioner's need to remain off work for 8 to 10 weeks. The letter requests Petitioner to forward an updated doctor's note regarding estimated recovery time and return to work by 8/28/17. (PX 18)

Conclusions of Law

C. Whether an Accident Occurred That Arose Out of and In the Course of Petitioner's Employment by Respondent?

The Worker's Compensation Act is a remedial statute, which should be liberally construed to effectuate its main purpose of providing financial protection for injured workers. *Interstate Scaffolding, Inc. v Illinois Worker's Compensation Commission,* 236, Ill. 2nd 132, 149 (2010). According to the Act, in order for a claimant to be entitled to workers compensation benefits, the injury must "arise out of" and "in the course of" the claimant's employment. 820 ILCS 305/1(d) (West 2014). Case law interpreting the Act makes it clear that both elements must be present at the time of the accidental injury in order to justify compensation. *Orsini v Industrial Commission,* 117 Ill.2nd 38, at 44-45; *Illinois Bell Telephone Co. v Industrial Commission,* 131 Ill. 2nd 478, 483 (1989); *Free King Oil Co. v. Industrial Commission,* 62 Ill. 2nd 293, 294 (1976); *Wise v. Industrial Commission,* 54 Ill. 2nd 138, 142 (1973). Therefore, in order to obtain compensation under the Act, a claimant bears the burden of proving by a preponderance of the evidence two elements: (1) that the injury occurred in the course of claimant's employment and (2) that the injury arose out of claimant's employment., *Sisbro, Inc., v. Industrial Commission,* 207 Ill. 2nd 193, 203 (2003)."The arising out of component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro,* 207 Ill. 2nd at 203. The 3 categories of risks recognized by case law are " (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." *Illinois Institute of Technology Research Institute,* 314 Ill. App. 3rd 149 at 105 (2000).

Injuries resulting from a risk distinctly associated with employment are deemed to arise out the claimant's employment and are compensable under the Act. *Stake 'n Shake v Illinois Worker's Compensation Commission,* 2016 Ill. App. 3rd 150500 WC paragraph 34.

"The first step in risk analysis is to determine whether the claimant's injuries arose out of an employment-related risk – a risk distinctly associated with the claimant's employment. (Cited cases.) As noted above, a risk is distinctly associated with employee's employment if at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *Caterpillar Tractor v Industrial Commission,* 129 Ill. 2nd 52 at 58, (1989)." *McAllister v The Illinois Worker's Compensation Commission*, 2020 IL 124848 paragraph 46 (2020).

Petitioner's job with Respondent was as a medical assistant. Her job duties included answering phones, making appointments for the doctor, taking vitals, filing, faxing and assisting the doctor. Petitioner was injured when she lost her balance and fell to the floor as she was standing on a desk in the office placing streamers for the birthday of her supervisor, Kathlyn Thompson. Petitioner was not instructed by the supervisor to decorate the office for this event. The evidence in this record demonstrates that one week prior to the date of this accident, Petitioner was instructed by her supervisor to purchase decorations and to decorate the office for a co-worker who was leaving employment with Respondent. Petitioner purchased those decorations which included streamers and she did decorate the office placing those streamers as instructed by Thompson. Petitioner was reimbursed by Thompson for those decorations that she had purchased. Petitioner also had placed decorations in the office for other coworkers' birthdays and other occasions.

The testimony of Petitioner was that it was the normal practice in the office to decorate when it was a coworker's birthday or when a coworker was leaving for another job. Thompson testified that she herself hung up decorations in the office for parties or celebratory events including holidays, birthdays, and babies of coworkers. Thompson identified additional celebrations that took place in the office. (T 65)

Thompson testified nobody was ever disciplined for not participating in any of these celebrations, and nobody was ever disciplined for placing decorations for these celebrations. The evidence in this record demonstrates that the office celebrations occurred during office hours, in the office where the employees worked, and it was a normal practice in this office. The evidence in this record demonstrates that the decorations were focused around the desk of the individual being celebrated. The weight of credible evidence in this record demonstrates that the Respondent supervisor not only permitted, but actively participated in the decoration of the office for the life celebratory events. The evidence in this record demonstrates that when Petitioner returned to her job after treatment and surgery of the injury to her foot, decorations including streamers were put up to celebrate her return to work. (PX 11-6, T 41)
The Arbitrator finds based upon the weight of credible evidence in this record that at the time of the injury, Petitioner was decorating the office around the desk of her supervisor for her supervisor's birthday, Petitioner was performing acts which Respondent might reasonably be expected to perform incident to her assigned duties. The Arbitrator notes that even though no one directly instructed or ordered the Petitioner to perform duties of decorating the desk area, the Arbitrator agrees that due to prior evidence and testimony, the act of decorating the desk area for the co-worker's birthday is implied and acceptable. The Arbitrator therefore finds pursuant to the rule of *Caterpillar Tractor* that Petitioner

was engaged in an employment-related risk when she was injured. Pursuant to the rule of *McAllister,* the arbitrator finds that Petitioner was injured in an accident that arose out of her employment.

The second element, "in the course of employment" refers to the time, place, and circumstances of the injury. *Scheffler Greenhouse, Inc. v Industrial Commission* 66 Ill. 2nd 361, 366-367 (1977). "A compensable injury occurs 'in the course of' employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment." *Wise,* 54 Ill.2nd at 142. The testimony demonstrates that the accident occurred while petitioner was at work in her office. Additionally, the weight of credible evidence demonstrates that at the time of the accident, Petitioner was performing an activity that she had performed on multiple prior occasions, an activity that she had been directed by her supervisor to perform on at least one prior occasion, an activity which her supervisor had herself performed on prior occasions. The Arbitrator finds the weight of credible evidence demonstrates that petitioner was injured in an accident on June 19, 2017, that occurred in the course of employment with Respondent.

Section 11 of the Act provides that: "Accidental injuries incurred while participating in voluntary recreational programs including but not limited to athletic events, parties and picnics do not arise out of and in the course of the employment even though employer pays some or all of the cost thereof. This exclusion shall not apply in the event that the injured employee was ordered or assigned by his employer to participate in the program." 820 ILCS 305/11. Whether a particular activity (emphasis added) is a "recreational program" under Section 11 of the Act is a question of law. *Elmhurst Park District v Illinois Workers Compensation Commission,* 395 Ill App 3rd 404, 408 (2009). Although Section 11 of the Act provides some general examples of activities which may be considered "recreational"-such as "athletic events, parties and picnics"—"the Act does not expressly define the term." *Elmhurst Park District* 395 Ill App 3rd at 408-09. "Absent statutory definitions including a different legislative intention, courts will assume that words have their ordinary and popularly understood meanings." *Elmhurst Park District*, 395 Ill App 3rd at 409. Case law has identified "parties" that constitute a "recreational program" that are covered by this provision. In *Glassie v Papergraphics,* 248 Ill. App. 3rd 621 (1st Dist.1993) the court found that a holiday party on the employer's premises where food was being prepared on portable burners and located on a table at the party to which all of the employees had been invited and sat at a common table and which started at noon and after which employees were not required to return to work did qualify as a "party" to which Section 11 was applicable. There is no evidence in this record that the decoration of the office for the birthday of the Petitioner's supervisor and for all the other life-events described in this record by Petitioner or by her supervisor, consisted of any activity other than

decorating the desk area where the person whose life event was being noted, worked. There is no evidence in this record that these events included stopping work, sharing common food and drink, socializing, or any other activity that would constitute a "party" or a "recreational program" in their ordinary and popularly understood meanings. The Arbitrator finds that Petitioner's decorating the area around her supervisor's desk as evidenced in this record does not constitute participation in a party or a recreational program. The Arbitrator finds that the weight of credible evidence in this record demonstrates that Section 11 of the Act does not apply to the facts of this case.

F. Whether Petitioner's Current Condition of Ill Being Causally Related to the Injury?

Petitioner had no problems with her right foot and ankle that caused her to seek any medical treatment prior to the work accident of June 19, 2017. She fell from a desk approximately 4 feet high and felt immediate pain in her right foot. She was unable to place weight on the right foot. She was taken by a coworker from the office on the day of the accident to the Adventist LaGrange Memorial Hospital where she gave history of the work accident consistent with her testimony at hearing and complained about right foot pain and swelling that is documented in the medical record. (PX 1, p 15-17) Petitioner gave a credible account as to what happened to all medical providers, including the history of the accident and onset of the pain in her right foot, consistent with her testimony at trial. The Arbitrator finds based upon a chain of events analysis that Petitioner's current condition of ill being with regard to her right foot is causally related to the work accident of June 19, 2017.

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 medical bills were admitted in evidence as part of the subpoenaed medical records of the treating physicians. Those medical records are summarized in Petitioner Exhibit 15 which is a list of the admitted bills in evidence. The Arbitrator finds the admitted bills to be reasonable, necessary and causally related treatment of the work injury. Respondent is ordered to pay those bills listed in PX 15 pursuant to the fee schedule or the negotiated rate, whichever is less as provided in Sections 8(a) and 8.2 of the Act. Petitioner stipulated that PublicAid/Equian had filed a lien, PX 14, claiming to have paid a portion of these bills, but that some of the providers indicate that they have not received payment. Petitioner stipulated to the extent that any of the bills have been paid by Public Aid, Respondent would receive credit for payment made by Public Aid. Respondent is ordered to pay the lien of Public Aid/Equian as evidenced in PX 14.

K. What Temporary Benefits Are in Dispute? TTD.

The weight of credible evidence demonstrates that Petitioner was off work and was unable to work as result of the work injury from the day of the accident through her return to work with respondent on 9/19/2017. Respondent is therefore ordered to pay TTD from 6/20/17 through 9/19/17 representing 13 weeks.

L. What Is the Nature and Extent of the Injury?

i. 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.
ii. 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 medical assistant at the time of the accident and that she *is* able to return to work in her prior capacity as a result of said injury. The Arbitrator notes petitioner's job duties require her to be on her feet. Because the injury is to petitioner's foot, the Arbitrator gives *greater* weight to this factor.
iii. With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 42 years old at the time of the accident. Because petitioner has at least 20 more years of work life, the Arbitrator gives *greater* weight to this factor.
iv. With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes there is no evidence that petitioner sustained any loss of future earning capacity. The Arbitrator therefore gives *no* weight to this factor.
v. With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes petitioner sustained a Lisfranc's midfoot fracture requiring two surgeries to the foot. She has retained hardware in her foot. The injury to petitioner's right foot limits the petitioner's activities of daily living including cleaning, walking her dog, jogging as result of pain. She takes over-the-counter medication 5 times a week to address the ongoing pain in the foot. The Arbitrator 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 35% loss of use of the right foot pursuant to §8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC026808
Case Name	Charles E Baker v. The American Coal Company
Consolidated Cases	
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	23IWCC0047
Number of Pages of Decision	21
Decision Issued By	Kathryn Doerries, Commissioner, Thomas Tyrrell, Commissioner

Petitioner Attorney	Kirk Caponi
Respondent Attorney	Julie Webb, Kenneth Werts

DATE FILED: 1/30/2023

/s/Kathryn Doerries, Commissioner

Signature

DISSENT: /s/Thomas Tyrrell, Commissioner

Signature

23IWCC0047

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHARLES BAKER,

Petitioner,

vs. NO: 12 WC 26808

THE AMERICAN COAL COMPANY,

Respondent.

DECISION AND OPINION ON REMAND

This cause comes before the Commission for discussion pursuant to the Rule 23 Order of the Appellate Court of the Illinois Fifth District Workers' Compensation Commission Division, Appeal No. Appeal No. 5-18-0341 WC, filed June 2, 2019, vacating the orders of the Commission case 17IWCC0571, and the Circuit Court case 17 MR 290, and remanding this case to the Commission with directions to issue a new decision, this time clarifying whether the Commission is or is not considering the X-rays from the National Institute of Occupational Health (National Institute) and in either event explaining why. After considering the entire record, including the evidence from the National Institute, the Commission affirms but modifies the Decision of the Arbitrator for the reasons outlined below.

Findings of Fact and Conclusions of Law

The Commission affirms and adopts the Arbitrator's findings of fact. The Commission also finds that although Petitioner had certain exposures for more than ten years working as an underground coal miner, Petitioner failed to prove he suffers from an Occupational Disease, disablement, or that he was disabled, as defined under the Illinois Workers' Occupational Diseases Act.

The pertinent sections of the Illinois Workers' Occupational Diseases Act state, in part, the following:

(d) In this Act the term "Occupational Disease" means a disease arising out of and in the course of the employment or which has become aggravated and rendered disabling as a result of the exposure of the employment. Such aggravation shall arise out of a risk peculiar to or increased by the employment and not common to the general public.

A disease shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin or aggravation in a risk connected with the employment and to have flowed from that source as a rational consequence.

An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when, for any length of time however short, he or she is employed in an occupation or process in which the hazard of the disease exists…

The employer liable for the compensation in this Act provided shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease claimed upon regardless of the length of time of such last exposure, except, in cases of silicosis or asbestosis, the only employer liable shall be the last employer in whose employment the employee was last exposed during a period of 60 days or more after the effective date of this Act, to the hazard of such occupational disease, and, in such cases, an exposure during a period of less than 60 days, after the effective date of this Act, shall not be deemed a last exposure. If a miner who is suffering or suffered from pneumoconiosis was employed for 10 years or more in one or more coal mines there shall, effective July 1, 1973 be a rebuttable presumption that his or her pneumoconiosis arose out of such employment…

(e) "Disablement" means an impairment or partial impairment, temporary or permanent, in the function of the body or any of the members of the body, or the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom he or she claims compensation, or equal wages in other suitable employment; and "disability" means the state of being so incapacitated.

(f) No compensation shall be payable for or on account of any occupational disease unless disablement, as herein defined, occurs within two years after the last day of the last exposure to the hazards of the disease, except in cases of occupational disease caused by berylliosis or by the inhalation of silica dust or asbestos dust and, in such cases, within 3 years after the last day of the last exposure to the hazards of such disease and except in the case of occupational disease caused by exposure to radiological materials or equipment, and in such case, within 25 years after the last day of last exposure to the hazards of such disease. *820 ILCS 310/1(d), (e), (f)*

The Commission further finds Petitioner was last exposed on February 8, 2012, the date of his retirement, and as of the date of the arbitration hearing on April 12, 2016, had not established he suffers from an Occupational Disease or disablement, or that he is disabled or suffering from any respiratory condition either from coal workers' pneumoconiosis (CWP) or any respiratory

condition or reduced pulmonary capacity from exposures while working for Respondent.

In affirming but modifying the Arbitrator's findings, the Commission relies upon the findings of the National Institute's (aka National Institute for Occupational Safety and Health (NIOSH)) testing results in this case. (RX5) In concluding that Petitioner failed to prove by a preponderance of the evidence that he suffers from coal workers' pneumoconiosis, the Commission, relies, in part, upon the findings of the two NIOSH B-readers, Dr. William Meseroll and Dr. John Parker, that Petitioner's x-ray of May 4, 2007, did not reveal any evidence of coal workers' pneumoconiosis. The Commission also agrees with the Arbitrator that all of the NIOSH B-readers and A-readers found Petitioner's x-rays of January 19, 2000, and January 29, 2003, to be negative for coal workers' pneumoconiosis. The Commission further finds that the Arbitrator properly gave less weight to these interpretations than those of the results of the Petitioner's 2012 X-rays.

The National Institute's test results were properly considered, in part, because P etitioner did not object to admission of the test results related to the pre-retirement x-rays and which are evidence of whether Petitioner had the condition of CWP during his employment. (RX5, T. 10) Further, the National Institute's test results were properly considered because those x-rays and interpretations confirm that in 2000, 2003 and 2007 there was no evidence of CWP in Petitioner's chest x-rays. See *Field v. Ill. Workers' Comp. Comm'n,* 2022 IL App (5th) 210301WC-U, P53, 2022 Ill. App. Unpub. LEXIS 1714, *36. (While older X- ray interpretations may not be entitled to as much weight as more recent ones, the court still find them relevant to demonstrate the progression, or lack thereof, of CWP in claimant during the years of his employment as a coal miner.)

Petitioner underwent an X-ray on February 21, 2012, at his attorney's request. (T, p. 36) The February 21, 2012, X-ray was taken approximately two weeks after Petitioner retired. The May 4, 2007, X-ray, although taken to fulfill NIOSH requirements during the time of the Petitioner's employment, was also used by Dr. Alexander, Dr. Meyer and Dr. Selby for the purpose of comparing the findings with the February 21, 2012 X-ray.

Dr. Henry Smith and Dr. Michael Alexander, both board certified radiologists and B-readers reviewed the February 21, 2012, chest X-ray at Petitioner's request. Dr. Smith and Dr. Alexander interpreted the February 21, 2012 chest, X-ray as positive for simple CWP and CWP respectively with profusion 1/0 and P/P opacities. Their opinions differ in the location of the opacities. Dr. Smith opined the opacities were in the middle and lower lung zones bilaterally. Dr. Alexander opined the opacities were in all lung zones. Dr. Alexander held the only opinion that the May 4, 2007, X-ray was positive for CWP. Neither Dr. Smith nor Dr. Alexander examined Petitioner and neither Dr. Smith nor Dr. Alexander testified.

Dr. Christopher Meyer and Dr. Jeffrey Selby, both board certified radiologists and B-readers, reviewed the February 21, 2012, chest X-ray at Respondent's request. Dr. Meyer testified there can be disagreement amongst B-readers as to whether they think they are seeing small opacities or not. Making the distinction between 0/1 and 1/0 opacities is one of the most difficult processes of the entire B-Reader form. (8/30/13DepT, p. 10)

Dr. Meyer testified B-Reading is an epidemiologic evaluation of chest X-rays. There is a very specific form that's been developed to go through and evaluate the chest X-ray for the presence or absence of occupational lung disease. CWP is typically an upper zone predominant process; others like idiopathic pulmonary fibrosis or asbestosis is a basilar or linear process. He explained it is very important to show the small opacities and distribution of the small opacities and that is the purpose of the form. The last component is the extent of the lung involvement, the so-called profusion. (8/30/13DepT, pp. 22-23)

Dr. Meyer then testified that, "(w)e expect CWP and silicosis early in the disease process to be an upper zone predominant disease. You have to grade the film for profusion as well, basically trying to define the density of the small opacities in the lung. So if we were to imagine a film that was completely normal that would be a profusion of zero. (8/30/13DepT, pp. 28-30)

The most abnormal film with small opacities everywhere would be in a general profusion category of 3 and in-between we have threshold values. So one (1) threshold, or a profusion value of one (1), implies a mild amount of disease. Two (2) would be medium involvement of the lung and a profusion value of three (3) would be severe involvement of the lung. Profusion is described in fractionated terms as well in that the numerator of a profusion value implies what we think the value is and the denominator implies the other closest possible value. A 0/1 would mean the X-ray is normal but it might be just a little bit mildly abnormal. 2/1 would mean X-ray has mid-level of profusion of abnormality but might actually be a little milder than that. A 1/0 is right on the borderline between abnormal & normal." (8/30/13DepT, pp. 30-31)

Dr. Meyer compared the Petitioner's May 4, 2007 to the February 21, 2012 X-ray and found both negative for CWP. (8/30/13 DepT, pp. 40-41)

Dr. Selby, a certified B-reader since 1985 and re-certified about seven times, examined Petitioner and also compared the 2007 and 2012 X-rays finding both were negative for CWP. (2/2/16 DepT. p. 23)

The Commission concurs with the Arbitrator's finding that the testimony of Dr. Selby and Dr. Meyer are more persuasive than the B-Reader opinions of Dr. Smith and Dr. Alexander and more persuasive than the testimony of Dr. Glannon Paul. The Commission notes specifically Dr. Paul did not review any medical records. (1/11/16 DepT, pp. 18-20) Dr. Paul testified he is neither an A or B reader or board certified in pulmonary medicine. (1/11/16 DepT, pp. 25-26) The Commission finds Dr. Paul's concession that he did not review Petitioner's medical records or know the inhalation time for the tracer gas or the hold time for the tracer gas, tarnishes his opinion and the results of the diffusing capacity he performed.

The Commission notes Dr. Meyer and Dr. Selby agree regarding the impact of film quality and expertise on B-reading results and the fact that comparable experts can disagree. Dr. Meyer, Dr. Selby and Dr. Paul opined similarly without tissue sample, via biopsy or autopsy, presence or absence of coal workers' pneumoconiosis (CWP) cannot be confirmed. In this case, Dr. Smith and Dr. Alexander, hired by Petitioner to perform B-Readings, both found the profusion 1/0, the borderline area between abnormal and normal in the 2012 X-ray.

The Commission is swayed, therefore, by Dr. Selby's testimony regarding the sensitivity of CT scans for the evaluation of lung parenchyma. Dr. Selby testified a high-resolution CT of the chest was completed July 31, 2013, and read by Anthony Perkins, M.D., a board-certified radiologist, showing no evidence of black lung disease/coal worker's pneumoconiosis. Dr. Selby reviewed the CT of the chest and agreed with Dr. Perkins' interpretation. (2/2/16 DepT, p. 13)

Dr. Selby opined that, "Petitioner does not suffer from any respiratory or pulmonary abnormality as a result of coal mine dust inhalation or coal mine employment…. Mr. Baker is deconditioned and obese. Both can be causative of shortness of breath or exercise limitation." (2/2/16 DepT, p. 22)

Although there are no protocols for standardizing equipment for CT scans, the cuts used for CT, according to Dr. Selby, are based on protocol that is used for any interstitial lung disease and acceptable by the American College of Radiology for all interstitial lung disease. (2/2/16 DepT, p. 40)

Dr. Meyer testified, "sometimes CT scans are referred for CWP…You don't need contrast for evaluating interstitial lung disease like CWP." (8/30/13 DepT, pp. 40-45)

Dr. Selby also testified CTs of the chest are more sensitive detecting emphysema. There was no emphysema seen on the July 31, 2013, CT of Petitioner's chest. That was the opinion of the radiologist as well. The testing performed on Petitioner January 29, 2003, compared to July 31, 2013, showed no significant change. Petitioner does not have progressive massive fibrosis or cor pulmonale. (2/2/16 DepT, pp. 51-52)

The Commission finds that the July 31, 2013, CT scan is the best evidence in this case and corroborates the B-Reader findings of Dr. Meyer and Dr. Selby.

The Petitioner's treating medical records through the date of the arbitration hearing confirm the same findings on physical examination as Dr. Selby's comprehensive evaluation found. The Veterans Administration records confirm Petitioner had no shortness of breath or cough, dyspnea on exertion and physical examination of the chest when last seen on July 29, 2013, revealed the lungs to be clear to auscultation bilaterally.

Dr. Selby testified Petitioner's chief complaint was that, his knee hurts. Petitioner told Dr. Selby "he has no respiratory problems he can think of." (2/2/16 DepT, p.10) The Commission finds Petitioner does not have evidence of an occupational disease, disablement, pulmonary or respiratory condition.

The Commission finds that because the Petitioner did not object to the National Institute's 2000, 2003 and 2007 X-ray results being admitted into evidence, those results are properly considered by the Commission. Second, the Commission finds that the results of the 2000, 2003 and 2007 X-ray results are not entitled to as much weight as more recent x-rays, however, the older films are still relevant to the question of whether the claimant has CWP, by confirming progression, or lack thereof, of CWP. For those reasons, the Commission considered the National Institute's X-ray results and conclusions and further considered the B-Readers' opinions in regard

to those reports. Therefore, the Commission affirms and modifies the Arbitrator's Decision on remand to clarify that the Commission considered the National Institute's X-ray results in concluding that Petitioner does not show evidence of CWP, or any occupational disease, disablement, pulmonary or respiratory condition as a result of exposures while working for Respondent or at the time of the hearing, and, as such, Petitioner failed to prove under the Occupational Diseases Act he suffers from an occupational disease as a result of exposure while working for Respondent.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on June 29, 2016, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner failed to prove by a preponderance of the evidence that he has an occupational disease, disablement, or that he was disabled, as defined in the Illinois Workers' Occupational Diseases Act and all benefits are hereby denied.

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.

Based upon the denial of compensation herein, no bond is set by the Commission. *820 ILCS 305/19(f)(2)*. 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.

January 30, 2023

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

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

DISSENT

I believe that the record amply supports Petitioner's claim that he was not only exposed to an occupational disease by way of his having worked underground in coal mines for 27 years, but that he also proved by a preponderance of the credible evidence that he suffers from an occupational disease and that he has suffered disablement as a result thereof. More to the point, the testimony and opinions of Drs. Paul and Alexander,

as well as the radiographic testing, clearly evidence the fact that Petitioner suffers from coal workers' pneumoconiosis as well as reduced diffusing capacity, which by its very nature restricts his ability to return to the mines and thus has resulted in disablement.

For the above reasons, I would reverse the Arbitrator's decision and find that Petitioner proved that he was exposed to an occupational disease by reason of his employment with Respondent and that said exposure has resulted in disablement and impairment, warranting compensation pursuant to the Act. Therefore, I respectfully dissent.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BAKER, CHARLES Case# **12WC026808**
Employee/Petitioner

THE AMERICAN COAL COMPANY
Employer/Respondent

On 6/29/2016, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.34% shall accrue from the date listed above 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.

A copy of this decision is mailed to the following parties:

0755 CULLEY & WISSORE
KIRK CAPONI
300 SMALL ST SUITE #3
HARRISBURG, IL 62946

1662 CRAIG & CRAIG LLC
KENNETH F WERTS
115 N 7TH ST PO BOX 1545
MT VERNON, IL 62864

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

CHARLES BAKER
Employee/Petitioner

v.

THE AMERICAN COAL COMPANY
Employer/Respondent

Case # **12** WC **26808**

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 **Christina Hemenway**, Arbitrator of the Commission, in the city of **Herrin**, on **April 12, 2016**. 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 **Sections 1(d)-(f) of the Occupational Diseases Act**

FINDINGS

On **February 8, 2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did 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 $**64,955.80**; the average weekly wage was $**1,249.15**.

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

Petitioner claims no medical.

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

As explained in the Arbitration Decision, Petitioner failed to prove by a preponderance of the evidence that he suffered from coal workers' pneumoconiosis and/or reduced pulmonary capacity that arose out of and in the course of his exposures in the coal mine, and that his current condition of ill-being is causally related to his employment. All benefits are denied.

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

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

Signature of Arbitrator

June 23, 2016
Date

JUN 29 2016

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

CHARLES BAKER
Employee/Petitioner

v. Case #: **12 WC 26808**

THE AMERICAN COAL COMPANY
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

At the time of his accident, Petitioner was 62 years old, married, with no dependent children. He was employed by The American Coal Company as an underground mechanic, and had been so employed since 2003. Petitioner completed his junior year in high school and later received his GED in 1972. He also received a maintenance mining technology certificate through Rend Lake College. Petitioner served in the armed forced from November 1969 to November 1978. He served in the Marine Corps in Vietnam and later served in the Navy.

Petitioner worked in the coal mines for 27 years, all of which were underground. He was regularly exposed to coal dust, silica dust, bolting glue fumes, and diesel fumes. His last day of employment with Respondent was February 8, 2012. He was exposed to coal dust that day in his classification as underground mechanic. He testified he decided to retire and "get out while the getting was good". He was also having a little bit of trouble breathing, and had some other unrelated medical issues, and he wanted to get out of the atmosphere in the mine. He has not worked for any other coal mine since he retired, nor has he worked elsewhere.

Petitioner began working in the mines in 1980 for Inland Steel. He was a roof bolter, which involved drilling holes into the roof and adding roof bolts for additional support after the coal was mined out. This process created a lot of rock dust, which Petitioner was exposed to. He also used roof bolting glue pins, which had an odor which could take your breath. Petitioner was a roof bolter for about a year, and then got his job as an underground mechanic. That job involved troubleshooting and repair of mechanical, electrical, and hydraulic equipment underground. He repaired the equipment underground in the mine, where the coal miners were working, and where there was a lot of dust. Petitioner worked for Inland Steel until around 1988, when the mine closed.

Following work at Inland Steel, Petitioner worked as a mechanic on assembly lines and machines for a company that made interior car parts. He did that for about three years. Following that, he returned to the coal mines. He worked for Consolidation Coal from the early 1990's to 2003, when the mine closed. He then went to work form Respondent as an underground mechanic, where he remained until his retirement in 2012. He testified the work also exposed him to diesel fumes, as the haulage equipment was diesel powered and he ran into the fumes before he actually got into the unit.

Petitioner testified he first noticed breathing problems about two years before he retired. He noticed as he walked across the unit he would get low on air, which he first attributed to "getting old". He testified that from that time until the day he retired, his breathing problems got worse. He is currently able to walk on level ground at a normal pace for about a mile or climb one flight of stairs before he becomes short of breath. He is not currently on any breathing medications. The breathing difficulties interfere with his ability to mow his grass, which his wife primarily does now, and his ability to take out more than one trash can at a time. They also prevent him from restoring cars, which was previously a hobby. He is still able to ride motorcycles, as it does not involving lifting much weight.

Petitioner testified he gets most of his medical treatment at the VA hospital, for any ailment he may have. He has not really discussed his breathing problem with the doctors at the VA, as he did not believe there was anything they would do. Petitioner testified he was a smoker from ages 13 to 33, but that he had not smoked in 33 years. At the highest point, he was smoking close to three packs a day.

In addition to his breathing problems, Petitioner testified he had Type II diabetes, kidney disease, high blood pressure, and anxiety attacks, all of which require medication.

On cross-examination, Petitioner acknowledged that when he was employed at the mine he had chest x-rays from time to time, which were provided by NIOSH for black lung screening. When he underwent the screening they would write to him and let him know the results of the x-rays. He did not bring any of those letters with him to trial. He testified that when he retired he signed up for Social Security. When he retired he was having other medical problems, including kidney disease and anxiety attacks. He acknowledged he had had knee problems while working in the mine, for which he had surgery, and from which he had recovered.

Petitioner testified he began treating at the VA in 2009, and prior to that he treated with Dr. Julie Atkins at Ultimed Plus/SIMCA. In conjunction with his claim, he had a chest x-ray done by Dr. James Alexander and was examined by Dr. Glennon Paul, both at his attorney's request. He testified he had seen no other physicians in regard to his claim, except for an examination done at his employer's request.

Petitioner testified his hobbies include target shooting and taking long motorcycle trips with his wife. The longest trip they have taken was about 4,500 miles over a 10-day period.

Petitioner was examined by Dr. Glennon Paul at his attorney's request on December 7, 2012. PX1, Dep. PX2. He testified by way of deposition on January 11, 2016. Dr. Paul is board

certified in asthma, allergy & immunology. He is the medical director of St. John's respiratory therapy, clinical assistant professor of medicine at SIU Medical School, and senior physician at the Central Illinois Allergy and Respiratory Clinic. Dr. Paul testified that when he did his fellowship from 1970 to 1972, there were not pulmonary fellowships developed, but that during his fellowship he was responsible for pulmonary diseases. He testified he reads about 100 chest x-rays per week and interprets the same number of pulmonary function tests. He has treated coal miners for coal mining induced lung disease since the 1970's. Dr. Paul is not an A or B reader and is not board certified in pulmonary medicine. PX1

Dr. Paul testified that Petitioner gave a history of working underground in the coal mines for 28 years. He reported some shortness of breath when lifting or going up one flight of stairs. He did not have cough or sputum production. Dr. Paul testified there are causes for shortness of breath with exertion other than lung disease, including heart disease, and that exertional dyspnea is possibly associated with deconditioning. Examination of Petitioner's chest was normal, except that he had rales throughout his lung areas on deep inspiration. Dr. Paul testified this is caused by fibrosis, which is a permanent condition. He testified that Petitioner did not have restrictive lung diseased, based on his pulmonary function studies. Petitioner did have reduced diffusing capacity, which Dr. Paul testified was compatible with black lung disease. PX1.

Dr. Paul testified that Petitioner had coal workers' pneumoconiosis and a decreased diffusing capacity, both of which were caused by inhalation of coal mine dust. He testified that in light of these diagnoses, Petitioner could have no further exposure to the environment of a coal mine without endangering his health. Dr. Paul testified that Petitioner had clinically significant pulmonary impairment caused by the coal dust environment. He further testified that a person could have coal workers' pneumoconiosis despite having a negative chest x-ray. PX1.

On cross-examination, Dr. Paul acknowledged that he had seen Petitioner only one time, at the request of his attorney, and that he has examined hundreds of patients at the request of Petitioner's counsel. Petitioner was not taking any medication at the time he was examined, and Dr. Paul did not ask him if he had ever taken breathing medication in the past. Dr. Paul did not review medical records regarding Petitioner. He testified that Petitioner did not relate to him why he retired when he did, and did not relate to him that he left mining at the time he did due to an occupational disease. PX1.

Dr. Paul testified that simple pneumoconiosis does not have any symptoms and that it will likely progress once the exposure ceases. He acknowledged, however, that when he gave depositions in May 2015 he testified at that time that simple coal workers' pneumoconiosis was unlikely to progress once the exposure ceases. PX1, Dep. RXA, RXB. Dr. Paul testified that when he answered (in May 2015) that it could not progress, he was referring to the chest x-rays. He testified it is more likely not to progress regarding the chest x-rays, but he testified he was currently talking about the disease itself in the lung, and it is likely to progress. He could not say that it was progressing in Petitioner, as he did not have a biopsy. PX1.

With regard to the diffusing capacity he performed, Dr. Paul did not know the inhalation time for the tracer gas, or the hold time for the tracer gas. He did not know the inspiratory volume for the tracer gas. Dr. Paul attributed the decrease in diffusing capacity to scarring of the

lungs by pneumoconiosis, which he testified is permanent. Dr. Paul conceded that he did not know the date of the chest x-ray that he reviewed. He testified that all opacities in the lungs of patients who have coal workers' pneumoconiosis are the same and that it does not matter what the shape is, that they are all due to coal dust. Dr. Paul did not note the profusion of the film. He felt there was a greater involvement in the lower lung zones. PX1.

At Petitioner's request, Dr. Henry Smith reviewed chest x-ray dated February 21, 2012. Dr. Smith is a Board Certified Radiologist and a B-reader. He interpreted the chest x-ray as positive for pneumoconiosis, with profusion 1/0 and P/P opacities in the middle and lower lung zones bilaterally. Dr. Smith's impression was simple coal worker's pneumoconiosis. PX2.

At Petitioner's request, Dr. Michael Alexander reviewed chest x-ray dated February 21, 2012. Dr. Alexander is a Board Certified Radiologist and a B-reader. He interpreted chest x-ray as positive for pneumoconiosis, with profusion 1/0 and P/P opacities in all lung zones. His impression was coal workers' pneumoconiosis. PX3.

Records of NIOSH were admitted into evidence. Chest x-ray of January 19, 2000, was interpreted by B-reader McGraw and B-reader Shipley as being completely negative. Chest x-ray of January 29, 2003, was interpreted by B-reader Parker and A-reader Youssef as being completely negative. Chest x-ray of May 4, 2007, was interpreted by B-reader Meseroll and B-reader Parker as being completely negative. RX5.

At Respondent's request, Dr. Cristopher A. Meyer reviewed Petitioner's chest x-rays dated May 4, 2007, and February 21, 2012. He found the 2007 x-ray to be quality 2 due to poor contrast, and the 2012 x-ray to be quality 2 due to overexposure. Dr. Meyer found no evidence of coal workers' pneumoconiosis on either of the films, and found the 2012 film to be unchanged when compared to the 2007 film. RX1, Dep. RXB.

Dr. Meyer testified by way of deposition on August 30, 2013. He is a Board Certified Radiologist and has been since 1992. He has been a B-reader since 1999. Dr. Meyer testified that radiologists have a 10% higher pass rate on the B-reading exam than other specialties. He opined that is because radiologists have a better sense of what the variation of normal is. He testified he reads 200 to 250 chest x-rays and 20 to 40 CT scans in an average week. RX1.

Dr. Meyer testified that B-reading is an epidemiologic evaluation of chest x-rays. There is a very specific form that has been developed that the B-reader goes through to evaluate the chest x-ray for the presence or absence of occupational lung disease. The B-reader first evaluates the quality of the film, describes any limitations of the x-ray, and then goes on to classify any parenchymal abnormalities. The B-reader next decides whether there are any small nodular opacities or any linear opacities, and based on the size and appearance of the small opacities, they are given a letter score. The B-reader next describes the distribution of the opacities. Dr. Meyer testified that different pneumoconioses are seen in different regions of the lung, so it is important to describe where the findings are in the lungs. He testified that coal workers' pneumoconiosis is typically an upper zone predominant process. Dr. Meyer testified that specific occupational lung diseases are described by specific opacity types, and that coal workers' pneumoconiosis is characteristically described by small round opacities. Finally, the

last component of interpretation for the B-reader is the extent of the lung involvement, or the so-called profusion. Dr. Meyer testified that the profusion defines the density of the small opacities in the lung. RX1.

Dr. Meyer testified that to become a B-reader, one takes a weekend course which includes a series of lectures describing the B-reading classification system. The teachers of the course go through standard examples of the various components of the B-reading system. The course participants then review a series of practice examples with mentors overseeing the practice examples. At the end of the weekend there is a certifying exam which is six hours long, with 120 chest x-rays to be categorized. Dr. Meyer has recently been asked to have a more active academic role with the B-reader course. RX1.

At Respondent's request, Dr. Jeffrey W. Selby examined Petitioner on July 31, 2013, and authored a report dated the same day. RX2, Dep. RX3. Dr. Selby testified by way of deposition on February 2, 2016. He is board certified in internal medicine and pulmonology and has been a B-reader since 1985. RX1, Dep. RX1, RX2. Dr. Selby has a general pulmonology practice that entails both inpatient and outpatient care. He consults on chest, lungs, and breathing disorders. His practice also includes occupational lung disease, including individuals with coal workers' pneumoconiosis. RX2.

When Petitioner saw Dr. Selby, his chief complaint was that his knee hurt. He had no respiratory problems that he could think of. He reported he had never been diagnosed with asthma, and he denied cough or wheezing. He did have some shortness of breath with exertion. Petitioner reported to Dr. Selby that he had started smoking at age 12 and smoked two packs per day until age 33. He stopped smoking because of coughing every morning. After he stopped he noticed a significant improvement in his breathing, he had more energy and less coughing, and his food tasted better. Dr. Selby noted that Petitioner was 68 inches tall and weight 270 pounds, giving him a BMI of 41.1, which placed him in the morbidly obese category. Petitioner's chest exam revealed clear breath sounds with good air movement. RX2.

Dr. Selby testified he performed several tests on Petitioner. His oxygen saturation on room air was 97%. A chest x-ray was done, with a B-reading showing a grade 1 quality film. There were no parenchymal or pleural abnormalities consistent with pneumoconiosis, and Dr. Selby testified the film was negative for pneumoconiosis, including coal workers' pneumoconiosis. A CT scan was conducted in conjunction with the examination, and was read by Dr. Anthony Perkins, a board-certified radiologist, as showing no evidence of black lung disease or coal workers' pneumoconiosis. Dr. Selby testified he reviewed the CT himself and agreed with Dr. Perkins' interpretation. A complete pulmonary function study was also done. Dr. Selby testified that the interpretation was a normal spirometry, without improvement post-bronchodilator, normal lung volumes, and normal diffusion capacity. Exercise testing was also performed. Petitioner was only able to complete five minutes and 28 seconds on the treadmill test. He stopped because he complained of shortness of breath and then became a little lightheaded after the treadmill was stopped. Dr. Selby testified there was no objective data to go along with Petitioner's complaints. He had no oxygen desaturation during exercise. Dr. Selby testified that there was no objective evidence of a limitation from a pulmonary standpoint, based on the exercise testing. RX2.

Dr. Selby testified that, in general, if one has scarring that results in a reduction in diffusion capacity, that reduction will not go away. When Dr. Selby measured Petitioner's diffusion capacity, it was normal. Based on that testing there was no evidence of an impairment in gas exchange. Dr. Selby testified that Petitioner was significantly overweight and deconditioned which was the most likely reason for him to be short of breath with exertion. He testified that applying the AMA Guides, Sixth Edition to Petitioner, he would fall under Class 0. Dr. Selby testified that Petitioner was capable of heavy manual labor from a respiratory standpoint. He noted that Petitioner had hypertension, diabetes mellitus and probable sleep apnea, all of which are significant risk factors for heart disease. If Petitioner is ever discovered to have shortness of breath, the most likely etiology would be heart disease if an obvious cause is not found. Petitioner also smoked heavily for over 20 years potentially leading to heart disease and occult lung disease. RX2.

Dr. Selby also reviewed medical records regarding Petitioner which dated from January 2000 through September 2012. He reviewed Dr. Paul's report from his examination and testing performed on December 5, 2012. He also reviewed chest x-rays dated May 4, 2007, and February 21, 2012, and testified there was no evidence of pneumoconiosis on these films. RX2.

Dr. Selby testified that for a proper reading of a chest x-ray for pneumoconiosis, one must have appropriate demographic information on the film identifying the individual and the date the film was taken. On the B-reading form one is asked to indicate what type of opacity is present. The opacities are classified by shape and size. The two shapes are round and irregular. One must indicate the profusion present. Dr. Selby testified there is no such thing as radiographically significant pulmonary impairment, and that he cannot determine pulmonary impairment from chest x-rays. Dr. Selby testified that it is very unlikely for simple pneumoconiosis to progress once the exposure ceases. He did not see any pathologic evidence of pneumoconiosis in Petitioner. RX2.

On cross-examination, Dr. Selby testified that for a person to have coal workers' pneumoconiosis, in addition to having coal mine dust in the lungs, a tissue reaction is required. That tissue reaction is called scarring or fibrosis. The scarring of coal workers' pneumoconiosis cannot perform the function of normal, healthy lung tissue. By definition, if a person has pneumoconiosis, he would necessarily have impairment in the function of his lung at the very site of scarring whether that impairment can be measured by spirometry or not. RX2.

Dr. Selby testified that removal from any further exposure to coal dust is the only treatment for coal workers' pneumoconiosis. If a person continues his exposure after he has pneumoconiosis, it is a chronic, slowly progressive disease. If a miner leaves the coal mine with category I pneumoconiosis and does not have any more exposure, in the vast majority of cases the pneumoconiosis does not progress. Dr. Selby testified that if an individual had category I coal workers' pneumoconiosis, he probably would not be having abnormal pulmonary function tests or blood gases or physical examination of the chest or symptoms. Dr. Selby testified that if one wanted to know if a specific miner's pulmonary function was impaired from what it used to be, the way to measure that would be to compare his current pulmonary function to what it was before the insult or injury. Dr. Selby testified that when the testing that was performed on

Petitioner on January 29, 2003, was compared to what he performed on July 31, 2013, there was no significant change. RX2.

Medical records from SIMCA were admitted into evidence. Petitioner was first seen at that facility on April 8, 2002. His health history was negative for asthma. The assessment on that date was elevated blood pressure and moderate obesity. Petitioner was seen on June 24, 2002, and reported he had increased his exercise to walking one mile daily. He had no shortness of breath with same. Petitioner was seen on January 24, 2005, with complaints of pain and swelling in both knees. He had been tripped by a rope and twisted his knees in the process. Review of systems on that date revealed no cough, wheezing or shortness of breath. Petitioner underwent an EKG on February 2, 2005, which revealed a sinus tachycardia. Petitioner was seen on February 21, 2005, at which time he complained that it hurt to take a deep breath. Review of systems respiratory was negative for cough, wheeze or shortness of breath. His EKG was repeated and again revealed an arrhythmia. Petitioner was seen on March 11, 2005, with complaint of wheezing and some sinus congestion. It was noted that he had been hospitalized from February 21 through February 23 for pneumonia, and was being seen at that time in follow up. Petitioner still had a dry cough. Petitioner was seen on March 15, 2005, for follow up. His review of systems respiratory revealed no abnormality. He was next seen on September 30, 2005, with complaint of pain and swelling in the right knee. It was noted that he had undergone left knee surgery following a fall on January 17, 2005. His review of systems respiratory that date was negative. Petitioner was seen in the office for medication refill on July 25, 2006. His review of systems respiratory was negative. Petitioner was seen on January 26, 2009, with complaint of right ear pain after a piece of hot metal entered same while he was welding at work. Review of systems respiratory was negative. He was seen on September 28, 2009. At that time review of systems respiratory was negative. Petitioner was seen on January 4, 2010, for his arthritis. His review of systems respiratory was negative. RX3.

Medical records from Alexander Family Practice were admitted into evidence. Petitioner was seen on January 29, 2003, for a pre-employment physical with Respondent. Petitioner denied ever having had asthma, emphysema or frequent lung infections. In review of systems respiratory Petitioner denied frequent chest colds, constant or bothersome cough, sputum between colds, difficulty breathing, shortness of breath or wheezing. Physical examination of the chest revealed no abnormality. Simple spirometry was performed and was interpreted as normal. Petitioner was seen on January 11, 2010, for evaluation of a laceration of his right index finger. He was placed on limited duty through February 8, 2010. When he was seen on that date, physical examination of the chest revealed the lungs to be clear. He was seen for final evaluation on his finger laceration on October 19, 2010. He was fully recovered from the incident and was released from the doctor's care at that time. RX8.

A chest x-ray was taken at Harrisburg Medical Center on January 29, 2003. Dr. Hisham Youssef interpreted the chest x-ray as negative with classification 0/0. RX7.

Medical records of Crossroads Urology were admitted into evidence. Petitioner was seen on October 5, 2011, for kidney stone. He underwent a CT scan and was found to have a 16mg proximal right ureteral calculus with obstructive uropathy and a 1cm calculus in the left kidney without obstructive uropathy. Petitioner had previous history of nephrolithiasis one year prior.

He had a history of passing stones dating back two years. On October 17, 2011, Petitioner underwent attempted stent placement on the left which was unsuccessful followed by lithotripsy that appeared to adequately pulverize the stone. On the right, lithotripsy was applied to the stone which did not appear to adequately fragment the stone. On October 20, 2011, Petitioner was seen at Crossroads Community Hospital Emergency Room where a CT scan revealed a left small steinstrasse and obstruction on the right. He was admitted for bilateral uretroscopic stone manipulation. Physical examination of the chest at that time revealed his lungs to be clear. Petitioner was seen on November 2, 2011. It was noted he had bilateral indwelling stents and some residual stone fragments. When he returned for follow up on November 16, 2011, the doctor determined that because his stones were high in the ureter it was better to repeat lithotripsy rather than cystoscopy. Petitioner was seen in the hospital again on November 28, 2011, for secondary lithotripsy on the right. Physical examination of the chest that date revealed the lungs to be clear. Petitioner underwent lithotripsy and his stones appeared to be adequately pulverized on that date. Cystoscopy followed and Petitioner's indwelling stents were removed. Petitioner was seen on December 28, 2011, at which time it was charted that Petitioner had passed multiple sandy fragments and was totally asymptomatic. RX6.

Medical records from the Veterans Administration were admitted into evidence. Petitioner was first seen on March 26, 2009, for Agent Orange evaluation. It was recorded that he was an ex-smoker, having had said habit for 25 years. Review of systems respiratory was negative. His pulse ox on room air was 96%. Physical examination of the chest revealed the lungs to be clear to auscultation bilaterally. Chest x-ray performed on that date was interpreted as normal. When Petitioner was seen on September 6, 2011, his review of systems respiratory revealed no shortness of breath or cough. Physical examination of the chest revealed the lungs to be clear to auscultation. He was seen on September 29, 2011. Physical examination of the chest revealed no rales or rhonchi. It was felt that Petitioner was suffering from chronic kidney disease as a result of his creatinine trending higher. Petitioner was seen on March 9, 2012, at which time he related his energy level was good, but he did have some shortness of breath with overexertion. It was noted on that date that Petitioner had worked as a mechanic in a coal mine for 28 years and retired in February, 2012. Petitioner was told by urology that his lab work was deteriorating. On examination his lungs were clear to auscultation. On March 30, 2012, Petitioner reported that his energy level was good, but he did complain of shortness of breath with overexertion. Petitioner was seen on June 20, 2012, in follow up. Review of systems respiratory revealed no cough or shortness of breath. Physical examination of the chest revealed the lungs to be clear to auscultation bilaterally. On July 31, 2012, physical examination of the chest revealed no rales or rhonchi. Petitioner related being tired and having no energy to do anything the past six weeks. He denied shortness of breath. Petitioner was seen for a preoperative examination for anticipated cataract removal on August 1, 2012. On that date Petitioner related the ability to walk a mile without shortness of breath. It was also recorded that he could walk three blocks or climb two flights of stairs without shortness of breath. COPD was denied. Physical examination of the chest revealed Petitioner's lungs to be clear to auscultation. Petitioner was seen on September 7, 2012. His review of systems respiratory revealed no complaint of shortness of breath or cough. Physical examination of the chest revealed the lungs to be clear to auscultation bilaterally. Petitioner was seen on March 12, 2013. His past medical history was not significant for any pulmonary problem. Review of systems respiratory was negative for shortness of breath or cough. Physical examination of the chest revealed the lungs

to be clear to auscultation bilaterally. He was seen on July 29, 2013. Review of systems respiratory revealed no shortness of breath or cough. Petitioner had no dyspnea on exertion. Physical examination of the chest revealed the lungs to be clear to auscultation bilaterally. RX4.

CONCLUSIONS OF LAW

The Arbitrator hereby incorporates the Findings of Fact delineated above and the Arbitrator's and parties' exhibits are made part of the Commission's file. After review of the evidence and due deliberation, the Arbitrator finds on the issues presented at trial as follows.

In support of the Arbitrator's decision relating to issue (C), whether an accident occurred which arose out of and in the course of Petitioner's employment with Respondent, and issue (F), whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following:

To recover compensation under the Workers' Occupational Diseases Act, a claimant must prove that he suffers from an occupational disease and that a causal connection exists between the disease and his employment. An occupational exposure need not be the sole or principal causative factor, as long as it was a causative factor in the condition of ill being. *Bernardoni v. Indus. Comm'n*, 362 Ill.App.3d 582, 596 (3rd Dist. 2005).

In this case, the Arbitrator finds that Petitioner failed to prove by a preponderance of the evidence that he suffers from coal workers' pneumoconiosis. In so concluding, the Arbitrator relies, in part, upon the findings of the two NIOSH B-readers that Petitioner's x-ray of May 4, 2007, did not reveal any evidence of coal workers' pneumoconiosis. The Arbitrator further notes that all of the NIOSH B-readers and A-readers found Petitioner's x-rays of January 19, 2000, and January 29, 2003, to be negative for coal workers' pneumoconiosis. However, the Arbitrator gives less weight to these interpretations, due to the temporal remoteness of those x-rays to Petitioner's date of accident and last date of exposure. The Arbitrator relies upon the opinions of the NIOSH physicians, as NIOSH is the governmental agency responsible for administering the health surveillance program for the benefit of coal miners, NIOSH is not a party to this action, and the x-rays were taken and reviewed for reasons independent of litigation.

The Arbitrator recognizes that Petitioner's alleged condition of coal workers' pneumoconiosis may have developed in the time period subsequent to his final NIOSH x-ray of May 4, 2007. Nonetheless, the Arbitrator finds the reverberation of opinions amongst B-readers Dr. Meyer and Dr. Selby compelling in conjunction with the significant number of negative x-ray interpretations performed at the behest of NIOSH, discussed above. The Arbitrator notes that the totality of the evidence demonstrates that a significant majority of B-readers concur that Petitioner does not have coal workers' pneumoconiosis.

Further, the Arbitrator finds the B-reading interpretations and opinions of Drs. Meyer and Selby to be more persuasive than the B-reading interpretations of Drs. Smith and Alexander. The Arbitrator gives no weight to Dr. Paul's x-ray interpretations, as in his testimony he did not properly describe the findings on the chest x-ray for it to be a competent interpretation. The Arbitrator notes that both Dr. Meyer and Dr. Selby reviewed the chest x-ray of May 4, 2007,

interpreted by NIOSH as negative, and likewise found the films to be negative for pneumoconiosis. Dr. Meyer and Dr. Selby also found the February 21, 2012, chest x-ray to be negative for pneumoconiosis. Dr. Meyer noted in his report that he compared the 2012 film to the May 2007 film, and that it was unchanged. Dr. Selby further found the July 31, 2013, chest x-ray to be negative for pneumoconiosis. The interpretations by Drs. Meyer and Selby were consistent with the independent readings by the NIOSH physicians.

The Arbitrator does not find Dr. Paul's conclusion that Petitioner had a decreased diffusing capacity caused by inhalation of coal mine dust to be credible. Dr. Paul attributed the decrease in diffusing capacity to scarring of the lungs by pneumoconiosis. He testified that this scarring would be permanent. Dr. Selby testified that if the reduction of diffusing capacity is due to scarring, the reduction will not go away. When Dr. Selby measured Petitioner's diffusing capacity on July 31, 2013, his diffusing capacity was normal. The Arbitrator finds Dr. Paul's diagnosis of decreased diffusing capacity related to coal mine dust exposure to not be persuasive.

The Arbitrator notes there are treatment records for Petitioner which were admitted into evidence. During his treatment with SIMCA from 2002 through January 4, 2010, Petitioner did not have any respiratory complaints other than on February 21, 2005, when he complained that it hurt to take a deep breath. He was hospitalized on that date for pneumonia. He continued to have a dry cough for some weeks after the pneumonia. Petitioner underwent simple spirometry on January 29, 2003, prior to Petitioner's employment with Respondent and same was interpreted as normal. Dr. Selby testified that there was essentially no change between this spirometry performed in January 2003 and the one performed at Dr. Selby's examination in July 2013. Petitioner complained of shortness of breath with overexertion when seen at the VA on March 9, 2012, and March 30, 2012. He denied shortness of breath when seen for preoperative examination on August 1, 2012. At that time he related an ability to walk a mile without shortness of breath. He did not have any complaints of shortness of breath when seen on September 7, 2012, March 12, 2013, and July 29, 2013. There was nothing in the treatment records indicating that Petitioner suffered from an occupational disease.

The Arbitrator finds the reverberation of opinions amongst B-readers Drs. Meyer and Selby, in conjunction with the aforementioned opinions of the NIOSH B-readers, to be compelling. Based upon the foregoing and the record in its entirety, the Arbitrator finds that Petitioner failed to prove by a preponderance of the evidence that he suffers from coal workers; pneumoconiosis and/or reduced pulmonary capacity that arose out of and in the course of his exposures in the coal mine, and that his current condition of ill-being is causally related to his employment. All benefits are denied. The remaining issues are moot and the Arbitrator makes no conclusions as to those issues.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC009135
Case Name	Joseph Raniszewski v. AMS Mechanical Systems Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0048
Number of Pages of Decision	28
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Al Koritsaris
Respondent Attorney	Derek Storm

DATE FILED: 1/30/2023

/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 Evidentiary Ruling; Temporary Disability	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOSEPH RANISZEWSKI,

Petitioner,

vs. NO: 20 WC 09135

A.M.S. MECHANICAL SERVICES, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of the admissibility of Petitioner's Exhibit 9, whether Petitioner's left shoulder condition of ill-being is causally related to the February 28, 2020 accident, entitlement to temporary disability benefits, entitlement to incurred medical expenses as well as prospective medical care, and Respondent's request for special findings under Rule 9040.40(b), and being advised of the facts and law, modifies the Decision as stated below but declines to provide special findings, and otherwise 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).

CONCLUSIONS OF LAW

I. Admissibility of Petitioner's Exhibit 9

During the submission of exhibits, Petitioner offered into evidence Petitioner's Exhibit 9, a screenshot of a text message, and Respondent raised hearsay and foundation objections to the exhibit. T. 99. The Arbitrator reserved ruling on the objections and asked the parties to address admissibility in their Proposed Decisions. In the Decision, the Arbitrator ruled the exhibit was not

hearsay and was admissible; the Decision is silent as to Respondent's foundation objection. The Commission finds Petitioner failed to lay a foundation for Petitioner's Exhibit 9.

Even when a document falls within a recognized exception to the hearsay rule, an adequate foundation must still be laid before it is admitted into evidence; in order to lay an adequate foundation, the proponent must present evidence to demonstrate that the document is what it claims to be. *Greaney v. Industrial Commission*, 358 Ill. App. 3d 1002, 1011 (1st Dist. 2005). Absent proper authentication and identification, the document cannot be admitted into evidence. *Id*. Here, Petitioner testified that he texted his foreman, Garrett McCracken ("McCracken"), on March 14, 2020. T. 27. The Commission observes, however, that there was no effort to establish Petitioner's Exhibit 9 is that text message, *i.e.*, that the document is what Petitioner claims it be. To be clear, Petitioner was never presented with Petitioner's Exhibit 9 and as such, Petitioner never authenticated the document as coming from his phone, nor did he identify himself as the author. The only witness presented with Petitioner's Exhibit 9 was Aaron White, and he had no personal knowledge regarding the document. As Petitioner failed to lay an adequate foundation for Petitioner's Exhibit 9, the Commission sustains Respondent's objection and strikes Petitioner's Exhibit 9 from the record. We emphasize, however, that as detailed below, striking the exhibit does not affect the outcome.

II. Causal Connection

The Arbitrator found Petitioner's left shoulder condition of ill-being is causally related to the undisputed work accident. Our review of the evidence yields the same result, however, we write separately as our analysis differs.

It is undisputed that Petitioner sustained an accidental injury arising out of and occurring in the course of his employment on Friday, February 28, 2020: while carrying a bucket of "Bang-Its" to the deck, Petitioner tripped and fell, landing on his left side. Arb.'s Ex. 1, T. 15. It is similarly undisputed that Petitioner did not seek immediate medical attention following the fall. We begin our analysis with consideration of the evidence regarding Respondent's argument that there was a delay in treatment.

Petitioner testified he had an acute onset of pain in his left shoulder and elbow after the fall. T. 16. He further testified he notified McCracken of the incident, and although he was in pain, Petitioner completed the remainder of his shift. T. 16-18. Petitioner was then off work for the weekend. Petitioner testified that when he reported to work on Monday, March 2, 2020, his left arm was feeling worse; at the start of his shift, Petitioner advised McCracken of his increasing pain and asked to complete an incident report but was refused. T. 19, 20-22. Petitioner worked his full shift on Monday as well as the remainder of that workweek. T. 22. Petitioner testified his left arm pain persisted and he made repeated entreaties to complete an incident report, but it was not until March 10, 2020 that McCracken acquiesced and provided Petitioner with the requested form. T. 22, 24. Petitioner explained he was not able to immediately commence treatment, however, "[b]ecause I needed a claim number to give to my doctor because I told him it was Workers' Compensation when I called the first time." T. 26. Petitioner testified he texted McCracken on March 14 "asking can I get a copy and maybe a claim number," and in late March, when he had obtained the necessary information, Petitioner made an appointment at Chicago Hand & Orthopedic Surgery Centers ("CHOSC"). T. 27-28. Petitioner testified he was scheduled for the soonest available appointment, which was April 7, 2020. T. 29. Petitioner continued to work

through the remainder of March and was laid off on April 1, 2020. T. 53. As to his ability to perform his job duties from March 2 through April 1, Petitioner testified he continued to have left arm pain so he self-modified, performing any shoulder-level or above tasks with his dominant right arm: "I was only gonna do it with my right arm." T. 62-63, 46.

Respondent, in turn, presented the testimony of Aaron White ("White"), who formerly worked for Respondent as a superintendent. T. 65-66. White testified that he worked at the same jobsite as Petitioner in March 2020, and while he did not observe Petitioner on a constant basis, when he did see Petitioner working he did not notice anything unusual about how Petitioner did his job. T. 70. Relevant to the precise issue of a delay in treatment, White conceded he had no personal knowledge of Petitioner's interactions with McCracken; specifically, White testified he had no information on whether Petitioner attempted to complete an incident report prior to March 10, nor whether Petitioner asked McCracken to be allowed to see a doctor. T. 76, 78. Although White testified he would expect McCracken to have informed him if Petitioner requested to see a doctor and McCracken did not do so, the Commission observes White acknowledged that McCracken deviated from Respondent's procedures by not completing an incident report on February 28, 2020, as protocol requires that an incident report be completed on the date of an accident. T. 79, 75-76. The Commission finds White's testimony is speculative and does not effectively refute Petitioner's credible testimony regarding his interactions with McCracken.

The Commission, like the Arbitrator, finds Petitioner is credible. We conclude the gap in time between the injury and the start of treatment is inconsequential: Petitioner declined immediate treatment but within three days, he was requesting the necessary documentation be completed so that he could be evaluated by a doctor; for reasons that are unclear, McCracken refused to provide an incident report until March 10 and Petitioner was not given a claim number to provide to the doctor's office until late March.

Our analysis next turns to the treating records. On April 7, 2020, Petitioner presented to CHOSC and was evaluated by Dr. Alexander Soneru. Dr. Soneru memorialized that Petitioner was a right-hand dominant individual being evaluated for a left shoulder injury "he sustained in a fall from standing height (2/28/20). At first he thought that it was just a minor injury but now after over a month he experiences continued pain in his shoulder with overhead activity and daily use." Pet.'s Ex. 1. Dr. Soneru's examination findings included left shoulder tenderness as well as motion deficits; Dr. Soneru further noted he performed provocative testing and all the tests were positive. Dr. Soneru concluded Petitioner's symptoms were consistent with left shoulder biceps tendinopathy and rotator cuff tendonitis; the doctor injected Petitioner's shoulder with a corticosteroid, ordered physical therapy, and imposed work restrictions of sedentary duty with no overhead use of the left arm. Pet.'s Ex. 1. Petitioner commenced physical therapy at ATI on April 9. The initial evaluation documents a consistent history of an acute shoulder injury followed by worsening pain: "Patient was at work. He tripped on something and he fell on his left shoulder on a flat top roof. Patient felt some immediate pain. He filled out an accident report. However, with time the shoulder pain got progressively worse." Pet.'s Ex. 2.

On April 13, 2020, Petitioner returned to Chicago Hand & Orthopedics and was evaluated by Dr. Paul Papierski. The record reflects Petitioner had partial relief with the injection but continued to have significant complaints of pain and limited range of motion. Noting Petitioner was six weeks status post traumatic injury and had not obtained the desired benefit from the

injection and physical therapy, Dr. Papierski maintained Petitioner's work restrictions and ordered an MRI. Pet.'s Ex. 1.

On April 15, 2020, the left shoulder MRI was completed at EnVision Medical Imaging. The interpreting radiologist, Dr. David Dubois, identified primarily benign findings except for "small focus of abnormal signal in the posterior glenoid labrum at the 9:00 position." Dr. Dubois' impression was "Tiny focus of abnormal signal in the posterior glenoid labrum suspicious for a tear. This could be better assessed with MR arthrography if clinically warranted. Otherwise unremarkable study. Intact rotator cuff tendons. No acute bony abnormality." Pet.'s Ex. 1.

When Petitioner followed up with Dr. Papierski on April 22, 2020, he reported improved range of motion but persistent pain. On review of the MRI films and report, Dr. Papierski's interpretation echoed that of Dr. Dubois: "These are suggestive of a posterior labrum tear at about the 9 o'clock position." Pet.'s Ex. 1. Noting there was "some probability" that it will heal with time, Dr. Papierski recommended continuing with physical therapy; if Petitioner remained significantly symptomatic after another month of therapy, consideration would be given to surgery. In the meantime, Petitioner's work status was unchanged. Pet.'s Ex. 1.

Petitioner attended physical therapy as directed, but as of Dr. Papierski's May 20, 2020 re-evaluation, Petitioner had only obtained slight benefit. Dr. Papierski administered a second cortisone injection and noted that if Petitioner was not improved by the next month, surgery would be the next step. Pet.'s Ex. 1. When Petitioner returned to Dr. Papierski on June 24, 2020, he reported that his "left shoulder just isn't getting better." Dr. Papierski memorialized he re-reviewed the April 15, 2020 MRI: "The report gives indication of posterior superior glenoid labrum abnormality. My own review of this shows some evidence for impingement syndrome and possibly an anterolateral acromial spur." Pet.'s Ex. 1. Concluding Petitioner was "not making progress as expected with conservative treatment," Dr. Papierski maintained Petitioner's sedentary duty restriction and recommended proceeding with arthroscopy. Pet.'s Ex. 1.

The record reflects Dr. Papierski subsequently ordered a left shoulder MR arthrogram. The test was completed on August 26, 2020, and the impression of the interpreting radiologist, Dr. Elliot Wagner, was mild changes of osteoarthritis in the glenohumeral joint, and mild lateral downsloping of acromion. Pet.'s Ex. 5. When Dr. Papierski reviewed the arthrogram on September 2, he noted the enhanced imaging "suggested labrum is actually okay, but tendinosis of the subscapularis and supraspinatus is present." Pet.'s Ex. 5. Dr. Papierski's assessment was:

> Patient with persistent left shoulder pain secondary to injury. The tendinosis described in the most recent MRI is indicative of inflammatory change, and can be post injury in nature. The lateral downsloping of the acromion likely continues to contribute to impingement on this area and persistent symptoms. Patient again notes today that he was asymptomatic in the left shoulder prior to his reported accident. Pet.'s Ex. 5.

Again noting Petitioner had "gradually worsening left shoulder pain status post accident with continued impingement" and had failed conservative treatment, Dr. Papierski reiterated his surgical recommendation and renewed the sedentary duty restriction. Pet.'s Ex. 5.

Petitioner's last pre-arbitration evaluation with Dr. Papierski was on January 8, 2021. Dr. Papierski continues to recommend surgery to address the persistent pain and decreased function in

Petitioner's left shoulder. The doctor similarly continues to restrict Petitioner to sedentary duty. Pet.'s Ex. 5.

The Commission finds the medical records uniformly document an acute onset of left shoulder pain following the February 28, 2020 fall. The records further reflect Petitioner's left shoulder symptoms persist despite a course of conservative care, and the diagnostic imaging reveals pathology which Dr. Papierski credibly concluded is consistent with Petitioner's symptoms.

Finally, our analysis turns to the opinions of Respondent's expert, Dr. Brian Cole. Dr. Cole conducted two record reviews at Respondent's request and authored three reports detailing his conclusions: July 31, 2020 (Resp.'s Ex. 2); August 12, 2020 (Resp.'s Ex. 3); and September 23, 2020 (Resp.'s Ex. 4). Initially, the Commission observes that the authenticated transcript contains an incomplete copy of Dr. Cole's July 31, 2020 report, with only the first and last pages of the report included. The extent of Dr. Cole's July 31, 2020 opinions contained in the record is the following:

> …the MRI findings and the lack of correlation with his subjective complaints and objective findings otherwise. Again, it is difficult to ascertain what the exact injury is given the records provided, in terms of his subjective complaints, his ability to work and the subsequent inability to work apparent only after he was laid off from his job. Therefore, it is not clear that he has actually had any significant injury to his shoulder, based upon a work event and that it is medically safe and acceptable for him to continue working in a full duty capacity. Resp.'s Ex. 2.

As the Commission is unable to evaluate the entirety of Dr. Cole's July 31, 2020 opinions or the bases he relied upon in reaching those conclusions, we focus our analysis on the doctor's August 12, 2020 and September 23, 2020 addenda. In his August 12, 2020 addendum, Dr. Cole memorialized that his prior record review included the April 15, 2020 MRI:

> I wanted to clarify that his MRI was in fact reviewed. There was no objective pathology on the MRI with any meaningful correlation to his subjective complaints. There was the absence of any formal labral pathology, cuff pathology, or osteoarthritis. I reviewed these films and the report. My opinions are with a high degree of medical and surgical certainty." Resp.'s Ex. 3.

On September 23, 2020, Dr. Cole authored a second addendum, this detailing his review of Dr. Papierski's September 2, 2020 office note as well as the August 26, 2020 imaging scans. Therein, Dr. Cole opined the there is no objective pathology on the arthrogram "that would correspond with the claimant's nonlocalized pain in the left shoulder." Resp.'s Ex. 4. Dr. Cole further opined the February 28, 2020 accident did not result in any left shoulder condition of ill-being, offering the following bases for his conclusion:

> There was no immediate level of subjective symptoms nor impairment driving any need for care and the claimant's pursuit of medical care was delayed, as conveyed in my prior opinion/record review. Certainly, the claimant has ongoing subjective symptoms, which might or could correlate with the diagnosis of impingement/rotator cuff tendinitis. This is a condition that is very common in the

> shoulder and certainly one that can be caused by both trauma and insidious (gradual/atraumatic) onset. In this case, it does not appear that the pain began immediately after the trauma, but rather is of insidious onset thereafter and thus supportive of my opinion that there was no causally related injury here. Resp.'s Ex. 4.

While Dr. Cole concluded there was no causal connection to the work accident, he did not disagree with Dr. Papierski's surgical recommendation: "The need for surgery is based on the claimant's failure to thrive, not necessarily MRI arthrogram results. The MRI arthrogram may very likely be a negative/unremarkable study, but the decision for surgery by Dr. Papierski should be based on the claimant's failure to thrive and based on his opinion that all other conservative/nonoperative measures have been exhausted." Resp.'s Ex. 4. Finally, Dr. Cole indicated he continued to believe the objective findings did not merit work restrictions, though he acknowledged he "ha[d] not examined the claimant in person to really have a fair assessment of the claimant's work status," and further explained, "The MRI findings (or lack thereof) would not play a role in the claimant's decision regarding work but rather it should be based on whether they feel physically able to perform their job duties or not." Resp.'s Ex. 4.

The Commission finds it significant that Dr. Cole confirmed that Petitioner had ongoing subjective symptoms which were consistent with Dr. Papierski's diagnosis of impingement, yet denied causal connection based on his belief that there was a delayed onset of symptoms and treatment. The Commission notes Dr. Cole's perception of the timeline is contradicted by Petitioner's credible testimony as well as the treating medical records, which consistently document that Petitioner had an acute onset of pain after the fall. As such, we afford little weight to Dr. Cole's causal connection opinion. See *Sunny Hill of Will County v. Illinois Workers' Compensation Commission*, 2014 IL App (3d) 130028WC, ¶ 36 (Expert opinions must be supported by facts and are only as valid as the facts underlying them.)

The Commission finds the preponderance of the credible evidence establishes Petitioner's left shoulder condition of ill-being is causally related to the undisputed February 28, 2020 work accident. Before us, Respondent's primary contention is that the opinions of its §12 expert, Dr. Brian Cole, are more credible than those of Petitioner's treating physician, Dr. Paul Papierski. Respondent's argument is twofold: 1) where Respondent provided "overwhelming evidence" of Dr. Cole's qualifications and expertise, the Commission is essentially precluded from relying on Dr. Papierski's conclusions because there is no evidence of the doctor's qualifications, and 2) Dr. Papierski's opinions are inconsistent with the diagnostic testing. The Commission disagrees with both propositions.

First, the Commission emphasizes that the weight afforded to a medical opinion is not contingent upon that physician's credentials. While Dr. Cole's C.V. is extensive, that does not automatically render his opinions most credible, nor does the absence of Dr. Papierski's C.V. render Dr. Papierski's medical conclusions speculative. To be clear, the weight we assign to a medical opinion is predicated on our analysis of the bases provided for the doctor's conclusions as well as how the opinion comports with the totality of the evidence. As explained in detail above, we performed that analysis herein and concluded Dr. Cole's opinions are unsupported by the evidence and are not persuasive.

Second, the Commission finds Respondent's arguments regarding the diagnostic imaging misstate the evidence. Respondent claims Dr. Dubois concluded there was "a small focus of abnormal signal intensity in the posterior glenoid labrum, but Dr. DuBois [*sic*] indicated that the rest of the labrum was intact," yet "Amazingly, Dr. Papierski in his April 22, 2020 report, when viewing the same MRI as interpreted by Dr. DuBois [*sic*], stated that the MRI suggested a posterior superior glenoid labral tear." Respondent's Statement of Exceptions, p. 12. What the record reflects, however, is Dr. Dubois's impression was "Tiny focus of abnormal signal in the posterior glenoid labrum suspicious for a tear. This could be better assessed with MR arthrography if clinically warranted." Pet.'s Ex. 1 (Emphasis added). Contrary to Respondent's assertion, Dr. Papierski's interpretation of those images is fully consistent with Dr. Dubois': "MRI films and report are available for review. These are suggestive of a posterior labrum tear about the 9 o'clock position." Pet.'s Ex. 1 (Emphasis added). The record further reflects that the "suspicion" of a tear was subsequently "better assessed" by the August 26, 2020 arthrogram and ultimately ruled out; instead, the more detailed diagnostic imaging revealed a mild downsloping acromion, which Dr. Papierski noted "likely continues to contribute to impingement on this area and persistent symptoms." Pet.'s Ex. 5.

As noted above, Respondent filed a request for special findings. The Commission has discretion as to whether we will find specially upon any questions submitted, and in the Commission's view, the questions submitted do not merit special findings as the answers are inherent in our ultimate determination of compensability as detailed above. *See*, *Jarrett v. Industrial Commission*, 156 Ill. App. 3d 898, 916-917, 511 N.E.2d 144, 156 (4th Dist. 1987) (It is within the discretion of the Commission whether it will find specially upon any questions which are submitted in writing; a general finding by the Commission for one part is, in effect, a favorable finding on each special matter necessary to support the general findings).

III. Temporary Disability

On the Request for Hearing, Petitioner alleged entitlement to Temporary Total Disability ("TTD") benefits from April 8, 2020 through March 4, 2021, the date of hearing. Arb.'s Ex. 1. The Decision does not include a discussion of Petitioner's entitlement to TTD benefits, however the Order directs Respondent to pay TTD benefits "commencing April 8, 2020 through March 4, 2021, as provided in Section 8(b) of the Act and shall continue weekly until Petitioner's work status changes or until the Respondent has a valid reason under The Act to terminate benefits in the future." Arb.'s Dec.

Initially, the Commission observes the Decision orders Respondent to pay TTD benefits which appear to be prospective in nature. We emphasize, however, that there is no authority under the Act to award temporary disability benefits beyond the arbitration date: "The Arbitrator may find that the disabling condition is temporary and has not yet reached a permanent condition and may order the payment of compensation up to the date of the hearing…" *820 ILCS 305/19(b)* (Emphasis added). The award of TTD benefits beyond the March 4, 2021 hearing date is contrary to law and is hereby vacated.

As to the TTD benefit period alleged by Petitioner, April 8, 2020 through March 4, 2021, the Commission observes this comports with the timeframe Petitioner has been under work restrictions imposed by his treating physicians at CHOSC. On April 7, 2020, Dr. Alexander Soneru restricted Petitioner to sedentary duty with no overhead use of the left arm. Pet.'s Ex. 1. Petitioner

thereafter came under the care of Dr. Papierski, who has maintained Petitioner's work restrictions while overseeing conservative care with physical therapy and injections as well as further diagnostic workup and ultimately a surgical recommendation. Pet.'s Ex. 1, Pet.'s Ex. 5. Respondent's witness, White, testified that at the time work restrictions were imposed, Respondent was in the midst of a business downturn occasioned by the COVID-19 pandemic, and Petitioner was one of 80 employees who had been laid off. T. 80-81. As such, Respondent was unable to provide accommodated work.

Consistent with our determination that Petitioner's current left shoulder condition remains causally related to the February 28, 2020 accident, we conclude Petitioner has missed work due to the restrictions necessitated by his work injury. The Commission finds Petitioner is entitled to Temporary Total Disability benefits from April 8, 2020 through March 4, 2021.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 7, 2022, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent's objection to Petitioner's Exhibit 9 is sustained and Petitioner's Exhibit 9 is hereby stricken.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,176.50 per week for a period of 47 2/7 weeks, representing April 8, 2020 through March 4, 2021, that being the 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. Respondent shall have a credit of $20,336.64 for TTD benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of post-hearing Temporary Total Disability benefits commencing on March 5, 2021 is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $12,283.63 for medical expenses, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Responent shall provide and pay for left shoulder surgery as recommended by Dr. Papierski, including but not limited to any necessary pre-operative and post-operative rehabilitative treatment, as provided in §8(a) of the Act.

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

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

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.

January 30, 2023

/s/ *Deborah J. Baker*

DJB/mck

O: 12/14/22

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/s/ *Stephen Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC009135
Case Name	RANISZEWSKI, JOSEPH v. A.M.S. MECHANICAL SERVICES INC
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Al Koritsaris
Respondent Attorney	Derek Storm

DATE FILED: 2/7/2022

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

/s/William McLaughlin, 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)

Joseph Raniszewski
Employee/Petitioner

v.

A.M.S. Mechanical Services, Inc.
Employer/Respondent

Case # **20** WC **9135**

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 **Douglas Steffenson**, Arbitrator of the Commission, in the city of **Chicago, Illinois**, on **March 4, 2021**. And decided on by Arbitrator **WILLIAM MCLAUGHLIN** after reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **February 28, 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 $**91,767.00**; the average weekly wage was $**1,764.75**.

On the date of accident, Petitioner was **47** years of age, ***single*** 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 $**20,336.64** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

ORDER

Temporary Total Disability
Respondent shall pay Petitioner temporary total disability benefits of **$1,176.50/week for 47 1/7 weeks ($55,460.21.),** commencing **April 8, 2020 through March 4, 2021**, as provided in Section 8(b) of the Act and shall continue weekly until Petitioner's work status changes or until the Respondent has a valid reason under The Act to terminate benefits in the future.

Medical Benefits
Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $1,172.60 to Chicago Hand & Orthopedic, $6,461.03 to ATI Physical Therapy and $4,650.00 to Chicago Medical Imaging/Niles Open MRI, as provided in Sections 8(a) and 8.2 of the Act.

Prospective Medical
The prospective medical treatment ordered by Dr. Papierski shall be the responsibility of the Respondent, including but not limited to the recommended surgical procedure. Respondent shall pay for all medical services associated with said treatment pursuant to the medical fee schedule as provided in Sections 8(a) 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.

FEBRUARY 7, 2022

Signature of Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION 19(b) DECISION

JOSEPH RANISZEWSKI,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	20 WC 9135
	)	
A.M.S. MECHANICAL SYSTEMS, Inc.,	)	
	)	
Employer/Respondent.	)	

Findings of Facts:

Arbitrator Stephenson heard the in person hearing, however, because he is no longer with the Commission, the parties agreed to have Arbitrator McLaughlin rule on the hearing based on the transcript.

It is undisputed that on February 28, 2020, Petitioner Joseph Raniszewski suffered a shoulder injury that arose out of and in the course of his employment with A.M.S. Mechanical Systems., Inc. It is undisputed that the Petitioner gave his employer Notice withing the requisite time frame under the Illinois Workers Compensation Act. Petitioner testified that on February 28, 2020, he was injured when he tripped over construction debris while carrying a bucket of materials, causing him to fall to the ground. (Transcript, p. 14-15, hereinafter "T, 14-15"). He testified that when he fell to the ground, the left side of his body, more specifically his left arm, left shoulder and left hip, struck the ground. (T, 16). Petitioner testified that he felt pain in his left shoulder and left elbow, following the fall. *Id*. He testified that after putting his employer on notice, he was able to finish his shift, but did so in pain. (T, 17-18). He testified that February 28, 2020 was a Friday. (T, 18). He testified that he was not scheduled to work over the weekend. *Id.* He testified that he remained in pain during the course of the weekend. (T, 19).

The Petitioner testified that he returned to work on Monday morning and attempted to fill out an incident report. (T, 21). He testified that he went to his foreman, Garrett McKracken and asked to fill out an incident report. *Id*. He testified that he was not given the opportunity to fill one out until March 10, 2020. (T, 24). The incident report from the occurrence, shows that it was authored and signed on March 10, 2020. (Petitioner's Exhibit 6, hereinafter "Pet. Ex. 6). The Petitioner testified that he continued to work his normal job, while he waited for the claim to be opened and did his best to perform his work. (T, 29-30). He testified that he would use his right arm as much as possible due to the pain in his left arm and shoulder. (T, 46). He also testified that he reached back out to his foreman on March 14, 2020 via text message to inform him that his left arm and shoulder was getting worse and that he wanted to see a doctor to have it checked out. (T, 27). The text message

dated March 14, 2020, sent to Mr. McKracken, states as follows, "Hey sorry to bother you but my shoulder and inner elbow has been bothering me since the deck fall hurts especially when I put a jacket or button-down shirt just getting worse so I think I need to have it looked at ASAP pain just not going away it just hurts." (Pet. Ex. 9). Mr. Raniszewski testified that he then contacted a physician's office he had seen in the past in late March to make an appointment. (T, 29). He testified that the earliest appointment available was April 7, 2021, so he booked that date. *Id*. Further, he testified that on April 1, 2021, he was laid off by his employer and was not given any reason for the layoff. *Id*. Petitioner testified that prior to February 28, 2020, he never injured his left shoulder (T, 42).

On April 7, 2020 he was seen by Dr. Alexander Soneru at Chicago Hand & Orthopedic Surgery Centers (hereinafter "Chicago Hand"). (Pet. Ex. 1, p. 1-3). Petitioner testified that he saw Dr. Soneru that day because Dr. Papierski, who had treated him in the past, was unavailable. (T, 30). The record indicates that he was presenting for evaluation of his left shoulder, following a fall from standing height on February 28, 2020. (Pet. Ex. 1, p. 1). The record also indicates that he (Petitioner) thought it was just a minor injury but now after a month he experiences continued pain in his left shoulder with overhead activity and daily use. *Id*. Physical examination revealed tenderness over the biceps tendon and AC joint. (Pet. Ex. 1, p. 2). Further, the record notes a positive Jobes, Hawkins, Speed's and Yergason's tests. *Id*. He was diagnosed with impingement syndrome of the left shoulder along with biceps tendinitis. *Id*. The Petitioner was given a corticosteroid injection in the office during the visit, was given a prescription for physical therapy (hereinafter, "PT"), and was placed on a sedentary work restriction with no overhead use of his left arm. *Id*. Petitioner testified that he began PT following the visit. (T, 31-32). Further, he testified that his light duty restriction was not accommodated by his employer and he began receiving disability benefits shortly thereafter. (T, 32).

On April 13, 2020, the Petitioner returned to Chicago Hand for a follow-up visit and saw Dr. Paul Papierski. The record indicates that he received partial relief from the injection he was given and started PT but that he continued to have significant complaints of pain and limited range of motion of the left shoulder. (Pet. Ex. 1, p. 4). On exam, the record notes decreased range of motion of the left shoulder with flexion, abduction

and external rotation. (Pet. Ex. 1, p.5). Dr. Papierski agreed with Dr. Soneru's initial diagnoses and also added sprain of the left rotator cuff capsule. *Id*. At this time, Dr. Papierski ordered a MRI of the left shoulder and kept Mr. Raniszewski on the same sedentary restriction with no overhead use of the arm. *Id*. Petitioner testified that he continued to receive disability benefits at that time. (T, 35).

On April 15, 2020, Petitioner underwent an MRI of the left shoulder. (Pet. Ex. 1, p. 7). The MRI report notes abnormal signal in the posterior glenoid labrum suspicious for a tear. *Id*. The report also notes that this could be better assessed with MR arthrography. *Id*. On April 22, 2020 he returned to see Dr. Papierski. (Pet. Ex. 1, p. 8). The record notes that with continued PT the pain remained but range of motion was improving slightly. *Id*. Physical examination remained unchanged. *Id*. Dr. Papierski interpreted the MRI and noted a suggestive labrum tear at about the 9 o'clock position. (Pet. Ex. 1, p. 9). He prescribed Tramadol and continued PT at this time. *Id*. Further, he kept the same work restrictions in place. *Id*. Petitioner testified that he continued PT at that time and he also continued getting disability benefits. (T, 35). The records from ATI physical therapy corroborate this testimony. (Pet. Ex. 2).

On May 20, 2020, he returned to see Dr. Papierski for follow-up. (Pet. Ex. 1, p. 10). The records indicate persistent complaints of shoulder pain with only minimal improvement during PT since the last visit. *Id*. The physical exam showed some improved range of motion but also positive for tenderness and circumduction. (Pet. Ex. 1, p. 11). Dr. Papierski administered another shoulder injection during the visit and recommended continued PT. *Id*. The record also notes possible surgical discussion in the event no additional improvement was reached. *Id*. Petitioner was kept of the same work restrictions. *Id*. Petitioner testified that he continued PT per doctor order and that his benefits continued at that time. (T, 36-37).

On June 24, 2020, the Petitioner returned to see Dr. Papierski for a follow-up visit. (Pet. Ex. 1, p. 13-15). The record indicates that the left shoulder is not getting better and that he still has pain with forward flexion and abduction. (Pet. Ex. 1, p. 13). The record indicates that Dr. Papierski re-reviewed the MRI and also notes evidence of impingement syndrome. (Pet. Ex. 1, p. 14). At this time Dr. Papierski recommended surgical intervention due to patient not making progress as expected with conservative treatment. (Pet. Ex. 1, p. 15).

The record notes recommendation for a left shoulder arthroscopy with subacromial decompression, evaluation of the labrum for debridement or repair, and possible biceps tenodesis. *Id.* His work status remained the same and Petitioner testified that he continued to receive benefits at that time. (T, 39). Petitioner testified that he did not have the surgery recommended because the workers compensation carrier did not approve the procedure. (T, 38). He testified that his disability pay benefits were cut off approximately August 5, 2020. (T, 39). Following non-approval, the Petitioner testified that he was sent for a CT arthrogram of the left shoulder. (T, 40).

At the request of the Respondent, the medical records for the care and treatment rendered to the Petitioner and the MRI imaging study of the Petitioner's left shoulder performed on April 15, 2020 were forwarded to Dr. Cole for review and comment. The Arbitrator notes that Dr. Cole is a Board Certified Orthopaedic Surgeon specializing in the care and treatment of patients with sports injuries particularly to the shoulder and knee. He is the managing partner at Midwest Orthopaedics at Rush; Associate Chairman of the Department of Orthopaedics at Rush University Medical Center; Chairman of the Department of Surgery at Rush Oak Park Hospital; and a Professor of Orthopaedic Surgeon at Rush Medical College.

Thereafter, Dr. Cole authored a report dated July 31, 2020 which was introduced into evidence as Respondent's Exhibit #2. Arbitrator notes that in reading Dr. Cole's report of this date, Dr. Cole had an understanding of the mechanism of the Petitioner's injury, his employment activities thereafter, and the medical care rendered to the Petitioner from April 7, through June 24, 2020 including, but not limited to the medical care rendered at Dr. Papierski's office and the MRI of the Petitioner's left shoulder performed in April of 2020. (Resp.Ex.#2).

On July 31, 2020, Brian Cole, M.D., prepared a document review report on behalf of the Respondent. (Respondent, Ex. 1, p. 1-3 "hereinafter Res. Ex. 1, p. 1-3"). Petitioner testified that he never saw Dr. Cole for a physical examination. (T, 43-44). Petitioner testified that he also never received a request letter from his

employer to appear for a physical examination by Dr. Cole or any other physician. The report generated by Dr. Cole states that he reviewed the MRI report and there was no pathology based upon the read. (Res. Ex. 1, p. 2). Dr. Cole's report does not state that he looked at the MRI film, just the report. Dr. Cole diagnosis the Petitioner with left shoulder pain subjective without objective correlation by MRI. *Id.* Dr. Cole opines that since he was working until he was laid off there is no medical reason why he couldn't continue to work. *Id*. Further, he states that whatever his condition is, it is difficult to say that it is related to the February 20, 2020 event, given the fact that he had no subjective complaints of pain and worked full duty. *Id*. Finally, he states that the need for surgery would be based upon subjective complaints only and has a guarded prognosis. *Id*. On August 12, 2020 tendered a supplemental report to counsel for Respondent. (Res. Ex. 3, p. 1). The report states that Dr. Cole would like to clarify that the MRI was in fact reviewed both the films and the report. *Id*. Further, Dr. Cole states that his opinions are with a high degree of medical and surgical certainty. *Id*.

On September 2, 2020, Mr. Raniszewski underwent the MR Arthogram ordered by Dr. Papierski at Chicago Medical Imaging/Niles Open MRI. (Pet. Ex. 5, p. 11). The MRI report notes lateral downsloping of the acromion with osteoarthritis in the glenohumeral joint. *Id*. Following the Arthogram, he returned to se Dr. Papierski the same day for interpretation. (Pet. Ex. 5, p. 1-3). The record indicates that the CT arthrogram was reviewed and that the lateral downsloping of the acromion is likely contributing to the impingement on this area and is causing the Petitioner's symptoms. (Pet. Ex. 5, p. 3). He notes that Petitioner was asymptomatic in the left shoulder prior to the fall. *Id*. He opines that although the MRI suggests that the labrum is okay, the tendinosis of the subscapularis and supraspinatus is present along with the downsloping of the acromion. *Id*. Dr. Papierski opines that the recommendation remained surgical by way of subacromial decompression and possible subcoracoid decompression and evaluation of the long head of the biceps to see if tenodesis would be necessary. *Id*.

On September 23, 2020, Dr. Cole prepares an addendum report at the request of Respondent's counsel. (Res. Ex. 4, p. 1-3). The record notes that the arthrogram was reviewed and that there is fluid present underneath the superior labrum. (Res. Ex. 4, p. 2). He notes that his prior opinions remain unchanged. *Id*.

However, he does state that the claimant has ongoing subjective symptoms, which might correlate with a diagnosis of impingement. *Id*. He states that this condition can be caused "by both trauma and insidious (gradual/atraumatic) onset." *Id*. He also states that in this case, "it does not appear that the pain began immediately after the trauma, but rather is of insidious onset thereafter and therefore supportive of my opinion that there was no causally related injury here." He goes on to state that the surgery recommended by Dr. Papierski is necessary because of the claimant's clinical and ongoing failure to thrive despite conservative measures and not because of the MRI arthrogram. (Res. Ex. 5, p. 3). Further, he notes that the need for surgery is not based on the claimant's allegation of a work injury. *Id*.

On December 11, 2020, the Petitioner returned to see Dr. Papierski for another follow-up visit. (Pet. Ex. 5, p. 19-21). The record indicates that Petitioner's shoulder has not improved since the last visit. (Pet. Ex. 5, p. 19). The record also notes renewal of the surgical recommendation and keeps the Petitioner on the same previous work restrictions. (Pet. Ex. 5, p. 20). On January 8, 2021, he returns for another follow-up visit with Dr. Papierski. (Pet. Ex. 5, p. 13-15). The record notes the same complaints as the previous visit with the same recommendations being made by Dr. Papierski. *Id*. Mr. Raniszewski testified that his symptoms have not improved since the recommendation for surgery. (T, 42). He testified that since his injury at work suffered on February 28, 2020, he has not re-injured his left shoulder. (T, 57). Finally, he testified that he has not worked since being laid off on April 1, 2020. (T, 53).

Respondent called Aaron White to testify at trial. (T, 65). Mr. White testified that he was a superintendent for Respondent on the day of the occurrence. (T, 66). He testified that he was aware that the Petitioner was injured on February 28, 2020. (T, 69). He testified that when someone is injured on the job, they would have him seek medical treatment and they would also fill out an incident report. *Id*. He testified an incident report should have been filled out for this incident on the day it happened. (T, 75-76). He testified that if an employee asks to fill out an incident report, it is the employer's responsibility to allow him to fill out one. (T, 76).

Mr. White testified that following the occurrence, he worked at the Grand Avenue job-site for the period from March 2nd through March 31, 2020. (T, 70). He testified that he did not notice anything unusual about the way he (Petitioner) went about doing his job duties during that time. *Id.* He testified that during that time he would have been responsible for supervising approximately 10 employees. (T, 77). He testified that it would not be possible to watch the same employee throughout the duration of his entire shift. *Id*. He also testified that he does not know whether the Petitioner was in pain when he wasn't watching him work. *Id*. He testified that he does not know whether Petitioner had difficulty doing certain things with his left arm when he wasn't watching him work following the occurrence. *Id*. He testified that his testimony that he did not notice anything unusual about the Petitioner went about doing his job duties is limited to the time that he actually had eyes on him. (T, 77-78). Mr. White testified that Petitioner did not request medical attention from him, from March 1st to March 31st. (T, 78). He also testified that he was not aware of whether the Petitioner asked the foreman for medical treatment during that time period. *Id*. Mr. White testified that if Petitioner did request medical attention from Mr. McCracken during that time period that Mr. McCracken had a duty to relay that information to him. (T, 78-79). He testified that Mr. McCracken never informed him that Petitioner reached out to him requesting medical treatment. (T, 79).

Conclusions of Law:

(F), whether the petitioner's present condition of ill-being is causally related to the injury, the Arbitrator finds the following:

The Arbitrator finds Petitioner's current condition of ill-being is causally related to his work injury of February 28, 2020. Accordingly, based on the credible testimony of the petitioner, as contained in the transcript, as well as the medical records and opinions of Dr. Soneru and Dr. Papierski, which includes the diagnostic testing, the Arbitrator finds that the petitioner has affirmatively demonstrated a causal relationship between his work-related injury on February 28, 2020 and his current condition of ill-being. Prior to his injury, Petitioner did not have any issues with his left shoulder and he was performing full duty work. The Petitioner did not suffer a injury to his left shoulder prior to February 28, 2020. The injury alleged, caused an immediate disability to Petitioner's left shoulder. No evidence was presented that Petitioner suffered any injury other than the work-

related injury he suffered on February 28, 2020. Therefore, Arbitrator concludes that the Petitioner's current condition of his shoulder was caused by the February 28, 2020, work related injury. Further, Dr. Papierski's medical records show that Petitioner exhausted conservative management for his left shoulder with no relief of symptoms. The diagnostic tests reviewed showed downsloping of the acromion in his left shoulder resulting in shoulder impingement. It is also important to note that the physical examinations performed by both Dr. Soneru and Dr. Papierski not only showed consistent deficit with respect to range of motion. Further, all of the provocative tests performed, including but not limited to Jobes, Hawkins, Speed's and Yergason's, were positive. This is important because these clinical exam findings directly correlate to the objective pathology and confirm the shoulder impingement.

The Arbitrator notes that the thirty (30) day or so delay in treatment is inconsequential. Petitioner reported the fall the same day it occurred. The Petitioner testified that initially he thought the injury was minor and that is why he did not request an emergency room visit. The evidence shows that Petitioner's symptoms began immediately. The evidence also shows that Petitioner attempted to fill out an incident report the following work day and was not given the opportunity to author said report until March 10, 2020. Further, the evidence shows that although Petitioner worked from the date of the injury until he was laid off on April 1, 2020, he did so symptomatically. He testified that he used his other (right) arm as much as possible during the work day. Further, petitioner testified that he texted his foreman, Garrett McCracken, on March 14, 2020, merely two weeks after the incident complaining of worsening shoulder pain and requesting medical treatment. Finally, petitioner testified that he made an appointment to see a doctor in late March and the first available appointment date was April 7, 2020.

The Arbitrator notes that Respondent did not send Mr. Raniszewski for a Section 12 examination. In the alternative, the Respondent sent medical records to Brian Cole, M.D. for review and opinion. The Respondent submitted three (3) reports into evidence from Dr. Cole, dated July 31, 2020, August 12, 2020 and September 23, 2020. The Arbitrator does not place a great deal of weight on Dr. Cole's opinions and for the following reasons. First Dr. Cole never examined the Petitioner. Arbitrator finds the treating physician's opinions carry

more weight than DR. Cole who never performed a physical examination of the Petitioner. Since Dr. Cole never examined Petitioner, the only examination findings in evidence are those performed by Dr. Soneru and Dr. Papierski, which are summarized in their medical chart. This carries more weight because the Petitioner's physical examinations during his visits at Chicago Hand show objective evidence of shoulder impingement as evidenced by the positive provocative Jobes, Hawkins, Speed's and Yergason's tests. Further, the records show reduced range of motion throughout his care at Chicago Hand and document consistent complaints of worsening shoulder pain.

Second, Dr. Cole's opinion regarding the objective shoulder pathology seen on the MRI and MR arthrogram lacks credibility. Dr. Cole not only disagrees with Dr. Papierski, but also, the radiologist regarding what the arthrogram shows. The radiologist who interpreted the arthrogram exclusively interprets diagnostic films for a living. As such, the radiologist's reading is more credible than Dr. Cole's reading, who only interprets diagnostic films ancillary to his sub-specialty as an orthopedic surgeon. For that reason alone, his opinion regarding the shoulder pathology is not given as much weight as the interpreting radiologist. Further, Dr. Papierski's interpretation of the shoulder pathology following his review of the MRI and MR arthrogram is the same as the radiologist's interpretation and is thus more credible.

Third, in Dr. Cole's September 23, 2020 report, he agreed that Petitioner has ongoing subjective symptoms that correlate with the diagnosis of impingement/rotator cuff tendinitis. He goes on to state that shoulder impingement can be caused by trauma or can be caused by insidious atraumatic gradual onset, in other words as a degenerative process. However, he then goes on to say that in this case it does not appear that Petitioner's pain began immediately after the trauma but is rather is of insidious onset thereafter and thus opines that the shoulder impingement is not related to the work injury. This statement is troubling for many reasons and therefore lacks credibility. Petitioner testified that he had pain in his shoulder right away and that he complained to his foreman about it Monday morning, three (3) days after his injury and also by text message merely two weeks later. Further, although the first documented pain complaints in a medical record is not until five weeks later, April 7, 2020, five weeks of time is no where near enough time for the degenerative process to

evolve to cause the shoulder impingement. As such it is much more likely that the impingement was caused by the fall. It is also important to note for the sake of argument, that even if the impingement did in fact pre-date the fall, it would still be causally related to the February 28, 2020 fall under Illinois law. The law in Illinois is clear regarding pre-existing conditions and this would be considered an asymptomatic degenerative condition that became symptomatic as a result of the trauma.

Finally, Dr. Cole seems to agree that surgery is necessary for Mr. Raniszewski yet conveniently hides behind the fact that Mr. Raniszweski did not seek medical treatment for five (5) weeks as the reason to opine that the Petitioner's need for surgery is not related to the February 28, 2020 fall. At the time of the injury Mr. Raniszewski was working full duty with no issues and had been doing so since being hired by the Respondent several weeks earlier. Then he sustained a fall on February 28, 2020 wherein he fell onto his left side, including left arm and elbow. Just because Petitioner continued to work for about a month before he was seen by a doctor does not mean he did not injure his shoulder in the fall. Dr. Cole even states that he cannot opine whether Mr. Raniszewski requires work restrictions since he never examined him in paragraph 4 of the September 23, 2020 report. Since he cant opine regarding work restrictions since he hasn't examined Petitioner, his opinion that his fall did not cause or contribute to the shoulder injury and resulting shoulder impingement lacks merit and credibility. I can't imagine how the doctor can defer opinions on impairment and work restrictions since he did not examine the Petitioner yet have an opinion to a "high" degree of medical certainty as he puts it, that there is no causal connection without examining the Petitioner. For the several reasons set forth above, the Arbitrator finds that Dr. Cole's opinions lack merit and are incredible.

It is well settled that employers take their employees as they find them. Therefore, even though an employee may have a pre-existing condition which may make him more susceptible to an injury, compensation for the injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co., v. Industrial Comm'n*, 92 Ill. 2d 30, 36, 440 N.E.2d 861 (1982). Furthermore, an accidental injury need not be the sole causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Rock Road Construction Co., v. Industrial Comm'n*, 37 Ill. 2d 123, 127, 227 N.E.2d 65

(1967). Although this is well settled law in the state of Illinois, the petitioner's work-related injury was the primary causative factor in the resulting condition of ill-being. If a pre-existing condition was asymptomatic prior to the injury and then became symptomatic as a result of the injury or accelerated by an accidental injury, the employee is entitled to benefits. *Id* at 67-68.

Upon close examination of the medical records, this Arbitrator finds no inconsistent history, nor any evidence of any intervening cause for the petitioner's current condition. Clearly, after reviewing the records of Dr. Soneru and Dr. Papierski as well as the therapy records from ATI, and the diagnostic test results, Petitioner failed conservative treatment and therefore is a candidate for shoulder surgery. Therefore, the Arbitrator concludes that the petitioner's current condition of ill-being is causally related to the petitioner's accident of February 28, 2020.

In support of the Arbitrator's decision relating to (J), were the medical services that were provided to petitioner reasonable and necessary, the Arbitrator finds the following facts:

On April 7, 2020, the Petitioner began treating Chicago Hand & Orthopedic Surgery Centers. The Arbitrator finds that the treatment rendered by Dr. Papierski was reasonable and necessary to treat Mr. Raniszewski for the work-related injury he sustained on February 28, 2020. The Arbitrator also finds that since the Petitioner's condition of ill-being was causally related to his injury, the respondent is responsible for the aforementioned medical charges and that such charges were generated as a result of treatment that was reasonable and necessary as well as usual and customary. The Arbitrator finds that the related bills on Petitioner's Exhibits 3 and 8, totaling $1,172.60 are to be paid by Respondent according to the medical fee schedule.

On April 14, 2020, the Petitioner began treating at ATI Physical Therapy. The Arbitrator finds that the treatment rendered by ATI was reasonable and necessary to treat Mr. Raniszewski for the work-related injury he sustained on February 28, 2020. The Arbitrator also finds that since the Petitioner's condition of ill-being was causally related to his injury, the respondent is responsible for the aforementioned medical charges and that such charges were generated as a result of treatment that was reasonable and necessary as well as usual and

customary. The Arbitrator finds that the related bills on Petitioner's Exhibit 4, totaling $6,461.03 are to be paid by Respondent according to the medical fee schedule.

On August 26, 2020, the Petitioner underwent diagnostic testing at Chicago Medical Imaging. The Arbitrator finds that the treatment rendered by the provider was reasonable and necessary to treat Mr. Raniszewski for the work-related injury he sustained on February 28, 2020. The Arbitrator also finds that since the Petitioner's condition of ill-being was causally related to his injury on February 28, 2020, the respondent is responsible for the medical charges and that such charges were generated as a result of treatment that was reasonable and necessary as well as usual and customary. The Arbitrator finds that the related bill on Petitioner's Exhibit 7, totaling $4,650.00 is to be paid by Respondent according to the medical fee schedule.

Accordingly, whether the Petitioner will require additional medical services, following surgery and whether such potential future medical services would be considered to be reasonable and necessary will be held open, and will be decided at a later date, if necessary.

In support of the Arbitrator's decision relating to (K), is the Petitioner entitled to any prospective medical treatment, the Arbitrator finds the following facts:

The Arbitrator finds that the Petitioner requires additional medical treatment, including the surgery that is being recommended by Dr. Papierski. Since the Petitioner's condition of ill-being is causally related to the February 28, 2020 work injury, the Arbitrator finds that the respondent is responsible for the additional treatment consistent with petitioner's treating physician's instruction. The medical records of Dr. Papierski and from ATI physical therapy show that Joseph Raniszewski exhausted all conservative measures and remains symptomatic. (Pet. Ex. 1, 2 and 5). Even Respondent's expert physician opines that the surgery is reasonable and necessary in his September 23, 2020 medical record review report. The Arbitrator finds that the respondent must authorize the surgery that was recommended by Dr. Papierski. The Arbitrator finds that payment for said treatment is also the responsibility of the respondent.

In support of the Arbitrator's decision relating to (O), Should Petitioner's Exhibit 9 be admitted into evidence, the Arbitrator finds the following facts:

The Arbitrator determines that Exhibit 9 is an out-of-court statement being offered in evidence for some purpose other than to prove the truth of the matter asserted and is therefore not hearsay and is admitted. Illinois Supreme Court has held, that when an out-of-court statement is being offered in evidence for a purpose other than to prove the matter asserted, it is not considered hearsay. *In re Marriage of Miller*, 396 Ill.Dec. 553 (2015), Ill.R.Evid. 801(c). A statement made by one person that becomes known to another is offered for the purpose of showing the latter's state of mind, as a circumstance under which the latter acted and as bearing upon his conduct. *People v. Sorrels*, 329 Ill. Dec. 590 (2009). It is necessary to establish that the statement was actually heard or acknowledged by the person for the statement to be relevant as an effect on the listener. *People v. Bailey*, 350 Ill. Dec. 410 (2011). A statement is also not hearsay when offered for the purpose of showing that the listener was placed or notice of had knowledge. *Piser v. State Farm Mutual Insurance Co.,* 345 Ill. Dec. 201 (2010).

Exhibit 9 is a screen shot of a text message sent on March 14, 2020 by Petitioner to his foreman, Mr. McCracken, two weeks after the incident. The statement is not being offered into evidence by Petitioner to prove that he was in pain on that day and that he needed medical attention as of that date. Petitioner credibly testified that he was in pain from the date of the incident to the present. Further the Petitioner credibly testified that his shoulder pain was worsening during that time he continued to work and that he set up an appointment on his own in March of 2020, since he had not received the claim number or claim information timely. Petitioner is offering that statement to show its effect on the listener, Mr. McCracken. The statement is being offered to show that Mr. McCracken was placed on knowledge as of March 14, 2020 by Petitioner that his symptoms were worsening and needed medical attention stemming from his fall. The statement is not being offered to actually prove that Petitioner was in pain or actually needed medical attention. Further, the requisite element that the statement was actually heard or received by Mr. McCracken is also met. Mr. McCracken responded to the text message. This evidence is also clearly relevant to dispel the Respondent's argument that Petitioner only pursued his workers compensation case as a retaliatory measure to being laid off on April 1, 2020, since he did not have his first doctor visit until April 7, 2020.

Affirm and Adopt (No Changes) Yes Affirm with Changes No 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	12WC019559
Case Name	Inez Qtaish v. Bronzeville Park Nursing & Skill Facility
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0049
Number of Pages of Decision	20
Decision Issued By	Stephen Mathis, Commissioner

Pro Se	
Respondent Attorney	Paul Pasche, Petar Milenkovich

DATE FILED: 1/30/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Inez Qtaish,

Petitioner,

vs. No. 12 WC 19559

Bronzeville Park Nursing and Skill Facility,

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 occupational disease, notice, causal connection, medical expenses, prospective medical care, wage calculations and "discontinued 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.

During the pendency of this matter on review, the parties and Petitioner's former attorney filed a number of motions. The Commission, in pertinent part: granted *pro se* Petitioner's petition to proceed as a poor person under section 20; set a return date on review and a briefing schedule; and, as Petitioner disputed the correctness of the transcript, remanded the matter to the Arbitrator for further proceedings, including any hearings necessary to resolve the question of correctness of the transcript. On May 13, 2022, the Arbitrator filed a certification order finding the transcript complete and accurate.

The matter was then set for a remote oral argument via Webex on November 23, 2022. Petitioner did not appear. The matter was continued to an in-person oral argument date of December 14, 2022. Again, Petitioner did not appear. In affirming and adopting the Arbitrator's Decision, the Commission has carefully considered the entire record and the parties' briefs on review.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 7, 2019 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.

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.

January 30, 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

23IWCC0049

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

QTAISH, INEZ
Employee/Petitioner

Case# **12WC019559**

BRONZEVILLE PARK NURSING
Employer/Respondent

On 5/7/2019, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 2.38% shall accrue from the date listed above 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.

A copy of this decision is mailed to the following parties:

0000 QTAISH, INEZ
10228 S WALDEN
CHICAGO, IL 60643

6099 McCABE KIRSHNER PC
RYAN A ERIKSON
7373 N LINCOLN AVE SUITE 100
LINCOLNWOOD, IL 60712

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

INEZ QTAISH
Employee/Petitioner

v.

BRONZEVILLE PARK NURSING
Employer/Respondent

Case # **12** WC **19559**

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 **November 19, 2018**. 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 13, 2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$16,848.00**; the average weekly wage was **$324.00**.

On the date of accident, Petitioner was **41** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of **$8,076.20** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$8,076.20**.

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

ORDER

The Arbitrator finds that the Petitioner's left wrist and cervical spine injuries are causally related to the May 13, 2012 accident, but that she reached maximum medical improvement with regard to these injuries as of June 19, 2013.

Respondent shall pay Petitioner temporary total disability benefits of **$220.00 per week**, the minimum allowable statutory rate, for **56 weeks**, commencing **May 24, 2012 through June 19, 2013**, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of **$8,076.20** for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services of Chicago Pain Center incurred between May 13, 2012 and June 19, 2013, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for any awarded medical benefits that have been paid by Respondent prior to hearing, 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 **$220.00 per week**, the minimum allowable statutory rate, 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.

Respondent shall pay Petitioner compensation that has accrued from **May 13, 2012** through **November 19, 2018**, 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.

Signature of Arbitrator

May 3, 2019
Date

MAY 7 – 2019

STATEMENT OF FACTS

This matter was heard by the Arbitrator on 11/19/18. The Petitioner appeared on this matter pro se, and the Respondent was represented by counsel. Petitioner indicated she began to represent herself in 2017 when the relationship between she and her attorneys ended. The Petitioner was advised at hearing and at multiple prior settings that she would be provided an opportunity to obtain new counsel, but she declined.

Petitioner testified she worked for the Respondent at a nursing home facility, Bronzeville Park, as a Certified Nursing Assistant (CNA). This job's duties included dressing residents, feeding residents, cleaning, assisting with showers, transferring residents from place to place, such as from a chair to a bed. On 5/13/12, Petitioner testified she went into a room to replace a mattress on a bed. While lifting the mattress, she testified that her left wrist popped loudly, she developed pain and had to drop the mattress. She indicated she reported the incident to the head of nurses at the front desk and was advised that Respondent did not have any accident reporting forms. This occurred close to the end of her shift, and when she came to work the next day she spoke to the director of nursing (DON) and reported what happened. The nursing director told Petitioner she needed to complete an accident report, and her vitals were taken and she underwent drug testing. Petitioner testified she then went to the Trinity Hospital emergency room.

Petitioner testified she underwent a second drug test at the ER and was advised to follow up with an orthopedic physician. The 5/14/12 report notes Petitioner reported left wrist pain after lifting a mattress at work, denying any other trauma/injury, numbness or tingling. X-ray was negative, other than an incidental finding of mild 5th metacarpal bone deformity which was likely a healed fracture. Petitioner was diagnosed with a wrist sprain and was issued a wrist splint. She was discharged and advised to follow up with Dr. Egwele. The billing for this visit totaled $1,348.00. (Rx9).

Petitioner testified that she contacted an orthopedic physician, whose name she could not recall, and was advised that she needed a form to be able to obtain treatment. She testified that she went to the Respondent's facility and was told the form would be mailed. When it hadn't been mailed to her after two weeks, she contacted an attorney, who referred her to chiropractor Dr. Markarian.

On 5/24/12, Petitioner presented to Dr. Markarian at Chicago Pain and Orthopedic Institute. At that time, she provided a history of injuring her right wrist when she was picking up a mattress and she experienced an acute onset of pain over the ulnar aspect of her right wrist. Petitioner also stated she was having pain in the ulnar left wrist since the accident, noting she had no history of prior wrist pain before 5/13/12. Dr. Markarian noted a history of fibromyalgia, arthritis, joint pain and high blood pressure. A physical examination found tenderness along the ulnar aspect of the wrist and over the ECU. Additionally, pain was positive with pronation and supination. Dr. Markarian diagnosed ECU tendinitis without defect and recommended a splint and physical therapy. Additionally, Petitioner was authorized off work. (Px5).

On 5/31/12, Petitioner presented to Chicago Pain Center for physical therapy treatment performed by chiropractors Dr. Krueger and Dr. Cohen. The initial intake form, which appears to have been completed by Petitioner, notes she was moving a mattress at work and states: "My wrist got sprained at work and now depending on the way it is moved I have pain. Also my arm gets pain up to the elbow." She noted 8/10 stabbing/throbbing/aching pain with pins and needles. Petitioner also referenced a three-day hospitalization in 2012 for fibromyalgia. A separate "Work/Comp Questionnaire" completed by Petitioner indicates: "Prior to this accident there was nothing wrong with my hands. I have fibromyalgia which causes chronic pain throughout my body. My hands and wrist was working in good order until this accident now I have pain everywhere." (Px6).

Petitioner's therapy with Dr. Krueger solely focused on the left wrist through 7/23/12. Prior to that date, on 7/9/12, Dr. Krueger's note states that Dr. Markarian recommended an MRI to an unspecified area and that Petitioner had concerns about neurological symptoms. On 7/13/12, Dr. Krueger noted shoulder pain, stiffness, and fatigue with continued pain in the neck. Petitioner was to follow-up with Dr. Markarian. The 7/23/12 report noted that Petitioner continued with neck/shoulder pain radiating into the arms, and that the therapy plan was changed to include the cervical spine and upper extremity per an orthopedic referral. Petitioner continued therapy off and on through 6/24/15. A medical bill from this facility totals $32,963.00. Multiple references in this bill reflect that the Respondent insurer denied payment as "not covered not medically necessary." (Px6).

Petitioner returned to Dr. Markarian on 6/29/12 complaining of pain radiating from her neck into her hands, and that she was not improving with therapy. A cervical MRI was requested to rule out a C5/6 disc herniation. (Px6). On 7/13/12, Petitioner underwent the cervical MRI, which was indicated to reflect a right central broad-based protrusion at C5/6. She followed up with Dr. Markarian on 8/15/12 and was referred to pain management (Px5).

She testified she only saw Dr. Markarian for a few weeks with complaints of pain going up to her shoulder. After he obtained a cervical MRI and reviewed the results, she testified he advised her to follow up with pain management due to her having a cervical bulge and referred her to Chicago Pain for therapy. She testified she also treated there with another chiropractor, Dr. Vargas.

On 8/24/12, Petitioner presented to Dr. Louis, a pain management doctor, at Chicago Pain and Orthopedic (CP&O) with complaints of neck, left arm and bilateral shoulder pain. She reported lifting a mattress at work on 5/13/12, causing pain in her arm on the left side and at the left wrist. The pain was worse with turning her head and bending forward. It radiated from the neck to the hand and included some numbness and tingling in the left fingers. He noted Dr. Markarian had prescribed medications along with therapy and splinting, including Gabapentin, hydrocodone and meloxicam. Petitioner indicated she was doing myofascial work in therapy and started having significant pain in her right trapezius area, which she described as a popping sensation in her neck. Additionally, Dr. Louis noted the MRI revealed a right central C5/6 disc herniation but no nerve compression and the facets were normal. Dr. Louis opined that Petitioner developed significant pain in her neck at the time of lifting a mattress at work and was developing myofascial pain with therapy. She was diagnosed

with cervical radiculopathy, spondylosis, cervicalgia, myofascial pain, and ECU tendinitis. Dr. Louis recommended continued therapy and performed trigger point injections in the neck. He also recommended and then performed an epidural steroid injection at C6/7 on 9/12/12. (Px5).

On 9/18/12, Respondent's Human Resource Director, Angelic Chavez, wrote a "To Whom It May Concern" letter noting that Respondent had a transitional duty program available which would accommodate light duty restrictions, and asking if the Petitioner is capable of a light duty return to work. (Rx5).

Petitioner returned to CP&O on 9/20/12 and reported increased pain over the posterior cervical paraspinal area and upper thoracic spine since the injection, as well as a worsening of pain in her upper extremities. She wasn't sure if this was due to the injection or her abrupt discontinuation of gabapentin. A resumption of gabapentin was prescribed along with continued Flexeril and meloxicam. She was advised to continue therapy and to remain off work. (Px5).

On 10/5/12, Petitioner returned to Dr. Louis with complaints of continued pain in the upper extremities and neck area, radiating to the hands bilaterally. Examination found significant tenderness over the upper cervical spine region and bilateral trapezius as well as over the right cervical paraspinal muscles. Dr. Louis opined Petitioner was developing pain associated with fibromyalgia coinciding with her neck pain. It was also noted that Petitioner had improvement in her wrist pain and was discharged by Dr. Markarian for ECU tendinitis. An EMG of the upper extremities was recommended to rule out radicular pain. Additionally, Petitioner was switched from gabapentin to Lyrica, and physical therapy was continued. She was authorized to remain off work. (Px5).

On 10/9/12, Human Resources Director Chavez, wrote to Petitioner indicating: "Based on medical updates provided by your physician you have been release from care due to your workplace injury of your right wrist. Please contact us so that may schedule your first day back to work." (Rx5).

Petitioner underwent the EMG/NCV on 10/23/12 and the findings were normal with no evidence of neuropathy, left-sided radiculopathy, or myopathy. However, it was noted that Petitioner "declined to have the right upper extremity study performed." (Px5).

Petitioner returned to Dr. Louis on 10/26/12, noting that her EMG was reported to her as normal. Due to the neck and myofascial pain, Dr. Louis recommended proceeding with bilateral cervical medial branch blocks. Petitioner's medications and off work status were continued. (Px5).

Pursuant to Section 12 of the Act, on 11/7/12 the Petitioner presented to orthopedic surgeon Dr. Goldberg for a cervical examination at the Respondent's request, noting he was not addressing the left wrist injury. Petitioner reported hurting herself on 5/13/12 attempting to lift a mattress and developed acute left wrist pain. She also stated that on 5/24/12 she developed pain in the left neck and arm that radiated into the left wrist after she changed splints. She reported epidural injection made her worse. Current complaints included some left-sided neck pain into the left arm, wrist and hand. She gave a history of jumping from three stories up 7 years prior, denying any cervical problems prior to 5/13/12, and that she had a history of fibromyalgia for which she took Lyrica. Regarding the left wrist, Petitioner advised that she was fine. Dr. Goldberg reviewed an MRI of the cervical spine and noted disc herniation at C5/6. Dr. Goldberg also reviewed the EMG and found no evidence of left cervical radiculopathy. Following his examination, Dr. Goldberg diagnosed a central C5/6 disc herniation, noting Petitioner had some upper arm pain at the time of the accident but the main problem was the left wrist, and that "I do believe that lifting a mattress could result in the disc herniation." He recommended an

additional month of cervical physical therapy, at which point she would hopefully be at maximum medical improvement and opined that she could work with a 10-pound lifting restriction. (Rx6).

Wage records submitted into evidence appear to indicate the Petitioner returned to work very briefly, earning only $20.20, on a day between 11/21/12 and 11/28/12. (Rx4).

Dr. Jain, a pain management physician at CP&O, on 11/26/12, noted Petitioner had continued complaints of neck pain radiating into her bilateral shoulders and upper extremities. Bilateral facet joint injections were recommended from C5 to C7, physical therapy was continued, Norco was refilled, and Petitioner was authorized to remain off work. Lyrica was discontinued "secondary to confusion and memory loss." Petitioner returned to Dr. Jain on 12/17/12 with complaints of increased stabbing pains into the left shoulder and left anterior chest wall as well as increased headaches. Again, bilateral facet joint injections were recommended from C5 to C7. Physical therapy was continued, Petitioner was authorized to remain off work and gabapentin was reinstituted. (Px5).

Petitioner returned to Dr. Jain on 1/25/13, reporting worsening pain all over her body that she was suffering from fibromyalgia. A physical examination at that time found tenderness to palpation at the axial cervical, bilateral trapezius, and bilateral scapular areas with limited cervical range of motion secondary to neck pain. Petitioner was advised to resume Lyrica and taper gabapentin, and her Norco and meloxicam prescriptions were refilled. Therapy and off work status were again continued, and bilateral facet joint injections were again recommended. (Px5).

Petitioner was referred for a second examination with Dr. Goldberg on 1/30/13. At that time, Petitioner complained of neck pain, right jaw pain, chest pain, and occasional left shoulder pain. She denied radicular pain in any of her extremities. Dr. Goldberg opined that "she has a large component of fibromyalgia", noting Petitioner indicated her pain was now going from the neck into the lower lumbar region: "This is not be [sic] coming from a disc herniation at C5/6." Examination indicated she was neurologically intact. Dr. Goldberg recommended she follow up with her primary care provider, Dr. Mendez, for fibromyalgia as well as going to the ER or an internist for a cardiac examination. He opined that ongoing chiropractor care was not indicated and recommended two more weeks of physical therapy followed by a functional capacity evaluation (FCE). Finally, Dr. Goldberg opined that Petitioner did not require facet injections and had reached maximum medical improvement (MMI) pending the FCE. He believed she could work with a 10-pound restriction in the meantime. (Rx7).

Petitioner continued to treat with Dr. Jain from 2/22/13 to 5/3/13. She continued to have complaints including neck pain radiating into both arms. On 2/22/13, Dr. Jain noted that Dr. Goldberg believed Petitioner could return to restricted work and should undergo an FCE. Petitioner also reported low back pain into her legs that was unrelated to the work injury. She underwent bilateral C5-C7 facet joint injections on 3/9/13 and advised at her 3/15/13 follow-up that the injections helped with the numbness and tingling in her forearm and hand but that her neck pain was unchanged. Repeat bilateral C5-C7 facet joint injections were administered on 4/20/13. Petitioner subsequently reported that she had approximately three to four days of relief and then developed back pain, elbow pain, headaches, and neck pain, as well as a stabbing sensation in her left eye and anterior chest wall pain. Dr. Jain recommended medical branch blocks at C2-C5, holding off on therapy and that she obtain an FCE. He also continued to authorize Petitioner off work. (Px5). The Arbitrator notes that Dr. Jain's reports also reflect his opinion that Petitioner had a preexisting asymptomatic degenerative condition that was aggravated by the work accident and caused it to become symptomatic and require treatment.

On 5/18/13, Petitioner saw Dr. Nath at CP&O, noting a history of low back pain and neck pain due to a work-related injury. She also complained of leg pain and cramping. A physical examination found good range of motion and strength with intact sensation throughout her musculoskeletal exam. Dr. Nath recommended Petitioner proceed with the FCE. (Px5).

Petitioner participated in an FCE on 6/9/13 at ATI Physical Therapy. (Rx10). The therapist, Joshua Hicks, issued a report to Dr. Jain indicating the testing was a valid representation of Petitioner's physical abilities, and that was limited to the light physical demand level, while her job as a Nursing Assistant, per the Dictionary of Occupational Titles (DOT), was at the medium physical demand level. There was no specific job description from the Respondent reviewed. The report notes Petitioner had complaints of pain in her neck/mid-back/upper arms/feet during the assessment, and recommends she discuss all of her deficits and complaints with her doctor and that work conditioning could benefit her. A review of the detailed report references that Petitioner terminated various activities due to problems with body parts other than the left wrist.

Petitioner next treated with Dr. Vargas, a pain management doctor, at Chicago Pain on 6/21/13, reporting that she "developed a very poor rapport" with Dr. Nath, who she indicated was somewhat dismissive of her overall clinical complaints. Petitioner complained of significant posterior axial neck pain with radiation and headaches. Dr. Vargas noted that Petitioner reported complete remission of her pain for six to ten days following the previous facet injection. Accordingly, he recommended two-phase medial branch block and continued Petitioner's medications. Dr. Vargas then criticized Dr. Goldberg for being dismissive of the Petitioner's symptoms as being due to fibromyalgia and ignoring signs of axial pain with provocative maneuvers. Petitioner was released to return to work pursuant to the restrictions of the FCE. (Px5).

On 8/16/13, Petitioner returned to Dr. Vargas and advised of no change in her condition. He again recommended a two-phase medial branch block and continued Petitioner's medications, and Petitioner was again indicated to be able to work within the restrictions of the FCE. (Px5).

The next report of Dr. Vargas in evidence was from 4/4/14, though the report stated that it was a follow-up to treatment from 3/7/14. A 3/7/14 report was not part of the evidence submitted into the record. Dr. Vargas noted that Petitioner had been scheduled to undergo a two-phase medial branch block but was unable to proceed due to high blood pressure. He recommended medical clearance prior to the procedure and continued her medications. Dr. Vargas made the same recommendations on 5/2/14, noting the purpose of the branch blocks was to ascertain the potential efficacy of a radiofrequency ablation procedure. However, Petitioner advised that "her primary care physician 'does not want to issue' such clearance." Petitioner also was hesitant to undergo the injections and was "considering" requesting to be discharged from care. Accordingly, Dr. Vargas advised he might then be compelled to declare Petitioner at maximum medical improvement. Dr. Vargas' 5/30/14 report was virtually identical to his 5/2/14 report. However, his work note from that date was very confusing in terms of whether it holds Petitioner off work or on restrictions. (Px5).

On 10/24/14, Petitioner saw yet another physician at Chicago Pain, this time Dr. Patel, with complaints of neck pain as well as pins and needles in the left jaw and left axilla. Physical examination noted tenderness to palpation over the mid lower cervical facet joint line. Dr. Patel noted that Petitioner had excellent relief following cervical diagnostic medial branch blocks performed by Dr. Vargas, and that she was having current issues with her blood pressure. It was noted that Petitioner was waiting for authorization of radiofrequency ablation (RFA) of the left C3 to C6 medial branches. Dr. Patel indicated she should remain off work pending same. (Px5).

On 11/24/14, Petitioner treated with Dr. Rakic at Chicago Pain. She complained of neck pain, facial tingling, left axillary tingling, and radiation into the left hand. Dr. Rakic noted that Petitioner had a normal EMG and an MRI showing a bulge at C5/6 with no stenosis. Dr. Rakic opined Petitioner's neck pain was characteristic of facet arthropathy and recommended RFA at C3/4. (Px5).

Petitioner underwent a left shoulder MRI on 12/26/14, noted to have been prescribed by Dr. Rakic, which indicated no rotator cuff tear, mild supraspinatus tendinosis, mild AC joint arthrosis and a type II acromion. (Px5). There is no evidence in the record supporting when or why this MRI had been prescribed.

Respondent had Petitioner evaluated for a third time by Dr. Goldberg on 2/2/15. At that time, Petitioner advised of some soreness in her neck, difficulty swallowing and three bumps in the front of her neck. Following examination and review of the medical records, Dr. Goldberg diagnosed a small central C5/6 herniation and opined that medial branch blocks and radiofrequency ablation were not indicated and would not alleviate the disc herniation ("She told me she had no improvement" with the prior nerve blocks). She was not a surgical candidate. Accordingly, he advised that Petitioner was at MMI and could return to work per the FCE at a light/medium level. (Rx8).

Petitioner returned to Dr. Rakic on 2/16/15, noting her primary care doctor would not medically clear her for the RFA procedure due to uncontrolled hypertension. She complained of pain in the neck, worse with looking over her right shoulder, and pain in the left shoulder and left chest wall. Dr. Rakic indicated that Petitioner's other medical issues should be managed before proceeding with the RFA procedure. Continued home physical therapy was recommended, and Petitioner was authorized off work. (Px5).

On 3/5/15, Petitioner presented to St. Bernard Hospital with complaints of chronic neck discomfort, referencing a 2011 cervical work injury, as well as cough and chest pain. Examination was normal and a cardiac evaluation including EKG found no acute cardiopulmonary pathology. Petitioner was diagnosed with neck pain an advised to follow-up with Dr. Abbasi. The Arbitrator notes the triage report also references "neck and shoulder injury 2012." (Px2).

On 5/7/15, Petitioner returned to St. Bernard Hospital with complaints of left knee pain without acute trauma/injury. What appears to be a triage note indicates a one-week history of worsening bilateral knee pain with burning sensation. Left knee x-ray was normal. The examining physician noted tenderness to the left medial knee and diagnosed left degenerative joint disease, and it was recommended that Petitioner follow-up with her primary doctor. A prior history of arthritis and peripheral neuropathy were noted. (Px2).

On 5/19/15, Petitioner presented to Auburn Gresham Primary Care for a check-up. She was complaining of left knee pain and low blood pressure. She advised that her left knee pain started six months earlier and that her prior physician, Dr. Song, would not refer her to a pain doctor for the knee. She reported the pain started 6 months prior, went away and then came back three weeks ago during physical therapy for her shoulder and neck. She also stated that she had been diagnosed with fibromyalgia at Mercy Hospital in 2011, and that blood work two months prior indicated a thyroid abnormality. A physical examination revealed no tenderness to palpation of the left knee but did find tenderness to palpation of the neck and shoulder. Petitioner was diagnosed with hypertension and knee pain and referred to an orthopedist. (Px3).

On 5/27/15, Petitioner presented to the emergency department of Advocate Health Care with complaints of a four-day history of neck/shoulder and left lateral chest wall pain. She additionally complained of tiredness and weakness in the arms last Sunday that had resolved. A history of fibromyalgia was also noted. Petitioner underwent a cardiology workup for symptoms of dizziness and chest pain. Her lab results and EKG were

normal. Discharge diagnoses included dizziness, chest pain and back pain. She was advised to follow up with her primary care provider. (Px4).

Petitioner returned to Advocate Health Care on 5/30/15 with complaints of shoulder pain and generalized weakness as well as intermittent chest discomfort. She further advised of generalized weakness and "does state that this is similar to her fibromyalgia flare-ups." The examining doctor noted an entirely benign examination, and Petitioner was released with very low suspicion of cardiac pathology or aortic injury. She indicated she was pain free and was asking to go home. (Px4).

Petitioner returned to Auburn Gresham on 8/3/15 for a female-related examination, but she also noted a history of pain in her back and left chest wall for a few weeks, worse with prolonged sitting. She returned on 10/5/15 for her mammogram results. No complaints of neck, shoulder, knee, or other orthopedic pain are noted in the records. (Px3).

On 3/3/16, Petitioner returned to Auburn Gresham with complaints of upper respiratory symptoms, as well as reporting that she had been having episodes of passing out for the past six months, where she feels like she cannot hold her body up. She indicated she wasn't certain if she completely loses consciousness, as she can hear but cannot respond without slurring her words. She reported going to the Christ Hospital ER for this six months prior when it first started and was advised her blood work was normal and it was just dizziness. Nothing was indicated regarding her neck, shoulder, knee, or other orthopedic complaints, and examination was indicated to be normal. (Px3).

Petitioner presented to the MetroSouth Medical Center ER on 11/1/18 with complaints of a two to three-day history of right-sided hip/buttock pain, noting no inciting trauma/injury, and that this occasionally radiated into the right leg. A separate history note reflects complaints of a one-week history of pain radiating down the right leg. Petitioner noted a remote history of cervical disc herniation, as well as falling from a great height in 1999, resulting in bilateral ankle fractures and intermittent leg pain since. X-rays showed no acute right/hip pelvis fracture but did show degenerative changes consistent with an old left-sided ilium fracture/trauma, possibly related to old trauma with remote chronic avulsion, and mild bilateral degenerative hip joint disease. Dr. Sinnott believed Petitioner's symptoms were likely musculoskeletal. Her diagnosis was right hip pain, right buttock pain, lower back pain, and lumbosacral radiculopathy, and Petitioner was advised to follow up with her primary care prover and orthopedist for re-evaluation. Lidoderm patch, Robaxin and acetaminophen were prescribed. Charges for this visit totaled $2,870.94. (Px1).

No additional medical records were submitted into evidence.

Petitioner testified that she underwent three injections to her cervical spine at CP&O, which she indicated only helped temporarily before the stabbing and pinching pain would return. She said she ended her treatment there as of 3/16/15 because she was sent a medication by mail that they hadn't discussed, and she lost trust in the doctor. She continued to attend therapy in the same building. She testified her knees started becoming painful like bone on bone. She ended therapy in June 2015 indicating she was asked to come in after hours. After that she self-treated with over-the-counter medications and, when her pain was severe, visits to an emergency room, including St. Bernard's (2016), Holy Cross (for her back in 2017), Christ Hospital and Metro South (2 weeks prior to hearing).

Petitioner testified that her main current problems are her back, neck, left knee and right hip. Her left shoulder hasn't been bothering her and she testified she can deal with it. Her neck gets cramped at times, but nothing to where she is totally out of balance, though she sometimes wears a brace. She has weakness and difficulty

holding her head up. She feels a crook in her neck at times. She testified she also gets bad headaches. She testified her back is not good at all and she can't stand for long periods of time. She cannot hold her upper extremities up for long. She testified her left wrist is not really a problem, with "just arthritis into it now." Her right hip pain comes and goes, and this pain makes it hard to sleep.

Petitioner testified she has not worked for Respondent since attempting to do so on the advice of her prior attorney after receiving a letter from Respondent requesting that she do so. She testified when she returned her eyes were red and burning, she felt ill and she couldn't hold hands up. After being there for a couple hours, she called her attorney and informed Tony Prather she couldn't continue. She hasn't worked anywhere else since. When she has no income, Petitioner testified she will go to her aunt's house to perform chores, such as sweeping, cleaning tables and taking care of her cats, and she would give her money. She hasn't done this since 2017. She indicated she has looked into college but hasn't taken any classes. She was receiving public aid assistance initially in 2015 but testified her benefits were terminated about 7 months prior to the hearing. Some of her medical expenses have been paid via her medical card, including many of her ER visits and her primary care provider, Auburn Gresham Clinic. She would tell them about what happened at work but testified she did not receive any injury-related treatment there.

On cross examination, Petitioner agreed she felt a pop in her wrist lifting the mattress on 5/13/12, but did not feel a pop in her back, hips or knees at that time. All she felt at that time was her wrist and that was all she complained about when she went to Trinity. It was about three weeks later that she began to feel left shoulder pain. She testified that when she saw Dr. Markarian she told him about the shoulder, it started about a week after seeing him. She agreed she had no pain in her neck, shoulder, knees or back "at that time", i.e. when she initially saw Dr. Markarian.

Petitioner testified that she believes the symptoms in her low back, knees and hips are causally related to her work injury. She testified she was initially diagnosed with fibromyalgia in 2011. She had some disability time then. She denied having headaches in 2010. She testified the fibromyalgia symptoms started "out of the blue." The pains following her wrist injury started this way as well.

Since 2015, Petitioner has treated at emergency rooms, agreeing none of those visits involved the left wrist, but rather the shoulders and neck. She would receive pain medications and recommendations for orthopedic follow-ups. She testified the referrals were sent to the doctors but she never received a call from them.

Following her FCE, Petitioner did not recall her attorney ever advising her to try to return to work. She testified she didn't go back to work with Respondent because the FCE said she couldn't return. On further cross-exam, she agreed she was supposed to be returning to a lighter job with Respondent, and she then indicated she didn't go back because she didn't feel well, her hands were hurting, she felt weak and had headaches and shoulder pain. Her shoulder feels stiff at times and weak at times, but she deals with it and wasn't trying to allege that she couldn't perform any activities. She hasn't looked for any other jobs since the accident date, noting she will not lie on a job application and would state exactly what she is going through.

Petitioner testified that when her older aunt would get chores piling up, she would call Petitioner to help. She would do this every month or two, noting it would take her a long time to do the work, but she did it. Petitioner does not believe she has the education to perform a seated desk job but believed she could find work. She indicated she did apply online for office jobs and any other types of jobs she could do with no lifting and no prolonged sitting, though the last time she did so was around 2015. She could not recall how many jobs she has applied for.

Petitioner sought treatment at the Metro South ER about two weeks prior to hearing for her right hip, noting she was to see a bone specialist and received pain medication and a muscle relaxer. She did not have shoulder complaints at that time, as "it wasn't hurting at that time." At times she still gets pain in her neck and shoulders. She testified her last ER visit for her wrist, shoulder or neck was at Holy Cross Hospital.

Tony Prather, the Vice President of Operations for Maestro Consulting, the Respondent's management company, testified at hearing. He testified he oversaw in 2012 and continues to oversee the Respondent's Bronzeville facility. He testified he is in the loop regarding workers' compensation claims but would not normally have direct contact with claimants. Mr. Prather testified that the Respondent has a light duty program in place for workers' compensation employees based on medical documentation of their restrictions.

Mr. Prather testified that the only direct contact he had with Petitioner regarding her claim was asking her what happened, and that she indicated she didn't feel the management in the building was helping her and so she got an attorney. He testified that light duty job offers in a workers' compensation situation are typically made via mail by the facility HR Director, and he identified the 10/9/12 offer made to Petitioner (Rx5) by the Bronzeville HR Director Angelic Chavez. He testified that his documentation indicates the Petitioner did briefly return to work.

Mr. Prather testified that if an employee refuses a light duty job offer they would be terminated for absenteeism, though he could not recall if this occurred with Petitioner or not. He was not aware of there being any specific time limitation for the continuation of a period of light duty. Mr. Prather did not recognize the disability documentation the Petitioner completed (Rx3). As the VP of operations, he testified that certain medical records may be included in employee personnel files. He noted that Petitioner's file contained a 10/19/10 return to work form indicating no heavy lifting over 20 pounds. He could not say that Respondent accommodated this or not. Had they done so, he agreed there would be wage documentation, and Rx4 documents entries where the Petitioner did work on some dates after 10/19/10.

In rebuttal, Petitioner testified that when she received the fibromyalgia diagnosis in 2010 from the Board of Health Clinic, she completed the FMLA leave documentation and brought it in to Respondent. She denied ever receiving a letter from Respondent indicating her employment had been terminated. Her understanding from her attorney was that the Respondent terminated her workers' compensation benefits in reliance on their doctor.

As noted, Petitioner testified that she returned to work for less than a day pursuant to the light duty job accommodation offer. Petitioner's employee medical records evidenced pre-injury restrictions for fibromyalgia dating back to October 2010 (Rx3), and wage records submitted into evidence by Respondent indicate the restrictions were accommodated as Petitioner continued to work for Respondent during this period (Rx4).

Respondent submitted a claim form for disability through the Respondent completed by Petitioner on 9/14/10. In this document, she stated: "I was at home sitting down during some _____ (illegible) and sharp pains began to stick me in different parts of my body." Petitioner's primary provider, Dr. Datta, completed a form indicating Petitioner reported a sudden onset of diffuse pains, myalgias and weakness of unknown etiology in July 2010, and that an ongoing workup was continuing. The doctor notes the Petitioner had been off work for this but was neurologically intact and could likely return to work if she did not lift. This was modified to no lifting over 20 pounds as of 10/19/10. (Rx3). Petitioner reviewed Rx3 and testified that she recognized it and did sign it on 9/14/10. She denied filing this claim for disability income until she had been diagnosed with fibromyalgia.

CONCLUSIONS OF LAW

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

During her testimony, Petitioner stated that on the date of injury, the only body part injured was her left wrist. This is supported by her initial treatment at CP&O and her initial physical therapy at Chicago Pain Center. The Arbitrator notes that Petitioner continued to work for over a week until she presented to CP&O. Shortly after she began treatment, she began complaining of symptoms in her neck and bilateral shoulders radiating down her arms. The records are unclear of the date of onset of these symptoms and their relation to the work injury, but the Petitioner testified the symptoms started about three weeks after the accident. The most detailed explanation is found in Dr. Goldberg's initial 11/7/12 report, where he indicated Petitioner stated she developed pain in the left arm and left neck after changing splints. Dr. Goldberg reviewed an MRI of the cervical spine, diagnosed a C5/6 disc herniation and opined that it could have been caused by lifting a mattress.

Since the date of injury, Petitioner has treated for a significantly varied number of conditions. The Arbitrator notes that symptoms and conditions are not automatically related to a work-injury simply because they occurred subsequent to that injury. Here, the medical records, employment records, and Petitioner's testimony make clear that the Petitioner had been diagnosed with pre-existing fibromyalgia following a sudden onset in 2010. She was again noted to have this diagnosis after the date of injury. This is specifically evidenced by Petitioner's treatment at Advocate Health Care on 5/27/15, when she complained of four days of neck/shoulder pain and left lateral chest wall pain with a history of fibromyalgia. On 5/30/15, Petitioner complained of shoulder pain and generalized weakness as well as intermittent chest discomfort. She further advised of generalized weakness and stated the symptoms are similar to when she has fibromyalgia flare-ups. This history of fibromyalgia-related symptoms is consistent with her treatment and complaints throughout the course of her treatment at CP&O and Chicago Pain Center.

The Petitioner also has complained of low back pain that sometimes radiates into the legs. There is no anatomic model the Arbitrator knows of that would involve low back pain being caused by a cervical herniation with no evidence of nerve or spinal cord compression, or a left wrist injury. There were no initial low back or leg complaints whatsoever and there is no medical evidence which would tie any low back or leg symptoms to the 5/13/12 accident, and this is supported by the opinion of Dr. Goldberg.

Taking Petitioner's personal medical history, symptoms, and injury as a whole, the Arbitrator finds that Petitioner suffered a left wrist strain/ECU tendonitis and a central disc herniation at C5/6 as a result of the work injury on 5/13/12. During the course of her treatment, her left wrist strain resolved and, as noted by Dr. Louis on 10/5/12, she was discharged by Dr. Markarian for the ECU tendinitis diagnosis. Petitioner advised Dr. Goldberg at the 11/7/12 examination that her left wrist was fine. She also testified that her left wrist was not currently a problem and there is "just some arthritis" in it. Accordingly, the Arbitrator finds that the Petitioner reached MMI with regard to the left wrist injury as of 10/5/12.

As to her cervical spine condition, the Arbitrator notes that Petitioner treated with up to six different pain management doctors at CP&O. Throughout the course of this treatment, the pain physicians all repeated a similarly nebulous history of injury in terms of the left wrist pop and initial complaints versus her later complaints, and prescribed essentially the same treatment plan: physical therapy, pain medication, injections, medial branch blocks, and possible radiofrequency ablation. Although the doctors noted a work-related injury, there is no solid medical explanation relating all of Petitioner's multiple symptoms to an initial left-wrist injury. The doctors were additionally equivocal regarding the success of the injections that were administered. Petitioner's own testimony at trial indicated they provided only minimal temporary relief at best.

The only orthopedic evaluation Petitioner underwent was with Dr. Goldberg. He noted the history of injury and symptoms and provided a medical opinion finding a causal relation between the work injury and a central cervical disc herniation. However, he further opined that cervical injections, medial branch blocks and radiofrequency ablation were not medically indicated and were not reasonable and necessary to treat Petitioner's condition. Dr. Goldberg's opinion was subsequently corroborated by Petitioner's own testimony and the fact that the injections provided minimal temporary results at best. Additionally, on 1/30/13, Dr. Goldberg opined that Petitioner's complaints appeared to be more of the nature of fibromyalgia, and he recommended additional physical therapy followed by an FCE and release from care. This opinion is corroborated by Petitioner's subsequent treatment for fibromyalgia flare-ups according to her own treating records and testimony. The Arbitrator also notes that the MRI itself evidenced normal findings at every level but C5/6, and at that level indicated nothing more significant than a central herniation with no evidence of nerve root or spinal cord compression.

While the Arbitrator notes that the FCE was determined to have been valid and limited the Petitioner to the light physical demand level, which is below the medium physical demand level of a Nursing Assistant, the report notes that a significant amount of her limitations were based on unrelated body parts, such as the mid-back, low back and feet. The therapist also noted that work conditioning could benefit the Petitioner, and this was never undertaken by Petitioner's treaters.

The Arbitrator finds Dr. Goldberg's opinions to be the most persuasive in this case and supported by the medical record as a whole. The Arbitrator finds that Petitioner suffered a central cervical disc herniation at C5/6 and was at MMI for this injury as of 6/19/13, following the FCE, per Dr. Goldberg.

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:

Within the evidence presented at hearing, the Arbitrator was able to locate invoices for medical expenses from two providers: MetroSouth Medical Center and Chicago Pain Center.

In regard to the treatment at MetroSouth Medical Center, Petitioner presented on 11/1/18 with complaints of right-sided hip/buttock pain for the last two to three days. No trauma or injury was noted prior to the onset of symptoms. The evidence does not support this treatment as being causally related to the 5/13/12 accident, and therefore the expenses of MetroSouth, totaling $$2,870.94, are denied.

In regard to Chicago Pain Center for services provided by Dr. Krueger and Dr. Cohen, Petitioner submitted an invoice showing a balance $32,963.00. Respondent has paid for substantial treatment at Chicago Pain Center and Dr. Cohen through 11/23/12 (see Rx1). As noted above, the Arbitrator finds that Petitioner's work-related condition stabilized, and she was at MMI as of the 6/19/13 FCE. Dr. Goldberg, at Petitioner's initial 11/7/12 and subsequent 1/13/13 examinations, advised Petitioner to continue physical therapy. On the latter date he advised this should be followed by an FCE, at which point Petitioner would be at MMI. Accordingly, the Arbitrator awards the medical expenses incurred at Chicago Pain Center through 6/19/13, the date of the FCE and MMI.

With regard to any other medical expenses the Petitioner may have claimed as being causally related to the 5/13/12 work accident, the Arbitrator is unable to award any such expenses since no other bills or invoices were included within the record of evidence.

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

The evidence presented by Respondent (see Rx2) indicates that the Petitioner received TTD benefits totaling $8.076.20 between approximately 5/24/12 and 2/2/13.

Based on the opinion of Dr. Goldberg, Petitioner was released to light duty following his 11/7/12 examination. the IME on November 7, 2012. Respondent offered light duty accommodations to Petitioner. Following Petitioner's refusal of light duty accommodations, she was terminated. She subsequently underwent an FCE on June 19, 2013. Although the restrictions prevented Petitioner from returning to her previous position as a CNA, Respondent's testimony and records indicate that Respondent was willing to accommodate Petitioner's restrictions, but that accommodated work was offered both for her work-related condition as well as her pre-existing, non-related condition.

Based on evidence and testimony provided by Respondent, the Arbitrator finds that, following the FCE, the Petitioner could have returned to work with restrictions pursuant to the FCE. Further, following the FCE, Petitioner provided no evidence of a job search or demand for vocational rehabilitation.

According to the Act, a Petitioner is entitled to TTD benefits as long as the total temporary incapacity lasts. Here, the Arbitrator finds that Petitioner was at MMI as of 6/19/13. The Arbitrator finds that the Petitioner is entitled to TTD from 5/24/12 through 6/19/13. The Respondent is entitled to a $8,076.20 credit against this award for previously paid TTD benefits.

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

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

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

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

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In

> determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that neither party has presented an AMA permanent partial impairment rating or report into evidence. This factor carries no weight in the permanency determination.

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 CNA at the time of the accident and was not able to return to work in her prior capacity as a result of said injury based on the findings in FCE testing. Petitioner was offered a light duty position, however, and testified that she essentially didn't feel well enough to return to work even in a restricted capacity. The Arbitrator finds that this factor carries moderate weight in the permanency determination.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 41 years old at the time of the accident. Neither party has presented evidence which would tend to show the impact of the Petitioner's age on the extent of any disability resulting from the 5/13/12 accident. This factor carries no weight in the permanency determination.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that the Petitioner did not present any evidence which specifically addresses how her future earning capacity may have been impacted by her work injury. However, the Arbitrator notes that the Petitioner's FCE test results indicated she was not able to return to her regular job as a CNA. The preponderance of the evidence therefore does reflect that the Petitioner's future earning capacity may have been adversely impacted by the injury. The Arbitrator finds that this factor carries moderate weight in the permanency determination.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that the Petitioner initially sustained a left wrist injury, per her testimony, when she felt a pop in that area while changing a mattress. She later indicated that the pain was either going up her arm or was coming from the neck/shoulder area. The Arbitrator notes the initial report of Dr. Markarian reflects right wrist complaints. The Arbitrator also notes, as indicated above, that the Petitioner' lumbar and leg conditions are not causally related to the accident. She has permanent restrictions according to the FCE, though the Arbitrator again notes that there are some aspects of the FCE that appear to indicate that both related and unrelated complaints were determinative of the final noted restrictions.

Based on the above factors, the record taken as a whole and a review of prior Commission awards with similar injuries similar outcomes, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent the loss of use of 20% of the person as a whole pursuant to §8(d)2 of the Act.

Finally, the treating medical records including the FCE confirm Petitioner's permanent restrictions.

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner claims the Respondent has paid $6,160.00 in TTD per Arbx1. Respondent presented evidence in the form of payment records of TTD paid by Respondent totaling $8,076.20. The Arbitrator finds that the

documentary evidence presented is of greater weight than the amount claimed by Petitioner to have been received, and therefore finds that the Respondent is entitled to a TTD credit totaling $8,076.20.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC020885
Case Name	Darryl Smith v. Cook Count Sherrif's Dept.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0050
Number of Pages of Decision	29
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Michael Youkhana
Respondent Attorney	James Lumene

DATE FILED: 1/31/2023

/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 up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Darryl Smith,

Petitioner,

vs. No. 21 WC 020885

Cook County Sheriff's Department,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review under §19(b) and §8(a) having been filed by Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary 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. 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).

On February 5, 2021, Petitioner, a 40-year-old deputy sheriff, sustained multiple injuries when he was attacked by a detainee who knocked him down to the concrete floor. Petitioner sustained injuries to his right elbow, both knees, right hip, left shoulder and neck. The Arbitrator found Petitioner's current conditions of his cervical spine, left shoulder, right elbow and bilateral knees were causally related to his accident. However, the Arbitrator found Petitioner's right hip condition was causally related to his accident only through May 24, 2021. In finding Petitioner's right hip condition had reached maximum medical improvement on that date, the Arbitrator noted that while the treatment for his right hip had been continuous through May 24, 2021, after that date Petitioner did not seek hip treatment for over nine months. The Arbitrator also based her causation finding upon Dr. LaReau's diagnosis that Petitioner had right hip osteoarthritis; and Dr. Riff's report that Petitioner's right hip pain was secondary to an early osteoarthritic flare and underlying acetabular cystic change.

It is undisputed that Petitioner's right hip was injured as a result of his work accident, and that the treatment he received for it was causally related through May 2021. On February 18, 2021, Dr. Riff reported that Petitioner's current hip pain was different and more constant than the minor aches he experienced in the past, subsequent to his 2010 right hip arthroscopic surgery. Dr. Riff noted Petitioner had frequent popping in his hip, and his impingement test was positive. On March 18, 2021, Dr. Riff opined that Petitioner's right hip pain was related to his work injury. Through May 2021, Petitioner underwent conservative right hip treatment consisting of physical therapy, medications, a cortisone injection and activity modification. Dr. LaReau reported that none of those treatments provided Petitioner with long term relief, and on May 24, 2021, he recommended Petitioner undergo a total right hip arthroplasty.

The Commission views the evidence regarding the causation of Petitioner's right hip condition after May 24, 2021 differently than the Arbitrator, and finds that that condition and need for subsequent hip treatment continued to be causally related to his February 5, 2021 accident.

Petitioner's right hip symptoms had not resolved or improved by May 24, 2021, as evidenced by Dr. LaReau's recommendation for a total hip arthroplasty on that date. Two months later, on July 21, 2021, Dr. Colman documented Petitioner's complaints of: right hip pain with hip rotation; pain radiating into his right groin area when descending stairs; and feeling like his hip would give out.

The Commission finds Petitioner has proven causal connection of his current right hip condition under a chain of events theory, by demonstrating a previous condition of good health in his right hip; an accident; and a subsequent injury resulting in disability. Prior to Petitioner's February 5, 2021 accident, he was not under care for his hip and was able to perform all of his work duties without restrictions. After that date, his hip became symptomatic, he was taken off work, and he received continuous conservative treatment.

The Commission does not find the nine month period after May 24, 2021, during which Petitioner did not seek treatment for his hip, significant to the issue of causation. The recommendation for hip arthroplasty had been made prior to that treatment gap, and no new hip injuries occurred. Petitioner's delay in obtaining hip treatment after May 24, 2021 was largely due to Respondent's failure to authorize the recommended hip arthroplasty, which was the only remaining treatment Dr. LaReau had to offer. Under those circumstances there was little, if any, reason for Petitioner to return to Dr. Riff or Dr. LaReau until authorization was provided for the arthroplasty. Petitioner's failure to go back to those doctors was neither evidence that his accident-related right hip pain had resolved, nor that his right hip condition after May 24, 2021 was unrelated to his February 5, 2021 accident.

Consistent with the foregoing, the Commission also modifies those parts of the Arbitrator's decision which denied payment of the reasonable and necessary medical services for Petitioner's

right hip after May 24, 2021, and denied prospective medical care for his right hip. The Commission finds Respondent liable for both.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 30, 2022, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION Respondent shall pay Petitioner temporary total disability benefits of $943.47/week for 45-5/7 weeks, commencing February 6, 2021 through August 29, 2021, and November 27, 2021 through March 21, 2022, the date of arbitration, as provided in §8(b) of the Act. Per the parties' stipulation, Respondent is entitled to a credit in the amount of $23,991.09 for benefits paid to Petitioner for the TTD period awarded.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner's reasonable and necessary medical expenses, as provided in Petitioner's Exhibits 4, 5, and 6, pursuant to the medical feel schedule and §8(a) and §8.2 of the Act. Per the parties' stipulation, Respondent is entitled to a credit in the amount of $23,968.70 for medical bills paid through its group medical plan, pursuant to §8(j).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the prospective medical treatment and attendant care of Petitioner's right knee and left shoulder, as recommended by Dr. Chudik; Petitioner's cervical spine, as recommended by Dr. Darwish; and Petitioner's right hip, as recommended by Drs. Riff and LaReau.

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 other 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.

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.

January 31, 2023

/s/ *Marc Parker*
Marc Parker

MP/mcp
o-01/19/23
068

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC020885
Case Name	Smith, Darryl v. Cook County Sherriff's Department
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Michael Youkhana
Respondent Attorney	James Lumene

DATE FILED: 6/30/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 28, 2022 2.50%

/s/Ana Vazquez, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Darryl Smith
Employee/Petitioner

v.

Cook County Sherriff's Department
Employer/Respondent

Case # **21** WC **020885**

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, Illinois**, on **March 21, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **February 5, 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 $**73,590.40**; the average weekly wage was $**1,415.20**

On the date of accident, Petitioner was **40** years of age, ***single*** with **3** 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 $**23,991.09** for TTD, $**0** for TPD, $**0** for maintenance, and $**23,968.70** for other benefits, for a total credit of $**47,959.79**.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $943.47/week for 45 5/7 weeks, commencing February 6, 2021 through August 29, 2021 and November 27, 2021 through March 21, 2022, the date of arbitration, as provided in Section 8(b) of the Act. Per the Parties stipulation, Respondent is entitled to a credit in the amount of $23,991.09 for benefits paid to Petitioner for the TTD period awarded.

Respondent shall pay reasonable and necessary medical services, as provided in Petitioner's Exhibits 4, 5, and 6, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Medical treatment provided for Petitioner's right hip after May 24, 2021 is denied. Per the Parties stipulation, Respondent is entitled to a credit in the amount of $23,968.70 for medical bills paid through its group medical plan, pursuant to Section 8(j).

Respondent shall authorize and is liable for prospective medical treatment of Petitioner's right knee and left shoulder, as recommended by Dr. Chudik, and for Petitioner's cervical spine, as recommended by Dr. Darwish. Prospective medical care of Petitioner's right hip 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.

Ana Vazquez

Signature of Arbitrator

JUNE 30, 2022

ICArbDec19(b)

21WC020885

FINDINGS OF FACT

This matter proceeded to trial on March 21, 2022, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act ("the Act"). The issues in dispute are: (1) the causal connection between the accident and Petitioner's current condition of ill-being, (2) whether Respondent is liable for unpaid medical bills, (3) Petitioner's entitlement to prospective medical care, and (4) Petitioner's entitlement to temporary total disability benefits. Arbitrator's Exhibit ("Ax") 1. All other issues have been stipulated. Ax1. The Parties further stipulated that Respondent is entitled to a credit in the amount of $23,968.70, pursuant to Section 8(j) of the Act and that Respondent is entitled to a credit in the amount of $23,991.09 for temporary total disability benefits paid to Petitioner. Ax1.

Duties

Petitioner testified that in February 2021 he was employed by Respondent as a deputy sheriff. Transcript of Proceedings ("Tr.") at 6. Petitioner had been a deputy sheriff with Respondent for 16 years. Tr. at 6-7. Petitioner's job duties included overseeing Security Custody Control, Division 6, and detainees. Tr. at 7. Petitioner explained that on February 5, 2021 he was overseeing 20 to 24 detainees and keeping them from harming themselves and others, keeping them inside, and keeping them from tearing the building down. Tr. at 7.

Accident[1]

Petitioner testified that on February 5, 2021, he opened the dayroom door and a detainee attacked him. Tr. at 8. The detainee grabbed Petitioner by his legs, and they struggled. Tr. at 8. Petitioner initially fell back and to the right and hit a wall. Tr. at 8. After hitting the wall, Petitioner fell into the room, he got up, he grabbed the detainee, and then Petitioner fell and hit his knees on the concrete ground. Tr. at 8. Petitioner explained that the jail is made of steel and concrete, and that he hit a steel or concrete wall with a steel frame and the concrete floor. Tr. at 9. Petitioner testified that the altercation lasted three to five minutes. Tr. at 8. Petitioner injured his right elbow, left shoulder, right hip, both of his knees, and his neck during the altercation. Tr. at 9. Petitioner testified that his neck was not feeling fine after the incident and that he was having tightness in his neck, but the pain did not escalate until the following day. Tr. at 32. The

[1] Petitioner's testimony as to the February 5, 2021 incident is corroborated by the incident reports contained within Respondent's Exhibit ("Rx") 2.

incident was broadcasted over the radio and Petitioner went to the infirmary after the incident. Tr. at 32. The superintendent and the building director talked to Petitioner before the ambulance arrived. Tr. at 11. Petitioner sought medical attention at St. Anthony's Hospital. Tr. at 11.

Medical treatment summary

Petitioner presented at the Emergency Department of St. Anthony Hospital on February 5, 2021. Petitioner's Exhibit ("Px1") at 1. Petitioner reported that he was attacked by an inmate, fell, and injured his knees. Px1 at 4. Petitioner presented with complaints of moderate, non-radiating, aching bilateral knee pain, left shoulder pain, and right elbow pain. Px1 at 4. Petitioner described the pain as constant and worse with movement. Px1 at 4. On exam of Petitioner's upper extremity, range of motion was limited to the left shoulder and right elbow. Pz1 at 6. Tenderness of the left shoulder, right elbow, and bilateral knees was noted. Px1 at 6. X-rays of the right elbow demonstrated no acute osseous abnormality. Px1 at 13. X-rays of the left knee demonstrated no acute radiographic abnormality. Px1 at 15. X-rays of the right knee demonstrated no acute radiographic abnormality. Px1 at 17. X-rays of the left shoulder demonstrated no acute findings. Px1 at 19. Petitioner's diagnoses were left shoulder strain, right elbow contusion, and bilateral knee contusions. Px1 at 1. Petitioner had no fractures and was discharged. Px1 at 1, 6. Petitioner was prescribed Naproxen 500mg and Tizanidine Hydrochloride for muscle spasms. Px1 at 2.

On February 12, 2021, Petitioner presented to Dr. Steven Chudik at Hinsdale Orthopaedics. Px2 at 1. Petitioner reported a consistent accident history. Px2 at 1. Petitioner reported that he hurt his bilateral knees, left shoulder, right elbow, and right hip. Px1 at 1. He further reported that he was taken to the emergency room via ambulance, was discharged on the same day, and began to feel pain in his neck the following morning. Px1 at 1. Petitioner reported left shoulder pain and bilateral knee pain. Px2 at 1. Regarding his knees, Petitioner reported no pain at rest and sharp, non-radiating pain with activities, especially with stairs. Px2 at 1. Petitioner reported that his right knee was worse than his left knee. Px2 at 1. Regarding his left shoulder, Petitioner reported no pain at rest and sharp pain with radiation to the trapezius in his neck with activities. Px2 at 1. Petitioner also complained of paresthesias in the second through fifth digits of his left hand. Px2 at 1. Petitioner denied any paresthesias prior to the work incident. Px2 at 1. Petitioner's surgical history indicated a prior right hip implant, performed in

December 2010. Px2 at 1. Physical examination of Petitioner's right elbow revealed no swelling or ecchymosis and all passive range of motion was full and symmetric. Px2 at 2. Physical examination of Petitioner's right knee revealed tenderness at the medial tibiofemoral joint line and reflected a positive McMurray's test. Px2 at 3. Physical examination of Petitioner's left knee revealed tenderness at the medial trochlea and medial femoral condyle. Px2 at 3. Physical examination of Petitioner's left shoulder demonstrated no tenderness to palpation and reflected a positive Neer's, Hawkins, Bear Hugger's, Empty can, and cross arm adduction tests. Px2 at 1. Petitioner's sensation over the right volar middle finger and right volar little finger was abnormal and decreased sensation was noted over the volar aspects of the second through fifth digit of the left hand. Px2 at 4. X-rays of Petitioner's left shoulder, bilateral knees, and right elbow were obtained and were normal. Px2 at 4. Dr. Chudik's diagnoses were (1) pain, left shoulder, (2) pain, right knee, (3) cervical radiculopathy, (4) pain, right elbow, and (5) pain, left knee. Px2 at 4. Dr. Chudik recommended an MRI of Petitioner's right knee and left shoulder and prescribed physical therapy for Petitioner's left knee. Px2 at 4. Petitioner was instructed to take ibuprofen or Tylenol for pain control. Px2 at 4. Dr. Chudik recommended Petitioner follow up with Dr. Darwish or Dr. Lorenz for his neck and referred Petitioner to Dr. Riff for his right hip pain. Px2 at 4. Petitioner was placed off work. Px2 at 5, 6.

On February 18, 2021, Petitioner presented to Dr. Ashraf Darwish at Hinsdale Orthopaedics, as referred by Dr. Chudik. Px2 at 7. Petitioner presented with a chief complaint of cervical pain. Px2 at 4. Petitioner reported a consistent accident history. Px2 at 7. Petitioner also reported that he initially had left shoulder pain, right elbow pain, and bilateral knee pain; and that he was taken to the emergency room at St. Anthony's Hospital, was given pain medication and a muscle relaxer, and discharged home. Px2 at 7. Petitioner reported that the following day, his neck became painful and stiff and described the pain as uncomfortable. Px2 at 7. Dr. Darwish noted that Petitioner's pain radiated into his trap and periscapular region, and into his bilateral shoulders on range of motion. Px2 at 7. Physical examination of Petitioner's cervical spine revealed flexion measured to 30 degrees with pain and extension measured to 10 degrees with pain; tenderness over the right paraspinal, left paraspinal, periscapular region, and trapezius region; and positive right and left Spurlings tests. Px2 at 9. Dr. Darwish noted that sensation was decreased in the first through fourth digits, left greater than right. Px2 at 9. X-rays of Petitioner's

cervical spine were performed and revealed loss of cervical lordosis and no instability on flexion or extension. Px2 at 9. Dr. Darwish diagnosed Petitioner with cervicalgia and cervical radiculopathy. Px2 at 9. Dr. Darwish recommended a cervical MRI and prescribed Mobic and Flexeril. Px2 at 10.

Petitioner also presented to Dr. Andrew Riff at Hinsdale Orthopaedics on February 18, 2021 for a right hip evaluation, as referred by Dr. Chudik. Px2 at 11. Petitioner reported a consistent accident history and that he noticed hip pain after the alteration. Px2 at 11. He further reported that the knee x-rays performed at his visit with Dr. Chudik had increased his right hip pain. Px2 at 11. Petitioner reported that he felt the pain deep in his groin and recalled having minor aches in his right hip in the past, but that the pain had been constant since the work incident. Px2 at 11. Petitioner also reported that he underwent right hip surgery in 2010, and that his current pain was different than the pain he experienced ten years prior. Px2 at 11. Dr. Riff noted that Petitioner rarely experienced numbness down the right lower extremity and that Petitioner noticed frequent popping in the right hip. Px2 at 11. Pain with flexion and a positive anterior impingement test were noted. Px2 at 12. X-rays were obtained and demonstrated evidence of labral ossification with beaking lateral to the acetabular rim. Px2 at 13. Dr. Riff's diagnoses were right hip pincer femoroacetabular impingement with probable labral ossification and possible labral tearing. Px2 at 13. Dr. Riff recommended physical therapy for the right hip and Petitioner was kept off work. Px2 at 13, 14.

On February 23, 2021, Petitioner underwent a left shoulder MRI which demonstrated (1) mild supraspinatus tendinosis, (2) mild acromioclavicular joint degenerative change partially effacing the subacromial fat, and (3) mild subacromial/subdeltoid bursitis. Px2 at 15. There was no full-thickness rotator cuff tendon tear and no evidence of a labral tear. Px2 at 15. Petitioner also underwent a right knee MRI on February 23, 2021. Px2 at 16. The right knee MRI demonstrated (1) minor surface fissuring of the patellar cartilage and (2) no evidence of a meniscus tear, cruciate ligament injury, or other internal derangement. Px2 at 16. Petitioner underwent a cervical MRI on February 25, 2021, which demonstrated central canal or neural foraminal narrowing most prominent at the C5-6 and C6-7 levels. Px2 at 19.

Petitioner next saw Dr. Chudik on March 1, 2021 via telemed for an MRI review. Px2 at 20. Petitioner reported that his symptoms were unchanged. Px2 at 20. Dr. Chudik reviewed

Petitioner's MRIs and noted that the MRI of the right knee was abnormal and demonstrated small to minimal effusion, little blunting of the medial meniscus, chondromalacia of the medial compartment, and chondral defect of the lateral aspect of the MFC. Px2 at 22. Dr. Chudik noted that the MRI of the left shoulder was also abnormal and demonstrated SA fluid, edema in the rotator cuff, and an intact rotator cuff. Px2 at 22. Dr. Chudik noted that it appeared that Petitioner had an irritation of his left shoulder rotator cuff. Px2 at 22. Dr. Chudik's impressions were right knee blunting of the medial meniscus with chondromalacia in the medial compartment and left shoulder impingement. Px2 at 22. Dr. Chudik recommended physical therapy for the left shoulder and right knee. Px2 at 22. Petitioner was kept off work. Px2 at 22, 24.

Petitioner returned to Dr. Darwish on March 2, 2021 for follow up. Px2 at 25. Petitioner continued to complain of posterior neck pain and left periscapular pain. Px2 at 25. Dr. Darwish noted that Petitioner's pain radiated into his left upper extremity with numbness and tingling into his first, second, and third digits. Px2 at 25. Petitioner reported occasional numbness and tingling present in the entire left hand. Px2 at 25. Petitioner also reported experiencing headaches since the work incident. Px2 at 25. Petitioner reported no relief with Mobic and Flexeril. Px2 at 25. On exam of the cervical spine, tenderness was present over the right paraspinal, left paraspinal, and periscapular region; and there were positive results for the right and left Spurlings tests. Px2 at 26. Dr. Darwish reviewed the cervical MRI and noted that there was mild to moderate central canal stenosis and mild right neural foraminal narrowing at the C5-6 level and that there was disc desiccation and a small posterior central protrusion which was causing moderate central canal stenosis in conjunction with a congenitally slender spinal canal at the C6-7 level. Px2 at 27. Dr. Darwish further noted that the MRI demonstrated a herniated disc at the C6-7 level. Px2 at 27. Dr. Darwish's diagnoses were (1) herniated cervical disc, (2) cervicalgia, and (3) cervical radiculopathy. Px2 at 27. Petitioner was given a referral to a pain management specialist, as Dr. Darwish recommended a C6-7 epidural steroid injection. Px2 at 27. Dr. Darwish also recommended physical therapy and kept Petitioner off work. Px2 at 27.

Petitioner followed up with Dr. Riff on March 18, 2021. Px2 at 29. Petitioner reported that physical therapy had helped, but he still had pain over the anterior hip. Px2 at 29. Dr. Riff recommended a right hip MR arthrogram and kept Petitioner off work. Px2 at 30, 31. Petitioner underwent a right hip MR arthrogram on March 25, 2021. Px2 at 32. The MR arthrogram

demonstrated (1) a defect along the anterolateral femoral head neck junction suggestive of femoroplasty, (2) no evidence of stress reaction, contusion, occult fracture, or avascular necrosis, (3) two small subchondral cysts at the superior lateral acetabulum, and (4) prominent appearing superior lateral labrum, but no gadolinium fluid signal was seen imbibing into the labrum to suggest a definite tear. Px2 at 33.

On March 30, 2021, Petitioner returned to Dr. Riff for review of the MR arthrogram results. Px2 at 34. On exam of his right hip, a positive anterior impingement test result was noted. Px2 at 35. Dr. Riff also noted that the MR arthrogram results demonstrated a hypertrophic labrum, but no evidence of a discrete labral tear; mild osteoarthritic change with articular cartilage irregularity; and two subchondral cysts within the acetabulum. Px2 at 36. Dr. Riff's diagnosis was right hip mild osteoarthritis. Px2 at 36. Dr. Riff noted that Petitioner's right hip pain was secondary to early osteoarthritic flare and underlying acetabular cystic change. Px2 at 36. There was no discrete labral tear that was amenable to surgical repair. Px2 at 36. Dr. Riff recommended continuing conservative treatment and an intra-articular steroid injection was administered into Petitioner's right hip. Px2 at 35, 36. Additional physical therapy was also recommended. Px2 at 36. Petitioner was kept off work. Px2 at 36, 37.

Petitioner next saw Dr. Darwish on April 13, 2021 for follow up. Px2 at 38. Petitioner reported that physical therapy was going well and that he had undergone his first C5-6 epidural steroid injection on April 12, 2021. Px2 at 38. Petitioner reported relief of radicular symptoms following the epidural steroid injection. Px2 at 38. Petitioner continued to complain of posterior neck pain that radiated into his mid thoracic. Px2 at 38. Petitioner reported left periscapular pain and pain in his right side with any range of motion to his left side. Px2 at 38. He also reported that this pain had increased since the injection the previous day and that his pain had been severe in any laying position the previous two weeks. Px2 at 38. Dr. Darwish's diagnoses were herniated cervical disc, cervicalgia, and cervical radiculopathy. Px2 at 40. Dr. Darwish recommended that Petitioner continue physical therapy and that he proceed with a second epidural injection on May 10, 2021. Px2 at 41. Petitioner was kept off work. Px2 at 42.

Petitioner followed up with Dr. Chudik on April 14, 2021. Px2 at 43. Petitioner reported persistent pain in his bilateral knees and left shoulder. Px2 at 43. Petitioner reported that his right knee hurt going up and down stairs and that the pain was located on the inside of his knee. Px2 at

43. Petitioner also reported that his left knee throbbed and that he felt clicking sensations. Px2 at 43. Petitioner further reported that he still experienced a pinching pain in his left shoulder in certain positions. Px2 at 43. Petitioner had a right shoulder positive impingement test, along with pain with bilateral knee extension. Px2 at 44. Dr. Chudik's diagnoses were (1) left knee pain, (2) right knee blunting of medial meniscus with chondromalacia medial compartment, and (3) left shoulder impingement. Px2 at 45. Dr. Chudik recommended work conditioning once Petitioner had been cleared by Dr. Riff and Dr. Darwish. Px2 at 45. Petitioner was kept off work. Px2 at 46, 47. Petitioner participated in approximately 33 sessions of physical therapy at ATI Physical Therapy from February 23, 2021 through May 10, 2021. Px3.

On May 24, 2021, Petitioner saw Dr. Justin LaReau at Hinsdale Orthopaedics, as referred by Dr. Riff. Px2 at 48. Petitioner testified that he presented to Dr. Lareau because Dr. Riff was on medical leave. Tr. at 19. Petitioner reported short-term relief from the right hip injection, but no improvement in his hip symptoms following therapy. Px2 at 48. Dr. LaReau noted that Petitioner reported intermittent right hip pain prior to the work incident, but that his symptoms were more severe and consistent following the work incident. Px2 at 48. On physical exam of Petitioner's right hip, Dr. LaReau noted that there was pain with range of motion and the labral impingement test was positive. Px2 at 49. Dr. LaReau's diagnosis was right hip osteoarthritis. Px2 at 50. Dr. LaReau recommended a total right hip arthroscopy as conservative treatment had failed. Px2 at 50. Petitioner was kept off work. Px2 at 51.

On May 26, 2021, Petitioner was seen by James Schneider, PAC for follow up of bilateral knee pain. Px2 at 52. Petitioner continued to experience pain in both knees. Px2 at 52. Petitioner's diagnoses were unchanged. Px2 at 54. Petitioner was kept off work. Px2 at 55. Petitioner followed up with Dr. Darwish on June 8, 2021. Px2 at 56. Petitioner reported that the two cervical epidural steroid injections caused his neck and upper extremity pain to increase. Px2 at 56. Petitioner was not interested in a third cervical epidural steroid injection. Px2 at 56. Petitioner reported feeling a knot and throbbing sensation in the periscapular region, which occurred after certain neck movements. Px2 at 56. Petitioner also reported that the posterior neck pain radiated down his left shoulder and into his hand, with the first and second digits most impacted. Px2 at 56. Petitioner reported experiencing slight headaches which had been occurring in the previous two weeks. Px2 at 56. Petitioner also reported that physical therapy had caused

his periscapular and cervical pain to worsen. Px2 at 56. Dr. Darwish's diagnoses were herniated cervical disc and cervicalgia. Px2 at 58. Dr. Darwish recommended a C5-7 anterior cervical discectomy and fusion as Petitioner had failed conservative treatment. Px2 at 58. Petitioner was kept off work. Px2 at 60.

On July 21, 2021, Petitioner was again seen by James Schneider, PAC for complaints of bilateral knee and left shoulder pain. Px2 at 61. Petitioner reported that he continued to have pain, including in his left shoulder with weighted forward flexion and that he did not climb anymore because of the bilateral knee pain. Px2 at 61. Petitioner reported that he walked a lot, which prevented stiffness. Px2 at 61. Petitioner's bilateral knees and left shoulder diagnoses were unchanged. Px2 at 63. PAC Schneider recommended Petitioner resume formal physical therapy for his left shoulder and bilateral knees. Px2 at 63. Petitioner was kept off work. Px2 at 63, 65. Petitioner was seen by Ashley Michelsen, PAC on July 27, 2021 for follow up of his cervical spine. Px2 at 66. Petitioner continued to complain of posterior neck pain and left upper extremity numbness. Px2 at 66. Petitioner's diagnoses on this date were cervicalgia and cervical radiculopathy. Px2 at 68. A C5-C7 anterior cervical discectomy and fusion continued to be recommended. Px2 at 68. Petitioner was kept off work. Px2 at 69.

On August 31, 2021, Petitioner was seen by Vincent Walsh, PAC for complaints of bilateral knee and left shoulder pain. Px2 at 70. Petitioner reported that he had undergone an independent medical examination ("IME"), the IME physician recommended that he return to work full duty, and that he had returned to work full duty the previous day, but he was struggling significantly with his right knee and left shoulder. Px2 at 70. Petitioner reported having pain medially, some giving way sensations in his right knee, and difficulty going up and down stairs. Px2 at 70. Petitioner reported having pain in his left shoulder with forward flexion and overhead reaching. Px2 at 70. Petitioner denied radiating pain or paresthesias about the left upper extremity. Px2 at 70. A right knee intra-articular injection was administered. Px2 at 71 Physical therapy was recommended and Petitioner was kept off work. Px2 at 71, 72.

Petitioner was seen by Dr. Darwish on September 23, 2021 for follow up. Px2 at 73. Dr. Darwish noted that Petitioner had returned to work on August 30, 2021 and sustained a flare up. Px2 at 73. Dr. Darwish noted that Petitioner wears a vest, which increased his posterior neck, periscapular, and left upper extremity pain. Px2 at 73. Petitioner also continued to complain of

numbness and tingling in the first through third digits of his left hand and of dexterity issues with his left hand. Px2 at 73. Petitioner further reported that since his return to work, he had been experiencing severe back pain and right upper extremity pain. Px2 at 73. Dr. Darwish's diagnoses were herniated cervical disc, cervicalgia, and cervical radiculopathy. Px2 at 75. Dr. Darwish noted that he had reviewed Dr. Colman's Independent Medical Examination and that he disagreed with Dr. Colman. Px2 at 75. Dr. Darwish noted that Petitioner had acute central disc herniations which were causing neck, periscapular, and bilateral radiculopathy. Px2 at 75. Dr. Darwish further noted that Petitioner's return to work full duty was dangerous due to Petitioner's multiple injuries and his possibly working with combative inmates. Px2 at 75. Dr. Darwish recommended that Petitioner return to desk duty work only. Px2 at 75. Dr. Darwish continued to recommend a C5-C7 cervical discectomy and fusion with use of allograft bone. Px2 at 75.

Petitioner followed up with Dr. Chudik on October 22, 2021 for bilateral knee pain. Px2 at 79. Petitioner could not recall if the intra-articular injections administered at the previous appointment had provided relief. Px2 at 79. Petitioner reported that ascending stairs was painful and the most difficult task for his right knee. Px2 at 79. Petitioner also reported no pain in his left shoulder at rest, but sharp pain with movement and with some radiation to the trapezius in his neck and paresthesias in the second through fifth digits of his left hand. Px2 at 79. Dr. Chudik's diagnoses remained unchanged. Px2 at 80. Dr. Chudik recommended Petitioner proceed with treatment for his cervical spine as that was a more severe issue. Px2 at 81. Dr. Chudik noted that Petitioner was failing conservative treatment for his right knee and was a candidate for a right knee arthroscopy in the future. Px2 at 81. Petitioner was kept off work. Px2 at 82. Petitioner also saw Dr. Darwish on October 22, 2021 and saw PAC Michelsen on November 18, 2021. Px2 at 83, 95. Petitioner's cervical symptoms continued. Px2 at 85, 95. Petitioner's cervical diagnoses were unchanged and the surgical recommendation continued. Px2 at 85, 97. Petitioner was kept off work. Px2 at 98.

On December 1, 2021, Petitioner underwent an anterior cervical discectomy and fusion at C5-C6 and C6-C7, with the use of PEEK interbody cage at C5-C7, local allograft bone, allograft bone, an anterior cervical plate spanning the C5-C7 levels, intraoperative fluoroscopy, and intraoperative monitoring. Px2 at 99. In the operative report, Dr. Darwish noted that there was midline and right paracentral disc herniation at C4-C5 that was removed using a micro pituitary

and a midline annular defect with a broad-based disc herniation in the canal, which was also removed. Px2 at 100. Petitioner's postoperative diagnoses were cervical radiculopathy and cervical disc herniation. Px2 at 99. Petitioner testified that he underwent this procedure through his own health insurance. Tr. at 26.

Petitioner followed up with Dr. Darwish on December 15, 2021. Px2 at 102. Petitioner denied any numbness or tingling in either of his upper extremities and reported that he experienced sharp pain if he tried to turn his head. Px2 at 102. X-rays were obtained and revealed C5-7 cervical interbody fusion with cage and hardware in good position and no evidence of fusion failure. Px2 at 103. Dr. Darwish's diagnoses were cervicalgia, cervical radiculopathy, and status post C5-7 anterior cervical discectomy and fusion. Px2 at 103. Dr. Darwish noted that Petitioner was doing well, advised Petitioner to continue use of the cervical collar for four weeks, and that he not lift over 10 pounds. Px2 at 103. Petitioner was kept off work. Px2 at 105. Petitioner followed up with PAC Michelsen on January 13, 2022. Px2 at 106. Petitioner reported improvement in his arm pain, had discontinued use of the cervical brace, and had noticed an increase in posterior neck pain. Px2 at 106. PAC Michelsen recommended Petitioner wean from use of the cervical brace over the next week and continue with the 10-pound lifting restriction for six weeks. Px2 at 108. Petitioner was kept off work. Px2 at 109.

Petitioner was seen by Donald Galvin, PAC on January 19, 2022 for follow up of bilateral knee pain and left shoulder pain. Px2 at 110. Petitioner reported worsening pain to the right knee and intermittent swelling. Px2 at 110. Petitioner also reported an exacerbation of his left shoulder pain, which was localized to the anterior lateral aspect. Px2 at 110. Petitioner was diagnosed with (1) right knee blunting of medial meniscus with chondromalacia medial compartment, (2) left knee pain, and (3) left shoulder rotator cuff impingement. Px2 at 112. A right knee arthroscopic surgery and physical therapy for Petitioner's left shoulder and left knee continued to be recommended. Px2 at 112. Petitioner was kept off work. Px2 at 113, 114. On February 24, 2022, Petitioner was seen by Lauren Reineke, PA for postoperative follow up. Px2 at 115. Petitioner presented with complaints of lateral neck pain and occasional tremors in the left hand. Px2 at 115. Petitioner reported that he continued to feel improvement and felt 50 percent improvement since surgery. Px2 at 115. Petitioner's diagnoses were unchanged. Px2 at 115-116. All restrictions with regards to range of motion and lifting were discontinued and

physical therapy was prescribed. Px2 at 117. Petitioner was kept off work. Px2 at 118.

On March 7, 2022, Petitioner followed up with Meagan McRae, PAC. Px2 at 119. Petitioner's bilateral knees and left shoulder symptoms were worsening. Px2 at 119. Petitioner reported left hip pain radiating into his groin. Px2 at 119. Petitioner's bilateral knees and left shoulder diagnoses were unchanged. Px2 at 121. Physical therapy continued to be recommended for Petitioner's left shoulder and bilateral knees. Px2 at 121. An MRI of Petitioner's right knee was ordered to reevaluate the cartilage and meniscus prior to any formal surgical recommendations. Px2 at 121. It was noted that Petitioner had hip pain that had recurred without injury and Petitioner was advised to make an appointment with Dr. Riff or Dr. LaReau for reevaluation of the hip. Px2 at 121. Petitioner was kept off work. Px2 at 122, 123. Petitioner saw Dr. Riff on March 15, 2022. Px2 at 124. Dr. Riff noted that Petitioner had right hip osteoarthritis and conservative treatment had failed to provide long term relief of his hip pain. Px2 at 124. Petitioner reported that he noticed right lower abdomen pain in August 2021, the pain went away, but returned one month prior and was constant. Px2 at 124. Dr. Riff's assessment was right hip osteoarthritis. Px2 at 125. Dr. Riff recommended an MRI of Petitioner's pelvis with a dedicated sports hernia protocol to further evaluate a cause of Petitioner's pain over his pubic symphysis. Px2 at 126.

Petitioner underwent a right knee MRI on March 15, 2022, which demonstrated (1) Grade 2 patellar chondromalacia with small joint effusion, (2) no evidence of meniscal tear medially or laterally, and (3) medial and lateral tibiofemoral joint space narrowing and grade III chondromalacia. Px2 at 128. Petitioner testified that at the time of arbitration he had not yet seen Dr. Chudik for follow up and review of the MRI, but the appointment was scheduled. Tr. at 28.

Temporary total disability benefits

Petitioner testified that he received his full salary via direct deposit following the February 5, 2021 incident. Tr. at 33. Petitioner recalled receiving a claim approval letter from an adjustor named James Martin on February 19, 2021. Tr. at 33-34. Petitioner testified that he returned to work on August 30, 2021, after having run out of medical time. Tr. at 22. Petitioner's temporary total disability ("TTD") benefits were suspended at that time and further medical treatment was denied. Tr. at 23. Petitioner testified that he worked full duty for approximately one month and was then told by his supervisor that he should work light duty. Tr. at 38.

Petitioner then performed clerical work. Tr. at 38. Petitioner testified that he last worked on November 26, 2021 as he had elected to proceed with the recommended neck surgery. Tr. at 24, 37. Dr. Darwish has not cleared Petitioner to return to light duty work since having the surgery. Tr. at 39.

Current Condition

Petitioner had left shoulder impingement 10 years ago, which was treated with physical therapy. Tr. at 10. Petitioner had arthroscopic right hip surgery for treatment of a labral tear over 10 years ago due to a car accident. Tr. at 10. Petitioner had not injured his knees or his neck prior to the work accident and he was working full duty and without restrictions on the day of the accident. Tr. at 10-11.

Petitioner had to wear a vest while performing full duty work, but he did not have to wear the vest while working light duty. Tr. at 25. Petitioner testified that the vest is bullet proof and that he was also required to have his gun on him, and the vest and the gun were "putting more weight" on his hip, shoulders, and neck. Tr. at 25. Petitioner testified that the total weight of all of his equipment is over 40 to 50 pounds. Tr. at 26. Petitioner testified that following his return to work on August 30, 2021, it was difficult to wear the vest because of his neck issues. Tr. at 24-25. Petitioner testified that when he put the vest on, the pain worsened, and he could not move very much. Tr. at 25. Petitioner testified that his supervisors recommended that he pursue light duty, and he worked light duty for one month. Tr. at 25. Petitioner testified that the light duty work was difficult to perform without pain. Tr. at 25.

At arbitration, Petitioner testified that his neck was better. Tr. at 28. The pain and numbness going down his left arm and into his left hand is gone. Tr. at 28. Petitioner testified that his shoulder blades are still tight. Tr. at 28. Petitioner testified that his right hip was causing other issues and that he was scheduled to undergo an MRI of his pelvis to determine why he was having pelvic pressure and pain in the left side of his pelvis. Tr. at 29. Petitioner testified that his right knee was worse and that he has difficulty going up and down stairs. Tr. at 29. Petitioner has difficulty walking any distance and walking at any form of speed. Tr. at 41. Petitioner testified that the pain in his right knee is constant and in the lower left side of his knee. Tr. at 29. Petitioner feels pain in his left shoulder when he lifts his arm past his head. Tr. at 29. Petitioner testified that Dr. Chudik continues to recommend a right knee surgery and that Dr. Riff and Dr.

LaReau continue to recommend a right hip surgery. Tr. at 29-30. Petitioner has not undergone any surgeries to his right elbow, left shoulder, or bilateral knees. Tr. at 36. Petitioner testified that he does not feel that he is capable of working light duty or clerical duty at this time. Tr. at 41.

Respondent's Section 12 exam by Matthew Colman, M.D.

Petitioner presented for a Section 12 exam on July 21, 2021 with Dr. Matthew Colman. Respondent's Exhibit ("Rx") 13. Dr. Colman is certified by the American Board of Orthopaedic Surgery and his current full time profession is Assistant Professor at Rush University Medical/Midwest Orthopedics at Rush, Spine Surgery and Musculoskeletal Oncology. Rx14 at 1. Petitioner estimated that he was in the examination room with Dr. Colman for approximately 15 minutes. Tr. 20, 34. Petitioner testified that Dr. Colman did not perform a physical examination of his neck that he was aware of. Tr. at 20, 34. Petitioner also testified that Dr. Colman did not physically examine his left shoulder, hip, or elbow. Tr. at 20, 34. Petitioner testified that Dr. Colman looked at his right knee and had him put his leg out and perform different movements with his right knee. Tr. at 21. Dr. Colman prepared an IME report following his exam of Petitioner. Rx13. Dr. Colman reviewed 23 documents in preparation of his evaluation. Rx13 at 1-3. Dr. Colman took Petitioner's history, wherein Petitioner reported a consistent accident history. Rx13 at 3. Dr. Colman noted that at the time of the evaluation, Petitioner endorsed pain in his neck, bilateral knees, left shoulder, and right hip. Rx13 at 4. Petitioner reported that he previously had pain in the right elbow following the accident, which had resolved two to three days after the accident. Rx13 at 4.

Dr. Colman noted that Petitioner's range of motion of the cervical spine was normal and that he was nontender to palpitation along the cervical spine. Rx13 at 5. Dr. Colman also noted that the range of motion of the left shoulder was normal, he was tender to palpation along the left anterior shoulder over the caracoid process, and that Petitioner had a positive Neer's and Hawkin's test on the left. Rx13 at 5. Dr. Colman further noted that Petitioner's right hip range of motion was normal, however, Petitioner had pain in the right groin with both internal and external rotation of the right and with right hip flexion. Rx13 at 5. Dr. Colman did not note any bilateral knee exam findings. Rx13 at 5. Dr. Colman obtained x-rays of the cervical spine, which he noted demonstrated mild degenerative disc disease at C5-6. Rx13 at 5. Dr. Colman also

reviewed Petitioner's prior cervical, right knee, left shoulder, and right hip MRIs. Rx13 at 5-6. Dr. Colman's diagnoses were (1) exacerbation of underlying degenerative disc disease at C5-6 and C6-7, (2) bilateral knee sprain or strain with contusion, resolved, (3) elbow contusion, resolved, (4) sprain or strain of the left shoulder with contusion, resolved, and (5) right transient flare up of underlying labral degeneration and hip sprain or strain, resolved. Rx13 at 7.

Dr. Colman opined that the mechanism of injury was sufficient to cause de novo sprain or strain injuries, contusions, and transient aggravation of underlying preexisting degenerative issues. Rx13 at 7. Dr. Colman also opined that the diagnoses he rendered were causally related to the February 5, 2021 work accident. Rx13 at 7. Dr. Colman noted that Petitioner promptly and consistently reported the injuries, did not display any signs of secondary gain, and did not have documented issues with any body part in the months just prior to the injury. Rx13 at 7. Dr. Colman further opined that Petitioner's current condition was no longer related to the work injury for any body part. Rx13 at 7. Dr. Colman noted that Petitioner has underlying cervical degenerative disc disease with foraminal stenosis seen on x-ray and MRI, he did not believe Petitioner's disc herniations were acute herniations, and he did not believe the disc herniation was causing significant foraminal stenosis or central stenosis resulting in cervical myelopathy. Rx13 at 7. Dr. Colman noted that if Petitioner had ongoing neck pain and radiculopathy, it was "more related to his underlying symptomatic degenerative disease than to any significant structural injury sustained on 02/05/2021." Rx13 at 7. Regarding the bilateral knees, Dr. Colman noted that Petitioner has no degenerative arthritis and had essentially normal x-rays with no structural injury noted. Rx13 at 7. Dr. Colman further noted that Petitioner's right knee MRI showed chondromalacia, but no acute structural injury and any ongoing complaints in the knees were related to underlying degenerative disease. Rx13 at 7. Regarding the right elbow, Dr. Colman noted that it had no symptoms at the time of his exam and that the condition was fully resolved, regardless of causation. Rx13 at 7. Regarding the left shoulder, Dr. Colman noted that Petitioner had a normal x-ray and MRI, which showed edema without significant structural injury, and any ongoing symptoms would be related to degenerative bursitis or rotator cuff inflammation and not the work accident. Rx13 at 7. Regarding the right hip, Dr. Colman noted that Petitioner had a significant history of hip surgery and that he has a pincer lesion in the acetabular dome. Rx13 at 7. Dr. Colman further noted that Petitioner's right hip does not have

significant joint space arthritis, joint space narrowing, or any acute structural issues. Rx13 at 7. Dr. Colman noted that any ongoing symptoms in Petitioner's right hip are related to his preexisting labral disease with prior surgery and not any interval structure injury sustained on February 5, 2021. Rx13 at 7-8.

Dr. Colman further opined that no further treatment was required for any body part as it related to the work accident. Rx13 at 8. Dr. Colman noted that Petitioner had received "full complementive non-surgical care, which [had] been thorough and appropriate." Rx13 at 8. Dr. Colman did not agree with the surgical recommendation for Petitioner's neck and believed that surgical intervention would be excessive. Rx13 at 8. Dr. Colman did not believe that Petitioner was an appropriate candidate for a right total hip arthroplasty, which would be excessively morbid and would result in decline in Petitioner's functional capabilities. Rx13 at 8. Dr. Colman noted that with continued nonsurgical treatment, he believed Petitioner's neck, knee, shoulder, and hip degenerative issues would continue to improve with time and observation. Rx13 at 8. Dr. Colman also opined that Petitioner had reached maximum medical improvement ("MMI") three months following the injury, on May 5, 2021, for all body parts. Rx13 at 8. Dr. Colman did not find that there was any permanent impairment assignable in this matter and he did not believe that there was any permanent loss of function due to the work accident. Rx13 at 8. Dr. Colman opined that Petitioner was able to return to work at full-duty capacity without restrictions and he did not believe a permanent wage loss was reasonable. Rx13 at 8.

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 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. 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. *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). 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 if the claimant can show that a work-related injury played a role in aggravating or accelerating his preexisting condition. *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's current condition of ill-being as to his cervical spine, left shoulder, right elbow, and bilateral knees is causally related to the February 5, 2021 injury. The Arbitrator further finds that Petitioner's current-condition of ill-being as to his right hip is causally related to the February 5, 2021 work accident through May 24, 2021, at which time Petitioner reached maximum medical improvement of his right hip only. The Arbitrator

relies on the following in support of her findings: (1) Petitioner's credible testimony, (2) the medical records of St. Anthony Hospital, (3) Dr. Chudik's records, (4) Dr. Darwish's records, and (5) Dr. Riff and Dr. LaReau's records. The Arbitrator has considered the opinions of Dr. Colman and finds that they do not outweigh the opinions of Petitioner's treating physicians. The Arbitrator notes and considers that Dr. Colman examined Petitioner on only one occasion, on July 21, 2021, which was five months following the February 5, 2021 work accident and four months prior to Petitioner undergoing the December 1, 2021 anterior cervical discectomy and fusion at C5-C6 and C6-C7.

Petitioner credibly testified that he was working full duty and without any restrictions on February 5, 2021. Petitioner also credibly testified that he felt immediate pain in his left shoulder, right elbow, bilateral knees, and right hip following the February 5, 2021 work accident. While Petitioner did not complain of neck pain following the work accident, he reliably explained that he felt tightness in his neck following the work accident, however, the pain in his neck did not worsen until the following day. Petitioner also consistently reported the work accident to St. Anthony Hospital, Dr. Chudik, Dr. Darwish, Dr. Riff, Dr. LaReau, and Dr. Colman. Petitioner further testified that he had not had any issues with his right elbow, neck, or bilateral knees prior to the work accident. Although he had sought treatment for left shoulder impingement prior to the work accident, Petitioner credibly testified that this diagnosis occurred 10 years prior to the work accident and treatment had consisted of only physical therapy. Petitioner also testified that he continues to experience pain in his left shoulder, right knee, and right hip. His neck symptomology has improved following the procedure performed by Dr. Darwish on December 1, 2021. Petitioner's testimony is corroborated by the medical records.

Dr. Chudik has provided Petitioner with continuous treatment for his bilateral knees and left shoulder conditions since February 12, 2021 and Petitioner has had consistent bilateral knee and left shoulder symptomology since February 5, 2021. The Arbitrator notes that Dr. Chudik's objective findings have consistently yielded positive McMurray's results for the right knee, as well as positive Neer's, Hawkins, cross arm adduction, and Bear Hugger's results for the left shoulder. The Arbitrator notes that Dr. Colman's physical exam of Petitioner's left shoulder also yielded positive Neer and Hawkins results. Dr. Chudik has consistently diagnosed Petitioner with left shoulder impingement and with right knee blunting of the medial meniscus with

chondromalacia. Moreover, there is no evidence that Petitioner was treating for any left shoulder or bilateral knee conditions prior to the work accident.

Dr. Darwish has provided Petitioner with continuous treatment for his cervical spine condition since February 18, 2021 and Petitioner has had consistent cervical spine symptomology since approximately February 6, 2021. The Arbitrator notes that Dr. Darwish's objective findings and diagnoses as to Petitioner's cervical spine have been consistent and are further supported by his surgical findings of disc herniations during the December 1, 2021 anterior cervical discectomy and fusion procedure. The Arbitrator further notes that Petitioner's cervical spine symptoms improved after this surgical procedure. There is also no evidence that Petitioner was treating for a cervical spine condition prior to the work accident.

Dr. Riff and Dr. LaReau provided Petitioner with continuous treatment for his right hip condition since February 18, 2021 and Petitioner had consistent right hip symptomology since the work accident until May 24, 2021. The Arbitrator notes that following the work accident, both Dr. Riff and Dr. LaReau noted positive anterior impingement of Petitioner's right hip. The Arbitrator further notes that on March 30, 2021 Dr. Riff noted that Petitioner's right hip pain was secondary to early osteoarthritic flare and underlying acetabular cystic change, and that there was not a discrete labral tear that was amenable to surgical repair. On May 24, 2021, Petitioner presented to Dr. LaReau, wherein Dr. LaReau diagnosed Petitioner with right hip osteoarthritis and recommended a total right hip replacement. After May 24, 2021, however, Petitioner did not return for or seek right hip related treatment until March 15, 2022, over nine months later. On March 15, 2022, Petitioner presented to Dr. Riff, after having complained of recurrent hip pain without injury on March 7, 2022, and reported that he noticed right lower abdomen pain in August 2021 which had resolved, but had returned one month prior and was constant. As such, the Arbitrator finds that Petitioner was at maximum medical improvement as to his right hip on May 24, 2021.

Based on the record as a whole, the Arbitrator finds that Petitioner has met his burden in proving a causal connection between the February 5, 2021 work accident and his current condition of ill-being as to his cervical spine, left shoulder, right elbow, bilateral knees, and right hip; the Arbitrator, however, further finds that Petitioner was at maximum medical improvement as to his right hip condition on May 24, 2021.

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 follow:

Consistent with the Arbitrator's prior finding as to causal connection, 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 Hinsdale Orthopaedics ($51,896.88), St. Anthony Hospital ($2,497.00), and ATI ($13,368.36). With the exception of right hip related care after May 24, 2021, the Arbitrator further finds that Respondent shall pay the reasonable, necessary, and causally related medical expenses, as provided in Px4, Px5, and Px6, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. The Arbitrator further finds that Respondent is not liable for payment of medical expenses for treatment of Petitioner's right hip after May 24, 2021.

Further, pursuant to the Parties stipulation, Respondent is entitled to a credit in the amount of $23,968.70 for payment of medical bills through its group medical plan, pursuant to Section 8(j) of the Act. Respondent is also entitled to a credit for any payments made towards the awarded outstanding expenses and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

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

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to prospective medical care for his left shoulder, right knee, and cervical spine as recommended by Dr. Chudik and Dr. Darwish. As the Arbitrator has found that Petitioner was at maximum medical improvement for his right hip condition on May 24, 2021, the Arbitrator further finds that Petitioner is not entitled to prospective medical care for his right hip.

The Arbitrator notes that on March 7, 2022, an MRI of Petitioner's right knee was ordered to reevaluate the cartilage and meniscus prior to any formal surgical recommendations being made. Px2 at 121. Petitioner underwent the MRI on March 15, 2022, and at the time of arbitration, Petitioner had not yet followed up with Dr. Chudik. Thus, Respondent shall authorize any prospective medical treatment for Petitioner's right knee, as recommended by Dr. Chudik, following his review of Petitioner's March 15, 2022 right knee MRI.

Additionally, Respondent shall authorize any prospective medical treatment for Petitioner's left shoulder, as recommended by Dr. Chudik, and for Petitioner's cervical spine, including postsurgical physical therapy and continued care, as recommended by Dr. Darwish.

Based on the record as a whole, the Arbitrator finds that Petitioner is entitled to prospective right knee, left shoulder, and cervical spine treatment, as recommended by Dr. Chudik and Dr. Darwish, which is contemplated as compensable treatment under Section 8(a) of the Act, and therefore Respondent is responsible for authorizing and paying for same.

Issue L, whether Petitioner is entitled to temporary total disability, the Arbitrator finds as follows:

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to TTD benefits. Petitioner claims that he is entitled to TTD benefits from February 6, 2021 through August 29, 2021 and November 27, 2021 through the date of arbitration. Ax1. Respondent claims that Petitioner is entitled to TTD from February 19, 2021 through August 15, 2021. Ax1.

The medical records support that Petitioner was off work from February 6, 2021 through August 29, 2021. Petitioner returned to work on August 30, 2021, following Dr. Colman's opinion that he was at MMI for all work-related injuries. As the Arbitrator has found that Dr. Colman's opinions do not outweigh those of his treating physicians, the Arbitrator further finds that Petitioner has not reached MMI as to his cervical spine, left shoulder, and right knee conditions. On November 18, 2021, Petitioner continued to be kept off work for his cervical spine condition by Dr. Darwish. Petitioner testified, however, that he continued to work until November 26, 2021, at which time he elected to undergo surgical treatment for his cervical spine condition. Petitioner underwent an anterior cervical discectomy and fusion at C5-C6 and C6-C7 on December 1, 2021. The medical records, as well as work statuses provided by Dr. Chudik and Dr. Darwish, support that Petitioner has been kept off work since November 27, 2021 through the date of arbitration for his cervical spine and right knee conditions.

Based on the record as a whole, the Arbitrator finds that Petitioner is entitled to TTD benefits from February 6, 2021 through August 29, 2021 and from November 27, 2021 through March 21, 2022, the date of arbitration. Further, based on the Parties' stipulation, Respondent is entitled to a credit in the amount of $23,991.09 for TTD paid by Respondent to Petitioner.

21WC020885

ANA VAZQUEZ, ARBITRATOR

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC032084
Case Name	Rashun Singleton v. Amita Health
Consolidated Cases	16WC038818;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0051
Number of Pages of Decision	7
Decision Issued By	Stephen Mathis, Commissioner

Pro Se	
Respondent Attorney	Keith Herman

DATE FILED: 1/31/2023

/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

Rashun Singleton,

Petitioner,

vs. Nos. 16 WC 38818
18 WC 32084

Amita Health,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issue of denial of Petitioner's motion to reinstate, and being advised of the facts and law, affirms and adopts the Order of the Arbitrator, which is attached hereto and made a part hereof.

On December 22, 2016, Petitioner through counsel filed an application for adjustment of claim, which received case No. 16 WC 38818, alleging that on November 2, 2016, she injured both feet at work. On May 3, 2017, Petitioner filed a stipulation to substitute another law firm as her attorney. On October 31, 2017, an Arbitrator granted that law firm's motion to withdraw. On October 25, 2018, Petitioner *pro se* filed a duplicate application for adjustment of claim, which received case No. 18 WC 32084. The two claims were subsequently consolidated.

On July 1, 2019, Respondent filed a request for hearing and, alternatively, a motion to dismiss for want of prosecution (DWP). In the motion to DWP, Respondent alleged that: "Respondent scheduled the Petitioner for Section 12 examinations on multiple occasions;" "[o]n April 16, 2019, the parties appeared before the Arbitrator for a pretrial;" "[t]he Arbitrator instructed the Petitioner to cooperate with providing requested medical records so that a Section 12 examination could be rescheduled;" "[t]o date, the Petitioner has not provided executed HIPAA releases;" "[t]o date, the Petitioner has not provided the names of her current treating

doctors or any supporting treatment records;" "Petitioner has not complied on multiple occasions with Respondent's request that she attend Section 12 Examinations;" "Respondent has been unable to obtain a Section 12 opinion because the Petitioner is non-cooperative;" and "Petitioner has not complied with Respondent's requests for information, including a subpoena for tax records." Respondent therefore argued that Petitioner had taken no action and will not take any action to prosecute her claim. Respondent further claimed prejudice to its ability to defend the claim.

On July 24, 2019, a hearing on the record was held before Arbitrator Frank Soto. Respondent was present through counsel. Petitioner was not present. Respondent's counsel stated the matter was properly noticed, and notification was sent to Petitioner. Respondent's counsel added that at 8:06 a.m. the morning of the hearing, he received an e-mail from Petitioner "advising that she could not appear." Respondent's counsel forwarded the e-mail to the Arbitrator. Respondent then introduced into evidence multiple documents in support of its motion to DWP. The Arbitrator noted: "It is currently 10:45 a.m., July 24, 2019. Petitioner has not checked in nor has she forwarded any e-mails or correspondence to the Arbitrator directly indicating that she was not going to be here today or asking for a continuation of this case at least that I am aware of." The Arbitrator granted Respondent's motion to DWP.

On July 30, 2019, Petitioner timely filed a motion to reinstate, which she refiled on August 21, 2019 and September 24, 2019. On October 23, 2019, Arbitrator Soto held a hearing on the record on the motion to reinstate. Respondent objected to reinstatement. Petitioner argued her case should be reinstated. However, Petitioner did not agree to provide the requested medical records/releases or cooperate with a Section 12 examination. Respondent restated the history of the case, adding: "[T]his case has shown a history of no medical records being produced or any type of trial exhibits, no medical bills although there's allegations of unpaid medical bills. We have received none. There is an allegation in the most recent pleading that she has an attorney willing to take her case, but I would submit he is not here today on probably one of the most important dates in this case's status. * * * She has presented no evidence of a doctor taking her off work to support TTD. She has not cooperated with any of the Section 12 exams. To date we have been unable to get a Section 12 examination. And she has never responded even to the settlement offer we made." Petitioner vehemently disagreed with Respondent's assertions, but offered no plan to try her case.

The Arbitrator pointed out this was a 2016 case and Petitioner had the burden of proof. The Arbitrator found Petitioner not credible and "a significant lack of cooperation on behalf of the Petitioner in this case. I don't see anything wrong that the Respondent is doing in this case." The Arbitrator also pointed to misleading or false statements made by Petitioner. Petitioner, in turn, accused the Arbitrator and Respondent of misconduct.

The Arbitrator offered to continue the motion to reinstate pending Petitioner's cooperation. Petitioner again indicated she would not comply and stated she had an attorney who wanted to represent her. The Arbitrator reiterated he was inclined to continue the motion to reinstate for a month to allow Petitioner an opportunity to cure the pending issues. Petitioner's response did not change. The Arbitrator found that Petitioner did not want to cooperate and

summarized past non-cooperation. To that, Petitioner responded that she did not have to cooperate because her "case is not open right now" and is "closed." The Arbitrator again recounted instances of non-cooperation and denied the motion to reinstate.

Petitioner then sought to admit her exhibits into evidence. Respondent objected to all the exhibits based upon foundation, hearsay and lack of certification. The Arbitrator ruled as follows: "With regard to Respondent's objection, any objection with regard to pleadings or filings that have been submitted to the Commission, that may stay with the record. That will remain admitted. Any documentation regarding handwritten notes or other types of miscellaneous paperwork that's been submitted, your objection regarding foundation is sustained. I will let the Commission decide on what weight the Commission would like to afford whatever documentation is hereby submitted." The Arbitrator ruled that all exhibits would be retained in the court file.[1]

On November 21, 2019, Petitioner timely filed a petition for review. During the pendency of review, the parties filed multiple motions, which were heard by Commissioner Thomas Tyrrell on his review call docket. In late November of 2019, Commissioner Tyrrell granted Petitioner's section 20 petition to proceed as a poor person. On September 17, 2021, Commissioner Tyrrell memorialized an oral order that "the Petitioner receive a copy of the transcript from the Office of the Commissioner, Thomas Tyrrell, on August 31, 2021" and "the Return Date on Review is extended to November 1, 2021 and that on that date, the Reviewing Party shall present the authenticated transcript to the Workers' Compensation Commission before 5:00 p.m." Further, Commissioner Tyrrell set a briefing schedule, subsequently granting Petitioner an extension of time to file her brief.

On August 31, 2021, Petitioner signed a statement confirming that she "received a copy of the October 23, 2019, transcript today" from the Commission staff. However, Petitioner disputed the accuracy of the transcript. On or about October 26, 2021, Petitioner signed and filed the following statement: "Attention: Pro se Rashun Singleton has reviewed the transcripts, and the Transcripts on October 23, 2019 are not accurate." Petitioner has also signed a transcript authentication page, adding "Not Accurate Information." Respondent has authenticated the transcript. In her brief on review, Petitioner specifies her objections to the transcript, disputes virtually all underlying facts, and accuses Respondent and the Commission of misconduct. Petitioner also seeks to introduce new evidence on review, in violation of section 19(e) of the Act.

The matter was initially set for oral argument on July 13, 2022. Petitioner filed a motion to reschedule oral argument due to "a previously scheduled conflict" and requested a virtual oral argument due to the Covid-19 pandemic. The Commission continued the oral argument to

[1] The Commission has reviewed the exhibits in evidence, which corroborate Respondent's summary of the history of the case. Petitioner's Exhibits F and R confirm Petitioner was scheduled for section 12 examinations with Dr. Lee on April 26, 2017 and June 28, 2017. Petitioner did not show up on April 26, 2017, and did not cooperate with the scheduled examination on June 28, 2017. The rest of Petitioner's exhibits, even if they were admissible, are of little relevance to the issue on review, namely, the denial of reinstatement because of continued non-cooperation. Petitioner's Exhibit G indicates Petitioner had a third attorney, who withdrew in February of 2018.

September 28, 2022, a remote/Webex Springfield orals date. Petitioner then filed a motion to reschedule oral argument due to feeling unwell and under duress, and having experienced traumatic events. Petitioner requested a "Chicago virtual" oral argument, contrary to the Commission's policy that Chicago oral arguments be held in person. The Commission, over Respondent's objection, continued the oral argument to October 12, 2022, a Chicago in-person orals date. Petitioner again filed a motion to reschedule oral argument due to feeling unwell and under duress, and having experienced traumatic events. She again requested a "Chicago virtual" date. The Commission, over Respondent's objection, continued the oral argument to November 23, 2022, a remote/Webex Springfield orals date, notifying the parties that was the final continuance. Petitioner, however, filed another motion to reschedule oral argument, this time requesting an in-person date. On November 23, 2022, Petitioner did not appear for oral argument. The Commission allowed Respondent to make its oral argument and rescheduled Petitioner's part of the oral argument to December 14, 2022, a Chicago in-person date. On December 14, 2022, Petitioner appeared in person before the Commission, but declined to present an oral argument. However, Respondent reiterated its oral argument and Petitioner responded to it.

In our deliberations on review, the Commission has carefully considered the entire record, the parties' briefs to the extent they do not seek to introduce new evidence on review in violation of section 19(e), and the parties' respective oral arguments. The Commission agrees with the Arbitrator's Order and interim rulings in all respects.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Order of the Arbitrator filed October 23, 2019 is hereby affirmed and adopted.

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.

January 31, 2023
SJM/sk
o-11/23/2022 and 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

23IWCC0051

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF MOTION AND ORDER

ATTENTION. You must attach the motion to this notice. If the motion is not attached, this form may not be processed.
Upon filing of a motion before a Commissioner on review, the moving party is responsible for payment for preparation of the transcript.

FILED
ILLINOIS WORKERS' COMPENSATION COMMISSION
3 SEP 24 PM

Rashun Singleton
Employee/Petitioner

Case # **16** WC **38818 & 18 WC 32084**

v.

Hon. Frank Soto
Illinois worker Compensation Commission
100 W. Rahdolph Street, Suite 8-200
Chicago IL. 60601

Amita Health
Employer/Respondent

TO: **NYHAN,BAMBRICK,KINZIE AND LOWRY,P.C**
20 NORTH CLARK ST.SUITE 1000
CHICAGO ILLINOIS 60602-4195

On **October 11 2019**, at **9.00** AM, or as soon thereafter as possible, I shall appear before the Honorable **Frank Soto**, or any arbitrator or commissioner appearing in his or her place at **421 N. County farm Rd Wheaton**, Illinois, and present the attached motion for:

- ☐ Change of venue (#3072)
- ☐ Consolidation of cases (#3071) (list case#) ____
- ☐ Dismissal of attorney (#3052)
- ☐ Dismissal of review (#3085)
- ☐ Fees under Section 16 (#1600)
- ☐ Fees under Section 16a (#1645)
- ☐ Hearing under Sect.19(b) (#1902)
- ☐ Penalties under Sect. 19(k) (#1911)
- ☐ Penalties under Sect. 19(l) (#1912)
- ☒ Reinstatement of case (#3074)
- ☐ Request for hearing (#R33)
- ☐ Withdrawal of attorney (#3073
- ☐ Other (explain) ____

Signature Petitioner ☒ Respondent ☐

Rashun Singleton
Attorney's name and IC code # (please print)

____
Name of law firm, if applicable

P. O box 7714
Street address

Westchester IL 60154
City, State, Zip code

404-664-3536
Telephone number

kelis1992@yahoo.cor
E-mail address

ORDER

The motion is set for hearing on _____

Signature of arbitrator or commissioner

10/23/19
Date

ORDER

The motion is ☒ Granted ___ Withdrawn ___ Continued to _____
___ Denied ___ Dismissed ___ Set for trial (date certain) on _____

PROOF OF SERVICE

If the person who signed the *Proof of Service* is not an attorney, this form must be notarized.

I, **Rashun Singleton**, affirm that I delivered ☒ mailed with proper postage ☒

in the city of **Chicago** a copy of this form

at **500** PM on **Setember 25, 2019** to each party at the address(es) listed below.

NYHAN,BAMBRICK,KINZIE AND LOWRY,P.C
20 NORTH CLARK ST.SUITE 1000
CHICAGO ILLINOIS 60602-4195

Signature of person completing *Proof of Service*

Signed and sworn to before me on 9/23/19

Notary Public

OFFICIAL SEAL
MELISSA A FECAROTTA
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires Jul 2, 2020

[i] The Workers' Compensation Commission assigns code numbers to attorneys who regularly practice before it. To obtain or look up a code number, contact the Information Unit in Chicago or any of the downstate offices at the telephone numbers listed on this form.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC038818
Case Name	Rashun Singleton v. Amita Health
Consolidated Cases	18WC032084;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0052
Number of Pages of Decision	7
Decision Issued By	Stephen Mathis, Commissioner

Pro Se	
Respondent Attorney	Keith Herman

DATE FILED: 1/31/2023

/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

Rashun Singleton,

Petitioner,

vs. Nos. 16 WC 38818
18 WC 32084

Amita Health,

Respondent.

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The Arbitrator offered to continue the motion to reinstate pending Petitioner's cooperation. Petitioner again indicated she would not comply and stated she had an attorney who wanted to represent her. The Arbitrator reiterated he was inclined to continue the motion to reinstate for a month to allow Petitioner an opportunity to cure the pending issues. Petitioner's response did not change. The Arbitrator found that Petitioner did not want to cooperate and

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January 31, 2023
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o-11/23/2022 and 12/14/2022
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/s/ *Stephen J. Mathis*
Stephen J. Mathis

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

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

23IWCC0052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF MOTION AND ORDER

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FILED
ILLINOIS WORKERS' COMPENSATION COMMISSION
18 SEP 24 PM
CC-TR

Rashun Singleton
Employee/Petitioner

v.

Case # **16** WC **38818 & 18 WC 32084**

Hon. Frank Soto
Illinois worker Compensation Commission
100 W. Rahdolph Street, Suite 8-200
Chicago IL. 60601

Amita Health
Employer/Respondent

TO: **NYHAN,BAMBRICK,KINZIE AND LOWRY,P.C**
20 NORTH CLARK ST.SUITE 1000
CHICAGO ILLINOIS 60602-4195

On **October 11 2019**, at **9.00** AM, or as soon thereafter as possible, I shall appear before the Honorable **Frank Soto**, or any arbitrator or commissioner appearing in his or her place at **421 N. County farm Rd Wheaton**, Illinois, and present the attached motion for:

- ☐ Change of venue (#3072)
- ☐ Consolidation of cases (#3071) (list case#) ____
- ☐ Dismissal of attorney (#3052)
- ☐ Dismissal of review (#3085)
- ☐ Fees under Section 16 (#1600)
- ☐ Fees under Section 16a (#1645)
- ☐ Hearing under Sect.19(b) (#1902)
- ☐ Penalties under Sect. 19(k) (#1911)
- ☐ Penalties under Sect. 19(l) (#1912)
- ☒ Reinstatement of case (#3074)
- ☐ Request for hearing (#R33)
- ☐ Withdrawal of attorney (#3073
- ☐ Other (explain) ____

Signature Petitioner ☒ Respondent ☐

Rashun Singleton
Attorney's name and IC code # (please print)

____
Name of law firm, if applicable

P. O box 7714
Street address

Westchester IL 60154
City, State, Zip code

404-664-3536
Telephone number

kelis1992@yahoo.cor
E-mail address

ORDER

The motion is set for hearing on _____

Signature of arbitrator or commissioner

10/23/19
Date

ORDER

The motion is ☒ Granted ☐ Withdrawn ☐ Continued to _____
☐ Denied ☐ Dismissed ☐ Set for trial (date certain) on _____

PROOF OF SERVICE

If the person who signed the *Proof of Service* is not an attorney, this form must be notarized.

I, **Rashun Singleton**, affirm that I delivered ☒ mailed with proper postage ☒

in the city of **Chicago** a copy of this form

at **500** PM on **Setember 25, 2019** to each party at the address(es) listed below.

NYHAN,BAMBRICK,KINZIE AND LOWRY,P.C
20 NORTH CLARK ST.SUITE 1000
CHICAGO ILLINOIS 60602-4195

Signature of person completing *Proof of Service*

Signed and sworn to before me on 9/23/19

Notary Public

OFFICIAL SEAL
MELISSA A FECAROTTA
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires Jul 2, 2020

[i] The Workers' Compensation Commission assigns code numbers to attorneys who regularly practice before it. To obtain or look up a code number, contact the Information Unit in Chicago or any of the downstate offices at the telephone numbers listed on this form.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC035362
Case Name	Jeffery Raceina v. Federal Signal Corp
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0053
Number of Pages of Decision	17
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	David Kosin
Respondent Attorney	Mark Vizza

DATE FILED: 1/31/2023

/s/ Kathryn Doerries, Commissioner

Signature

23IWCC0053

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JEFFERY RACEINA,

Petitioner,

vs. NO: 19 WC 035362

FEDERAL SIGNAL CORPORATION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary 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 in its entirety, however, modifies the Arbitrator's Conclusions of Law by striking the first two full paragraphs on page ten, beginning with the word "Likewise" and ending with the word "comfort." Further, the Commission modifies the third paragraph on page ten by striking the last sentence and substituting the following: "The Arbitrator finds Petitioner's actions did not arise to the level of a deviation that took him out of the course of his employment."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on January 27, 2022, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $356.41 per week for a period of 10-6/7 weeks, commencing January 25, 2018, through February 7, 2018, and April 12, 2019, through June 12, 2019, that being the period of

temporary total incapacity for work under §8(b) of the Act. Respondent shall be given a credit of $457.99 for TTD paid and $1,860.00 in other benefits, for a total credit of $2,317.99.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $320.77 per week for a period of 100 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of use of 20% of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $47,717.00 for medical expenses subject to the fee schedule under §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.

January 31, 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	19WC035362
Case Name	RACEINA, JEFFERY v. FEDERAL SIGNAL CORP
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	David Kosin
Respondent Attorney	Mark Vizza

DATE FILED: 1/27/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 25, 2022 0.38%

/s/ Jessica Hegarty, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jeffery Raceina
Employee/Petitioner

v.

Federal Signal Corp.
Employer/Respondent

Case # **19** WC **035362**

Consolidated cases: **None**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jessica Hegarty**, Arbitrator of the Commission, in the city of **Joliet**, on **October 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 24, 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 $**27,265.68**; the average weekly wage was $**534.62**.

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 $**457.99** for TTD, $**0** for TPD, $**0** for maintenance, and $**1,860.00** for other benefits, for a total credit of $**2,317.99**.

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

ORDER

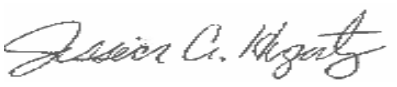
- **Respondent is liable for reasonable and necessary medical services of $47,717.00, as provided in Sections 8(a) and 8.2 of the Act.**

- **Respondent shall pay Petitioner temporary total disability benefits of $356.41/week for 10-6/7 weeks, commencing 1/25/2018 through 2/7/18 and 4/12/19 through 6/12/19, as provided in Section 8(b) of the Act.**

- **Petitioner sustained permanent partial disability to the extent of 20% loss of use of a person as a whole pursuant to §8(d)2 of the Act. -** See attached Addendum for the Arbitrator's analysis pursuant to 820 ILCS 305/8.1b(b)

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

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



Signature of Arbitrator

JANUARY 27, 2022

ADDENDUM TO THE DECISION OF THE ARBITRATOR

This matter proceeded to hearing on October 14, 2021 in Joliet, Illinois. (Arb. 1). The disputed issues are accident, causal connection, TTD, and the nature and extent of the injury. (Id.). Respondent stipulated to ownership and control of the property where Petitioner worked, including the parking lots. (T. 10)

Petitioner's Testimony

On January 24, 2018, the right-handed, 59-year-old Petitioner was employed by Respondent for approximately 2 ½ years as a material handler. (Id., 9) His duties included shipping, packing and picking. His job required him to lift anything from a nut to a 60-pound pump. He spent about 50 to 60% of his day lifting. (Id., 10)

Petitioner testified he was familiar with the structure and layout of the building and the location of various departments within the facility. (Id., 11) He is familiar with the general parking facilities. He identified Petitioner's exhibit 8A as a photograph of the Respondent's building. (Id.). There are two parking lots and employees are not allowed to park in the visitors lot. (Id. 12-13). Employee parking is separate from the visitor parking lot. There is a sign that says Federal Signal employee parking only. Petitioner was shown a photo of the employee entrance of parking lot one, on the south side of the building. Photograph 8E is a photograph of the Depot employees parking. 8E shows Petitioner's usual customary entrance to the building which is a single door. There is no indication that door is for visitors. Petitioner needed a keycard to enter the door shown on 8E. He never saw any visitors parked in the parking lot contiguous from this employee door which was used by supervisors and employees. There is no intercom near this door so if a visitor came to that entrance they would have to drive to the visitors entrance. There is no direct walkway. Directly inside the door there is no greeting facility. Inside the door was the Depot department. The timeclock that Petitioner used was 300 feet beyond that entrance. The door in photograph 8E was the most direct way and was Petitioner's usual customary route to enter the Depot facility. There is no street parking or open lots for employees. There is no general public parking.

Prior to his work injury on that date, he never experienced pain, soreness or limitations in his right upper extremity. (Id., 7-8)

Petitioner testified that on the morning of January 24, 2018 at 7:00 am, the weather was cold and it was freezing rain when he arrived at work. He parked his car in a parking lot provided by Respondent for employees only. (T. 21-24) He identified this parking lot in Petitioner's Exhibit 8a which is the closest lot to the Petitioner's department, the Depot building. (Id., 22-23)

Petitioner exited his vehicle and lifted the driver side window wiper off the windshield (to keep it from freezing to the windshield). While walking to the passenger side to lift the other windshield wiper, he turned and slipped on ice that covered the parking lot surface, causing him to fall to the ground, landing on his right shoulder and right hip. Although Petitioner felt soreness in his right shoulder and hip, he stood up and walked into work. (Id., 24-25) Throughout the day, he felt increasing pain in his right shoulder.

The next day, Petitioner requested medical attention and was sent by Respondent to Riverside Medical (a/k/a Work Force), the company's occupational clinic. (T. 27 & PX1)

Medical treatment

The Petitioner presented to WorkForce Health Monee on January 25, 2018 reporting a history of accident consistent with his testimony at the hearing. He complained of sharp, right anterior shoulder from distal clavicle to

proximal humerus. (PX 1). Painful abduction at 70 degrees were noted. A right shoulder x-ray did not show any fractures. Petitioner was diagnosed with a contusion of his right shoulder. Light duty work restrictions were instituted. Because Respondent did not initially have suitable light duty work available, TTD commenced. (Id.).

On January 31, 2018, Petitioner returned to Work Force with persistent complaints of right shoulder and right hip pain. (Id.). His complaints of pain in his shoulder from the distal clavicle to the proximal humerus, the anterior of his right shoulder, were documented along with right shoulder clicking. The pain required him to sleep upright in a recliner. Petitioner identified the portion of his right shoulder where the pain had localized, on the outside of his shoulder over the bicipital groove. He was given Prednisone. Petitioner remained off work and TTD was paid.

On February 8, 2019 Petitioner returned to Work Force where his complaints of anterior shoulder pain were noted although he noted some improvement since starting the Prednisone. (Id.). Petitioner began physical therapy at Athletico and his light duty work restrictions were continued. (Id).

At this point in time, Respondent was able to accommodate his work restrictions and Petitioner returned to work.

Petitioner followed up at Work Force on February 22, 2018 at which time his physical therapy was continued. On March 19, 2018 Petitioner returned to Work Force complaining of nagging pain from the right shoulder to his right elbow. An MRI was prescribed and performed at Chicago Ridge Medical Imaging on March 26, 2018.

On April 9, 2018, Petitioner presented to Dr. James Leonard at Midwest Orthopaedic Consultants for initial consult. (T. 32 & PX2) Petitioner provided a history of the work accident consistent with his testimony at the hearing. Persistent complaints of right shoulder pain were noted. On examination, positive impingement of the right shoulder was noted. Dr. Leonard reviewed the recent MRI noting supraspinatus tendinosis with interstitial tears and mild AC arthropathy. A right subacromial cortisone injection was administered along with a prescription for additional physical therapy. Petitioner was restricted to 25-pounds of lifting at work. Dr. Leonard noted a diagnosis was right shoulder impingement syndrome and incomplete rotator cuff tear was noted by the doctor. (PX2, pp.3-8)

On May 7, 2018, Dr. Leonard noted Petitioner's complaints of persistent pain when reaching overhead and behind his back. Physical therapy was continued along with work restrictions. (T. 35 & PX2, pp.9-11)

On June 11, 2018, Dr. Leonard noted Petitioner's report that he still had clicking in his shoulder. Petitioner advised Dr. Leonard that he felt he could return to full duty work. He was released to do so. (T. 36 & PX2, pp.12-14)

One month later, on July 11, 2018, Petitioner returned to Dr. Leonard with complaints of shoulder clicking after performing heavy lifting the prior day at work. Petitioner testified that continued to experience soreness, although the pain had greatly subsided after the subacromial cortisone injection. (T. 37) Dr. Leonard released the Petitioner at MMI, but noted that Petitioner "should still have access to an orthopedic surgeon as well as physical therapy, cortisone injections, medications, advanced imaging studies, and surgery if need be". Petitioner was advised to return as needed should pain or symptoms arise, persist, or get worse and to continue a home exercise program. (PX2, pp.15-17)

Respondent ceased all benefits at this point.

Petitioner testified that after July 11, 2018, the soreness in his right anterior shoulder remained stable until approximately September 2018. At that point his anterior shoulder pain returned. (T. 38-39)

On December 20, 2018 Petitioner returned to Dr. Leonard complaining of increased anterior shoulder pain at rest and at night. His home exercise program was no longer providing relief. Petitioner demonstrated to the Arbitrator where the pain was localized. (Id., 39) The Arbitrator notes the Petitioner demonstrated that the pain was in the outside of his shoulder over the bicipital groove. Dr. Leonard examined the Petitioner and diagnosed bicipital tendonitis. Petitioner was provided an injection into the bicipital groove. (PX2, pp.18-20)

On January 24, 2019, Petitioner returned to Dr. Leonard reporting the bicipital injection provided great relief of his anterior shoulder pain for two months. He was able to perform all activities. Again, Petitioner was advised to return to Dr. Leonard if his symptoms recurred. If so, Dr. Leonard would consider a right shoulder arthroscopic biceps tenodesis to address the diagnosis of biceps tendinosis. (Id., pp.23-25)

On March 28, 2019 the Petitioner returned to Dr. Leonard with complaints of anterior shoulder pain that had returned approximately two months following the bicipital injection. Petitioner asked Dr. Leonard whether there was a more permanent solution to his continuing shoulder pain. (T. 40) Dr. Leonard diagnosed Petitioner with right shoulder impingement syndrome with biceps tendinitis. He advised that surgical intervention consisting of right shoulder arthroscopy with extensive debridement, subacromial decompression, and subpectoral biceps tenodesis was indicated. (PX2, pp.26-28)

Respondent denied further treatment. Petitioner continued care under his personal medical insurance.

On April 12, 2019, Petitioner underwent surgery at Silver Cross Medical Center consisting of right shoulder extensive debridement, subacromial decompression and an open subpectoral biceps tenodesis. (T. 40 & PX2, pp.47-48)

Petitioner was again unable to return to work. TTD was denied. The parties agree that some short-term disability benefits were paid.

Postoperatively, Petitioner returned to Dr. Leonard on April 22, 2019. He was doing well and in a sling. Dr. Leonard noted a diagnosis of biceps tendonitis, incomplete tear of the right rotator cuff as well as a superior glenoid labrum lesion. Petitioner was kept off work and began physical therapy. (T.41 & PX2, pp.29-30)

By May 20, 2019, Petitioner returned to Dr. Leonard reporting 1-2/10 VAS pain in his shoulder to the elbow. He was released to light duty which Respondent accommodated. He remained in physical therapy. (PX2, pp.31-32)

During his subsequent follow-up visits to Dr. Leonard on July 1, 2019, August 12, 2019 and September 18, 2019 the Petitioner showed slow, steady improvement with increases in strength and motion. During this period, he remained on light duty. (T.41-43 & PX2, pp.33-43)

Petitioner was last seen by Dr. Leonard on November 11, 2019. Petitioner advised Dr. Leonard he was doing well and noted he needed to lift 54 pounds to return to full duty. Petitioner believed he could meet that criteria and Dr. Leonard released Petitioner to full duty. Dr. Leonard noted Petitioner could return as needed, specifically for additional physical therapy should he not be able to meet the Respondent's lifting requirements. (T.44 & PX2, pp.44-46)

Petitioner testified that he continues to work in a full duty capacity. He has not sought further care for his right arm and shoulder injury since November 11, 2019. Petitioner testified he continues to notice pain when lifting and particularly raising his arm above shoulder level. (T. 45)

Evidence deposition of Dr. Joshua Alpert

Respondent offered the evidence deposition of Dr. Joshua Alpert as Respondent's Exhibit 1. Dr. Alpert is an orthopedic surgeon concentrating in general orthopedics. (RX 1, p. 7) On September 8, 2020 he performed a record review of Petitioner's care to date. (Id., 8) Based upon his review of the records, the doctor opined that the surgery performed by Dr. Leonard on April 12, 2019 was not related to Petitioner's fall of January 24, 2018. (Id., 9) The basis of his opinion was that the Petitioner fell on January 24, 2018, received physical therapy and an injection, and was subsequently returned to full duty on July 11, 2018. Five months later Petitioner returned to Dr. Leonard complaining of pain in a different location to the anterior of his shoulder over the biceps. The surgery performed by Dr. Leonard on April 12, 2019 was for complaints to Petitioner's biceps. According to Dr. Alpert and review of the medical records, Petitioner never complained of biceps pain from the date of his fall through July 11, 2018. (Id., 10)

On cross-examination Dr. Alpert agreed that his opinions are based upon a records review and that he never examined the Petitioner. Pursuant to his records review, he agreed that Petitioner had no history of pain, disability or limitation to his right shoulder prior to the January 24, 2018 accident. (Id.,16, 23)

Dr. Alpert opined that Dr. Leonard's office note of July 11, 2018, finding Petitioner to be at MMI, was a significant consideration in forming his conclusions. He agreed that Petitioner's complaints of pain and clicking in his shoulder were noted on that date. (Id., 17-18) Further, Dr. Alpert agreed that patients who are noted to be at MMI and have returned to work can experience a relapse in their pain conditions. (Id., 32)

Dr. Alpert found Petitioner's failure to return to Dr. Leonard for five months after July 11, 2018 to be significant in forming his opinions.

On cross-examination, Dr. Alpert agreed that Dr. Leonard's notes document that Petitioner had increasing right shoulder pain in September 2018, two months after his second shoulder injection. He agreed he did not know whether Petitioner's complaints were the same as when he last saw Dr. Leonard on July 11, 2018. Dr. Alpert agreed these issues could have been clarified if he had personally examined the Petitioner. (Id., 22)

Dr. Alpert agreed that Petitioner made no complaints of biceps pain from the date of his injury, January 24, 2018, through his eventual return to Dr. Leonard on December 23, 2018. Dr. Alpert noted only that the Petitioner complained of shoulder pain during these visits. Dr. Alpert agreed that symptoms of biceps tendinitis present as pain and tenderness at the anterior portion of the shoulder, worse with overhead lifting and activity. Another significant symptom of biceps tendinitis is pain and tenderness moving down the upper arm along the bone to the elbow in the anatomical area of the biceps. Another symptom is clicking in the shoulder. Dr. Alpert never noted Petitioner's complaints of anterior shoulder pain on his initial examination the day after his work injury. (Id., 24) He did not note that Petitioner complained of anterior shoulder pain on his next medical office visit on January 31, 2018. (Id., 26) He agreed this can be an indication of biceps tendinitis immediately after the accident. (Id., 27) Dr. Alpert did not note Petitioner's complaints of anterior shoulder pain and clicking on the next office visit of February 8, 2018. (Id., 28) Dr. Alpert never saw the office note of March 19, 2018 wherein Petitioner again complained of anterior shoulder pain. Again, Dr. Alpert agreed that these complaints are indicative of biceps tendinitis. Dr. Alpert did not note Petitioner's complained of pain from the shoulder to the elbow on March 19, 2018. Dr. Alpert admitted this is significant, had he seen the note. (Id., 29)

Dr. Alpert was unaware that Petitioner complained of the same anterior shoulder pain when he first was examined by Dr. Leonard on April 9, 2018. (Id., 30) Dr. Alpert agreed that the surgery performed by Dr. Leonard on April 12, 2019 was the appropriate surgery for the Petitioner's complaints of anterior shoulder pain and the diagnosis of

biceps tendinitis. (Id., 34) Dr. Alpert agreed that biceps tendinitis can be caused by trauma, such as Petitioner falling onto his shoulder. (Id., 39-40)

Considering Petitioner's continuing complaints of anterior shoulder pain from the date of injury through the date of surgery, Dr. Alpert agreed that the surgical biceps tenodesis was possibly related to the initial injury of January 24, 2018. (Id., 35)

Evidence deposition of Dr. James Leonard

Dr. James P. Leonard is a Board-Certified Orthopedic Surgeon specializing in shoulders and elbows. (PX7, 6) Dr. Leonard began treating the Petitioner on April 9, 2018. His examination found inflammation to the outside of Petitioner's right shoulder. His initial diagnosis was shoulder impingement and interstitial tearing of the rotator cuff. (Id., 13) A subacromial injection was performed.

Dr. Leonard testified that the subacromial injection is a broad injection and treats a lot of different conditions in the shoulder such as rotator cuff, impingement, bursitis and biceps tendinitis. (Id., 25) Petitioner did well with the injection and physical therapy. (Id.) Dr. Leonard testified that by July 11, 2018, Petitioner was doing well and was returned to work full duty. Dr. Leonard initially indicated Petitioner was at MMI. However, Dr. Leonard testified that on July 11, 2018, Petitioner was not asymptomatic. (Id., 17) Petitioner was offered the option of returning should his condition worsen. (Id.) When the subacromial injection wore off, Petitioner's rotator cuff pain was not as bad, but his biceps pain became more of an issue and treatment was concentrated on that additional diagnosis. (Id., 25)

Dr. Leonard testified that when Petitioner returned on December 12, 2018, Petitioner's complaints of shoulder pain were more localized and he added the diagnosis of biceps tendinitis. (Id., 18) The diagnosis of biceps tendinitis was confirmed via direct injection to the biceps tendon sheath with temporary relief of pain, same as Petitioner experienced with the initial subacromial injection. (Id., 34)

It is Dr. Leonard's opinion that the initial diagnoses of impingement syndrome and interstitial rotator cuff tears, as well as the subsequent diagnosis of biceps tendinitis, are all causally related to the work injury of January 24, 2018. (Id., 29) Biceps tendinitis is rarely seen in isolation. (Id., 25) It is typically associated with rotator cuff disease or injury in 90% to 95% of cases. (Id., 25, 47) It is highly unlikely Petitioner developed biceps tendinitis in the two-month period between his initial release to full duty on July 11, 2018 and the return of shoulder pain in September 2018. (Id., 29-30) Biceps tendinitis is not typically degenerative in nature. (Id., 30) Further, when asked to review the initial Work Force records, Dr. Leonard agreed they consistently demonstrate complaints of anterior shoulder pain, a clear symptom of biceps tendinitis. (Id., 38)

Dr. Leonard concluded that the care and treatment provided to the Petitioner after July 11, 2018 was reasonable, necessary and causally related to the work injury of January 24, 2018. (Id, .39-40)

Testimony of Tamera Galbreath

Respondent called Tamera Galbreath, Safety Supervisor for the Respondent to testify at the hearing. (T.64) She is familiar with the Respondent's facilities including the parking areas. According to Ms. Galbreath, employees may park anywhere they want on the Respondent's property. She acknowledged that the lot identified as P1 has signage directing that the lot is for Respondent's employees only. (Id., 67) Further, she testified that the Petitioner was not required to enter the door depicted in PX8e immediately contiguous to the lot where the Petitioner fell on ice.

On cross examination Ms. Galbreath agreed that employees are allowed to park in the lots depicted at P1 and P2 in PX8a. She conceded that there are no other places for employees to park other than in those lots provided by the Respondent and located upon its property. (Id., 72) Respondent stipulates that it owns and controls all of the parking lots on the property. Ms. Galbreath agreed that the Petitioner fell in the lot identified as P2. (see PX8a) This is the parking lot closest the entrance used by the Petitioner and is the closest and the most direct route to Petitioner's department where he punches in and performs his duties for the Respondent. It is an employee only entrance immediately contiguous to lot P2. (Id., 73)

This entrance door is the usual and customary door used by the Petitioner and where he was to enter the facility had the fall not occurred. That door is not accessible by visitors and requires the use of a keycard provided to employees to enter. (Id.) Any visitors parking in P2 would have to enter the visitor's entrance on the far south side of the facility which cannot be accessed directly without driving or walking along the roadway to the front of the facility. (Id., 75-76) Ms Galbreath further testified that the only entrance door contiguous to where Petitioner parked and needed to enter for the immediate access to his workplace was only for employees. (Id., 79)

CONCLUSIONS OF LAW

B. Whether an accident occur that arose out of and in the course of Petitioner's employment by Respondent.

Petitioner has the burden of establishing, by a preponderance of the evidence, that her injury arose out of and in the course of her employment. Sisbro Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 203 (2003). An injury "in the course of employment" refers to the time, place and circumstances under which the claimant is injured. Scheffler Greenhouses, Inc. v. Industrial Comm'n, 66 Ill. 2d 361, 10 366-67 (1977). For an injury to be compensable, it generally must occur within the time and space boundaries of the employment. Sisbro Inc., 207 Ill. 2d at 203 (citing 1 A. Larson, Worker's Compensation Law section 12.01 (2002)). Injuries sustained on an employer's premises, or at a place where claimant might reasonably have been while performing her duties, and while a claimant is at work, or within a reasonable time before and after work, are generally deemed to have been received in the course of employment. Caterpillar Tractor Co., 129 Ill. 2d at 57-8.

Generally, "when an employee slips and falls at a point off the employer's premises while traveling to or from work, the resulting injuries do not arise out of and in the course of the employment." Joiner v. Industrial Commission, 337 Ill. App. 3d 812, 815 (2003). However, the Illinois Supreme Court had noted an exception to this general rule occurs when an employer provides a parking lot to its employees. De Hoyos v. Industrial Commission, 26 Ill. 2d 110, 113 (1962).

> Whether or not the employer owned the parking lot is immaterial; for if the employer provides a parking lot which is customarily used by its employees, the employer is responsible for the maintenance and control of that parking lot. Therefore, the question presented to the circuit court was not one of disputed fact or whether the decision of the Industrial Commission was manifestly against the weight of the evidence, but whether, *when an employer provides a parking lot for employees and an employee falls on the parking lot, this fact being uncontroverted on the record, the employee is entitled to recover as a matter of law.* De Hoyos, 26 Ill.2d at 113-114 (emphasis added).

Whether or not the employer "provided" the parking lot in question to its employees requires a determination of one of the following: (1) whether the parking lot was owned by the employer, or; (2) whether the employer

exercised control or dominion over the parking lot, or; (3) whether the parking lot was a route required by the employer. Walker Brothers v. Illinois Workers' Compensation Commission, 2019 Ill. App. (1st) 181519WC (2019).

When an employee is injured on the usual route to the employer's premises and there is a special risk or hazard on the route, the hazard becomes part of the employment. See Litchfield, 349 Ill. App. 3d at 491. "Special hazards or risks encountered as a result of using a usual access route satisfy the 'arising out of' requirement of the Act." Id. at 491 (citing Bommarito v. Industrial Comm'n, 82 Ill. 2d 191, 195 (1980)).

In the case at bar, the Respondent stipulated to ownership and control of the parking lot where the Petitioner fell. (T.10-11)

Respondent's campus contains an access road that only reaches Respondent's facility. (PX8a) Respondent's witness, Tamera Galbreath, testified that Respondent placed "Federal Signal Employees Parking Only" signs at their parking lot entrance to keep other people, not connected with Respondent's business, out of their parking facilities. (PX8b) There are no alternative places, such as street parking or off-site parking, for employees to park other than on the Respondent's property. It is unrebutted that Respondent gave Petitioner a parking sticker to be placed on his car windshield, which designated his vehicle as belonging to an employee when parked in the parking lots provided by the Respondent. The location where Petitioner fell was along the route he customarily used to enter Respondent's facility. Further, it is unrebutted that the Respondent designated the exterior door depicted in PX8(e) as an employee entrance which required a key card to enter and that Respondent gave Petitioner a copy of that keycard. Visitors were allowed entry at the Visitor's Entrance located at the opposite end of the facility, accessible only by driving or walking along the roadway surrounding the Federal Signal facility. (PX8a&d)

This Commission has held that when a Respondent designates separate parking areas for employees and visitors, it is additional proof that the Respondent provided parking to their employees where the injury occurred. Petra Jacobo v. Metro Staff, Inc. and John B. Sanfillippo & Son, Inc., 20I.W.C.C.0691. In Jacobo the Commission found it significant that the injured employee's parking lot was located at one end of the facility while general public used the lot at the completely opposite end of the Respondent's facility. The Commission concluded the general public would have no reasonable basis to park near the employee entrance.

In this case, the Petitioner fell in a parking lot provided by the Respondent, located next to an employee only entrance immediately adjacent to Petitioner's specific department (Depot) and completely opposite the designated visitor's parking lot and visitor's entrance located at the complete opposite end of the facility without any walking path between the two areas. (PX8 a,d&e) Clearly the general public and/or visitors would have no reasonable basis to park near the employee entrance where Petitioner slipped and fell on ice.

The Arbitrator can reach no other conclusion than that the parking lot where Petitioner fell was a "route required by the employer." Therefore, the Arbitrator finds that the Respondent provided the parking lot for the use of its employees and the lot is part of the Respondent's premises. When the injury is the direct result of a hazardous condition on an employer's premises, further risk analysis is unnecessary as injuries resulting from a hazardous condition or defect such as ice on the employer's premises is a "risk distinctly associated with employment." Patton citing Dukich v. Illinois Workers' Compensation Commission, 2017 IL App. 2d 160351WC (2017)

Petitioner's act of walking to the passenger side of his car to lift the windshield wiper when he slipped on ice, does not take the Petitioner out of the course of his employment. In Patton the Petitioner left his duties as a warehouse worker without clocking out to go to his car located in the Respondent's parking lot for the purpose of warming up his car in anticipation of eating his lunch in it. While walking to his car, the Petitioner fell on ice causing his injuries. The Commission found that Petitioner's hurrying to his car a few minutes early did not negate the fact that there

were patches of ice on the parking lot pavement. Petitioner, or any other employee, could have slipped and fallen on the same patch of ice if he or she had left the building during the designated lunch period, five to ten minutes later. Petitioner did not deviate from his normal path to his car in any way or act negligently or recklessly. The Commission found that Petitioner did not sufficiently deviate from his work duties when he failed to clock out before going outside to warm up his car and did not remove himself from the scope of his employment.

Likewise, in Ludtke v. County of DeKalb, 19I.W.C.C.712, Petitioner was a maintenance worker for the Respondent assigned to the courthouse. At the time of his injury, Petitioner parked in one of Respondent's parking lots close to the entrance of the facility. He went into the courthouse only to drop off his lunch. After dropping of his lunch Petitioner went back to his car to move it to another lot when he slipped and fell on ice causing his injuries. Again, having lost on the issue that Petitioner's injuries came under the Parking Lot Exception, Respondent argued that the Petitioner was not required to keep his lunch and coffee in the courthouse. The Commission analyzed Petitioner's actions under the personal comfort doctrine.

The personal comfort doctrine generally encompasses acts such as eating and drinking, obtaining fresh air, seeking relief from heat or cold, showering, resting and smoking. Larson & L. Larson, Workers' Compensation Law Sec. 21.10, at 5-5 (1998) The Commission reasoned that because the Petitioner in Ludtke sought relief from the cold for himself, his coffee and food during the short period before his shift was a reasonable and foreseeable act of personal comfort.

In the instant case the following is unrebutted: When Petitioner arrived at Respondent's parking lot, it was freezing rain. When he exited his car, Petitioner lifted his windshield wipers off his windshield so they would not freeze against the windshield glass. After lifting his driver side windshield wiper, he walked toward the passenger side when he slipped and fell on the ice. The Arbitrator finds Petitioner's actions were for his personal comfort which do not take him out of the course of his employment.

The Arbitrator finds, based on the preponderance of credible evidence contained in the record, that Petitioner has sustained his burden of proof regarding this issue.

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

It is uncontested that prior to January 24, 2018 the Petitioner had no pain, soreness or limitations to his right shoulder and arm. Immediately after his accident Petitioner began treating with the Respondent's occupational clinic, Work Force. The records from Work Force, including every reference from the first visit of January 25, 2018 through the last on March 19, 2018, document that the Petitioner had continuous and significant right shoulder pain in the anterior part of his shoulder. He complained of clicking, pain radiating down from his shoulder to his right elbow and limitation of movement.

Dr. James Leonard, Petitioner's treating orthopedic surgeon, testified that the Petitioner's constant complaints of anterior shoulder pain are consistent with a diagnosis of biceps tendinitis. He also found evidence of impingement and interstitial tears to Petitioner's right rotator cuff. Dr. Leonard testified that each of these diagnoses are causally related to the work injury of January 24, 2018.

Regarding the opinions of Dr. Joshua Alpert offered by Respondent, the Arbitrator notes Dr. Alpert did not examine the Petitioner. He performed a medical records review.

Petitioner presented to his medical providers with consistent, documented complaints of right anterior shoulder pain from his initial office note through his final evaluation. Dr. Alpert admitted not acknowledging these

complaints during his review of the medical records and that they are important indicia of biceps tendinitis which he did not bother to note or consider in formulating his opinions. Further, Dr. Alpert agreed that Petitioner might well have suffered biceps tendinitis due to the accident of January 24, 2018 based upon entries in the medical records. Despite his protestations of having reviewed the medical records, Dr. Alpert missed every repeating entry consistent with that diagnosis.

The Arbitrator adopts the opinions of Dr. James Leonard who testified that the Petitioner sustained right shoulder impingement, right shoulder interstitial tears to his rotator cuff as well as right shoulder biceps tendinitis all caused by the work injury of January 24, 2018.

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

Respondent objects to medical care provided to the Petitioner after July 11, 2018, the date the Petitioner's orthopedic surgeon, Dr. James Leonard, initially found Petitioner to be at MMI. Respondent also relies upon Dr. Joshua Alpert, to deny treatment after July 11, 2018 based upon his opinion that the treatment thereafter was for an unrelated condition of biceps tendinitis which arose after the date of July 11, 2018.

Dr. Leonard opined that the medical treatment provided after July 11, 2018 was reasonable, necessary and related to Petitioner's the January 24, 2018 work-related accident.

The medical record in evidence documents Petitioner's continuous complaints of anterior shoulder pain, clicking and pain radiating from his shoulder to his elbow. These complaints are consistent with the diagnosis of biceps tendinosis. These facts were largely ignored by Dr. Alpert in his records review on behalf of Respondent. The Arbitrator notes he eventually agreed that the treatment after July 11, 2018 was appropriate for the diagnosis of biceps tendinitis which might well have been caused by the work injury of January 24, 2018.

Again, the Arbitrator adopts the opinions of Dr. Leonard who testified that upon initial exam., Petitioner had significant right shoulder complaints. At that same visit, Dr. Leonard administered a subacromial injection to the Petitioner's right shoulder. Dr. Leonard's testified that the injection was broad in nature and brought relief to Petitioner's complaints of impingement, rotator cuff pathology, bursitis as well as biceps tendinitis. The Petitioner was returned to work full duty and Dr. Leonard initially found him at MMI on July 11, 2018 when the subacromial injection and physical therapy had reduced Petitioner's right shoulder pain complaints. Dr. Leonard noted that Petitioner had continuing complaints after July 11, 2018, and that the Petitioner was cautioned to return for further care should his condition deteriorate.

In September 2018, Petitioner's complaints were localized at the bicipital groove. A diagnosis of biceps tendinitis was noted by Dr. Leonard who opined that this diagnosis was causally connected to the work-related accident on January 24, 2018. Dr. Leonard found it unlikely that biceps tendinitis arose in the two months after Petitioner was found to be at MMI. He further opined that biceps tendinitis is commonly associated with shoulder injuries such as the shoulder impingement and interstitial rotator cuff injuries caused by the work-related accident at issue. Dr. Leonard, pursuant to his review of the occupational clinic records, documented Petitioner's complaints and symptoms, consistent with biceps tendinitis, immediately following the work injury.

Accordingly, the Arbitrator finds that Petitioner has sustained his burden with respect to this issue. Respondent shall pay to the Petitioner reasonable and necessary medical services of $47,717.00 as, as provided in Sections 8(a) and 8.2 of the Act and as documented in PX6.

K. What temporary benefits are in dispute?

Petitioner testified that Work Force provided a work status note allowing Petitioner to return to work with limitations on January 25, 2018. Respondent could not initially accommodate the restrictions. Thereafter, Petitioner was returned to restricted duty on February 8, 2018. This time accommodation was offered. With respect to the disputed period of April 12, 2019 through June 12, 2019, this is the period Petitioner remained off of work due to the shoulder surgery performed by Dr. Leonard. The Respondent disputes that TTD is due during this period based upon its position that MMI was reached on July 11, 2018. As noted above, the Arbitrator finds that the Petitioner did not reach MMI on July 11, 2018 and that all further medical treatment after that date is reasonable and necessary to cure or relieve Petitioner's condition of ill-being, including the resultant surgical procedure. The dates correlate with the testimony of the Petitioner as well as the medical records of Dr. Leonard. (PX2)

Accordingly, Respondent shall pay Petitioner temporary total disability benefits **of $356.41 /week for 10-6/7 weeks, commencing January 25, 2018 through February 7, 2018 and thereafter from April 12, 2019 through June 12, 2019**, as provided in Section 8(b) of the Act.

N. Is Respondent due any credit?

Pursuant to the parties stipulation, the Respondent is due a credit for TTD paid in the amount of $457.99 and $1,860.00 in nonoccupational indemnity disability benefits.

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

Section 8.1b(b) of the Act provides the following:

> 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) (AMA impairment rating); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order. (820 ILCS 305/8.1b(b).

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. Accordingly, this factor will not be considered.

Regarding subsection (ii) of §8.1b(b), the occupation of the employee, Petitioner was employed as a material handler at the time of the accident. The nature of Petitioner's occupation is defined by the continual lifting and moving of objects and materials. Although he is able to return to work in his prior capacity, he continues to experience pain when he lifts and reaches over head, both of which, are consistently required on a daily basis at his physically demanding job as a material handler. The Arbitrator gives greater weight to this factor.

Subsection (iii) of §8.1b(b), refers to the age of Petitioner, which was 59 years old, at the time of the accident. Although he is somewhat of an older man, he will continue to work in a physically demanding job for years to come which will require constant lifting and reaching overhead, the Arbitrator therefore gives greater weight to this factor.

Regarding subsection (iv) of §8.1b(b), because of a lack of any evidence pertaining to the issue of diminished future earning capacity, no consideration will be given to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, Petitioner's testified that he continues to notice pain when lifting and particularly raising his arm above shoulder level. The treating medical records note his right shoulder impingement, interstitial tears to the right rotator cuff and biceps tendinitis all required surgical repair. Dr. Leonard's last office note from November 11, 2019 cautions that Petitioner may need further physical therapy if he is unable to meet the lifting criteria of his job. The Arbitrator finds the treating medical records corroborate Petitioner's testimony regarding his current condition. Accordingly, greater weight is attributed 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 a person** as a whole pursuant to §8(d)2 of the Act.