ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC024434
Case Name	William Clayton v. State of Illinois - Vienna Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0090
Number of Pages of Decision	20
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Kenton Owens

DATE FILED: 3/1/2023

/s/Maria Portela, Commissioner

Signature

23IWCC0090

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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

WILLIAM CLAYTON,

Petitioner,

vs. NO: 19 WC 24434

STATE OF ILLINOIS /
VIENNA CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

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

We affirm the Arbitrator's findings regarding Petitioner's lumbar condition being causally related to his work accident. However, we reverse the decision regarding the cervical condition. Regarding the cervical condition, the Arbitrator found:

> There is no prior reference to neck complaints in the records. Dr. Chabot admitted that a jarring incident such as the one described by Petitioner could not only aggravate an underlying condition, but also cause new structural injury. The Arbitrator does not find that Petitioner's cervical spine complaints manifested in an unreasonable amount of time following the injury to bring causality into question, and Dr. Gornet logically explained that inflammatory processes in injuries such as Petitioner's may develop or progress over time following the injury.

Dec. 12 (unnumbered). First, we strike the sentence that, "there is no prior reference to neck

complaints in the records." Although perhaps minor, an October 24, 2017 nurse's note does mention that Petitioner had back pain and neck stiffness along with migraine headaches. We acknowledge, however, that Dr. Buchman, on that same date, did not make any cervical diagnoses and only assessed chronic back pain, migraine, essential hypertension, restless legs and insomnia.

Second, the records show and Dr. Gornet testified that Petitioner had a history of chronic migraines (*Px11 at 9)* about which Dr. Gornet explained:

> Q. Now, there's a discussion in his records about long-time migraines, management of his migraines. Is there any correlation between migraines and a neck injury or a cervical disc injury?
> A. There is a correlation between cervical pathology and headaches, and so there is a correlation with that. Obviously[,] patients can have a change in that status where the migraines become less refractory to treatment with medications. The frequency of the headaches may increase. So[,] all those are changes that can occur, but **we do see an association in the cervical spine with headaches**.
> Q. And regarding his prior history, is there any correlation or do you have any evidence suggesting that his headaches are coming from a neck -- or a disc injury in his neck?
> A. Not that I can recall.

Id. at 21 (Emphasis added). Therefore, Dr. Gornet testified that there *is* a correlation between cervical pathology and migraines although he could not recall if there was evidence in Petitioner's history to suggest that, in Petitioner's case, his migraines were coming from his neck. Unfortunately, the medical records do not fully identify the cause of Petitioner's chronic migraines, so we are left to wonder what, if any, contribution Petitioner's degenerative cervical condition played in those.

Based on the above, we clarify the decision to find there is the specific reference to previous neck stiffness and, based on the opinion of Dr. Gornet, Petitioner's chronic migraines appear likely correlated with a cervical pathology, even if that was not diagnosed or explained in the medical records in evidence.

Regardless of the migraine headache question, the first post-accident mention of any cervical complaints is in the October 28, 2019 Dr. Gornet record in which he wrote, "I last saw him on 8/1/19 approximately two weeks after his injury. He states that in the interim several weeks after I saw him, he developed increasing neck pain and headaches. He has a long history of headaches, but he feels that this has become worse and somewhat different than anything he had in the past. His symptoms are neck pain into both traps, both shoulders." *Px5, T.179.*

This record seems to infer that Petitioner developed neck pain and worsening headaches in the several weeks after the August 1, 2019 visit. However, this is not supported by the evidence. The September 11, 2019 medical note authored by Gerald Martin, N.P. at SIH Primary Care indicates "negative for…neck pain and stiffness." *Rx5, T.616*. Similarly, the September 12, 2019 note from Nathan Collins, P.A. (in Dr. Gornet's office) does not mention

any cervical complaints. *Px5, T.177*.

These records support a finding that Petitioner's cervical complaints did not begin until sometime between September 12, 2019 and his visit with Dr. Gornet on October 28, 2019. This means that the cervical complaints did not begin for at least eight weeks after his work accident.

Regarding the delayed onset of Petitioner's cervical symptoms, Dr. Gornet testified:

> Q. And prior to -- well, I guess let me ask you this. Is it common for there to be a delayed onset or increase in symptoms following a traumatic incident?
> A. I would say that that is not atypical. We often see patients who develop increasing symptoms or a change in their symptoms over time, and that's in large part due to the inflammatory process. Remember, when I first saw him he was fairly miserable, in a lot of pain, and then he became worse. All of those played a role in -- and often delay a manifestation of symptoms -- bringing them to the forefront. *Px11 at 16.*

It appears that Dr. Gornet's opinion is based, in part, on an inaccurate understanding of the timeline of events. Dr. Gornet's July 16, 2020 record states, "His neck pain did not come to the forefront until he began to wean off of narcotics." Similarly, in his October 19, 2020 record, Dr. Gornet addressed Dr. Chabot's §12 opinion and wrote, "Dr. Chabot pointed out that his neck symptoms were not documented initially, but again according to Mr. Clayton these became much more significant for him as he weaned down off of his narcotics." *Px5, T.184*.

However, the above statements by Dr. Gornet are not supported by the evidence because his October 28, 2019 record indicates Petitioner had increasing neck pain and headaches since the previous visit on August 1, 2019, but Dr. Gornet had not recommended that Petitioner wean off of the narcotics until almost three months later on October 28th. Therefore, Petitioner being weaned off of narcotics had nothing to do with the onset of his cervical complaints because Petitioner's cervical complaints pre-dated the start of the weaning process.

Since Petitioner's cervical complaints do not appear to have any correlation with being weaned off of narcotic, the question is whether it is reasonable for those complaints to have started eight or more weeks after his work accident. Petitioner underwent a cervical MRI on October 28, 2019, which Dr. Gornet reviewed and wrote:

> This reveals fairly significant disc herniation at C4-5 causing cord compression. There is also an annular tear at C3-4. There is clear disc degeneration at C5-6 and C6-7 in addition to C4-5, but there appears to be acute on chronic herniations being present.
>
> **I advised him that we often see a delay or even increasing symptoms over time as one body part seems to improve and the other worsens. He also understands that inflammation is cellular based and takes a period of time to develop and given his herniation and cord compression I suspect this is what happened. At this point, I would like him to be weaned off of narcotics.**

…
Again, I do believe his current symptoms, at least in their level of severity in both his neck and back, are causally connected to his work injury as described, as he clearly had symptoms in both areas prior, but it appears as if he now has more acute findings, particularly in his cervical spine.

Px5, T.179 (Emphasis added).

Although not clearly stated, this record seems to suggest that Petitioner's cervical issues may have been masked by his lumbar symptoms. However, the evidence shows that there was a period of time when Petitioner had *no pain at all*. The August 30, 2019 physical therapy record indicates "No pain; couldn't come to therapy last visit because he was stung by a swarm of yellow jackets but is better now." *Px7*. The therapy records dated September 4, 2019, September 6, 2019 and September 9, 2019 all indicate that Petitioner was "pain free" and "doing good with his back." *Id., T.250-259*. It wasn't until September 11, 2019 that Petitioner reported to his therapist that he was doing fine until working a little overtime on Monday but "after he went to bed and got up his pain was severe." *Id., T.262*.

If, as Dr. Gornet opined, Petitioner sustained structural cervical injuries at the time of his work accident, but those symptoms were either delayed due to an "inflammatory process" or, perhaps, masked by the severity of his lumbar symptoms, one would expect the cervical symptoms to manifest during this period of time when he had no lumbar symptoms at all, which was six to eight weeks after his work accident.

In contrast to the opinion of Dr. Gornet, Respondent's §12 physician, Dr. Chabot, opined and testified:

Q. Okay. Irrespective in this case and your opinions that you've already expressed, it isn't uncommon to see a delay in the onset of symptoms following a traumatic injury, is that fair to say?

A. Well, I would say again that you're talking about acute injury, and acute injuries most people manifest the maximum in inflammation within three to five days after the accident. So one would expect if you have an injury to the area, that you would describe those complaints to somebody within the, you know, short period following the accident. And Dr. Buchman's notes, you know, in reviewing them he evaluated him shortly after the accident on 7/23, and there's -- that would have been during the acute phase. There's no mention of neck complaints.

Rx11 at 56 (Emphasis added).

Based on the above and the evidence in the record, we find that Petitioner's cervical symptoms did not develop in a reasonable amount of time, under the present circumstances, to prove that they are causally related to his work accident. On this issue, we find Dr. Chabot's opinion more persuasive than that of Dr. Gornet.

As a result of our finding that Petitioner failed to prove that his cervical condition is causally related to his work injury, we modify the medical award to deny all bills that are related to the cervical condition.

Regarding the permanency awards, we affirm the 10% person-as-a-whole award for Petitioner's lumbar condition but vacate the award for his unrelated cervical condition.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ $756.71 per week for a period of 50 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 10% loss of use of Petitioner as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the medical expenses identified in Petitioner's Exhibit 1, excluding those related to his cervical condition, for medical expenses 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 Respondent is entitled to a credit under §8(j) of the Act for payments made by its group insurance carrier; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

IT IS FURTHER ORDERED BY THE COMMISSION that 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.

March 1, 2023

/s/ *Maria E. Portela*

SE/
O: 1/17/23
49

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC024434
Case Name	CLAYTON, WILLIAM v. STATE OF ILLINOIS/VIENNA CORRECTIONAL CENTER.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Kenton Owens

DATE FILED: 11/24/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 23, 2021 0.07%

/s/ Linda Cantrell, Arbitrator
Signature

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

November 24, 2021

/s/ Brendon O'Rourke
Brendan O'Rourke, Assistant Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

WILLIAM CLAYTON
Employee/Petitioner

v.

STATE OF ILLINOIS/VIENNA CORRECTIONAL CENTER
Employer/Respondent

Case # **19** WC **024434**

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 **September 15, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **July 19, 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 $**65,581.58**; the average weekly wage was $**1,261.18**.

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 $**44,924.38** for TTD paid from 9/14/19 through 9/21/20, plus 5 service-connected days and 2 regular days, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**44,924.38**.

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

ORDER

Respondent shall pay the reasonable and necessary medical expenses contained in Petitioner's group exhibit 1, 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. 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 a credit for medical bills paid through its group medical plan, if any, pursuant to Section 8(j) of the Act. Respondent shall further hold Petitioner harmless from all claims or liabilities made by the group medical plan to the extent of such 8(j) credit.

Respondent to pay Petitioner permanent partial disability benefits of $**756.71**/week for **50** weeks because the injuries sustained caused **10%** loss of use of the person as a whole related to Petitioner's lumbar spine, and permanent partial disability benefits of $**756.71**/week for **25** weeks because the injuries sustained caused **5%** loss of use of the person as a whole related to Petitioner's cervical spine, pursuant to Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 10/19/20 through 9/15/21, and shall pay the remainder of the award, if any, in weekly payments.

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

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

NOVEMBER 24, 2021

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

WILLIAM CLAYTON,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 19-WC-024434
	)	
STATE OF ILLINOIS/VIENNA CORRECTIONAL CENTER,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on September 15, 2021 on all issues. The issues in dispute are accident, causal connection, medical expenses, and the nature and extent of Petitioner's injuries. All other issues have been stipulated.

TESTIMONY

Petitioner was 56 years old, married, with no dependent children at the time of accident. Petitioner is a Correctional Officer for Respondent and has worked for various IDOC facilities since 2001. Petitioner testified that on July 19, 2019 he was performing his duties as an escort officer which involved watching all inmate movement in their assigned zones to make sure there is no deviation from the inmate's assigned route and destination. He stated this required his focus and concentration to make sure the same inmates that pass through his zone are the same inmates that return through his zone. Petitioner testified he was running the dinner lines on 7/19/19 which entails watching and counting inmates as they move through the facility and dinner line. He stated his count was incorrect by six to eight inmates and found all of them running out the front to get in line. This upset Petitioner and as he walked toward the inmates to make sure they did not get mixed up with other inmates he stepped off the sidewalk into a hole. Petitioner stated he stepped into the hole heel first with his right foot and "jarred everything". The Sergeant asked Petitioner if he was alright and he said he was hurting but needed to take care of the inmate line. Petitioner completed his escort duties and stated he injured his upper and lower spine, hip, and right lower extremity as a result of the fall.

Petitioner testified his job duties require a lot of walking and his focus is always somewhere else as he escorts/searches for inmates. Petitioner testified that although he had low back pain in the past which required surgery in 2017, he was not under any active treatment and was working full duty without restrictions immediately prior to the accident. He further testified

that he completed all of the necessary paperwork to make a claim with the State of Illinois and received correspondence that his claim had been approved. He was advised to attend his medical appointments until he was discharged and to submit all medical bills to the claims examiner. Petitioner testified he never received correspondence that his claim was denied.

Petitioner testified he sustained no intervening accidents following the injury on 7/19/19. He testified he received steroid injections, physical therapy, and medication following the accident. Surgery was not recommended and Dr. Gornet released Petitioner to return on an as-needed basis. Petitioner disagreed with Dr. Chabot's statement that a correctional officer position is a low demand job. Petitioner also disagreed with Dr. Chabot's statement that he was back to using narcotic pain medication at the same level he did prior to the accident. Petitioner testified that Dr. Gornet reduced and changed his pain medication and he is no longer taking narcotic pain medication. Petitioner testified that Dr. Chabot failed to record that Petitioner experienced pain with riding a lawnmower which sometimes jarred his back and neck resulting in him taking more pain medication and laying on the couch.

Petitioner testified he has changed job shifts from 3:00 p.m. to 11:00 p.m. to midnights because the inmates are in bed and he does not have to walk or move as much. He stated walking causes pain in his legs and groin and lifting causes back pain. Petitioner testified he requires assistance bush hogging his property because he cannot sit on a tractor as long as he did prior to the accident. He takes Hydrocodone two to three days per week and two muscle relaxers every day.

On cross-examination, Petitioner testified he was able to bushhog his property prior to the accident at which time he was taking stronger pain medication. He testified he continued to have stiffness in his low back following surgery in 2017 and continued taking pain medication for low back pain and migraines. He also took muscle relaxers prior to his work accident and had a prescription for Tizanidine filled ten days prior to his work accident. He agreed he was examined by his primary care physician, Dr. Buchman, in June 2019 for chronic back pain and stated he was getting relief from Norco. Petitioner testified he is taking less Norco since his work accident.

MEDICAL HISTORY

Petitioner presented to the emergency department at Union County Hospital on the date of injury. He provided a history of injury wherein he stepped in a hole with his right foot and began having shooting pains in his right buttock, thigh, and leg. CT imaging of Petitioner's lumbar spine showed no evidence of fracture, but demonstrated disc, endplate, and facet disease at L4-5 and L5-S1 with central canal and foraminal stenosis. Petitioner was diagnosed with sciatica most likely secondary to muscle spasm and discharged with a prescription for Prednisone.

Petitioner presented to his primary care physician, Dr. Kyle Buchman, on 7/23/19, and reported a consistent history of injury. He complained of right-sided back, buttock, and leg pain. Dr. Buchman noted Petitioner "jarred his body in the process" and subsequently began developing pain in his spine and right lower extremity. Dr. Buchman believed Petitioner's right

leg symptoms and paresthesia would improve with Prednisone but referred him for evaluation of the lumbar spine.

On 8/1/19, Petitioner was examined by Dr. Matthew Gornet for complaints of pain in his low back and right buttock, hip, groin, and lateral thigh. Dr. Gornet took a history of Petitioner stepping in a hole with his right leg and jarring his back with a contemporaneous onset of symptoms. Dr. Gornet noted Petitioner's prior history of back problems in 1996, 2009, and 2017. He observed that Petitioner did well and always returned to work following his prior injuries. Petitioner reported constant symptoms at the present and advised that this injury was the first time he had any groin pain of significance.

Dr. Gornet's physical examination was positive for significant pain with bending and decreased EHL and ankle dorsiflexion on the right with trace deep tendon reflexes. He noted that Petitioner's lumbar films revealed loss of disc height at L5-S1 and to a lesser extent at L4-5. He recommended and obtained an MRI of Petitioner's low back that day, which demonstrated evidence of microdecompression changes at L4-5 and L5-S1 with an L4-5 circumferential disc bulge and superimposed central protrusion with caudally extruded disc material and facet arthropathy resulting in moderate-to-severe right-greater-than-left foraminal stenosis, and L5-S1 circumferential disc bulge with a superimposed right lateral recess protrusion with spurring, resulting in right lateral recess stenosis with moderate-to-severe right-greater-than-left foraminal stenosis. Dr. Gornet took particular note of the L4-5 findings suggestive of recurrent disc herniation on the right with an annular tear, and the L5-S1 annular tear and disc osteophyte with the potential of acute on chronic herniation. Dr. Gornet believed that the work injury either aggravated Petitioner's underlying condition or caused a new disc injury, though he suspected it was a combination. He advised Petitioner that his condition would be difficult to treat given his extensive prior treatment. Dr. Gornet recommended conservative care with Prednisone, Meloxicam, Cyclobenzaprine, and Famotidine along with a course of physical therapy. He placed Petitioner on light duty restrictions of no lifting greater than 10 pounds, no repetitive bending or lifting, and alternating between sitting and standing as needed.

Petitioner underwent physical therapy at Rehab Unlimited that brought no lasting relief of his symptoms. He received a Kenalog injection from his family physician on 9/11/19 and contacted Dr. Gornet via telephone the following day advising he was having a severe increase in his low back pain with radiculopathy. Dr. Gornet noted the injection and placed Petitioner off work until he could be examined. Dr. Gornet ultimately recommended that Petitioner cease physical therapy and referred him for injections at L4-5 and L5-S1.

Petitioner received injections on 9/24/19, which provided only temporary relief. He returned to Dr. Gornet and reported continued right buttock, hip, and groin pain. Dr. Gornet also noted that since Petitioner was last seen he developed increasing neck pain and headaches. Petitioner reported a long history of headaches, but he felt his current symptoms were worse and somewhat different than anything he had in the past. Petitioner's current complaints included neck pain into both trapezii and shoulders. Dr. Gornet recommended a cervical MRI, which demonstrated a fairly significant disc herniation at C4-5 causing cord compression and an annular tear at C3-4. Although there was clear degeneration at C5-6 and C6-7, Dr. Gornet noted what appeared to be acute on chronic herniation present. Dr. Gornet stated that he often sees a

delay or even increasing symptoms over time as one body part seems to improve and the other worsens. He stated that inflammation is cellular based and takes a period of time to develop. Dr. Gornet believed Petitioner's current symptoms, at least in their level of severity, were causally connected to his work accident, and recommended Petitioner wean from narcotic medication. Records show that as Petitioner weaned himself from narcotic medication, his neck complaints became more pronounced. Dr. Gornet stated that Petitioner remained temporarily and totally disabled during this time.

On 8/3/20, Petitioner was examined by Dr. Michael Chabot pursuant to Section 12 of the Act. Dr. Chabot reported that Petitioner complained only of right groin pain without radiation of complaints from his back. He also stated that Petitioner was able to mow his lawn with a riding mower. He reported that Petitioner denied neck pain. Physical examination documented tension, loss of cervical lordosis, and reduced cervical range of motion in addition to low back/hip symptoms of decreased internal hip rotation and positive leg role test. Dr. Chabot reviewed Petitioner's records and the imaging studies, noting degenerative findings but no mention of reported tearing. He disagreed with the radiology findings of L4-5 protrusion. His assessment was cervicalgia and low back pain. Dr. Chabot requested Petitioner's primary care records predating the accident for two years for a more in-depth review; however, his primary impression was that Petitioner had a strain/jarring injury to the lumbar spine and right leg as a result of his work injury of 7/19/19. He based his opinion on finding no evidence of radiculopathy and that Petitioner had evidence of long-standing preexisting degenerative disease with no evidence of acute disc herniation. Dr. Chabot believed that Petitioner's treatment to date had been reasonable and necessary and that Petitioner had reached maximum medical improvement and could return to work full duty. Dr. Chabot's description of Petitioner's job duties was "supervision of inmates." Dr. Chabot opined that Petitioner's cervical spine complaints were unrelated to the accident. Respondent thereafter provided additional medical records that predated the work accident which did not change Dr. Chabot's causation opinion.

Petitioner returned to Dr. Gornet on 10/19/20 with ongoing symptoms. Dr. Gornet reviewed and compared Petitioner's current imaging to a pre-injury scan dated 3/14/17 and noted a recurrent herniation at L4-5, which he believed was predominantly responsible for Petitioner's right buttock and hip pain. He stated Petitioner was attempting to cope with his symptoms and Dr. Gornet would observe him for the time being. On 1/28/21, Dr. Gornet noted Petitioner had weaned his narcotic intake and returned to work, but he continued to have low back, right buttock, right hip, right groin, and neck symptoms. Dr. Gornet noted Petitioner switched to the midnight shift to reduce his activity level and encouraged him to continue full duty work.

Petitioner last saw Dr. Gornet on 6/28/21 and examination was unchanged. Dr. Gornet noted he was managing Petitioner conservatively and he discussed a possible fusion at L5-S1 and disc replacement at L4-5, C3-4, and C4-5. He noted Petitioner was still taking narcotics to get through.

Dr. Chabot testified by way of evidence deposition on 11/18/20. Dr. Chabot is a board-certified orthopedic spine surgeon. Dr. Chabot testified he found no evidence of acute injury on examination or diagnostic studies and opined Petitioner sustained a back strain as a result of the accident. He noted Petitioner had a prior history of back surgery and chronic medication use for

his migraines and complaints. He testified that Petitioner's strain injury had returned to baseline and he was capable of returning to full duty work. Dr. Chabot opined Petitioner suffered no injury with respect to his cervical spine as a result of the accident.

On cross-examination, Dr. Chabot acknowledged Petitioner exhibited no signs of symptom magnification during his examination. While he felt that the majority of Petitioner's job duties as a Correctional Officer were low demand, he acknowledged that things could escalate and become high demand if Petitioner had to control an unruly inmate, at which point it would require maximum effort. He did not believe, however, that physical restrain was a common occurrence.

Dr. Chabot acknowledged that the history of the accident is documented in all of Petitioner's treatment records. He acknowledged that Petitioner was working full duty at the time of the accident. He admitted that a jarring incident such as the one described by Petitioner could not only aggravate an underlying condition, but cause new structural injury. Dr. Chabot testified that his physical examination was devoid of any functional residuals he could attribute to the accident. He also admitted that he was the only physician to release Petitioner back to work full duty. He acknowledged he had no information to indicate Petitioner needed muscle relaxers or nonsteroidal anti-inflammatory medication for his back prior to the accident, but that Petitioner continued to have a need for same for more than a year following his accident. He agreed that Petitioner's records prior to the accident documented that his pain was well controlled. He disagreed that Petitioner suffered from herniation in his low back but admitted that such a diagnosis would be consistent with Petitioner's complaints of radiation down his extremity. Irrespective of causation, he also agreed that all of Petitioner's treatment to date had been reasonable and necessary.

Dr. Matthew Gornet testified by way of evidence deposition on 11/23/20. Dr. Gornet is a board-certified orthopedic surgeon. Dr. Gornet reviewed Petitioner's treatment records, including Dr. Chabot's Section 12 report. He noted that his physical examination findings, particularly the decrease in EHL and ankle dorsiflexion, were consistent with nerve problems isolated to the L4-L5 nerves. Dr. Gornet reviewed the post-accident CT and MRI scans and compared them to the pre-accident imaging. Dr. Gornet diagnosed an aggravation of Petitioner's underlying condition as well as a new disc injury. The MRI scan he ordered showed a new free fragmented disc at L4-5 on the right that was not present on the original scan of 3/14/17. The diagnostic imaging correlated very well with his findings on physical examination and Petitioner's subjective complaints of right buttock, hip, groin pain. Dr. Gornet diagnosed an aggravation of preexisting degeneration at L4-5 and L5-S1, as well as a new disc injury with new fragmented disc at L4-5 on the right side.

Dr. Gornet testified that when a person suddenly steps in a hole which they were not expecting, a sudden unexpected mechanical load is created which musculature does not have the opportunity to dampen. He explained that if, as in Petitioner's case, the load exceeds what the stucture can tolerate, fragmented disc can come out. Dr. Gornet explained that Petitioner was particularly susceptible to this effect due to his previous interventions, such as his microdiscectomies which are known to weaken discs by over 30%.

With respect to Petitioner's cervical spine, Dr. Gornet testified it was not unusual to see patients develop increasing symptoms or a change in their symptoms over time, largely in party due to how the inflammatory process works. He testified that Petitioner's imaging studies in his neck also reflected acute-on-chronic herniation, particularly at C4-5, and a central disc protrusion at C3-4. His cervical spine assessment was aggravation of preexisting degeneration at C4-5, C5-6, C6-7, and acute on chronic herniation at C4-5 with annular tear at C3-4. When asked to define what he meant by acute-on-chronic herniation, he stated Petitioner has some preexisting degeneration at C4-5, and it has to do with appearance and the change in size of the disc. You see more fleshy, darker disc coming out of the MRI towards the spinal cord. He stated that the mechanism of Petitioner's injury was also consistent with his cervical disc injuries. He noted that Petitioner had no history of significant neck issues prior to the accident, as there was no indication that Petitioner's headaches or migraines were coming from his cervical spine.

Based upon the above findings and conclusions, Dr. Gornet causally related Petitioner's cervical and lumbar spine conditions to the work accident. He provided copies of Petitioner's pre- and post-accident lumbar imaging for comparison to support his opinion. Dr. Gornet recommended conservative treatment and observation. He noted, however, that surgical options were available if Petitioner was unable to cope with his symptoms. Given the extent of Petitioner's injuries, he believed Petitioner would ultimately need further surgery to address his condition. He also opined that all Petitioner's care and treatment, including possible prospective recommended care, was reasonable and necessary to treat the effects of his work accident.

On cross-examination, Dr. Gornet testified that the calcification visualized by Dr. Chabot was separate and distinct from Petitioner's disc pathology.

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arouse out of and in the course of his employment with employment. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 203 (2003). 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." *Id.* A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in order to fulfill his job duties. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, ¶36.

Accordingly, an injury arises out of an employment-related risk (*i.e.*, a risk "distinctly associate with" and "incidental to" his employment) if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might "reasonably be expected to perform incidental to his assigned duties." *McAllister*, 2020 IL 124848, ¶36; see also *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989).

Petitioner's injuries arose out of his employment because he was injured while performing an act that he was instructed to perform by his employer and one in which Respondent might reasonably expect Petitioner to perform incidental to his assigned duties. There was no evidence that Petitioner deviated from the scope of his employment or that he performed an activity that Respondent did not expect him to perform incidental to his duties.

Moreover, the hole on the premises in which Petitioner stepped would constitute a defective condition. The court in *USF Holland* noted that a plurality of courts have determined that liability should be imposed where an injury occurs as a direct result of a hazardous condition on the employer's premises. *USF Holland, Inc. v. Industrial Commission*, 357 Ill.App.3d 798, 829 N.E.2d 810 (1st Dist., 2005) citing *Caterpillar Tractor Co. v. Indus. Comm'n*, 129 Ill.2d 52, 541 N.E.2d 665 (Ill. 1989); *see also See Archer Daniels Midland Co. v. Indus. Comm'n*, 91 Ill.2d 210, 437 N.E.2d 609, 610 (Ill. 1982); and *Material Service Corp., Division of General Dynamics v. Industrial Commission,* 53 Ill.2d 429, 292 N.E.2d 367 (Ill. 1973) (when conditions of the parking lot were a contributing cause to employee's death, employer was liable even though employee was not engaged in any work activity). When injury to an employee takes place in an area that is a part of the employer's premises that is attendant with a special risk or hazard, the hazard becomes part of the employment, constitutes a risk distinctly associated with the employment, and satisfies the "arising out of" requirement of the Act. *Springfield Urban League v. Illinois Workers' Comp. Comm'n*, 2013 IL App (4th) 120219WC, 990 N.E.2d 284, 291 citing *Litchfield Healthcare Center v. Industrial Comm'n,* 349 Ill.App.3d 486, 812 N.E.2d 401, 406 (5th Dist. 2004).

From another prospective, the record is clear that Petitioner was also exposed to a qualitative increased risk of injury by virtue of the distracting nature of his job duties, which directed his attention away from where he was walking. The Arbitrator notes in *Kram v. SOI/Vienna Corr. Ctr.*, 15 I.W.C.C. 0286, the Commission held that the claimant, a Correctional Officer, sustained a compensable injury when he injured his knee while stepping down stairs to the landing on his way to take corrective action against two inmates breaking line formation. He testified that the insubordinate inmates diverted his attention from where he was stepping and resulted in his left knee injury. *Id.* The Commission confirmed the Arbitrator's award of benefits, finding that such a distraction constituted a qualitative increased risk. *Id.* Petitioner's claim is nearly identical to the matter of *Kram*, as he was distracted by missing inmates when he stepped in the hole.

For the foregoing reasons, the Arbitrator finds that Petitioner's accidental injuries 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 the injury?

Causal connection between accident and claimant's condition may be established by chain of events including claimant's ability to perform manual duties before accident, decreased ability to still perform immediately after accident, and other circumstantial evidence. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979). When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to

have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital v. Workers' Comp. Comm'n*, 864 N.E.2d 266, 272-273 (5th Dist. 2007).

The law holds that accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 797 N.E.2d 665, 672 (2003). "Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Industrial Commission*, 723 N.E.2d 846 (3d Dist. 2000). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 834 N.E.2d 583 (2d Dist. 2005). Employers are to take their employees as they find them. *A.C. & S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1st Dist., 1999) citing *General Electric Co. v. Industrial Comm'n*, 433 N.E.2d 671, 672 (1982). If a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Constr. v. Indus. Comm'n*, 227 N.E.2d 65, 67-68 (Ill. 1967); see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 362 N.E.2d 339 (Ill. 1977).

The Arbitrator finds that Dr. Chabot's causation opinion does not comport with the manifest weight of the evidence or the law and finds Dr. Gornet's testimony regarding the differences between Petitioner's pre-and-post-accident condition of ill-being more persuasive. Petitioner was able to work full duty prior to the injury. The objective medical evidence and diagnostic studies showed clear evidence of injury superimposed upon his preexisting condition in the lumbar spine. Petitioner was not able to return to his pre-injury baseline. Petitioner suffered no intervening injuries. There is no prior reference to neck complaints in the records. Dr. Chabot admitted that a jarring incident such as the one described by Petitioner could not only aggravate an underlying condition, but also cause new structural injury. The Arbitrator does not find that Petitioner's cervical spine complaints manifested in an unreasonable amount of time following the injury to bring causality into question, and Dr. Gornet logically explained that inflammatory processes in injuries such as Petitioner's may develop or progress over time following the injury.

Therefore, the Arbitrator finds that Petitioner's current condition of ill-being in his cervical and lumbar spine is causally connected to his work injury.

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

Upon a claimant's establishment of a causal nexus between injury and illness, employers are responsible for the employees' medical care reasonably required in order to diagnose, relieve, or cure the effects of the claimant's injury. *Plantation Mfg. Co. v. Indus. Comm'n,* 294 Ill.App.3d 705, 691 N.E.2d 13 (2000); *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill.App.3d 527, 758 N.E.2d 18 (1st Dist. 2001). Dr. Chabot agreed, irrespective of causality, that Petitioner's care and treatment up to the time of his deposition was reasonable and necessary. Dr. Gornet likewise opined that Petitioner's care and treatment, including the likely need for future care, was

reasonable, necessary, and related to the accident. Respondent shall therefore pay the reasonable and necessary medical expenses contained in Petitioner's group exhibit 1, 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. 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 a credit for medical bills paid through its group medical plan, if any, pursuant to Section 8(j) of the Act. Respondent shall further hold Petitioner harmless from all claims or liabilities made by the group medical plan to the extent of such 8(j) credit.

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

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

(i) **Level of Impairment**: Neither party submitted an AMA rating. Therefore, the Arbitrator places no weight on this factor.

(ii) **Occupation**: Petitioner continues to serve as a Correctional Officer. He testified, however, that he switched to midnight shift to reduce the amount of walking and movement required to perform his job duties. The Arbitrator places greater weight on this factor.

(iii) **Age**: Petitioner was 56 years old at the time of his injury. He must live and work with his disability for a number of years. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity**: There is no direct evidence of reduced earning capacity contained in the record. The Arbitrator places some weight on this factor.

(v) **Disability**: Petitioner sustained an aggravation of a preexisting degeneration condition in his lumbar spine at levels L4-5 and L5-S1, as well as a new disc injury with new fragmented disc at L4-5 on the right side, and an aggravation of a preexisting degenerative condition at C4-5, C5-6, C6-7, and acute on chronic herniation at C4-5 with annular tear at C3-4. Petitioner testified to continued limitations because of his injuries. He switched to the midnight shift because he is no longer able to perform the amount of walking required on the 3 pm to 11 pm shift. He testified he continues to have back pain, particularly with lifting, and requires assistance with bushhogging his property as riding a tractor increases his pain. He takes pain medication and muscle relaxers for his symptoms. The Arbitrator finds Petitioner's complaints consistent with his treating records and places greater weight on this factor.

Based upon the above factors and the record taken as a whole, the Arbitrator orders Respondent to pay Petitioner permanent partial disability benefits of $**756.71**/week for **50** weeks because the injuries sustained caused **10%** loss of use of the person as a whole related to Petitioner's lumbar spine, and permanent partial disability benefits of $**756.71**/week for **25** weeks because the injuries sustained caused **5%** loss of use of the person as a whole related to Petitioner's cervical spine, pursuant to Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 10/19/20 through 9/15/21, and shall pay the remainder of the award, if any, in weekly payments.

Linda J. Cantrell, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC013774
Case Name	Tina Poyer v. GPM Investments
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0091
Number of Pages of Decision	18
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Charles Given
Respondent Attorney	Miles Cahill

DATE FILED: 3/1/2023

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WINNAGABO

☒ 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

TINA POYER,

Petitioner,

vs. NO: 21 WC 13774

GPM INVESTMMENTS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b)/8(a) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of penalties and attorneys' fees, under Sections 19(k), 19(l), and 16 of the Act, 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 Comm'n*, 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 April 22, 2022, is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $60,000.00. 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.

March 1, 2023

o-2/21/23
KAD/jsf

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC013774
Case Name	POYER, TINA v. GPM INVESTMENTS
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Miles Cahill
Respondent Attorney	Charles Given

DATE FILED: 4/22/2022

THE INTEREST RATE FOR THE WEEK OF APRIL 19, 2022 1.25%

/s/ Paul Seal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Tina Poyer
Employee/Petitioner

v.

GPM Investments
Employer/Respondent

Case # **21** WC **013774**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Rockford**, on **March 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, **April 28, 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 $**42,387.80**; the average weekly wage was $**815.15**.

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

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

Respondent shall be given a credit of $**15,218.84** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**15,218.84**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $543.43/week for 43 weeks, commencing May 25, 2021, through March 21, 2022, as provided in Section 8(b) of the Act.

Respondent shall pay to Petitioner penalties of $**2,620.86**, as provided in Section 16 of the Act; $**4,074.32**, as provided in Section 19(k) of the Act; and $**9,030.00**, as provided in Section 19(l) of the Act.

Respondent shall authorize and pay for the right knee surgery prescribed by Dr Whitehurst and confirmed as reasonable, necessary and causally related by Section 12 examiner Dr Weiss. The medical bills should be paid as provided in Section 8(a) 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.

APRIL 22, 2022

Signature of Arbitrator

ICArbDec19(b)

Findings of Fact

At the time of her accident, Tina Poyer ("Petitioner") was a 50-year-old Manager of a gas station owned by GPM Investments ("Respondent"). She started this job in January 2021. On April 28, 2021 she injured her right knee when she missed a step on a two-step stool and fell to the ground.

Petitioner's initial medical treatment was at Mercy Hospital in Woodstock on the day of the accident. X-rays of the right knee were performed and negative for fracture. PX1.

On April 29, 2021, Petitioner was examined at Physician's Immediate Care. Petitioner had pain at 7/10. On examination, the medial joint line and right patella tendon were tender and she had pain with end point flexion. Petitioner was provided with a right knee brace and allowed to return to work with sedentary work restrictions. PX1.

Petitioner was seen at Physicians Immediate Care on May 3, 2021. Her symptoms had not improved and she had similar pain complaints and physical examination findings. Petitioner was prescribed a course of physical therapy and provided with light duty work restrictions. PX1.

Petitioner started a course of physical therapy on May 4, 2021. PX1.

On May 11, 2021, Petitioner was examined at Physicians Immediate Care. She did not have relief with the therapy and had the same physical examination findings and pain complaints. The doctor prescribed an MRI of the right knee. PX1.

Petitioner attended 4 sessions of physical therapy at Physicians Immediate Care between May 4, 2021 and May 14, 2021. PX1.

On May 18, 2021, Petitioner underwent a MRI of the right knee. This revealed a complete tear of the ACL, grade 1 MCL sprain, and macro trabecular contusion within the posterior dural lateral tibia with superimposed vertically oriented fracture line within the tibial diaphysis. Petitioner was referred by Physicians Immediate Care to Dr Andrew Blint at NitrOrthopaedics. PX1.

On May 24, 2021, Petitioner was examined by Dr Blint. Dr Blint reviewed the MRI and saw a possible nondisplaced fracture of the right tibial plateau in addition to the grade 1 MCL sprain and ACL tear. He recommended non-weight bearing and continued use of the right knee brace and referred Petitioner to Dr Jon Whitehurst for further evaluation. She was to remain off work. PX2.

Petitioner was terminated from employment with Respondent on May 24, 2021.

On June 11, 2021, Petitioner was examined by Dr Whitehurst. Pain at rest was 7/10 and increased to 8/10 with activity. On physical examination she had pain in the posterior right knee. The doctor reviewed the MRI films and confirmed an ACL tear. Petitioner was prescribed a course of physical therapy due to the stiffness present in her knee. PX2.

Therapy at Rockford Orthopaedic Rehab did not start until August 26, 2021 because authorization was not received until August 24, 2021. Petitioner completed 10 sessions of therapy through September 30, 2021. PX3.

On September 24, 2021, Petitioner was re-examined by Dr Whitehurt. She had pain over the posterior and lateral aspects of the right knee. Her range of motion was 120 degrees of flexion and 5 degrees on extension. Dr Whitehurst opined Petitioner had exhausted conservative treatment and prescribed right knee surgery, likely to include right knee arthroscopy, ACL reconstruction and possible partial meniscectomy. PX3.

On January 7, 2022, Petitioner was examined by Dr Stephen Weiss, a Section 12 independent medical examiner hired by the Respondent. On physical examination there was medial joint line tenderness and mild pain on valgus stress on the right side. There was positive Lachman sign. Dr Weiss agreed with the diagnoses of ACL tear, Grade 1 MCL sprain and non-displaced fracture of the lateral tibial plateau and found these conditions to be causally related to the work accident of April 28, 2021. He agreed with Dr Whitehurst's surgical recommendation and indicated Petitioner could work with light duty restrictions of no carrying more than 10 pounds for distances greater than 20 feet, no squatting crawling, ladder climbing or stair climbing. PX4.

Petitioner testified she'd like to undergo the surgery recommended by Dr Whitehurst but it has not been approved by the Respondent. She tried to schedule the surgery as recently as the Friday before the Monday hearing, but was advised the facility had not received approval yet. She notices limitations with her range of motion in the knee and is severely limited in what she is able to do. She always wears a locking brace on her knee for stability purposes. The knee "gives out" and "pops" when walking. Prior to this accident she was not having any issues with her right knee.

Petitioner testified she has only received 3 TTD checks, totaling $15,218.84 (PX7):

1. $81.60, dated October 12, 2021
2. $4,266.64, dated October 15, 2021
3. $10,870.60, dated November 10, 2021.

She never received the checks issued January 6, 2022, in the amount of $4,890.87 and January 13, 2022, in the amount of $543.43, that "posted" pursuant to Respondent's Exhibit 2.

The delay in payments of TTD benefits has caused her significant harm. Petitioner testified that her truck is in the process of getting repossessed because she has missed payments. She is in jeopardy of being evicted because she has been unable to make rent payments to her landlord. Her phone was being turned off on the date of hearing because she could not pay for the service. She has had to borrow money from her mother and her church, but they cannot lend her any more money. Her credit score has been negatively impacted.

Conclusions of Law

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

Petitioner testified she was not having any problems with her right knee before the accident on April 28, 2021, when she missed a step on a two step stool and fell to the ground. She obtained medical treatment the same day as the accident. She underwent two courses of physical therapy with minimal improvement. MRI performed May 18, 2021, revealed a complete tear of the ACL, grade 1 MCL sprain, and macro trabecular contusion within the posterior dural lateral tibia with superimposed vertically oriented fracture line within the tibial diaphysis. PX1. Dr Whitehurst has recommended right knee surgery which will likely include right knee arthroscopy, ACL reconstruction and possible partial meniscectomy. PX3. Respondent's Section 12 independent medical examiner confirmed the surgery recommendation is reasonable, necessary and causally related to the work accident. PX4.

The Arbitrator has reviewed the evidence and finds Petitioner's current condition of ill-being is causally related to the work accident of April 28, 2021.

K. Is Petitioner entitled to any prospective medical care?

Based on the evidence presented and the Arbitrator's findings in Section "F", Petitioner's right knee surgery prescribed by Dr Whitehurst is reasonable, necessary and causally related to the work accident of April 28, 2021. The Arbitrator awards the same and Respondent shall pay for the treatment pursuant to Section 8(a) of the Act.

L. What temporary total disability benefits are in dispute and payable?

The parties stipulated Petitioner is entitled to TTD benefits for 43 weeks, representing the period between May 25, 2021 and March 21, 2022. Respondent shall receive a credit for the TTD benefits already issued totaling $15,218.84. Petitioner testified she never received the checks issued January 6, 2022, in the amount of $4,890.87 and January 13, 2022, in the amount of $543.43, that "posted" pursuant to Respondent's Exhibit 2. In addition to Petitioner's testimony

that she never received these checks, Petitioner's Exhibit 5 also has email communications from Petitioner's attorney to Respondent's attorney indicating she never received these benefits. Petitioner's testimony was not rebutted by the Respondent. The Arbitrator finds Petitioner credible and awards Respondent a credit for TTD benefits paid of $15,218.84.

M. Should penalties or fees be imposed upon Respondent?

After reviewing the testimony and the evidence submitted by the parties, the Arbitrator finds the Petitioner is entitled to attorney's fees under Section 16 in the amount of $2,620.86 and penalties under Sections 19(k) in the amount of $4,074.32 and 19(l) in the amount of $9,030.00.

In reaching said decision, the Arbitrator does not take lightly the imposition of penalties and attorney's fees. In this case, Respondent's serial failure to pay compensation and to pay it timely, and its failure to authorize treatment – even after its Section 12 examiner opined reasonableness, necessity, and relation of said treatment – is unreasonable, dilatory, and vexatious. Respondent's behavior in this case is the very type that these sections of the Act are intended to prevent. Not only does Respondent have no defense in this case, its own evidence corroborates Petitioner's position and warrants penalties and fees.

For the foregoing reasons, the Arbitrator finds Respondent liable for the following penalties and attorney's fees:

Section 19(l):

Section 19(l) provides in pertinent part, as follows:

"In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay." (Emphasis added.) 820 ILCS 305/19(l) (West 2006).

Penalties under section 19(l) are in the nature of a late fee. Mechanical Devices v. Indus. Comm'n, 344 Ill. App. 3d 752, 763, 800 N.E.2d 819, 828 (2003). In addition, the assessment of a penalty under section 19(l) is mandatory "if the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay." McMahan v. Indus. Comm'n, 183 Ill. 2d 499, 515, 702 N.E.2d 545, 552 (1998). The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness. Mechanical Devices, 344 Ill. App. 3d at 763, 800 N.E.2d at 829. The employer has the burden of justifying the delay, and the employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified. Bd. of Educ. of the City of Chi. v. Indus. Comm'n, 93 Ill. 2d 1, 9-10, 442 N.E.2d 861, 865 (1982).

The evidence shows Petitioner provided the off work note of May 24, 2021 and the light duty work note of June 11, 2021 to the Respondent via email as of June 15, 2021. The Respondent was provided with the May 18, 2021 MRI report and May 18, 2021 referral from Physicians Immediate Care to Dr Blint at the same time. Follow up emails were sent on June 21, 2021, June 23, 2021, June 25, 2021, June 30, 2021, July 1, 2021 and July 2, 2021. PX5. A notice of motion was filed on July 7, 2021 and sent to the Respondent via email. PX5 and PX6. Follow up emails were sent to Respondent July 14, 2021, July 19, 2021, July 23, 2021, August 3, 2021, and August 8, 2021, with no response. Respondent's attorney filed an Appearance on August 9, 2021. Petitioner's attorney provided Respondent's attorney with the current medical via email on August 12, 2021. PX5

A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay. This presumption was never rebutted by the Respondent.

On August 13, 2021, the parties appeared for a pre-trial before the Arbitrator. Respondent Attorney maintained TTD benefits would be brought current but the Arbitrator set the case for hearing on October 12, 2021, just in case.

On August 25, 2021, Petitioner's attorney sent Respondent's attorney the August 25, 2021 work status note and confirmation the therapy sessions had been scheduled and confirmed no TTD benefits had been received. Follow up emails were sent from Petitioner's attorney to Respondent's attorney regarding the unpaid TTD benefits on August 27, 2021, September 7, 2021, September 9, 2021, September 13, 2021, and September 22, 2021. On September 27, 2021, Petitioner's attorney sent Respondent's attorney the September 24, 2021, work status note and prescription for surgery issued by Dr Whitehurst. PX5.

Petitioner's attorney sent an email to Respondent's attorney on October 5, 2021 requesting an update on TTD benefits. Respondent's attorney responded October 6, 2021 and indicated a check in the amount of $4,266.64 had been issued on September 23, 2021. PX5. This check was never received by the Petitioner and on the payment log it shows the check was issued and removed on the same day. The check never posted. RX2.

In an October 11, 2021 email, Respondent's attorney confirmed they were scheduling a Section 12 independent medical examination but would issue all back TTD benefits and continue TTD benefits until the Section 12 report was received from the doctor. The case was continued on October 12, 2021 pursuant to this agreement. PX5.

Respondent issued a check for $81.60 on October 12, 2021 and a check for $4,266.64 on October 15, 2021. PX7. The case was re-motioned by the Petitioner on October 18, 2021. PX6. Petitioner's attorney sent an email to Respondent's attorney on October 27, 2021 indicating these checks were received but an underpayment of $7,918.35 existed for benefits due through October 31, 2021. Follow up emails were sent by the Petitioner's attorney to the Respondent's attorney regarding the underpayment on October 29, 2021 and November 4, 2021. PX5.

The case was pre-tried before Arbitrator Seal on November 9, 2021. At that time the case was set for hearing on December 22, 2021 because TTD benefits had not been brought current, TTD benefits had not been placed on repetitive payment and the Section 12 examination had not been scheduled.

A check for $10,870.60 was issued by the Respondent on November 10, 2021. The Section 12 examination was scheduled the same day. PX4 and PX7.

Petitioner's attorney emailed Respondent's attorney regarding TTD benefits on November 26, 2021, November 21, 2021, November 30, 2021, December 7, 2021, December 9, 2021, December 13, 2021 and December 19, 2021 with no response. On December 20, 2021, Respondent's attorney emailed Petitioner's attorney to confirm TTD benefits of $2,173.22 were issued on December 16, 2021. He also indicated additional benefits would be issued on December 22, 2021. The trial set for December 22, 2021 was continued based on this email. Petitioner never received a check dated December 16, 2021 in the amount of $2,173.22. PX5. Respondent's Exhibit 2 does not show this check was issued on December 16, 2022. Instead, it shows a check in the amount of $1,087.06 was entered and another check in the same amount was removed. These checks never posted. No checks were issued on December 22, 2021. Respondent's Exhibit 2 shows a check in the amount of $543.43 was entered on December 23, 2021 but another check in the same amount was removed. These checks never posted.
On January 4, 2022, Petitioner's attorney emailed the defense attorney to confirm no additional checks had been received. Respondent's attorney confirmed stop payments would be ordered and checks would be reissued. The adjuster on the file sent an email January 6, 2022 confirming a check in the amount of $4,890.87 had been issued. PX5.

Petitioner attended the Section 12 examination with Dr Weiss on January 7, 2022. PX4.

On January 11, 2022, Petitioner re-motioned the case for hearing. PX6.

Petitioner's attorney sent Respondent's attorney emails on January 19, 2022, January 24, 2022, February 1, 2022, February 3, 2022, February 4, 2022 and February 8, 2022, indicating no TTD checks had been received, including the check issued January 6, 2022. PX5.

On February 8, 2022, Respondent's attorney provided the Section 12 report of Dr Weiss to Petitioner's attorney and advised the surgery prescribed by Dr Whitehurst would be authorized. PX4.

At the pre-trial on February 9, 2022, the case was set for trial on March 21, 2022.

Petitioner's attorney emailed Respondent's attorney regarding the TTD benefits February 11, 2022, February 17, 2022, February 22, 2022, February 24, 2022, March 1, 2022, and March 7, 2022. PX5.

It is clear there have been numerous delays in the payment of TTD benefits in this claim which the Arbitrator finds clearly unreasonable. Petitioner has been off work with doctors notes since May 25, 2021. A defense has never been raised by the Respondent in this case. At the beginning, it is clear there was a breakdown in communication within the Respondent as to who was handling the claim. No Appearance was filed by Respondent's attorney until August 9, 2021, three days before the first scheduled pre-trial. However, the Respondent's issues have not been corrected. The Respondent's attorney had maintained on October 11, 2021, the day before a hearing was scheduled, that TTD benefits would be brought current and would remain current until Respondent received a Section 12 report. The first TTD check received on this case was issued on October 12, 2021 in the amount of $81.60. The second TTD check received was issued on October 15, 2021 in the amount of $4,266.64. Benefits of $11,178.89 were due as of October 15, 2021. Petitioner didn't receive another check until the one dated November 10, 2021. This check was issued after yet another pre-trial was held on November 9, 2021. Petitioner has not received any additional checks. A number of checks that were allegedly issued were never received by the Petitioner. When Respondent was notified that the checks were not received, the checks were never reissued. The Respondent was provided with more than enough opportunities to remedy the situation.

A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay. This presumption was never rebutted by the Respondent. The Respondent has been unable to show an adequate justification for the delay.

The Arbitrator awards $30.00 a day for each day that TTD was delayed. The period from May 25, 2021 through March 21, 2022 is 301 days. 19(l) penalties are awarded in the amount of $9,030.00.

Section 19(k):

The standard for awarding penalties under section 19(k) is higher than the standard under 19(l). Section 19(k) of the Act provides, in pertinent part, as follows:

"In case where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation…then the Commission may award compensation additional to that otherwise payable under the Act equal to 50% of the amount payable at the time of such award." (Emphasis added.) 820 ILCS 305/19(k) (West 2006).

An award of penalties pursuant to section 19(k) is "intended to promote the prompt payment of compensation where due and to deter those occasional employers or insurance carriers who might withhold payment from other than legitimate motives." McMahan v. Indus. Comm'n, 289 Ill. App. 3d 1090, 1093, 683 N.E.2d 460, 463 (1997), aff'd, 183 Ill. 2d 499, 702 N.E.2d 545 (1998). The standard for awarding penalties and attorney fees under section 19(k) of the Act is higher than the standard for awarding penalties under section 19(l) because section 19(k) requires more than an "unreasonable delay" in payment of an award. McMahan, 183 Ill. 2d 499, 514-15, 702 N.E.2d 545, 552 (1998). It is not enough for the claimant to show that the employer simply failed, neglected, or refused to make payment or unreasonably delayed payment without good and just cause. McMahan, 183 Ill. 2d at 515, 702 N.E.2d at 552. Instead, section 19(k) penalties are "intended to address situations where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose." McMahan, 183 Ill. 2d at 515, 702 N.E.2d at 553.

Respondent has presented no defense for denying and/or delaying Petitioner's benefits. In fact, its belatedly obtained section 12 report finds the reasonableness, necessity, and relation of Petitioner's treatment. The first TTD check issued on this case was on October 12, 2021 in the amount of $81.60. The second TTD check was issued on October 15, 2021 in the amount of $4,266.64. Benefits of $11,178.89 were due as of October 15, 2021. Petitioner didn't receive another check until the one dated November 10, 2021. This check was issued after yet another pre-trial was held on November 9, 2021. Petitioner has not received any additional checks.

A number of checks that were allegedly issued were never received by the Petitioner. When Respondent was notified that the checks were not received, the checks were never reissued. Respondent's attorney maintained before the Commission on multiple occasions the TTD benefits would be brought current and would continue to be paid while they were waiting on a Section 12 report. Petitioner was never placed on a repetitive system and benefits were never willingly issued without appearing before the Arbitrator.

The Respondent sent Petitioner's attorney a copy of the Section 12 report on February 8, 2021. The hearing date was March 21, 2022. The surgery had not been authorized as of the date of the hearing. TTD benefits had not been received since November 10, 2021. Respondent's own Exhibits show the TTD benefits were never issued timely. Because Respondent has not issued benefits in a timely manner, Petitioner has had to borrow money from her mother and her church. She is close to being evicted from her home and her truck is close to being repossessed. Respondent's actions warrant the award of penalties under Section 19(k).

TTD benefits are due for 43 weeks, covering the period between May 25, 2021 and March 21, 2022. The total amount of TTD benefits due is $23,367.49. Petitioner has received TTD benefits of $15,218.84, leaving TTD benefits due in the amount of $8,148.65. Penalties are due in the amount of $4,074.32, which is 50% of the unpaid benefits.

Section 16:

Section 16 of the Act provides for an award of attorney fees when an award of additional compensation under section 19(k) is appropriate. 820 ILCS 305/16 (West 2006).

Having found the Respondent's actions towards Petitioner to be unreasonable and vexatious and dilatory, the Arbitrator awards attorney's fees under Section 16. The Arbitrator awards 20% of the total penalties, or $2,620.86 (20% *($9,030.00 + $4,074.32)).

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC019441
Case Name	Herbert Miller v. Manchester Tank
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0092
Number of Pages of Decision	10
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	PHILIP BARECK
Respondent Attorney	Matthew Brewer

DATE FILED: 3/3/2023

/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

HERBERT MILLER,
Petitioner,

vs. NO: 20 WC 19441

MANCHESTER TANK,
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 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 28, 2022 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $36,700.00. 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.

March 3, 2023
O: 03/02/23
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	20WC019441
Case Name	Herbert Miller v. Manchester Tank
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Philip Bareck
Respondent Attorney	Matthew Brewer

DATE FILED: 7/28/2022

THE INTEREST RATE FOR THE WEEK OF JULY 26, 2022 2.92%

/s/Maureen Pulia, 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
NATURE AND EXTENT ONLY

HERBERT MILLER,
Employee/Petitioner

v.

MANCHESTER TANK,
Employer/Respondent

Case # **20** WC **19441**

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 **Maureen Pulia**, Arbitrator of the Commission, in the city of **Springfield**, on **7/6/22**. By stipulation, the parties agree:

On the date of accident, **5/6/20**, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $**38,267.84**, and the average weekly wage was $**735.92**.

At the time of injury, Petitioner was **59** years of age, ***married*** with **no** dependent children.

Necessary medical services and temporary compensation benefits have or will be provided by Respondent. Petitioner offered into evidence $5,983.64 in unpaid bills, which respondent has agreed to pay pursuant to the Act. Respondent shall receive credit for any of these bills paid by Respondent's group medical carrier and Respondent will hold petitioner safe and harmless pursuant to Section 8(j) of the Act up to the amount of the credit. Respondent shall reimburse petitioner for any out of pocket medical expenses he paid that were related to the reasonable and necessary medical treatment he received as a result of the injury on 5/6/20. Petitioner shall provide Respondent with proper documentation evidencing payments.

Respondent shall be given a credit of $**5,817.23** for TTD, $**280.55** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**6,097.78**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 $**441.55**/week for a further period of **96.75** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused petitioner a **45% loss of use of his right leg**.

Respondent shall pay Petitioner compensation that has accrued from **5/6/20** through **7/6/22**, and shall pay the remainder of the award, if any, in weekly payments.

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

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

JULY 28, 2022

Signature of Arbitrator

ICArbDecN&E p.2

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 59 year old welder, sustained an accidental injury to his right leg/hip that arose out of and in the course of his employment by respondent on 5/6/20. Petitioner began working for respondent in September 1997. His duties included working in a factory as a head press welder/repairman of bad welds. He testified that the job is physical and requires lifting, pushing, and pulling up to 50 pounds daily. He works mainly with steel. Petitioner denied any hip problems/issues or treatment for osteporosis prior to 5/6/20.

On 5/6/20 petitioner was testing a tank at low pressure test. While doing this his feet got caught in the line and he fell on his right side. He was taken to Blessing Hospital via ambulance. He complained of right hip and right shoulder pain. It was noted that petitioner was laying on the floor with external rotation and screaming when the ambulance arrived. Petitioner was diagnosed with a moderately displaced right femoral neck fracture and admitted to the hospital.

On 5/7/20 petitioner underwent a right hip total arthroplasty performed by Dr. Crickard. His post-operative diagnosis was right femoral neck fracture with displacement. Petitioner tolerated the surgery well.

On 5/8/20 petitioner was discharged from the hospital. Prior to discharge he was up and mobilizing with physical and occupation therapy. Petitioner was educated on standard hip precautions, including weight bearing as tolerated. His pain was well controlled. He was authorized off work until released by Dr. Crickard.

On 5/21/20 petitioner followed up with Dr. Crickard. Petitioner reported no post-op problems. He was ambulating with a cane. Dr. Crickard noted that petitioner was doing well. He had a long discussion with petitioner about how his recovery is different than a total joint for osteporosis.

On 5/28/20 petitioner began a course of therapy at Advance Physical Therapy. He underwent an initial evaluation. While in therapy his hip was still sore.

On 6/19/20 petitioner returned to Quincy Clinic and was seen by Nurse Practitioner Becker. It was noted that petitioner had no previous treatment for osteoporosis. She noted that the DEXA showed evidence of osteoporosis with recent fragility fracture of the hip. She recommended initiating treatment for his osteoporosis. Petitioner began treatment for his osteoporosis with Forte injections through July 2022, at which point he was to switch to Prolia injections, as he will have completed 2 years of anabolic therapy. Petitioner remained at risk for fragility fractures in the future.

On 6/25/20 petitioner followed-up with Dr. Crickard. He noted that he was doing well the day before and went to therapy, but woke up in the night and took a couple of aspirins due to pain and woke up in the morning unable to abduct and adduct his leg without pain. X-rays were taken and an examination was performed. Dr. Crickard was not sure if petitioner's complaints were due to therapy or some other activity. He

was of the opinion that it was more likely that this was normal recovery and that petitioner would have good and bad days.

On 7/28/20 petitioner returned to Dr. Crickard. Petitioner was controlling his pain with acetaminophen. He was ambulating well without a walker. He was making gradual improvement and was back to regular activities of daily living. Dr. Crickard continued petitioner off work. On 8/27/20 petitioner reported that he was still really struggling to walk, and sleep at night due to pain. He also complained of right knee pain that was still sore from the fall. Following an examination and x-rays Dr. Crickard was of the opinion that petitioner was struggling from some greater trochanter bursitis, as well as some possible back issues. Dr. Crickard performed an injection into his greater trochanter bursa. Petitioner asked about aqua therapy. Dr. Crickard released petitioner to work with sitting 100% of the time.

Petitioner began a new course of physical therapy on 9/4/20 at Quincy Medical Group. Petitioner presented with impaired balance, gait, muscle strength and range of motion. This course of therapy included water therapy. The plan was for 2 times a week for 6 weeks.

On 9/24/20 petitioner returned to Dr. Crickard after 6 sessions of therapy. Petitioner did not report any pain, and was ambulating well with a cane. Dr. Crickard was of the opinion that petitioner's recovery was very slow. He planned to send petitioner to therapy for work hardening. Petitioner continued in therapy.

On 10/22/20 petitioner followed-up with Dr. Crickard. Petitioner reported some soreness. He stated that last night he felt pain in the right leg after it twisted and had been sore ever since. Dr. Crickard indicated that he wanted petitioner to start work hardening. Petitioner continued in therapy and with work hardening.

On 11/19/20 petitioner reported no pain when he presented to Dr. Crickard. He stated that his leg was doing better, but he was still unable to lay on the right hip. Dr. Crickard indicated that he would like to get petitioner back to work without restrictions. He told petitioner to follow-up in May of 2021. Petitioner continued in therapy and work hardening through 11/20/20. On that date petitioner was discharged with a home an exercise program that was to be completed 1-2 times a day. He had met all his goals, but one. That one related to strength in his right hip, which was a 4/5.

On 5/18/21 petitioner followed-up with Dr. Crickard for his 1 year follow-up. He reported that he had pain in his right hip everyday at work, otherwise it does not bother him. Petitioner was exquisitely tender over the greater trochanter bursal area. He had no real pain with internal and external rotation of the right hip or axial load. X-ray showed the components were in good position. Dr. Crickard noted that petitioner had greater trochanter bursitis. He also performed a right hip bursa injection.

On 5/26/22 petitioner returned to Dr. Crickard. Petitioner was doing very well, and did not have any pain. His only complaint was discomfort over the bursa area. He ambulated without assistance. Dr. Crickard instructed petitioner to follow-up in two years. With respect to his bursitis, Dr. Crickard advised him to ice his hip for 20 minutes on and off throughout the day. He told petitioner to call if he wanted a steroid injection. Petitioner refused an injection that date.

Petitioner testified that his next visit with Becker for his osteoporosis is in one month. He also testified that if his hip is not stable in 10-15 years he would consider a revision surgery. However, there is no current recommendation for any revision surgery.

Petitioner was off work and collected temporary total disability benefits from 5/7/20-7/28/20. He then returned to light duty for a while and collected temporary partial disability benefits for a couple months, before returning to full duty as a welder without restrictions on 11/19/20. Petitioner testified that he is still working as a welder today.

The parties stipulated that there may be $5,983.64 in bills still outstanding, as well as some out of pocket expenses paid by petitioner, that will be paid by the respondent. The parties further stipulated that respondent shall get credit which may be allowed under Section 8(j) of the Act for all medical bills respondent paid through its group medical plan.

Currently, petitioner has a lot pain in his right hip when working. As a result, he has to stop periodically to ease the pain. He takes 1000 mg of aspirin for the pain. Petitioner testified that he can do most jobs up to 50 pounds. He stated that heavier work takes longer. Petitioner testified that when he bends over or stoops the pain in his right hip worsens. He noted that the pain starts in one spot and spreads down his leg and sometimes he cannot move. Petitioner testified that at home he can't sit for long periods of time or his hip gets sore. At night, he can't lay on his right side. Sitting puts pressure on his right hip.

Petitioner testified that when he uses his riding mover his right hip hurts. He also testified that doing stairs and walking on uneven surfaces is hard.

Petitioner takes Vitamin C and D, and does daily injections of Forte for his osteoporosis. Petitioner does not take any pain medication. Petitioner testified that he has no issues with his right shoulder, and that the only treatment for it was at Blessing Hospital on the date of accident.

The nature and extent of petitioner's injury, consistent with 820 ILCS 305/8.1b, permanent partial disability, shall be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1b of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability

corroborated by the treating medical records. 820 ILCS 305/8.1b. No single enumerated factor shall be the sole determinant of disability. Id.

Neither party submitted an AMA rating pursuant to Section 8.1b of the Act into evidence. For this reason, the arbitrator gives no weight to this factor.

With respect to factor (ii), the occupation of the injured employee, the petitioner was a welder. The arbitrator notes that the petitioner was able to return to full duty work on 11/19/20 and continues to work in that capacity today. Petitioner does report a lot of pain in his right hip when working, and as a result, has to stop periodically to ease the pain, and take some aspirin if needed. Petitioner can do most jobs up to 50 pounds, but heavier work takes longer. He testified that when he bends over or stoops the pain in his right hip worsens. For these reasons, the arbitrator gives greater weight to this factor.

With respect to factor (iii), the age of the employee. Petitioner was 59 years old on the date of injury, and 61 years old on the date of trial. The petitioner has a work life expectancy of less than 5-10 years. For these reasons, the Arbitrator gives lesser weight to this factor.

With respect to factor (iv), the future earnings of the petitioner, the petitioner was released from care on 11/19/20 to full duty without restrictions. No evidence was offered to support a finding that petitioner has sustained any wage loss as a result of this accident, or that his future earnings have been negatively impacted as a result of this accident. In fact, the petitioner has received an increase in his pay since the date of injury. For these reasons, the arbitrator gives lesser weight to this factor.

With respect to factor (v), evidence of disability corroborated by the treating medical records, the Arbitrator finds that as a result of the accident on 5/4/17 petitioner sustained a right femoral neck fracture with displacement. For this he underwent a right hip total arthroplasty performed by Dr Crickard. Within a month petitioner was diagnosed with osteoporosis of the right hip. The DEXA showed evidence of osteoporosis with recent fragility fracture of the hip. He underwent treatment for his osteoporosis that included two years of Forte injections followed by Prolia injections. It was noted that petitioner would remain at risk for fragility fractures in the future.

Petitioner also underwent a course of physical therapy, as well as a course of work hardening. Dr. Crickard noted that petitioner's recovery was very slow. When he was discharged from work hardening on 11/19/20 he had met all goals but one. That one was related to the strength in his right hip, which was a 4/5. When petitioner last saw Dr. Crickard on 5/26/22 he was doing very well, and did not have any pain. His only complaint was discomfort over the bursa area. He ambulated without assistance. With respect to his bursitis, Dr. Crickard advised him to ice his hip for 20 minutes on and off throughout the day. He told petitioner to call if he wanted a steroid injection. Petitioner refused an injection that day.

Petitioner testified that his next visit with Becker for his osteoporosis is in one month. He also testified that if his hip is not stable in 10-15 years he would consider a revision surgery. However, there is no current recommendation for any revision surgery.

Currently, petitioner has a lot pain in his right hip when working. As a result, he has to stop periodically to ease the pain. He takes 1000 mg of aspirin for the pain. Petitioner testified that he can do most jobs up to 50 pounds. He stated that heavier work takes longer. Petitioner testified that when he bends over or stoops the pain in his right hip worsens. He noted that the pain starts in one spot and spreads down his leg and sometimes he cannot move. Petitioner testified that at home he can't sit for long periods of time or his hip gets sore. At night, he can't lay on his right side. Sitting puts pressure on his right hip.

Petitioner testified that when he uses his riding mover his right hip hurts. He also testified that doing stairs and walking on uneven surfaces is hard.

Petitioner takes Vitamin C and D, and does daily injections of Forte for his osteoporosis. Petitioner does not take any pain medication. Petitioner testified that he has no issues with his right shoulder, and that the only treatment for it was at Blessing Hospital on the date of accident.

For these reasons, the Arbitrator gives greater weight to this factor.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner sustained a 45% loss of use to his right leg pursuant to Section 8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC015116
Case Name	Christopher Moshenrose v. FedEx Supply Chain Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0093
Number of Pages of Decision	15
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	David Moss
Respondent Attorney	Martin Spiegel

DATE FILED: 3/3/2023

/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

CHRISTOPHER MOSCHENROSE,

Petitioner,

vs. NO: 19 WC 15116

FEDEX SUPPLY CHAIN,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of temporary total disability (TTD), causal connection, medical expenses, and 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed July 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, 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 $63,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 3, 2023

CAH/tdm
O: 3/2/23
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC015116
Case Name	Moshenrose, Christopher v. FedEx Supply Chain Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	David Moss
Respondent Attorney	Martin Spiegel

DATE FILED: 7/5/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 28, 2022 2.50%

/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
19(b)

Christopher Moshenrose
Employee/Petitioner

v.

FedEx Supply Chain
Employer/Respondent

Case # **19 WC 015116**

Consolidated cases: _____

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

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **November 12, 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 $**33,074.01**; the average weekly wage was $**636.03**.

On the date of accident, Petitioner was **41** years of age, ***single*** with **1** dependent child~~ren~~.

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 the reasonable and necessary medical services outlined in Petitioner's Exhibit 8, as provided in § 8(a) and § 8.2 of the Act. Respondent shall have credit for any amounts previously paid and shall indemnify and hold Petitioner harmless from claims made by any health providers arising from the expenses for which it claims credit.

Respondent shall pay for the treatment recommended by Dr. Graves.

Respondent shall pay temporary total disability benefits of $**423.98**/week for **148 and 6/7ths weeks**, representing the period of May 3, 2019, through March 10, 2022, as provided in Section 8(b) of the Act.

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

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

JULY 5, 2022

ICArbDec19(b)

PROCEDURAL HISTORY

This matter proceeded to trial on March 10, 2022, pursuant to Sections 19(b) and 8(a) if the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) the causal connection between the accident and the Petitioner's low back condition; 2) payment of medical bills incurred; 3) entitlement to TTD benefits from May 3, 2019, through March 10, 2022; and 4) entitlement to prospective medical care to the Petitioner's low back. Although average weekly wage was disputed at the time of Arbitration, the parties have since reached an agreement, that the Petitioner's average weekly wage was $636.03. The parties also stipulated that all but one medical bill was paid by the Respondent.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 41 years old, employed with Respondent as a forklift driver, unloading and loading trucks for three years. (AX1, T. 10-11) On November 12, 2018, he was manually building pallets of pickles. (T. 12-13) He said that he picked up a case of product weighing approximately 50 pounds, and when he went to turn, he slid a little bit and felt a burn in his back. (T. 13, 50-52)

The Petitioner had a prior workers' compensation claim for a back injury in 2012 that resulted in three-level fusion surgery at L3-L5 and a settlement of 36 percent of the person as a whole on November 17, 2014. (T. 11, 47-48, PX1) A CT myelogram performed on March 4, 2014, (after the fusion) showed mild multilevel internal disc derangement more prominent at L3-4 and mild to moderate stenosis and some broad-based protrusion of the disc at L2-3 . (RX1) The Petitioner was able to return to work with a permanent lifting restriction of 50 pounds with occasional bending, twisting and stooping, with his job duties for the Respondent being within that

restriction. (T. 12, 49-50, PX2) He said he had not been experiencing pain from after his release in 2014 until the 2018 accident and felt like he was back to normal. (T. 82, 94-95)

Following the accident, the Petitioner was instructed to take a couple of days off then was told to seek treatment at the Bonutti Clinic at the Sarah Bush Lincoln Health Center when his pain did not resolve. (T. 13) The Petitioner presented to the clinic on November 15, 2018, reported pain in his lower back when standing and pain on the lateral side of the hip and down the front of the leg but denied numbness, tingling or radicular pain. (PX4) He underwent X-rays that showed degenerative changes. (Id.) Dr. Karl Rudert, an emergency medicine physician, diagnosed the Petitioner with lumbar strain, prescribed a muscle relaxant and oral steroids and gave work restrictions of limited lifting of 10 pounds and limited bending and twisting. (Id.) The Petitioner testified that the Respondent accommodated his restrictions, but he continued to experience pain when standing. (T. 14-15)

The Petitioner returned to the clinic on November 20, 2018, and reported that the medication helped about 70 percent, with his pain being primarily with prolonged sitting or standing. (PX4) Family Nurse Practitioner Jennifer Hess prescribed an anti-inflammatory, ordered physical therapy and continued work restrictions. (Id.) The Petitioner underwent physical therapy for six visits from December 11, 2018, through December 28, 2018. (Id.) At his last session, he reported increased pain and difficulty moving. (Id.) An MRI performed on January 28, 2019, showed multilevel degenerative and post-surgical changes, variable foraminal narrowing and a small, broad, central disc protrusion at L2-3 superimposed on circumferential disc bulging, resulting in mild spinal stenosis. (Id.) On February 4, 2019, FNP Hess referred the Petitioner to Dr. Todd Stewart, a neurosurgeon at Advanced Spine Institute. (Id.)

The Petitioner saw Dr. Stewart on April 2, 2019, and reported constant pain across the low back area and worse on the left side. (PX5) He denied shooting pains, radicular pains or weakness in the legs but reported occasional tingling down the legs to the toes and increased pain with standing in one position for a length of time and extended sitting. (Id.) Dr. Stewart diagnosed spinal stenosis of the lumbar region without neurogenic claudication and recommended epidural steroid injections. (Id.)

On April 18, 2019, the Petitioner underwent a bilateral transforaminal epidural steroid injection at L2-3 performed by Dr. Brian Ogan, a pain management physician at the Bonutti Clinic. (PX5, PX6) Dr. Ogan performed another injection at L5-S1 on May 23, 2019. (Id.) The Petitioner testified that the injections gave him pain relief for about 30 minutes and did relieve his numbness and tingling. (T. 83-84) He said the tingling came back. (T. 85) He reported similar results to Drs. Stewart and Ogen. (PX5, PX6) On August 6, 2019, Dr. Stewart stated that the Petitioner would benefit from posterior lumbar decompression and fusion but was not a surgical candidate at that time because he needed to lose weight. (PX5) Dr. Stewart continued work restrictions for six weeks. (Id.) The Petitioner testified that he was trying to lose weight until the COVID pandemic caused his gym to shut down, but he resumed working out when the gym reopened. (T. 23, 26)

At a visit to the Bonutti clinic on December 9, 2019, the Petitioner reported that he was doing a weight-loss program and had continued low back pain and increasing radiculopathy down both legs. (PX4) FNP Hess prescribed pain medication and another round of oral steroids, continued work restrictions and referred the Petitioner to Dr. Christopher Graves, an orthopedic spine surgeon at the Orthopedic Center of Illinois. (Id.)

The Petitioner saw Dr. Graves on February 25, 2020, and reported: his pain was getting worse in recent weeks; standing made his legs feel weak; physical therapy did not help; NSAIDs,

ice and heat seemed to help relieve some of the pain; and the two injections helped for 30 minutes. (PX7, Deposition Exhibit 2) He denied numbness or tingling in the lower extremities and had an antalgic gait. (Id.) Dr. Graves read the January 2019 MRI as demonstrating some multilevel spondylosis, a left-sided disc protrusion at L2-3 that was non-compressive and right greater than left foraminal stenosis at L4-5 and L5-S1. (Id.) He ordered an updated MRI. (Id.)

The MRI performed on March 17, 2020, at Midwest Imaging showed progression in the adjacent level of degeneration at L2-3 when compared to the previous MRI and moderate spinal canal narrowing. (Id.) At a visit to Dr. Graves on April 9, 2020, the Petitioner reported worsening symptoms and tingling in his toes on the right side. (Id.) Dr. Graves read the MRI as showing the L3-5 fusion with moderate to severe adjacent segment stenosis secondary to a disc protrusion at L2-3. (Id.) After discussing treatment options including decompression or extension of the fusion, Dr. Graves and the Petitioner decided on the fusion extension at L2-3., and Dr. Graves found the Petitioner was unable to work. (Id.) The Petitioner testified he wanted to have surgery because he wanted to return to work, as he did after his first surgery. (T. 30) He denied asking for fusion surgery when Dr. Graves recommended a decompression. (T. 78)

At follow-up visits with Dr. Graves on June 25, 2020, October 29, 2020, December 1, 2020, December 31, 2020, and February 18, 2021, the Petitioner reported worsening symptoms, including radiating pain. (PX7, Deposition Exhibit 2) Dr. Graves stated that the Petitioner had adjacent segment disease and warned that the Petitioner would suffer irreparable harm if his condition was left untreated in the long term. (Id.) At the last visit, the Petitioner reported that he slipped two days prior and felt and heard a "pop." (Id.)

The Petitioner testified that in July 2021, he was involved in a motorcycle accident. (T. 36) He said he was riding his motorcycle because his truck had broken down and that was his only

other mode of transportation. (T. 36) He said he suffered neck and leg injuries and road rash. (T. 39) After an emergency room visit at St. Anthony's Hospital, the Petitioner sought treatment from his family doctor for his neck. (T. 39-40) Emergency room records reflect that the Petitioner's main concern after the accident was left lower leg pain, and he complained of right shoulder, right arm and neck pain. (RX3) He underwent CT scans of the chest, abdomen and pelvis and X-rays of the shoulder and lower leg. (Id.) The Petitioner testified that he did not notice any change in his low back after the motorcycle accident. (T. 41) The Respondent submitted photos of the Petitioner on a motorcycle. (RX4)

Dr. Graves testified consistently with his reports at a deposition on September 14, 2021. (PX7) He explained that adjacent segment disease and stenosis, which he referred to in his notes, develops over time in patients who have had a long fusion – as the joints and ligaments above the fusion begin to wear out. (Id.) He said the sudden onset of severe worsening back pain would not be part of the natural history of stenosis, but an acute disc herniation potentially would worsen the stenosis significantly. (Id.) Dr. Graves believed the Petitioner had pre-existing stenosis that predisposed him to have an area that had this problem. (Id.)

Based on the Petitioner's consistent description of the accident, continued worsening of symptoms and pathology as seen on the MRIs, Dr. Graves opined that the accident was "the inciting event" to his current condition. (Id.) After being informed of the CT myelogram in 2014, Dr. Graves responded that the newer MRIs showed a disc herniation after the accident that worsened until the time he saw the Petitioner. (Id.) He pointed out on the MRIs that the small protrusion present on the left side in 2019 had since moved paracentral, became significant and was compressing the nerve roots. (Id.) He saw no other good explanation for the Petitioner being

able to work from after the fusion surgery until the 2018 accident other than that the 2018 injury exacerbating his adjacent segment disease. (Id.)

He said the need for surgery was related to the accident, explaining that the surgery would decompress the neurologic elements of the spine that are compressed secondary to the disc herniation and spinal stenosis. (Id.) He stated that the fusion was recommended because a decompression only necessitated removing a large amount of bone above the previously fused segment, causing a poor result, while a fusion is a more definitive way to address the problem. (Id.) He believed the Petitioner's choice of fusion versus decompression was reasonable and within the standard of care. (Id.) He said the Petitioner should not go back to a physical job. (Id.)

Regarding the Petitioner's ability to ride a motorcycle with his condition, Dr. Graves said he would expect that the Petitioner would be able to do so and have an easier time than walking in a grocery store because the spine is typically flexed when sitting on a motorcycle. (Id.) He said activities of walking or running distances would be more inconsistent with the Petitioner's condition. (Id.) As to the slip the Petitioner experienced on February 16, 2021. Dr. Graves did not view that as significant because he had been recommending surgery all along. (Id.)

The Petitioner testified that since his last visit with Dr. Graves, he has continued to try to lose weight and still wants to undergo surgery. (T. 45) He said he is able to manage his pain with ibuprofen and Tylenol and activity modification. (T. 87-88)

At the time of arbitration, the Petitioner was unemployed. (T. 10) He testified that in May 2019, the Respondent was bought out by another company, which did not accommodate his restrictions. (T. 21-22) He said he received unemployment from May 3, 2019, until January 2021 and looked for work unsuccessfully because employers could not accommodate his restrictions. (T. 24, 28-29) He stopped looking for work after his unemployment ran out because he already

had applied at "almost everywhere" in Effingham with no success. (T. 34-35) He said he was "pretty sure" he could still drive a forklift. (T. 86)

CONCLUSIONS OF LAW

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

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

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n,* 371 ILL. App. 3d 882, 888 (2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill. 2d 30, 36 (1982).

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Industrial. Comm'n*, 77 Ill. 2d 469, 471-472, 397 N.E.2d 834, 34 Ill.Dec. 162 (1979); *Gano Elec. Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724, 197 Ill.Dec. 502 (4th Dist. 1994); *International Harvester v. Industrial Com.*, 93 Ill.2d 59, 63-64, 442 N.E.2d 908, 66 Ill.Dec. 347 (1982).

The Petitioner had pre-existing adjacent segment disease from his prior fusion that resulted in stenosis. Dr. Graves testified that the stenosis was aggravated by the work injury and his condition continued to worsen afterwards. The circumstantial evidence also supports Dr. Graves'

opinions in that the Petitioner was able to perform his job duties within his prior restrictions until the accident and was unable to do so afterwards. There were no contrary medical opinions rendered. Although the Petitioner had a slip incident in February 2021 and a motorcycle accident in July 2021, there was no evidence that either of these incidents broke the chain of causation between the work accident and the Petitioner's condition. His condition appeared to be the same before and after these events.

Therefore, the Arbitrator finds that the Petitioner has met his burden of proof establishing causal connection between the accident and the Petitioner's lumbar spine condition.

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

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

Based on the above findings regarding causation, the Arbitrator finds that the treatment rendered was reasonable and necessary. Therefore, the Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 8. 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).

Dr. Graves testified to the necessity of surgery to relieve or cure the effects of the Petitioner's injury. There was no contrary opinion. Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care as recommended by Dr. Graves – including any additional diagnostics, surgery and rehabilitation – and the Respondent shall authorize and pay for such care.

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

The parties dispute temporary total disability benefits from May 3, 2019 through the trial date of March 10, 2022. An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Id.* at 121.

During the above period, the Petitioner was either under work restrictions or taken off work completely by his physicians. Therefore, the Petitioner is entitled to temporary total disability benefits pursuant to Section 8(b) of the Act for 148 and 6/7 weeks, from May 3, 2019, 2021, through March 10, 2022.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025355
Case Name	Marvin Pellazari v. Granite City School District
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0094
Number of Pages of Decision	18
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Giambattista Patti
Respondent Attorney	Michael Karr

DATE FILED: 3/3/2023

/s/Carolyn Doherty, 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

MARVIN PELLAZARI,

Petitioner,

vs. NO: 21 WC 25355

GRANITE CITY SCHOOL DISTRICT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability (TTD), medical expenses, prospective medical care, and permanent partial disability (PPD), and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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 August 22, 2022 is hereby affirmed and adopted.

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

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

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

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.

March 3, 2023

O: 03/02/23
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	21WC025355
Case Name	Marvin Pellazari v. Granite City School District
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Giambattista Patti
Respondent Attorney	Michael Karr

DATE FILED: 8/22/2022

/s/ Linda Cantrell, Arbitrator

Signature

INTEREST RATE WEEK OF AUGUST 16, 2022 3.02%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Marvin Pellazari
Employee/Petitioner

v.

Granite City School District
Employer/Respondent

Case # **21** WC **025355**

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 **June 17, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **8/31/21**, 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 $**55,879.20**; the average weekly wage was $**1,074.60**.

On the date of accident, Petitioner was **58** 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 $**6,447.60** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for medical benefits, for a total credit of $**6,447.60.**

Respondent is entitled to a credit of $**1,509.82** under Section 8(j) of the Act.

ORDER

Respondent shall pay the medical expenses contained in Petitioner's Group Exhibit 7, directly to the medical providers and pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for medical expenses paid in the amount of $1,509.82.

The evidence supports that Petitioner has not been cured or relieved from the effects of his work-related injuries. Drs. Gornet and Bradley recommend conservative treatment for Petitioner's lumbar spine and right ankle/foot injuries. Dr. Kitchens recommended physical therapy, lumbar epidural steroid injections, or possibly surgery for decompression at L3-4. The Arbitrator finds that Petitioner is entitled to receive the additional care recommended by Drs. Gornet and Kitchens as he has not reached maximum medical improvement. Therefore, Respondent shall authorize and pay for prospective medical treatment until Petitioner reaches maximum medical improvement.

Respondent shall pay Petitioner temporary total disability benefits of $**716.40**/week for **41-3/7th** weeks, for the period **9/1/21 through 6/17/22**, as provided in Section 8(a) of the Act. Respondent shall receive credit for temporary total disability benefits paid in the amount of $6,447.60.

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

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

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

Arbitrator Linda J. Cantrell **August 22, 2022**

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

MARVIN PELLAZARI,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	**Case No.: 21-WC-025355**
	)	
GRANITE CITY SCHOOL DISTRICT,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on June 17, 2022 pursuant to Section 19(b) of the Act. Petitioner stipulates that Respondent is entitled to a credit for medical expenses paid in the amount of $1,509.82. Petitioner claims entitlement to temporary total disability benefits for the period 9/1/21 through 6/17/22, representing 41-3/7th weeks. Respondent claims it paid TTD benefits from 11/10/21 through 1/11/22, representing 9 weeks. Petitioner agrees Respondent is entitled to a credit for temporary total disability benefits paid in the amount of $6,447.60.

The issues in dispute are accident, causal connection, medical expenses, temporary total disability benefits, and prospective medical care. All other issues have been stipulated.

TESTIMONY

Petitioner was 58 years old, married, with no dependent children at the time of accident. Petitioner worked as a custodian for Respondent for over sixteen years. On 8/31/21, Petitioner completed his task of cleaning rooms and went into the boiler room to get a drink before going outside to guide school busses through traffic. He testified that his office is in the boiler room and is essentially an employee breakroom, where a coffee pot, microwave, and refrigerator are located. Petitioner testified that he regularly got a drink before going outside for bus duty because it is hot. He stated he is not sure if Respondent knew he got a drink prior to going outside for bus duty.

Petitioner testified that as he descended a step in the boiler room he felt a pop in his right foot and as he continued to step down he twisted to avoid putting weight on his foot and felt back and ankle pain. He stated he thought he was walking at a normal speed when he entered the boiler room and was not rushing. However, Petitioner testified he is always moving with urgency while performing his job duties because the staff always needs assistance.

Petitioner testified he never had ankle issues prior to 8/31/21. He admitted he had prior left-sided back pain and underwent an MRI and chiropractic care. Petitioner was working full duty without restrictions prior to 8/31/21.

Petitioner testified that following the accident he had right-sided back pain and a burning sensation that radiated into his groin, leg, and foot. He has constant numbness and a throbbing sensation in the top of his right foot. He testified that his symptoms are different than what he experienced prior to 8/31/21, which was primarily pain in his left low back with no burning sensation.

Petitioner sought medical treatment at Gateway Regional the day after the accident and was told he had arthritis. He received chiropractic treatment with Dr. Brooks who placed him off work on 9/7/21. Dr. Brooks referred Petitioner to Dr. Gornet who ordered physical therapy and an injection. Petitioner testified that the injection did not alleviate his symptoms. Dr. Gornet referred Petitioner to Dr. Bradley for right ankle symptoms. He stated the top of his foot was numb and he had throbbing and pain in the back of his ankle. Dr. Bradley diagnosed Petitioner with a partial Achilles tendon tear and administered a stim cell injection that did not provide relief.

Petitioner testified he has reduced his opioid pain medication as instructed by Dr. Gornet in February 2022. He continues to treat with Dr. Gornet and Dr. Bradley. He continues to have pain while walking, sitting, and laying down. He changes positions frequently and props his feet to alleviate his symptoms. Petitioner stated he walks with a limp which he did not have prior to the accident. He has pain when he puts pressure on his right heel.

On cross-examination, Petitioner testified that his supervisor came into the boiler room right after he injured himself and he told his supervisor he was in pain. He stated he was limping around while speaking to his supervisor. Petitioner testified that his supervisor did not acknowledge his complaints but proceeded to tall him what needed to be done that day.

Petitioner identified his name on an Employer's First Report of Injury and stated he did not recall completing the form, but he could have. (RX1) He stated the description of accident was accurate. Petitioner identified a Report of Injury and stated the description of accident was accurate. (RX2) Petitioner identified photographs of the concrete steps he descended on 8/31/21. (RX3) He stated there are two steps with a handrail on the right side of the stairs. He testified he stepped down to the first step with his right foot and felt it pop. He proceeded to step with his left foot and began to twist due to his right foot injury. He could not recall if he placed his left foot on the first step or on the boiler room floor. He testified he did not fall forward because there is a desk there and he did not want to strike his body on it. Petitioner identified the desk depicted in photograph marked Petitioner's Exhibit 8. Petitioner testified he caught his balance without assistance and did not fall to the ground.

He testified that the boiler room was well lit and he was not aware of any liquid or debris on the steps. He testified there was nothing about the steps themselves that caused his foot to pop. He was not carrying anything or wearing a tool belt at the time. He was wearing shoes he regularly wore to work.

Petitioner testified that the history he provided to Dr. Brooks was accurate. He felt he was moving at his normal pace when he descended the stairs. Petitioner stated it was getting close to time for bus duty and a teacher needed assistance, but he was not running when he entered the boiler room. Petitioner testified there are other steps in the facility and none of them are painted yellow like the steps in the boiler room.

Petitioner testified he was taking Hydrocodone prior to 8/31/21 for "real bad arthritis and a bad knee on the left side". He stated his left knee has been bad for a long time, which he thinks is arthritis, and it pops once in a while. His left knee condition does not cause him to favor his leg. He stated he never had issues with his right foot prior to 8/31/21. He admitted he took Hydrocodone for back pain as well.

MEDICAL HISTORY

Petitioner reported to Gateway Occupational Health on 9/1/21. (PX1) He provided a history of stepping down on a step when his right ankle popped and/or gave way causing him to step down with his left foot. When Petitioner did so, he felt a pop in his back and twisted. Petitioner complained of tingling in his right foot and a burning sensation across his back. Petitioner denied previous injuries to his right foot and back. It was noted that Petitioner was favoring his right foot and not bearing full weight. Petitioner appeared to be in mild-to-moderate pain and grimaced and shifted in the chair.

Physical examination revealed limited range of moiton in the lumbar spine due to pain, restricted extension, muscle spasms, and tenderness to palpation. Petitioner had pain with inversion, eversion, and plantar flexion of the right foot, with pain primarily located in the calcaneal region. Global swelling, inflammation, and edema was noted in the foot. X-rays of the right foot revealed no fracture, dislocation, or degenerative changes, with prominent calcaneal spurs noted. X-rays of the lumbar spine revealed disc space narrowing at L3-4 and L4-5 with endplate spurring, and mild degenerative changes throughout the lumbar spine without acute abnormalities.

Petitioner was diagnosed with a lumbar strain and right ankle sprain. He was taken off work through 9/7/21 and prescribed Skelaxin and Naprosyn. He was advised to elevate his foot and an ACE bandage was applied. He was instructed to return on 9/7/21.

On 9/7/21, Petitioner followed up with Jonathan Brooks, DC at MultiCare Specialists. (PX3, p.1) He reported he stepped down and inverted his right ankle. He had immediate pain in his ankle and felt a pop. Petitioner reached forward during the incident and twisted his lower back causing immediate low back pain. His complaints included back pain radiating into his right leg, with a burning sensation throughout his leg. Petitioner stated he went to the company doctor and they told him his symptoms were from arthritis. Petitioner reported his symptoms were getting worse. Dr. Brooks noted Petitioner walked with a significant limp in the right lower extremity. Past medical history was positive for osteoarthritis and Rheumatoid arthritis.

Physical examination revealed significant tenderness throughout the lumbar spine, worse on the right, difuse paraspinal hypertonocity, and positive straight leg raises on the right and negative on the left. Petitioner had palpable tenderness in the right lateral ankle, tenderness in the distal Achilles tendon, and reduced range of motion with inversion and dorsiflexion secondary to pain. Dr. Brooks' impression was lumbar disc protrusion, right lumbar radiculitis, and right partial Achilles tendon tear. He referred Petitioner to physical therapy and placed him on light duty restrictions of no lifting greater than 20 pounds, no repetitive lifting or bending, no pushing, pulling or climbing, and limited walking of 10 minutes or less. Dr. Brooks ordered an MRI for Petitioner's lumbar spine and right ankle.

On 9/8/21, a lumbar MRI was performed that revealed a disc bulge at L2-3 with a midline annular tear/fissure and protrusion resulting in moderate central canal stenosis and moderate-to-severe bilateral foraminal stenosis; a disc bulge at L3-4 with bilateral foraminal protrustions with extruding disc material in the foramina resulting in severe bilateral foraminal stenosis and moderate central canal stenosis; a disc bulge at L4-5 with left foraminal herniated and cranially extruded disc fragment resulting in moderate-to-severe left greater than right foraminal stenosis and moderate central canal stenosis; and a left broad-based protrustion at L5-S1 resulting in left lateral recess stenosis and moderate left foraminal stenosis with no central canal or right foraminal stenosis. (PX2, p.5-6)

A right ankle MRI revealed a 20% partial-thickness tear of the Achilles tendon, bone marrow edema involving the posterior superior calcaneus, and a 5 x 5 mm osteochondral lesion of the lateral talar dome. (PX2, p. 7)

On 9/14/21, Dr. Brooks reviewed the MRI studies and referred Petitioner to Dr. Gornet for evaluation of his lumbar spine and prescribed a CAM walker for his right ankle. (PX3, p. 18) He placed Petitioner off work and ordered him to continue physical and chiropractic therapy and a home exercise program.

Petitioner was examined by Dr. Gornet on 9/28/21. (PX4) Petitioner reported he stepped down on two steps and felt a sudden pop in his ankle. This caused pain and he twisted rapidly to prevent falling and felt back pain. Petitioner admitted to having a history of occasional chiropractic care several years ago. He admitted he had an episode of low back pain that required an MRI on 1/24/20 and an injection, but stated he recovered and was doing well until the incident on 8/31/21. Petitioner reported constant back pain made worse with bending, lifting, and prolonged sitting or standing. Dr. Gornet noted Petitioner's pain was all right-sided and Petitioner denied left-sided pain. Dr. Gornet noted Petitioner was in a moon boot for a partial thickness Achilles tear.

Physical examination revealed pain on both sides of Petitioner's low back, particularly the right buttock, right hip, and right groin, inner thigh to the medial knee down the medial lower leg to the top of his foot with a burning sensation. Dr. Gornet compared the 9/8/21 MRI to a previous MRI performed on 1/24/20. He found the new films revealed an increase in size of the disc herniation at L3-4 evidencing an acute injury of pre-existing degeneration and foraminal narrowing. Dr. Gornet noted the recent MRI also showed a foraminal protrusion at L2-3, an annular tear at L3-4, and a central disc annular tear at L5-S1. Dr. Gornet opined that Petitioner's current symptoms, at least in their level of severity, were related to his work accident on 8/31/21. His

working diagnosis was aggravation of some previously minimally symptomatic/asymptomatic degenerative condition and foraminal narrowing. Dr. Gornet prescribed steroids, ordered physical therapy with Dr. Brooks, and placed Petitioner off work. He also referred Petitioner to Dr. Bradley for his right ankle. Dr. Gornet stated Petitioner's condition may be difficult to treat given his multilevel problem which he was quite certain was vascular and cardiac disease.

On 10/11/21, Petitioner was examined by Dr. Matthew Bradley. (PX5) Dr. Bradley noted that on 8/31/21 Petitioner was walking down a couple of steps when he missed a step and came down wrong on his right foot and ankle. He immediately felt a pop in the posterior aspect of his ankle followed by pain. Dr. Bradley noted Petitioner had undergone one month of physical therapy and continued to wear a CAM boot. Dr. Bradley reviewed the 9/8/21 MRI which revealed a partial thickness tear of the Achilles with significant reactive bone edema at the attachment of the Achilles, and a 5 x 5 mm osteochondral lesion noted at the talar dome. Dr. Bradley opined that Petitioner's accident of 8/31/21 was at least a precipitating factor in the diagnosis of a right partial Achilles tendon tear and is causally connected to his work accident. Dr. Bradley recommended Petitioner continue with his current rehabilitation program of physical therapy and home exercises. He prescribed Diclofenac and would consider a PRP injection if Petitioner's symptoms did not resolve in 3 to 4 weeks. Dr. Bradley prescribed light duty restrictions of desk work only.

On 11/30/21, Dr. Gornet performed a transforaminal injection with a facet block at L3-4. (PX4, p. 11) On 2/17/22, Dr. Gornet noted the injection and block did not provide significant relief. Dr. Gornet noted that the state website showed Petitioner was taking a substantial amount of narcotics. Petitioner advised the medications were prescribed by his primary care physician for arthritis. Dr. Gornet advised there was nothing he could do for Petitioner if he did not wean off the narcotics. He continued Petitioner off work and ordered him to return in three months.

On 12/20/21, Petitioner was examined by Dr. Kitchens pursuant to Section 12 of the Act. (RX5) Petitioner provided a consistent history of accident and recounted his prior back pain and treatment. Dr. Kitchens also reviewed treatment records predating Petitioner's 8/31/21 work accident dating back to 3/4/15. Dr. Kitchens reported Petitioner presented with a diagnosis of lumbar degenerative disc disease, lumbar spondylosis with disc bulging, and lumbar spinal stenosis at L2-3, L3-4, L4-5, and L5-S1. He opined that Petitioner's work incident did not cause, aggravate, or exacerbate his pre-existing lumbar conditions. He opined Petitioner did sustain an acute injury to the L3-4 disc with foraminal bulging and right L4 radicular symptoms. He recommended physical therapy, lumbar epidural steroid injections, or surgery for decompression at L3-4. Dr. Kitchens opined that Petitioner had not reached MMI and required work restrictions.

On 3/31/22, Dr. Bradley noted Petitioner continued to have significant pain in the distal Achilles tendon. He performed an PRP injection into the peritendinous area and in the Achilles bursa. Dr. Bradley ordered Petitioner to continue therapy and light duty restrictions. He was instructed to return in 8 weeks. (PX5)

Medical records that pre-date Petitioner's work accident were admitted into evidence. (RX4). On 7/9/15, Petitioner presented to Metro East HealthCare Limited/Dr. Haresh Motwani for complaints of back pain and chronic conditions. Petitioner reported his back pain started four days prior after getting off his lawn mower. The pain was in his low back and legs and was described

as shooting and stabbing. His pain was aggravated by bending, changing positions, sitting, standing, walking, and descending stairs. On 1/8/16, Petitioner presented to Dr. Motwani for follow up of chronic conditions and worsening sciatica. On 5/6/16, Petitioner reported back pain that started two days prior and was worsening. On 6/2/17, Petitioner reported he was putting landscaping up when he heard a "pop" coming from his ribs. It was noted Petitioner had a history of sacroiliitis and hurting his ribs. On 1/3/18, Petitioner followed up for back pain and osteoarthritis in the neck, hands, and knees. Petitioner reported the pain in his low back was worsening on 6/11/18. On 2/12/19, x-rays of the lumbar spine showed moderate degenerative spurring and degenerative disc disease from L2 through L5, and to a lesser extent L1-2. The radiologist noted the L5-S1 interspace was well preserved. Indication for the lumbar x-ray was low back pain and bilateral sciatic pain.

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

The 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 Workers' Compensation Comm'n*, 236 Ill. 2d 132, 149, 337 Ill.Dec. 707, 923 N.E.2d 266 (2010). According to the Act, in order for a claimant to be entitled to workers' compensation benefits, the injury must "aris[e] out of" and occur "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*, 117 Ill. 2d at 44-45, 109 Ill.Dec. 166, 509 N.E.2d 1005; *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483, 137 Ill.Dec. 658, 546 N.E.2d 603 (1989); *Fire King Oil Co. v. Industrial Comm'n*, 62 Ill. 2d 293, 294, 342 N.E.2d 1 (1976); *Wise v. Industrial Comm'n*, 54 Ill. 2d 138, 142, 295 N.E.2d 459 (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 Comm'n*, 207 Ill. 2d 193, 203, 278 Ill.Dec. 70, 797 N.E.2d 665 (2003) (collecting cases).

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366-67, 5 Ill.Dec. 854, 362 N.E.2d 325 (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. 2d at 142, 295 N.E.2d 459. The record is clear that Petitioner was, in fact, at work when he sustained accidental injuries. Petitioner was performing activities in conjunction with his employment when he descended steps in the boiler room. He testified that his office is located in the boiler room which also acts as an employee breakroom/lunchroom and is supplied with a refrigerator, microwave, and coffee pot. He went to the boiler room to get a drink prior to going outside to direct traffic for the buses. The Arbitrator finds that Petitioner's accident occurred in the course of his employment with Respondent.

An injury arises out of one's employment if its origin is in a risk connected with or incidental to the employment so that there is a causal relationship between the employment and

the accidental injury. *Orsini v. Indus. Comm'n*, 509 N.E.2d 1005 (1987). In order to meet this burden, a claimant must prove that the risk of injury is peculiar to the work ***or*** that he or she is exposed to the risk of injury to a greater degree than the general public. *Id.* Specifically, the Court has acknowledged the existence of three categories of risk: (1) risks distinctly associated with employment; (2) personal risks; and (3) neutral risks which have no particular employment or personal characteristics. *Springfield Urban League v. Illinois Workers' Comp. Comm'n*, 2013 IL App (4th) 120219WC, 990 N.E.2d 284, 290 (4th Dist. 2013). 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.* This increased risk may be qualitative, such as some aspect of employment that contributes to the risk, or quantitative, such as the number of times they are required to encounter the risk. *Id.*

The first category of risks involves risks that are distinctly associated with employment. "Employment risks include the obvious kinds of industrial injuries and occupational diseases and are universally compensated." *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162, 247 Ill.Dec. 22, 731 N.E.2d 795. Examples of employment-related risks include "tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing some work-related task which contributes to the risk of falling." *First Cash Financial Services*, 367 Ill. App. 3d at 106, 304 Ill.Dec. 722, 853 N.E.2d 799. Injuries resulting from a risk distinctly associated with employment are deemed to arise out of the claimant's employment and are compensable under the Act. *Steak 'n Shake*, 409 Ill.Dec. 359, 67 N.E.3d 571 (2016).

The Arbitrator does not find that Petitioner's injuries arose out of an employment-related risk. Petitioner testified that he entered the boiler room to obtain a drink prior to going outside to direct traffic for the buses. He testified that the boiler room was well lit and he was not aware of any liquid or debris on the steps. He testified there was nothing about the steps themselves that caused his foot to pop. He was not carrying anything or wearing a tool belt at the time he descended the steps. Petitioner testified he was wearing acceptable shoes that he regularly wore to work. Although Petitioner initially testified he was not running or in a hurry when he descended the steps, he later testified he was close on time for bus duty and a teacher also needed assistance. He testified that he regularly took a drink break prior to going outside because it was hot.

There is no evidence Petitioner was performing a work-related task when he descended the steps. Likewise, there is no evidence that Respondent instructed Petitioner to enter the boiler room to obtain a drink prior to performing his bus duties. Although it may be reasonable or even expected by Respondent that Petitioner take a drink break prior to performing his bus duties, such activity of descending steps to take a drink was not required of Petitioner's job duties that would be compensable even under the *McAllister* analysis.

The Arbitrator finds that Petitioner's injuries arose out of his employment pursuant to the Personal Comfort doctrine. The Personal Comfort doctrine provides that an employee, while engaged in work, may do those things that are necessary and reasonable to his or her health and comfort and remain in the course of employment. This applies even if the act is personal in nature and done only for the benefit of the employee. *Illinois Consol. Tel. Co. v. Industrial Comm'n*, 314 Ill.App.3d, 347, 247 Ill.Dec.333, 732 N.E.2d 49 (5th Dist. 2000) The course of

employment is not broken by these personal acts. *Eagle Discount Supermarket v. Industrial Commission*, 82 Ill.2d 331, 421 N.E.2d 492 (1980).

In *Village of Oak Park*, the Commission reversed the Arbitrator's Decision and found claimant's injuries fell within the Personal Comfort doctrine and therefore arose out of and in the course of his employment. Claimant was a community service officer and his locker was located downstairs as were the lunchroom and vending machines. Claimant descended the 20-step stairwell to go to the locker room when his knee buckled and he fell. During the course of a day he would go up and down the stairs at least 2 to 4 times to change his clothing, get equipment, eat lunch, and take personal breaks. The Commission noted that claimant was not in a hurry, was not carrying anything while descending the stairs, and there were no defects in the staircase. The Commission further held that claimant was exposed to a greater risk than the general public because he was continually forced to use the stairway to seek personal comfort during his workday and to complete work-related activities. *Village of Oak Park v. IWCC*, Case No. 09-IWCC-1334, 2013 Ill.App.2d 130038WC.

In support of its decision, the Commission cited *Illinois Consolidated Telephone Co. v. Industrial Commission*, 314 Ill.App.3d 347 (2000). In that case the claimant was injured when she fell descending steps after she used the washroom. The Appellate Court applied the personal comfort doctrine. In their view, claimant was using the washroom to meet the demands of personal health and the stairs were the only means of assessing the restroom. The court found that claimant was exposed to a greater risk than the general public because she was continually forced to use stairs to seek personal comfort during the workday.

The Arbitrator finds the facts in *Village of Oak Park* and *Illinois Consolidated Telephone Co.* analygous to the facts in the instant case. In this case, Petitioner was engaged in employment in a place where he had a reasonable right to be and was exposed to a greater risk than the general public because he was continually forced to use the stairway in the boiler room to seek personal comfort during the workday and to perform his work activities. It is undisputed that Petitioner's office was located in the boiler room where he performed work-related activities, including payroll and ordering supplies. The boiler room also acted as an employee lunchroom/breakroom where a refrigerator, microwave, and coffee pot were provided for employee use. Although there was no testimony as to how many times per day Petitioner went up and down the steps, if he clocked in and out for payroll purposes and had at least one break during the day, he would have traversed the steps at least three times per day. Petitioner testified he typically went to the boiler room to get a drink before going outside for bus duty, and sometimes took a cold towel from the freezer if it was a hot day.

Like the claimant in *Village of Oak Park*, Petitioner testified he was not carrying anything when he descended the stairs and he was not aware of any defect in the staircase that contributed to his injuries. Although Petitioner testified he was not running and was not in a hurry when he entered the breakroom, he did state he was close on time to get outside for bus duty and a teacher needed assistance.

Based on the foregoing reasons, the Arbitrator finds Petitioner's injuries arose out of and in the course of his employment for Respondent and is compensable pursuant to the Personal Comfort doctrine and a neurtral risk analysis.

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

The law holds that an accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. Sisbro, Inc. v. Indus. Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-673 (2003). [Emphasis added]. "Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." Fierke v. Industrial Commission, 309 Ill. App. 3d 1037, 723 N.E.2d 846 (2000).

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. Pulliam Masonry v. Indus. Comm'n, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); Gano Electric Contracting v. Indus. Comm'n, 260 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).

Petitioner was hired by Respondent in 2006 as a Lead Custodian. He was working full duty without restrictions prior to 8/31/21. Petitioner testified that as he descended the steps in the boiler room he felt a pop in his right foot and as he continued to step down he twisted to avoid putting weight on his foot and felt back and ankle pain. He was able to catch his balance and did not fall to the ground. Petitioner testified he never had ankle issues prior to 8/31/21. He stated he had prior left-sided back pain and underwent an MRI and chiropractic care. Following the work accident, Petitioner had primarily right-sided back pain and a burning sensation that radiated to his right groin, leg, and foot. He testified that his symptoms are different than what he experienced prior to 8/31/21, which was primarily pain in his left low back with no burning sensation.

Dr. Gornet compared the lumbar MRIs dated 1/24/20 and 9/8/21. He found the new films revealed an increase in size of the disc herniation at L3-4 evidencing an acute injury of pre-existing degeneration and foraminal narrowing. Dr. Gornet noted the 9/8/21 MRI also showed a foraminal protrusion at L2-3, an annular tear at L3-4, and a central disc annular tear at L5-S1. Dr. Gornet opined that Petitioner's current symptoms, at least in their level of severity, were related to his work accident. His working diagnosis was aggravation of some previously minimally symptomatic/asymptomatic degenerative condition and foraminal narrowing. He prescribed steroids, ordered physical therapy with Dr. Brooks, and placed Petitioner off work.

Respondent's Section 12 examiner, Dr. Kitchens, reviewed Petitioner's medical records dating back to 2015. Dr. Kitchens agreed that the work accident caused an acute injury to the L3-4 disc with foraminal bulging and right L4 radicular symptoms. He recommended physical therapy, lumbar epidural steroid injections, or surgery for decompression at L3-4. He opined that

Petitioner's accident did not cause, aggravate, or exacerbate his pre-existing lumbar conditions. Dr. Kitchens opined Petitioner has not reached MMI and required work restrictions.

Dr. Bradley diagnosed a partial thickness tear of the Achilles with significant reactive bone edema at the attachment of the Achilles, and a 5 x 5 mm osteochondral lesion noted at the talar dome. Dr. Bradley opined that Petitioner's accident of 8/31/21 was at least a precipitating factor in the diagnosis of a right partial Achilles tendon tear and is causally connected to his work accident. The Arbitrator notes there is no Section 12 examination related to Petitioner's right ankle injury.

Based on the above evidence, the Arbitrator finds that Petitioner's current conditions of ill-being in his right ankle/foot and lumbar spine are causally connected to his work accident.

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

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

Based on the above findings as to accident and causal connection, the Arbitrator finds that the medical treatment rendered to Petitioner was reasonable and necessary to treat his work-related injuries. Therefore, Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's Group Exhibit 7, directly to the medical providers pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Petitioner stipulates that Respondent is entitled to a credit for medical expenses paid in the amount of $1,509.82.

The evidence supports that Petitioner has not been cured or relieved from the effects of his work-related injuries. Drs. Gornet and Bradley recommend conservative treatment for Petitioner's lumbar spine and right ankle/foot injuries. Dr. Kitchens recommended physical therapy, lumbar epidural steroid injections, or possibly surgery for decompression at L3-4. The Arbitrator finds that Petitioner is entitled to receive the additional care recommended by Drs. Gornet, Bradley, and Kitchens as he has not reached maximum medical improvement. Therefore, Respondent shall authorize and pay for prospective medical treatment as recommended by Dr. Gornet and Dr. Bradley until Petitioner reaches maximum medical improvement.

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

Petitioner claims entitlement to temporary total disability benefits for the period 9/1/21 through 6/17/22, for a period of 41-3/7th weeks. Respondent claims it paid TTD benefits for the period 11/10/21 through 1/11/22, representing 9 weeks. Petitioner agrees Respondent is entitled to a credit for temporary total disability benefits paid in the amount of $6,447.60.

On 9/1/21, Petitioner was placed off work by Gateway Occupational Health. On 9/7/21, Dr. Brooks placed Petitioner on light duty work. On 9/28/21, Dr. Gornet placed Petitioner off work for his lumbar spine condition which has continued to the date of arbitration. Dr. Bradley has and continues to recommend light duty restrictions of desk work only. On 12/20/21, Dr. Kitchens recommended light duty restrictions related to Petitioner's lumbar spine. There is no

evidence that Respondent offered Petitioner work within the light duty restrictions prescribed by Drs. Brooks, Bradley, or Kitchens.

Therefore, the Arbitrator awards total temporary total disability benefits for the period 9/1/21 through 6/17/22, representing a period of 41-3/7th weeks. Respondent shall receive credit for temporary total disability benefits paid in the amount of $6,447.60.

This award shall in no instance be a bar to further hearing and determination of any additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

Arbitrator Linda J. Cantrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC036184
Case Name	Bernard Newman v. O'Reilly Auto Parts
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0095
Number of Pages of Decision	19
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Ryan Meikamp
Respondent Attorney	Mark Dinos

DATE FILED: 3/6/2023

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BERNARD NEWMAN,

Petitioner,

vs. NO: 18 WC 36184

O'REILLY AUTO PARTS,

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 causal connection, medical expenses and permanent partial disability (PPD) benefits, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator which is attached hereto and made a part hereof.

The Commission notes that the Arbitrator awarded the medical charges for the cervical facet injections that were administered to Petitioner on January 16, 2020, but did not award the corresponding physician charge of $1,116.00 from the Orthopedic Center of Illinois. (Pet. Ex. 13, pg. 17). The Commission finds that the physician bill is also reasonable, necessary and related to the October 29, 2018 work accident and accordingly modifies the Arbitrator's Decision to award this charge. The Arbitrator's Decision regarding the remaining medical bills is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 12, 2022 is hereby modified as stated and otherwise 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 other 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 $46,100.00. 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 the Circuit Court.

March 6, 2023

CAH/pm
O: 3/2/23
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC036184
Case Name	Bernard Newman v. O'Reilly Auto Parts
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Ryan Meikamp
Respondent Attorney	Dana Djokic

DATE FILED: 7/12/2022

THE INTEREST RATE FOR THE WEEK OF JULY 12, 2022 2.68%

/s/ Dennis OBrien, 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

BERNARD NEWMAN
Employee/Petitioner

Case # **18** WC 036184

v.

Consolidated cases:

O'REILLY AUTO PARTS
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 **Dennis O'Brien**, Arbitrator of the Commission, in the city of **Springfield**, on **May 3, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **October 29, 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 $**14,053.55**; the average weekly wage was $**351.34**.

On the date of accident, Petitioner was **71** 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 $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

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

ORDER

Petitioner's medical condition, cervical sprain or strain, is causally related to the accident of October 29, 2018.

All of the bills introduced into evidence in Petitioner's Exhibit 13 are related to Petitioner's cervical injury, 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, with the exception of November, 20, 2017, November 29, 2018, and January 16, 2020, which are found not to be reasonable or necessitated to treat or cure Petitioner's injuries suffered in this accident.

Petitioner sustained permanent partial disability to the extent of 3% loss of use of the person as a whole, pursuant to §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 12, 2022

Signature of Arbitrator

ICArbDec p. 3

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified that prior to the date of this accident he was employed by Respondent on October 11, 2017 as a delivery person. He said on that date another employee asked him to help in measuring some wire, and in doing so he was backing up and did not see a two wheel truck, he went over it, landing on his right side and shoulder on a skid of batteries. He said he had to be helped off the floor. He sought medical that day at Memorial Medical Center where he gave a history of his fall and was checked out. He said he then came under the care of Dr. Pate, an orthopedist, who performed an injection on his shoulder on October 12, 2017. He said the injection did not help his shoulder, nor did physical therapy which was later ordered by Dr. Pate.

Petitioner said that Dr. Pate then recommended surgery and the surgery occurred on March 20, 2018. He said Dr. Pate took him off work on the date of the surgery. He then underwent post-operative physical therapy for about three months. As a result of that treatment Petitioner said he regained some of the lost function in his shoulder. He said Dr. Pate released him to return to work on September 3, 2018.

Petitioner said that as of the date of arbitration he still took pain pills everyday and he could not fully use his shoulder, he could not play catch with his eight year old grandson. He said that his range of motion and his strength in the right arm had been reduced, and it had not been reduced prior to this accident.

Petitioner testified that he was involved in a second accident, the subject matter of this claim, on October 29, 2018 when while driving a company vehicle back to the store he was rear-ended by another vehicle. He said he was transported to the emergency room that day by ambulance. He said his neck and back were bothering him that day following the accident. He was then seen by his family doctor and referred to an orthopedic specialist at the Orthopedic Center of Illinois, where he was seen for his neck. Petitioner said his family doctor also referred him for some physical therapy, which again did not help. He said Dr. Williams referred him to Dr. Bender, who performed injections to his neck, which helped at that time. During this period of time he was given instructions to work with restrictions, and Respondent allowed him to work light duty, having others help him load parts and customers unload parts which were over his limitations.

Petitioner said that as of the date of arbitration he still had problems from his neck, he still had stabbing pain on the right side of his neck, but no pains radiating down his arms or back. He said he was still making appointments so it could be looked at again. He said the pains he was currently having had not been ongoing since he was released from the Orthopedic Center, the pains had just started eight or nine months prior to arbitration.

Petitioner said he had a third injury on March 9, 2020, when he was involved in another automobile accident. He said he was on 11th Street, turning onto North Grand to go back to the store, looked down the street, saw a vehicle perhaps a block away, thought he had time to make the turn without a problem, and, while making the turn was struck so hard the truck he was driving was totaled. He said he was seen in the emergency

room and his legs and shoulders were painful. He said he had diagnostic tests performed on his neck, head, abdomen, and chest, as he had pain in those areas. Following his discharge from the emergency room he saw his family doctor the next day, March 10, 2020, told him of the accident and of his pain, and the doctor released him to return to work.

Petitioner testified that upon his release to work he was advised by Respondent that he had been terminated, effective March 11, 2020. He had not worked for Respondent since that date.

On cross examination Petitioner said he had undergone a prior rotator cuff surgery in October of 2017 and following that surgery he had required about 18 months of rehabilitation. He said he could not remember what doctor did that earlier surgery. Petitioner said he did not return to full activity after that previous surgery, and he was fired by his employer at that time, Colonial Vending Company. He said when hired by Respondent he was working part-time as a delivery driver. He said that before the October 11, 2017 accident other people helped him with lifting, overhead work or reaching. He said before the October 2017 accident he also took pain medication for his right shoulder whenever it was bothering him. He said after the rotator cuff surgery, but prior to his October 2017 accident he thought the surgeon had done a good job. He said that after that surgery he got a job with a company and worked that job for 11 years, until he had a heart attack and had a valve replacement in 2000. He said he knew he had some arthritis in his neck, which he considered normal for his age.

Petitioner said he could not remember if his arm was outstretched when he fell on October 11, 2017, but he knew he fell on his left side and did not remember if he caught himself with his right hand. Petitioner seemed somewhat confused as to whether or not he caught himself with the right hand.

Petitioner said he was claiming neck and back injuries from the 2018 and 2020 accidents. When asked if the back and neck pain he was currently experiencing was similar to the neck and back pain he had prior to these motor vehicle accidents, Petitioner said it was not, but added that age had a lot to do with this, that he would not deny that age could be involved in his aches and pains.

Petitioner said his right shoulder was last treated in September of 2018, but he could not remember when he last received physical therapy to his neck and back. When asked if he got physical therapy after the 2020 accident Petitioner said he thought he just went back to work at O'Reilly's the day after the accident, walked in the door and was terminated. He said his last day of work was the day of that accident, that on that date he was performing his regular job duties and was making a delivery. He said he was also doing his regular job duties at the time of the October 29, 2018 accident.

On redirect examination Petitioner said he was able to perform all of the necessary functions of his job as a delivery driver prior to October 11, 2017, and that it was only after that accident that he was placed on light duty. H e believed his prior right shoulder surgery was about 20 years before the October 11, 2017 accident, and that between the two injuries he had been able to play catch with his grandson. He said that while he had neck pain prior to the October 29, 2018 accident, he had more neck pain after that accident. He said the subsequent pain was more frequent and more severe. Petitioner said that when he fell over the cart and landed on the batteries he landed on the top of his shoulder down to around the elbow, on the outside of his right arm.

On recross examination Petitioner said he had not worked anywhere since being terminated in March of 2020. He said he would have liked to continue working as he did not like to sit around, but he currently

dedicated all of his time to his great grandson. He said he did not know when he would have retired, as he had trouble, he would stumble and fall on occasions and he could not get up, he needed help to get up.

MEDICAL EVIDENCE

October 11, 2017 Medical:

Petitioner was seen in Memorial Medical Center's emergency room on October 11, 2017, and gave a consistent history of his falling over a dolly while walking backwards, landing on his right side, with pain in his right shoulder and hip and some soreness in the left shoulder. X-rays showed no acute findings for the right shoulder, but did note mild osteoarthritis. Physical examination revealed right shoulder tenderness and range of motion which was restricted by pain. Diagnosis at that time was of contusions of the pelvis and right shoulder. (PX 2 p.5-9)

Petitioner was again seen in the emergency room at Memorial Medical Center the next day, October 12, 2017, with complaints of pain in the right ulna and both shoulders. X-rays of the ulna were negative. A history of a prior shoulder surgery 10-12 years earlier was given. It was noted that a prior rotator cuff tendon repair had been performed on the left shoulder as well. He was seen by Dr. Pate of SIU Medicine with the same complaints and history, and physical examination of the right shoulder showed reduction in range of motion, and x-rays were interpreted as showing degeneration and arthritis. An injection of the right shoulder was performed. Dr. Pate's assessment was rotator cuff tear arthropathy of both shoulders, right worse than left. (PX 2 p.28; PX 3 p.2,6,7)

Petitioner was seen by Dr. Varney of SIU Medicine on October 16, 2017 for acute low back pain without radiculopathy as well as shoulder pain. Physical therapy for the right shoulder was ordered. (PX 3 p.8)

Dr. Pate then saw Petitioner on November 2, 2017, with continued right shoulder pain. It was noted that the shoulder injection had not relieved his symptoms for very long. Petitioner was reporting difficulties with overhead and reaching activities. Physical examination revealed positive Neer and Hawkins tests and reduced supraspinatus strength on testing. Dr. Pate felt Petitioner probably had a re-tear of his rotator cuff and he recommended an arthroscopic revision repair. It was noted that Petitioner could not have an MRI as he had a defibrillator. Petitioner was reluctant to undergo surgery, so physical therapy was ordered. (PX 3 p.12,15)

When seen on December 1, 2017, Petitioner advised Dr. Pate that he felt his shoulder would probably need surgery. He advised the doctor that he did not feel he could go back to work due to a problem abiding by work restrictions. Petitioner's physical examination appeared unchanged. Dr. Pate felt Petitioner likely had "a large to massive rotator cuff tear," and he again recommended arthroscopic surgery. He gave Petitioner a 5 pound weight restriction. (PX 3 p.16,17)

An evaluation of Petitioner was performed by Memorial Industrial Rehabilitation Center on December 7, 2017, on referral of Dr. Pate. In the consistent history given by Petitioner on that date Petitioner advised the staff that he had a right rotator cuff repair more than 20 years earlier, had a very good recovery, and had been getting along fine until this fall occurred. Petitioner advised the therapist that he was not working due to a "no lifting" restriction as well as his being unable to drive while on pain medication. Right shoulder range of motion

was found to be limited on examination. Petitioner received physical therapy from December 11, 2017 through December 21, 2017. (PX 2 p.38,40,43-50)

Respondent had Petitioner examined by Dr. Mall on December 13, 2017. Dr. Mall took a history from Petitioner of the fall of October 11, 2017, and his subsequent complaints and treatment, his job duties prior to the accident and his current symptoms which were preventing him from doing his prior work, resulting in his not working as of the date of the examination. Dr. Mall's physical examination revealed a normal neurologic examination, bilateral rotator cuff weakness, mild discomfort over both biceps tendons, a negative O'Brien's test and no pain on cross-body adduction. It was noted that Petitioner had cervical spine tenderness and significant limitations in cervical spine range of motion with extension, flexion, and rotation. Petitioner said movement of the cervical spine did not cause him substantial pain. X-rays of the right shoulder demonstrated rotator cuff arthropathy as well as the anchor placed during his prior rotator cuff repair. X-rays of the cervical spine showed significant disk space narrowing from C3 to C7 with obliteration of the disk space at C5/6 and C6/7, anterior osteophytes formation at C3/4 and anterolisthesis of C4 onto C5. Dr. Mall reported his viewing a report of video taken of Petitioner on November 5, 2017, performing certain activities, as well as photographs. It is noted that no such report, video, or photographs were introduced into evidence. Dr. Mall also summarized the medical records he reviewed. Dr. Mall's opinions will be noted in the summary of his deposition, below. (RX 1)

On December 21, 2017, Petitioner told Dr. Pate that physical therapy had not helped. He said he had been sent to St. Louis for a second opinion and the doctor there told him that because of his age and his comorbidities surgery was not recommended. Dr. Pate noted that Petitioner had failed injections and physical therapy and his shoulder pain was worsening, as was his shoulder function. Dr. Pate thought surgery would help Petitioner. (PX 3 p.18,20)

After a pre-operative physical of March 12, 2018, right shoulder arthroscopic surgery was performed by Dr. Pate on March 20, 2018. During that surgery Dr. Pate found a massive rotator cuff tear involving the supraspinatus, the infraspinatus and the subscapularis. A repair was performed including debridement and placement of multiple anchors. (PX 3 p.37-39; PX 4 p.1-3)

Petitioner was seen post-operatively by Dr. Boente on April 3, 2018. He was found to be doing well. (PX 3 p.47,48)

Dr. Pate examined Petitioner on May 1, 2018. Petitioner had been doing gentle range of motion exercises for the forearm and elbow and was reporting occasional sharp pain in the right elbow. Physical therapy was ordered. (PX 3 p.49,51)

Following his right shoulder surgery, Petitioner was again seen at Memorial Industrial Rehabilitation Center for an evaluation on May 10, 2018, and received physical therapy from May 14, 2018 through August 23, 2018. (PX 2 p.54,58-111)

Dr. Pate examined Petitioner on May 25, 2018, and, after examining Petitioner, wrote that Petitioner was not ready to go back to work, he was to continue physical therapy. When seen on July 6, 2018, Petitioner said he was doing pretty well and was happy with physical therapy. Dr. Pate also felt Petitioner was doing well, but

he did not feel he was quite ready to return to work. He had Petitioner continue physical therapy and noted he felt he would release Petitioner to work in four weeks. (PX 3 p.52,54,58,60)

On August 7, 2018, Dr. Pate noted Petitioner felt he was ready to return to work in September as he was doing a lot better. He reported some stiffness in the shoulder but was able to reach over his head and away from his body without much pain. Dr. Pate released Petitioner to return to work on September 3, 2018, and released him on an as-needed basis. (PX 3 p.61,63)

October 29, 2018 Medical:

Petitioner was seen in Memorial Medical Center's emergency room on October 29, 2018, with a history of a motor vehicle accident immediately prior to being seen. He said he was slowing to a stop when the car behind him struck him going around 15 to 20 miles per hour. He said the only pain he had was in the upper back and a headache. Other than multilevel degenerative disc disease CT scans of the head, cervical spine, thoracic spine, and lumbar spine revealed no acute findings. No acute findings were seen in the CT scans of the chest, abdomen, and pelvis, but evidence of pulmonary emphysema, coronary artery disease, colonic diverticulosis and a 14 mm left renal lesion were seen. X-rays of the right shoulder were compared to those of October 11, 2017 and were basically unchanged. The emergency room doctor noted that a full physical examination and CT scans showed no acute injuries requiring specific therapy, and Petitioner was discharged from the emergency department to follow up on an as needed basis. (PX 9 p.18,20,21,23-30)

Petitioner saw Dr. Varney on November 1, 2018, complaining of neck stiffness and soreness, but denying radiation of pain into the arms. He noted his right shoulder pain was no better, and no worse. Petitioner did provide Dr. Varney with a history of the rear-end collision. Physical examination at that time did not note any traumatic abnormalities. Dr. Varney assessed Petitioner as having an acute whiplash injury, prescribed medication, told him not to drive for two weeks and found him to be unable to work at that time. (PX 10 p.2,5)

Petitioner was seen by Dr. Bhandari on November 15, 2019. Petitioner said his pain was better with the medication he had received but worse when not taking that medication. He continued to complain of neck stiffness and loss of motion of the neck. He denied any radiculopathy. The only abnormality on physical examination was a reduction in range of motion in all planes. His medication was continued and physical therapy was ordered. He was not to push or pull more than 10 pounds. (PX 10 p.6,7)

Petitioner saw Dr. Williams on December 17, 2019. He told him of neck pain coming on six months earlier after an auto accident, and being unchanged. Petitioner said 12 weeks of physical therapy did not provide him pain relief. He rated his pain as 8/10. Physical examination of the neck demonstrated normal active painless range of motion with flexion and extension, and his neurologic examination was totally normal. X-rays showed multilevel cervical degenerative disease and chronic and degenerative anterolisthesis of C4 on C5. Dr. Williams's assessment was neck pain and degenerative disc disease, cervical. An EMG of the bilateral arms was ordered.(PX 11 p.2,3)

On February 25, 2019 Petitioner was seen by Dr. Cheema. He noted that he had been going to physical therapy and taking the prescribed tramadol for pain and was tolerating both. He complained of right knee pain on this visit, with sharp pain below the patella which was disturbing his sleep. Physical examination of the neck was normal on this visit. Tramadol was continued on this date, but for his knee pain. While Petitioner told the

doctor that he was not ready to return to full activity as pain returns when medication wears off, no mention of work restrictions is included in this office note. (PX 10 p.8,9)

Dr. Varney issued a restricted work letter and form on March 25, 2019. No medical records for the visit with Dr. Varney on that date were introduced into evidence. An identical letter was issued by Dr. Varney on May 20, 2019, but again, no records for that office visit were introduced into evidence indicating what medical malady was prompting the restrictions. (PX 12 p. 1,3,4)

A work restriction form dated April 25, 2019, is included in the records, but no records indicating an office visit on that date were introduced into evidence, and the restriction is not signed by Dr. Varney or any other medical provider. (PX 10 p.18)

At Respondent's request Petitioner was examined by Dr. Mall for a second time on May 10, 2019. Petitioner advised him that his right shoulder had been "fixed" after March 2018 surgery, that while he was not 100 percent, he felt better after the surgery. Petitioner advised Dr. Mall that his motor vehicle accident had not injured his right shoulder, it had hurt his neck. Physical examination on May 10, 2019 revealed continued reduction in rotator cuff muscle strength bilaterally, and a normal neurologic examination. Dr. Mall summarized medical records for treatment subsequent to his earlier examination. He noted that he had not reviewed the operative report for the surgery which had been performed after his earlier examination. Dr. Mall's opinions will be noted in the summary of his deposition, below. (RX 2)

Dr. Watson performed electrodiagnostic testing of Petitioner's arms on July 15, 2019. At that time Petitioner was complaining mostly of shoulder pain and of occasional neck pain. After EMG/NCV testing Dr. Watson was not of the opinion that Petitioner had any cervical radiculopathy, but he did have moderate right and mild left carpal tunnel syndrome. (PX 11 p.6,8)

Petitioner saw Dr. Williams on July 24, 2019 with continued complaints of neck pain. Physical examination of the neck was normal, he continued to have painless range of motion, and his neurologic examination remained normal. Dr. Williams noted that the EMG showed no signs of cervical radiculopathy. He noted Petitioner had been seen for an IME in St. Louis in June as well as an IME about a year ago. Dr. Williams said no MRI had been done because Petitioner had a mechanical heart valve and a pacemaker/defibrillator. He said Petitioner was a high risk surgical candidate. He felt Petitioner was doing well and should continue doing exercises taught to him in physical therapy. He was released on an as-needed basis. (PX 11 p.10,11)

Petitioner saw Dr. Khan on September 26, 2019, with complaints of right wrist pain which was progressively worsening. He reported having had an EMG which found carpal tunnel syndrome. He noted that he had been having neck pain and sometimes had trouble holding his head up, but that an EMG did not show any problem at the cervical level. With the exception of positive Tinel's over the carpal tunnel, Petitioner's physical examination was normal. Dr. Kahn's assessment was carpal tunnel syndrome, with no assessment in regard to the neck. (PX 10 p.19,20)

Petitioner returned to see Dr. Williams on October 28, 2019. He was complaining of neck pain, which was unchanged. Petitioner's physical and neurologic examinations were also unchanged, and normal. Dr.

Williams referred Petitioner to Dr. Bender for cervical facet injections as he did not feel that surgical intervention was indicated. (PX 11 p.14,15)

Petitioner was seen by Dr. Bender on November 5, 2019, for possible left-sided facet joint injections. Physical examination was normal, palpating the cervical spine facet joints did not produce pain. He reviewed CT scans of the cervical spine which showed moderate cervical spondylotic changes throughout the cervical spine with advanced facet arthrosis in a vacuum phenomena on left at the C2/3 facet joint. Dr. Bender felt diagnostic left-sided C2/3 and C3/4 facet joint injection would benefit Petitioner. Those injections were performed by Dr. Bender on January 16, 2020. (PX 11 p.17-20)

March 9, 2020 Medical:

Following the motor vehicle accident of March 9, 2020, Petitioner was again seen in the emergency room of Memorial Medical Center. Petitioner denied having cervical pain. Physical examination was normal CT scans were again performed on Petitioner's head, chest, abdomen, pelvis, cervical spine, thoracic spine and lumbar spine. They were compared to prior CT scans. No acute findings were made, though prior findings of degenerative changes and non-related medical conditions in the abdomen and chest were noted. The impression of the emergency room staff was that Petitioner had traumatic chest pain, which was assessed as not being a serious injury, and he was released. (PX 14 p.11-16,18,19,23)

Petitioner was seen by Nurse Practitioner Stark on March 10, 2020 for a pacemaker integration following his automobile accident. A representative of Medtronic performed that integration. Petitioner was released to return to work without restrictions. (PX 15 p.2)

DEPOSITION TESTIMONY OF DR. RYAN C. PATE

Dr. Pate was deposed on February 28, 2022, as a witness for Petitioner. He testified he is a board certified orthopedic surgeon. While associated with SIU School of medicine he had Petitioner as a patient. And his testimony reference Petitioner's histories and complaints, physical examination findings, treatment recommendations, surgical findings, and work restrictions were consistent with the medical summary, above. He described seeing a massive tear of the rotator cuff during the March 20, 2018 surgery, with tears in three of the four rotator cuff tendons. (PX 6 p.3,4-15)

Dr. Pate when asked if Petitioner's fall caused his right shoulder condition of ill-being stated that he took Petitioner at his word that prior to the fall he had a fairly functional shoulder and, after the fall, had an appreciable decline in his shoulder function as well as pain, so it was reasonable that his shoulder dysfunction change occurred due to that fall. He said the level of injury he found was quite probably a traumatically induced issue. He felt the surgery performed was reasonable and necessary to alleviate Petitioner's condition of ill-being, as they had tried several conservative efforts to avoid surgery that had not helped. (PX 6 p.15,16)

On cross examination Dr. Pate said that in his new position in Texas he dealt with almost nothing but total joint surgery, mostly knees and hips, but prior to going to Texas he did general orthopedics as well as total joint replacements, with one-third of his practice being shoulder arthroscopy, approximately 150 surgeries a year. He said he knew Petitioner had previously undergone a rotator cuff repair, but he did not have access to those records. He said he could not get an MRI due to other medical issues Petitioner had, so the decision to

perform surgery was arrived at by trying other methods of treatment first, a steroid injection, and physical therapy, and when he did not get better, they arrived at surgical intervention. (PX 6 p.17,18,20,21)

Dr. Pate said that with prior surgery Petitioner was at a higher risk for injury in the previously operated shoulder as it was weakened, and older patients are also more likely to have rotator cuff tears, but that did not negate the fact that Petitioner had a fairly well-functioning shoulder and had been able to do his job, then fell at work, injured his shoulder and the shoulder became significantly less functional. (PX 6 p.23)

When asked if there was a different surgery which could have been performed to fix Petitioner's shoulder, Dr. Pate said there was, a reverse total shoulder arthroplasty, but it was a much bigger, much more invasive surgery, and much riskier. He also thought Petitioner had a good chance of doing well with a rotator cuff repair, even with a large tear. (PX 6 p.24,25)

Dr. Pate said he did not review any IME reports or any depositions, they had not been supplied to him, all he had were his prior records. (PX 6 p.25)

On redirect examination Dr. Pate said that from the records he reviewed it appeared Petitioner was working full duty at the time of his accident. (PX 6 p.26)

DEPOSITION TESTIMONY OF DR. NATHAN A. MALL

Dr. Mall was deposed on October 16, 2019, as a witness for Respondent. Dr. Mall testified that he was a board certified orthopedic surgeon and independent medical evaluator. He said in the course of his practice he performs shoulder surgeries, sees approximately 200 patients per week and performs three or four IMEs per week. He recalled briefly seeing Petitioner and generating his IME report. His testimony reference physical examination findings from December 13, 2017 was consistent with the medical summary, above. Dr. Mall testified in regard to his opinions, which he said were based upon his review of medical records, Petitioner's description of his job duties and his symptoms. He said his diagnosis was bilateral rotator cuff arthropathy and significant cervical spine degenerative disc disease. He said this type of arthropathy, which involves the humeral head riding up, occurs only when the rotator cuff has not been functional for a long period of time, and it could not have developed within the time between the alleged accident and the time he evaluated Petitioner. (RX 3 p.5-12)

Dr. Mall was also of the opinion that the symptoms Petitioner had when he evaluated him in December of 2017 were not caused by this accident, they were the type of symptoms seen in rotator cuff arthropathy, and that Petitioner told him he was having these problems in his shoulder prior to the accident, they just were not as severe as what he had after the accident. Dr. Mall said that landing directly on the shoulder will usually cause an AC joint separation or a shoulder fracture, it will not usually cause a rotator cuff tear, which is usually caused by landing on an outstretched arm with upward force to the shoulder. He did not believe the mechanism of this accident was sufficient to cause a rotator cuff tear or aggravate a rotator cuff tear. (RX 3 p.12-14)

Dr. Mall thought appropriate treatment would be a cortisone shot to the shoulder and perhaps physical therapy would be helpful. He said that this type of condition naturally gets worse over time, and that eventually, regardless of whether he had an injury or not, he would become so symptomatic that he would need a reverse shoulder replacement. He said he would not anticipate Petitioner or anyone his age with this condition would heal with a rotator cuff repair. (RX 3 p.15,17)

Dr. Mall said that he examined Petitioner again on May 10, 2019. His medical record review and physical examination findings on that occasion are contained in the medical summary, above. He said Petitioner's physical findings were worse on this occasion than they had been on the previous examination. He said this could be a result of the surgery he had, as that happens, but he noted he had not seen the operative report. He said he gave an AMA impairment rating in his second evaluation, noting that Petitioner essentially had a shoulder strain or contusion as a result of this work injury, and that it would not produce any permanent impairment to the right shoulder. He said he certainly had impairment from his diagnosis, but that it did not relate to his work injury. (RX 3 p.19-25)

Dr. Mall said he reviewed cervical x-rays taken subsequent to his motor vehicle accident (please note, this deposition was conducted prior to the second motor vehicle accident of March 9, 2020), and they were worse than his prior x-rays, but that was what would be expected with degenerative conditions, they continue to degenerate. He said he did not see any changes which were necessarily from a car accident per se. (RX 3 p.25,26)

On cross examination Dr. Mall said he had not reviewed the operative report for the surgery which occurred before this accident, nor did he see the operative report from March of 2018. He said he did not review medical records from prior to October 11, 2017, but he did know that his system indicated there were x-rays and a CT scan of the right shoulder from October of 2012, five years prior to this accident, but he had not reviewed the reports from those studies, and he did not know how those got into their system. (RX 3 p.27,28)

When asked about Petitioner's diagnosis from the motor vehicle accident, Dr. Mall said that he did not see him for that accident, but that Petitioner had cervical spine symptomatology when seen in December of 2017, with limited range of motion of the neck and symptoms of numbness and tingling into his hand, which were cervical spine related issues. He said Petitioner could have sustained a sprain or strain to his cervical spine as a result of the motor vehicle accident, being in a vehicle struck from behind by a vehicle going 15 to 20 miles per hour could cause a cervical sprain or strain. He was of the opinion that the fall in October of 2017 if directly on the shoulder would not cause significant stress on the rotator cuff and would not be an injury mechanism that would cause an aggravation of a rotator cuff tear. In addition, Petitioner had told him that he was still having symptoms with the shoulder and they got a little worse after the accident. He agreed that the accident cause Petitioner's symptoms to be worse, but the chronic rotator cuff tearing was not any worse. (RX 3 p.29-35)

On redirect examination Dr. Mall said his opinions in regard to the appropriateness of a reverse arthroplasty did not change despite his not having seen operative reports. (RX 3 p.35)

On recross examination Dr. Mall said that doing a reverse arthroplasty following an attempted rotator cuff repair or multiple rotator cuff repairs caused a heightened risk of infection in the later surgery. (RX 3 p.36)

ARBITRATOR CREDIBILITY ASSESSMENT

Petitioner during his testimony appeared to be forthright and answered all questions put to him by both attorneys with no apparent attempt to evade or refuse to answer said questions. He did not appear to exaggerate his symptoms. He did at one point take umbrage at questions asked by Respondent counsel, but when advised by the Arbitrator that the questions being asked were normal during hearings and not a personal assault on him, Petitioner apologized for becoming angry and thereafter answered all questions posed to him. The Arbitrator

took this as frustration on the part of Petitioner and of a misunderstanding or ignorance of the nature of the proceedings and the role of Respondent counsel. The Arbitrator found Petitioner to be a credible witness.

While Dr. Pate and Dr. Mall were of quite different opinions, they both appeared to be disinterested witnesses who answered all questions posed to them without hesitation, and with no apparent prejudice. The Arbitrator finds both doctors to be credible witnesses.

CONCLUSIONS OF LAW:

These findings and award are limited to only the accident of October 29, 2018. Separate findings and awards will be made in separate Decisions of Arbitrator in 18 WC 000716, date of accident October 11, 2017, and 20 WC 008208, date of accident March 9, 2008.

In support of the Arbitrator's decision relating to whether Petitioner's current condition of ill-being, whiplash injury resulting in cervical sprain or strain and aggravation of pre-existing degenerative disc disease, is causally related to the accident of October 29, 2018, 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 Credibility Assessment, above, is incorporated herein.

Petitioner was working his regular job, with accommodations for a right shoulder injury at the time of this accident.

Respondent in this case presented no evidence indicating that the Petitioner was under any active medical care for his degenerative disc disease at the time of the date of accident nor any information to suggest that the Petitioner was having any medical problems associated with his cervical spine at the time of the date of accident. The only information that was submitted into evidence regarding the Petitioner's prior condition is x-ray evidence of its existence at the time of his examination by Dr. Mall in regard to his right shoulder injury on December 13, 2017 and testimony of Dr. Mall that it would have taken a considerable period of time for his degenerative changes to develop to the extent found subsequent to the accident. At the time of Petitioner's December 13, 2017 examination by Dr. Mall Petitioner was found to have restrictions in range of motion of the cervical spine similar to the restrictions found subsequent to the accident of October 29, 2018. Petitioner was not making complaints of cervical pain to Dr. Mall on December 13, 2017. Respondent presented no evidence indicating Petitioner was suffering from any cervical pain prior to October 29, 2018. It is noted that the anterolisthesis of C4 on C5 seen in x-rays after this accident was observed by Dr. Mall during his first IME of Petitioner, prior to the date of this accident, and is therefore a pre-existing condition.

Respondent submitted no evidence nor called any witnesses to suggest that the Petitioner was working under any medical restrictions due to his neck at the time of the accident of October 29, 2018.

Emergency room personnel, Dr. Varney, Dr. Bhandari, Dr. Williams, Dr. Cheema, and Dr. Mall all recorded complaints of upper back or neck pain on the day of the accident and in the months thereafter. X-rays taken after this accident were quite similar in description to those described by Dr. Mall during his December 13, 2017 examination for the right shoulder. Dr. Varney diagnosed Petitioner as having an acute whiplash injury on November 1, 2018. Dr. Bhandari gave Petitioner work restrictions when he saw him for neck pain and stiffness on November 15, 2019. Dr. Bhandari ordered physical therapy at that time. Petitioner made similar complaints to Dr. Williams on December 17, 2019, and EMG studies were ordered. Dr. Mall performed his cervical IME on Petitioner on May 10, 2019, and he said x-rays of the cervical spine on that date were worse than the prior x-rays, but he would expect that as degenerative conditions continue to degenerate. He said Petitioner could have sustained a sprain or strain to his cervical spine as a result of the motor accident, as being in a vehicle struck from behind by a vehicle going 15 to 20 miles per hour could cause such a sprain or strain. Dr. Watson performed electrodiagnostic testing on July 15, 2019, and found no evidence of cervical radiculopathy. He noted Petitioner was complaining of occasional neck pain as of that date. Petitioner was still complaining of neck pain when he saw Dr. Williams on July 24, 2019, but his physical examination was normal. He released Petitioner on an as-needed basis on that date.

The Arbitrator finds that Petitioner's medical condition, cervical sprain or strain, is causally related to the accident of October 29, 2018. This finding is based upon the testimony of Petitioner, of being able to work, with accommodations for his right shoulder, prior to October 29, 2018, the lack of medical treatment or complaints prior to the date of accident, and the medical findings and testimony of the emergency room staff of Memorial Medical Center, Dr. Varney, Dr. Bhandari, Dr. Williams and Dr. Mall. Dr. Mall specifically testified that the type of motor vehicle accident described as happening by Petitioner could have caused Petitioner to sustain a sprain or strain to his cervical spine.

The Arbitrator further finds that the chain-of-events also support a finding of causal connection. This finding is based upon Petitioner's unrebutted testimony to a pre-accident ability to perform his usual work, with accommodations for his right shoulder, no medical complaints, treatment or temporary disability relating to the cervical spine in the months or years immediately preceding October 29, 2018, his having an accident on October 29, 2018, his immediately after said accident having sudden pain, immediate medical treatment, and new diagnoses based on physical examinations. Certi-Serve, Inc. vs. Industrial Commission, 101 Ill.2d 236,244 (1984)

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 October 17, 2017, 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 Credibility Assessment, above, is incorporated herein.

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

The medical bills contained in Petitioner's Exhibit 13 are for medical treatment claimed to be related to the accident of October 29, 2018. A review of those bills reveals that most, but not all, are supported by medical records introduced into evidence for treatment of cervical injuries.

The following bills have no corresponding medical records reflecting medical treatment of the cervical spine:

- November 20, 2017 (pre-dates accident, Internal Medicine, PX 13, p.8)
- November 29, 2018 (Internal Medicine, PX 13, p.9)
- January 16, 2020 (PX 13, p.17)

The Arbitrator finds that all of the bills introduced into evidence in Petitioner's Exhibit 13 are related to Petitioner's cervical injury, 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, with the exception of November, 20, 2017, November 29, 2018, and January 16, 2020, which are found not to be reasonable or necessitated to treat or cure Petitioner's injuries suffered in this accident. This finding is based upon the medical records introduced into evidence.

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 Arbitrator Credibility Assessment, above, is incorporated herein.

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

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

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

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a part-time parts delivery driver at the time of the accident and that he was able to return to work in his prior capacity as a result of said injury. The Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 71 years old at the time of the accident. Because of the few future years of potential employment, 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 Petitioner did not testify to any decrease in his earnings or earning capacity. Because of lack of evidence in this regard, the Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner had pre-existing cervical degenerative disc disease which per x-rays, had worsened since x-rays performed one year earlier. Petitioner continued to complain of occasional neck symptoms when last seen for this condition. He received physical therapy and injections to treat this injury. 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 3% loss of use of the person as a whole, pursuant to §8(d)(2) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC024774
Case Name	Anna Steinacher v. State of Illinois - Alton Mental Health Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0096
Number of Pages of Decision	14
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Jay Johnson
Respondent Attorney	Caitlin Fiello

DATE FILED: 3/6/2023

/s/Carolyn Doherty, 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

ANNA STEINACHER,
Petitioner,

vs. NO: 16 WC 24774

ALTON MENTAL HEALTH CENTER,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, and nature and extent, with the issue of penalties having been withdrawn by Petitioner at oral argument, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 5, 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 Section 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.

March 6, 2023
O: 03/02/23
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	16WC024774
Case Name	Anna Steinacher v. Alton Mental Health Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Jay Johnson
Respondent Attorney	Caitlin Fiello

DATE FILED: 8/5/2022

THE INTEREST RATE FOR THE WEEK OF AUGUST 2, 2022 2.85%

/s/ William Gallagher, Arbitrator
Signature

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

August 5, 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

Anna Steinacher
Employee/Petitioner

v.

Alton Mental Health Center
Employer/Respondent

Case # 16 WC 24774

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, on June 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 July 13, 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 $39,047.84; the average weekly wage was $750.92.

On the date of accident, Petitioner was 33 years of age, married with 3 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 $12,863.42 for other benefits, for a total credit of $12,863.42.

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 7, 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 temporary total disability benefits of $500.61 per week for 127 4/7 weeks, commencing July 18, 2016, through October 16, 2016; July 26, 2017, through January 8, 2018; April 9, 2018, through March 1, 2019; September 11, 2019, through October 6, 2019; and November 20, 2019, through July 31, 2020, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $450.55 per week for 300 weeks because the injury sustained caused the 60% 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.

William R. Gallagher, Arbitrator

AUGUST 5, 2022

ICArbDec p. 2

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment by Respondent on July 13, 2016. According to the Application, Petitioner was "Injured at work" and sustained injuries to her "Left Arm, Right Arm, Right Hand and Body" (Arbitrator's Exhibit 2). Although it was not pled in the Application, Petitioner was alleging that the injuries were a result of "repetitive movement" (Respondent's Exhibit 1).

Respondent disputed liability on the basis of the accident and causal relationship. In regard to temporary total disability benefits, Petitioner alleged she was entitled to temporary total disability benefits of 127 4/7 weeks, commencing July 18, 2016, through October 16, 2016; July 26, 2017, through January 8, 2018; April 9, 2018, through March 1, 2019; September 11, 2019, through October 6, 2019; and November 20, 2019, through July 31, 2020. Petitioner also claimed she was permanently and totally disabled since August 1, 2020 (Arbitrator's Exhibit 1).

Petitioner became employed by Respondent on June 16, 2016, as a Support Services Worker/Housekeeper. Petitioner's job duties included sweeping, mopping floors, cleaning bathrooms and other rooms/offices. All of Petitioner's job duties required the active and repetitive use of her arms/hands which she testified she did eight hours a day.

Shortly after Petitioner became employed by Respondent, Petitioner and other employees had to do a "deep cleaning" of the facility to prepare for a special survey/inspection. The deep cleaning included shampooing all of the carpeting, stripping/waxing floors, and washing all the windows, etc. Petitioner testified the work was much more intensive than her regular job duties.

Petitioner testified she used an electric scrubber to shampoo the carpeting. When she did so, Petitioner's arms were bent at a 45° angle and the scrubber would vibrate, shake and bounce when she was using it. Petitioner used the same electric scrubber fitted with a different head to strip the old wax off of the floors. Petitioner then used a mop to apply the new wax. When she was using the scrubber, she did so for five to six hours per day.

Petitioner testified that on July 12, 2016, she was using the scrubber and her arms started to hurt. Petitioner said she needed a break from using the machine because of the vibrations and she finished her work day performing other cleaning activities.

On July 13, 2016 (the date of accident alleged in the Application), Petitioner was washing windows with her right hand over her head. Suddenly, Petitioner experienced a lack of feeling in her right hand from her fingertips extending up to her shoulder. Petitioner said she dropped things she was holding and advised her supervisor. An accident report was completed that same day which noted Petitioner was having symptoms because of "repetitive movement" (Respondent's Exhibit 1).

On July 13, 2016, Petitioner was seen in the ER of St. Anthony's Hospital. At that time, Petitioner complained of bilateral wrist pain which had been present for one week, but was worsening today. Petitioner advised she worked as a housekeeper and the movement associated with that job brought

on the symptoms. Petitioner was diagnosed with bilateral carpal tunnel syndrome and directed to follow-up with her own physician (Petitioner's Exhibit 4).

Petitioner was subsequently seen by Dr. Randall Rogalsky, an orthopedic surgeon, on July 18, 2016. At that time, Petitioner complained of right wrist/elbow pain as well as numbness/tingling and weakness in the right hand. Dr. Rogalsky diagnosed Petitioner with right upper extremity neural entrapment at the wrist/elbow. He ordered EMG/nerve conduction studies and authorized Petitioner to be off work (Petitioner's Exhibit 3).

The EMG/nerve conduction studies were performed on August 16, 2016, and they revealed right median nerve entrapment. Dr. Rogalsky saw Petitioner on August 19, 2016, and recommended Petitioner undergo right carpal tunnel and right cubital tunnel surgical release procedures (Petitioner's Exhibit 3).

Dr. Rogalsky performed surgery on Petitioner's right hand and elbow on August 30, 2016. The surgeries consisted of right carpal tunnel and right cubital tunnel releases (Petitioner's Exhibit 3).

Following surgery, Dr. Rogalsky continued to treat Petitioner and ordered physical therapy. Petitioner received physical therapy from September 28, 2016, through November 28, 2016 (Petitioner's Exhibits 3 and 6).

Dr. Rogalsky evaluated Petitioner on October 10, 2016. At that time, Petitioner's condition had improved, but she still complained of hypersensitivity over the wrist incision. He authorized Petitioner to return to work (Petitioner's Exhibit 3).

Petitioner returned to work for Respondent on October 17, 2016, on light duty. When she did so, Petitioner worked in the kitchen and she counted salt/pepper packets, silverware and napkins. Petitioner testified the area she worked in was cold and her right hand began to swell. Respondent then moved Petitioner to an office where she performed clerical tasks which included filing, sorting and scanning of charts. Petitioner stated that when she did too much lifting, her right arm pain increased.

Petitioner was again seen by Dr. Rogalsky on December 19, 2016. At that time, Petitioner had returned to her regular job duties with Respondent. Petitioner's right hand/arm condition had improved; however, Petitioner's primary complaints were in regard to her left upper extremity and they were virtually identical to the complaints she previously had in regard to her right upper extremity. Dr. Rogalsky ordered EMG/nerve conduction studies of the left upper extremity (Petitioner's Exhibit 3).

The EMG/nerve conduction studies of Petitioner's left upper extremity were performed on January 6, 2017. The diagnostic studies were positive for left carpal tunnel syndrome, but equivocal for left cubital tunnel syndrome (Petitioner's Exhibit 3).

Petitioner continued to perform her regular job duties for Respondent. She was subsequently seen by Dr. Rogalsky on July 21, 2017. At that time, Petitioner complained of recurrent right upper extremity symptoms and ongoing left wrist symptoms. Petitioner advised she did very physical

custodial work and had just been seen in an ER where she was prescribed medication. Dr. Rogalsky ordered repeat EMG/nerve conduction studies of both upper extremities and authorized Petitioner to be off work (Petitioner's Exhibit 3).

Petitioner was again seen by Dr. Rogalsky on August 14, 2017. At that time, Petitioner complained of bilateral wrist and right elbow pain as well as right hand numbness/tingling. Dr. Rogalsky reviewed the EMG/nerve conduction studies and opined they were positive for bilateral recurrent carpal tunnel syndrome. He ordered physical therapy and continued to authorize Petitioner to remain off work (Petitioner's Exhibit 3).

Dr. Rogalsky saw Petitioner on September 25, 2017. At that time, Petitioner advised her left upper extremity symptoms had improved, but she continued to complain of right upper extremity symptoms which also included the right shoulder. Dr. Rogalsky opined there was potential right shoulder pathology and ordered an MRI scan of the right shoulder (Petitioner's Exhibit 3).

When Dr. Rogalsky reviewed the MRI, he opined it revealed subacromial impingement. Dr. Rogalsky recommended Petitioner undergo right shoulder surgery (Petitioner's Exhibit 3).

Dr. Rogalsky performed right shoulder surgery on October 24, 2017. The procedure consisted of acromioclavicular resection with anterior acromioplasty. Following surgery, Dr. Rogalsky ordered physical therapy (Petitioner's Exhibit 3).

When Dr. Rogalsky saw Petitioner on November 13, 2017, he noted Petitioner's range of motion of the right upper extremity had improved; however, Petitioner continued to complain of left hand/elbow symptoms. Dr. Rogalsky recommended Petitioner undergo surgery on the left hand/elbow (Petitioner's Exhibit 3).

Dr. Rogalsky performed surgery on Petitioner's left hand/elbow on November 28, 2017. The surgical procedures consisted of carpal tunnel and cubital tunnel releases (Petitioner's Exhibit 3). Petitioner testified her recovery was difficult because she was still recovering from the right shoulder surgery.

At the direction of Respondent, Petitioner was examined by Dr. Patrick Stewart, a hand surgeon, on December 4, 2017. In connection with his examination of Petitioner, Dr. Stewart reviewed medical records provided to him by Respondent. Dr. Stewart noted Petitioner was diabetic, had a BMI of over 30 and was female. In regard to Petitioner's work exposure, Dr. Stewart noted Petitioner was subject to the exposure for three weeks prior to the onset of symptoms. Dr. Stewart opined that because of the limited work exposure and the other factors of Petitioner being diabetic, an elevated BMI and being female, her upper extremity conditions were not related to the work exposure (Respondent's Exhibit 4).

Petitioner continued to be treated by Dr. Rogalsky. When Dr. Rogalsky saw Petitioner on December 29, 2017, he authorized her to return to work on 50% restricted duty in seven to 10 days (Petitioner's Exhibit 3).

Petitioner returned to work for Respondent on January 9, 2018, to a light duty job. Petitioner testified she performed clerical tasks in an office. This was a temporary job assignment for 60 days. After 60 days, Petitioner returned to work to her regular job for Respondent. When Petitioner was seen by Dr. Rogalsky on February 5, 2018, he authorized her to return to work (Petitioner's Exhibit 3).

Petitioner testified that after working at her regular job for approximately one week, she began to experience swelling in her right upper extremity. Petitioner was again evaluated by Dr. Rogalsky on April 9, 2018. Dr. Rogalsky diagnosed Petitioner with right shoulder bursitis secondary to increased activities at work. He prescribed medication and authorized Petitioner to be off work (Petitioner's Exhibit 3).

Dr. Rogalsky continued to treat Petitioner and saw her periodically from April 16, 2018, through December 5, 2018. Petitioner continued to have ongoing symptoms, primarily in the right shoulder. Dr. Rogalsky continued to authorize Petitioner to remain off work. When he saw Petitioner on December 5, 2018, he ordered a Functional Capacity Evaluation (FCE) (Petitioner's Exhibit 3).

The FCE was performed on December 18, 2018. According to the examiner, the test results were a valid representation of Petitioner's functional abilities. However, the examiner noted Petitioner's efforts during testing and her pain questionnaires indicated Petitioner had a high pain perception and demonstrated inconsistencies with range of motion measurements. The examiner opined Petitioner could work in the medium physical demand level with the heaviest weight Petitioner would be able to lift was 50 pounds from floor to waist level (Petitioner's Exhibit 3).

Dr. Rogalsky saw Petitioner on January 2, 2019, and reviewed the FCE. He opined Petitioner would not be capable of full time medium work because of the repetitive nature of the work she performed and the need to reach overhead repetitively. He indicated that occasional lifting of 25 pounds was possible, but repetitive lifting should be kept to less than 10 pounds. He opined Petitioner would be able to return to work in a low/sedentary secretarial position and he released her to do so effective January 7, 2019 (Petitioner's Exhibit 3).

Respondent was able to accommodate Petitioner's work restrictions and Petitioner returned to work on March 2, 2019. Petitioner testified she returned to the same light duty office job that she had previously had. Respondent was only able to accommodate Petitioner's light duty work restrictions for 180 days because of Respondent's policies regarding such situations. Petitioner testified that after September 10, 2019, Respondent was no longer able to accommodate her work restrictions and she was compelled by Respondent to resign her employment.

Petitioner subsequently obtained employment at Blackberry Cottage, a nursing home, beginning October 7, 2019. Petitioner's job duties included doing laundry and assisting with patient care. After a while, Petitioner's upper extremity symptoms returned and she began to experience pain, swelling, decreased strength and a diminished range of motion. Petitioner resigned her position on November 19, 2019, and stated she was afraid she might reinjure herself or hurt one of the patients.

Petitioner last saw Dr. Rogalsky on October 1, 2020. At that time, Dr. Rogalsky noted Petitioner's symptoms and findings on examination were the same as they were one year prior. He diagnosed

Petitioner with impingement syndrome of the right shoulder and continued to authorize Petitioner to remain off work (Petitioner's Exhibit 3).

Dr. Rogalsky was deposed on February 22, 2018, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Rogalsky's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. In regard to causality, Dr. Rogalsky testified Petitioner's repetitive work activities which included flexion, extension, and gripping/grasping were a causative factor in the development of Petitioner's upper extremity conditions. He acknowledged Petitioner's gender and diabetic conditions put her at an increased risk for development of nerve entrapment problems, but her work activities further increased the likelihood of Petitioner developing such problems. He noted Petitioner was performing these repetitive activities with a much greater frequency than she would had she been unemployed sitting at home (Respondent's Exhibit 2 pp 27-33).

In regard to Petitioner's right shoulder condition, Dr. Rogalsky testified Petitioner initially complained of right shoulder symptoms on September 25, 2017. He ordered an MRI which revealed subacromial impingement, but no rotator cuff tear. In regard to causality, Dr. Rogalsky testified the repetitive activities could have caused bone spurs which contributed to the development of inflammation of the acromioclavicular joint (Petitioner's Exhibit 2; pp 16-18, 40).

Dr. Stewart was deposed on June 19, 2018, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Stewart's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. Specifically, in regard to causality, Dr. Stewart testified that because of the short exposure Petitioner was subjected to, her work activities did not contribute to the development of Petitioner's bilateral carpal tunnel syndrome (Respondent's Exhibit 5; pp 26-27).

On cross-examination, Dr. Stewart agreed that Petitioner having comorbidities did not exclude other factors which could contribute to the development of carpal tunnel syndrome. He acknowledged Petitioner's flexion/extension of her elbows and the vibration of the floor buffer could cause someone to experience carpal tunnel and cubital tunnel syndromes (Respondent's Exhibit 5; pp 34-35).

Petitioner testified that prior to working at the Alton Mental Health Center, she had other jobs with the State of Illinois. In 2006, Petitioner worked at the Jacksonville Developmental Center as a Mental Health Technician Trainee. Petitioner cared for patients who were mentally disabled and her job duties included dressing, feeding, bathing, cleaning their rooms, etc. She worked there from 2006 to 2007, and again from 2008 until 2012. In 2012, the facility was closed so Petitioner was laid off.

In 2014, Petitioner worked at the Illinois School for the Blind as a Support Service Worker in the dietary department. Petitioner cleaned the cafeteria, prepared food, cleaned out refrigerators, etc. Petitioner worked there for approximately one year. Petitioner's next job was when she started working at the Alton Mental Health Center in June, 2016.

At the direction of Petitioner's counsel, Petitioner was evaluated by John Dolan, a vocational rehabilitation counselor, on September 16, 2019. Because of the pandemic and other factors, Dolan did not get his report prepared until July 31, 2020. Dolan obtained an educational and work history from Petitioner. Petitioner was a high school graduate, but was in a learning disability class for reading. However, Petitioner's grades were mostly A's and B's. Petitioner also attended Lewis and Clark Community College and obtained a certification as a CNA in 2002 (Petitioner's Exhibit 1; Deposition Exhibit 2).

In addition to her regular job duties which Petitioner performed for Respondent, she also advised that she worked for Respondent as an Office Assistant during the time she was subject to work restrictions. Petitioner purged patient's charts, audited paperwork and keyboarded lists of deficiencies found when making charts. The heaviest item Petitioner had to lift was a patient's chart (Petitioner's Exhibit 1; Deposition Exhibit 2).

Dolan noted the work restrictions indicated in the FCE and those imposed by Dr. Rogalsky. Petitioner informed Dolan she experienced daily arm pain which she rated at 4/5 on a pain scale of 0/10. When Petitioner used her right arm, the pain level increased to 7/10 or 9/10. Petitioner complained that she frequently drops objects and carrying a gallon of milk is difficult and she now uses her left hand to do so. Dolan administered some tests to Petitioner which revealed she read at a fourth grade level, spelled at a third grade level, but could comprehend sentences at a high school level (Petitioner's Exhibit 1; Deposition Exhibit 1).

Dolan opined Petitioner had never been successful in any job in which reading and spelling were important because she had always performed physical jobs. In regard to the light duty job Petitioner performed for Respondent, Dolan noted Petitioner's light duty job was "heavily accommodated" and opined Petitioner lacked the skills to compete for such a position given her academic and work skills as well as the restrictions imposed by Dr. Rogalsky. He opined Petitioner no longer had access to a reasonable stable labor market (Petitioner's Exhibit 1; Deposition Exhibit 2).

Dolan was deposed on June 7, 2021, and his deposition testimony was received into evidence at trial. On direct examination, Dolan's testimony was consistent with his report and he reaffirmed the opinions contained therein. Specifically, Dolan testified that based on her age, academic skills, work skills and restrictions imposed by Dr. Rogalsky and the FCE, Petitioner no longer had access to a reasonable stable labor market. In regard to Petitioner's work while on light duty, he noted it was "heavily accommodated" (Petitioner's Exhibit 1; pp 28-30).

On cross-examination, Dolan was questioned about what he meant by Petitioner being "heavily accommodated." He testified Petitioner did not have to do any heavy lifting and if a patient's chart was heavy, she had a cart to transport it. Petitioner could also change positions, stand, and walk on an as needed basis and only occasionally had to do any keyboarding (Petitioner's Exhibit 1; pp 40-41).

Petitioner testified she still has right hand weakness and experiences tingling/throbbing especially when she is driving. Petitioner continues to experience right arm/shoulder swelling and stated she can only lift objects that weigh five to 10 pounds. In regard to her left hand, Petitioner testified she still experiences swelling of her fingers.

On cross-examination, Petitioner agreed she applied for several jobs with the State. Petitioner acknowledged she was offered a position in a Department of Public Aid office, but declined to accept the offer because the office was a 45 minute drive from her residence.

Sheryl Rutledge, Respondent's Office Coordinator, testified she worked with Petitioner for seven months between 2018 and 2019. She said Petitioner performed essentially the same job duties she did which included filing, auditing/scanning the filing, auditing discharge charts and typing deficiency lists. Rutledge said she did not recall Petitioner needing assistance or accommodation to perform her work tasks. In regard to typing, she testified it was just an occasional portion of Petitioner's job duties.

A performance review of Petitioner's work from January 8, 2018, to March 5, 2018, was received into evidence at trial. It was a positive review of Petitioner's work and noted Petitioner's "…efforts and teamwork during this period of reduced staffing has been an asset to the HIM department." (Respondent's Exhibit 8).

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusions of law:

The Arbitrator concludes Petitioner sustained a repetitive trauma injury to her right and left hands and right shoulder arising out of and in the course of her employment by Respondent, and her current condition of ill-being is causally related to her work activities.

In support of this conclusion the Arbitrator notes the following:

Petitioner's testimony regarding the repetitive nature of her job duties and that she sustained an onset of symptoms in her right hand on July 13, 2016, was credible and unrebutted.

Petitioner's treating physician, Dr. Rogalsky, opined Petitioner's left and right upper extremity conditions were causally related to her repetitive work activities which included repetitive flexion/extension and gripping/grasping.

Respondent's Section 12 examiner, Dr. Stewart, opined Petitioner's left and right hand/arm conditions were not caused by her work activity, but this opinion was based primarily on the short exposure time; however, he agreed on cross-examination the activities could have caused someone to experience carpal tunnel and cubital tunnel symptoms. Dr. Stewart did not opine as to causality in regard to Petitioner's right shoulder condition.

Based upon the preceding, the Arbitrator finds the opinion of Dr. Rogalsky to be more persuasive than that of Dr. Stewart in regard to causality.

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

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

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 7, 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 (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of 127 4/7 weeks, commencing July 18, 2016, through October 16, 2016; July 26, 2017, through January 8, 2018; April 9, 2018, through March 1, 2019; September 11, 2019, through October 6, 2019; and November 20, 2019, through July 31, 2020.

In support of this conclusion the Arbitrator notes the following:

The Petitioner was subject to work restrictions imposed by her treating physician, Dr. Rogalsky, and Respondent could not accommodate same during all of the aforestated periods of time.

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

The Arbitrator concludes Petitioner is not permanently and totally disabled.

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 60% loss of use of the person as a whole.

In support of these conclusions the Arbitrator notes the following:

Because of Petitioner's upper extremity conditions, she is not able to return to work to the job she had at the time she sustained the injuries.

When Petitioner was on light duty while continuing to work for Respondent, she was able to successfully perform all the job duties of an Office Assistant. This was confirmed by the testimony of Sheryl Rutledge, Respondent's Office Coordinator and the Performance Evaluation which was tendered into evidence.

Petitioner's vocational expert, John Dolan's testimony that Petitioner had not been successful in any jobs in which reading and spelling were important and that she was "heavily accommodated" during her light duty assignment for Respondent was not credible.

Petitioner was offered a job with the Illinois Department of Public Aid which she declined without even attempting same.

Based on the preceding, the Arbitrator concludes Petitioner is not permanently and totally disabled.

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

Petitioner's job at the time she sustained the accident required the active and repetitive use of both upper extremities. Petitioner can no longer perform that job because of the injury she sustained. The Arbitrator gives this factor significant weight.

Petitioner was 33 years old at the time she sustained the accident and 39 years old at the time of trial. Petitioner will have to live with the effects of the injury for the remainder of her natural life. The Arbitrator gives this factor significant weight.

Because Petitioner declined the job offer and made no attempt to return to work, it is impossible determine if the injury had any effect on her future earning capacity. The Arbitrator gives this factor moderate weight.

Petitioner had complaints in respect to both hands and right shoulder consistent with the injury she sustained. The Arbitrator gives this factor significant weight.

William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC000716
Case Name	Bernard Newman v. O'Reilly Auto Parts
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0097
Number of Pages of Decision	21
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Ryan Meikamp
Respondent Attorney	Mark Dinos

DATE FILED: 3/6/2023

/s/ Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BERNARD NEWMAN,

Petitioner,

vs. NO: 18 WC 716

O'REILLY AUTO PARTS,

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 causal connection, medical expenses, temporary total disability (TTD) benefits and permanent partial disability (PPD) benefits, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator which is attached hereto and made a part hereof.

The Commission modifies the Arbitrator's Decision to give greater weight to the fifth factor and increase the PPD award. As a result of the October 11, 2017 work accident, Petitioner sustained a massive right shoulder rotator cuff tear involving the supraspinatus, infraspinatus and subscapularis. Petitioner's injury necessitated treatment including an injection to the right shoulder, physical therapy and rotator cuff repair surgery. Petitioner testified at arbitration that he had not regained all his shoulder function, he continued to take pain medication on a daily basis and his range of motion and strength were reduced following the injury. The Commission therefore finds that Petitioner is entitled to seventeen-and-a-half percent (17.5%) loss of use of the person as a whole in PPD benefits.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 12, 2022 is hereby modified as stated and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of $253.00 per week for 87.5 weeks because the injuries sustained caused seventeen-and-a-half percent (17.5%) loss of use of the person as a whole pursuant to Section 8(d)2 of the Act.

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

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

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 the Circuit Court.

March 6, 2023

CAH/pm
O: 3/2/23
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC000716
Case Name	Bernard Newman v. O'Reilly Auto Parts
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Ryan Meikamp
Respondent Attorney	Dana Djokic

DATE FILED: 7/12/2022

THE INTEREST RATE FOR THE WEEK OF JULY 12, 2022 2.68%

/s/ Dennis OBrien, 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

BERNARD NEWMAN
Employee/Petitioner

Case # **18** WC **000716**

v.

Consolidated cases:

O'REILLY AUTO PARTS
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 **Dennis O'Brien**, Arbitrator of the Commission, in the city of **Springfield**, on **May 3, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **October 11, 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 $**14,053.55**; the average weekly wage was $**351.34**.

On the date of accident, Petitioner was **70** 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 $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

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

ORDER

Petitioner's medical condition, massive rotator cuff tear involving the supraspinatus, the infraspinatus and the subscapularis, is causally related to the accident of October 11, 2017.

Petitioner was temporarily totally disabled as a result of the accident from March 20, 2018 to September 3, 2018, a period of 23 6/7 weeks, which is to be paid at a weekly rate of $253.00, the minimum rate in effect on October 11, 2017.

All of the bills introduced into evidence in Petitioner's Exhibit 7 are related to Petitioner's right shoulder injury, 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, with the exception of December 11, 2017, May 21, 2018, May 31, 2018, June 22, 2018, and August 23, 2018, which are found not to be reasonable or necessitated to treat or cure Petitioner's injuries suffered in this accident.

Petitioner sustained permanent partial disability to the extent of 15% loss of use of the person as a whole pursuant to §8(d)(2) of the Act, 75 weeks of disability, which is to be paid at a weekly rate of 253.00, the minimum rate in effect on October 11, 2017.

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

JULY 12, 2022

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified that he was employed by Respondent on October 11, 2017 as a delivery person. He said on that date another employee asked him to help in measuring some wire, and in doing so he was backing up and did not see a two wheel truck, he went over it, landing on his right side and shoulder on a skid of batteries. He said he had to be helped off the floor. He sought medical that day at Memorial Medical Center where he gave a history of his fall and was checked out. He said he then came under the care of Dr. Pate, an orthopedist, who performed an injection on his shoulder on October 12, 2017. He said the injection did not help his shoulder, nor did physical therapy which was later ordered by Dr. Pate.

Petitioner said that Dr. Pate then recommended surgery and the surgery occurred on March 20, 2018. He said Dr. Pate took him off work on the date of the surgery. He then underwent post-operative physical therapy for about three months. As a result of that treatment Petitioner said he regained some of the lost function in his shoulder. He said Dr. Pate released him to return to work on September 3, 2018.

Petitioner said that as of the date of arbitration he still took pain pills everyday and he could not fully use his shoulder, he could not play catch with his eight year old grandson. He said that his range of motion and his strength in the right arm had been reduced, and they had not been reduced prior to this accident.

Petitioner testified that he was involved in a second accident on October 29, 2018 when while driving a company vehicle back to the store he was rear-ended by another vehicle. He said he was transported to the emergency room that day by ambulance. He said his neck and back were bothering him that day following the accident. He was then seen by his family doctor and referred to an orthopedic specialist at the Orthopedic Center of Illinois, where he was seen for his neck. Petitioner said his family doctor also referred him for some physical therapy, which again did not help. He said Dr. Williams referred him to Dr. Bender, who performed injections to his neck, which helped at that time. During this period of time he was given instructions to work with restrictions, and Respondent allowed him to work light duty, having others help him load parts and customers unload parts over his limitations.

Petitioner said that as of the date of arbitration he still had problems from his neck, he still had stabbing pain on the right side of his neck, but no pains radiating down his arms or back. He said he was still making appointments so it could be looked at again. He said the pains he was currently having had not been ongoing since he was released from the Orthopedic Center, the pains had just started eight or nine months prior to arbitration.

Petitioner said he had a third injury on March 9, 2020, when he was involved in another automobile accident. He said he was on 11th Street, turning onto North Grand to go back to the store, looked down the street, saw a vehicle perhaps a block away, though he had time to make the turn without a problem, and, while making the turn was struck so hard the truck he was driving was totaled. He said he was seen in the emergency

room and his legs and shoulders were painful. He said he had diagnostic tests performed on his neck, head, abdomen, and chest, as he had pain in those areas. Following his discharge from the emergency room he saw his family doctor the next day, March 10, 2020, told him of the accident and of his pain, and the doctor released him to return to work.

Petitioner testified that upon his release to work he was advised by Respondent that he had been terminated, effective March 11, 2020. He had not worked for Respondent since that date.

On cross examination Petitioner said he had undergone a prior rotator cuff surgery in October of 2017 and following that surgery he had required about 18 months of rehabilitation. He said he could not remember what doctor did that earlier surgery. Petitioner said he did not return to full activity after that previous surgery, and he was fired by his employer at that time, Colonial Vending Company. He said when hired by Respondent he was working part-time as a delivery driver. He said that before the October 11, 2017 accident other people helped him with lifting, overhead work or reaching. He said before the October 2017 accident he also took pain medication for his right shoulder whenever it was bothering him. He said after the rotator cuff surgery prior to his October 2017 accident he thought the surgeon had done a good job. He said that after that surgery he got a job with a company and worked that job for 11 years, until he had a heart attack and had a valve replacement in 2000. He said he knew he had some arthritis in his neck, which he considered normal for his age.

Petitioner said he could not remember if his arm was outstretched when he fell on October 11, 2017, but he knew he fell on his left side and did not remember if he caught himself with his right hand. Petitioner seemed somewhat confused as to whether or not he caught himself with the right hand.

Petitioner said he was claiming neck and back injuries from the 2018 and 2020 accidents. When asked if the back and neck pain he was currently experiencing was similar to the neck and back pain he had prior to these motor vehicle accidents, Petitioner said it was not, but added that age had a lot to do with this, that he would not deny that age could be involved in his aches and pains.

Petitioner said his right shoulder was last treated in September of 2018, but he could not remember when he last received physical therapy to his neck and back. When asked if he got physical therapy after the 2020 accident Petitioner said he thought he just went back to work at O'Reilly's the day after the accident, walked in the door and was terminated. He said his last day of work was the day of that accident, that on that date he was performing his regular job duties and was making a delivery. He said he was also doing his regular job duties at the time of the October 29, 2018 accident.

On redirect examination Petitioner said he was able to perform all of the necessary functions of his job as a delivery driver prior to October 11, 2017, and that it was only after that accident that he was placed on light duty. H e believed his prior right shoulder surgery was about 20 years before the October 11, 2017 accident, and that between the two injuries he had been able to play catch with his grandson. He said that while he had neck pain prior to the October 29, 2018 accident, he had more neck pain after that accident. He said the subsequent pain was more frequent and more severe. Petitioner said that when he fell over the cart and landed on the batteries he landed on the top of his shoulder down to around the elbow, on the outside of his right arm.

On recross examination Petitioner said he had not worked anywhere since being terminated in March of 2020. He said he would have liked to continue working as he did not like to sit around, but he currently

dedicated all of his time to his great grandson. He said he did not know when he would have retired, as he had trouble, he would stumble and fall on occasions and he could not get up, he needed help to get up.

MEDICAL EVIDENCE

October 11, 2017 Medical:

Petitioner was seen in Memorial Medical Center's emergency room on October 11, 2017, and gave a consistent history of his falling over a dolly while walking backwards, landing on his right side, with pain in his right shoulder and hip and some soreness in the left shoulder. X-rays showed no acute findings for the right shoulder, but did note mild osteoarthritis. Physical examination revealed right shoulder tenderness and range of motion which was restricted by pain. Diagnosis at that time was of contusions of the pelvis and right shoulder. (PX 2 p.5-9)

Petitioner was again seen in the emergency room at Memorial Medical Center the next day, October 12, 2017, with complaints of pain in the right ulna and both shoulders. X-rays of the ulna were negative. A history of a prior shoulder surgery 10-12 years earlier was given. It was noted that a prior rotator cuff tendon repair had been performed on the left shoulder as well. He was seen by Dr. Pate of SIU Medicine with the same complaints and history, and physical examination of the right shoulder showed reduction in range of motion, and x-rays were interpreted as showing degeneration and arthritis. An injection of the right shoulder was performed. Dr. Pate's assessment was rotator cuff tear arthropathy of both shoulders, right worse than left. (PX 2 p.28; PX 3 p.2,6,7)

Petitioner was seen by Dr. Varney of SIU Medicine on October 16, 2017 for acute low back pain without radiculopathy as well as shoulder pain. Physical therapy for the right shoulder was ordered. (PX 3 p.8)

Dr. Pate then saw Petitioner on November 2, 2017, with continued right shoulder pain. It was noted that the shoulder injection had not relieved his symptoms for very long. Petitioner was reporting difficulties with overhead and reaching activities. Physical examination revealed positive Neer and Hawkins tests and reduced supraspinatus strength on testing. Dr. Pate felt Petitioner probably had a re-tear of his rotator cuff and he recommended an arthroscopic revision repair. It was noted that Petitioner could not have an MRI as he had a defibrillator. Petitioner was reluctant to undergo surgery, so physical therapy was ordered. (PX 3 p.12,15)

When seen on December 1, 2017, Petitioner advised Dr. Pate that he felt his shoulder would probably need surgery. He advised the doctor that he did not feel he could go back to work due to a problem abiding by work restrictions. Petitioner's physical examination appeared unchanged. Dr. Pate felt Petitioner likely had "a large to massive rotator cuff tear," and he again recommended arthroscopic surgery. He gave Petitioner a 5 pound weight restriction. (PX 3 p.16,17)

An evaluation of Petitioner was performed by Memorial Industrial Rehabilitation Center on December 7, 2017, on referral of Dr. Pate. In the consistent history given by Petitioner on that date Petitioner advised the staff that he had a right rotator cuff repair more than 20 years earlier, had a very good recovery, and had been getting along fine until this fall occurred. Petitioner advised the therapist that he was not working due to a "no lifting" restriction as well as his being unable to drive while on pain medication. Right shoulder range of motion

was found to be limited on examination. Petitioner received physical therapy from December 11, 2017 through December 21, 2017. (PX 2 p.38,40,43-50)

Respondent had Petitioner examined by Dr. Mall on December 13, 2017. Dr. Mall took a history from Petitioner of the fall of October 11, 2017 and his subsequent complaints and treatment, his job duties prior to the accident and his current symptoms which were preventing him from doing his prior work, resulting in his not working as of the date of the examination. Dr. Mall's physical examination revealed a normal neurologic examination, bilateral rotator cuff weakness, mild discomfort over both biceps tendons, a negative O'Brien's test and no pain on cross-body adduction. It was noted that Petitioner had cervical spine tenderness and significant limitations in cervical spine range of motion with extension, flexion, and rotation. Petitioner said movement of the cervical spine did not cause him substantial pain. X-rays of the right shoulder demonstrated rotator cuff arthropathy as well as the anchor placed during his prior rotator cuff repair. X-rays of the cervical spine showed significant disk space narrowing from C3 to C7 with obliteration of the disk space at C5/6 and C6/7, anterior osteophytes formation at C3/4 and anterolisthesis of C4 onto C5. Dr. Mall reported his viewing a report of video taken of Petitioner on November 5, 2017, performing certain activities, as well as photographs. It is noted that no such report, vide, or photographs were introduced into evidence. Dr. Mall also summarized the medical records he reviewed. Dr. Mall's opinions will be noted in the summary of his deposition, below. (RX 1)

On December 21, 2017, Petitioner told Dr. Pate that physical therapy had not helped. He said he had been sent to St. Louis for a second opinion and the doctor there told him that because of his age and his comorbidities surgery was not recommended. Dr. Pate noted that Petitioner had failed injections and physical therapy and his shoulder pain was worsening, as was his shoulder function. Dr. Pate thought surgery would help Petitioner. (PX 3 p.18,20)

After a pre-operative physical of March 12, 2018, right shoulder arthroscopic surgery was performed by Dr. Pate on March 20, 2018. During that surgery Dr. Pate found a massive rotator cuff tear involving the supraspinatus, the infraspinatus and the subscapularis. A repair was performed including debridement and placement of multiple anchors. (PX 3 p.37-39; PX 4 p.1-3)

Petitioner was seen post-operatively by Dr. Boente on April 3, 2018. He was found to be doing well. (PX 3 p.47,48)

Dr. Pate examined Petitioner on May 1, 2018. Petitioner had been doing gentle range of motion exercises for the forearm and elbow and was reporting occasional sharp pain in the right elbow. Physical therapy was ordered. (PX 3 p.49,51)

Following his right shoulder surgery, Petitioner was again seen at Memorial Industrial Rehabilitation Center for an evaluation on May 10, 2018, and received physical therapy from May 14, 2018 through August 23, 2018. (PX 2 p.54,58-111)

Dr. Pate, after examining Petitioner on May 25, 2018, and, after examining Petitioner, Dr. Pate wrote that Petitioner was not ready to go back to work, he was to continue physical therapy. When seen on July 6, 2018, Petitioner said he was doing pretty well and was happy with physical therapy. Dr. Pate also felt Petitioner

was doing well, but he did not feel he was quite ready to return to work. He had Petitioner continue physical therapy and noted he felt he would release Petitioner to work in four weeks. (PX 3 p.52,54,58,60)

On August 7, 2018, Dr. Pate noted Petitioner felt he was ready to return to work in September as he was doing a lot better. He reported some stiffness in the shoulder but was able to reach over his head and away from his body without much pain. Dr. Pate released Petitioner to return to work on September 3, 2018, and released him on an as-needed basis. (PX 3 p.61,63)

October 29, 2018 Medical:

Petitioner was seen in Memorial Medical Center's emergency room on October 29, 2018, with a history of a motor vehicle accident immediately prior to being seen. He said he was slowing to a stop when the car behind him struck him going around 15 to 20 miles per hour. He said the only pain he had was in the upper back and a headache. Other than multilevel degenerative disc disease CT scans of the head, cervical spine, thoracic spine, and lumbar spine revealed no acute findings. No acute findings were seen in the CT scans of the chest, abdomen, and pelvis, but evidence of pulmonary emphysema, coronary artery disease, colonic diverticulosis and a 14 mm left renal lesion were seen. X-rays of the right shoulder were compared to those of October 11, 2017 and were basically unchanged. The emergency room doctor noted that a full physical examination and CT scans showed no acute injuries requiring specific therapy, and Petitioner was discharged from the emergency department to follow up on an as needed basis. (PX 9 p.18,20,21,23-30)

Petitioner saw Dr. Varney on November 1, 2018, complaining of neck stiffness and soreness, but denying radiation of pain into the arms. He noted his right shoulder pain was no better, and no worse. Petitioner did provide Dr. Varney with a history of the rear-end collision. Physical examination at that time did not note any traumatic abnormalities. Dr. Varney assessed Petitioner as having an acute whiplash injury, prescribed medication, told him not to drive for two weeks and found him to be unable to work at that time. (PX 10 p.2,5)

Petitioner was seen by Dr. Bhandari on November 15, 2019. Petitioner said his pain was better with the medication he had received but worse when not taking that medication. He continued to complain of neck stiffness and loss of motion of the neck. He denied any radiculopathy. The only abnormality on physical examination was a reduction in range of motion in all planes. His medication was continued and physical therapy was ordered. He was not to push or pull more than 10 pounds. (PX 10 p.6,7)

Petitioner saw Dr. Williams on December 17, 2019. He told him of neck pain coming on six months earlier after an auto accident, and being unchanged. Petitioner said 12 weeks of physical therapy did not provide him pain relief. He rated his pain as 8/10. Physical examination of the neck demonstrated normal active painless range of motion with flexion and extension, and his neurologic examination was totally normal. X-rays showed multilevel cervical degenerative disease and chronic and degenerative anterolisthesis of C4 on C5. Dr. Williams's assessment was neck pain and degenerative disc disease, cervical. An EMG of the bilateral arms was ordered.(PX 11 p.2,3)

On February 25, 2019 Petitioner was seen by Dr. Cheema. He noted that he had been going to physical therapy and taking the prescribed tramadol for pain and was tolerating both. He complained of right knee pain on this visit, with sharp pain below the patella which was disturbing his sleep. Physical examination of the neck was normal on this visit. Tramadol was continued on this date, but for his knee pain. While Petitioner told the

doctor that he was not ready to return to full activity as pain returns when medication wears off, no mention of work restrictions is included in this office note. (PX 10 p.8,9)

Dr. Varney issued a restricted work letter and form on March 25, 2019. No medical records for the visit with Dr. Varney on that date were introduced into evidence. An identical letter was issued by Dr. Varney on May 20, 2019, but again, no records for that office visit were introduced into evidence indicating what medical malady was prompting the restrictions. (PX 12 p. 1,3,4)

A work restriction form dated April 25, 2019, is included in the records, but no records indicating an office visit on that date were introduced into evidence, and the restriction is not signed by Dr. Varney or any other medical provider. (PX 10 p.18)

At Respondent's request Petitioner was examined by Dr. Mall for a second time on May 10, 2019. Petitioner advised him that his right shoulder had been "fixed" after March 2018 surgery, that while he was not 100 percent, he felt better after the surgery. Petitioner advised Dr. Mall that his motor vehicle accident had not injured his right shoulder, it had hurt his neck. Physical examination on May 10, 2019 revealed continued reduction in rotator cuff muscle strength bilaterally, and a normal neurologic examination. Dr. Mall summarized medical records for treatment subsequent to his earlier examination. He noted that he had not reviewed the operative report for the surgery which had been performed after his earlier examination. Dr. Mall's opinions will be noted in the summary of his deposition, below. (RX 2)

Dr. Watson performed electrodiagnostic testing of Petitioner's arms on July 15, 2019. At that time Petitioner was complaining mostly of shoulder pain and of occasional neck pain. After EMG/NCV testing Dr. Watson was not of the opinion that Petitioner had any cervical radiculopathy, but he did have moderate right and mild left carpal tunnel syndrome. (PX 11 p.6,8)

Petitioner saw Dr. Williams on July 24, 2019 with continued complaints of neck pain. Physical examination of the neck was normal, he continued to have painless range of motion, and his neurologic examination remained normal. Dr. Williams noted that the EMG showed no signs of cervical radiculopathy. He noted Petitioner had been seen for an IME in St. Louis in June as well as an IME about a year ago. Dr. Williams said no MRI had been done because Petitioner had a mechanical heart valve and a pacemaker/defibrillator. He said Petitioner was a high risk surgical candidate. He felt Petitioner was doing well and should continue doing exercises taught to him in physical therapy. He was released on an as-needed basis. (PX 11 p.10,11)

Petitioner saw Dr. Khan on September 26, 2019, with complaints of right wrist pain which was progressively worsening. He reported having had an EMG which found carpal tunnel syndrome. He noted that he had been having neck pain and sometimes had trouble holding his head up, but that an EMG did not show any problem at the cervical level. With the exception of positive Tinel's over the carpal tunnel, Petitioner's physical examination was normal. Dr. Kahn's assessment was carpal tunnel syndrome, with no assessment in regard to the neck. (PX 10 p.19,20)

Petitioner returned to see Dr. Williams on October 28, 2019. He was complaining of neck pain, which was unchanged. Petitioner's physical and neurologic examinations were also unchanged, and normal. Dr.

Williams referred Petitioner to Dr. Bender for cervical facet injections as he did not feel that surgical intervention was indicated. (PX 11 p.14,15)

Petitioner was seen by Dr. Bender on November 5, 2019, for possible left-sided facet joint injections. Physical examination was normal, palpating the cervical spine facet joints did not produce pain. He reviewed CT scans of the cervical spine which showed moderate cervical spondylotic changes throughout the cervical spine with advanced facet arthrosis in a vacuum phenomena on left at the C2/3 facet joint. Dr. Bender felt diagnostic left-sided C2/3 and C3/4 facet joint injection would benefit Petitioner. Those injections were performed by Dr. Bender on January 16, 2020. (PX 11 p.17-20)

March 9, 2020 Medical:

Following the motor vehicle accident of March 9, 2020, Petitioner was again seen in the emergency room of Memorial Medical Center. Petitioner denied having cervical pain. Physical examination was normal CT scans were again performed on Petitioner's head, chest, abdomen, pelvis, cervical spine, thoracic spine and lumbar spine. They were compared to prior CT scans. No acute findings were made, though prior findings of degenerative changes and non-related medical conditions in the abdomen and chest were noted. The impression of the emergency room staff was that Petitioner had traumatic chest pain, which was assessed as not being a serious injury, and he was released. (PX 14 p.11-16,18,19,23)

Petitioner was seen by Nurse Practitioner Stark on March 10, 2020 for a pacemaker integration following his automobile accident. A representative of Medtronic performed that integration. Petitioner was released to return to work without restrictions. (PX 15 p.2)

DEPOSITION TESTIMONY OF DR. RYAN C. PATE

Dr. Pate was deposed on February 28, 2022, as a witness for Petitioner. He testified he is a board certified orthopedic surgeon. While associated with SIU School of medicine he had Petitioner as a patient. And his testimony reference Petitioner's histories and complaints, physical examination findings, treatment recommendations, surgical findings, and work restrictions was consistent with the medical summary, above. He described seeing a massive tear of the rotator cuff during the March 20, 2018 surgery, with tears in three of the four rotator cuff tendons. (PX 6 p.3,4-15)

Dr. Pate when asked if Petitioner's fall caused his right shoulder condition of ill-being stated that he took Petitioner at his word that prior to the fall he had a fairly functional shoulder and, after the fall, had an appreciable decline in his shoulder function as well as pain, so it was reasonable that his shoulder dysfunction change occurred due to that fall. He said the level of injury he found was quite probably a traumatically induced issue. He felt the surgery performed was reasonable and necessary to alleviate Petitioner's condition of ill-being, as they had tried several conservative efforts to avoid surgery that had not helped. (PX 6 p.15,16)

On cross examination Dr. Pate said that in his new position in Texas he dealt with almost nothing but total joint surgery, mostly knees and hips, but prior to going to Texas he did general orthopedics as well as total joint replacements, with one-third of his practice being shoulder arthroscopy, approximately 150 surgeries a year. He said he knew Petitioner had previously undergone a rotator cuff repair, but he did not have access to those records. He said he could not get an MRI due to other medical issues Petitioner had, so the decision to

perform surgery was arrived at by trying other methods of treatment first, a steroid injection, and physical therapy, and when he did not get better, they arrived at surgical intervention. (PX 6 p.17,18,20,21)

Dr. Pate said that with prior surgery Petitioner was at a higher risk for injury in the previously operated shoulder as it was weakened, and older patients are also more likely to have rotator cuff tears, but that did not negate the fact that Petitioner had a fairly well-functioning shoulder and had been able to do his job, then fell at work, injured his shoulder and the shoulder became significantly less functional. (PX 6 p.23)

When asked if there was a different surgery which could have been performed to fix Petitioner's shoulder, Dr. Pate said there was, a reverse total shoulder arthroplasty, but it was a much bigger, much more invasive surgery, and much riskier. He also thought Petitioner had a good chance of doing well with a rotator cuff repair, even with a large tear. (PX 6 p.24,25)

Dr. Pate said he did not review any IME reports or any depositions, they had not been supplied to him, all he had were his prior records. (PX 6 p.25)

On redirect examination Dr. Pate said that from the records he reviewed it appeared Petitioner was working full duty at the time of his accident. (PX 6 p.26)

DEPOSITION TESTIMONY OF DR. NATHAN A. MALL

Dr. Mall was deposed on October 16, 2019, as a witness for Respondent. Dr. Mall testified that he was a board certified orthopedic surgeon and independent medical evaluator. He said in the course of his practice he performs shoulder surgeries, sees approximately 200 patients per week and performs three or four IMEs per week. He recalled briefly seeing Petitioner and generating his IME report. His testimony reference physical examination findings from December 13, 2017 was consistent with the medical summary, above. Dr. Mall testified in regard to his opinions, which he said were based upon his review of medical records, Petitioner's description of his job duties and his symptoms. He said his diagnosis was bilateral rotator cuff arthropathy and significant cervical spine degenerative disc disease. He said this type of arthropathy, which involves the humeral head riding up, occurs only when the rotator cuff has not been functional for a long period of time, and it could not have developed within the time between the alleged accident and the time he evaluated Petitioner. (RX 3 p.5-12)

Dr. Mall was also of the opinion that the symptoms Petitioner had when he evaluated him in December of 2017 were not caused by this accident, they were the type of symptoms seen in rotator cuff arthropathy, and that Petitioner told him he was having these problems in his shoulder prior to the accident, they just were not as severe as what he had after the accident. Dr. Mall said that landing directly on the shoulder will usually cause an AC joint separation or a shoulder fracture, it will not usually cause a rotator cuff tear, which is usually caused by landing on an outstretched arm with upward force to the shoulder. He did not believe the mechanism of this accident was sufficient to cause a rotator cuff tear or aggravate a rotator cuff tear. (RX 3 p.12-14)

Dr. Mall thought appropriate treatment would be a cortisone shot to the shoulder and perhaps physical therapy would be helpful. He said that this type of condition naturally gets worse over time, and that eventually, regardless of whether he had an injury or not, he would become so symptomatic that he would need a reverse shoulder replacement. He said he would not anticipate Petitioner or anyone his age with this condition would heal with a rotator cuff repair. (RX 3 p.15,17)

Dr. Mall said that he examined Petitioner again on May 10, 2019. His medical record review and physical examination findings on that occasion are contained in the medical summary, above. He said Petitioner's physical findings were worse on this occasion than they had been on the previous examination. He said this could be a result of the surgery he had, as that happens, but he noted he had not seen the operative report. He said he gave an AMA impairment rating in his second evaluation, noting that Petitioner essentially had a shoulder strain or contusion as a result of this work injury, and that it would not produce any permanent impairment to the right shoulder. He said he certainly had impairment from his diagnosis, but that it did not relate to his work injury. (RX 3 p.19-25)

Dr. Mall said he reviewed cervical x-rays taken subsequent to his motor vehicle accident (please note, this deposition was conducted prior to the second motor vehicle accident of March 9, 2020), and they were worse than his prior x-rays, but that was what would be expected with degenerative conditions, they continue to degenerate. He said he did not see any changes which were necessarily from a car accident per se. (RX 3 p.25,26)

On cross examination Dr. Mall said he had not reviewed the operative report for the surgery which occurred before this accident, nor did he see the operative report from March of 2018. He said he did not review medical records from prior to October 11, 2017, but he did know that his system indicated there were x-rays and a CT scan of the right shoulder from October of 2012, five years prior to this accident, but he had not reviewed the reports from those studies, and he did not know how those got into their system. (RX 3 p.27,28)

When asked about Petitioner's diagnosis from the motor vehicle accident, Dr. Mall said that he did not see him for that accident, but that Petitioner had cervical spine symptomatology when seen in December of 2017, with limited range of motion of the neck and symptoms of numbness and tingling into his hand, which were cervical spine related issues. He said Petitioner could have sustained a sprain or strain to his cervical spine as a result of the motor vehicle accident, being in a vehicle struck from behind by a vehicle going 15 to 20 miles per hour could cause a cervical sprain or strain. He was of the opinion that the fall in October of 2017 if directly on the shoulder would not cause significant stress on the rotator cuff and would not be an injury mechanism that would cause an aggravation of a rotator cuff tear. In addition, Petitioner had told him that he was still having symptoms with the shoulder and they got a little worse after the accident. He agreed that the accident cause Petitioner's symptoms to be worse, but the chronic rotator cuff tearing was not any worse. (RX 3 p.29-35)

On redirect examination Dr. Mall said his opinions in regard to the appropriateness of a reverse arthroplasty did not change despite his not having seen operative reports. (RX 3 p.35)

On recross examination Dr. Mall said that doing a reverse arthroplasty following an attempted rotator cuff repair or multiple rotator cuff repairs caused a heightened risk of infection in the later surgery. (RX 3 p.36)

ARBITRATOR CREDIBILITY ASSESSMENT

Petitioner during his testimony appeared to be forthright and answered all questions put to him by both attorneys with no apparent attempt to evade or refuse to answer said questions. He did not appear to exaggerate his symptoms. He did at one point take umbrage at questions asked by Respondent counsel, but when advised by the Arbitrator that the questions being asked were normal during hearings and not a personal assault on him, Petitioner apologized for becoming angry and thereafter answered all questions posed to him. The Arbitrator

took this as frustration on the part of Petitioner and of a misunderstanding or ignorance of the nature of the proceedings and the role of Respondent counsel. The Arbitrator found Petitioner to be a credible witness.

While Dr. Pate and Dr. Mall were of quite different opinions, they both appeared to be disinterested witnesses who answered all questions posed to them without hesitation, and with no apparent prejudice. The Arbitrator finds both doctors to be credible witnesses.

CONCLUSIONS OF LAW:

These findings and award are limited to only the accident of October 11, 2017. Separate findings and awards will be made in separate Decisions of Arbitrator in 18 WC 036184, date of accident October 29, 2018, and 20 WC 008208, date of accident March 9, 2008.

In support of the Arbitrator's decision relating to whether Petitioner's current condition of ill-being, massive rotator cuff tear involving the supraspinatus, the infraspinatus and the subscapularis, is causally related to the accident of October 11, 2017, 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 Credibility Assessment, above, is incorporated herein.

Petitioner was working his regular job at the time of this accident.

Respondent in this case presented no evidence indicating that the Petitioner was under any active medical care for his right shoulder at the time of the date of accident nor any information to suggest that the Petitioner was having any medical problems associated with his shoulder at the time of the date of accident. The only information that was submitted into evidence regarding the Petitioner's prior right shoulder treatment is found in Petitioner's own testimony that the previous treatment that he had on his right shoulder involved a surgery approximately 20 years prior to the date of accident. Respondent presented no evidence to rebut Petitioner's testimony.

The testimony of Dr. Ryan Pate supports that the Petitioner sustained a traumatic event to his right shoulder in the accident in question, and Dr. Pate found tears of 3 of the 4 tendons of the Petitioner's rotator cuff at the time of his arthroscopy. There is nothing in the record reflecting Petitioner having any difficulty or inability to function with the shoulder as suggested by Dr. Mall would be true with this sort of long standing pre-existing problem.

Respondent submitted no evidence nor called any witnesses to suggest that the Petitioner was working under any medical restrictions at the time of the accident.

Dr. Pate's testified that the condition of ill-being in the Petitioner's shoulder was quite probably traumatically induced and that his shoulder dysfunction change had occurred due to the fall in question.

Based upon this, the Arbitrator finds that the fall in question caused a permanent aggravation of the Petitioner's right shoulder conditions, including, but not limited to, the right rotator cuff.

The Arbitrator finds that Petitioner's medical condition, massive rotator cuff tear involving the supraspinatus, the infraspinatus and the subscapularis, is causally related to the accident of October 11, 2017. This finding is based upon the testimony of Petitioner of being able to work prior to the fall of October 11, 2017, the lack of medical treatment or complaints prior to the date of accident, and the medical findings and testimony of Dr. Pate, who actually examined and treated Petitioner conservatively on numerous occasions prior to surgery and who viewed the physical damage to Petitioner's rotator cuff during the surgery of March 20, 2018, Dr. Mall not only did not view the physical damage to Petitioner's rotator cuff during surgery, he did not even review the operative report from that surgery. The Arbitrator gives much greater weight to the opinions of Dr. Pate, who performed the surgical repair, than to Dr. Mall, who did not even know what damage actually existed in Petitioner's right shoulder as seen in the surgery.

The Arbitrator further finds that the chain-of-events also support a finding of causal connection. This finding is based upon Petitioner's unrebutted testimony to a pre-accident ability to perform his usual work, no medical complaints, treatment or temporary disability of the right shoulder in the months or years immediately preceding October 11, 2017, his having an accident on October 11, 2017, his immediately after said accident having sudden pain, immediate medical treatment, immediate inability to perform his regular work and new diagnoses based on diagnostic testing and physical examinations. 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 October 11, 2017, 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 Credibility Assessment, above, is incorporated herein.

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

Dr. Pate testified that the Petitioner was taken off work following his surgical procedure on March 20, 2018 and was not returned back to work until a follow up visit on August 7, 2018 in which he was released to return back to work on September 3, 2018.

The Arbitrator finds that Petitioner was temporarily totally disabled as a result of the accident from March 20, 2018 to September 3, 2018, a period of 23 6/7 weeks. This finding is based upon the testimony of Dr. Pate.

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 October 17, 2017, 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 Credibility Assessment, above, is incorporated herein.

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

The medical bills contained in Petitioner's Exhibit 7 are for medical treatment claimed to be related to the accident of October 11, 2017. A review of those bills reveals that most, but not all, are supported by medical records introduced into evidence for treatment of right shoulder injuries.

The following bills have no corresponding medical records reflecting medical treatment of the right shoulder:

- December 11, 2017 (Internal Medicine, PX 7 p.8)
- May 21, 2018 (Internal Medicine, PX 7 p.16)
- May 31, 2018 (Internal Medicine, PX 7 p.15)
- June 22, 2018 (Internal Medicine, PX 7 p.21,22)
- August 23, 2018 (PX 7 p.22)

The Arbitrator finds that all of the bills introduced into evidence in Petitioner's Exhibit 7 are related to Petitioner's right shoulder injury, 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, with the exception of December 11, 2017, May 21, 2018, May 31, 2018, June 22, 2018, and August 23, 2018, which are found not to be reasonable or necessitated to treat or cure Petitioner's injuries suffered in this accident. This finding is based upon the medical records introduced into evidence and the testimony of Petitioner and Dr. Pate.

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 Arbitrator Credibility Assessment, above, is incorporated herein.

The findings in regard to causal connection and temporary total disability, 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 the record contains an impairment rating of 0% as determined by Dr. Mall. Dr. Mall was not asked and did not testify that this rating was pursuant to the most current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment. 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 Arbitrator further notes that Dr. Mall's rating was based upon his opinion that there was no causal connection between Petitioner's condition of ill-being and this accident. Because of the Arbitrator's finding of causal connection, above, 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 parts delivery driver at the time of the accident and that he was able to return to work in his prior capacity as a result of said injury. The Arbitrator notes Petitioner returned to his performed his prior work between the date of accident and the date of his surgery, March 20, 2018, with accommodations/assistance from co-workers and customers in loading and unloading of parts, and he returned to his prior work following his surgery, on September 3, 2018, again with accommodation/assistance from co-workers and customers in loading and unloading of parts. The Arbitrator therefore gives *moderate* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 72 years old at the time of the accident. Because of the few future years of potential employment, 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 Petitioner did not testify to any decrease in his earnings or earning capacity. Because of lack of evidence in this regard, the Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Dr. Pate in his surgery found a massive tear of the rotator cuff, tears involving three tendons, and repaired those tears. Dr. Pate later stated that on August 7, 2018, when seen, Petitioner felt he was ready to return to work in September as he was doing a lot better. Petitioner at that time reported some stiffness in the shoulder but was able to reach over his head and away from his body without much pain. Petitioner returned to his prior job and continued working that job until he had his subsequent motor vehicle accidents and his employment was terminated due to his having twenty points due to automobile accidents and was therefore no longer able to drive for Respondent, an essential job function. (PX 17) 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 15% loss of use of the person as a whole, pursuant to §8(d)(2) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC008208
Case Name	Bernard Newman v. O'Reilly Auto Parts
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0098
Number of Pages of Decision	18
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Ryan Meikamp
Respondent Attorney	Mark Dinos

DATE FILED: 3/6/2023

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BERNARD NEWMAN,

Petitioner,

vs. NO: 20 WC 8208

O'REILLY AUTO PARTS,

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 causal connection, medical expenses 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 July 12, 2022 is hereby affirmed and adopted.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $20,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

March 6, 2023

CAH/pm
O: 3/2/23
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC008208
Case Name	Bernard Newman v. O'Reilly Auto Parts
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Ryan Meikamp
Respondent Attorney	Dana Djokic

DATE FILED: 7/12/2022

THE INTEREST RATE FOR THE WEEK OF JULY 12, 2022 2.68%

/s/ Dennis OBrien, 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

BERNARD NEWMAN
Employee/Petitioner

Case # **20 WC 008208**

v.

Consolidated cases:

O'REILLY AUTO PARTS
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 **Dennis O'Brien**, Arbitrator of the Commission, in the city of **Springfield**, on **May 3, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **March 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 $**14,053.55**; the average weekly wage was $**351.34**.

On the date of accident, Petitioner was **72** 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 $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

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

ORDER

Petitioner's medical condition, chest pain, is causally related to the accident of March 9, 2020.

The medical bills introduced into evidence in Petitioner's Exhibit 16 are related to Petitioner's chest injury, 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 has failed to prove he suffered any permanent disability as a result of this accident.

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.

Dennis J. O'Brien

_____ **JULY 12, 2022**

Signature of Arbitrator

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified that prior to the date of this accident he was employed by Respondent on October 11, 2017 as a delivery person. He said on that date another employee asked him to help in measuring some wire, and in doing so he was backing up and did not see a two wheel truck, he went over it, landing on his right side and shoulder on a skid of batteries. He said he had to be helped off the floor. He sought medical that day at Memorial Medical Center where he gave a history of his fall and was checked out. He said he then came under the care of Dr. Pate, an orthopedist, who performed an injection on his shoulder on October 12, 2017. He said the injection did not help his shoulder, nor did physical therapy which was later ordered by Dr. Pate.

Petitioner said that Dr. Pate then recommended surgery and the surgery occurred on March 20, 2018. He said Dr. Pate took him off work on the date of the surgery. He then underwent post-operative physical therapy for about three months. As a result of that treatment Petitioner said he regained some of the lost function in his shoulder. He said Dr. Pate released him to return to work on September 3, 2018.

Petitioner said that as of the date of arbitration he still took pain pills everyday and he could not fully use his shoulder, he could not play catch with his eight year old grandson. He said that his range of motion and his strength in the right arm had been reduced, and it had not been reduced prior to this accident.

Petitioner testified that he was involved in a second accident on October 29, 2018, when, while driving a company vehicle back to the store he was rear-ended by another vehicle. He said he was transported to the emergency room that day by ambulance. He said his neck and back were bothering him that day following the accident. He was then seen by his family doctor and referred to an orthopedic specialist at the Orthopedic Center of Illinois, where he was seen for his neck. Petitioner said his family doctor also referred him for some physical therapy, which again did not help. He said Dr. Williams referred him to Dr. Bender, who performed injections to his neck, which helped at that time. During this period of time he was given instructions to work with restrictions, and Respondent allowed him to work light duty, having others help him load parts and customers unload parts which were over his limitations.

Petitioner said that as of the date of arbitration he still had problems from his neck, he still had stabbing pain on the right side of his neck, but no pains radiating down his arms or back. He said he was still making appointments so it could be looked at again. He said the pains he was currently having had not been ongoing since he was released from the Orthopedic Center, the pains had just started eight or nine months prior to arbitration.

Petitioner said he had a third injury, the subject matter of this claim, on March 9, 2020, when he was involved in another automobile accident. He said he was on 11th Street, turning onto North Grand to go back to the store, looked down the street, saw a vehicle perhaps a block away, thought he had time to make the turn without a problem, and, while making the turn was struck so hard the truck he was driving was totaled. He said

he was seen in the emergency room and his legs and shoulders were painful. He said he had diagnostic tests performed on his neck, head, abdomen, and chest, as he had pain in those areas. Following his discharge from the emergency room he saw his family doctor the next day, March 10, 2020, told him of the accident and of his pain, and the doctor released him to return to work.

Petitioner testified that upon his release to work he was advised by Respondent that he had been terminated, effective March 11, 2020. He had not worked for Respondent since that date.

On cross examination Petitioner said he had undergone a prior rotator cuff surgery in October of 2017 and following that surgery he had required about 18 months of rehabilitation. He said he could not remember what doctor did that earlier surgery. Petitioner said he did not return to full activity after that previous surgery, and he was fired by his employer at that time, Colonial Vending Company. He said when hired by Respondent he was working part-time as a delivery driver. He said that before the October 11, 2017 accident other people helped him with lifting, overhead work or reaching. He said before the October 2017 accident he also took pain medication for his right shoulder whenever it was bothering him. He said after the rotator cuff surgery, but prior to his October 2017 accident he thought the surgeon had done a good job. He said that after that surgery he got a job with a company and worked that job for 11 years, until he had a heart attack and had a valve replacement in 2000. He said he knew he had some arthritis in his neck, which he considered normal for his age.

Petitioner said he could not remember if his arm was outstretched when he fell on October 11, 2017, but he knew he fell on his left side and did not remember if he caught himself with his right hand. Petitioner seemed somewhat confused as to whether or not he caught himself with the right hand.

Petitioner said he was claiming neck and back injuries from the 2018 and 2020 accidents. When asked if the back and neck pain he was currently experiencing was similar to the neck and back pain he had prior to these motor vehicle accidents, Petitioner said it was not, but added that age had a lot to do with this, that he would not deny that age could be involved in his aches and pains.

Petitioner said his right shoulder was last treated in September of 2018, but he could not remember when he last received physical therapy to his neck and back. When asked if he got physical therapy after the 2020 accident Petitioner said he thought he just went back to work at O'Reilly's the day after the accident, walked in the door and was terminated. He said his last day of work was the day of that accident, that on that date he was performing his regular job duties and was making a delivery. He said he was also doing his regular job duties at the time of the October 29, 2018 accident.

On redirect examination Petitioner said he was able to perform all of the necessary functions of his job as a delivery driver prior to October 11, 2017, and that it was only after that accident that he was placed on light duty. H e believed his prior right shoulder surgery was about 20 years before the October 11, 2017 accident, and that between the two injuries he had been able to play catch with his grandson. He said that while he had neck pain prior to the October 29, 2018 accident, he had more neck pain after that accident. He said the subsequent pain was more frequent and more severe. Petitioner said that when he fell over the cart and landed on the batteries he landed on the top of his shoulder down to around the elbow, on the outside of his right arm.

On recross examination Petitioner said he had not worked anywhere since being terminated in March of 2020. He said he would have liked to continue working as he did not like to sit around, but he currently dedicated all of his time to his great grandson. He said he did not know when he would have retired, as he had trouble, he would stumble and fall on occasions and he could not get up, he needed help to get up.

MEDICAL EVIDENCE

October 11, 2017 Medical:

Petitioner was seen in Memorial Medical Center's emergency room on October 11, 2017, and gave a consistent history of his falling over a dolly while walking backwards, landing on his right side, with pain in his right shoulder and hip and some soreness in the left shoulder. X-rays showed no acute findings for the right shoulder, but did note mild osteoarthritis. Physical examination revealed right shoulder tenderness and range of motion which was restricted by pain. Diagnosis at that time was of contusions of the pelvis and right shoulder. (PX 2 p.5-9)

Petitioner was again seen in the emergency room at Memorial Medical Center the next day, October 12, 2017, with complaints of pain in the right ulna and both shoulders. X-rays of the ulna were negative. A history of a prior shoulder surgery 10-12 years earlier was given. It was noted that a prior rotator cuff tendon repair had been performed on the left shoulder as well. He was seen by Dr. Pate of SIU Medicine with the same complaints and history, and physical examination of the right shoulder showed reduction in range of motion, and x-rays were interpreted as showing degeneration and arthritis. An injection of the right shoulder was performed. Dr. Pate's assessment was rotator cuff tear arthropathy of both shoulders, right worse than left. (PX 2 p.28; PX 3 p.2,6,7)

Petitioner was seen by Dr. Varney of SIU Medicine on October 16, 2017 for acute low back pain without radiculopathy as well as shoulder pain. Physical therapy for the right shoulder was ordered. (PX 3 p.8)

Dr. Pate then saw Petitioner on November 2, 2017, with continued right shoulder pain. It was noted that the shoulder injection had not relieved his symptoms for very long. Petitioner was reporting difficulties with overhead and reaching activities. Physical examination revealed positive Neer and Hawkins tests and reduced supraspinatus strength on testing. Dr. Pate felt Petitioner probably had a re-tear of his rotator cuff and he recommended an arthroscopic revision repair. It was noted that Petitioner could not have an MRI as he had a defibrillator. Petitioner was reluctant to undergo surgery, so physical therapy was ordered. (PX 3 p.12,15)

When seen on December 1, 2017, Petitioner advised Dr. Pate that he felt his shoulder would probably need surgery. He advised the doctor that he did not feel he could go back to work due to a problem abiding by work restrictions. Petitioner's physical examination appeared unchanged. Dr. Pate felt Petitioner likely had "a large to massive rotator cuff tear," and he again recommended arthroscopic surgery. He gave Petitioner a 5 pound weight restriction. (PX 3 p.16,17)

An evaluation of Petitioner was performed by Memorial Industrial Rehabilitation Center on December 7, 2017, on referral of Dr. Pate. In the consistent history given by Petitioner on that date Petitioner advised the staff that he had a right rotator cuff repair more than 20 years earlier, had a very good recovery, and had been getting along fine until this fall occurred. Petitioner advised the therapist that he was not working due to a "no

lifting" restriction as well as his being unable to drive while on pain medication. Right shoulder range of motion was found to be limited on examination. Petitioner received physical therapy from December 11, 2017 through December 21, 2017. (PX 2 p.38,40,43-50)

Respondent had Petitioner examined by Dr. Mall on December 13, 2017. Dr. Mall took a history from Petitioner of the fall of October 11, 2017, and his subsequent complaints and treatment, his job duties prior to the accident and his current symptoms which were preventing him from doing his prior work, resulting in his not working as of the date of the examination. Dr. Mall's physical examination revealed a normal neurologic examination, bilateral rotator cuff weakness, mild discomfort over both biceps tendons, a negative O'Brien's test and no pain on cross-body adduction. It was noted that Petitioner had cervical spine tenderness and significant limitations in cervical spine range of motion with extension, flexion, and rotation. Petitioner said movement of the cervical spine did not cause him substantial pain. X-rays of the right shoulder demonstrated rotator cuff arthropathy as well as the anchor placed during his prior rotator cuff repair. X-rays of the cervical spine showed significant disk space narrowing from C3 to C7 with obliteration of the disk space at C5/6 and C6/7, anterior osteophytes formation at C3/4 and anterolisthesis of C4 onto C5. Dr. Mall reported his viewing a report of video taken of Petitioner on November 5, 2017, performing certain activities, as well as photographs. It is noted that no such report, video, or photographs were introduced into evidence. Dr. Mall also summarized the medical records he reviewed. Dr. Mall's opinions will be noted in the summary of his deposition, below. (RX 1)

On December 21, 2017, Petitioner told Dr. Pate that physical therapy had not helped. He said he had been sent to St. Louis for a second opinion and the doctor there told him that because of his age and his comorbidities surgery was not recommended. Dr. Pate noted that Petitioner had failed injections and physical therapy and his shoulder pain was worsening, as was his shoulder function. Dr. Pate thought surgery would help Petitioner. (PX 3 p.18,20)

After a pre-operative physical of March 12, 2018, right shoulder arthroscopic surgery was performed by Dr. Pate on March 20, 2018. During that surgery Dr. Pate found a massive rotator cuff tear involving the supraspinatus, the infraspinatus and the subscapularis. A repair was performed including debridement and placement of multiple anchors. (PX 3 p.37-39; PX 4 p.1-3)

Petitioner was seen post-operatively by Dr. Boente on April 3, 2018. He was found to be doing well. (PX 3 p.47,48)

Dr. Pate examined Petitioner on May 1, 2018. Petitioner had been doing gentle range of motion exercises for the forearm and elbow and was reporting occasional sharp pain in the right elbow. Physical therapy was ordered. (PX 3 p.49,51)

Following his right shoulder surgery, Petitioner was again seen at Memorial Industrial Rehabilitation Center for an evaluation on May 10, 2018, and received physical therapy from May 14, 2018 through August 23, 2018. (PX 2 p.54,58-111)

Dr. Pate examined Petitioner on May 25, 2018, and, after examining Petitioner, wrote that Petitioner was not ready to go back to work, he was to continue physical therapy. When seen on July 6, 2018, Petitioner said he was doing pretty well and was happy with physical therapy. Dr. Pate also felt Petitioner was doing well, but

he did not feel he was quite ready to return to work. He had Petitioner continue physical therapy and noted he felt he would release Petitioner to work in four weeks. (PX 3 p.52,54,58,60)

On August 7, 2018, Dr. Pate noted Petitioner felt he was ready to return to work in September as he was doing a lot better. He reported some stiffness in the shoulder but was able to reach over his head and away from his body without much pain. Dr. Pate released Petitioner to return to work on September 3, 2018, and released him on an as-needed basis. (PX 3 p.61,63)

October 29, 2018 Medical:

Petitioner was seen in Memorial Medical Center's emergency room on October 29, 2018, with a history of a motor vehicle accident immediately prior to being seen. He said he was slowing to a stop when the car behind him struck him going around 15 to 20 miles per hour. He said the only pain he had was in the upper back and a headache. Other than multilevel degenerative disc disease CT scans of the head, cervical spine, thoracic spine, and lumbar spine revealed no acute findings. No acute findings were seen in the CT scans of the chest, abdomen, and pelvis, but evidence of pulmonary emphysema, coronary artery disease, colonic diverticulosis and a 14 mm left renal lesion were seen. X-rays of the right shoulder were compared to those of October 11, 2017 and were basically unchanged. The emergency room doctor noted that a full physical examination and CT scans showed no acute injuries requiring specific therapy, and Petitioner was discharged from the emergency department to follow up on an as needed basis. (PX 9 p.18,20,21,23-30)

Petitioner saw Dr. Varney on November 1, 2018, complaining of neck stiffness and soreness, but denying radiation of pain into the arms. He noted his right shoulder pain was no better, and no worse. Petitioner did provide Dr. Varney with a history of the rear-end collision. Physical examination at that time did not note any traumatic abnormalities. Dr. Varney assessed Petitioner as having an acute whiplash injury, prescribed medication, told him not to drive for two weeks and found him to be unable to work at that time. (PX 10 p.2,5)

Petitioner was seen by Dr. Bhandari on November 15, 2019. Petitioner said his pain was better with the medication he had received but worse when not taking that medication. He continued to complain of neck stiffness and loss of motion of the neck. He denied any radiculopathy. The only abnormality on physical examination was a reduction in range of motion in all planes. His medication was continued and physical therapy was ordered. He was not to push or pull more than 10 pounds. (PX 10 p.6,7)

Petitioner saw Dr. Williams on December 17, 2019. He told him of neck pain coming on six months earlier after an auto accident, and being unchanged. Petitioner said 12 weeks of physical therapy did not provide him pain relief. He rated his pain as 8/10. Physical examination of the neck demonstrated normal active painless range of motion with flexion and extension, and his neurologic examination was totally normal. X-rays showed multilevel cervical degenerative disease and chronic and degenerative anterolisthesis of C4 on C5. Dr. Williams's assessment was neck pain and degenerative disc disease, cervical. An EMG of the bilateral arms was ordered.(PX 11 p.2,3)

On February 25, 2019 Petitioner was seen by Dr. Cheema. He noted that he had been going to physical therapy and taking the prescribed tramadol for pain and was tolerating both. He complained of right knee pain on this visit, with sharp pain below the patella which was disturbing his sleep. Physical examination of the neck was normal on this visit. Tramadol was continued on this date, but for his knee pain. While Petitioner told the

doctor that he was not ready to return to full activity as pain returns when medication wears off, no mention of work restrictions is included in this office note. (PX 10 p.8,9)

Dr. Varney issued a restricted work letter and form on March 25, 2019. No medical records for the visit with Dr. Varney on that date were introduced into evidence. An identical letter was issued by Dr. Varney on May 20, 2019, but again, no records for that office visit were introduced into evidence indicating what medical malady was prompting the restrictions. (PX 12 p. 1,3,4)

A work restriction form dated April 25, 2019, is included in the records, but no records indicating an office visit on that date were introduced into evidence, and the restriction is not signed by Dr. Varney or any other medical provider. (PX 10 p.18)

At Respondent's request Petitioner was examined by Dr. Mall for a second time on May 10, 2019. Petitioner advised him that his right shoulder had been "fixed" after March 2018 surgery, that while he was not 100 percent, he felt better after the surgery. Petitioner advised Dr. Mall that his motor vehicle accident had not injured his right shoulder, it had hurt his neck. Physical examination on May 10, 2019 revealed continued reduction in rotator cuff muscle strength bilaterally, and a normal neurologic examination. Dr. Mall summarized medical records for treatment subsequent to his earlier examination. He noted that he had not reviewed the operative report for the surgery which had been performed after his earlier examination. Dr. Mall's opinions will be noted in the summary of his deposition, below. (RX 2)

Dr. Watson performed electrodiagnostic testing of Petitioner's arms on July 15, 2019. At that time Petitioner was complaining mostly of shoulder pain and of occasional neck pain. After EMG/NCV testing Dr. Watson was not of the opinion that Petitioner had any cervical radiculopathy, but he did have moderate right and mild left carpal tunnel syndrome. (PX 11 p.6,8)

Petitioner saw Dr. Williams on July 24, 2019 with continued complaints of neck pain. Physical examination of the neck was normal, he continued to have painless range of motion, and his neurologic examination remained normal. Dr. Williams noted that the EMG showed no signs of cervical radiculopathy. He noted Petitioner had been seen for an IME in St. Louis in June as well as an IME about a year ago. Dr. Williams said no MRI had been done because Petitioner had a mechanical heart valve and a pacemaker/defibrillator. He said Petitioner was a high risk surgical candidate. He felt Petitioner was doing well and should continue doing exercises taught to him in physical therapy. He was released on an as-needed basis. (PX 11 p.10,11)

Petitioner saw Dr. Khan on September 26, 2019, with complaints of right wrist pain which was progressively worsening. He reported having had an EMG which found carpal tunnel syndrome. He noted that he had been having neck pain and sometimes had trouble holding his head up, but that an EMG did not show any problem at the cervical level. With the exception of positive Tinel's over the carpal tunnel, Petitioner's physical examination was normal. Dr. Kahn's assessment was carpal tunnel syndrome, with no assessment in regard to the neck. (PX 10 p.19,20)

Petitioner returned to see Dr. Williams on October 28, 2019. He was complaining of neck pain, which was unchanged. Petitioner's physical and neurologic examinations were also unchanged, and normal. Dr.

Williams referred Petitioner to Dr. Bender for cervical facet injections as he did not feel that surgical intervention was indicated. (PX 11 p.14,15)

Petitioner was seen by Dr. Bender on November 5, 2019, for possible left-sided facet joint injections. Physical examination was normal, palpating the cervical spine facet joints did not produce pain. He reviewed CT scans of the cervical spine which showed moderate cervical spondylotic changes throughout the cervical spine with advanced facet arthrosis in a vacuum phenomena on left at the C2/3 facet joint. Dr. Bender felt diagnostic left-sided C2/3 and C3/4 facet joint injection would benefit Petitioner. Those injections were performed by Dr. Bender on January 16, 2020. (PX 11 p.17-20)

March 9, 2020 Medical:

Following the motor vehicle accident of March 9, 2020, Petitioner was again seen in the emergency room of Memorial Medical Center. Petitioner denied having cervical pain. Physical examination was normal CT scans were again performed on Petitioner's head, chest, abdomen, pelvis, cervical spine, thoracic spine and lumbar spine. They were compared to prior CT scans. No acute findings were made, though prior findings of degenerative changes and non-related medical conditions in the abdomen and chest were noted. The impression of the emergency room staff was that Petitioner had traumatic chest pain, which was assessed as not being a serious injury, and he was released. (PX 14 p.11-16,18,19,23)

Petitioner was seen by Nurse Practitioner Stark on March 10, 2020 for a pacemaker integration following his automobile accident. A representative of Medtronic performed that integration. Petitioner was released to return to work without restrictions. (PX 15 p.2)

DEPOSITION TESTIMONY OF DR. RYAN C. PATE

Dr. Pate was deposed on February 28, 2022, as a witness for Petitioner. He testified he is a board certified orthopedic surgeon. While associated with SIU School of medicine he had Petitioner as a patient. And his testimony reference Petitioner's histories and complaints, physical examination findings, treatment recommendations, surgical findings, and work restrictions were consistent with the medical summary, above. He described seeing a massive tear of the rotator cuff during the March 20, 2018 surgery, with tears in three of the four rotator cuff tendons. (PX 6 p.3,4-15)

Dr. Pate when asked if Petitioner's fall caused his right shoulder condition of ill-being stated that he took Petitioner at his word that prior to the fall he had a fairly functional shoulder and, after the fall, had an appreciable decline in his shoulder function as well as pain, so it was reasonable that his shoulder dysfunction change occurred due to that fall. He said the level of injury he found was quite probably a traumatically induced issue. He felt the surgery performed was reasonable and necessary to alleviate Petitioner's condition of ill-being, as they had tried several conservative efforts to avoid surgery that had not helped. (PX 6 p.15,16)

On cross examination Dr. Pate said that in his new position in Texas he dealt with almost nothing but total joint surgery, mostly knees and hips, but prior to going to Texas he did general orthopedics as well as total joint replacements, with one-third of his practice being shoulder arthroscopy, approximately 150 surgeries a year. He said he knew Petitioner had previously undergone a rotator cuff repair, but he did not have access to those records. He said he could not get an MRI due to other medical issues Petitioner had, so the decision to

perform surgery was arrived at by trying other methods of treatment first, a steroid injection, and physical therapy, and when he did not get better, they arrived at surgical intervention. (PX 6 p.17,18,20,21)

Dr. Pate said that with prior surgery Petitioner was at a higher risk for injury in the previously operated shoulder as it was weakened, and older patients are also more likely to have rotator cuff tears, but that did not negate the fact that Petitioner had a fairly well-functioning shoulder and had been able to do his job, then fell at work, injured his shoulder and the shoulder became significantly less functional. (PX 6 p.23)

When asked if there was a different surgery which could have been performed to fix Petitioner's shoulder, Dr. Pate said there was, a reverse total shoulder arthroplasty, but it was a much bigger, much more invasive surgery, and much riskier. He also thought Petitioner had a good chance of doing well with a rotator cuff repair, even with a large tear. (PX 6 p.24,25)

Dr. Pate said he did not review any IME reports or any depositions, they had not been supplied to him, all he had were his prior records. (PX 6 p.25)

On redirect examination Dr. Pate said that from the records he reviewed it appeared Petitioner was working full duty at the time of his accident. (PX 6 p.26)

DEPOSITION TESTIMONY OF DR. NATHAN A. MALL

Dr. Mall was deposed on October 16, 2019, as a witness for Respondent. Dr. Mall testified that he was a board certified orthopedic surgeon and independent medical evaluator. He said in the course of his practice he performs shoulder surgeries, sees approximately 200 patients per week and performs three or four IMEs per week. He recalled briefly seeing Petitioner and generating his IME report. His testimony reference physical examination findings from December 13, 2017 was consistent with the medical summary, above. Dr. Mall testified in regard to his opinions, which he said were based upon his review of medical records, Petitioner's description of his job duties and his symptoms. He said his diagnosis was bilateral rotator cuff arthropathy and significant cervical spine degenerative disc disease. He said this type of arthropathy, which involves the humeral head riding up, occurs only when the rotator cuff has not been functional for a long period of time, and it could not have developed within the time between the alleged accident and the time he evaluated Petitioner. (RX 3 p.5-12)

Dr. Mall was also of the opinion that the symptoms Petitioner had when he evaluated him in December of 2017 were not caused by this accident, they were the type of symptoms seen in rotator cuff arthropathy, and that Petitioner told him he was having these problems in his shoulder prior to the accident, they just were not as severe as what he had after the accident. Dr. Mall said that landing directly on the shoulder will usually cause an AC joint separation or a shoulder fracture, it will not usually cause a rotator cuff tear, which is usually caused by landing on an outstretched arm with upward force to the shoulder. He did not believe the mechanism of this accident was sufficient to cause a rotator cuff tear or aggravate a rotator cuff tear. (RX 3 p.12-14)

Dr. Mall thought appropriate treatment would be a cortisone shot to the shoulder and perhaps physical therapy would be helpful. He said that this type of condition naturally gets worse over time, and that eventually, regardless of whether he had an injury or not, he would become so symptomatic that he would need a reverse shoulder replacement. He said he would not anticipate Petitioner or anyone his age with this condition would heal with a rotator cuff repair. (RX 3 p.15,17)

Dr. Mall said that he examined Petitioner again on May 10, 2019. His medical record review and physical examination findings on that occasion are contained in the medical summary, above. He said Petitioner's physical findings were worse on this occasion than they had been on the previous examination. He said this could be a result of the surgery he had, as that happens, but he noted he had not seen the operative report. He said he gave an AMA impairment rating in his second evaluation, noting that Petitioner essentially had a shoulder strain or contusion as a result of this work injury, and that it would not produce any permanent impairment to the right shoulder. He said he certainly had impairment from his diagnosis, but that it did not relate to his work injury. (RX 3 p.19-25)

Dr. Mall said he reviewed cervical x-rays taken subsequent to his motor vehicle accident (please note, this deposition was conducted prior to the second motor vehicle accident of March 9, 2020), and they were worse than his prior x-rays, but that was what would be expected with degenerative conditions, they continue to degenerate. He said he did not see any changes which were necessarily from a car accident per se. (RX 3 p.25,26)

On cross examination Dr. Mall said he had not reviewed the operative report for the surgery which occurred before this accident, nor did he see the operative report from March of 2018. He said he did not review medical records from prior to October 11, 2017, but he did know that his system indicated there were x-rays and a CT scan of the right shoulder from October of 2012, five years prior to this accident, but he had not reviewed the reports from those studies, and he did not know how those got into their system. (RX 3 p.27,28)

When asked about Petitioner's diagnosis from the motor vehicle accident, Dr. Mall said that he did not see him for that accident, but that Petitioner had cervical spine symptomatology when seen in December of 2017, with limited range of motion of the neck and symptoms of numbness and tingling into his hand, which were cervical spine related issues. He said Petitioner could have sustained a sprain or strain to his cervical spine as a result of the motor vehicle accident, being in a vehicle struck from behind by a vehicle going 15 to 20 miles per hour could cause a cervical sprain or strain. He was of the opinion that the fall in October of 2017 if directly on the shoulder would not cause significant stress on the rotator cuff and would not be an injury mechanism that would cause an aggravation of a rotator cuff tear. In addition, Petitioner had told him that he was still having symptoms with the shoulder and they got a little worse after the accident. He agreed that the accident cause Petitioner's symptoms to be worse, but the chronic rotator cuff tearing was not any worse. (RX 3 p.29-35)

On redirect examination Dr. Mall said his opinions in regard to the appropriateness of a reverse arthroplasty did not change despite his not having seen operative reports. (RX 3 p.35)

On recross examination Dr. Mall said that doing a reverse arthroplasty following an attempted rotator cuff repair or multiple rotator cuff repairs caused a heightened risk of infection in the later surgery. (RX 3 p.36)

ARBITRATOR CREDIBILITY ASSESSMENT

Petitioner during his testimony appeared to be forthright and answered all questions put to him by both attorneys with no apparent attempt to evade or refuse to answer said questions. He did not appear to exaggerate his symptoms. He did at one point take umbrage at questions asked by Respondent counsel, but when advised by the Arbitrator that the questions being asked were normal during hearings and not a personal assault on him, Petitioner apologized for becoming angry and thereafter answered all questions posed to him. The Arbitrator

took this as frustration on the part of Petitioner and of a misunderstanding or ignorance of the nature of the proceedings and the role of Respondent counsel. The Arbitrator found Petitioner to be a credible witness.

While Dr. Pate and Dr. Mall were of quite different opinions, they both appeared to be disinterested witnesses who answered all questions posed to them without hesitation, and with no apparent prejudice. The Arbitrator finds both doctors to be credible witnesses.

CONCLUSIONS OF LAW:

These findings and award are limited to only the accident of March 9, 2020. Separate findings and awards will be made in separate Decisions of Arbitrator in 18 WC 000716, date of accident October 11, 2017, and 18 WC 036184, date of accident October 29, 2018.

In support of the Arbitrator's decision relating to whether Petitioner's current condition of ill-being, traumatic chest pain, is causally related to the accident of October 29, 2018, 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 Credibility Assessment, above, is incorporated herein.

Petitioner was working his regular job, with accommodations for a right shoulder injury, at the time of this accident.

Respondent in this case presented no evidence indicating that the Petitioner was under any active medical care for his chest nor any information to suggest that the Petitioner was having any medical problems associated with his chest at the time of the date of accident. Respondent presented no evidence indicating Petitioner was suffering from any chest pain prior to October 29, 2018.

Petitioner was transported to Memorial Medical Center's emergency room by ambulance from the accident site.

At the emergency room Petitioner denied having cervical pain, numerous tests were performed, all of which were normal, other than pre-existing degenerative changes and non-related medical conditions in the abdomen and chest areas. The impression of the emergency room staff was that Petitioner had traumatic chest pain, which was assessed as not being a serious injury. Petitioner's only other treatment was the following day, on March 10, 2020, here his pre-existing pacemaker was integrated by a representative of Medtronic. He was then released to return to work without restrictions.

Upon returning to his workplace Petitioner was advised that his employment had been terminated. Petitioner's Exhibit 17 indicates Petitioner had accumulated 20 points for automobile accidents and was therefore unable to drive for the company. Driving was an essential job function for Petitioner.

The Arbitrator finds that Petitioner's medical condition, chest pain, is causally related to the accident of March 9, 2020. This finding is based upon the testimony of Petitioner and the medical records of Memorial Medical Center's emergency room.

The Arbitrator further finds that the chain-of-events also support a finding of causal connection. This finding is based upon Petitioner's unrebutted testimony to a pre-accident ability to perform his usual work, with accommodations for his right shoulder, no medical complaints, treatment or temporary disability relating to the chest pain in the months or years immediately preceding October 29, 2018, his having an accident on March 9, 2020, his immediately after said accident having sudden pain, immediate medical treatment, and a new diagnosis of chest pain. Certi-Serve, Inc. vs. Industrial Commission, 101 Ill.2d 236,244 (1984)

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 October 17, 2017, 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 Credibility Assessment, above, is incorporated herein.

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

The medical bills contained in Petitioner's Exhibit 16 are for medical treatment claimed to be related to the accident of March 9, 2020. A review of those bills reveals that they are supported by medical records introduced into evidence for treatment of chest pain.

The Arbitrator finds that all of the bills introduced into evidence in Petitioner's Exhibit 16 are related to Petitioner's chest injury, 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 medical records introduced into evidence.

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 Arbitrator Credibility Assessment, above, is incorporated herein.

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

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

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

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a part-time parts delivery driver at the time of the accident and that he was released to return to work in his prior capacity after said injury. The Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 72 years old at the time of the accident. Because of the few future years of potential employment, 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 Petitioner ceased working because he was terminated due to his driving record, not because of physical limitations caused by this accident. Because of lack of evidence in this regard, the Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner was only seen in the emergency room on the date of the accident, where he was released with no objective abnormalities noted, and on the day following the accident, when he had his pacemaker integrated by a manufacturer representative. At that time he was released to return to work with no restrictions. Petitioner's employment was then terminated due to his vehicular accidents, not due to this injury. Petitioner did not testify to any attempts to obtain employment subsequent to his termination by Respondent. The Arbitrator therefore gives *little* weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner has failed to prove he suffered any permanent disability as a result of this accident.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC033647
Case Name	David Barnes v. Durbins Construction & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0099
Number of Pages of Decision	14
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	Bradley Defreitas

DATE FILED: 3/6/2023

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF McLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

David Barnes,

Petitioner,

vs. NO: 16 WC 33647

Durbins Construction and Illinois State Treasurer
As *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 the issue of notice, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision, which is attached hereto and made a part hereof.

The Arbitrator ordered Respondent to hold Petitioner harmless against any claim in subrogation for the medical expenses she awarded. The Arbitrator had no authority to so order Respondent absent a Section 8(j) credit, which was not awarded in this case.

IT IS THEREFORE ORDERED BY THE COMMISSION that the following sentence is stricken from the Decision of the Arbitrator filed June 27, 2022: "Further, Respondent shall hold Petitioner harmless against any claim in subrogation for these expenses." All else is hereby affirmed and adopted.

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

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

The Illinois State Treasurer as *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 of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. 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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $14,400.00. 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.

March 6, 2023

MP:dk
o 3/2/23
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	16WC033647
Case Name	BARNES, DAVID v. DURBINS CONSTRUCTION AND STATE TREASURER AND EX OFFICIO CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND
Consolidated Cases	
Proceeding Type	
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	William Trimble
Respondent Attorney	Bradley Defreitas

DATE FILED: 6/27/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 22, 2022 2.39%

/s/Kurt Carlson, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

David Barnes
Employee/Petitioner

Case # **16** WC **033647**

v.

Durbin Construction and State Treasurer and Ex Officio Custodian of the Injured Workers' Benefit Fund
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Bloomington**, on **05-26-22**. 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 **8/17/2016**, 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 $**24,690.00**; the average weekly wage was $**480.00**.

On the date of accident, Petitioner was **56** years of age, ***married*** with **1** dependent children.

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

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

Respondent shall be given a credit of $**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 to Petitioner temporary total disability benefits of $320.00/week for 26 weeks, commencing August 17, 2016, through February 15, 2017, as provided in Section 8(b) of the Act.

Subject to the Fee Schedule, Respondent shall pay all medical expenses for treatment for Petitioner's work injury, as set forth in Petitioner's medical bill exhibits. Further, Respondent shall hold Petitioner harmless against any claim in subrogation for these expenses.

Respondent shall pay Petitioner permanent partial disability benefits of $288.00/week for 55.6 weeks, because the injuries sustained caused the 33.3% loss of the left foot, as provided in Section 8(e) of the Act.

Pursuant to Section 4 of the Act, the Injured Workers' Benefit Fund shall pay the above benefits.

The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as 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 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.

Kurt A. Carlson

Arbitrator

JUNE 27, 2022

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

David Barnes Employee/Petitioner	)	
v.	)	Case # 16 WC 033647
Durbin Construction. and State Treasurer and Ex Officio Custodian of the Injured Workers' Benefit Fund	)	

CORRECTED DECISION OF ARBITRATION

FINDINGS OF FACT

This matter was heard 5/26/22. Respondent Durbin Construction Co. ("Durbin") was not present, but notice sent to Durbin's Construction, 36 Louis Dr., Bloomington, IL by certified mail was returned undeliverable (PX 3). Petitioner submitted results of a Corporation/LLC search from the Illinois Secretary of State showing that Durbin Construction Co. was involuntarily dissolved August 1, 2002 (PX 1). Petitioner submitted IWCC/NCCI search results showing that Durbin Construction had no insurance on August 17, 2016. (PX 2)

The State Treasurer and Ex Officio Custodian of the Injured Workers' Benefit Fund appeared by counsel.

Petitioner testified that he worked for Durbin Construction ("Durbin") painting apartments. He testified that this was the majority of the business of Durbin, and that before the work accident in question he had painted 97 apartment walls for Durbin. Petitioner testified that he and other workers met at the headquarters of Durbin in the morning and drove together in the company owner's van to Champaign where they were painting apartments. Petitioner testified that Respondent provided him with shirts to wear at work that had Respondent's business name on them, and that he had several of these.

Petitioner testified that Respondent controlled the way Petitioner painted apartments, and that Respondent dictated his schedule. Petitioner testified that Respondent paid him on an hourly basis. Petitioner submitted into evidence time sheets he filled out for Respondent. (PX 8) Petitioner testified that these time sheets were supplied by Respondent.

Petitioner testified that Respondent did not withhold taxes from his pay. Petitioner testified that Respondent could discharge him at will, and that Respondent threatened to do so. Petitioner testified that Respondent provided all materials and equipment. Petitioner testified that Respondent characterized the relationship as one of employer-employee. Petitioner testified that he was paid $480.00/week.

Petitioner testified that on August 17, 2016, he and other employees met at Respondent's headquarters, and rode together in Respondent's work van to an apartment complex in Champaign where they were painting. This complex had high ceilings in the area where Petitioner was painting walls. Petitioner submitted a picture from the job in question showing these. (PX 9, p. 5) Although Petitioner

painted the majority of a wall with a paint roller on a long pole, he had to first climb a ladder to paint the portion of the wall nearest the ceiling.

While Petitioner was on the top of the ladder painting, he felt the ladder beginning to slip. He tried to climb down before the ladder fell, and then tried to get off the ladder so that he could control his fall. However, his leg tangled in the ladder as he and the ladder fell. He immediately knew he was hurt, and asked his fellow employees to get his daughter, who was also on the job site. He told Bob Durbin, the business owner, what had happened, and Bob Durbin asked him "do you have insurance?" Petitioner testified that his daughter drove him to Bloomington so that if he were admitted to the hospital he would be close to home.

Petitioner submitted records of Advocate BroMenn Medical Center as PX 4. The Emergency Room note of 8/17/16 notes that "Patient is a 56-year-old male that presents to the emergency department with complaint of injury to his left ankle. Patient states that he was painting, and the ladder fell from underneath him. Patient states that he fell sideways and twisted his ankle." (PX 4) X-rays taken that day showed comminuted fracture of the left heel/calcaneum. (PX 4) Advocate BroMenn ER discharged Petitioner to avoid weightbearing, use crutches, and follow up the next morning with orthopedist.

Petitioner submitted records of Orthopedic & Sports Enhancement Center as PX 5. Petitioner saw Dr. Bryce Paschold 8/18/16. Dr. Paschold's note indicates that Petitioner was referred by BroMenn ER, where X-rays were taken, and where Petitioner was given ibuprofen and hydrocodone. Petitioner had pain 9/10 at worst. (PX 5) Dr. Paschold reviewed Petitioner's X-rays and noted:

> X-rays of the left foot were obtained, demonstrating the following findings: There is normal alignment. There is a fracture of the calcaneus, which is comminuted, intra-articular, and minimally displaced. There is a comminuted fracture through the calcaneal body with a lateral wall blowout. The calcaneal tuberosity is well aligned and is not in varus. The Boehler's angle is near normal and the posterior facet is not depressed. Additional findings include joint spaces well preserved. Soft tissue exam shows normal soft tissue. (PX 5, pp. 13-15)

Dr. Paschold considered surgery but noted "Better outcomes for surgical interventions have been reported in younger adults and women." He also noted that "Even if satisfactory alignment is achieved, calcaneus fracture can still lead to chronic pain, heel stiffness, and functional difficulties." (PX 5) Dr. Paschold noted "After looking at the x-ray, the Boehler's angle is near normal and the heel is not in varus. I do not think surgery could improve this enough to warrant surgery." (PX 5) Ultimately Dr. Paschold provided Petitioner with a fiberglass short leg splint. (PX 5; *see also photograph of cast*, PX 9, p. 6)

Petitioner returned to Orthopedic & Sports Enhancement Center September 7, 2016, where his cast was removed and Petitioner's foot was examined. The cast was replaced. (PX 5; *see also photograph of second cast*, PX 9, p. 7)

Petitioner returned to Orthopedic & Sports Enhancement Center September 19, 2016. X-rays showed normal alignment, comminuted fracture of the calcaneus, and appropriate interval callus formation and remodeling callus. Dr. Paschold replaced Petitioner's cast again. (PX 5; *see also photograph of third cast*, PX 9, p. 8)

Petitioner returned to Orthopedic & Sports Enhancement Center October 3, 2016. He was noted to be doing well, using crutches. Petitioner had not had any pain until the previous day when he stumbled and landed on the bottom of his heel. Petitioner's cast was removed, Dr. Paschold prescribed a walking boot, and advised Petitioner to gradually increase weightbearing status in the walking boot with crutch assistance over the next two weeks as pain tolerates, after which he was to get rid of the crutches and walk in the boot full weightbearing for the next two weeks as pain tolerates. (PX 5)

October 31, 2016, Petitioner returned to Orthopedic & Sports Enhancement Center for further evaluation and management. He reported that he had more pain when he was on his foot a lot, and that he still had some swelling. He was weight bearing in the boot and still using crutches, although he was better than he had been on his last visit. (PX 5)

On October 31, 2106, Dr. Paschold's plan for Petitioner stated:

> I have encouraged him to progress his weightbearing and fully weight-bear in the boot without the crutches over the next few weeks. He has been to do this for a few weeks in the boot full weightbearing. I would also like him to get physical therapy to help him with his gait progression**. I did tell him that he is still going to be off work for the next 4-6 months at the very least.** (PX 5)

November 11, 2016, Petitioner was seen at Advocate BroMenn Medical Center for initial visit for evaluation and treatment for gait progression, Range of Motion, and strengthening. (PX 4)

Petitioner testified that he remained unable to work for several months, and that Dr. Paschold's October 31, 2016 prediction that he would be off work for the next 4-6 months at the very least proved accurate.

Petitioner submitted Exhibit 6, a lien from Conduent, indicating payments made by Conduent for the medical care of Petitioner related to this accident.

Petitioner submitted Exhibit 7, a summary of his medical bills together with the bills summarized.

CONCLUSIONS OF LAW

Section 4 states, in part, "monies in the Injured Workers Benefit Fund shall only be used for the payment of workers' compensation benefits for injured employees when the employer has failed to provide coverage as determined under this paragraph (d) and has failed to pay benefits due to the injured employee." The monies in the Fund are obtained from non-complying employers through Commission proceedings as a result of settlements and civil penalties assessed. The Illinois State Treasurer acts as custodian of the Fund and is joined as a party Respondent as was done in this matter as Respondent is a non-complying employer. Obtaining an award here in this matter requires the Fund to pay the awarded benefits

1. **In regard to whether Respondent Durbin Construction was operating under and subject to the Illinois Workers' Compensation Act, the Arbitrator finds the following:**

Section 3, Paragraph 2, of the Illinois Workers' Compensation Act ("Act") provides that automatic coverage applies to "The erection, maintaining, removing, remodeling, altering or demolishing of any structure." 820 ILCS 305/3(2). Section 3, Paragraph 3, of the Illinois Workers' Compensation Act ("Act") provides that automatic coverage applies to "Construction, excavating or electrical work." 820 ILCS 305/3(3). The Arbitrator finds that the business activities of Durbin Construction, as described by Petitioner, are sufficient to subject it to the automatic coverage provision of the Act under 820 ILCS 305/3(2) and (3).

Section 3, Paragraph 15, of the Illinois Workers' Compensation Act ("Act") provides that automatic coverage applies to "any business or enterprise in which electric, gasoline, or other power-driven equipment is used in the operation thereof." 820 ILCS 305/3(15). The unrebutted evidence establishes that on August 17, 2016, Petitioner and other employees of Durbin Construction travelled to the worksite in Champaign in a van owned and operated by Durbin Construction, and therefore the evidence establishes that the use of vehicles was employed in Respondent's operation. The Arbitrator finds that Respondent's business activities are sufficient to subject it to the automatic coverage provision of the Act under 820 ILCS 305/3(15).

2. **In regard to whether Respondent was in an employer-employee relationship with Petitioner, the Arbitrator finds the following:**

The Arbitrator finds that the uncontradicted evidence and testimony in this case establishes that Respondent was in an employer-employee relationship with Petitioner. In making this finding, the Arbitrator relies on the uncontradicted testimony of Petitioner, as well as Petitioner's time records submitted in evidence. There is no testimony or evidence to the contrary.

In so finding, the Arbitrator makes reference to *Steel & Mach. Transp., Inc. v. Ill. Workers' Comp. Comm'n*, 2015 IL App (1st) 133985WC. In that case, the Appellate Court addressed the factors to be considered in determining whether a person is an employee:

> To assist in determining whether a person is an employee, the supreme court has identified a number of factors. Among the factors cited by the supreme court 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 compensates the person on an hourly basis; (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; and (6) whether the employer supplies the person with materials and equipment. *Roberson*, 225 Ill. 2d at 175. Another relevant factor is the nature of the work performed by the alleged employee in relation to the general business of the employer. *Roberson*, 225 Ill. 2d at 175; *Ware*, 318 Ill. App. 3d at 1122. The label the parties place on their relationship is also a consideration, although it is a factor of "lesser weight." *Ware*, 318 Ill. App. 3d at 1122. The significance of these factors rests on the totality of the circumstances, and no single factor is determinative. *Roberson*, 225 Ill. 2d at 175. Nevertheless, the right to control the work and the nature of the work are the two most important considerations. *Kirkwood*, 84 Ill. 2d at 21; *Ware*, 318 Ill. App. 3d at 1122.
>
> *Steel & Machinery Transportation, Inc. v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 133985WC, ¶ 31, 33 N.E.3d 674

Applying these factors, the Arbitrator finds that:

(1) Durbin Construction exercised considerable control over the manner in which Petitioner performed his work. Durbin Construction brought its employees, including Petitioner, to the work site, and told them how and when to work. Delivery Logistics, Inc. provided Petitioner with a uniform to wear. The Arbitrator finds that this factor weighs in favor of a determination that Petitioner was an employee.
(2) Work took place on a regular schedule determined by Durbin Construction. The Arbitrator finds that this factor weighs in favor of a determination that Petitioner was an employee.
(3) Durbin Construction paid Petitioner by the hour. The Arbitrator notes that Petitioner has submitted into evidence his time sheets. The Arbitrator finds that this factor weighs in favor of a determination that Petitioner was an employee.
(4) Durbin Construction did not withhold income and social security taxes from Petitioner's compensation. The Arbitrator finds that this factor weighs in favor of a determination that Petitioner was an independent contractor.
(5) Durbin Construction was able to discharge its workers, including Petitioner, at will. The Arbitrator finds that this factor weighs in favor of a determination that Petitioner was an employee.
(6) Durbin Construction provided the materials and equipment used by Petitioner. The Arbitrator finds that this factor weighs in favor of a determination that Petitioner was an independent contractor.

Petitioner testified that a substantial portion of Durbin Construction's work was commercial painting, and Petitioner was a commercial painter.

Although no one factor is conclusive, the Arbitrator has weighed the totality of the factors above, and finds that these factors strongly weigh in favor of the conclusion that Durbin Construction was an "employer" within the meaning of § 1(a) of the Act and that Petitioner was an employee of Durbin Construction.

3. **In regard to whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, what the date was of that accident, whether timely notice of that accident was given to Respondent, and whether proper notice of the hearing was given to Respondent, the Arbitrator finds the following:**

The Petitioner's account of falling from a ladder while painting an apartment wall for his employer is unrebutted and supported by the medical records. The Arbitrator finds that the Petitioner has met his burden of proving that on August 17, 2016, he suffered an accident which arose out of and in the course of his employment by Respondent. In making this finding, the Arbitrator relies upon the uncontradicted evidence and testimony in this case, including medical records. Based on this uncontradicted evidence and testimony in this case, the Arbitrator also finds that timely notice of the accident was given to Respondent.

Respondent Durbin Construction was not present at hearing, and records from the Illinois Secretary of State show that Respondent has been dissolved as of August 1, 2002. Certified mail was sent to it advising of this action but was not deliverable. Respondent is subject to this action, and notice was appropriately sent although not deliverable.

4. **In regard to Petitioner's earnings and the Petitioner's age and marital status at the time of accident, the Arbitrator finds the following:**

The Arbitrator finds that Petitioner's average weekly wage at the time of his accident was $480.00. Based on the uncontradicted testimony in this case as well as the evidence submitted, the Arbitrator concludes that Petitioner was 56 years old at the time of the work accident and was married with one child under the age of 18.

5. In regard to whether the medical services provided to the Petitioner were reasonable and necessary, and whether Respondent has paid all appropriate charges, the Arbitrator finds the following:

The Arbitrator finds that Petitioner has met his burden of proving that the medical services provided to him were reasonable and necessary. The medical records submitted show treatment by Advocate BroMenn Medical Center Emergency Room, which eventually referred Petitioner to orthopedic surgery at Orthopedic & Sports Enhancement Center, which treated Petitioner with casting and orthopedic boot, then referred him for physical therapy back at Advocate BroMenn Medical Center.

The record establishes that these services were reasonable and necessary to treat Petitioner's work injury, and Respondent has not paid all appropriate charges. Respondent shall pay all medical expenses for treatment for Petitioner's work injury, as set forth in Petitioner's medical bill exhibits, and as outlined in the schedules of amounts paid by Conduent.

6. In regard to what temporary total disability benefits are due, the Arbitrator finds the following:

The Arbitrator finds that Petitioner was unable to work due to his work injury from the time of his work injury, for six months or 26 weeks. He did not receive TTD payments during this time. The Arbitrator finds that Respondent is responsible for TTD for 26 weeks at Petitioner's TTD rate of $320.00

..

7. With regard to the Nature and Extent of the Injury, the Arbitrator finds as follows:

Pursuant to Section 8.1(b) of the Act, the Arbitrator, in determining the level of permanent partial disability, must use 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 the medical records.

With regard to (i) of Section 8.1(b) of the Act, the reported level of impairment:

There was no evaluation pursuant to the American Medical Association's Guide to the Evaluation of Permanent Impairment. Therefore, the Arbitrator gives no weight to this factor.

With regard to (ii) of Section 8.1(b) of the Act, the occupation of the injured employee:

Petitioner's occupation was as a painter, a job which requires him to constantly be on his feet. The Arbitrator gives considerable weight to this factor.

With regard to (iii) of Section 8.1(b) of the Act, the age of the employee at the time of the injury:

Petitioner was 56 years old at the time of the incident and the medical records suggest that the decision not to perform surgery was partly because his surgical result would not be as good as if he were younger. The Arbitrator gives some weight to this factor.

With regard to (iv) of Section 8.1(b) of the Act, the employee's future earning capacity:

There was no direct evidence offered regarding Petitioner's future earning capacity. However, he is not able to be on his feet as long as he was before the accident. The Arbitrator gives some weight to this factor.

With regard to (v) of Section 8.1(b) of the Act, evidence of disability corroborated by the medical records:

There was evidence of disability corroborated by the medical records, which show that Petitioner suffered a fracture of the left calcaneus, which is comminuted, intra-articular, and minimally displaced, and which describe it as a comminuted fracture through the calcaneal body with a lateral wall blowout. This was addressed with casting, gradual progression to weightbearing, and pain medication, with a long period of inability to work. The evidence shows that Petitioner continues to have complaints of discomfort and pain to his heel, which has limited some of her activities including activities of daily life, climbing stairs, and standing long periods of time. Based on the evidence introduced at trial, the Arbitrator gives significant weight to this factor.

Based on the factors above, the Arbitrator concludes the injuries sustained by Petitioner caused a 33.3% of loss of a foot as provided in Section 8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC012233
Case Name	Kathryn Kabiller v. Innovista Health Solutions
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0100
Number of Pages of Decision	38
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Arnold Rubin
Respondent Attorney	Stephen Carter

DATE FILED: 3/7/2023

/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

Kathryn Kabiller,

Petitioner,

vs. No. 18 WC 12233

Innovista Health Solutions,

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 accident, causal connection, medical expenses, temporary disability, permanent disability and "[v]arious evidentiary and procedural rulings of the Arbitrator at [t]rial," and being advised of the facts and law, affirms with a different analysis and otherwise adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The main issue at the arbitration hearing was whether the claim is compensable. Petitioner testified that she worked as a "quality specialist" for Respondent from June of 2016 through April of 2018. The job was sedentary, involving review of medical claims. Petitioner's lunch break was half an hour long, unpaid.

On February 16, 2018, Petitioner as usual drove to work at the "Westchester facility," an office complex. Petitioner was aware of three office towers in the complex. Petitioner worked on the top (12th) floor of Tower 1, which was connected to Towers 2 and 3, with a cafeteria style restaurant between Towers 2 and 3. There were other businesses located within the towers of the Westchester office complex, and the parking lot was open to the general public. Petitioner parked by Tower 1 in a parking space closer to the entrance, and walked into the building.

Petitioner returned to the parking lot on her lunch break to smoke a cigarette in a designated smoking area behind the building. Petitioner had learned of the smoking area from her fellow workers, and she smoked with them. Petitioner also knew it was a designated smoking area because "[t]here was an ashtray there." The smoking area was open to employees of other tenants and members of the general public. Petitioner did not go to any other smoking areas because they were farther away, and she had only a half an hour lunch break. On the date of accident, no one from Respondent directed Petitioner to smoke at that particular location.

Petitioner identified Petitioner's Exhibit 3 as the photographs of the designated smoking area, which she took post-accident on March 14, 2018. Petitioner testified the photographs did not reflect the condition of the area on February 16, 2018. "[T]he ashtray was not there. The ashtray was closer to the top of the incline." The ashtray "was up higher by the tree" by approximately 5 feet. Also, "[t]he area was all muddy" on February 16, 2018. The Commission has viewed the photographs, which show a smoking receptacle located on a grassy island in a parking lot. The area in question is unpaved and looks like it would easily get muddy, as the grass is patchy and short. Asked how many feet the smoking area was from the building exit, Petitioner responded: "You had a nice walk," approximately two minutes. Asked about what the employee handbook said about smoking, Petitioner referred to a smoking policy on pages 18 and 19. Petitioner agreed the policy advised smokers to become familiar with permitted and prohibited smoking areas.[1]

Petitioner further testified that she clocked out for lunch at 12:40 p.m. She clocked back in at 1:11 p.m. During that time, she "went out and had a cigarette, and then [she] went to get lunch." Petitioner smoked in her usual smoking area behind Tower 1. Petitioner described the condition of the smoking area at the time: "There was snow over by the curb here up. The ashtray was further up. The grounds were all—on the incline was all muddy and had snow on it." Petitioner drew a diagram for the Arbitrator. Petitioner stated she smoked by the lower curb, which is not in the picture, for approximately 10 minutes. Then she "walked up the incline and put it in that ashtray." The incline "was all muddy." Petitioner described the accident as follows: "I put my cigarette in the ashtray, turned around, and I slipped." Petitioner fell and injured her left shoulder. Despite the injury, she got lunch, returned to work, and finished her shift. On February 20, 2018, Petitioner and her supervisor, Carmen Spanior, completed an accident report, which states the injury occurred "[b]ack in the parking lot on the grass" and describes the accident as follows: "Walking up the hill to throw away cigs butts and the grass was muddy and slipped down the hill."

Robert Olson, an insurance adjuster, investigated the accident, visiting the parking lot of the office campus on October 17, 2021, more than three and a half years after the accident. Mr. Olson did not testify about the area where Petitioner fell or the tower where she worked. As such, his testimony is of little probative value, other than he counted five, not three, office towers. The Arbitrator admitted into evidence the investigation work product authenticated by

[1] The smoking policy provided: "In order to maintain a safe and comfortable working environment and to ensure compliance with applicable laws, smoking in Company offices and facilities is strictly prohibited ***. You should familiarize yourself with those areas throughout the premises where smoking is either permitted or prohibited. *** Employees smoking in any non-smoking area may be subject to disciplinary action, up to and including termination."

Mr. Olson, which described the office campus and other, sheltered, designated smoking areas, but not the area where Petitioner fell.

Tova Garfinkel, Respondent's manager of human resources, testified on direct examination that there are five buildings on the office campus. The buildings and the parking lots were open to the general public. Ms. Garfinkel agreed with the statement "the island in question that the employee is saying she hurt herself" was open to the general public. The other smoking areas that Mr. Olson described were "protected" (sheltered) from the weather.

Ms. Garfinkel further testified that Respondent did not own "[t]he premises in question," clarifying: "We rented office space." Ms. Garfinkel denied that Respondent provided or maintained the parking lots, the islands, or the smoking areas, stating: "The building was responsible for the premises." Turning to the smoking policy in the employee handbook, Ms. Garfinkel testified that state law prohibits smoking inside the office. The smoking policy followed "the building" rule that smoking was only allowed in designated areas.

On cross-examination, Ms. Garfinkel was asked about the Form 45, "Workers Compensation – First Report of Injury or Illness." She responded: "I submitted the information online, and the form was generated." Ms. Garfinkel completed the Form 45 on February 21, 2018. Ms. Garfinkel believed she completed the form correctly. Ms. Garfinkel agreed she indicated the injury occurred on Respondent's "premises." Turning to Petitioner's Exhibit 3, Ms. Garfinkel acknowledged the smoking receptacle. Petitioner was never disciplined for smoking in that location. On redirect examination, Ms. Garfinkel denied "the island in question" was Respondent's "premises." On re-cross examination, Ms. Garfinkel affirmed that in the Form 45 she checked the "yes" box to indicate the injury occurred on Respondent's "premises." To be clear, the Form 45 in evidence has a "yes" box checked indicating the accident occurred "on employer's premises."

The Arbitrator found the claim compensable and awarded workers' compensation benefits. The Commission agrees, but with a different analysis. Petitioner fell on a muddy incline in a designated smoking area right after putting a cigarette butt in a smoking receptacle. This claim can be considered a workers' compensation premises liability case due to a " 'hazardous condition' on the employer's premises." See, *e.g.*, *Dukich v. Workers' Compensation Comm'n*, 2017 IL App (2d) 160351WC, ¶ 41. Conversely, if the injury did not occur on the premises owned, controlled or required to traverse by the employer, the employer is not liable. See *Walker Brothers v. Workers' Compensation Comm'n*, 2019 IL App (1st) 181519WC. Here, the outcome is determined by what admittedly is Respondent's premises. During the arbitration hearing, Respondent used the term "premises" to interchangeably refer to Respondent's office space and the office campus. In questioning witnesses, Respondent's counsel did not make clear what he meant by "premises" and did not make a distinction between Respondent's office space and the rest of the office campus. The Form 45 in evidence has a "yes" box checked indicating the accident occurred "on employer's premises." Ms. Garfinkel believed she completed the form correctly, although on redirect examination she denied "the island in question" was Respondent's "premises." Respondent's brief on review[2] in passing raises a defense that the injury did not

[2] Which violates the Commission's page limits.

occur on Respondent's premises, but without any citation to authority. In any event, the Commission does not see how it could get around the fact that Respondent, a sophisticated party in the business of adjusting claims, made an admission that the accident occurred "on employer's premises."

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 affirmed with a different analysis and otherwise adopted.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $64,200.00. 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.

March 7, 2023

SJM/sk
o-1/11/2023
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC012233
Case Name	KABILLER, KATHRYN v. INNOVISTA HEALTH SOLUTIONS
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	34
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Arnold Rubin
Respondent Attorney	Stephen Carter

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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Kathryn Kabiller
Employee/Petitioner

v.

Innovista Health Solutions
Employer/Respondent

Case # **18WC012233**

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 **Charles Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **November 15, 2021**. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **2/16/2018** , 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 $**52,301.03** ; the average weekly wage was **$1,005.79**.

On the date of accident, Petitioner was **58** 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 $**30,821.52** under Section 8(j) of the Act.

ORDER

- Respondent shall pay Petitioner temporary total disability benefits in the amount of **$670.53**/week for **28-1/7** weeks, for the period of **7/19/2018** through **1/31/2019**, which is the period of temporary total disability for which compensation is due.
- Respondent shall pay the further sum of $**30,821.52** for necessary medical services as provided in Section 8(a) of the Act.
- Respondent shall receive an 8(j) credit of **$30,821.52** for payments made by Petitioner's group insurance. Respondent will hold Petitioner harmless from any claim for payment by the group provider.
- Respondent shall pay Petitioner the sum of **$603.47**/week for a further period of **75** weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained to the left shoulder caused a **15%** loss of use of the person as a whole.
- Respondent shall pay Petitioner the compensation accrued from **2/16/2018** through **11/15/2021** and shall pay the remainder of the award, if any in weekly payments.
- See Rider attached hereto and made a part of hereof.

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

Kathryn Kabiller v. Innovista Health Solutions
Case Number: 18 WC 12233
Date of Accident: 2/16/2018

RIDER TO THE ARBITRATION DECISION

I. INTRODUCTION

Evidence in the above-captioned claim was presented to Arbitrator Watts on November 15, 2021. On that date the Arbitrator heard the testimony of Petitioner and Respondent's witnesses. The Arbitrator also received into evidence various exhibits, which included: 1) accident reports; 2) medical records; 3) diagnostic test reports; 4) operative report; 5) physical therapy records; 6) Section 12 report of Dr. Bare; 7) medical bills; 8) employee handbook; 9) photographs; 10) timecards and wage documentation; and 11) diagram.

The Arbitrator is considering the disputed issues of accident, medical causation, payment of medical bills, payment of temporary total disability benefits and nature and extent of the injury. The Arbitrator notes that Respondent stipulated to the period of TTD benefits owed if Petitioner established that she sustained a compensable accident. Respondent disputes liability for the temporary total disability benefits based on accident and causal connection.

Before making conclusions of law in connection with this case, the Arbitrator makes the following findings of fact:

II. FINDINGS OF FACT

A. Work History and Background

Petitioner was employed by Respondent on February 16, 2018. She had worked for Respondent since June 30, 2016. As of 2017, Petitioner worked at Respondent's facility in Westchester, Illinois. Petitioner worked at the Westchester facility from June 2017 through April 2018. Petitioner was employed as a quality specialist. Petitioner is right handed. Petitioner is a smoker.

Petitioner testified that her job required mainly desk work. She operated a computer, answered the phone and performed light office work. Petitioner reviewed claims for medical providers and reviewed

diagnostic codes. Petitioner worked five days a week, eight hours per day. Petitioner had a half hour lunch break. Petitioner drove to work. Petitioner smoked on her unpaid breaks.

The wage statement for the 52 weeks prior to February 16, 2018 was admitted into evidence. (RX 7). The wage statement confirms that Petitioner's average weekly wage is $1,0065.79. (RX 7). Average weekly wage was not placed in dispute at hearing.

B. Description of the Complex and Smoking Area

Petitioner testified regarding her understanding of the Westchester facility where she worked. The Westchester facility was an office complex. Petitioner testified that she knew of three connected towers. The towers were interconnected and she could move between the three towers without having to go outside. There is a cafeteria between Towers 1 and 2. Petitioner worked in Tower 1. Petitioner worked on the twelfth floor, which was the top floor. There were other offices located within the towers at the Westchester complex.

Petitioner parked her car by Tower 1. She parked in front of the tower. Petitioner entered the parking lot from Cermak Road and drove down a street, made a left and parked on the side of the building. The parking lot was open to the general public. Petitioner parked as close as she could to the entrance. Petitioner walked into the building from her car every day. At the end of the day, she would walk back to her car. Petitioner went back to the parking lot during her lunch break. Petitioner walked through the parking lot three times per day, five times a week or fifteen times per day. Petitioner walked through the parking lot into the building every day of the week from July 2017 through April 2018. The only days that Petitioner did not travel through the parking lot was when she was on vacation.

Petitioner described the area where she smoked. She smoked in the designated smoking area located in the parking lot where she parked her car. Petitioner went to that area because she knew there was an ashtray located there and that she could smoke in that location. Petitioner testified that she threw her cigarettes away in a standing ashtray. Petitioner testified that the area where she smoked was depicted in Petitioner's Exhibit 3. Petitioner testified that she took the picture depicted in Petitioner's Exhibit 3 on March 14, 2018. She testified that the condition of the ground was different than it was on February 16,

2018. On February 16, 2018, there was snow piled up and the area was muddy. Additionally, the ashtray was located closer to the top of the incline. The ashtray was about five feet from where it was depicted in the picture. It was closer to the tree. The ashtray was located behind Tower 1. Petitioner parked on the opposite side of the street depicted in the photographs. Petitioner parked closer to the door of the building. The area where Petitioner smoked was in a public parking lot and was probably open to the public. There were probably hundreds of people working in the buildings who had access to the area.

Petitioner testified that she picked that location to smoke because she knew she could smoke there. Petitioner knew she could smoke there because she asked her fellow workers if she could smoke in that location. Specifically, Petitioner asked Sunil Cardozo, the chief information officer for Respondent, if she could smoke in that area. Petitioner smoked on her lunch break. She smoked with other people, including employees of Respondent. Petitioner smoked with Myra Cruz, a senior claims adjudicator; JJ Shah-Mirany, a senior applications specialist; and Sunil Cardozo. Petitioner walked about two minutes to get to the smoking area from her office.

Petitioner was not aware of other designated smoking locations in the office complex. She found the one by the back door and used it because it was the easiest location for her. Petitioner only had thirty minutes for lunch. She wanted to smoke there because it was the most convenient location for her. Petitioner used the same location every day. Petitioner had not observed any employees smoking in other areas in the parking lot. Anyone who smoked where Petitioner did would be subjected to the risk of mud or snow. However, unlike the general public, Petitioner could be terminated for not smoking in the designated area.

There was no sign stating that the area was a designated smoking location where Petitioner smoked. Petitioner was not aware of whether there were signs in other designated smoking areas. She was not aware of whether the other locations were protected from the elements. Petitioner did not look for any other smoking locations. Petitioner did not look for ashtrays outside building 2 or 3.

Petitioner was aware of an employee handbook. (PX 2); (RX 3). The handbook referenced the smoking policy. Petitioner was aware of the smoking policy. Petitioner became aware of the policy when she was

first hired by Respondent. The policy set forth that Petitioner should familiarize herself with the areas throughout the premises where smoking was permitted or prohibited. The reason for the policy was that it is illegal to smoke inside in Illinois. Petitioner testified that she was not aware of the building's smoking policy; however, Respondent required that she find a designated smoking location to smoke or she could be fired.

Petitioner familiarized herself with the areas pursuant to the policy. Petitioner did not familiarize herself with all of the smoking areas. She familiarized herself with the area most convenient to her. Petitioner went to the same location five times per week. Petitioner only went to specific areas of the towers and did not branch out to any other tower or areas of the property.

The employee handbook was admitted into evidence. (PX 2); (RX 3). The handbook set forth the company policy for smoking. (PX 2 at 18). The handbook set forth that smoking is prohibited. (PX 2 at 18). The employee should be familiar with the areas throughout the premises where smoking is permitted or prohibited. (PX 2 at 18). The handbook stated that Respondent required strict adherence to the policy. (PX 2 at 18). Employees smoking in a non-smoking area may be subject to disciplinary action, up to and including termination. (PX 2 at 18-19).

C. Prior Medical Treatment

Petitioner testified regarding prior medical treatment for her left shoulder. Petitioner received medical treatment for her left shoulder between June 5, 2008 and September 11, 2008. Petitioner testified that she did not receive any medical treatment for the left shoulder for approximately ten years prior to the accident of February 16, 2018.

D. Work-Related Accident of February 16, 2018

On February 16, 2018, Petitioner checked in for work at 8:28 am. Petitioner's work day began at 8:30 am. Petitioner punched out for lunch at 12:40 am. She punched back in at 1:11 pm. Petitioner's timecards for the period of February 4, 2018 through February 16, 2018 were admitted into evidence. (RX 2). Petitioner clocked out for lunch at 12:40 am and clocked back in at 1:11 pm on February 16, 2018. (RX2).

Petitioner was not paid for the time she was on lunch break. Petitioner's activities were not controlled by Respondent while she was on break. Petitioner could leave campus while on her lunch break. Petitioner was not performing any job duties in the parking lot while on her lunch break. Petitioner has left campus on her lunch break for lunch with "the girls." She went off campus about two times in the entire time she worked for Respondent. The half hour lunch was the only break that Petitioner had during the day.

On February 16, 2018, Petitioner went out to have a cigarette on her lunch break. Petitioner exited out of building 1. Petitioner picked the location where she smoked because it was closest to the office and was a designated smoking area. Petitioner did not familiarize herself with any other smoking locations because she used the location closest to her.

After smoking, Petitioner went to the cafeteria, which was located between building 2 and 3, for lunch. Petitioner was not aware of any designated smoking areas in building 2 or 3. Petitioner did not see any ashtrays in building 2 or 3. She stated that the locations could have been outside. Petitioner did not look outside building 3 to see if there was a designated smoking area. Petitioner went to the cafeteria to pick up her lunch and then went back to her desk to eat. Petitioner did not have to go outside since the buildings were interconnected, so she did not see if there were any designated smoking areas.

When her lunch break started, Petitioner exited out of building 1. After she smoked, she went back into the building 2. She went through building 2 to building 3 to pick up her lunch in the cafeteria. Petitioner went to the area depicted in Petitioner's Exhibit 3, which was the same place she smoked every day. Petitioner testified that she smoked her cigarette in the area depicted in Petitioner's Exhibit 3 on February 16, 2018. There was snow on the ground and close to the curb. The ashtray was located further up the incline. The ground and the incline were muddy and had snow on it. Petitioner was smoking at the lower curb, in the lower left-handed corner of the picture. (PX 3). Petitioner initialed where she was standing. (PX 3). Petitioner smoked for about ten minutes. After she finished smoking, the walked up the incline and put the cigarette in the ashtray. Petitioner walked up the incline to throw the cigarette into the ashtray.

Petitioner testified that the incline was muddy. Petitioner put the cigarette in the ashtray, turned around and slipped. Petitioner fell and braced herself with both arms. Petitioner testified that she was embarrassed. Petitioner noticed that her arms hurt and she was sore. Her shoulders, mainly her left shoulder, felt sore and was hurting. Petitioner completed work for the day.

Petitioner was alone when she fell. She was not told on February 16, 2018 where to smoke. Petitioner walked to the smoking island in two minutes. Petitioner testified that time was of the essence because she was on her lunch hour. Petitioner went to the cafeteria after she smoked to get lunch.

Petitioner completed an accident report. The accident report was typed. The accident report completed by Petitioner was admitted into evidence. (PX 1); (RX 1). The accident report is dated February 20, 2018. (PX 1). Petitioner did not complete the accident report on February 16, 2018. The accident report was not completed on February 16, 2018 because Petitioner's supervisor was not in the office. Petitioner was not aware of the condition of the smoking area on February 19, 2019 when the accident report was completed.

The accident report was signed by Petitioner's supervisor, Carmen Spanior. (PX 1). The accident report set forth that Petitioner sustained an injury to her neck, left shoulder and buttocks on February 16, 2018 and 12:50 pm. (PX 1). The accident occurred in the back of the parking lot on the grass. (PX 1). Petitioner testified that she meant the area depicted in Petitioner's Exhibit 3. Petitioner worked from 8:30 am to 5:00 pm. (PX 1). The accident occurred when Petitioner was walking up the hill to throw away cigarette butts and the grass was muddy. (PX 1). Petitioner slipped down the hill. (PX 1). Petitioner stated that the muddy grass caused the accident. (PX 1).

Petitioner did not document that there was snow in the accident report. She stated that she slipped on mud. Petitioner testified that she did not write down snow on the accident report because the snow was by the curb and not in the area that she fell. The mud caused Petitioner to fall.

The Form 45 completed by Respondent was also submitted into evidence. (PX 16). The Form 45 indicated that Petitioner slipped on snow and mud. (PX 16). It further indicated the accident occurred on Respondent's premises. (PX 16).

E. Respondent's Witnesses

1. Robert Olson

Robert Olson testified on behalf of Respondent. Mr. Olson is an insurance adjuster for Crawford and Company. Mr. Olson has worked for Crawford and Company for 32 years. He was engaged by Broadspire to determine where the smoking receptacles were located. Broadspire is a sister company of Crawford and Company.

Mr. Olson was engaged on October 17, 2021. Mr. Olson identified Respondent's Exhibit 4 as a diagram of the smoking receptacles and services drive near buildings 2, 3, 4 and 5. Mr. Olson drew the diagram. (RX 4). It was a rough sketch of the location of the buildings and location of the parking garage and service drive. (RX 4). The diagram was based on his personal observations.

Mr. Olson testified that he went through the whole parking lot, which is almost a mile long and did not see any smoking receptacles. Five buildings were part of the complex. He entered the service drive between buildings 4 and 5. The service drive was one lane going in the north direction. Mr. Olson found the first receptacle by building 4. Mr. Olson found four smoking receptacles. He denoted the buildings by their numbers. (RX 4). Building 1 was far away from the service drive to the northwest corner. The smoking receptacles were marked with canisters on the drawing. (RX 4). They were like little bus stops with sheltered areas to protect people. They receptacles were enclosed. The buildings were interconnected and could be accessed without going outside. Respondent submitted a diagram into evidence. (RX 4). The diagram was of a parking garage. (RX 4). The parking garage was not where Petitioner parked.

Mr. Olson acknowledged that Petitioner worked in building 1. Building 1 was between buildings 2 and 3 and connected by a walkway. He was not sure whether buildings 4 and 5 were connected. A person could walk between buildings 1, 2 and 3 without going outside. The distance between building 1 to 2 was about seventeen to twenty car lengths. Mr. Olson estimated that it would take approximately two minutes to walk between the buildings. The distance between buildings 1 and 3 was about the same.

Mr. Olson identified Respondent's Exhibit 5. The exhibit was a picture of the parking garage and the buildings of the complex. The pictures show the parking garage, service road, buildings and smoking receptacles. (RX 5). The pictures of the smoking receptacles depicted signed which stated that the location

was a designated smoking area. (RX 5). The smoking receptacles in the pictures are near the buildings and did not have mud. (RX 5).

Mr. Olson testified that the smoking receptacles on the diagram were the only ones he noticed on October 17, 2021. He did not have personal knowledge of what smoking receptacles were on the campus on February 16, 2018. Mr. Olson acknowledged that there was another parking area other than the parking garage on campus. The other parking area is not depicted in the photographs.

2. Tova Garfinkel

Tova Garfinkel testified on behalf of Respondent. Ms. Garfinkel was employed by Respondent on February 16, 2018. She was the manager of human resources and worked in a supervisory capacity.

Ms. Garfinkel testified that Respondent did not own the premises. Respondent leased the office space from a building management company. Respondent did not maintain the premises. The building was responsible for maintaining the premises. Respondent did not provide smoking areas for its employees. Ms. Garfinkel testified that the building provided the smoking locations for the employees. Ms. Garfinkel became aware that Petitioner was a smoker following her accident.

Respondent did not have assigned parking. The employees could park where they wanted to park. Respondent did not have assigned smoking areas. They did not direct petitioner to smoke in any particular location. Respondent did not place the receptacles. The building placed the receptacles. Ms. Garfinkel testified that smoking did not benefit the company. Respondent did not tell Petitioner which door to exit or enter from or where to smoke.

Ms. Garfinkel identified the employee handbook. (PX 2) ; (RX 3). The handbook was in effect as of June 2016 and the smoking policy was in effect at the time of the accident in 2018. Ms. Garfinkel created the handbook. Ms. Garfinkel testified that it is against the law to smoke inside the building. Respondent does not have control of the laws. The smoking policy was written to include the building's rules which required that employees smoke in designated smoking areas. Ms. Garfinkel testified that there were multiple designated smoking areas. Ms. Garfinkel testified that the designated smoking areas were along

the service lane. The policy states that the employees should familiarize themselves with the designated smoking areas.

Ms. Garfinkel stated that there are five buildings on the campus. The buildings and parking lot were public. The area where Petitioner sustained her injury was public. The area could be accessed by any of the tenants of the building and was not protected from the elements.

Ms. Garfinkel filled out the Form 45. (PX 16). The Form was completed on February 21, 2018. (PX 16). Ms. Garfinkel indicated that the injury occurred on Respondent's premises in the Form 45. (PX 16). On cross-examination, Ms. Garfinkel stated that the island was not on Respondent's premises.

Ms. Garfinkel was aware of the area where Petitioner smoked prior to the accident. She was aware that there were other smoking receptacles in the parking lot area. She was familiar with the parking lot where Petitioner parked. She acknowledged that receptacles for smoking were located in that area. Ms. Garfinkel was aware that Petitioner continued to smoke in that area after the accident of February 16, 2018. Petitioner was not disciplined for smoking in that area.

F. Medical Treatment

Following the work accident of February 16, 2018, Petitioner sought medical treatment. Petitioner was initially examined at Lutheran General Hospital on February 16, 2018. (PX 4). The medical records documented that Petitioner was smoking a cigarette when she slipped on slippery ground and fell, landing on her knees and outstretched hands. (PX 4). Petitioner had left shoulder and neck pain following a fall. (PX 4). A CT of the head and cervical spine were performed. (PX 5). Both tests were normal. (PX 5). Petitioner was discharged and advised to follow up with her primary care physician. (PX 5).

Petitioner was examined by Dr. Berman on May 23, 2018. (PX 6). The appointment was for Petitioner's annual examination and also a follow up from the fall. (PX 6). Petitioner had left shoulder pain. (PX 6). Dr. Berman referred Petitioner to an orthopedic surgeon. (PX 6).

Petitioner was examined by Dr. Breslow on March 12, 2018. (PX 7). Dr. Breslow documented a history that Petitioner fell at work. (PX 7). He set forth an impression of left rotator cuff tendinitis. (PX 7). He performed an injection, referred Petitioner to physical therapy and recommended an MRI. (PX 7).

Petitioner underwent the left shoulder MRI on March 19, 2018 at Lutheran General Hospital. (PX 5). The MRI revealed a partial tear of the distal supraspinatus tendon, subacromial subdeltoid bursitis and mild degenerative changes in the acromioclavicular joint. (PX 5).

Petitioner had a follow up examination with Dr. Breslow on March 23, 2018. (PX 7). He set forth an impression of left partial tear of the supraspinatus tendon and subacromial impingement of the left shoulder. (PX 7). He recommended physical therapy and to follow up in one month. (PX 7).

On May 21, 2018, Dr. Breslow examined Petitioner. (PX 7). He recommended left shoulder surgery. (PX 7). Petitioner had lost her insurance coverage. (PX 7). Dr. Breslow documented that Petitioner would try to find insurance coverage for the surgery. (PX 7).

Petitioner had a follow up examination with Dr. Breslow on July 5, 2018. (PX 7). Dr. Breslow recommended that Petitioner undergo surgery for the left shoulder at Lutheran General Hospital. (PX 7). Petitioner was cleared for surgery by Dr. Berman. (PX 6).

Petitioner underwent surgery at Lutheran General Hospital on July 19, 2018. (PX 8). Dr. Breslow performed a left shoulder arthroscopic rotator cuff repair and subacromial decompression. (PX 8). The post-operative diagnosis was left shoulder medium sized full thickness tear of the supraspinatus tendon and subacromial impingement. (PX 8).

On July 21, 2018, Petitioner presented to the emergency room at Lutheran General for assistance in removing the nerve block. (PX 4). Following the surgery, a nerve block was placed in Petitioner's arm. (PX 4). The nerve block was causing Petitioner pain. (PX 4). The nerve block was removed at the hospital. (PX 4).

Petitioner remained under the post-operative care of Dr. Breslow. (PX 4). Post-operative care included follow up appointments, physical therapy and activity modification. (PX 4). Petitioner participated in physical therapy at Lutheran General Hospital. (PX 12). Petitioner complained of left-hand pain and stiffness. (PX 4).

Petitioner was examined by Dr. Visotsky on October 16, 2018. (PX 9). Petitioner complained of left-hand arm swelling following the surgery. (PX 9). Petitioner had left hand edema and pins and needles in

her finger tips. (PX 9). Dr. Visotsky set forth a diagnosis of left-hand edema postoperatively, left multi-digital trigger finger and cervical versus carpal tunnel paresthesias of the left hand. (PX 9). He recommended an EMG, occupational therapy and an edema glove. (PX 9). Petitioner participated in occupational therapy at Lutheran General Hospital. (PX 12).

Petitioner underwent the EMG at Lutheran General Hospital on October 18, 2018. (PX 10). The EMG revealed moderate right carpal tunnel syndrome. (PX 10). Petitioner is not claiming that the carpal tunnel syndrome is part of the instant workers' compensation claim.

Petitioner was examined by Dr. Breslow on October 29, 2018. (PX 7). Dr. Breslow set forth that the EMG report likely meant that Petitioner sustained left, not right, carpal tunnel syndrome. (PX 7). Dr. Breslow recommended physical therapy and to follow up with Dr. Visotsky. (PX 7).

Dr. Visotsky examined Petitioner on October 30, 2018. (PX 9). Dr. Visotsky set forth that Petitioner had persistent edema in the upper extremity. (PX 9). He recommended a venous doppler test and thera-glove. (PX 9).

Petitioner underwent the venous doppler on October 31, 2018 at Lutheran General Hospital. (PX 11). The venous doppler revealed no evidence of acute DVT in the upper left extremity and acute focal superficial thrombophlebitis of the left basilica vein in the mid upper arm region. (PX 11).

Petitioner had a telephone conversation with Dr. Breslow on November 2, 2018. (PX 7). He recommended that Petitioner follow up with her primary care physician regarding the thrombophlebitis of the basilic vein. (PX 7).

Petitioner was examined by Dr. Berman on November 14, 2018. (PX 6). Dr. Berman documented continued swelling in the left arm. (PX 6). He ordered a Vasc for the left upper extremity. (PX 6).

Petitioner underwent a second venous doppler on November 27, 2018 at Lutheran General Hospital. (PX 11). The venous doppler was abnormal and revealed a superficial thrombophlebitis of the left basilica vein in the mid upper arm. (PX 11).

Petitioner was examined by Dr. Jacobs on December 20, 2018 at Illinois Medical Group. (PX 6). Dr. Jacobs set forth that no additional intervention was required for the basilic vein thrombosis. (PX 6). He

indicated that the continued swelling of the arm was not related to the upper extremity venous system. (PX 6). He recommended continued arm elevation and compression therapy and a lower extremity venous reflux ultrasound. (PX 6).

Petitioner was last examined by Dr. Breslow on December 31, 2018. (PX 7). Petitioner's symptoms had improved. (PX 7). Petitioner continued to complain of persistent soreness and swelling. (PX 7). Dr. Breslow set forth an impression of twenty-three weeks post left shoulder arthroscopic rotator cuff repair and subacromial decompression. (PX 7). He recommended that Petitioner continued with a home exercise program. (PX 7). Petitioner declined an injection. (PX 7). Dr. Breslow recommended that Petitioner follow up with a hematologist for the thrombosis and swelling and treat with Dr. Visotsky for the carpal tunnel syndrome. (PX 7).

G. Section 12 Report of Dr. Bare

At the request of Respondent, Petitioner was examined by Dr. Bare on August 14, 2019. (PX 13); (RX 6). Dr. Bare documented a history that Petitioner was outside the office complex on the office grounds having a cigarette. (PX 13). Petitioner was walking to place the cigarette butt in the container when she slipped on the slight incline, which contained mud and snow. (PX 13). Petitioner fell forward onto her extended left arm. (PX 13). Dr. Bare set forth a diagnosis of left shoulder following surgical arthroscopy and rotator cuff repair. (PX 13).

Dr. Bare set forth that the work injury was the direct cause of the left shoulder condition and the need for further medical treatment. (PX 13). The mechanism of accident was that Petitioner fell on a muddy surface as she was having a cigarette break and landed on an outstretched arm. (PX 13). Dr. Bare set forth that maximum medical improvement would occur six to eight months after surgery, around March 2019. (PX 13). Dr. Bare set forth that Petitioner gave a true, accurate and correct history of the injury. (PX 13). Dr. Bare set forth that the EMG was recommended to determine whether there was cervical radiculopathy. (PX 13). The carpal tunnel was an incidental finding. (PX 13). Dr. Bare set forth that Petitioner would be able to return to work by February 2019 without restrictions. (PX 13).

H. Medical Bills

Petitioner's medical bills were paid by group insurance through Respondent. Petitioner used a CORBA policy after April 26, 2018. The COBRA policy was through Respondent. The itemized reports from Equian and Blue Cross Blue Shield were admitted into evidence. (PX 14-15); (RX 8). Equian paid $2,933.52. (PX 14). Blue Cross Blue Shield paid $27,888.60. (PX 15).

I. Post-Accident Employment

Petitioner returned for work for Respondent following the accident of February 16, 2018. She worked for Respondent until April 26, 2018. Petitioner was terminated on April 26, 2018. Petitioner did not perform any work for Respondent between July 19, 2018 and January 31, 2019.

Petitioner testified that following the accident, she worked slower. Petitioner was slower at typing. Petitioner testified that she was slower because she experienced pain in her left arm, and left shoulder. Petitioner did not have any work restrictions. Petitioner is not currently working. She has not obtained a job. Petitioner is looking for employment.

J. Current Subjective Complaints

Petitioner testified regarding her subjective complaints. Petitioner is only able to lift 20 pounds. Petitioner experiences pain in her left arm when the weather is bad. Petitioner testified that she performs activities around the house differently and she did prior to the accident. Instead of carrying the laundry in baskets, Petitioner throws the laundry down the stairs and then picks it up. Petitioner tried to carry the laundry in the basket since the surgery of July 2018. Petitioner testified that her left shoulder hurt if there was too much laundry in the basket. Petitioner does not put as many groceries in her bags so she does not have to lift as much.

Petitioner performed home exercises for the pain. Petitioner takes hot showers for the pain. She also ices her shoulder. Petitioner takes over-the-counter Tylenol for the pain. Petitioner does not have any prescription medication for her left shoulder.

III. CONCLUSIONS OF LAW

The Arbitrator adopts the Statement of Facts in support of the Conclusions of Law.

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d).

To obtain compensation under the act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim (*O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253 (1980) including that the accidental injury both arose out of and occurred in the course of his employment (Horvath v. Industrial Commission, 96 Ill.2d. 349 (1983)) and that there is some causal relationship between the employment and her injury. *Caterpillar Tractor Co. v. Industrial Commission*, I29 Ill. 2d 52, 63 (1998). Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e).

Credibility is the quality of a witness which renders her evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with her testimony. Where a claimant's testimony is inconsistent with her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972). While it is true that an employee's uncorroborated testimony will not bar a recovery under the Act, it does not mean that the employee's testimony will always support an award of benefits when considering all the testimony and circumstances shown by the totality of the evidence. *Caterpillar Tractor Co. v. Industrial Commission*, 83 Ill. 2d 213 (1980). The mere existence of testimony does not require its acceptance. *Smith v. Industrial Commission*, 98 Ill.2d 20, 455 N.E.2d 86 (1983). To argue to the contrary would require that an award be entered or affirmed whenever a claimant testified to an injury no matter how much her testimony might be contradicted by the evidence, or how evidence it might be that her story is a fabricated afterthought. *U.S. Steel v. Industrial Commission*, 44 Ill2d 207, 214, 254 N.E.2d 522 (1969); see also *Hansel & Gretel Day Care Center v. Industrial Commission*, 215 Ill. App. 3d 284, 574 N.E.2d 1244 (1991).

The Petitioner bears the burden of proving every aspect of her claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill App. 3d 706 (1992). "Liability under the Workmen's

Compensation Act may not be based on imagination, speculation, or conjecture, but must have a foundation of facts established by a preponderance of the evidence…" *Shell Petroleum Corp. v. Industrial Commission*, 10 N.E.2d 352 (1937). The burden of proof is on a claimant to establish the elements of her right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment there is no right to recover. *Revere Paint & Varnish Corp. v. Industrial Commission*, 41 Ill.2d. 59 (1968). Preponderance of the evidence means greater weight of the evidence in merit and worth that which has more evidence for it than against it. *Spankroy v. Alesky*, 45 Ill. App.3d 432 (1st Dist. 1977).

The Arbitrator observed Petitioner's demeanor at trial and finds that her manner of speech, easy and direct answers to questions, and overall presence to be indicative of sincerity. The Arbitrator finds that Petitioner's testimony was credible. The Arbitrator also finds that Petitioner's testimony was consistent with the histories, treatment and objective findings documented in the medical records, which were offered into evidence at the time of the hearing. Her testimony was also consistent with the accident report and Form 45 admitted into evidence.

The Arbitrator finds that Respondent's witness Robert Olson was credible. His testimony was not relevant to the instant case since he did not have any personal knowledge of where Petitioner fell and did not photograph the parking lot where she parked. However, his testimony was credible regarding the area that he observed.

The Arbitrator finds that Ms. Garfinkel's testimony was contradicted by the Form 45, which she completed. Accordingly, he does not find her testimony as persuasive as Petitioner's testimony.

In support of the Arbitrator's decision relating to "C," did an accident occur that arose out of and in the course of the Petitioner's employment with Respondent, the Arbitrator makes the following conclusions:

The Arbitrator concludes that Petitioner sustained an accidental injury that arose out of and in the course of her employment with Respondent on February 16, 2018. In support of the decision, the Arbitrator relies on Petitioner's credible and unrebutted testimony, which was consistent with the medical records, accident

report, Form 45 and the case law. The Supreme Court has held that the unrebutted testimony of Petitioner is sufficient to establish a work-related accident. *Thrall Car Manufacturing Co. v. Industrial Commission*, 64 Ill.2d 459, 356 N.E.2d 516 (1976).

The Arbitrator finds that Petitioner has met her burden of proof and has established that she sustained accidental injuries arising out of and in the course of his employment. An injury occurs in the course of the employment when the injury occurs at a place where the claimant might have reasonably been performing his job duties and while the claimant was at work. *Caterpillar Tractor Company v. Indus. Com'n*, 129 Ill.2d 52, 541 N.E.2d 655 (1989). "For an injury to arise out of one's employment, it must have an origin and some risk connected with or incidental to the employment, so that there is a causal connection between the employment and the injury." *Lakeside Architectural Metals v. Industrial Commission,* 267 Ill.App.3d 1058, 642 N.E.2d 796 (1st Dist. 1994). Thus, to be covered, the employee must be exposed to a risk greater than that of the general public if they are not subjected to a risk directly related to employment. *Caterpillar Tractor Company*, 129 Ill.2d 52.

A neutral risk is a risk that the general public is equally exposed to. *Id.* Where there is a neutral risk, the employee must be exposed to a risk greater than that of the general public for the accident to be compensable. *Caterpillar Tractor Company*, 129 Ill.2d 52. "If the risk of hazard is so increased by employment, it does not matter that the injury is unusual or unexpected, or that it is not particular to the employment." *Bommarito v. Industrial Commission*, 82 Ill.2d 191, 412 N.E.2d 548 (1980), citing *C.A. Dunham Co. v. Industrial Commission*, 16 Ill.2d 102, 156 N.E.2d 560 (1959). An employee can show an increased risk quantitatively or qualitatively. *Adcock v. Illinois Workers' Compensation Commission*, 2015 IL App (2d) 130884WC, 38 N.E.3d 587 (2d Dist. 2015).

The courts have set forth examples of when an employee is subjected to an increased risk. In *Illinois Consolidated Telephone Company v. Industrial Commission*, 314 Ill.App.3d 347, 732 N.E.2d 49 (5th Dist. 2000), the court found that the claimant sustained accidental injuries arising out of her employment when she fell on the stairs while going to the restroom located on the first floor. The court held that the accident

arose out of the employment because the claimant was forced to use the stairs for her personal comfort to use the bathroom. *Id.*

Further, in *William G. Ceas & Company v. Industrial Commission*, 261 Ill.App.3d 630, 633 N.E.2d 994 (1st Dist. 1994), the court held that the claimant sustained an accidental injury that arose out of and in the course of her employment. The claimant fell down the stairs while holding a Fed Ex envelope. *Id.* The court held that the risk of the employment was that the claimant was in a hurry since she was mailing the envelope at the end of the day. *Id.* Thus, the accidental injury arose out of her employment. *Id.*

The courts have examined when an employee is subjected to an increased risk on a quantitative basis. In *Adcock v. Illinois Workers' Compensation Commission*, 2015 IL App (2d) 130884WC, 38 N.E.3d 587 (2d Dist. 2015), the court found that the employee sustained a compensable accident because the employee's job required him to perform activities such as bending, kneeling, walking and turning more frequently than members of the general public. Additionally, in *Village of Villa Park v. Illinois Workers' Compensation Commission*, 2013 IL App (2d) 130038 WC, 2013 WL 6867380 (2d Dist. 2013), the court found that the claimant sustained a compensable injury where she injured her right knee and low back after she fell down the back stairs. The claimant used the stairs two to four times per day. *Id.* The court relied on the fact that the claimant "continuously" used the stairway to complete her work and for personal comfort. *Id.* Accordingly, the court found that the claimant's injury arose out of her employment. *Id.*

"The words 'in the course of the employment' refer to time, place and circumstances under which the accident occurred." *Chmelik v. Vana*, 31 Ill.2d 272, 201 N.E.2d 434 (1964). The Supreme Court held that "in the course of" employment includes a reasonable time before an employee commences work and after the conclusion of the employment. *Id.* The courts have held that when the injuries are sustained during a lunch break, where the employee remains on the employer's premises, the act of procuring lunch is reasonably related to the employment. *Eagle Discount Supermarket v. Industrial Commission*, 412 N.E.2d 492, 82 Ill.2d 331 (1980). The rule applies where the break is unpaid and not under the control of the employer and where the employee is free to leave the premises. *Id.* Eating and other activities fall under the Personal Comfort Doctrine. *Id.* Under the Personal Comfort Doctrine, the acts during a break time in

the employment do not take the employee out of the course of employment. *Id.* If the employee voluntarily and in an unexpected manner exposes themselves to a risk outside the reasonable exercise of this duty, then the injury is not compensable. *Id.* However, if the employer has knowledge of or acquiesced to the unreasonable and unnecessary risk, then they can still be held liable for a resulting injury. *Id.*

The Commission has found that smoking is included in the personal comfort doctrine. The facts of *Burns v. McDonald's of Watseka,* 09 IWCC 1014, 2009 WL 3807313 (IWCC Oct. 2009) were similar to the instant case. In *Burns,* the smoking policy stated that the employee could not smoke on the premises, meaning the restaurant or the sidewalk next to the restaurant. *Id.* The claimant testified that he was instructed to smoke in a garbage corral and sustained an injury to his hand when he bumped into some carts in the corral. *Id.* The Commission found that the claimant sustained a compensable accident since he was required to smoke in the area and the condition of the premises caused his work injury. *Id.*

Further, in *Larsen v. Lee Auto Parts*, 08 IWCC 0520, 2008 WL 2600291 (IWCC May 6, 2008), the Commission found that the claimant sustained an accidental injury arising out of her employment where she missed a step while hurrying back to work after smoking a cigarette. Pursuant to company policy, the claimant had to smoke in a designated smoking area and was hurrying back from that area when she fell. *Id.*

The Arbitrator finds that Petitioner established that she sustained accidental injuries arising out of and in the course of her employment. The Arbitrator finds that Petitioner was in the course of her employment when she sustained her injuries. The Arbitrator relies on the Personal Comfort Doctrine, which states that the employee remains in the course of her employment during acts of personal comfort, such as lunch. *Eagle Discount Supermarket,* 412 N.E.2d 492. Smoking is covered under the Personal Comfort Doctrine. *See Burns v. McDonald's of Watseka,* 09 IWCC 1014; *Larsen v. Lee Auto Parts*, 08 IWCC 0520. The Arbitrator also notes that it is not relevant that Petitioner's break was unpaid, outside of the control of Respondent or that Petitioner could have left the premises. *See Eagle Discount Supermarket,* 412 N.E.2d 492. Accordingly, it is clear that Petitioner was in the course of her employment when she sustained the

injury to her shoulder since Petitioner was smoking on the campus in a designated smoking area as directed by the employment handbook.

The Arbitrator next considers whether the accident arose out of Petitioner's employment. The Arbitrator finds that Petitioner fell while on a smoke break in the parking lot area designated as a smoking area. As such, the Arbitrator analyzed the case as under the neutral risk doctrine. To be compensable, Petitioner must show that she was subject to a risk greater than the general public. *Caterpillar,* 129 Ill.2d 52. She can show an increased risk through though qualitative or quantitative means. *Adcock*, 2015 Il App (2d) 130884WC. In the instant case, the Arbitrator finds that Petitioner established an increased risk both qualitatively and quantitatively.

Petitioner established an increased risk qualitatively. Petitioner slipped on mud located on an incline caused by snow. The Form 45, completed by Respondent, stated that the accident occurred on Respondent's premises. Although, Ms. Garfinkel testified that she was mistaken when she filled out the form, she clearly believed that the area was on Respondent's premises. At the very least, the area was on the campus where Respondent's office was located. Functionally the designated smoking area was park of Respondent's premises and part of the campus. Further, pursuant to the company handbook, Petitioner had to smoke in designated areas provided by the building. Petitioner was not able to smoke in the office and had to use a designated area to smoke or face termination. Respondent knew of the smoking locations and delegated the smoking areas to the building. Petitioner slipped and fell on the muddy incline caused by snow. Thus, a hazard of the property caused her fall. *See Eagle Discount Supermarket*,412 N.E.2d 492. Further, Petitioner was rushing to return to work because she only had a thirty-minute lunch break. *See William G. Ceas & Company*, 261 Ill.App.3d 630. In fact, she chose the smoking location because it was closest to her office so that she could smoke during her break. Thus, Petitioner was subjected to a risk greater than the general public because she had to smoke in a designated smoke area, was on a lunch break and in a hurry to finish smoking and fell on a muddy surface next to the cigarette receptible. Further, unlike the general public, Petitioner was required to smoke in the designated smoking area or face termination from her job.

Petitioner also established that she was subject to an increased risk on a quantitative basis. *See Adcock.* Petitioner testified that she walked through the smoking area in the parking lot at least three times per day, or fifteen times per week for over the eight months preceding the accident. The Arbitrator notes that the appellate court in *Village of Villa Park v. Illinois Workers' Compensation Commission*, 2013 IL App (2d) 130038 WC, 2013 WL 6867380 (2d Dist. 2013), found that the claimant sustained a compensable accident when she fell down the stairs. The claimant used the stairs for her personal comfort, to use the bathroom, two to four times per day. Accordingly, the Arbitrator finds that Petitioner was subject to an increased risk where she walked through the location at least three times per day. *See Village of Villa Park*, 2013 IL App (2d) 130038 WC. Based on the facts of the accident, Form 45, company handbook, testimony of Petitioner and case law, the Arbitrator finds that Petitioner sustained accidental injuries arising out of and in the course of her employment with Respondent.

Respondent argues that Petitioner had a duty to look for a better or "safer" alternative to smoke, subjected herself to a unreasonable hazard and smoked in an area not controlled by Respondent. Respondent submitted case law into evidence to support its argument. (RX 9). The Arbitrator rejects Respondent's argument. First, the Arbitrator notes that there is no duty for Petitioner to smoke in some designated smoking areas over others. She picked the smoking location closet to her office, which was a reasonable choice. Other members of the office, including Myra Cruz, a senior claims adjudicator; JJ Shah-Mirany, a senior applications specialist; and Sunil Cardozo, the chief information officer, smoke in the same area. Accordingly, Respondent was aware of the smoking location. The smoking policy states that Petitioner was not allow to smoke in the building and had to use a designated smoking area. Petitioner was smoking in a designated smoking area used by herself and other employees of Respondent, including high ranking employees. Thus, the Arbitrator finds that Petitioner complied with Respondent's smoking policy and did not have an additional duty to search out the best maintained smoking area. If the smoking policy meant that the employees had to find the safest place to smoke, it could have stated that, but did not.

Respondent submitted photographs and a diagram showing other designated smoking locations. Just because other locations exist, does not mean that Petitioner was required to use them. She smoked at the

location closest to her office. Some of the designated smoking locations were nowhere near Petitioner's office or the cafeteria. There were a few locations outside of the cafeteria or Building 1 or 2. Those locations were about 2 minutes from the cafeteria, which is the same distance as the smoking island was to Petitioner's office. However, Petitioner went to the smoking area from her office, not from the cafeteria. Petitioner was not required to change her routine to find another smoking location. Further, Petitioner smoked in a designated area so Respondent's arguments are not relevant. Mr. Olson acknowledged that the photographs do not depict the area where Petitioner smoked. Further, Mr. Olson acknowledged that there was another parking lot, but he did not include it in his diagram or with the pictures. He had no personal knowledge of where Petitioner smoked. Ms. Garfinkel also confirmed that she was aware of where Petitioner smoked. The Arbitrator finds that the photographs and diagrams, while helpful in understanding the layout of the campus, are not relevant to the instant case because they do not depict where Petitioner actually fell.

Second, Petitioner did not place herself in a dangerous situation or stray from the designated area. Petitioner smoked in the designated area. She did not hop over a fence or stray from the designated area to smoke. Petitioner used the smoking area as it was intended and stayed in the area. Further, Petitioner was never disciplined for smoking in this area or for continuing to smoke in the area after the accident. Given that the CIO and other employees smoke with Petitioner and Petitioner was not disciplined following the accident, Respondent has accepted and acquiesced to the use of the location to smoke. *See Eagle Discount Supermarket*,412 N.E.2d 492. Accordingly, she did not place herself in a hazardous position and Respondent's argument does not hold any merit.

The Arbitrator further notes that Respondent did not argue or present any evidence that Petitioner was not smoking in a designated area. No one testified that it was not appropriate for Petitioner to smoke in the area that she smoked. Petitioner testified that she smoked with other employees of Respondent, including the CIO. Respondent did not present any testimony disputing Petitioner's testimony. Since Respondent failed to call any witnesses to dispute Petitioner's testimony, the Arbitrator assumes that they would have agreed that the area was a designated smoking area. *See Tonarelli v. Gibbons*, 121 Ill.App.3d 1042, 460

N.E.2d 464 (3d 1984) (holding that "where a witness who has knowledge of the facts and is accessible to a party is not called by the party, a presumption arises that his testimony would be adverse to that party"). Further, Ms. Garfinkel also confirmed that she was aware of where Petitioner smoked. It is significant that she never testified that Petitioner was not smoking in a designated area when she fell. Additionally, Mr. Olson acknowledged that he did not know where Petitioner fell and did not take pictures of the other parking lot. He did admit that there was another parking lot, which he failed to photograph. Accordingly, the Arbitrator finds that Petitioner fell in a designated smoking area pursuant to the company policy.

Third, Respondent argued that they did not control the area. However, they did dictate the area where Petitioner was allowed to smoke. Ms. Garfinkel filled out the Form 45 and stated that Petitioner fell on Respondent's premise. She later testified that she was mistaken. However, it was clear that she believed or at least considered the entire campus to be Respondent's premises. Pursuant to the handbook, Respondent required its employees to smoke in an area designated by the building where it leased office space to comply with the law and the company policy. The company policy dictates where the employees can smoke and clearly states that deviating from the policy could result in termination. Respondent deferred the issue of where Petitioner could smoke to the building, but pursuant to its policy still dictated where Petitioner could smoke. Thus, Respondent dictated where Petitioner could smoke. Petitioner did not leave the campus to smoke. Accordingly, the Arbitrator finds that Respondent provided the designated smoking area to its employees to allow them to smoke on the company campus. Pursuant to its policy, the employer allowed smoking in designated areas. Therefore, smoking was part of the employment and injuries resulting from smoking were foreseeable.

The Arbitrator has reviewed the case law submitted by Respondent and finds that it is not relevant to the instant case and the facts are clearly distinguishable. (RX 9). Respondent cites cases to argue that Petitioner created an increased risk; however, the case law was clearly distinguishable from the facts of the instant case. In *Purcell v. Illinois Workers' Compensation Commission*, 2021 Il App (4th) 200359 (4th Dist. 2021), the claimant fell while turning in her time card. The claimant took a more direct route to the building which required her to "hop" over a fence. *Id.* The claimant fell when she hopped the fence. *Id.*

The court found that the claimant voluntarily hopped over a chain fence, which exposed her to unnecessary danger, instead of taking a safer route around the fence. *Id.* Accordingly, the accident did not arise out of the claimant's employment. *Id.* Further, in *Dodson v. Industrial Commission*, 208 Ill.App.3d 572, 720 N.E.2d 275 (5th Dist. 1999), the claimant sustained an injury when she left the sidewalk while walking to her car in an employee parking lot and walked across a grassy slope. The claimant fell backwards on the slope and injured her foot. *Id.* The court held that the case was not compensable because the injuries resulted from the claimant choice to take a route which increased her risk of injury. *Id.* The court noted that the claimant deviated from a unobstructed sidewalk. *Id.*

The instant case is clearly distinguishable from *Dodson* and *Purcell.* In the instant case, Petitioner did not "hop" over a fence or deviate from the designated smoking area. She smoked in a designated smoking area and walked up the incline to throw away her cigarette in the receptacle. This is not a case where Petitioner increased the risks that she faced by creating her own path. Respondent argues that Petitioner chose the receptacle that she used and she should have chosen a different, safer one. However, unlike in *Dodson*, Petitioner was in a designated smoking area and did not deviate from the area. She did not pick a new area or deviate from the established path to get to the area. Further, Petitioner used the smoking area in the way it was intended to be used and did not increase her risk by using it in an unsafe manner. Accordingly, the facts of the instant case are clearly distinguishable from *Dodson* and *Purcell*.

Respondent cites case law arguing that smoking is personal to Petitioner. In *Orsini v. Industrial Commission*, 117 Ill.2d 38, 509 N.E.2d 1005 (1987), the claimant sustained injuries while adjusting the carbonated in his personal car while on break. The court held that the accident occurred solely out of the defect in the claimant's personal car and was not related to his employment. *Id.* Similarly, in *Curtis v. Industrial Commission,* 158 Ill.App.3d 344, 511 N.E.2d 866 (5th Dist. 1987), the claimant sustained burn injuries while on break when he was loading a barrel of gasoline into his personal truck. While loading the barrel, there was a spark and the claimant was burned. *Id.* The court held that the accident was not compensable because the claimant was engaged in self-benefiting activities and not engaged in any activities related to his work. *Id.* Further, the activities were unreasonably dangerous. *Id*

In *Orsini* and *Curtis*, the accident occurred during a task solely personal to the claimant. Respondent argues that smoking is similarly a task solely personal to Petitioner. However, Respondent ignores the Personal Comfort Doctrine. The Commission has found that smoking is covered by the Personal Comfort Doctrine and that Petitioner was in the course of her employment while she was smoking. Further, unlike in *Orsini* and *Curtis*, Petitioner's injury did not arise out of her smoking or a personal action. The accident was caused by the condition of the premises. Thus, Respondent's argument and reliance on *Orsini* and *Curtis* is misplaced.

Lastly, Respondent argues that Petitioner's accident did not arise out of a risk greater than the general public. Respondent cites *Dukich v. Illinois Workers' Compensation*, 2017 IL App (2d) 160351 WC, 86 N.E.3d 1161 (2d Dist. 2017). In *Dukich,* the claimant sustained injuries when she stumbled or slipped on wet pavement while walking into the building after her lunch break. *Id.* The court held that the claimant was not subjected to an increased risk from the rainfall to a greater degree than the general public. *Id.*

The case is also distinguishable from *Dukich*. In *Dukich,* the claimant fell on wet concrete. There were no defects or hazards. In the instant case, Petitioner slipped on mud while throwing away a cigarette. She slipped on an incline and in the mud. The area was a designated smoking area that Petitioner was required to smoke in pursuant to the smoking policy. Petitioner was rushing because she was on her thirty-minute lunch break. Therefore, unlike in *Dukich,* Petitioner established that the actual hazards of the premises caused her to accident. Further, unlike in *Dukich*, Petitioner also established an increased risk on a quantitative basis.

After reviewing the case law submitted by Respondent, the Arbitrator finds that the instant case is distinguishable. Accordingly, the Arbitrator rejects Respondent's arguments and finds that Petitioner did not increase her risk of accident through her own personal actions and was subject to an increased risk of employment both qualitatively and quantitatively.

The Arbitrator finds that Petitioner has established that she sustained accidental injuries arising out of and in the course of her employment. Petitioner was on her lunch break and attending to her personal comfort. She was subjected to an increased risk due to the hazards of the smoking area and rushing. She

was required to smoke in a designated area pursuant to the smoking policy in the handbook. Petitioner followed the policy as directed and used a designated smoking area on Respondent's campus. She did not deviate from the smoking area. Further, she established an increased risk quantitatively. Thus, Petitioner has established that she sustained a compensable accident on February 16, 2018.

In support of the Arbitrator's decision relating to "F," whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator makes the following conclusions:

The Arbitrator concludes that Petitioner's current condition of ill-being in connection with her left shoulder, including the full thickness tear of the supraspinatus tendon and subacromial impingement, which required surgical repair, was causally connected to the work-related accident of February 16, 2018. The Arbitrator relies on Petitioner's credible and unrebutted testimony, the medical records admitted into evidence and the medical opinions of Dr. Bare, Respondent's Section 12 physician. Respondent did not have any medical evidence disputing causation. In fact, Respondent's Section 12 physician agreed that the work accident caused Petitioner's left shoulder condition. Respondent's only dispute is accident. Having found that Petitioner sustained accidental injuries arising out of and in the course of her employment, the Arbitrator finds that Petitioner's left shoulder condition was causally connected to the work-related accident of February 16, 2018.

Dr. Bare, Respondent's Section 12 physician, set forth a diagnosis of left shoulder following surgical arthroscopy and rotator cuff repair. Dr. Bare set forth that the work injury was the direct cause of the left shoulder condition and the need for further medical treatment. The mechanism of accident was that Petitioner fell on a muddy surface as she was having a cigarette break and landed on an outstretched arm. Dr. Bare set forth that Petitioner gave a true, accurate and correct history of the injury. Accordingly, the Arbitrator finds that Petitioner's left shoulder condition was causally connected to the work-related accident of February 16, 2018 based on the medical opinions of Respondent's Section 12 physician.

The Arbitrator further concludes that Petitioner has established that the current condition of ill-being as it relates to the left shoulder is causally connected to the work-related accident of February 16, 2018 through the "chain of event" analysis. Proof of prior good health and change immediately following and

continuing after an injury may establish that the impaired condition was due to injury. *Ill. Power Co. v. Indus. Com'n*, 176 Ill.App.3d 317, 530 N.E.2d 617 (4th Dist. 1988).

In the instant case, Petitioner underwent treatment for her left shoulder in 2008. However, she did not receive any medical treatment for her left shoulder for ten years prior to the accident of February 16, 2018. Immediately following the work-related accident of February 16, 2018, Petitioner began a course of medical care that included physical therapy, office visits and surgery. Accordingly, the Arbitrator concludes that based on the medical evidence, Petitioner was not under active medical care prior to February 16, 2018. Following the work-related accident of February 16, 2018, Petitioner received medical treatment, including surgery. Therefore, the Arbitrator finds that the work-related accident of February 16, 2018 caused Petitioner's current condition of ill-being as it relates to the left shoulder condition.

In support of the Arbitrator's decision relating to "J," whether the medical services were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator makes the following conclusions:

The Arbitrator concludes that the medical services provided to Petitioner constituted reasonable and necessary medical treatment. The medical bills were paid through Petitioner's group insurance. The Arbitrator awards payment of medical bills in the amount of $30, 821.52. Respondent shall receive an 8(j) credit as it relates to the payments made by the group plan. Respondent shall hold Petitioner harmless from any claim for payment as it relates to the payments made by the group plan. Respondent's dispute to payment of the medical bills was accident and medical causation. Having found that Petitioner sustained a compensable accident and that the accident caused Petitioner's current condition, the Arbitrator awards payment of the medical bills. The Arbitrator relies on the medical evidence submitted at hearing and the report of Dr. Bare, Respondent's Section 12 physician. Respondent did not submit any evidence disputing the reasonableness and necessity of the medical bills.

In support of the Arbitrator's decision relating to "L," temporary total disability and maintenance benefits, the Arbitrator makes the following conclusions:

The Arbitrator concludes that Petitioner is entitled to payment of temporary total disability benefits from July 19, 2018 through January 31, 2019. The Arbitrator relies on Petitioner's credible and unrebutted

testimony, the medical records admitted into evidence and the opinions of Dr. Bare, Respondent's Section 12 physician. Respondent's defense to payment of the benefits was accident and medical causation. Respondent stipulated to the period of temporary total disability benefits owed, if the Arbitrator found the case to be compensable. Having found that Petitioner sustained accidental injuries arising out of and in the course of her employment and that the current condition was casually connected to the work accident, the Arbitrator awards Petitioner payment of temporary total disability benefits for the period of July 19, 2018 through January 31, 2019.

In *Freeman United Coal Mining Company v. Industrial Commission*, 318 Ill.App.3d 170, 741 N.E.2d 1144 (2001), the court set forth that "a claimant is entitled to TTD when a 'disabling condition is temporary and has not reached a permanent condition.'" (quoting *Manis v. Industrial Commission*, 172 Ill.Dec. 95, 595 N.E.2d 158 (1st Dist. 1992)). The dispositive test for determining whether a claimant is entitled to TTD is whether the condition has stabilized. *Id.* In *Freeman United Coal Mining Company*, the court held that the condition of the claimant's knee had not stabilized and that the petitioner was thus entitled to TTD benefits. *Id.* The court based its decision on the fact that the claimant had not been released to full-duty work and future medical care was being considered by the claimant's treating physicians. *Id.*

Petitioner underwent left shoulder surgery performed by Dr. Breslow at Lutheran General Hospital on July, 19, 2018. Petitioner remained under the medical care of Dr. Breslow following the surgery. She underwent physical therapy and had follow up appointments with Dr. Breslow. Dr. Bare, Respondent's Section 12 physician, set forth that Petitioner would be able to return to work without restrictions by February 2019 and would reach maximum medical improvement by March 2019. Accordingly, the medical records and opinions establish that Petitioner was under active medical care, not able to return to work and her condition had not stabilized until January 31, 2019. Respondent does not dispute the period for which Petitioner was temporarily totally disabled.

Based on the medical records and opinions of Dr. Bare and the credible testimony of Petitioner, the Arbitrator finds that Petitioner is entitled to payment of temporary total disability benefits from July 19, 2018 through January 31, 2019.

In support of the Arbitrator's decision relating to "L," what is the nature and extent of the injury, the Arbitrator makes the following conclusions:

The Arbitrator concludes that as a result of the work-related accident of February 16, 2017, Petitioner sustained permanent and partial disability to the extent of 15% loss of use of the person as a whole in connection with the injury she sustained to her left shoulder. The Arbitrator relies on the credible and unrebutted testimony of Petitioner and the medical records admitted into evidence, including the operative report. The Arbitrator does not consider the carpal tunnel syndrome since it was an incidental finding and not caused by the instant accident.

The Arbitrator's finding is consistent with the factors and criteria set forth in Section 8.1(b) of the Act. Pursuant to Section 8.1(b) of the Act, the Arbitrator must consider certain factors and criteria in assessing permanent partial disability, including, the level of impairment under the AMA Guides, the occupation of the injured worker, the age of the injured worker, the future earning capacity of the injured worker and evidence of disability corroborated by the treating medical records. The Act provides that no single enumerated factor shall be the sole determinant of disability. After considering the factors, the Arbitrator finds that Petitioner is permanently partially disabled to the extent of 15% loss of use of the person as a whole. With respect to the factors, the Arbitrator finds the following:

A. Level of Impairment under the AMA Guides

The Arbitrator finds that neither Petitioner nor Respondent submitted a report setting forth an AMA impairment rating. The Arbitrator finds that an impairment rating is not necessary based on the appellate courts holding in *Corn Belt Energy v. Illinois Workers' Compensation Commission*, 2016 IL App (3d) 150311WC (3d Dist. 2016). The court held that an AMA Impairment Rating is not required for the Arbitrator to award permanent partial disability benefits. *Id.* Accordingly, the Arbitrator will not consider this factor as it relates to the nature and extent of the injury.

B. Occupation of Petitioner

At the time of the work-related accident, Petitioner was employed as a quality specialist for Respondent. Petitioner worked in an office setting and performed mainly typing and light office work. Petitioner was

required to use her arms for typing. Based on Petitioner's unrebutted and credible testimony, the Arbitrator finds that Petitioner's employment as a quality specialist requires typing and use of her arms. Accordingly, the Arbitrator accords this factor moderate weight.

C. Age of Petitioner

At the time of the accident, Petitioner was 58. At the time of the hearing, Petitioner was 62 years old. No evidence was presented as to how Petitioner's age affected her disability. However, the Arbitrator notes that Petitioner is an older woman. Her ability to heal is limited and impaired due to age. Accordingly, the Arbitrator finds that her age increases Petitioner disability. In support of this finding, the Arbitrator relies on the holding *Flexible Staffing Services v. Illinois Workers' Compensation Commission*, 2016 IL App (1st) 151300WC (1st Dist. 2016) (holding that the Commission can make reasonable inferences from the medical evidence as it relates to how the claimant's age affects his disability).

D. Future Earning Capacity

No evidence of whether Petitioner's future earning capacity impacted was submitted at hearing. The Arbitrator notes that Petitioner testified that she performs her job more slowly. Petitioner sustained a serious injury to her left shoulder, which would affect her ability to use her arm and type. Petitioner's condition may affect her ability to perform her job to the best of her ability. Accordingly, the Arbitrator accords this factor some weight.

E. Evidence of Disability Corroborated by the Treating Medical Records

The medical records from Lutheran General, Dr. Breslow and Dr. Bare establish that Petitioner sustained a full thickness tear of the supraspinatus tendon and subacromial impingement, which required surgical repair. There were also post-operative complication, including swelling and tingling. The diagnosis was corroborated by the objective evidence, diagnostic tests and operative report.

The medical records document Petitioner's subjective complaints. Petitioner complained of swelling and soreness in her arm at her last appointment with Dr. Breslow. Petitioner testified that she experienced ongoing pain in her left shoulder. Petitioner is not able to lift as much as she did prior to the work accident. Petitioner takes over the counter pain medication, ices and takes hot showers for her symptoms.

The medical records also document Petitioner's objective findings. Petitioner had a full thickness rotator cuff tear that was repaired surgically. Accordingly, the anatomy of the shoulder is different post-surgery. Petitioner also has swelling in the arm since the surgery.

The Arbitrator accords this factor great weight. The Arbitrator finds it significant that Petitioner had ongoing subjective complaints and objective findings. Based on the medical evidence and considering the above factors, the Arbitrator finds that Petitioner sustained the permanent and partial disability to the extent of 15% loss of use of the person as a whole since she continued to experience subjective and objective findings.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC036718
Case Name	Nayeli Zarate v. Allstaff
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	23IWCC0101
Number of Pages of Decision	16
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Adam Rosner
Respondent Attorney	David VanOverloop, Austin Friedrich

DATE FILED: 3/8/2023

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

NAYELI ZARATE,

Petitioner,

vs. NO: 19 WC 36718

ALLSTAFF,

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 whether Petitioner sustained an accidental injury arising out of and occurring in the course of her employment on October 8, 2019, whether Petitioner's current right shoulder and right elbow condition of ill-being is causally related to her accident, entitlement to incurred medical expenses, entitlement to temporary disability benefits, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 25, 2022 is hereby affirmed and adopted.

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.

March 8, 2023

DJB/lyc

O: 2/22/23

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

/s/ *Stephen Mathis*
Stephen Mathis

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC036718
Case Name	ZARATE, NAYELI v. ALLSTAFF
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Adam Rosner
Respondent Attorney	David VanOverloop

DATE FILED: 3/25/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 22, 2022 0.87%

/s/Gerald Napleton, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Nayeli Zarate
Employee/Petitioner

v.

AllStaff
Employer/Respondent

Case # **19** WC **036718**

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 Napleton, Arbitrator of the Commission, in the city of **Waukegan**, on **1/26/22**. 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. ☒ 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 **10/8/19**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Petitioner's current condition of ill-being ***is not*** causally related to an accident arising out of and in the course of her employment.

ORDER

Because Petitioner did not prove by a preponderance of credible evidence that an accident occurred that arose out of and in the course of employment, or that Petitioner's current condition of ill-being is causally related to such an accident, 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.

/s/ Gerald W. Napleton

Signature of Arbitrator

MARCH 25, 2022

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

NAYELI ZARATE, Petitioner,	)	
Vs.	)	Number: 19 WC 036718
ALLSTAFF, Respondent.	)	

FINDINGS OF FACT and CONCLUSIONS OF LAW

Testimony and Medical Treatment of Petitioner

Petitioner, Nayeli Zarate, testified that on October 8, 2019, she was employed by Respondent, AllStaff, and working at a factory engaged in packaging services. Petitioner described her position as an "operator" working at a conveyor belt to take bulk products and repackage them for promotions or sales. As of October 2019, Petitioner had worked for Respondent for two to three years and had previously worked for MPP for three to four years. Throughout these six to seven years of employment, Petitioner had always worked at the same facility. She worked eight-hour shifts, five days per week. Her job duties varied and are discussed below.

The materials handled by Petitioner ranged from perfume bottles to individual bottles of oven cleaner, which she described as the heaviest and weighing a pound a half. Petitioner testified that she at times worked on the "fast lines" as an operator. She testified that she was working the fast lanes with Clorox bottles on October 8, 2019. The fast lines were conveyor belts with "high volume of movement and heavy items." Petitioner testified that she would move Clorox bottles from line to line and place them in an upright position. The bottles came at a rate of 60 to 65 per minute. She would use her left hand to guide the bottles and her right hand to twist them. Her right elbow was at a roughly 90-degree angle. She would take individual bottles of Clorox wipes weighing between one half to one pound and would package three individual bottles together in a small cardboard box. She would move completed packages to a larger box that would hold approximately 6 of the new packages of 3 bottles.

Petitioner also performed duties unboxing products. She testified that she would have to lift product from a pallet on the floor to the table or belt but stated that she did not have to lift any completed boxes above her head. While unboxing, she would work at a table at waist-height (Petitioner testified she is five-feet tall) and unpack individual products from boxes that another employee would bring to her,

place on the table, and open. The boxes she would unpack could weigh 10 to 15 pounds and there are usually 100 boxes per pallet.

At other times she would work at a conveyor belt that came to her stomach and would straighten unpacked individual products as they came by. Also at the waist-height table, she would assemble small cardboard boxes, and fill those small boxes with individual products, before pushing the completed small box to another station to be taped or otherwise sealed. On cross-examination, Petitioner affirmed an example of the work performed being boxes of shampoo bottles and boxes of conditioner bottles being unpacked, and then an individual bottle of shampoo being packaged with an individual bottle of conditioner in a small box for promotional or sales purposes.

Petitioner testified that one product, bottles of WD-40, would require her to work above shoulder level. The individual bottles weighed a little more than a pound, and the packaging she was working with was a three-compartment vertical "tower"; she would have to put individual bottles of WD-40 in the top compartment of the packaging. This work was done only occasionally throughout the seven years Petitioner worked at the facility, and Petitioner did not identify any other products or tasks that required her to lift over her head or shoulder level.

Petitioner testified that sometime in October of 2019 she was reaching for a box of packages to help an employee and felt pain in her right elbow and right shoulder. She continued working and over the course of days her arm started painful and tired. After a week and a half she notified her supervisor, Carlos, to request lighter work and was sent by that supervisor to seek medical attention at the company clinic.

Petitioner was seen on October 25, 2019, at PromptMed Urgent Care. The record of PromptMed indicates a date of onset of October 11, 2019, and documents complaints of numbness, pain in the right elbow, and decreased grip strength. There is no specific history of accident, but Petitioner is noted to work a repetitive job. On physical examination, Petitioner was found to have right elbow tenderness of the medial epicondyle, without tenderness of the lateral epicondyle, as well as pain with palpation and tenderness at the right shoulder. X-rays of the right elbow and shoulder were negative for fracture, and Petitioner was diagnosed with unspecified sprains of the right shoulder and elbow. She was prescribed Meloxicam and released to return to work with restrictions of avoiding strong gripping with the right hand, limiting repetitive motion with the right hand, no lifting from waist to shoulder great than 5 lbs., and no lifting below the waist greater than 10 lbs. Respondent was unable to accommodate these restrictions.

Petitioner returned to PromptMed Urgent Care on October 28, 2019, and reported she was better but still feeling numbness. Her restrictions continued, and she returned to PromptMed again on November 4, 2019. She again reported improvement, severity of 1/10, and was released to return to work without restrictions, with a note that if the return was successful, she would be at MMI.

Petitioner followed-up at PromptMed on November 11, 2019, with complaints of pain in her back and right shoulder. She complained of pain when lifting heavy and right posterior scapular pain with any arm movement. She was recommended to start physical therapy for right scapular pain and could continue unrestricted work. She continued to follow-up with PromptMed on November 18, 2019, and November 27, 2019, with continued varying descriptions of right shoulder and elbow pain as well as tingling and numbness over her entire right upper extremity. Petitioner testified that she experienced pain and numbness after she had returned to work.

On December 13, 2019, Petitioner underwent a Section 12 evaluation by Dr. Sam Biafora at Hand to Shoulder Associates. Petitioner testified that she gave Dr. Biafora a description of her work and demonstrated the types of movements she performs at work. His report states,

> "Ms. Zarate has worked as a packer for the past 7 years for the same employer. She describes rotating her position every 2 hours. She is occasionally required to lift boxes off pallets. These boxes reportedly weigh anywhere from 2-10 pounds. They can be anywhere from floor to overhead height. When she is packing boxes, she demonstrates standing in a conveyor. The conveyor is on her right side at about the level of her waist. She demonstrates reaching with her shoulder at about 45 [degrees] of abduction when reaching for the product off the conveyor. She grasps the product and places it in boxes in front of her. She describes the items are light, but the work is repetitive. Another station places very small packets into some type of machine at waist height."

Dr. Biafora diagnosed Petitioner with diffuse nonspecific right upper extremity complaints of unclear etiology, unrelated to Petitioner's described work activities. Dr. Biafora opined that neither further treatment nor restrictions from activity were necessary. Dr. Biafora noted that Petitioner did not require further treatment for her right shoulder and elbow, however, he noted that Petitioner's condition may be of a cervical etiology and recommended an EMG or cervical MRI.

Petitioner returned to PromptMed on December 17, 2019, and was again provided restrictions of no lifting over 5 lbs., based on Petitioner's assertion that she could do repetitive work, but heavier work was the problem. The December 17, 2019 record notes Petitioner gave a history that her right arm still hurts when lifting heavy, and when in constant use. It noted that she was lifting heavy objects yesterday at work and pain became worse.

On December 27, 2019, Petitioner presented to La Clinica and saw Dr. Glenn Lemus, D.C. She complained of mid-back, right shoulder, and right elbow pain. Petitioner provided a history of standing in front of a conveyor belt packing products repeatedly using both arms and that she was using her right arm more than her left lifting packages to shoulder height repetitively for four hours on October 8, 2019. She stated that she felt increasing pain to the point where after four hours of repeated lifting she could not continue. The history further states that Petitioner notified her supervisor that day, was sent to the company clinic where she was taken off work and had been off work since October 8, 2019. Petitioner testified that she provided a complete and truthful history at the initial visit to La Clinica. Dr. Lemus noted pain and tenderness from palpation to the distal aspect of the biceps, medial, and epicondyle area and positive valgus, varus, and Cozen's tests. She was diagnosed with thoracic sprain/strain, right shoulder sprain/strain, and right medial and lateral elbow epicondylitis. She was taken off work completely and recommended physical therapy, as well as referral to an orthopedic specialist. Petitioner began therapy at La Clinica on December 31, 2019, and continued into January of 2021.

On January 10, 2020, Petitioner underwent MRIs of her right elbow and shoulder. The right elbow MRI was interpreted to show mild tendinosis of the common extensor tendon origin without tear. The right shoulder MRI was interpreted to show no evidence of internal derangement

Petitioner continued with therapy at La Clinica and presented to Dr. Thomas Poepping of G&T Orthopedics on January 31, 2020. Dr. Poepping documented a history of Petitioner suffering right shoulder and elbow injuries when lifting 10–15-pound boxes up to shoulder level on October 15, 2019. Dr. Poepping noted superior and lateral shoulder pain as well as lateral elbow pain. Dr. Poepping noted positive Neer's, Hawkins, and cross-body adduction tests. Following review of the diagnostic studies and physical examination, Dr. Poepping diagnosed Petitioner with right elbow lateral epicondylitis with partial-thickness tendon tearing and right shoulder impingement. He provided a Kenalog and lidocaine injection to the right shoulder subacromial space as well as the right proximal common extensor tendon. He kept Petitioner off work completely to continue physical therapy.

Petitioner underwent ongoing therapy at La Clinica and returned for follow-up appointments with Dr. Poepping, receiving injections in the right elbow and shoulder. On March 30, 2020, Dr. Poepping noted continued right elbow symptoms despite therapy and injections and recommended a right elbow open ECRB debridement. Petitioner was released to regular duty work. Petitioner continued to follow-up with Dr. Poepping while awaiting surgical authorization and received additional right shoulder and elbow injections.

Petitioner followed up with Dr. Fernando Perez, D.C. at La Clinica, on January 8, 2021, and January 28, 2021, complaining of ongoing right shoulder and elbow pain rated 4/10, as well as back and neck pain. She was referred for a cervical MRI which occurred on January 12, 2021, and revealed no disc herniations, with patent (unobstructed) central canal and neuroforamen. Dr. Perez stated that Petitioner's treatment was causally related to her 10/8/2019 work accident. Petitioner testified that although she did undergo the cervical MRI, at no point in her treatment did she have any neck pain. Petitioner continued with therapy at La Clinica.

Petitioner then followed up with Dr. Poepping on January 22, 2021, where Dr. Poepping noted similar physical examination findings and administered injections into Petitioner's right elbow and right shoulder.

On January 23, 2021, Petitioner underwent an EMG/NCV performed by Dr. Aleksandr Goldveht. The conclusion was that it was a normal right upper extremity study, with no evidence of cervical radiculopathy or entrapment neuropathy.

Petitioner returned to Dr. Poepping for additional injections in the right shoulder and elbow in April, July, and November of 2021. As of her final visit on November 5, 2021, she was continuing to complain of right shoulder and elbow pain and was awaiting surgical treatment for her right elbow. She was remained released to full-duty work.

Petitioner testified that she returned to work for AllStaff when she was released without restrictions by PromptMed but hasn't worked for AllStaff since December of 2019. Since leaving AllStaff, she has worked for SMS for a period of six months, followed by Accurate, her current employer, for three months. Petitioner testified that her job at Accurate Staffing is similar, but the items she moves do not weigh as much as the items while working with Respondent. Petitioner testified she asked to be released to work so that she may pursue these other jobs to support her family.

Petitioner testified that her right elbow was still in pain, and she felt numbness and tingling. Her right shoulder had an equal amount of pain as her right elbow. In her daily activities, she had to avoid picking up boxes or things for washing clothes and had to avoid playing with her children. She wishes to proceed with the elbow surgery recommended by Dr. Poepping.

At trial, Petitioner testified that the injections helped for about a month and a half and then the pain would return. Petitioner testified that she never had pain in her neck. Petitioner testified that she still wishes to proceed with the right elbow surgery. Petitioner testified that she still feels pain, numbness, and tingling. Petitioner testified that she has equal amount of pain in her right elbow and right shoulder.

Petitioner testified that her right elbow and right shoulder conditions have affected her ability to pick up boxes, wash clothes, and play with her children. Petitioner testified that prior to the work accident, she did not have any issues with her right shoulder or right elbow. Petitioner testified that she takes ibuprofen and Tylenol to treat the pain, but that it upsets her stomach. Petitioner testified that her hours unpacking boxes varied.

Evidence Deposition of Dr. Thomas Poepping

Dr. Thomas Poepping testified via evidence deposition prior to Hearing. Dr. Poepping is an orthopedic surgeon with board certifications in orthopedics and orthopedic sports medicine whose practice consists of 40-45% shoulder, 40% knee, and the rest elbows, hands, ankles, and feet.

Dr. Poepping testified consistent with his medical records that the first time he saw Petitioner was on January 31, 2020. At that time, Petitioner provided a history of injury from lifting 10–15-pound boxes to around her shoulder level on around October 15, 2019. On physical examination of Petitioner's right shoulder, Dr. Poepping found positive tenderness and provocative pain signs, as well as positive Neer's Hawkins's tests, which he identified as subjective testing reliant on a patient's report of pain. Similarly, regarding the right elbow, Dr. Poepping found positive tenderness and pain complaints. He reviewed the right shoulder MRI which he found to be normal, as well as the right elbow MRI which he found normal apart from mild fraying of the tendon.

Dr. Poepping diagnosed Petitioner with right shoulder impingement and right elbow lateral epicondylitis with a partial thickness tear. He described the diagnosis of shoulder impingement as a "catchall term for pain". He described the right elbow diagnosis as inflammation with a small tear that was more like fraying without detachment of the tendon. He performed injections into the right elbow and shoulder at that initial visit, and subsequently confirmed the remainder of the medical records documenting unchanged diagnoses and repeated injections.

Dr. Poepping testified regarding the surgical recommendation for the right elbow, identifying surgery as the only thing Petitioner had not done, with her subjective complaints continuing despite bracing, physical therapy, and multiple injections. He further testified that he did not believe his findings warranted surgery for her right shoulder.

Dr. Poepping testified that he believed Petitioner's work activities were directly related to the pain she was feeling in the shoulder and the elbow. On cross-examination, Dr. Poepping testified that the only history Petitioner ever provided to him was of lifting 10–15-pound boxes to around shoulder level on

October 15, 2019, and that his opinion that Petitioner's condition was related to her work was based off his understanding that for seven years every day Petitioner was lifting boxes weighing between 2 to 15 pounds up to shoulder level. Dr. Poepping believed the treatment received to date was reasonable and necessary.

Dr. Poepping admitted that the job description given to him on January 31, 2020, of repeatedly lifting boxes to shoulder level was the full extent of his knowledge of Petitioner's work activities. Dr. Poepping then testified that the work history given to Dr. Biafora would be sufficient to cause Petitioner's right elbow condition and right shoulder conditions. Dr. Poepping opined that Petitioner's "overuse" in terms of a mechanism of injury fits with her diagnoses. When asked whether weight of Petitioner's job duties factored into Petitioner's repetitive trauma injury, Dr. Poepping testified that there's zero evidence that weight makes a difference and states that repetitive flexion, extension of the elbow, is all that's required. Lifting a load is not required. Dr. Poepping testified that performing the same or similar activity for seven years would be considered repetitive.

Evidence Deposition of Dr. Sam Biafora

Dr. Sam Biafora testified via evidence deposition prior to hearing. Dr. Biafora is a board-certified orthopedic surgeon specializing in upper extremities who performed an Independent Medical Evaluation of Petitioner on December 13, 2019.

Dr. Biafora testified that Petitioner provided to him a history of having felt a "heaviness" in her right arm about three months prior to the evaluation. Petitioner had described her work to him as a packer for seven years for the same employer. As a packer, she who would work at waist height to reach for product off a conveyor and place it in boxes in front of her, and that her position would rotate every two hours. Occasionally she would lift boxes weighing from 2 to 10 pounds from pallets. Dr. Biafora testified, and Petitioner confirmed, that Petitioner demonstrated the body mechanics of her work during the evaluation. "Repetitive but light" was how Petitioner described her job duties.

Dr. Biafora testified that his physical examination did not provide him with a real diagnosis for either Petitioner's right shoulder or right elbow complaints, as the various testing produced only mild, non-specific, and inconsistent subjective pain responses. He did admit there may have been tenderness in the right elbow that could be consistent with tennis elbow or lateral epicondylitis, but that it was clinically insignificant and did not justify any additional treatment. Dr. Biafora testified that the right shoulder MRI was normal and that the right elbow MRI showed potentially some signal change but "nothing significant."

Overall, Dr. Biafora testified that the diagnoses for Petitioner's right shoulder and elbow were non-specific right upper extremity diffuse complaints of unclear etiology.

As it relates to causation, Dr. Biafora testified that the right shoulder subjective complaints were not related to the work duties as described and demonstrated by Petitioner, as she would only infrequently have to go above shoulder height. Likewise, the right elbow subjective complaints were not related to the work duties described and demonstrated by Petitioner, as the activities described and demonstrated by Petitioner were very light, with no forceful gripping such as is necessary to cause or aggravate tennis elbow.

CONCLUSIONS OF LAW

C. & F. Regarding whether an accident occurred that arose out of and in the course of Petitioner's employment with Respondent, and whether Petitioner's current condition of ill-being is causally related to such an accident, the Arbitrator finds as follows:

A petitioner bears the burden of proving every aspect of his claim by a preponderance of credible evidence. For the reasons that follow, the Arbitrator finds Petitioner in this case failed to meet that burden.

The evidence submitted contains varying and, at times, contradictory descriptions of Petitioner's job duties – descriptions Petitioner testified she provided to the various physicians, and descriptions that those physicians relied upon in forming diagnoses and causation opinions. The records are further contradicted by Petitioner's own testimony at Hearing.

On December 27, 2019, Petitioner provided to La Clinica a history of lifting packages to shoulder height repetitively for four hours on October 8, 2019, until the pain became unbearable and she had to stop. However, Petitioner herself testified that the onset of pain complaints was while she was repackaging containers of Clorox wipes – a task that she testified did not require her to lift boxes to shoulder level at all.

On January 31, 2020, Petitioner provided to Dr. Poepping a history of lifting 10–15-pound boxes up to shoulder level on October 15, 2019. Incorrect date aside, again, Petitioner testified the onset of pain complaints was while she was repackaging ½ to 1 lb. containers of Clorox Wipes – a task that did not require her to lift boxes to shoulder level at all.

After being provided a hypothetical in his evidence deposition, Dr. Poepping testified that his understanding of Petitioner's job duties was *not* simply what he documented in his medical records, but that every day for the past seven years she had been lifting boxes weighing 2-15 pounds to shoulder level.

However, Petitioner testified that she only occasionally throughout the seven years had to work at or above shoulder level: when she was putting individual bottles of WD-40 weighing a little more than a pound each into the top compartment of a stacked vertical package.

The records of La Clinica and Dr. Poepping, as well as even more specifically the deposition testimony of Dr. Poepping, paint a picture of a job consisting of constantly lifting boxes weighing as much as 15 pounds up to shoulder height continuously for seven years. This description is directly contradicted by Petitioner's testimony at Hearing, as she related only occasional lifting of anything up to shoulder level during her seven years working in the facility, and even then, it was individual containers of WD-40 which she estimated to weigh slightly more than a pound. The rest of her work was done at waist level: unpacking boxes; straightening unpacked products as they passed on a conveyor; constructing new, smaller boxes; and assembling the new packaging of two or three products placed in the new, smaller boxes. Although the records of La Clinica and Dr. Poepping corroborate each other, when compared to Petitioner's testimony at trial, they independently record a significant exaggeration in the weight and work of Petitioner's job duties as described by Petitioner to those physicians. The Arbitrator does not believe Petitioner to be without credibility as it is common for a Petitioner to be an imperfect historian, but the Arbitrator believes the record as a whole suggest an insufficiency of corroborating facts concerning Petitioner's job duties that support the issue of accident and medical causation.

The only record that resembles Petitioner's testimony surrounding her job duties is that of the Section 12 examiner, Dr. Biafora. Dr. Biafora testified that Petitioner described and demonstrated her work to him, and that it consisted of mainly standing at either a conveyor or table at waist height and reaching out directly in front of her to unpack, straighten, or re-pack materials at that level.

Petitioner's testimony at hearing is consistent with the description understood and relied upon by Dr. Biafora, as she testified that she worked on a variety of materials, the specific work would change frequently throughout the seven years she worked at the facility, and that her job was mostly limited to either unpacking boxes that another individual would bring from a pallet to her waist-height work station, straightening unpacked products on a conveyor, or assembling small boxes and repacking the product for sales or promotional purposes. Petitioner did not identify a single product that weighed more than a pound and a half, and certainly did not provide any testimony of lifting anything weighing as much as 15 pounds up to shoulder level, let alone doing so repeatedly for several hours a day over a period of several years. While Dr. Biafora provided that Petitioner would on occasion bring full boxes of products from pallets to

the waist-height workstation, Petitioner herself testified that she did not do so often and that that specific task was another individual's job.

Dr. Biafora testified that his physical examination of Petitioner did not result in any diagnosis, let alone a specific condition that could be attributed to Petitioner's job duties as she described and demonstrated them to be.

While Dr. Poepping testified that he believed Petitioner to be suffering from right shoulder impingement and right elbow epicondylitis resulting from her work duties, the Arbitrator notes again that Dr. Poepping's understanding of Petitioner's work was unsupported by Petitioner's own testimony at hearing. Furthermore, Dr. Poepping himself testified that his clinical diagnoses were based almost entirely on subjective complaints and inherently subjective testing performed in his office. The only objective testing Dr. Poepping had reviewed – the MRIs – demonstrated no structural injury to the right shoulder, and only mild fraying in the right elbow. Furthermore, there is no evidence that Dr. Poepping was even aware of the completely benign EMG/NCV performed, which – consistent with Dr. Biafora's opinions – ruled out any clinically significant entrapment neuropathy in the right arm.

In short, the Arbitrator believes Dr. Poepping's opinions are less credible than those of Dr. Biafora's. Dr. Poepping's diagnoses were based on subjective complaints and inaccurate and contradictory job duties. Further, Dr. Poepping's diagnoses seem to be contradicted by the objective testing performed. Dr. Biafora, on the other hand, provided opinions supported by the diagnostic testing, as well as corroborated by Petitioner's own testimony. The Arbitrator therefore finds the opinions of Dr. Biafora to be more credible than the opinions of Dr. Poepping. Similarly, the Arbitrator finds Dr. Biafora's opinions more credible than that of the chiropractors seen at La Clinica, Dr. Lemus and Dr. Perez.

In so doing, the Arbitrator adopts Dr. Biafora's opinion that Petitioner's complaints of right shoulder and elbow pain were appropriately diagnosed as diffuse, nonspecific and of an unclear etiology; no clinically significant condition existed, and there was no identifiable condition which could be attributed to Petitioner's job duties. The Arbitrator finds that Petitioners work was only repetitive at times. Her job duties and times spent on several job duties varied. Accordingly, the opinions of Dr. Biafora carry more weight.

The evidence in the record is insufficient to support a finding that Petitioner suffered an accident arising out of and in the course of her employment, and/or that her current condition of ill-being is causally related to such an accident. All benefits are denied, and all remaining issues are moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC012492
Case Name	Esther Patrick v. Advocate Bromenn Medical Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0102
Number of Pages of Decision	34
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	Christopher Gibbons

DATE FILED: 3/8/2023

/s/ Kathryn Doerries, Commissioner

Signature

23IWCC0102

STATE OF ILLINOIS)
) SS.
COUNTY OF McLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ESTHER PATRICK,

Petitioner,

vs. NO: 16 WC 012492

ADVOCATE BROMENN MEDICAL 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, notice, 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 and adopts the Arbitrator's Decision except as to the award of permanent partial disability (PPD), two evidentiary rulings and a scrivener's error. Therefore, the Arbitrator's Decision is modified as set forth below.

Preliminarily, the Commission reverses the Arbitrator's two evidentiary rulings sustaining Petitioner's attorney's objections in Petitioner's Exhibit Two, on page 55. The Commission overrules both objections. The Supreme Court has allowed wide latitude when cross-examining an expert regarding financial interest or bias. (See *Trower v. Jones*, 121 Ill. 2d 211, 217, 520 N.E.2d 297, 300, 1988 Ill. LEXIS 8, *8-9, 117 Ill. Dec. 136, 139. "We have long recognized that the principal safeguard against errant expert testimony is the opportunity of opposing counsel to cross-examine, which includes the opportunity to probe bias, partisanship or financial interest." (citation omitted.)) However, the Commission finds these rulings are not outcome determinative. (See *Taluzek v. Illinois Central Gulf R.R. Co.*, 255 Ill. App. 3d 72, 83, 193 Ill. Dec. 816, 626 N.E.2d 1367 (1993) (evidentiary rulings will not be overturned absent a clearly evident abuse of

discretion; in order to warrant reversal, error must have been substantially prejudicial and affected [*568] the outcome of the case). *Simmons v. Garces*, 198 Ill. 2d 541, 567-568, 763 N.E.2d 720, 737, 2002 Ill. LEXIS 9, *42, 261 Ill. Dec. 471, 488.

Next, the Commission corrects a scrivener's error in the first sentence of the second paragraph under the Findings of Fact section, striking "2013" and substituting "2016" so the sentence reads as follows, beginning with the date of accident, "On March 9, 2016, Petitioner's duties…"

Finally, with respect to the Section L, What is the Nature and Extent of the Injury, the Commission modifies the Arbitrator's award specifically with regard to sections (iii) and (v) of Section 8.1b(b).

On page 24 of the Arbitrator's Decision, with regard to (iii) of Section 8.1b(b) of the Act, the age of the employee at the time of the injury, the Commission strikes the first sentence and substitutes the following:

Petitioner was 70 years old at the time of accident and will suffer from the effects of her accident for less work life years than a younger employee.

On page 25 of the Arbitrator's Decision, with regard to (v) of Section 8.1b(b) of the Act, evidence of disability corroborated by the medical records, the Commission strikes the first sentence in the third (second to last) paragraph of that section and substitutes the following paragraphs:

Petitioner testified that her right shoulder still hurts in the morning when she gets up and she does the exercises given to her in therapy for it to go away. (T. 54) Petitioner further testified that her left shoulder gets stiff and she cannot achieve complete range of motion. *Id.* Her shoulders affect the way she sleeps restricting her to her left side. (T. 55) Petitioner testified she cannot vacuum or use certain pans. (T. 56) Petitioner also testified that her husband is sick and she has to help him get dressed and be sure he is stable. (T. 57)

The Petitioner's early physical therapy records on May 3, 2017, reflect that Petitioner did have sleeping discomfort as a result of her most recent left shoulder surgery, however, by July 17, 2017, she reported that after her prior session she had no pain to report, "just mild tightness and occasional soreness." She still exhibited some weakness with elevated movements. (PX7, T. 698, 775-776) On July 19, 2017, Petitioner maximized her therapy and was satisfied with her current progress and was generally feeling well. (PX7, T. 768)

On July 21, 2017, the physical therapy Discharge Note lists a subjective chief complaint with the left shoulder listed as 0/10 current, 0/10 worse and 0/10 best. Petitioner's Functional Activity Status reflects that for UEFS her status was 76/80, reaching was limited mostly in reaching above head, but she was not experiencing much pain. Dressing, managing hair, sleeping, driving, bathing showed Petitioner had no limitations. (PX6, T. 779) With respect to housework she was able to perform all ADLS with minimal to no limitations from the left shoulder and she was able to perform all ADLS with minimal to no limitations from her left shoulder doing yardwork. (PX7,

T. 780) The final Assessment states: Patient tolerated session well and demonstrates updated findings as indicated above. Patient demonstrates no significant objective or functional limitation at this time and has returned to full functional mobility. She was advised in final Home Exercise Program. (PX7, T. 782)

On April 5, 2018, Dr. Li saw Petitioner for the last time. (PX7, T. 785-788) He noted Petitioner's subjective complaints, 4 on the pain scale. (PX7, T. 785) Dr. Li then noted Petitioner's Postop Subjective Response: "Esther reports that she is much better than before her surgeries but still has issues with pain and weakness particularly with the left side. She has difficulty with any type of over chest or overhead activities, including reaching and even light lifting. She has trouble sleeping particularly on the left side. She can lift with both arms at about 10 pounds over chest and beyond that it is painful." (PX7, T. 786) The Commission notes that these subjective complaints do not comport with Petitioner's final therapy notes.

Further review of Dr. Li's shoulder examination notes confirm "Bilateral Shoulders" were noted to be affected *Id.* Inspection showed no swelling, bruising, redness but tenderness at the greater tuberosity left side. Provocative tests show positive Neer impingement, Hawkins impingement left side. Her strength testing was 4/5 supraspinatus, 5/5 external rotation, right shoulder 4/5 supraspinatus and external rotation left shoulder. Dr. Li specifically found full range of motion right shoulder and left shoulder, active flexion 150, passive flexion 160, active abduction, 150, passive abduction 160, active external rotation 80, passive external rotation 85 and active internal rotation L4. Dr. Li's diagnosis stated, [s]tatus post bilateral rotator cuff repairs with residual dysfunction particularly on the left. Dr. Li noted that Petitioner was to continue her home exercise program and that she was at maximal medical improvement and will have permanent residual dysfunction particularly over her left shoulder.

The Commission further strikes that last paragraph on page 25 and substitutes the following:

Based upon the five factors under Section 8.1b(b), the Commission concludes the injuries sustained by Petitioner caused a 20% loss of the body as a whole as provided in Section 8(d)2 for her left shoulder and 17.5% loss of the body as a whole as provided in Section 8(d)2 for her right shoulder.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on November 5, 2021, 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 $253.00 per week for a period of 66 2/7 weeks, commencing April 11, 2016, through July 19, 2017, that being the period of temporary total incapacity for work under §8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $253.00/week for 100 weeks, because the injuries sustained to Petitioner's left shoulder caused the 20% 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 $253.00/week for 87.5 weeks, because the injuries sustained to Petitioner's right shoulder caused the 17.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act

Respondent shall pay the following medical bills as set forth in Petitioner's Exhibit 9 for medical expenses pursuant to §8(a) and §8.2 of the Act.

Orthopedic and Shoulder Center	$186,059.83
Ireland Grove Center for Surgery	$127,212.84
Ambulatory Anesthesia	$3,744.79
Prescription Partners	$41,832.25

Respondent has paid no bills and is not entitled to a credit. Respondent is to hold Petitioner harmless for any claims for reimbursement from any health insurance provider and shall provide payment information to Petitioner relative to any credit due.

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.

March 8, 2023
KAD/bsd
O011723
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	16WC012492
Case Name	PATRICK, ESTHER v. ADVOCATE BROMENN MEDICAL CENTER
Consolidated Cases	No Consolidated Cases
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	29
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	William Trimble
Respondent Attorney	Christopher Gibbons

DATE FILED: 11/5/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 2, 2021 0.06%

/s/Bradley Gillespie, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF McLean)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

Esther Patrick
Employee/Petitioner

Case # **16** WC **012492**

v.

Consolidated cases: _____

Advocate Bromenn Medical 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 **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Peoria**, on **May 27, 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 **3/09/2016**, 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 $**15,411.19**; the average weekly wage was $**296.37. Minimum TDDand PPD was $253.00.**

On the date of accident, Petitioner was **70** 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, $ **0.00** 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 $253.00/week for 66 2/7 weeks, commencing 4/11/16 through 7/19/17, as provided in Section 8(b) of the Act,

Respondent shall pay the following medical bills as set forth in Petitioner's Exhibit 9 under the fee schedule.

Orthopedic and Shoulder Center	$186,059.83
Ireland Grove Center for Surgery	$127,212.84
Ambulatory Anesthesia	$3,744.79
Prescription Partners	$41,832.25

Respondent has paid no bills and is not entitled to a credit. Respondent is to hold Petitioner harmless for any claims for reimbursement from any health insurance provider and shall provide payment information to Petitioner relative to any credit due.

Respondent shall pay Petitioner permanent partial disability benefits of $253.00/week for 125 weeks, because the injuries sustained to Petitioner's left shoulder caused the 25% 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 $253.00/week for 100 weeks, because the injuries sustained to Petitioner's right shoulder 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.

Bradley D. Gillespie **NOVEMBER 5, 2021**

Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ESTHER PATRICK,	)	
Petitioner,	)	**Case No.: 16 WC 012492**
	)	
Vs.	)	
	)	
ADVOCATE BROMENN MEDICAL CENTER,	)	
	)	
Respondent.	)	

FINDINGS OF FACTS

Ester Patrick, [hereinafter, "Petitioner"] was born on January 21, 1946 and was 70 years of age at the time of her injuries. Petitioner testified that she began working for Advocate Bromenn Medical Center [hereinafter, "Respondent"] in 1991. She worked for Respondent continuously through the date of accident. Petitioner testified that her duties could generally be described as food service worker. Petitioner's duties required her to deliver food trays, pick them up and return them to the kitchen. Petitioner testified that she earned $13.31/hour, for an eight-hour day, three days a week. Prior to March 9, 2016, Petitioner had not received any medical treatment for her shoulders. She testified that her shoulders had not prevented her from doing any of her work duties.

On March 9, 2013, Petitioner's duties were to deliver trays of food to every floor at Advocate Bromenn Medical Center, and to pick-up trays and return them to the kitchen once they were empty. To deliver trays, Petitioner used a large stainless-steel cart. She described the cart as approximately chest height to her with a door in front and a door in back. The cart was cable of holding six full food trays in back and six in front. Petitioner testified that she had to maneuver the cart in and out of the kitchen and in and out of an elevator. Exiting the kitchen there was a ramp leading up to the elevator. Occasionally, Petitioner would enlist assistance to push the cart up the ramp. Petitioner testified that she experienced significant right shoulder pain on March 9, 2016 while pushing the cart up the incline. As she continued to work, her right shoulder pain increased, which caused her to use her left arm more and her left shoulder began to bother her. Petitioner testified that her shoulder pain increased throughout the day.

Petitioner testified that when she picked up empty trays, she used a dish room cart. Petitioner testified that the dish room cart was over six feet tall and that she is 5'3" tall. Petitioner testified that the dish room cart had to be returned to the kitchen via the same route she used to deliver the food trays. This required Petitioner to control the dish room cart as it went down the ramp into the kitchen.

When she returned from delivering trays on March 9, 2016, Petitioner told her manager that she had to go to Human Resources because her shoulder was hurting her so badly. Petitioner testified that she went to Human Resources later that day and filled out an incident report. (*See* RX #3) Human Resources sent her over to outpatient treatment. She was told to take a couple of days off, which she did. When Petitioner returned to work, she was still having shoulder pain.

On March 14, 2016, Petitioner sought treatment at the Orthopedic & Shoulder Center. (PX #3) Petitioner filled out a new patient intake sheet which indicated that both shoulders hurt in her armpits, and that the injury occurred pushing carts and picking up trays with a high cart. (PX #3 pp. 1-2) Petitioner indicated her pain level was 7out of 10 in both shoulders and was made worse with movement. *Id*.

Records from Petitioner's first visit with Dr. Lawrence Li provide the following history of injury:

> She was pushing carts and lifting trays at work on 3/9/16 and had pain in Bilateral shoulders. She pushes shoulder height carts that are full of trays. When she gets out of where the trays are put in the carts she has to push it up on the incline to get it into an elevator. It was during when she was negotiating this incline that she developed significant right shoulder pain. The cart was full and she was pushing it upwards. As she continued to work she developed more pain in her Right Shoulder. She then used her Left arm more and it also started to hurt her. The other problem she encountered is when she got out of the elevator she has to go down a decline and she has to pull it to keep it from running into a wall.

Petitioner's strength testing revealed 4/5 supraspinatus and external rotation for the right shoulder and 4/5 strength in the supraspinatus and 5/5 external rotation for the left shoulder. (PX #3) Petitioner had positive Neer and Hawkins Impingement Testing. *Id.* Regarding Petitioner's right shoulder, Dr. Li observed active flexion to 140°, active abduction to 120°, and active external rotation of 70°. *Id.* On the left shoulder, Dr. Li observed active flexion to 170°, active abduction to 150°, and active external rotation of 75°. *Id.* Dr. Li performed real time ultrasound imaging on both shoulders. On the right shoulder, Dr.

Li noted that the acromio-clavicular joint appeared abnormal with calcification identified; the supraspinatus tendon appeared abnormal in echogenicity with a tear-like appearance; the subacromial-subdeltoid bursa was abnormal with evidence of mild fluid accumulation; and cortical irregularity of the humeral head. Ultrasound imaging of the left shoulder revealed an abnormal acromio-clavicular joint with calcification; thickening of the supraspinatus tendon and abnormal echogenicity with tear versus calcification near the distal insertion; and abnormal subacromial-subdeltoid bursa with evidence of mild fluid. (PX #3) Dr. Li diagnosed Petitioner with "bilateral rotator cuff injuries due to steering a cart full of heavy trays." *Id.* Dr. Li opined that "to a reasonable degree of medical certainty that the mechanism of the injury she describes would have caused her current shoulder condition." *Id.*

On March 16, 2016, Petitioner underwent MRI of the right shoulder which showed low grade partial articular surface tearing of the distal supraspinatus tendon. (PX #3) On March 17, 2016, Petitioner underwent MRI of her left shoulder that disclosed a focal moderate grade partial thickness tear involving the anterior insertional fibers of the supraspinatus tendon. (PX #3)

Petitioner followed up with Dr. Li on March 18, 2016. Dr. Li interpreted the MRI of the right shoulder to indicate a low grade partial articular surface tearing of the distal supraspinatus tendon, and acromio-clavicular joint arthropathy with prominent inferior spurring. Dr. Li felt that the left shoulder MRI showed a small glenohumeral joint effusion; a small volume of fluid in the subacromial-subdeltoid bursa; a focal moderate grade partial thickness tear involving the anterior insertional fibers of the supraspinatus tendon; trace biceps tenosynovitis and a probable detachment of the labrum in the anterior superior quadrant. (PX #3) After reviewing her MRIs, Dr. Li discussed Petitioner's treatment options, and gave her a Kenalog injection in each shoulder. (PX #3) Dr. Li prescribed physical therapy for Petitioner, and she participated in therapy on March 22, 2016, March 28, 2016, March 30, 2016, April 4, 2016, and April 6, 2016.

Petitioner saw Dr. Li in follow-up for her bilateral shoulder pain on April 11, 2016. (PX #3) She reported that therapy had helped her with strength, the medications had only relieved about 10% of her pain, and that corticosteroid injection wore off after a week. *Id.* She also reported difficulty sleeping. On

examination, Dr. Li noted 4/5 supraspinatus in external rotation on the right, and 4/5 supraspinatus on the left, with bilateral positive Neer's and Hawkin's Impingement Test. The examination showed active flexion on the right shoulder at 125° and active abduction at 110°. Since Petitioner's right shoulder was most bothersome, Dr. Li proposed proceeding with right arthroscopic shoulder surgery and possible arthroscopic rotator cuff repair. (PX #3)

Petitioner returned to the Orthopedic & Shoulder Center on May 5, 2016 for her bilateral shoulder pain. (PX #4) On that date, Dr. Li noted that Petitioner had injured both shoulders, but her right shoulder was more painful than the left. *Id.* Petitioner reported that she was unable to sleep, her pain was worse than ever, and she could no longer tolerate her symptoms. *Id.* Dr. Li diagnosed a moderate partial articular surface tear of the supraspinatus tendon on the right which had failed therapy and was increasingly painful. *Id.* Dr. Li also diagnosed further aggravation of her left shoulder moderate grade partial thickness tear of the supraspinatus tendon and SLAP tear. (PX #4) Dr. Li noted that "it is my opinion to a reasonable degree of medical certainty that the injury she suffered originally while pushing carts and lifting trays at work is the direct cause of her Bilateral Shoulder conditions and the need for treatment. Her further aggravation with pushing carts has made the condition worse." *Id.*

On May 10, 2016, Petitioner underwent shoulder surgery for right rotator cuff tear, impingement syndrome, AC joint dysfunction, grade 3 chondral injury of the humeral articular surface, and type 1 tearing of the anterior, superior and posterior labrum. (PX #4) Petitioner returned to Dr. Li on May 18, 2016 following her surgery. *Id.* Dr. Li reported that Petitioner was having typical post-operative pain and progressing as expected with therapy. *Id.* Dr. Li noted that Petitioner was receiving vasopneumatic compression therapy to reduce swelling and pain and using a continuous passive motion (CPM) machine to improve her range of motion. *Id.* Dr. Li performed a real-time ultrasound of her right shoulder. Dr. Li ordered continued use of vasopneumatic compression therapy, the continuous passive motion machine and physical therapy. (PX #4)

Petitioner next saw Dr. Li on June 13, 2016 in follow-up for her right shoulder surgery. (PX #4) Petitioner was progressing as expected with therapy, reporting improvements in her range of motion, and

continuing to report typical post-operative pain. *Id.* Dr. Li performed a real-time ultrasound of Petitioner's right shoulder and noted that the subacromial-subdeltoid bursa was abnormal with evidence of mild fluid accumulation. *Id.* Dr. Li prescribed Mobic 7.5mg BID, Rabeprazole 20mg tab daily, and continued her physical therapy. *Id.*

On July 11, 2016, Petitioner returned to Dr. Li. (PX #4) Dr. Li noted that Petitioner's pain was better than before her surgery, but her range of motion was not progressing. *Id.* Real-time ultrasound imaging showed all ligaments and tendons were intact, but the subacromial-subdeltoid bursa was abnormal with evidence of mild fluid along the greater tuberosity. *Id.* Dr. Li continued Petitioner on Mobic, but also prescribed Ultram ER, Prilosec, Dendracin, Lunesta, and Terocin patches. *Id.* Dr. Li performed a Kenalog injection with ultrasound guidance and recommended continued physical therapy. (PX #4)

On August 8, 2016, Petitioner returned to Dr. Li. He noted that the Kenalog injection helped and Petitioner was making progress in therapy, but she reported that she was nowhere near normal yet. (PX #4) Dr. Li performed a physical examination and a Real-time ultrasound. *Id.* The Real-time Ultrasound revealed that the subacromial-subdeltoid bursa remained abnormal with evidence of trace fluid along the greater tuberosity and dynamic imaging of the supraspinatus indicated mild adhesive capsulitis with active abduction. *Id.* Dr. Li felt that Petitioner's adhesive capsulitis was improving but still present. *Id.* He continued Petitioner's medications and performed another Kenalog injection under ultrasound guidance. (PX #4)

Petitioner next saw Dr. Li on September 7, 2016. He noted that she had made slow progress in therapy for her right shoulder and was still quite limited. *Id.* He performed a physical examination as well as an ultrasound. *Id.* Diagnoses included adhesive capsulitis that was not resolving adequately with physical therapy. *Id.* Dr. Li recommended right shoulder arthroscopic shoulder surgery and lysis of the adhesions. (PX #4) The surgery recommended by Dr. Li was performed on September 20, 2016. *Id.* The operative report indicates Dr. Li performed a right shoulder arthroscopic lysis of adhesions and extensive debridement of tenosynovitis. *Id.*

Dr. Li saw Petitioner in follow-up on September 28, 2016. He performed a physical examination and again performed a Real-time Ultrasound. (PX #4) Dr. Li prescribed medication for pain, recommended that Petitioner continue to use the Game Ready vasopneumatic compression therapy and the CPM machine, and continue physical therapy. *Id.* Petitioner saw Dr. Li again on October 26, 2016. Dr. Li noted that Petitioner had good passive range of motion but lacked strength. *Id.* He further indicated that vasopneumatic compression therapy was helping to reduce her swelling and pain, that us of the CPM was improving her range of motion, and that Petitioner was progressing in therapy. *Id.* Dr. Li conducted a physical examination, performed an ultrasound, prescribed medications, and continued Petitioner in physical therapy. (PX #4)

On November 28, 2016, Petitioner saw Dr. Li in follow-up to her right shoulder arthroscopic surgery with lysis of adhesion and extensive debridement of tenosynovitis. (PX #6) Dr. Li performed a physical examination, another Real-time Ultrasound, continued Petitioner's medications, and recommended continued physical therapy for range of motion and strength deficits. *Id.*

On December 22, 2016, Dr. Li saw Petitioner for a re-evaluation of her left shoulder. He noted that Petitioner's left shoulder pain had gotten worse and she could no longer tolerate the pain. (PX #6) Petitioner informed Dr. Li that she wanted to proceed with surgery to her left shoulder. *Id.* Dr. Li performed a physical examination of Petitioner's left shoulder, again diagnosed her with left shoulder rotator cuff and labral tears, continued her medications, and planned to proceed with left arthroscopic shoulder surgery. *Id.* On January 11, 2017, Dr. Li performed left shoulder arthroscopy with rotator cuff repair, subacromial decompression, excision of distal clavicle, extensive debridement of tenosynovitis, glenohumeral joint and biceps tenotomy. (PX #6)

On January 19, 2017, Dr. Li saw Petitioner in follow-up to her January 11, 2017 left shoulder arthroscopic surgery. (PX #6) Dr. Li noted Petitioner was having typical post-operative pain, that the vasopneumatic compression therapy was helping reduce her swelling and pain, the CPM machine was helping improve her range of motion and advance her physical therapy. *Id.* Dr. Li performed another Real-time Ultrasound and a physical examination. *Id.* He refilled her prescriptions, recommended that

she continue the Game Ready vasopneumatic compression therapy, the CPM machine, and physical therapy. *Id.*

On February 10, 2017, Petitioner returned to Dr. Li complaining of increased left shoulder pain. (PX #6) Even though she was progressing in therapy, she still had significant pain over her incision portals. *Id.* Dr. Li conducted a physical examination and prescribed pain medication. *Id.* On February 15, 2017, Petitioner saw Dr. Li. Dr. Li performed physical examination and a Real-time Ultrasound, which revealed the subacromial-subdeltoid bursa was abnormal with evidence of mild anterior distension. (PX #6) He diagnosed Petitioner with adhesive capsulitis. *Id.* Dr. Li prescribed medications, gave Petitioner a Kenalog injection under ultrasound guidance, and recommended continued physical therapy. *Id.*

On March 15, 2017, Petitioner returned to Dr. Li. He did a physical examination of Petitioner and performed a Real-time ultrasound. (PX #6) Dr. Li prescribed medications and also performed a Kenalog injection under ultrasound guidance. *Id.* On April 12, 2017, Petitioner followed up with Dr. Li regarding her left shoulder. *Id.* Dr. Li performed a physical examination and Real-time Ultrasound examination. (PX #6) His impression of the ultrasound was that Petitioner's subacromial-subdeltoid bursa was abnormal but improved from her previous examination and that the rotator cuff appeared intact during dynamic and static testing. *Id.* Dr. Li continued her medications and recommended a left shoulder lysis of adhesions. *Id.* On April 25, 2017, Petitioner underwent a left shoulder arthroscopic lysis of adhesions, extensive debridement of tenosynovitis of the glenohumeral joint, and manipulation of her left shoulder.

On May 3, 2017, Dr. Li saw Petitioner in follow-up to her April 25, 2017 procedure. (PX #6) After an examination and a Real-Time Ultrasound, Dr. Li found Petitioner's subacromial-subdeltoid bursa was abnormal, but her rotator cuff appeared intact. *Id.* He prescribed medication, continued physical therapy, continued the Game Ready device and the CPM machine. *Id.* On May 24, 2017, Petitioner returned to Dr. Li. Dr. Li conducted a physical examination, noted Petitioner was making good progress in therapy and was improving despite her range of motion deficit. (PX #7) Real-time Ultrasound revealed

the rotator cuff appeared intact during static and dynamic testing. *Id.* Dr. Li prescribed medication and continued physical therapy. *Id.*

On June 21, 2017, Petitioner saw Dr. Li in further follow-up. (PX #7) Dr. Li noted that Petitioner was making gradual progress in therapy and was overall better than before surgery. *Id.* He noted that Petitioner reported relief from medications including Mobic 7.5mg BID, Ultram ER 150mg 1 tab QD, Cyclobenzaprine 7.5mg one P.O. TID, Prilosec 20mg, Dendracin, and Terocin patches 1 BID. *Id.* Dr. Li performed an ultrasound which showed the rotator cuff to be intact. *Id.* Dr. Li prescribed medication, continued her physical therapy and instructed Petitioner to follow-up in four weeks. (PX #7)

Petitioner saw Dr. Li again July 19, 2017. Dr. Li noted that Petitioner had maximized physical therapy and felt that she had reached a plateau. (PX #7) He noted that she was satisfied with her current progress and generally felt well. *Id.* He performed an ultrasound noting a normal examination of the left shoulder with the rotator cuff appearing intact during static and dynamic testing. *Id.* He refilled a three-month course of medication, instructed Petitioner to finish physical therapy, continue a home exercise program, and to advance her activities as tolerated. *Id.* Petitioner was discharged from physical therapy on July 21, 2017. (PX #7)

On April 5, 2018, Petitioner returned to see Dr. Li. She noted that she was much better than before her surgeries, but still had issues with her pain and weakness, particularly on her left side. *Id.* Petitioner described difficulty with any type of over chest or overhead activities, including reaching and even light lifting. *Id.* She reported trouble sleeping, particularly on her left side. *Id.* Petitioner indicated that she could lift with both arms about 10 pounds over chest level, but that it was painful beyond that. (PX #7) Dr. Li examined her shoulders and noted that she had positive Neer's impingement and Hawkin's impingement on left side. *Id.* In strength testing, he noted that Petitioner had 4/5 strength to her supraspinatus and 5/5 external rotation on the right shoulder. *Id.* Her left shoulder showed 4/5 strength to her supraspinatus and 4/5 external rotation. *Id.* Dr. Li's diagnosis was status post bilateral rotator cuff repairs with residual dysfunction particularly on the left. (PX #7) He believed Petitioner had reached

maximum medical improvement and noted that she would have permanent residual dysfunction particularly on her left shoulder. *Id.*

Petitioner testified that she never returned to work. She said that Respondent informed her that her job no longer existed or that its duties had changed. She did not feel she could perform the new duties. She testified that she is not working and has not worked since her left shoulder surgery. Petitioner testified that she did not receive any TTD payments from Respondent from the period of 4/11/16 – 11/28/16 nor did she receive any TTD payments from 3/5/17 – 4/5/18 when she was pronounced at maximum medical improvement.

Petitioner demonstrated her shoulder range of motion at hearing. She could not raise her arm all the way up above her head. She testified that she generally must sleep on her left side, and that in the mornings she needs to loosen up with exercises learned in therapy. She sometimes has pain in the back of both of her shoulders. Overall, her shoulders just hurt. Petitioner testified that she has lost strength as well as range of motion. She testified that she drops a lot of things, and that she cannot pick up some items, such as a heavy cooking pan. Petitioner has had to do things to compensate for this. For example, she must cook with a pressure cooker instead of a large pan. She can sweep, but she cannot vacuum. Petitioner's husband suffers from serious health conditions. She testified that he has blood clots in both lungs and has heart failure. She helps him dress and her shoulders make this activity more difficult.

Off work slips and work restrictions from Dr. Li were entered into evidence as Petitioner's Exhibit 8. Further off work slips and work restrictions appear in Petitioner's medical records. (*See* PX #4, PX #5, PX #6 & PX #7) These are consistent with Petitioner's testimony and the testimony of Dr. Li in his depositions.

The Evidence Deposition of Dr. Lawrence Li Taken December 1, 2016

The evidence deposition of Dr. Li was taken December 1, 2016 and was entered into evidence as Petitioner's Exhibit 1. Dr. Li testified that he had been practicing orthopedic surgery since 1991, that he has been Board Certified in orthopedic surgery since 1995, and that he had been licensed to practice in Illinois since 1996. (PX # 1, p. 5) Dr. Li testified that he first saw Petitioner on March 14, 2016, and that

she provided a history of sustaining injuries on March 9, 2016 while pushing carts and lifting trays at work. Dr. Li was given a history that Petitioner pushes shoulder height carts full of trays, and that when pushing one such cart up an incline she developed significant right shoulder pain, requiring her to use her left arm more, which then also started to bother her. Dr. Li noted that Petitioner also encountered problems when she had to pull the cart to keep it from running away from her when going down the incline. (PX #1, pp. 6-7) Dr. Li testified that he examined Petitioner on that date, finding decreased range of motion in both shoulders, decreased supraspinatus and external rotation strength, and positive Neer's and Hawkin's impingement tests bilaterally. (PX #1, pp. 7-8) Ultrasound bilaterally was consistent with tear of the supraspinatus. (PX #1, pp. 8-9) Dr. Li believed that Petitioner had suffered bilateral rotator cuff injuries due to steering a cart full of heavy trays and ordered MRI of both shoulders to determine what sort of injures she had suffered. (PX #1, p. 9).

Dr. Li testified that the MRI on the right shoulder showed a partial articular surface tear of the distal supraspinatus tendon, and AC joint arthropathy with spurring. The MRI of the left shoulder showed that she had a partial thickness tear of the supraspinatus tendon, detachment of the labrum, AC joint degenerative disease and inflammation in the subacromial space and biceps tendinitis. (PX #1, p. 10). His examination of Petitioner on March 18, 2016 yielded similar findings to those of his previous examinations, and he gave her injections in both shoulders to decrease inflammation and reduce Petitioner's pain. He also prescribed therapy. (PX #1, pp. 10-11)

In follow-up on April 11, 2016, Dr. Li noted that the steroid injections had initially worked but had worn off. This confirmed his diagnosis. He examined only the right shoulder and found that it was worse than it had been before. (PX #1, pp. 11-12). All findings were consistent with a rotator cuff problem or rotator cuff tear. Even though Dr. Li discussed conservative treatment options with Petitioner including continued medications and physical therapy, Petitioner was in significant pain not relieved by conservative modalities. Therefore, Dr. Li recommended arthroscopic shoulder surgery and repair of the rotator cuff. (PX #1, p. 12) He testified that Petitioner's physical exam findings including weakness,

decreased range of motion, and positive impingement tests correlated with the MRI findings. (PX #1, p. 13) Dr. Li testified that Petitioner was unable to work as of April 11, 2016. *Id.*

Dr. Li testified that when he saw Petitioner on May 5, 2016, she gave a history of aggravating her left shoulder pushing and pulling a cart. He explained that while these activities aggravated her left shoulder pain, her right shoulder continued to be more symptomatic. Dr. Li noted that Petitioner was having difficulty sleeping and despite her improved range of motion from physical therapy, the new injury had set her back and she could not tolerate her symptoms. (PX #1, p. 14) Dr. Li discussed waiting until the IME had been completed before proceeding to surgery, but Petitioner could no longer wait, so he recommended surgery. (PX #1, p. 15)

Dr. Li testified that he performed surgery May 10, 2016, for right shoulder rotator cuff tear, impingement syndrome, AC joint dysfunction, grade three chondral injury on the humeral articular surface, and type one tear in the anterior, superior, and posterior labrum. Dr. Li opined that surgery was necessary to cure and/or relieve her pain. (PX #1, p. 15) Dr. Li Performed right shoulder arthroscopy with rotator cuff repair, arthroscopic subacromial decompression, excision distal clavicle, debridement of grade three chondral injury to the humerus and type one tear in anterior, superior, and posterior labrum. (PX #1, p. 16) Dr. Li testified that when he saw Petitioner post-operatively on May 18, 2016, she was progressing with therapy, the Game Ready vasopneumatic cryocompression therapy was helping to reduce pain and swelling, and the Continuous Passive Motion machine was helping improve her range of motion. Dr. Li testified that the Game Ready system provided compression and cryotherapy at the same time which helps reduce swelling, increase lymphatic drainage, reduce pain, progress therapy, and reduce narcotic usage. He testified that the CPM machine is used to reduce the incidence of adhesive capsulitis or "frozen shoulder", which is the primary complication with shoulder surgery. (PX #1, p. 17) After examination and ultrasound, Dr. Li recommended that Petitioner continue Game Ready, CPM, and physical therapy. (PX #1, p. 18)

Dr. Li's nurse practitioner saw Petitioner on June 13, 2016. The nurse practitioner started Petitioner on Mobic, an anti-inflammatory, and continued physical therapy. (PX #1, p. 19) When Dr. Li

saw Petitioner in follow-up on July 11, 2016, he found that while her pain was improving, her range of motion was not improving. The Real-time Ultrasound showed no evidence of a recurrent tear. (PX #1, pp. 20-21) Dr. Li indicated that he provided a Kenalog injection to decrease inflammation, and provided various oral medications including anti-inflammatories, and Terocin patches to decrease pain and help her movement. (PX #1, p. 21)

Dr. Li testified that when he saw Petitioner in further follow-up on August 8, 2016, she had made progress, but was not close to normal. Ultrasound imaging showed an intact repair, but evidence of adhesive capsulitis. Dr. Li gave Petitioner another cortisone injection in hopes of improving her range of motion. (PX #1, p. 22) Dr. Li next saw Petitioner on September 7, 2016. Petitioner was making slow progress in therapy and her range of motion was still limited. The ultrasound showed an intact repair, inflammation in the shoulder and evidence of frozen shoulder. (PX #1, p. 23) At this point, Dr. Li recommended an arthroscopic lysis of adhesions and manipulation. He testified that this was necessary because aggressive therapy, injections, and medications had all failed to improve her condition. He testified that "she made only marginal improvement that was nowhere close to getting her back to where she needed to go." (PX #1, p. 24)

Dr. Li testified that he performed a right shoulder arthroscopic lysis of adhesions and extensive debridement of tenosynovitis on September 20, 2016 for Petitioner's right shoulder adhesive capsulitis and extensive tenosynovitis in the glenohumeral joint. (PX #1, p. 25) On September 28, 2016, Dr. Li saw Petitioner in follow-up to this procedure. Petitioner had typical post-operative pain but was doing much better with therapy. The Game Ready was helping her symptoms and she was using the CPM machine to hopefully avoid getting frozen shoulder again. Dr. Li testified that physical therapy was necessary because the shoulder is the most mobile joint and requires significant therapy to restore its function. (PX #1, pp. 26-27)

Dr. Li testified that when he saw Petitioner on October 26, 2016, her range of motion was improved, but she lacked strength. She was still using Game Ready and CPM machine. An ultrasound showed no evidence of recurrent tear. Dr. Li recommended that she continue therapy, medications and

continued use of the Game Ready device for another week or so. (PX #1, pp. 28-29) When he saw her on November 28, 2016, she was making good progress. Dr. Li planned to address her strength deficits with therapy and follow-up in about eight weeks. *Id.* Dr. Li gave Petitioner a return to work note, with restrictions to limit lifting, pushing, and pulling with the left arm to five pounds, no over chest activity with the left arm, and over chest lifting limited to ten pounds with the right arm until further notice. (PX #1, pp. 29-30)

Dr. Li testified that, to a reasonable degree of medical and surgical certainty, Petitioner's diagnosis on the right shoulder was right shoulder rotator cuff repair, impingement syndrome, and AC joint dysfunction, as well as grade three chondral injury the humeral head. Dr. Li's diagnosis on Petitioner's left shoulder was a rotator cuff tear, a labral tear, and impingement syndrome. (PX #1, p. 30)

Dr. Li testified that to a reasonable degree of medical certainty the work injury suffered by Petitioner caused her rotator cuff tears to either occur or become worse than they had been. (PX #1, p. 31) He testified that she had a good prognosis on her right shoulder and just needed to work on her strength. At that time Dr. Li's first deposition, surgery had not been done on Petitioner's left shoulder. Dr. Li testified that with surgery, if the surgery and rehabilitation were successful, Petitioner's prognosis was good for her left shoulder. (PX #1, p. 31)

Dr. Li testified that the injuries would have been caused by both pulling and pushing the large food tray cart up and down an incline because "there's both a force where she has to push with her shoulders and probably a worse force where she has to pull and decelerate with using her arms . . . that mechanism of injury is one that would cause an injury to the rotator cuff tendon." (PX #1, pp. 32-33) Dr. Li testified that Petitioner's limited range of motion on the left shoulder was secondary to pain and not evidence of symptom magnification as it is natural for people not to want to do what hurts them. (PX #1, p. 33)

Dr. Li responded to Dr. Cohen's criticism that there was no pre-operative indication for an AC joint resection. Dr. Li testified that the need for AC joint resection was determined intra-operatively as it is in most cases. (PX #1, p. 34) He explained that he evaluated the AC joint after acromioplasty and

determined it was unstable. Due to this instability, he removed the distal clavicle to avoid further problems in the future. (PX #1, pp. 34-35) Even though Petitioner had a pre-operative diagnosis of AC joint arthritis, that was not the indication for her surgery, her AC joint instability was. In addition, she had a humeral chondral injury, which Dr. Li opined is more likely a traumatic condition than is arthritis. (PX #1, p. 35)

On cross-examination, Dr. Li testified that chondral injury could be caused by pushing or pulling the cart on an incline, with the most likely cause being trying to control the cart as it went down an incline. According to his notes, Petitioner described developing pain in her shoulders negotiating an incline. (PX #1 p. 40). Dr. Li noted that Petitioner was negotiating an incline when her right shoulder pain began and then she encountered a problem when she got out of the elevator and had to go down a decline pulling the cart to keep it from running into a wall. (PX #1, pp. 38-40) Dr. Li opined that the event described immediately above caused Petitioner's chondral injury as chondral injuries are rare in non-weight bearing joints, such as the shoulder, supporting his conclusion that Petitioner sustained traumatic injury to her shoulder. (PX #1, p. 40-41)

The Evidence Deposition of Dr. Lawrence Li Taken August 12, 2019

A second evidence deposition of Dr. Lawrence Li was taken August 12, 2019. (PX #2) This deposition was taken because Dr. Li had not yet performed surgery on Petitioner's left shoulder at the time of the initial deposition. Dr. Li testified that the first time Petitioner discussed her left shoulder with him was March 14, 2016. (PX #2, pp. 7-8) He recounted Petitioner's initial history of pushing a cart of food trays up an incline when she developed pain in her right shoulder, then, as she continued to work, she developed the pain in her left shoulder. *Id.*

Dr. Li testified that he used ultrasound examinations during Petitioner's postoperative visits to have a non-invasive way to examine whether the tendon was still attached, to gain information about the amount of fluid in the joint and watch the shoulder move to determine whether the mechanics of the shoulder are appropriate. (PX #2, p. 15) Dr. Li testified that standard of care supports the use of

ultrasound in follow-up of shoulder repair and there is significant literature supporting its use post-tendon repair. (PX #2, pp. 15-16)

Dr. Li testified that after he returned Petitioner to work with restrictions on November 28, 2016, she continued to have left shoulder pain. Her left shoulder condition had failed to improve without surgery even though she had been performing exercises for her left shoulder as well as her right. (PX #2, p. 18) On December 22, 2016, Petitioner returned to Dr Li for her left shoulder since her pain in her left shoulder had become intolerable. (PX #2, p. 19) Based on the previous MRI and ultrasound, her diagnosis was left shoulder rotator cuff and labral tear. (PX #2 pp. 19-20) She had previously received corticosteroid injections, medications, and therapy, so Dr. Li recommended arthroscopic surgery and rotator cuff repair. (X #2 p. 20) On January 11, 2017, Dr. Li performed left shoulder arthroscopy, rotator cuff tear repair, arthroscopic subacromial decompression, excision distal clavicle, biceps tenotomy, and debridement. (PX #2, p. 20)

Dr. Li testified that based upon what he observed intraoperatively Petitioner's left shoulder injury was related to the mechanism of injury previously described to him by Petitioner. (PX #2 p. 23) Dr. Li explained that, "the mechanism of injury described was that she, first of all, had pain in her right shoulder. So the left shoulder had to do more of the pushing and pulling and that is the type of mechanism that would cause a rotator cuff tear that would then obviously cause inflammation and impingement, which are findings I found in surgery." *Id.*

On January 19, 2017, Dr. Li performed an examination finding Petitioner to have appropriate passive range of motion for the first week post-op. An ultrasound showed that the repair was intact. (PX #2, p. 24). Dr. Li next saw Petitioner on February 10, 2017. When Dr. Li saw Petitioner on February 15, 2017, Petitioner had adhesive capsulitis, so Dr. Li recommended cortisone injection and medications. (PX #2, p. 27) As with her right shoulder, Dr. Li prescribed use of the Game Ready and CPM machines to promote healing and help with range of motion. (PX #2, p. 28) He indicated that this regimen would have continued for six to eight weeks after surgery. (PX #2, p. 30). Dr. Li saw Petitioner again on March 15, 2017. (PX #2, p. 29)

When Dr. Li saw Petitioner on April. 12, 2017, her passive range of motion had not improved from the previous visit, and he found that she had adhesive capsulitis that was resistant to treatment. (PX #2, p. 31) Because Petitioner was not progressing with therapy and injections, Dr. Li recommended surgery. On April 25, 2017, Dr. Li performed arthroscopic lysis of adhesions and manipulation followed by use of the Game Ready device, CPM machine, and daily physical therapy. (PX #2, p. 32) Dr. Li testified that the use of CPM machine is supported by medical literature, and he uses it significantly in his own patients. (PX #2, p. 34)

Dr. Li next saw Petitioner on May 3, 2017, at which time her passive motion had improved significantly. When he next saw Petitioner on May 24, 2017, her passive motion was being maintained and her active motion was improving. (PX #2, pp. 34-35) On May 24, 2017, Dr. Li provided Petitioner with a return to work slip with the restrictions no over chest use of left arm. (PX #2, p. 36)

Dr. Li next saw Petitioner June 21, 2017. Because she still did not have full active range of motion, he performed an ultrasound to confirm that the rotator cuff repair was intact. (PX #2, pp. 37-38) When he next examined Petitioner July 19, 2017, Dr. Li felt that Petitioner had plateaued and was as good as she was going to get. Her rotator cuff was intact throughout dynamic testing. Dr. Li testified that this was a good result. He did continue her restrictions of no over chest use of the left arm, and this was a permanent restriction which continues to remain in place. (PX #2, pp. 39-40) Dr. Li testified that Petitioner returned one more time on April 5, 2018. At that time, she reported that she was much better than before her surgeries, but still had issues with pain and weakness, particularly on the left side. She was having trouble sleeping and could lift about ten pounds over chest. This was an expected result, and Dr. Li testified that further treatment was not necessary. (PX #2, pp. 40-41)

Dr. Li disagreed with the opinion of Respondent's IME physician that pushing a cart up a ramp was unlikely to cause an acute rotator cuff tear or worsen a pre-existing rotator cuff tear. Dr. Li testified that "First of all, I respond that she's five foot three and she was using her arms . . . in a high manner. . . . The second is that even if she had a rotator cuff tear before that was present the mechanism . . . of pushing

and controlling a cart and the torquing that goes along with that is one that can worsen a rotator cuff tear and make it bigger and render it symptomatic." (PX #2, p. 45)

Dr. Li disagreed with the opinion of Respondent's IME physician that he performed excessive ultrasounds on Petitioner. Dr. Li indicated that he used ultrasound on Petitioner because she had not achieved all her treatment goals, she was having problems with her range of motion and her strength. He testified "We need to find out why she's not progressing and doing it blindly is below standard of care." (PX #2, p. 46)

Dr. Li considered the statement that "when Dr. Li performed the arthrolysis of Ms. Patrick's right shoulder the difference of passive and active abduction was ten degrees and therefore was not indicated" to make no sense whatsoever, since it was the absolute passive and active motion that makes a difference. He testified that "it's the difference between normal and what the patient has that matters. So whoever stated that is making a false statement. . . It's not scientific. It's scientifically false and no one would support that. No orthopedic surgeon would support that." (PX #2, p. 47)

In response to the statement that surgical management of Petitioner's shoulders was not required, Dr. Li testified that conservative therapy of injections, medications, and therapy were tried first and were not successful. (PX #2, p. 47)

The Evidence Deposition of Dr. Michael Jay Cohen Taken December 7, 2016

The evidence deposition of Dr. Cohen was taken December 7, 2016. (RX #1) Dr. Cohen testified that he examined Petitioner June 2, 2016. (RX #1, p. 6) Dr. Cohen testified that since he saw Petitioner after she had undergone surgery on her right shoulder, his diagnosis would be consistent with Dr. Li's arthroscopy, including rotator cuff tear. (RX #1, pp. 14-15) However, he thought her left shoulder had more subjective than objective symptoms and minimal findings of any injury greater than a shoulder sprain plus or minus a little bit of arthritis. (RX #1, p. 15) Dr. Cohen testified that Petitioner had suffered a work related injury of no more than a sprain/strain to the shoulders, which he based on her job activities and her MRI results (RX #1, p. 16), and he would have not treated her with surgery. (RX #1, pp. 18-19) He testified that Petitioner's chondral injury was just wear and tear, not a traumatic incident. (RX #1, pp.

20-21) He agreed that for adhesive capsulitis, he generally performs the same surgery Dr. Li did. (RX #1, p. 23)

On cross-examination, Dr. Cohen agreed that the tall cart used by Petitioner, as depicted in photographs he examined, could cause an individual to use their arms at or above shoulder height. (RX #1, p. 27) He agreed that it was possible to at least aggravate a rotator cuff tear or an impingement syndrome when pushing such a cart up an incline. (RX #1, p. 28) He agreed that 7 out of 10 pain, as reported by Petitioner to Dr. Li, could be considered an abnormal finding and could indicate a need for further treatment. Likewise, the finding that Petitioner had 4 out of 5 strength in the supraspinatus could indicate that Petitioner had suffered an injury. (RX #1, p. 30) The positive impingement testing observed by Dr. Li was also an abnormal finding and could indicate an injury and that some further treatment could be necessary. (RX #1, p. 31) The range of motion for abduction on the right side could indicate an abnormal finding and could indicate a need for further treatment, as could the range of motion in abduction on the left side. (RX #1, p. 32)

Dr. Cohen agreed that MRI imaging of Petitioner's shoulders could be the result of injury to both shoulders. (RX #1, pp. 33-34) He acknowledged that in his discussion with Petitioner and in his review of medical records, he did not find a prior history of shoulder injury. (RX #1, p. 35)

The Evidence Deposition of Dr. Michael Jay Cohen Taken September 4, 2019

The second evidence deposition of Dr. Cohen was taken September 4, 2019. (RX #2) Dr. Cohen had evaluated Petitioner May 20, 2018 for a re-evaluation IME. (RX #2, pp. 7-8) Dr. Cohen could not explain why he had said that arthrolysis was not indicated because there was a ten-degree difference between active and passive abduction in his second written report. (RX #2, pp. 13-14)

Dr. Cohen testified that he did not think Petitioner's shoulder conditions were related to Petitioner's claimed work injury because he did not consider the mechanism of injury described to be sufficient. (RX #2, p. 15) He had no criticism of the rotator cuff repairs, although he thought more conservative treatment might have been attempted first. Dr. Cohen believed that Dr. Li had done more ultrasounds post-operatively than he needed to and believed that Game Ready and CPM were not

indicated. (RX# 2, pp. 17-18) On cross-examination, he clarified that he did not actually hold the criticism that he might have tried more conservative treatment before the second shoulder surgery. (RX #2, p. 23) Dr. Cohen agreed that Petitioner was more vulnerable to forces causing a rotator cuff tear. (RX #2, p. 26)

CONCLUSIONS OF LAW

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 as follows:

The Arbitrator finds that the Petitioner has met her burden of proof. In support of this finding, the Arbitrator relies on Petitioner's unrebutted testimony, the testimony of treating orthopedic surgeon Dr. Lawrence Li, and the documentary evidence submitted at the time of trial. The Arbitrator found Petitioner's testimony to be forthright and honest. The Arbitrator finds credible the Petitioner's description of injuring her shoulders while pushing a cart of food trays up an incline and controlling the momentum of a cart when returning down that same ramp on March 9, 2016. At that time, Petitioner's job required her to push a cart of food trays up an incline from the hospital kitchen to the elevator and to control a cart of food trays on that same ramp when returning to kitchen. Petitioner's unrebutted testimony is that she felt pain in her shoulders for the first time while performing the foregoing tasks. Moreover, her testimony that she had never had any prior shoulder problems is uncontroverted. The medical records, the accident report completed April 10, 2016, and the testimony of Dr. Lawrence Li also point to this event as the actual cause of Petitioner's shoulder injuries. The Arbitrator notes that Respondent's Section 12 physician did not dispute that an accident took place, but only disputed the severity of Petitioner's injury.

While the Arbitrator finds the above conclusive on this issue, the Arbitrator also notes 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." *Int'l Harvester v. Indus. Comm'n* 93 Ill. 2d 59, 63-64 (1982). Additionally, an accident need only be *a* cause of a condition of ill-being for a claimant to recover under the Act. *Schroeder v. Ill. Workers' Comp. Comm'n*, 2017 IL App (4th) 160192WC, ¶ 29.

With respect to disputed issue (E), Was Timely Notice of the Accident Given to Respondent, the Arbitrator finds as follows:

The Arbitrator finds that the Petitioner gave timely notice of her accident to Respondent. In support of this finding the Arbitrator relies on Petitioner's unrebutted testimony, the Employee Report of Occupational Injury or Illness (RX #3) completed by Petitioner the day after the accident, and the fact that this case was filed April 20, 2016, less than forty-five days after the accident.

With respect to disputed issue (F), Is Petitioner's Current Condition of Ill-Being Causally Related to the Injury, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner sustained accidental injuries to her bilateral shoulders as a result of the accident on March 9, 2016. In support of this finding the Arbitrator relies on Petitioner's unrebutted testimony that she did not have any previous treatment directed to her shoulders prior to the accident, that she underwent consistent and extensive treatment following the March 9, 2016, the medical records and testimony of her treating physician, Dr. Lawrence Li.

Dr. Lawrence Li testified that Petitioner's bilateral shoulder injuries were caused by pushing a cart up an incline and resisting the cart on the decline described by Petitioner in her initial office visit. (PX #1, pp. 32-33) Dr. Li noted that Petitioner was negotiating an incline when her right shoulder pain began and then she encountered a problem when she got out of the elevator and had to go down a decline pulling the cart to keep it from running into a wall. (PX #1, pp. 38-40) Dr. Li opined that the event described immediately above caused Petitioner's chondral injury as chondral injuries are rare in non-weight bearing joints, such as the shoulder, supporting his conclusion that Petitioner sustained traumatic injury to her shoulder. (PX #1, p. 40-41) Respondent's Section 12 examiner, Dr. Cohen, did not seriously question whether Petitioner sustained accidental injuries resulting from her work activities but suggested that Petitioner suffered no worse than strain/sprain type injuries to her shoulders. (RX #1, p. 16)

The Arbitrator notes that Dr. Cohen admitted that pushing a cart such as Petitioner pushed could at least aggravate a rotator cuff tear or impingement syndrome. To the extent that Dr. Li and Dr. Cohen disagree regarding the conditions for which Dr. Li treated Petitioner, the Arbitrator finds Dr. Li more credible. The Arbitrator finds that Dr. Li's explanation of how pushing a tall cart up an incline and controlling it down that incline caused Petitioner's injuries is credible and is consistent with Petitioner's description of accident. Moreover, her onset of symptoms at work as described in her testimony and in the Employee Report of Occupational Injury or Illness (RX #3) completed by her the day after the accident further support Dr. Li's opinion.

With respect to disputed issue (G) What Were Petitioner's Earnings, the Arbitrator finds as follows:

The Arbitrator finds Petitioner credible in her testimony that she earned $13.31 per hour, eight hours a day, three days a week. This yields an average weekly wage of $319.44. However, Respondent has submitted into evidence a calculation of average weekly wage which shows that Petitioner earned $15,411.19 in the 52 weeks before her accident, which is an average weekly wage of $296.37. The Arbitrator finds that Petitioner's average weekly wage was $296.37.

With regard to 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 Arbitrator finds as follows:

The Arbitrator notes that Respondent's section 12 physician Dr. Cohen did not agree with the use of CPM or Game Ready and believed that Dr. Li had performed more post-operative ultrasounds than were necessary. Dr. Cohen also authored a second written report which stated that arthrolysis of

Petitioner's left shoulder was not indicated because there was a ten-degree difference between active and passive abduction, but in deposition he stated that he was not sure why he had written that.

The Arbitrator finds Dr. Li's rationale for his use of CPM and Game Ready to be more persuasive than the objections of Dr. Cohen. Dr. Li testified that the use of CPM and Game Read was supported by medical literature and that he uses these significantly in his own patients. The Arbitrator also finds that Dr. Li's use of post-operative ultrasounds was well explained and well supported, as these can provide a dynamic motion view of the shoulder to determine whether the surgery remains intact and to guide treatment. The Arbitrator finds that the initial and subsequent surgeries performed by Dr. Li on Petitioner's right and left shoulders were reasonable and necessary, as were the other medical services provided to Petitioner.

Having found that Petitioner's right and left shoulder conditions are causally related to Petitioner's work accident, the Arbitrator finds that the medical bills set forth in Petitioner's Exhibit 9, represent treatment that was reasonable and necessary to treat or relieve Petitioner's condition.
The Arbitrator awards the following medical bills and orders Respondent to pay these bills subject to the fee schedule.

Orthopedic and Shoulder Center	$186,059.83
Ireland Grove Center for Surgery	$127,212.84
Ambulatory Anesthesia	$3,744.79
Prescription Partners	$41,832.25

Respondent has paid no bills and is not entitled to a credit.

With regard to issue (K), What Temporary Total Disability Benefits Are In Dispute, the Arbitrator finds as follows:

The parties stipulated that Respondent did not pay any TTD to Petitioner.

Petitioner was taken off work by Dr. Li on 4/11/16, and after conservative treatment failed, she underwent right shoulder arthroscopic surgery on May 10, 2016, followed by frozen shoulder and further right shoulder arthroscopic surgery to relieve this condition on September 20, 2016. Petitioner continued in therapy for her right shoulder and was not released to work regarding the right shoulder by Dr. Li until 11/28/16, when she was released with restrictions to limit lifting, pushing and pulling with the left arm to five pounds no over chest activity with the left arm, and over chest lifting limited to ten pounds with the right arm until further notice. Petitioner continued to treat with Dr. Li for her left shoulder and underwent surgery on her left shoulder on January 11, 2017. After that surgery, Petitioner underwent extensive rehabilitation, was released to return to work with no over chest use of left arm on May 24, 2017, and Dr. Li considered her to have plateaued in therapy on July 19, 2017.

Having found the requisite causal relationship, the Arbitrator finds that Petitioner is entitled to TTD for the period from April 11, 2016, through her plateau in therapy on July 19, 2017, a period of 66 2/7 weeks.

With regard to issue (L), What is the Nature and Extent of the Injury, the Arbitrator finds as follows:

Pursuant to Section 8.1(b) of the Act, the Arbitrator, in determining the level of permanent partial disability, must use 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 the medical records.

With regard to (i) of Section 8.1(b) of the Act, the reported level of impairment:

There was no evaluation pursuant to the American Medical Association's Guide to the Evaluation of Permanent Impairment. Therefore, the Arbitrator gives no weight to this factor.

With regard to (ii) of Section 8.1(b) of the Act, the occupation of the injured employee:

Petitioner's occupation was as a hostess and tray runner with Respondent from 1991 until March 9, 2016, approximately twenty-five years. She testified that she was notified by Respondent that during her period of treatment her job was eliminated. Her releases as to her left and right shoulders were limited with over chest lifting as to the right arm limited to ten pounds, and no over chest use of left arm. She had to load trays on a cart which was over six feet tall. Although she felt she could have resumed her former job, she clearly could not, since it would involve lifting contrary to her restrictions. The Arbitrator gives considerable weight to this factor.

With regard to (iii) of Section 8.1(b) of the Act, the age of the employee at the time of the injury:

Petitioner was 70 years old at the time of the incident and is less able than a younger person to develop job skills that accommodate her permanent restrictions. The Arbitrator gives some weight to this factor.

With regard to (iv) of Section 8.1(b) of the Act, the employee's future earning capacity:

There was no direct evidence offered regarding Petitioner's future earning capacity. However, she has not gone back to work, and it is not likely that with her restrictions she would be able to work in a similar capacity. The Arbitrator gives some weight to this factor.

With regard to (v) of Section 8.1(b) of the Act, evidence of disability corroborated by the medical records:

There was evidence of disability corroborated by the medical records, which show that Petitioner suffered right rotator cuff tear, impingement syndrome, AC joint dysfunction, grade 3 chondral injury of the humeral articular surface, and type 1 tearing of the anterior, superior, and posterior labrum. This was addressed with physical therapy, injections, and medication, and ultimately surgery. As to the right shoulder, Petitioner subsequently suffered adhesive capsulitis as a direct and proximate result of the necessary surgery for her work injury to her right shoulder. As to the right shoulder, Petitioner has permanent restrictions to no more than ten pounds of lifting over the chest.

As to the left shoulder, there was evidence of disability corroborated by the medical records, which show that Petitioner suffered left rotator cuff tear and labral tear, which was addressed with

physical therapy, injections, and medication, and ultimately surgery. As to the left shoulder, Petitioner subsequently suffered adhesive capsulitis as a direct and proximate result of the necessary surgery for her work injury to her left shoulder. As to the left shoulder, Petitioner has permanent restrictions to no work over the chest.

The evidence shows that Petitioner continues to have complaints of discomfort and pain in both shoulders, which has limited some of her activities including activities of daily life such as sleeping, cooking, cleaning, and providing care to her husband. Based on the evidence introduced at trial, the Arbitrator gives significant weight to this factor.

Based on the factors above, the Arbitrator concludes the injuries sustained by Petitioner caused a 25% loss of Man as a Whole as provided in Section 8(d)2 of the Act for her left shoulder condition of ill-being, and a 20% loss of Man as a Whole as provided in Section 8(d)2 of the Act for her right shoulder condition of ill-being.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC028447
Case Name	Brenda Hall v. Coles County Animal Shelter
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	23IWCC0103
Number of Pages of Decision	19
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Rodney Smith
Respondent Attorney	Theodore Powers

DATE FILED: 3/8/2023

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRENDA HALL,

Petitioner,

vs. NO: 18 WC 28447

COLES COUNTY ANIMAL SHELTER,

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, medical expenses, prospective medical treatment and temporary total disability benefits and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but makes a clarification as outlined below.

The Commission affirms the decision of the Arbitrator, however, clarifies the reasoning and legal analysis provided in support of the decision.

In finding that Petitioner failed to prove a compensable accident, we find Petitioner's lack of credibility to be a significant factor. Petitioner testified that she injured herself at work while weighing a dog. However, this testimony is not supported by the accident report or contemporaneous medical records.

The Employer's First Report of Injury which Petitioner completed and signed on May 2, 2018 indicated that the mechanism of injury was that her knee popped when she came down the hall and turned the corner. (Px2) Additionally, when Petitioner sought care with Dr. Mendella on May 7, 2018, she reported the mechanism of injury involved "simply walking, and felt a pop and catch to her knee." (Px3, Rx9)

The first medical record that references that Petitioner injured herself after "being jostled by a dog" was an MRI report dated July 30, 2018, almost 3 months after the accident date of May 2, 2018. (Px5)

The Application for Adjustment filed on September 26, 2018 states Petitioner twisted her knee while weighing a dog. (Ax2) However, significantly, Petitioner saw Dr. Mendella on the same day and once again reported the injury occurred while she was simply walking at work. (Px3, Rx9) Given that the contemporaneous records failed to corroborate Petitioner's trial testimony in regard to the mechanism of injury, the Commission finds Petitioner was not credible.

To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that she has suffered a disabling injury which arose out of and in the course of her employment. *Sisbro Inc. v. Industrial Comm'n*, 207 Ill.2d 193, 203 (2003). "In the course of employment" refers to the time, place and circumstances surrounding the injury. *Id.* An injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties. A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties. *Id.* At 204 (quoting *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill.2d 52, 58 (1989).

Petitioner failed to meet her burden of proof that she sustained an accident arising out of and in the course of employment. As Petitioner failed to prove accident, the Commission affirms that all other issues are moot.

All else, not otherwise inconsistent with this decision, is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 30, 2021, is hereby affirmed and adopted, but modified as set forth above.

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.

March 8, 2023

/s/ *Maria E. Portela*

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

MEP/dmm
O: 011723
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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC028447
Case Name	HALL, BRENDA v. COLES COUNTY ANIMAL SHELTER
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Rodney Smith
Respondent Attorney	R. Mark Cosimini

DATE FILED: 12/30/2021

/s/Edward Lee, Arbitrator
Signature

INTEREST RATE WEEK OF DECEMBER 28, 2021 0.21%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Brenda Hall
Employee/Petitioner
v.
Coles County Animal Shelter
Employer/Respondent

Case # **18** WC **028447**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Quincy, Illinois**, on **November 3, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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, **May 2, 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 not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this alleged 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 $**29,307.20**; the average weekly wage was $**563.60**.

On the date of accident, Petitioner was **56** years of age, ***single*** with **zero** dependent children.

Respondent ***is not*** liable for reasonable and necessary medical services.

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

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

ORDER

Petitioner failed to prove she sustained accidental injuries which arose out of and in the course of her employment.

Petitioner failed to prove her current condition of ill-being is causally related to the claimed accident.

Petitioner's claim for the payment of medical bills is denied.

Petitioner's claim for prospective medical care 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.

Edward Lee_____

Signature of Arbitrator **December 30, 2021**

FINDINGS OF FACT

Petitioner was employed by Respondent as an animal control officer. She was hired by Respondent 18 and a half years before the alleged accident. Petitioner testified that on May 2, 2018, she was weighing cats and dogs for surgery. She struggled with a 94-pound dog while trying to keep the dog on a scale. Petitioner testified she was jostled by the dog and felt something in her right knee. When she tried to walk out of the room, she was limping.

Petitioner further testified that at the time of the incident with the dog, she was in a half crouch position leaning into the dog to try and keep the dog still. Petitioner indicated she thought it was more of a twist of her knee.

Following the incident, Petitioner testified she went to the front office and reported it to her supervisor. Petitioner testified she told her supervisor she "really messed up her knee."

Petitioner next testified she completed an accident report, and she described the portion of the report which is in her handwriting. (Px 2)

The portion of the accident report in Petitioner's handwriting indicates Petitioner was weighing cats for surgery. She came down the hall and turned a corner when her right knee popped. She felt a burning sensation. (Px 2)

During the direct exam portion of Petitioner's testimony, she stated she did not realize what she wrote until she had already done it.

Petitioner testified that after feeling a pop in her knee, she pretty much stayed up front at the desk for the rest of the day.

Petitioner worked for the next couple of days and saw Dr. Mendella, an orthopedic surgeon, May 7, 2018.

With respect to Petitioner's job duties, she testified her duties included going out and trying to catch stray dogs. She described the position as requiring a lot of physical activities. Petitioner continued to perform her job duties following the claimed incident with the dog. She also testified she had swelling and fluid on her knee following the incident with the dog and experienced pain after being on her knee all day. Petitioner further testified she drove from Effingham where she lived to Charleston for work, and that did not help her knee any.

Following the claimed incident, Petitioner reported that while she continued to perform her regular job duties, she usually went with another animal control officer when trying to catch strays.

Petitioner testified Dr. Mendella recommended surgery on the right knee, and Petitioner wants to undergo the recommended surgery. She described her current condition as being in a lot of pain especially after being on her knee during the regular work day. She testified to being limited with respect to walking, going up inclines, and going up steps.

On cross exam, Petitioner acknowledged having previous treatment on both knees. The pre-accident treatment included meniscus tears in both knees. Petitioner acknowledged she did not sustain any type of accident which caused the meniscus tears. Petitioner testified she has arthritis.

Petitioner testified she had one prior surgery on her right knee as well as a couple of arthroscopic procedures and a knee replacement on her left knee.

Respondent's exhibits include an MRI taken of the right knee September 15, 2006. The report indicates Petitioner had an osteochondral defect or fracture of the posterior lateral tibial condyle and a tear of the medial meniscus. (Rx 1)

Dr. Gaylin Lack evaluated Petitioner October 12, 2006, and he recommended surgery on the right knee. (Rx 2)

Dr. Lack performed surgery on Petitioner's right knee October 13, 2006. The procedures included an arthroscopic chondroplasty of the medial femoral condyle and the patella as well as a debridement of a posterior lateral meniscus tear. (Rx 3)

Petitioner saw Dr. Louis Mendella August 1, 2008. Petitioner complained of bilateral knee pain with the left being worse than the right. Dr. Mendella noted the onset of the problem dated back many years and had progressively persisted and increased in severity. Petitioner told Dr. Mendella that over the previous six months, she experienced a significant increase in pain and discomfort. She denied any recent accident or associated injury. Petitioner reported having undergone surgery ten years prior with Dr. Bonutti and then surgery with Dr. Lack in 2006. Petitioner reported experiencing popping, clicking, and occasional locking to both knees with the left being worse than the right. She also complained of pain when going up and down stairs and with bearing weight for any period of time. Dr. Mendella administered an injection to each knee, and Petitioner reported some improvement immediately after the injections. (Rx 4)

In 2010, Petitioner received additional treatment for her left knee. Petitioner complained to Dr. Mendella of increased pain and discomfort in her left knee especially with going up and down stairs. She complained of popping and clicking in the knee. Petitioner denied any new accident or associated injury. Dr. Mendella diagnosed Petitioner with mild to moderate degenerative joint disease with clinical signs of patellofemoral pain syndrome with possible meniscal pathology. Dr. Mendella injected Petitioner's left knee. (Rx 5)

Dr. Mendella performed surgery on Petitioner's left knee February 25, 2010. The procedures included a partial medial meniscectomy for a complex tear; an abrasion chondroplasty of the patella, trochlea and medial compartment; a partial synovectomy; and Dr. Mendella administered a post-operative injection for pain relief. (Rx 6)

Dr. Mendella performed a left total knee replacement May 25, 2012. (Rx 7)

When discussing the claimed work accident on cross exam, Petitioner testified the incident with the dog was enough to cause her to limp. She acknowledged she did not mention the incident with the dog on the accident report. She also acknowledged coming down a hall, turning a corner, and her knee popping. Petitioner testified she told Dr. Mendella about the popping sensation in her knee. She also testified she told Dr. Mendella about the incident with the dog.

Petitioner further testified it was after the pop in her knee while walking when she filled out the accident report. She testified she reported to her boss when she started limping, and after the popping sensation, she filled out the accident report.

Petitioner testified she was not carrying anything at the time her knee popped. She also testified there was nothing spilled on the floor and there were no defects on the floor. She further testified there was nothing unusual about the hallway where her knee popped.

Petitioner testified that at the time her knee popped, she was going to the front of the office to make sure the surgical list was put together for the veterinarian. She acknowledged she was on her way to perform a job duty.

With respect to Petitioner's symptoms, she testified she initially experienced pain on the inside of her knee, but the pain progressed to involving the whole knee. She testified her symptoms did not go back and forth between the inside part of the knee to the outside part of the knee.

Following the claimed accident May 2, 2018, Petitioner first reported to Dr. Mendella May 7, 2018. Petitioner complained of right knee pain and discomfort. She provided a history of "simply walking, and felt a pop and a catch in her knee." Petitioner complained of intractable pain and discomfort with difficulty squatting, stooping, kneeling, and going up and down stairs. On exam, Dr. Mendella noted no swelling, edema, or discoloration. Petitioner was tender at the posterior aspect of the knee as well as over the medial and lateral joint lines. X-rays taken at that time revealed subtle narrowing about the medial joint space more than the lateral side. (Px 3)

After reviewing the records from Dr. Lack in 2006, Dr. Mendella diagnosed Petitioner with mild to moderate degenerative joint disease in the right knee with an acute exacerbation of right-sided knee pain and discomfort. He thought the clinical exam was consistent with possible meniscal pathology and chondromalacia of the patella. He administered a steroid injection to the right knee and indicated an MRI may be necessary. (Px 3)

On June 6, 2018, Dr. Mendella's clinical exam revealed a McMurray's test accentuated Petitioner's pain and discomfort. Petitioner reported the steroid injection did not provide long term relief. Dr. Mendella ordered an MRI study. (Px 3)

An MRI of the right knee was performed July 30, 2018. The report identifies complex tearing of the free edge of the lateral meniscus which was blunted. The radiologist thought the tear demonstrated a horizontal component. Additionally, an articular cartilage fissuring

irregularity was identified at the weight bearing lateral compartment. Similarly, an articular cartilage fissuring and irregularity was noted on the weight bearing medial femoral condyle. Finally, patellofemoral chondromalacia with an articular cartilage thinning irregularity and a full-thickness fissuring with subchondral fibrocystic changes were identified. (Px 5)

Following the MRI, Petitioner returned to Dr. Mendella's office August 16, 2018 when she was evaluated by Dr. Donald Sandercock. On exam, Dr. Sandercock noted medial joint line tenderness with no instability and good strength. A positive McMurray's test was noted. Dr. Sandercock interpreted the MRI to show an edge tear of the lateral meniscus and chondromalacia in the anterior and medial compartments. (Px 3)

Petitioner returned to see Dr. Mendella September 26, 2018. Dr. Mendella commented Petitioner was still having difficulty with various activities. He noted the onset of Petitioner's problem dated back several months prior to when Petitioner was walking at work and felt a popping and catch in her knee. Dr. Mendella's clinical exam noted a McMurray's test accentuated Petitioner's pain and discomfort and reproduced a mechanical catch. He did not identify any instability, and there were no obvious focal deficits. Dr. Mendella recommended a diagnostic arthroscopy of the right knee with a partial meniscectomy, synovectomy, and all indicated procedures. (Px 3)

Two days prior to the September 26, 2018 evaluation by Dr. Mendella, Petitioner filed the Application for Adjustment of Claim which alleges Petitioner twisted her knee when weighing a dog. (Arb. x2)

After more than a year, Petitioner returned to see Dr. Mendella October 4, 2019. X-rays taken at that time revealed degenerative and post-operative changes. Petitioner complained of ongoing pain in her knee as well as issues with her right foot. (Px 3)

At the request of Respondent, Petitioner was evaluated by Dr. John Krause January 27, 2020. Petitioner provided a history of wrestling a dog to keep him on a scale and twisting her right knee. She also indicated following the incident with the dog, she had pain in her knee. She was then walking down a hall and felt a pop in her knee. On exam, Dr. Krause noted a positive medial-sided McMurray's test but a negative lateral-sided McMurray's test. Petitioner did not complain of any medial joint line tenderness, but she did complain of lateral joint line tenderness. (Rx 8, Deposition Exhibit 2)

Following his evaluation of Petitioner and review of the medical records, Dr. Krause concluded Petitioner should have had more non-operative treatment for the right knee including a steroid injection. He diagnosed Petitioner with a right knee sprain as a result of the incident May 2, 2018. He further opined the degenerative joint disease in the right knee was not related to the May 2, 2018 incident. He also commented he was not convinced Petitioner had a lateral meniscus tear based on her exam and medical records. (Rx 8, Deposition Exhibit 2)

After receiving and reviewing the MRI films from July 30, 2018, Dr. Krause prepared an addendum report dated July 22, 2020. He interpreted the MRI films to show post-surgical

changes on the right lateral meniscus. He did not believe there was any evidence of new lateral meniscal pathology. Based upon his review of the films, Dr. Krause was not recommending surgical treatment on the lateral meniscus. He still thought a steroid injection would be acceptable if Petitioner was having pain. He indicated Petitioner would be at maximum medical improvement two weeks after the injection. As Petitioner was still working with no restrictions, he did not believe any restrictions were necessary. (Rx 8, Deposition Exhibit 2)

After almost another year, Petitioner saw Dr. Mendella August 17, 2020. The note contains a history of Petitioner working for Respondent in May 2018 and weighing a dog that was fairly large and heavy. The note indicates Petitioner sustained a twisting and buckling episode of the knee followed by intractable pain and discomfort. Dr. Mendella noted Petitioner had trials with conservative measures including anti-inflammatory medications, activity modification and therapy. Dr. Mendella again recommended surgery on the right knee. (Px 3)

Both Dr. Mendella and Dr. Krause testified by way of evidence deposition. Dr. Mendella testified February 15, 2021. He testified to his qualifications including being a chiropractor for several years. He went to medical school at Nova Southeastern University and conducted his residency at University of Medicine and Dentistry of New Jersey. Dr. Mendella testified he was board certified. (Px 1, pgs. 4-5, Dep. Exhibit 1)

Dr. Mendella testified about Petitioner's pre-accident history of treatment on her knees. He also testified that on May 7, 2018, Petitioner provided a history of walking and feeling a pop and catch in her knee followed by pain and discomfort. (Px 1, pg. 9)

Following his evaluation of Petitioner, Dr. Mendella testified he thought there might be pathology on both sides of the knee and recommended an MRI study. (Px 1, pg. 12)

Dr. Mendella interpreted the MRI to show mild to moderate chondromalacia, a lateral meniscus tear, and possibly a medial meniscus tear. (Px 1, pg. 14)

Dr. Mendella recommended surgery September 26, 2018 based upon Petitioner having clinical and diagnostic evidence of a lateral meniscus tear as well as mild to moderate chondromalacia of the patella. (Px 1, pgs. 16-17) Dr. Mendella interpreted the issues to be related to a torsional or twisting injury which places stress on the meniscus. (Px 1, pg. 19)

On cross exam, Dr. Mendella acknowledged Petitioner's size causes undo stress on the joints including the knees and potentially causes the degeneration to accelerate more quickly. (Px 1, pgs. 30-31) Dr. Mendella also testified Petitioner had pathology in all three compartments of her knee including degeneration as far back as 2006. He testified the natural history is for the degenerative changes to progress over time. (Px 1, pg. 30)

When discussing Petitioner's treatment in 2008, Dr. Mendella acknowledged Petitioner had symptoms which including popping, clicking, and occasional locking in the right knee as well as pain when going up and down stairs. He indicated the mechanical symptoms were

consistent with a meniscus tear and were also consistent with arthritic changes. (Px 1, pg. 31)

When discussing the claimed work accident, Dr. Mendella acknowledged Petitioner did not provide any history of a torsional injury. There was also no history of a blunt trauma to the knee. His first exam did not reveal any swelling, edema, or discoloration, but the McMurray's test accentuated Petitioner's pain. Dr. Mendella acknowledged the clinical findings following the claimed work accident were similar to the findings made in August 2008. He could not say if there were any differences. (Px 1, pgs. 32-34)

Also on cross exam, Dr. Mendella indicated that simply walking is typically not the type of activity which would cause a meniscus tear. (Px 1, pg. 36)

When talking about his evaluation of Petitioner in October 2019, Dr. Mendella again indicated the clinical findings were the same as in 2008. However, the history included a buckling and twisting injury to the right knee. Dr. Mendella did not have any information as to Petitioner's activities between the fall of 2018 and the fall of 2019. (Px 1, pg. 44-45)

Dr. Mendella testified he had not seen Petitioner since August 17, 2020 at which time Petitioner complained of ongoing pain and discomfort in the knee. (Px 1, pg. 46)

Dr. John Krause testified by way of evidence deposition June 25, 2021. (Rx 8)

After attending college at the U.S. Air Force Academy, Dr. Krause obtained his medical degree from Washington University School of Medicine in St. Louis. He did his residency at Washington University and then a fellowship at Baylor University. Dr. Krause is board certified by the American Board of Orthopedic Surgeons. (Rx 8, Deposition Exhibit 1)

Dr. Krause testified his specialty is in orthopedic surgery with a sub-specialty in the lower extremity. His practice deals primarily with knees and ankles. (Rx 8, pgs. 5-6, Dep. Exhibit 1)

Dr. Krause testified the treatment Petitioner received in 2006 on her right knee included surgery for all three compartments of the knee. He interpreted the MRI study from 2006 as well as the X-rays from 2018 and 2019 to show degenerative disease in all three compartments of the right knee. (Rx 8, pgs. 16-20)

Dr. Krause testified that at the IME, Petitioner provided a history of trying to get a dog on a floor scale and had to wrestle with the dog to keep him on the scale. In doing so, she twisted her right knee. Petitioner further reported having pain in her knee and later that same day having a pop in her knee when walking down a hall. (Rx 8, pg. 20)

Dr. Krause testified walking down a hallway is a not a competent mechanism of injury to cause a meniscus tear. (Rx 8, pg. 22)

The clinical exam performed by Dr. Krause revealed a positive McMurray's sign on the medial side of the right knee. It was negative on the lateral side. In contrast, Petitioner complained of no joint line tenderness on the medical side and positive joint line tenderness on the lateral side. Dr. Krause interpreted the findings to show symptoms consistent with a medial meniscus tear or more commonly, arthritis in the medial compartment. (Rx 8, pg. 25) He further explained it was inconsistent to be planning on doing a lateral-sided surgery when the symptoms were more on the medial side. (Rx 8, pg. 26)

Dr. Krause diagnosed Petitioner with a right knee sprain. (Rx 8, pg. 26) His diagnosis was based upon Petitioner's history, MRI studies, and X-rays as well as on his physical exam. (Rx 8, pg. 27)

In support of his opinion, Dr. Krause explained that in June 2018, Petitioner complained of both medial and lateral-sided symptoms. However, Dr. Sandercock's note from August 16, 2018 only mentioned medial-sided symptoms. Dr. Krause noted that when an MRI does not show pathology in the area of the pain complaints, treatment should not be provided for other pathology. (Rx 8, pg. 28)

At the time of the IME, Dr. Krause did not have the MRI films from 2018. He thought a steroid injection would be appropriate as it helped Petitioner in the past. He further noted that if Petitioner had a clear meniscal tear, then it would be causally related to the claimed work accident. (Rx 8, pg. 29)

Dr. Krause then testified about his review of the MRI films which was set forth in his report dated July 22, 2020. He interpreted the films to show degenerative changes in several areas of the knee. He noted there were changes in the leading edge of the lateral meniscus following the previous surgery. He did not believe the films showed an acute lateral meniscus tear. (Rx 8, pg. 35) Dr. Krause further explained the leading edge of the lateral meniscus was missing, and he did not see any changes in color such as a white line going through the meniscus to show an acute tear. (Rx 8, pgs. 36-37)

Dr. Krause also had an opportunity to review the deposition testimony of Dr. Mendella. Dr. Krause testified Dr. Mendella was recommending a partial meniscectomy, synovectomy, and abrasion chondroplasty. Dr. Krause explained the lateral free edge tear is a very thin portion of the meniscus and is not structural and does not cause symptoms. (Rx 8, pg. 46) He also explained the pathology noted on the MRI is from the prior surgery. (Rx 8, pg. 48) He further explained he disagreed with Dr. Mendella that Petitioner had new tears in the meniscus which could be made better with surgery. He noted the meniscus findings were not causing symptoms in Petitioner's knee and if Dr. Mendella messed with the menisci, they were going to get worse. Similarly, Dr. Krause testified if an abrasion chondroplasty was performed, Petitioner would get worse and it would hasten the need for a knee replacement. (Rx 8, pgs. 52-54)

Dr. Krause concluded Petitioner's right knee sprain was resolved and she did not need any ongoing treatment. He noted Petitioner may eventually need a knee replacement from her

pre-existing joint disease which had been present since at least 2006. He again noted any future treatment would not be related to the May 2, 2018 incident. (Rx 8, pgs. 57-58)

On cross exam, Dr. Krause indicated the inflammation in Petitioner's knee was caused by arthritis. He further explained the MRI study did not show the arthritis was worsened or changed as a result of the accident. He testified the arthritis was also causing the pain in Petitioner's right knee. (Rx 8, pgs. 74, 77)

On re-direct, Dr. Krause testified there was no objective evidence Petitioner's twisting injury aggravated her knee. (Rx 8, pg. 82) Furthermore, Petitioner's right knee sprain resolved during the gap in treatment for the knee when Petitioner was treating for her foot. (Rx 8, pg. 84)

Following Petitioner's testimony and the submission of each party's exhibits, the Arbitrator took the matter under advisement.

CONCLUSIONS OF LAW

In support of the Arbitrator's Decision relating to whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator states as follows:

There are two versions of events describing how Petitioner allegedly injured her right knee. On May 2, 2018, the same day as the claimed accident, Petitioner hand wrote a report indicating she was weighing cats, and separately, she was walking down a hall, went around a corner and her right knee popped. When she went to the doctor a few days later, she provided a history of "simply walking" and feeling a pop in her knee followed by pain and discomfort.

Nearly five months later on September 24, 2018, Petitioner filed an Application for Adjustment of Claim alleging injuries to her right knee as a result of twisting her knee when weighing a dog. The history provided to Respondent's IME doctor in January 2020 included the incident with the dog. Additionally, the history portion of Dr. Mendella's note in August 2020 includes a history of the incident with the dog.

When assessing the facts and circumstances of the claimed accident, the case of *Shell Oil v. Industrial Commission,* 2 Ill.2d 590 (1954) is instructive. In that case, the Illinois Supreme Court found the declarations of an injured person to his treating physician as to his physical condition and the cause thereof are admitted in evidence for the reason that it is presumed a person will not falsify such statements to a physician from whom he expects and hopes to receive medical aid.

The question here is whether the histories provided most contemporaneous with the accident are more credible than those provided after litigation ensued. In light of the *Shell Oil* case and considering the amount of time which elapsed from the claimed accident date until the first mention of an incident with a dog, the Arbitrator finds the histories provided most contemporaneous with the claimed accident are the most credible. Consequently, the analysis of Petitioner's accident is based upon her walking and feeling a pop in her knee.

The next question is whether the mere act of walking constitutes an accident which arose out of and in the course of Petitioner's job duties.

When analyzing whether an injury arose out of the employment, it is necessary to first determine the nature of the risk to which the employee was exposed. The risks include (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. *McAllister v. IWCC*, 2020 IL 124848.

In the case of *McAllister v. IWCC*, 2020 IL 124848, the Illinois Supreme Court determined the appropriate analysis in determining whether injuries sustained as a result of a common bodily movement constituted an employment related injury was set forth in the case of *Caterpillar Tractor Co. v. Industrial Commission,* 129 Ill.2d 52 (1989). In *Caterpillar,* the

Illinois Supreme Court concluded a risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties.

No evidence was presented establishing Petitioner was specifically instructed to walk to the front desk to check the surgical list or that walking was even a work related act. Similarly, no evidence was presented suggesting Petitioner had a duty to perform that activity. The only factor to consider is whether Petitioner's act of simply walking was incidental to her assigned duties.

Here, Petitioner testified she was on her way to review the surgical list for the veterinarian when her knee popped. In contrast to the facts of *McAllister* when the claimant was squatting down while searching for an item, here, Petitioner was on her way to perform a job duty. She was not actually performing a job duty at the time her knee popped.

If the mere act of walking from one location to another in order to perform a job duty is classified as being incidental to the employment duties, then a determination would be made essentially imposing strict liability on an employer for any injury sustained in the work place. Such a determination would violate the Illinois Supreme Court edict set forth in *Greater Peoria Mass Transit District v. Industrial Commission,* 81 Ill.2d 38 (1980). In *Greater Peoria Mass Transit District,* the Illinois Supreme Court held that to be entitled to benefits under the Workers' Compensation Act, more is required than the fact of an occurrence at the employee's place of work.

The Arbitrator declines to find the mere act of walking in the work place constitutes an activity incidental to the employment.

With Petitioner's injuries not arising from a risk incidental to her employment, the next step is to determine whether her injuries are from a personal risk or a neutral risk. Petitioner has a long history of issues with her knees. She was noted to have degenerative changes in her right knee more than ten years prior to the alleged work accident. She underwent an arthroscopic procedure addressing issues in all three compartments of her right knee in 2008. Significantly, Petitioner had mechanical issues such as popping and catching in her right knee ten years prior to the claimed work accident. Notwithstanding Petitioner's testimony that her knee was fine prior to the work accident, the Arbitrator finds the injury to Petitioner's right knee was due to a personal risk.

The Illinois Supreme Court has definitively established, injuries sustained as a result of a personal risk do not arise out of the employment. See, *Orsini v. Industrial Commission*, 117 Ill.2d 38 (1987). In *Orsini*, the Court further explained the risk of harm to the claimant was not increased by any condition of the employment premises.

As in the *Orsini* case, Petitioner was not exposed to an increased risk of harm as a result of the employer's premises. Petitioner testified nothing was spilled on the floor and there were no defects or abnormalities in the area where her knee popped.

It is significant to note Dr. Mendella diagnosed Petitioner with a lateral meniscus tear and possibly a medial meniscus tear. However, he also testified the mere act of walking is generally not the type of activity which would cause a meniscus tear. Additionally, Petitioner underwent a previous arthroscopic surgery on her right knee for a meniscus tear despite not sustaining any type of accident. She also underwent two arthroscopic procedures and a knee replacement on her left knee without sustaining any type of accident.

Considering these facts and including the testimony of Dr. Krause who indicated the pathology noted on the July 30, 2018 MRI did not include any acute changes, the Arbitrator finds the most likely cause of the pop in Petitioner's right knee May 3, 2018 was due to the progressive degenerative changes in her right knee and was therefore a personal risk. As such, Petitioner's injuries did not arise out of and in the course of her employment.

To the extent Petitioner's act of "simply walking" is a neutral risk, no evidence was presented to suggest Petitioner's injury was due to a risk to which she was exposed to a greater extent than the general public on either a qualitative or quantitative basis. As such, even if Petitioner's act of walking is classified as a neutral risk, Petitioner's injuries did not arise out of her employment. See, *Noonan v. Illinois Workers' Compensation Comm'n*, 65 N.E.3d 530 (1st Dist. 2017).

The Arbitrator concludes Petitioner's injury arose out of a personal risk and is therefore not compensable.

In support of the Arbitrator's Decision relating to whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator states as follows:

In addition to the findings and conclusions set forth above, the Arbitrator finds Petitioner failed to prove her current condition of ill-being is causally related to the alleged work accident.

Petitioner's injuries arose when her knee popped while simply walking. The Arbitrator finds the testimony of Dr. Krause was more credible than the testimony of Dr. Mendella. Dr. Krause testified Petitioner's subjective complaints were due to the longstanding degenerative changes in her right knee. Dr. Krause's opinion is supported by Petitioner having similar degenerative changes including meniscus tears in her left knee as well as a previous meniscus tear in her right knee none of which were caused by accidents or injuries.

Dr. Krause testified the findings noted on the MRI study performed July 30, 2018 were consistent with longstanding and post-operative changes in the right knee. There was no evidence of an acute tear or other acute pathology which would explain Petitioner's symptoms.

Additionally, Dr. Mendella attributed the need for the recommended surgery on Petitioner's right knee to a twisting or torsional injury, but he acknowledged the history of Petitioner's knee popping while "simply walking" was not consistent with a torsional or twisting injury.

With the mechanism of injury not being consistent with the pathology noted on the MRI films, and with the longstanding history of difficulty Petitioner had with her knees including similar clinical findings between 2008 and 2018, the Arbitrator finds Petitioner failed to prove a causal relationship between her current condition of ill-being and the claimed work accident.

In support of the Arbitrator's Decision relating to whether the medical services that were provided to Petitioner were reasonable and necessary, the Arbitrator states as follows:

Based upon the Arbitrator's findings and conclusions set forth above, Petitioner's claim for the payment of medical bills is denied.

In support of the Arbitrator's Decision relating to whether Petitioner is entitled to prospective medical care, the Arbitrator states as follows:

Based upon the Arbitrator's findings and conclusions set forth above, Petitioner's claim for prospective medical treatment relating to her right knee is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC013179
Case Name	John E Huelsmann v. State of Illinois – Illinois Department of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0104
Number of Pages of Decision	16
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Gregory Shevlin
Respondent Attorney	Aaron Wright

DATE FILED: 3/8/2023

/s/Maria Portela, 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

JOHN HUELSMANN,

Petitioner,

vs. NO: 12 WC 13179

SOI, DEPARTMENT OF TRANSPORTATION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causation, medical expenses, prospective medical treatment, temporary total disability benefits and permanent partial disability 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 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 modifies the award of total temporary disability benefits beginning February 22, 2011 through August 25, 2015 for a period of 235 1/7 weeks.

The Commission corrects the scrivener's error contained under the heading "Findings of Fact" in the first sentence of the 8th paragraph to correct the last day worked from "February 20, 2011" to "February 22, 2011".

Finally, the Commission finds that this matter is ripe for a determination of permanent partial disability benefits and remands this case to the Arbitrator to determine same.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $880.45 per week for a period of 235 1/7 weeks, from February 22, 2011 through August 25, 2015, 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 Exhibit 4 under §8(a) of the Act subject to the fee schedule in §8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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.

March 8, 2023

/s/ *Maria E. Portela*

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

MEP/dmm
O: 011723
49

ILLINOIS WORKERS' COMPENSATION COMMISSION 23IWCC0104
NOTICE OF ARBITRATOR DECISION
CORRECTED

HUELSMANN, JOHN Case# **12WC013179**
Employee/Petitioner

ILLINOIS DEPT OF TRANSPORTATION
Employer/Respondent

On 10/13/2016, 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 0.49% 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:

0135 COOK YSURA BARTHOLOMEW ET AL
STEPHEN M KERNAN
12 W LINCOLN ST
BELLEVILLE, IL 62220

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

4948 ASSISTANT ATTORNEY GENERAL
WILLIAM PHILLIPS
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SWANSEA, IL 62226

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601-3227

1430 CMS BUREAU OF RISK MANAGEMNET
WORKERS' COMPENSATION MANGER
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

OCT 13 2016

RONALD A. RASCIA, Acting 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
CORRECTED ARBITRATION DECISION

John Huelsmann
Employee/Petitioner

v.

Illinois Department of Transportation
Employer/Respondent

Case # **12** WC **13179**

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 **Michael Nowak**, Arbitrator of the Commission, in the city of **Collinsville**, on **08/25/15**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **02/22/11**, 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 **$68,675.00**; the average weekly wage was **$1,320.67**.

On the date of accident, Petitioner was **61** 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 any amount paid by group under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of as set forth in Petitioner's Exhibit 4, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $880.45/week for 78 3/7 weeks, commencing 2/22/14 through 8/25/15, 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.

Michael K. Nowak, Arbitrator

10/4/16
Date

OCT 13 2016

FINDINGS OF FACT

Petitioner is a 61 year old highway maintainer for the Illinois Department of Transportation (IDOT). Prior to coming to work for Respondent, Petitioner performed heavy manual labor jobs throughout his work life. Petitioner began working for Respondent on October 16, 2001. Petitioner was a manual laborer whose duties required heavy lifting and use of his upper extremities. His duties included shoveling, asphalt patching, hoisting debris into the back of dump trucks, digging, chain sawing, and hauling logs and brush with his arms. Petitioner testified that the debris they would pick up off of the highways included deer carcasses, truck wheels with spare tires on them, frequently retreads from the tires of semi-trailers, and occasionally things such as kitchen appliances. He worked "signs" much of the time which required handling 4 inch by 4 inch sign posts. Digging out the old posts and replacing them with new ones. He also operated various pieces of equipment such as back hoes, graders, and dump trucks which required him to pull himself up into the cab of the machines.

Petitioner testified that in 2002 they encountered a freezer on the highway. In the process of tossing the freezer into the dump truck he felt something pull in his shoulder. He reported the incident to Respondent but did not pursue a claim. He testified that he had some physical therapy which helped and he was able to continue working. Performance reviews for 2001 up to 2011 show that Petitioner was performing all of his duties either satisfactorily or highly satisfactorily. (RX 12)

Petitioner testified that between 2002 and 2010 his shoulder symptoms progressed to the point that by late 2010 he was unable to operate the levers of a backhoe with his right arm. The first medical treatment Petitioner sought for his shoulders following the treatment in 2002 was on May 24, 2010, when he presented to Dr. Matthew Bayes at the Orthopedic Center of St. Louis. His chief complaint was chronic right shoulder pain. Bayes noted Petitioner had an incident in 1965 when he fell off a horse and believed he dislocated his shoulder at that time. Petitioner had dealt with on and off pain for the last 40 years. The doctor also noted Petitioner had been very active working as both a farmer and a highway maintenance main. Dr. Bayes performed a physical exam and took x-rays of Petitioner's shoulder, which revealed a large amount of glenohumeral arthritis with bone spurs present on both humeral head and the glenoid cavity. Dr. Bayes diagnosed Petitioner with right shoulder glenohumeral joint osteoarthritis. Dr. Bayes recommended a Synvisc injection as well as glucosamine and chondroitin and Aleve twice a day.

On June 11, 2010, Petitioner returned to Dr. Bayes, who administered the Synvisc injection. Dr. Bayes noted Petitioner had no change in status following the Synvisc injection. Dr. Bayes recommended Petitioner continue taking glucosamine and chondroitin and have a Synvisc injection every six months.

On September 15, 2010, Petitioner called IDOT's "1-800 number" and reported an injury. As a result, an Illinois Form 45: Employer's First Report of Injury was generated. On that form, it states that on June 2, 2002, "while loading a chest type freezer onto a large truck, worker injured his right shoulder." (RX 2, P 1)

On September 19, 2010, Petitioner filled out an Employee's Notice of Injury, stating that on June 10, 2002, "Larry Kues and myself were on road patrol and came across a deep freeze, we loaded it on the back of the three ton truck." Petitioner stated that he had given notice of this injury to Michael A Weber on June 17, 2002 at 3:00 pm. For Describe Injury, Petitioner wrote "pulled something in shoulders." For Additional Details How Injury Occurred, Petitioner wrote, "There was a small amount of damage done in the shoulders in 02." Underneath that, it says: "The wear and tear on a daily basis is doing more damage to the right shoulder because

I am right handed. A non-surgical doctor was sought because of pain on May 26, 2010 from the Sports Medicine Institute Orthopedic Center of St. Louis: Dr. Matthew C. Bayes. On June 11, 2010, I received an injection in the right shoulder from Dr. Bayes. The shoulder is still quite painful and the injection did not help the pain. I have limited lifting ability in my right arm and the damage that occurred is getting worse on a daily basis. (RX 3, P 2)

On November 24, 2010, Petitioner saw Leesa Galatz, highly respected board certified orthopedic surgeon at Washington University Orthopedics. Dr. Galatz noted Petitioner had right shoulder pain for the last two years. She noted Petitioner does manual labor and had been a highway maintainer for the last several years, which often requires heavy lifting. Dr. Galatz noted that Petitioner reported having to ask colleagues for assistance with heavy activity for the last few years. (RX 15, P 28) Petitioner reported that his pain has gotten worse and over the last six months was rapidly becoming intolerable. Petitioner reported mostly an aching pain in his shoulder with occasional sharp pain. Petitioner reported his pain was better with rest and that he did have night pain. Dr. Galatz noted Petitioner had injections in the past that did not give him any permanent relief. (RX 15, P 28) Dr. Galatz took x-rays and diagnosed Petitioner with "arthritis with glenoid hypoplasia and severe retroversion as above." Dr. Galatz stated that she did not feel that a reverse shoulder arthroplasty would be good for Petitioner. Dr. Galatz discussed a total shoulder replacement with Petitioner, but also informed him that it would be particularly challenging, as he had glenoid hypoplasia. Dr. Galatz stated that glenoid hypoplasia was a severe bone deficiency on the glenoid side and that would complicate reconstruction significantly and give him a significantly increased risk for postoperative posterior instability. Dr. Galatz warned Petitioner that she might not be able to put in a glenoid component, but that they would try their best. (RX 15, P 28)

Petitioner testified that February 20, 2011 was his last day working for the Respondent and that he stopped working at that time to have surgery performed on his right shoulder. He testified that in the year and a half or so preceding February of 2011 he began to notice issues with his right shoulder. He testified that these issues began as noise like popping and clicking in the shoulder which developed into a more painful condition with use of the shoulder, finally ending in almost constant pain. He testified that as his shoulder problems developed he would discuss them with people at work including Dale Haukaub, Jason Rekenhaus and Kenny Varel. He testified that they all knew that his shoulder was bad and that he was taking off to have surgery. Mr. Rekenhaus was Petitioner's supervisor while at IDOT.

On February 24, 2011, Petitioner underwent a right shoulder hemiarthroplasty. He was discharged on February 26, 2011. (RX 15, P 45) On March 9, 2011, Petitioner returned to Dr. Galatz, who noted Petitioner had a "severly hypoplastic glenoid, so we did a hemiarthroplasty for his advanced osteoarthritis." Petitioner was complaining of some pain, noting that he was only taking Tylenol, as his narcotic medication was making him sick. (RX 15, P 21) Dr. Galatz prescribed Petitioner physical therapy and gave him a home exercise program for stretching. She emphasizing the importance of early range of motion. Dr. Galatz asked to see Petitioner back in 4 weeks. (RX 15, P 21)

On March 24, 2011, Petitioner sought FMLA leave from Respondent "for the purpose of Non-Occupational Disability." (RX 4, P 2)

On April 13, 2011, Petitioner returned to Dr. Galatz, who noted he had very good pain relief. Petitioner reported a lot of difficulty getting his range of motion back. Petitioner reported he had started physical therapy. Dr. Galatz recommended continuing with physical therapy and returning in six weeks. (RX 15, P 18) On June 1, 2011, Petitioner returned to Dr. Galatz, who noted he was going fairly well, although he had been a little slow

getting his range of motion and strength back. Dr. Galatz recommended continuing with physical therapy and returning in four months. (RX 15, P 17)

On June 11, 2012, Petitioner filled out an Employee's Notice of Injury, listing February 22, 2011 as the date of injury. For What Duty Were You Performing, Petitioner stated: "Highway Maintainer." For Place Where Injury Occurred, Petitioner wrote: "Working out of Carlyle Yard daily." For Detail How Injury Occurred, Petitioner wrote: "Repetitive Use of Shoulders see attached report." For Describe Injury, Petitioner wrote: "Both Shoulders." Further, Petitioner wrote that he had reported the injury to his supervisor, Jason Rekenhaus; Petitioner wrote: "I explained occasionally that the job was hurting my shoulders." (RX 6, P 1)

On June 26, 2012, Jason Rekenhaus filled out a Supervisor's Report of Injury that listed an accident date of 6/10/02. (RX 7, P 2) On July 3, 2012, Respondent sent Petitioner a denial letter through his attorney, "Jonathan Isbell, PO Box 596, Edwardsville, IL 62025." (RX 8, P 1)

On August 3, 2011, Petitioner returned to Dr. Galatz, who noted he had was doing fairly well, although his shoulder wasn't remarkable strong. (RX 15, P 14) On October 19, 2011, Petitioner returned to Dr. Galatz, who noted he hadn't been exercising much as he had a recent death in his family. Dr. Galatz noted Petitioner's shoulder had not changed. Dr. Galatz noted Petitioner was having left shoulder pain, as well. Dr. Galatz noted Petitioner did not want to have his left shoulder operated on. Dr. Galatz recommended returning in February for his one year follow up. (RX 15, P 13) On February 22, 2012, Petitioner returned to Dr. Galatz, who noted was now one year out from surgery. Dr. Galatz noted Petitioner was still having difficulty with some range of motion and also having some pain. Dr. Galatz stated: "Activities as tolerated. He is going to have difficulty returning to work at the same level of employment." Dr. Galatz recommended he return in one year for follow up. (RX 15, P 12) On February 27, 2013, Petitioner returned to Dr. Galatz, who noted he was doing fairly well, but still had some aching, especially in colder weather. Dr. Galatz stated: "Activities as tolerated." Dr. Galatz recommended he return for "routine arthroplasty follow up." (RX 15, P 12)

On August 15, 2013 Petitioner saw his primary care physician, Dr. Nash, who noted he needed a referral for an FCE. (RX 14, P 20)

On August 16, 2013, Petitioner underwent an FCE at Apex Network. This testing found Petitioner to be in the Medium physical demand level with restrictions. (RX 14, P 11) The therapist noted:

> Lifting/Carrying 30 pounds occasionally, 10 pounds frequently, and 5 pounds constantly – as long as these loads are conveniently positioned.
> He cannot lift above shoulder height.
> I would not recommend shoveling or use of impact tools, sweeping or mopping at this time.
>
> Pushing/Pulling 30-40 pounds occasionally
> I would not recommend operation of equipment requiring repetitive control use.
> He can drive a vehicle, however, with power steering and automatic transmission.
> Sitting/Standing/Walking Unrestricted.
>
> Climbing Occasional stairs (because of history of knee problems).
> I would not recommend ladder climbing at this time because of weakness in reaching and pulling.

Reaching/Gripping/Fine Frequent at waist to shoulder height.

Motor Occasional at shoulder height and below waist.
He cannot reach above shoulder height for functional tasks.
Lower Level Positions/ Bending is unrestricted. Otherwise, these tasks can be done

Movements occasionally (secondary to history of knee problems). He cannot crawl secondary to knee and shoulder residual problems.

(RX 14, P 11)

On August 20, 2013, Petitioner returned to Dr. Galatz, who noted he was there "for reevaluation of both shoulders." Dr. Galatz noted Petitioner still had limited range of motion and strength. Dr. Galatz stated: "Activities as tolerated. He has permanent disability. I do not anticipate any further improvement in his function in the future." Dr. Galatz did not recommend any follow up. (RX 15, P 4)

On February 26, 2014, Petitioner returned to Dr. Galatz. Dr. Galatz noted: "He does not want anything done on the left right now. His pain is not that bad. He is currently not working and is on disability. He recently had a mass on his right kidney and had a nephrectomy. He is doing well after this. He is scheduled for another PET scan in the future. Dr. Galatz recommended he return in six months. (RX 15, P 3)

On August 13, 2014, Petitioner returned to Dr. Galatz, who noted Petitioner was doing the same regarding his right shoulder. Dr. Galatz stated: "He is not having a lot of pain, fortunately. His left shoulder is not great, but he is also not having a lot of pain. He had nephrectomy on the one side. He is currently undergoing a work up for some pulmonary changes." Dr. Galatz recommended that he return for "routine arthroplasty follow up." On March 4, 2015, Petitioner returned to Dr. Galatz, who noted Petitioner was there for reevaluation of both shoulders. Dr. Galatz noted Petitioner would now like the left side reconstructed, as it has become increasingly painful. Dr. Galatz suggested getting a CT scan in August or September and planning the surgery for the end of the year. Petitioner declined, as his daughter was getting married in November. Petitioner stated he would go home and talk to his wife.

On April 8, 2015, Petitioner returned to Dr. Galatz, who noted he was there for his left shoulder. Petitioner stated that he would like to proceed with the reverse shoulder replacement, as he had a hemiarthroplasty on the other side and did not have superb results. Dr. Galatz had a CT scan performed and noted that it was difficult to envision a good place to seat the base plate. As such, Dr. Galatz noted the plan was to do a reverse and use humeral head autograft and a bio RSA. Dr. Galatz informed Petitioner that would be very difficult and if she was unable to put in the base plate, that she would convert to a hemiarthroplasty. On April 23, 2015, Petitioner underwent a left shoulder reverse arthroplasty with humeral had allograft.

Dr. Leesa Galatz testified by way of deposition. Dr. Galatz noted she initially saw Petitioner on November 24, 2010. He complained of pain for approximately two years. He stated that he was currently working as a manual laborer for the Highway Maintenance Department, which required heavy lifting and manual labor with the use of his upper extremities. Dr. Galatz noted Petitioner's pain had been bad enough that he had to ask his colleagues for assistance on occasion. Dr. Galatz noted Petitioner's pain had worsened over the

last six months and was becoming sharper and more intolerable. Dr. Galatz acknowledged that Petitioner has underlying glenoid hypoplasia and retroversion, which refers to the socket portion of his shoulder. His hypoplastic glenoid is a congential condition in which there is insufficient bone formation during development. This leads to posterior slanting or version of the socket. Patients with the condition often develop arthritis. It is known that this bone insufficiency has a significant outcome on shoulder reconstructive procedures, that being that the outcome in terms of both range of motion, strength, and pain relief is not as good as it otherwise could be if performed in an arthritic shoulder without the congenital bone insufficiency. .It was Dr. Galatz opinion that although Petitioner had this pre-existing shoulder condition, the heavy work that he did as a highway maintenance worker likely contributed to or aggravated his shoulder pain to the point where he required reconstructive surgery. Dr. Galatz testified that she kept Petitioner off work after his February 24, 2012 surgery.

Further, Dr. Galatz testified that she did not believe Petitioner could return to his previous level of employment with regard to physical activity, but that she had not put any specific limitations on him. However, Dr. Galatz stated:

On June 19, 2015, following Petitioner's left shoulder surgery, Dr. Galatz authored another report, stating:

> Mr. Huelsmann has bilateral dysplastic glenoids. We performed a hemiarthroplasty on the right shoulder. He has a similar condition on the left. On the left side, because he had a marginal result on the right, we elected to do a reverse shoulder replacement. This is a shoulder replacement which is specifically designed to handle more difficult reconstructive conditions. He underwent this surgical procedure and is recovering well post-operatively.
>
> Mr. Huelsmann had a pre-existing condition, specifically glenoid hypoplasia. The heavy work that he did as a highway maintenance worker likely contributed to, or aggravated his shoulder to the point where he required reconstructive surgery.

(PX 8)

Respondent had Petitioner examined pursuant to Section 12 by Dr. Timothy Farley on November 19, 2012. Dr. Farley noted Petitioner described a work-related injury in 2002 when he and a coworker at IDOT had to lift a heavy freezer four feet into the back of a truck. Petitioner told Dr. Farley that he sought care with Dr. Steven Kappel and was then returned to normal activities. Petitioner reported that he was able to perform his normal work activities throughout the last decade. (RX 9, P 1) In his report, Dr. Farley noted Petitioner's next medical intervention was in 2010 with Dr. Matt Bayes, who noted advanced degenerative change within Petitioner's right shoulder. Dr. Bayes recommended a Synvisc injection into Petitioner's right shoulder, which he underwent. Petitioner reported no improvement from that injection, so Petitioner was referred to Washington University. (RX 9, P 1-2) Dr. Farley noted Petitioner then began seeing Dr. Leesa Galatz at Washington University. Dr. Galatz diagnosed Petitioner with advanced arthritis with glenoid hypoplasia and recommended surgery, including hemiarthroplasty with a possible total shoulder replacement. Petitioner underwent surgery with Dr. Galatz on February 24, 2011, and was discharged two days later. (RX 9, P 2) In his deposition, Dr. Farley explained glenoid hypoplasia, stating:

> Glenoid hypoplasia is an architectural problem in the shoulders where the sockets of the shoulder do not develop appropriately and they are angled in such a way that it predisposes to abnormal forces within the shoulder that leads to advanced arthritis. It is analogous to dysplasia in the hip which is well-known, probably better known cause of arthritis that occurs and is evaluated very early in life when the pediatrician checks a newborn child's hips for hip clicking, that's essentially what they are looking for, signs of hypoplasia or dysplasia within the hip. In any case, it's because of these abnormal forces when the shoulder cartilage breakdown occurs and advanced arthritis occurs as well.

(RX 10, P 11)

In his report, Dr. Farley noted that his impression was "bilateral shoulder end stage DJD with glenoid hypoplasia and glenoid retroversion status post right shoulder hemiarthroplasty." For Petitioner's right shoulder. Dr. Farley noted his diagnosis was status post "right shoulder hemiarthroplasty for the treatment of end stage degenerative joint disease, which "occurs within the face of a congenital glenoid deficiency with hypoplasia and significant retroversion." For Petitioner's left shoulder, Dr. Farley's diagnosis was "similar findings of end stage degenerative joint replacement in the setting of underlying glenoid hypoplasia and excessive glenoid retroversion." (RX 9, P 7) Dr. Farley opined that Petitioner's condition was not related to the June 2002 lifting incident, noting that very soon thereafter he had x-rays taken that demonstrate advanced levels of degenerative change. He further opined that this is something that would not occur as a result of his described work activity some two weeks later as noted in his x-ray report of his left shoulder on June 18, 2002. The doctor felt Petitioner had underlying bilateral advanced degenerative joint disease related to a preexisting genetic condition of glenoid hypoplasia with severe glenoid retroversion. He further opined that the hypoplasia present in both shoulders is completely unrelated to his described work activities. This is a preexisting condition, genetically predetermined and not related to environmental factors including injury. (RX 9, P 7-8)

During his deposition, Dr. Farley testified that he did not feel that Petitioner's job duties caused or aggravated his bilateral shoulder condition. (RX 10, P 11-13) Dr. Farley opined that "he would be very shocked if [Petitioner] would be able to return to more normal activities requiring any lifting past the level of his shoulders." Further, Dr. Farley noted Petitioner should avoid lifting more than 20-25 pounds to the level of the shoulder and should not lift at all above shoulder level. (RX 9, P 9)

At Petitioner's request, Delores Gonzales performed a vocational rehabilitation evaluation of Petitioner in order to assess his employability and vocational rehabilitation. (PX 2) Ms. Gonzales met with Petitioner on September 10, 2013. Ms. Gonzales noted Petitioner slept well, but awoke 1-2 times a night. Petitioner mows the lawn using a riding mower and is able to cook using a grill. He does dishes and occasionally the laundry and is able to shop for groceries. He does not clean the kitchen, baths or bedrooms and does not vacuum, mop or sweep. (PX 2)

Petitioner reported that he was not able to lift with his right arm and had to use his left arm. Petitioner stated that his is not able to raise his right arm above waist level. Petitioner stated that he cannot lift more than 8 pounds with his right hand up to waist level. Petitioner reported not being able to reach overhead with his right arm. (PX 2) Petitioner stated that he could sit for long periods of time, but could not stand for more than 30-45 minutes or walk for more than 15 – 20 minutes without needing a break to sit and rest. Petitioner reported bending and stooping caused low back pain and he occasionally loses balance. Petitioner stated that he

is able to kneel, but must hold onto a stationary object for stability. Petitioner stated that he was able to climb stairs, but must hold a railing for support. Petitioner is able to drive by using his left arm. Petitioner reported increased aches in his right arm with cold, wet or humid environments and with weather changes. Petitioner reported problems with occasional headaches. (PX 2)

Ms. Gonzales reviewed Petitioner's past work history and determined he had no transferable skills. (PX 2) Ms. Gonzales then performed a Wide Range Achievement Test, which measures the basic academic skills of reading, spelling and mathematical computation necessary for effective learning, communication, and thinking. Ms. Gonzales found Petitioner to have "reading: below average, spelling: low, math: average, and overall Reading: below average. As such, Ms. Gonzales opined Petitioner would not be expected to assimilate to a new work environment or learning situation that required basic reading, spelling or math skills. He would not perform adequately in a clerical position that required basic spelling, sentence comprehension, spelling or math computation." (PX 2) Ms. Gonzales pointed out that the medical evidence corroborates continued significant, residual complaints that present a chronic hindrance in his ability to perform basic work function and some activities of daily living. From a vocational perspective, Petitioner is 64-years-old (a person close to retirement age) with a 12th grade education and impoverished educational skills. Both Dr. Galatz and Dr. Farley agree Petitioner is not capable of returning to his job as a highway maintenance worker. Dr. Galatz did not address specific limitations; however, Dr. Farley opined that Petitioner should avoid lifting more than 25 pounds to the level of his shoulder. He also opined that Petitioner is not at all capable of getting anywhere above the level of his shoulder. Based upon the restrictions of Dr. Farley, Petitioner is also not capable of his past relevant work. The restrictions set forth by Dr. Farley would render Petitioner capable of work only in a limited range of sedentary to light exertional work.

Ms Gonzales opined that considering his age, education, limited work history, and residual functional capacity in light of the restrictions, Petitioner is not employable on the open market. Prospective employers in the usual course of selecting new employees for jobs that offer significant and competitive wage would avoid hiring an individual with Petitioner's overall profile in favor of individuals who are younger, more work ready, who have higher academic skills, and who would not have to be accommodated. (PX 2)

Ms. Gonzales deposition was taken on December 10, 2014 and she testified consistent with the above discussed opinions as stated in her report.

Jana Range performed a blind vocational rehabilitation evaluation of Petitioner on January 14, 2015 at Respondent's request. In her report, she noted that she had reviewed Petitioner's medical records, including those of Dr. Galatz and Dr. Farley, as well as the report and deposition of Delores Gonzales. (RX 17) Ms. Range performed a labor market survey, including employers within an approximate forty-mile radius of Breese, Illinois. Ms. Range noted that she only included occupations within Petitioner's medical restrictions (no lifting more than 25 pounds and no lifting above shoulder level), in her labor market survey. Ms. Range noted that Petitioner's age, 65 years old, may make it more difficult for him to find employment, but that there are people his age in the workforce. (PX 17)

Ms. Range identified 35 potentially appropriate jobs available during a one week period in January of 2015. These positions were at Terminex (Sales and Development), Tru Green Lawn Services (Sales and Service), Rottler Pest and Lawn Solutions (Sales), Smokey Bones (Food Servers), Chipotle Mexican Grill (Crew Member), PF Chang's (Cashier and Food Runner), Pizza Hut (Delivery Driver), Denny's (Server and

Host), 54th Street Grill (Host and Food Runner), Wendy's (Crew Member), Flying J (Coffee Manager and Retail Support), Taco Bell (Team Member), NAPA (Counter Sales), Diebergs (Produce Clerk), K Mart (Clerk and Cashier), Ace Hardware (Sales Associate), Petco (Sales Associate), Fresh Market (Cashier and Sales Associate), Loves Travel Shop (Cashier and Sales), Wal-Mart (Customer Service Desk and Sales Floor Associate), Valvoline (Sales and Clerk), Gordman's (Loss Prevention Specialist), Stivers Staffing (Warehouse Clerk), Schneider Trucking Company (Shop Floor Leader), St. Louis Arch (Tour Guide and Cashier), Kroger (Courtesy Clerk), Reichmann Bros. (Parts Manager), Check N Go (Customer Service), The Republic of Tea (Customer Service Representative and Buyer), Service Master (Residential Housekeeper/House Cleaner), Precision Agriculture Services (Field Scout), Drury Hotels (Housekeeping), Securitas (Security Officer), ABM Industries (Cleaner), and Per Mar Security (Security Officer).

Based upon her labor market survey Ms. Range opined that Petitioner does have transferable skills that would allow him to find employment within his medical restrictions, although he may require reasonable accommodations for some non-essential job duties, according to the Americans with Disabilities Act.

At the request of Respondent, Kellerman Investigations conducted surveillance of Petitioner on April 28 and 29, 2014 and May 7 and 9, 2014. Respondent admitted a surveillance video and a corresponding report into evidence at hearing. The surveillance video shows Petitioner mowing grass on a large, zero-turn riding lawn mower. At one point Petitioner is seen in his garden with a shovel planting what he described as seedlings. On May 9, 2014, Petitioner is seen lifting white bags out of the back of his truck and carrying them, to his garden where he pours the soil contents into his garden. Petitioner also uses his tractor and front loader bucket, maneuvering the machinery with both hands. Petitioner is also seen using his right arm to hold a hose and spray his garden. (RX 19)

Joe Monroe, IDOT District 8 Operations Manager, testified at the hearing at Respondent's request. Mr. Monroe testified that he had been instructed to determine the number of hours Petitioner spent performing certain types of work at IDOT for the three years prior to September of 2010. Mr. Monroe testified that he generated a spreadsheet which showed the number of hours Petitioner spent doing certain assignments at IDOT from September 1, 2007 to September 1, 2010. This spreadsheet was entered in evidence as Respondent's Exhibit 20. Mr. Monroe testified that even when Petitioner was coded for a specific job duty, he would spend far less than the entire hour performing that function. Rather, due to travel, breaks, traffic control, setup/removal and cleanup, Petitioner would not be doing continuous, repetitive activity.

CONCLUSIONS

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
Issue (E): Was timely notice of the accident given to Respondent?
Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

An injury is accidental within the meaning of the Act if "a workman's existing physical structure, whatever it may be, gives way under the stress of his usual labor." *Laclede Steel. Co. v. Industrial Commission*, 128 N.E.2d 718, 720 (Ill. 1955); *General Electric Co. v. Industrial Commission*, 433 N.E.2d 671, 672 (Ill. 1982). In a repetitive trauma case, issues of accident and causation are intertwined. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture,* 99 I.I.C. 0961 (1999). Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is a causative factor in the resulting

condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 797 N.E.2d 665, 672-73 (Ill. 2003) (emphasis added). As in establishing accident, to show causal connection Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury. *Fierke v. Industrial Commission*, 723 N.E.2d 846 (3rd Dist. 2000).

In *Edward Hines Precision Components v. Indus. Comm'n*, 825 N.E.2d 773, (2nd Dist. 2005). the Court expressly stated, "There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Id.* at N.E.2d 780. Similarly, the Commission recently noted in *Dorhesca Randell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), a repetitive trauma claim, a claimant must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain amount of time each day on a specific task before a finding of repetitive trauma can be made. *Randell* citing *All Steel, Inc. v. Indus. Comm'n*, 582 N.E.2d 240 (2nd Dist. 1991) and *Edward Hines supra.*

The Appellate Court in *City of Springfield v. Illinois Workers' Comp. Comm'n*, 901 N.E.2d 1066 (4th Dist., 2009) issued a favorable decision in a repetitive trauma case to a claimant whose work was "varied" but also "repetitive" or "intensive" in that he used his hands, albeit for different task, for at least five (5) hours out of an eight (8) hour work day. *Id.* (emphasis added) "While [claimant's] duties may not have been 'repetitive' in a sense that the same thing was done over and over again as on an assembly line, the Commission finds that his duties required an intensive use of his hands and arms and his injuries were certainly cumulative." *Id.*

In this case it is undeniable that Petitioner suffered from a pre-existing congenital condition, glenoid hypoplasia and retroversion. The evidence shows that Petitioner performed manual labor, at times very heavy labor, and used his hands and arms extensively during the performance of his job duties for Respondent. Further, the Arbitrator finds the opinions and testimony of Dr. Galatz much more persuasive than those of Dr. Farley in this case. Petitioner credibly testified that as his shoulder problems developed he would discuss them with people at work including Dale Haukaub, Jason Rekenhaus and Kenny Varel. He testified that they all knew that his shoulder was bad and that he was taking off to have surgery. Mr. Rekenhaus was identified by the Respondent as Mr. Huelsmann's supervisor while at IDOT. They were further aware that his job duties were contributing to his problems.

Based upon the foregoing and the record taken as a whole, the Arbitrator finds Petitioner has met his burden of establishing that he sustained accidental injuries which arose out of and in the course of his employment with Respondent, that his current condition(s) of ill-being are causally related to the employment, and that proper notice under the Act was provided to Respondent.

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?

Both Dr. Galatz and Dr. Farley agreed the medical treatment provided was reasonable and necessary. There was no evidence to the contrary.

Based upon the foregoing and the record taken as a whole, Respondent shall pay reasonable and necessary medical services of as set forth in Petitioner's exhibit 4, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold

petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Issue (K): What temporary benefits are in dispute?
Issue (L): What is the nature and extent of the injury?

Dr. Galatz testified that she kept Petitioner off work after his February 24, 2012 surgery. On April 23, 2015, Petitioner underwent a left shoulder reverse arthroplasty with humeral had allograft. At the time of hearing Petitioner testified that Dr. Galatz had accepted a new position in New York, and he was to follow up with a new surgeon at Washington University Orthopedics. Petitioner has not been released from care or reached MMI. The Arbitrator therefore finds the issue of nature and extent of Petitioner's injuries is not ripe for resolution.

Based upon the foregoing and the record taken as a whole, the Arbitrator finds Respondent shall pay Petitioner temporary total disability benefits of $880.45/week for 78 3/7 weeks, commencing 2/22/14 through 8/25/15, as provided in Section 8(b) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC016678
Case Name	Isis Collins v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0105
Number of Pages of Decision	13
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Gary Friedman
Respondent Attorney	Argy Koutsikos

DATE FILED: 3/9/2023

/s/ Thomas Tyrrell, Commissioner

Signature

23IWCC0105

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

Isis Collins,

Petitioner,

vs. NO: 18 WC 016678

Chicago Transit Authority,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission amends the first page of the Arbitration Decision to check box "C" to indicate that "accident" was a disputed issue.

The Commission amends the first heading on page 5 of the Arbitration Decision to include "ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT."

The Commission strikes the Arbitrator's analysis under the above heading and replaces with the following:

> In *Pathfinder v. Indus. Comm'n*, 62 Ill. 2d 556 (1976), the Illinois Supreme Court held that psychological injuries could be compensable in either of two ways: (1) where the psychological injuries were related to and caused by a physical trauma or injury, i.e., "physical-mental" trauma, or (2) where the psychological injuries were caused by "a sudden, severe emotional shock traceable to a definite time, place and cause which causes psychological injury or harm *** though no physical trauma or injury was sustained," i.e., "mental-mental" trauma. *Pathfinder*, 62 Ill. 2d at 563.

Under the "physical-mental" theory, the work-related physical trauma need not be the sole causative factor, but need only be a causative factor of the subsequent mental condition. See *May v. Indus. Comm'n*, 195 Ill. App. 3d 468, 487 (1990). The *Pathfinder* court also noted that minor physical contact or contact that left no objective manifestation, i.e., bruises, contusions, broken bones, et cetera, was sufficient to cause psychological injuries to be compensable. *Pathfinder*, 62 Ill. 2d at 564.

The Court in *Pathfinder* discussed cases in which the Court allowed claimants to recover for psychological disability or injury where the physical contact and injury were minor. For example, in *Marshall Field & Co. v. Indus. Comm'n*, 305 Ill. 134 (1922), where the claimant injured a thumb and was severely jarred when she slipped and fell. She was diagnosed with major hysteria. The Court affirmed the Commission's award for permanent total disability based upon her psychological disability.

In *Olin Industries, Inc. v. Indus. Comm'n*, 394 Ill. 202 (1946), the claimant was injured while cleaning a machine when a metal guard weighing 75 pounds struck her across the right breast. The treating physician testified that his examination showed "there were no bruises or objective evidence of injury and that the diagnosis of contusion of chest was based on subjective complaints and history." The diagnosis was traumatic neurosis caused by the injury, and her award was upheld by the Court.

In *Matlock v. Indus. Comm'n*, 321 Ill. App. 3d 167 (2001), the claimant flight attendant was exposed to a toxic chemical mid-flight, sprayed by an unruly passenger. The Court concluded she sustained a physical trauma while in the course of her employment. She was diagnosed with PTSD following the incident. The Court also found she could recover under mental-mental, as the unruly passenger presented a psychological attack with her attempts to blow up the plane. Similarly, Petitioner in this case was exposed to a physical substance.

The instant matter presents a physical-mental trauma. An employee can recover for psychological disability even when any minor physical contact or injury occurs. *Chicago Park Dist. v. Indus. Comm'n*, 263 Ill. App. 3d 835, 842 (1994). Spitting is a physical attack. "Indeed, spitting has been recognized as an act sufficient to support a battery conviction since the development of early common law." *People v. Taylor*, 2022 IL App (4th) 210507, citing *People v. Peck,* 260 Ill. App. 3d 812, 814-15 (1994). In *Peck*, the defendant argued that mere spitting was not "physical contact" that could sustain an aggravated battery conviction. *Peck*, 260 Ill. App. 3d at 813. The Appellate Court rejected this argument. Per 720 ILCS 5/12-3(a)(2) (2020), one commits a battery if he or she makes physical contact with the victim "by any means." Battery is a physical bodily injury crime in Illinois. *City of Springfield v. Indus. Comm'n,* 291 Ill. App. 3d 734, 739 (1997).

The spitting attack caused Petitioner to require physical medical treatment to test

for communicable diseases at required intervals. This further illustrates the physical nature of this attack on her person. This physical injury caused a mental health condition. The medical records contain multiple mental health diagnoses including anxiety, paranoid state, anger reaction, and reaction to severe stress. The physician at Concentra referred Petitioner for psychological services as a result of the assault.

Petitioner required psychotherapy sessions as a result of the physical assault she sustained. However, it becomes clear in Dr. Bylsma's office visit notes that Petitioner's sessions became focused on her agitation with CTA's handling of her accommodations request. This is illustrated on June 28, 2018, where Dr. Bylsma's noted Petitioner was "agitated" because "she had received a letter from CTA regarding her application for accommodations…" PX4. Petitioner indicated "she has made a firm decision that she will not be returning to work as a Bus Operator for the CTA due to her concerns for personal safety." *Id.* It was notably not because of her mental health condition.

Dr. Bylsma notes on July 26, 2018, "She reported that last week she was notably upset and anxious about how CTA was managing her accommodations request and a co-occurring hearing about the status of her workers comp/short-term disability claims." *Id*. The visit note on August 2, 2018, states, "She continues to express agitation, irritability, and stress related to dealings with CTA administration and Accommodations Committee." *Id*.

Based on the above, Petitioner's condition of ill-being following the March 30, 2018 accident resolved by June 28, 2018, after which Petitioner's psychological issues were no longer focused on the assault itself but the acts of the CTA administration.

The Commission modifies the Arbitrator's award of TTD benefits. The Arbitrator erred in including the date of the accident, March 30, 2018, in the TTD period. The proper TTD period is March 31, 2018 through June 28, 2018.

The Commission also modifies the Arbitrator's award of medical expenses. While the Commission agrees that Petitioner reached maximum medical improvement for her mental health condition on June 28, 2018, Petitioner continued to require lab testing beyond that date for her physical exposure.

On the guidance of the physician at Concentra, Petitioner underwent recommended testing at designated intervals through August 2, 2018. This testing was based upon how communicable diseases develop following exposure such that they register on a test. Respondent is liable for all expenses incurred for said treatment at Roseland and Concentra to ensure that Petitioner did not contract an infectious disease as a result of the assault, not just the initial "wellness check" at the Emergency Department.

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 22, 2021, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED that Respondent shall pay to Petitioner temporary total disability benefits of $650.37/week for 12-6/7 weeks, commencing March 31, 2018 through June 28, 2018, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical expenses for mental health care through June 28, 2018, and for medical expenses related to infectious disease testing through August 2, 2018, subject to §8(a)/§8.2 of the Act.

IT IS FURTHER ORDERED that Respondent shall receive credit of $5,564.75 for benefits paid to Petitioner on account of this injury.

IT IS FURTHER ORDERED that Respondent shall pay to Petitioner permanent partial disability benefits of $585.34/week for five (5) weeks because the injuries sustained caused 1% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

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.

March 9, 2023

o: 01/31/2023

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	18WC016678
Case Name	COLLINS, ISIS v. CHICAGO TRANSIT AUTHORITY
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Gary Friedman
Respondent Attorney	Argy Koutsikos

DATE FILED: 12/22/2021

/s/Elaine Llerena, Arbitrator

Signature

INTEREST RATE WEEK OF DECEMBER 21, 2021 0.16%

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

Isis Collins
Employee/Petitioner

v.

Chicago Transit Authority
Employer/Respondent

Case # **18** WC **016678**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **August 19, 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 **March 30, 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 $**23,402.35**; the average weekly wage was $**975.56**.

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**5,564.75** for other benefits, for a total credit of $**5,564.75**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $650.37 per week for 13 weeks, commencing March 30, 2018 through June 28, 2018, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services from March 30, 2018 through June 28, 2018 as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $585.34 per week for 5 weeks, because the injuries sustained caused the 1% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

Elaine Llerena

Signature of Arbitrator

December 22, 2021

STATEMENT OF FACTS

On March 30, 2018, Petitioner was working as a bus operator. (T. 7-8) Petitioner testified that had worked as a bus operator for Respondent for approximately 4 years prior March 30, 2018. (T.8) On March 30, 2018, at approximately 7:50 p.m., Petitioner was sitting in her assigned bus at the 95th and Dan Ryan Terminal during a ten-minute layover before resuming her route. (T. 8-9) Petitioner testified that there was no one on the bus as she sat enclosed in the driver's seat, with the driver's shield engaged, when a male passenger boarded the bus and asked a question as to the bus route. (T. 9, 25) Petitioner informed the passenger that the bus was re-routed and while she gave him the new routing information, he spit in Petitioner's face. (T. 9) Petitioner testified that the spit ended up in her eyes, nose and mouth. (T. 10) Petitioner did not recall if she used her hands to shield herself immediately before the spit made any contact. (T. 25-26) Petitioner testified that the man stuck around the area and gloated about what he had done, laughing at Petitioner. (T. 33) Petitioner testified that she felt a tingling on her face and then some itching. (T. 43) Petitioner testified she was stunned immediately after the incident. (T. 10) Petitioner then proceeded to notify Respondent's supervision to report the incident. *Id.* Petitioner testified that a supervisor and police responded to the incident, after which she was transported via ambulance to Roseland Community Hospital. (T. 11-12)

At Roseland Community Hospital, Petitioner was seen in the Emergency Department where Petitioner reported a history of getting spat on at work and being concerned that she was exposed to infectious saliva. (PX6) Petitioner was noted to be very upset and angry and requested to be tested and screened for infectious disease. *Id.* Petitioner was examined, and lab tests were run. *Id.* Petitioner was diagnosed as having anxiety, being in a paranoid state and exposed to infectious disease. *Id.* Petitioner was discharged and was to follow up with her primary care physician within two to three days. *Id.*

After her discharge, Petitioner was taken back to her assigned garage where she completed an incident report and then went home. (T. 13-14) Petitioner testified that when she got home, she was still angry and scared and had difficulty sleeping and eating. (T. 15)

Lab tests taken on March 30, 2018 came back negative for Hepatitis A, Hepatitis B, Hepatitis C and HIV. (PX6) Petitioner returned to Roseland Community Hospital on April 2, 2018 for a lab redraw for TB test. *Id.* Petitioner was once again advised to follow up with her primary care physician. *Id.*

Petitioner also went to Occupational Health Centers of Illinois, at Respondent's request, on April 2, 2018. (PX2) Petitioner was seen by Dr. Afiz Taiwo and reported being spat on at work and that the spit got on her face and around and into her mouth. *Id.* Petitioner indicated that mentally she cannot return to driving a bus and was angry with Respondent for not protecting its drivers. *Id.* Petitioner also indicated that if she saw the man who spit on her she would kill him. *Id.* Dr. Taiwo diagnosed Petitioner as having been exposed to a blood-borne pathogen and anger reaction. *Id.* Dr. Taiwo referred Petitioner for a psychology evaluation and released Petitioner to return to work, modified duty: no driving company vehicles, office duties only until cleared by psychologist. *Id.*

Petitioner returned to Dr. Taiwo on April 4, 2018 with the lab results from Roseland Community Hospital. *Id.* Dr. Taiwo ordered tests for exposure to blood-borne pathogen and took Petitioner off work. *Id.*

Petitioner saw Dr. Frederick Bylsma, a psychologist, on April 13, 2018 for a mental capacity evaluation. (PX4) Dr. Bylsma diagnosed Petitioner as having reaction to severe stress and recommended psychotherapy. *Id.* Dr. Bylsma also indicated that Petitioner was not to work as a bus operator and required a new position that involved only office duties. *Id.*

Petitioner returned to Dr. Taiwo on April 18, 2018 for recheck. (PX2) Dr. Taiwo noted that Petitioner was at her functional goal but not at the end of her healing. *Id.* Dr. Taiwo placed Petitioner on modified duty with no driving company vehicles and office duties only. *Id.*

Petitioner returned to Dr. Bylsma on April 26, 2018. (PX4) Dr. Bylsma noted that Petitioner felt a little better and was more relaxed, which she attributed to not being on the bus for a while. *Id.* Petitioner indicated that felt that returning to the bus was not an option for safety reasons. *Id.* Petitioner indicated that she was going to apply for work accommodations. *Id.* Petitioner reported that all her blood tests had come back negative for Hepatitis and HIV, but that she had developed a skin rash on the area she was spat on. *Id.*

On May 2, 2018, Dr. Taiwo noted that all of Petitioner's serology tests had, to date, come back negative. *Id.* Dr. Taiwo took Petitioner off work. *Id.* On May 16, 2018, Dr. Taiwo noted that Petitioner was not nor had she recently experienced any fever, headache, vomiting, nausea, diarrhea, abdominal pain, decreased appetite, dark urine or skin or eyes turning yellow. *Id.* Dr. Taiwo again placed Petitioner on modified duty. *Id.*

On June 28, 2018, Dr. Bylsma noted that Petitioner was agitated due to a letter she had received from Respondent regarding her application for accommodations. (PX4) Dr. Bylsma also noted that Petitioner had made a firm decision that she would not be returning to work as a bus operator due to personal safety concerns. *Id.*

On August 2, 2018, Dr. Taiwo noted that all tests had come back negative. (PX2) Dr. Taiwo took Petitioner off work. *Id.*

On November 7, 2018, Dr. Bylsma noted that Petitioner was again angry and annoyed with Respondent as she had not heard anything regarding her application for an accommodation. (PX4) Dr. Bylsma recommended that Petitioner work light duty. *Id.*

Petitioner continued to undergo psychotherapy with Dr. Bylsma through March 7, 2019. *Id.* The therapy notes list Petitioner's many frustrations and complaints regarding Respondent and the lack of accommodation for a new position. *Id.* On March 7, 2019, Dr. Bylsma noted that Petitioner's emotional state remained variable and seemed to relate to the degree to which she was feeling frustrated with Respondent about specific cases and the process of attempting to move within the company to an alternate position. *Id.*

Petitioner testified that she was under Dr. Bylsma's care through April 11, 2019 for this spit incident only, with treatment consisting of talking about her feelings and how being around people would make her feel uncomfortable and would make her angry all over again. (T.19, 46-47)

At hearing, the parties and Arbitrator viewed a surveillance video of the March 30, 2018 incident. (T. 37-44)[1] The video showed a man in front of Petitioner as she sat in the driver's seat and then spitting on her. (T. 37-44)

Petitioner testified that she had previously treated with Dr. Bylsma for another work incident for which she had been released from his care approximately three months prior, in December 2017. (T.18, 31) Petitioner testified that there were other events that had affected her emotionally from December 2017 and prior to March 30, 2018 that she also discussed with Dr. Bylsma. (T. 31-32) A visit note from Dr. Bylsma dated April 13, 2017 recaps work incidents from December 4, 2017 through March 30, 2018. (PX4) Dr. Bylsma noted Petitioner was not sleeping well but was otherwise doing well. *Id.* Dr. Bylsma also noted that Petitioner harbored significant

[1] Respondent did not introduce the surveillance video into evidence.

anger regarding her issues with Respondent and that she would be addressing these issues with Respondent, the union, managers and upper management. *Id.*

Petitioner testified that she was terminated from Respondent's employment in March 2019 for an unrelated incident and was not employed in any capacity at time of hearing. (T. 21, 24) Petitioner testified that she still has residual effects from the March 30, 2018 incident. (T.20) Petitioner testified that she still feels angry, targeted and uncomfortable. *Id.* Petitioner explained that she tries to manage these feelings by limiting her interaction with people. *Id.*

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

In *Pathfinder v. Industrial Commission,* 62 Ill. 2d 556, 343 N.E. 2d 913 (1976), the Illinois Supreme Court allowed recovery for psychological injury in the absence of any physical trauma to the petitioner. The Court 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." *Id.* at 563, 917. In *General Motors Parts v. Industrial Commission,* 168 Ill. App. 3d 678, 522 N.E. 2d 1260, 119 Ill. Dec. 401 (1988), the First District concluded that *Pathfinder* does not permit recovery for every non-traumatic psychological injury from which an employee suffers merely because the employee can identify some work-related event which contributes in part to his/her anxiety/stress or depression.

The Arbitrator notes that following the incident on March 30, 2018, Petitioner was diagnosed as having been exposed to a blood-borne pathogen and anger reaction. The Arbitrator further notes that Petitioner's blood tests all came back negative. Additionally, the Arbitrator notes that the psychological treatment records indicate that while Petitioner initially suffered for stress and anger due to the March 30, 2018 incident, she subsequently continued to treat for her prior and ongoing stress and anger issues towards Respondent. The Arbitrator notes that Petitioner had been undergoing psychological treatment since 2017 and that by April 26, 2018, Petitioner was reporting to Dr. Bylsma feeling better and more relaxed. On June 28, 2018, Dr. Bylsma noted that Petitioner was agitated due to a letter she had received from Respondent regarding her application for accommodations. Dr. Bylsma also noted that Petitioner had made a firm decision that she would not be returning to work as a bus operator due to personal safety concerns. The Arbitrator notes that subsequent psychological records deal with Petitioner's ongoing issues with Respondent and their treatment of her for past incidents and unwillingness to accommodate her request for an alternative position.

Based on the above, the Arbitrator finds that Petitioner's condition of ill-being following the March 30, 2018 accident resolved by June 28, 2018, after which Petitioner's psychological issues reverted to their original basis of anger towards Respondent for past incidents and its response to those incidents.

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

Based on the finding above regarding causal connection, the Arbitrator finds that the treatment rendered to Petitioner regarding her exposure to blood-borne pathogen and psychological issues from March 30, 2018 through June 28, 2018 were reasonable, necessary and related to the incident on March 30, 2018. Therefore, Respondent shall pay reasonable and necessary medical services related to the March 30, 2018 accident through June 28, 2018, as provided in Sections 8(a) and 8.2 of the Act.

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

The Arbitrator notes that Petitioner was taken off work and/or placed on restricted duty following the March 30, 2018 accident. The Arbitrator further notes that on June 28, 2018, Petitioner decided that she would not be returning to work as a bus operator.

Based on the finding above regarding causal connection and Petitioner's decision to not return to her job, the Arbitrator finds that Petitioner was temporarily totally disabled from March 30, 2018 through June 28, 2018.

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

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

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

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

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

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

With regard to subsection (ii) of Section 8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a bus operator at the time of the accident and that she decided not to return to work in her prior capacity. The Arbitrator gives this factor great weight.

With regard to subsection (iii) of Section 8.1b(b), the Arbitrator notes that Petitioner was 40 years old at the time of the accident. The Arbitrator gives this factor some weight.

With regard to subsection (iv) of Section 8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that there was no evidence presented as to future earnings. The Arbitrator gives this factor no weight.

With regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner had received all the results of her blood tests (all of which were negative) and had returned to her prior psychological baseline by June 28, 2018. The Arbitrator gives this factor substantial weight.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 1% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC011802
Case Name	Madison Wellons v. State of Illinois - Choate Mental Health
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0106
Number of Pages of Decision	13
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Natalie Shasteen

DATE FILED: 3/9/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Madison Wellons,

Petitioner,

vs. NO.19WC 11802

State of Illinois/Choate Mental Health,

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, wage differential calculations, medical expenses, causal connection, necessary treatment, prospective medical care, 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 January 24, 2022, is hereby affirmed and adopted.

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

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

Pursuant to §19(f)(1) of the Act, this Decision and Opinion on Review of a claim against the State of Illinois is not subject to judicial review.

March 9, 2023
SJM/sj
o-1/25/2023
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC011802
Case Name	WELLONS, MADISON v. STATE/CHOATE MENTAL HEALTH
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Natalie Shasteen

DATE FILED: 1/24/2022

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

/s/William Gallagher, Arbitrator
Signature

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

January 24, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Madison Wellons
Employee/Petitioner

v.

State/Choate Mental Health
Employer/Respondent

Case # 19 WC 11802

Consolidated cases: n/a

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on November 17, 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 22, 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 $35,586.88; the average weekly wage was $684.36.

On the date of accident, Petitioner was 20 years of age, single with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $11,423.65 for TTD, $0.00 for TPD, $0.00 for maintenance, and $43,777.30 for other benefits, for a total credit of $55,200.95.

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

ORDER

Respondent shall pay reasonable and necessary medical and vocational services as identified in Petitioner's Exhibits 1 and 20, 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 Respondent shall pay Petitioner temporary total disability benefits of $456.24 per week for 73 3/7 weeks commencing January 23, 2019, through July 22, 2020, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner Respondent shall pay Petitioner maintenance benefits of $456.24 per week for 30 1/7 weeks commencing July 23, 2020, through February 17, 2021, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits commencing February 18, 2021, of $137.87 per week until Petitioner reaches age 67 or five years from the date of final award, whichever is later, because the injury sustained caused a loss of earnings, as provided in Section 8(d)1 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

JANUARY 24, 2022

William R. Gallagher, Arbitrator

Evidentiary Ruling

At trial, Petitioner's counsel tendered into evidence medical records of Dr. Adam Sky, a psychiatrist and Petitioner's Section 12 examiner, and the transcript of his deposition testimony of April 13, 2020 (Petitioner's Exhibits 16 and 18). Respondent's counsel objected to a portion of Dr. Sky's records on the basis of hearsay, specifically, two narrative reports prepared by Dr. Sky dated October 2, 2020, and October 27, 2020, both of which were directed to Petitioner's counsel. Obviously, the reports were prepared subsequent to Dr. Sky being deposed.

The Arbitrator deferred ruling on the hearsay objection and directed counsel for the parties to address the issue in their proposed decisions. The Arbitrator has reviewed the arguments of counsel and sustains the objection of Respondent's counsel. Accordingly, while Petitioner's Exhibit 16 was received into evidence at trial, the two reports of Dr. Sky dated October 2, 2020, and October 27, 2020, are hereby excluded.

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment by Respondent on January 22, 2019. The Application alleged Petitioner was "Assaulted by Combative Patient" and sustained an injury to the "Head/Neck/Body as a Whole/Back/PTSD/Mental Stress" (Arbitrator's Exhibit 2). Respondent stipulated Petitioner sustained a work-related accident on January 22, 2019, but disputed causal relationship in regard to the alleged PTSD. Petitioner claimed she was entitled to payment of temporary total disability benefits of 73 3/7 weeks, commencing January 23, 2019, through July 22, 2020. Petitioner also claimed she was entitled to maintenance of 30 1/7 weeks, commencing July 23, 2020, through February 17, 2021. Respondent paid Petitioner temporary total disability benefits of $11,423.65, other benefits of $35,587.50, and permanent partial disability advances which totaled $8,189.80, for which it claimed a credit (Arbitrator's Exhibit 1).

At trial, Petitioner sought an order for a permanent partial disability/wage differential award pursuant to Section 8(d)1 of the Act. Respondent disputed Petitioner's entitlement to a wage differential award (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a mental health technician. On January 22, 2019, Petitioner was assaulted by a developmentally disabled person. Petitioner testified the individual was walking in front of her when he turned around, grabbed her by the hair and started flinging her around. The individual kicked Petitioner in the face and abdominal area multiple times.

As a result of the accident, Petitioner sustained injuries to her cervical and lumbar spine, for which she received medical treatment. At trial, Respondent stipulated Petitioner's lumbar and cervical spine conditions were related to the accident. As noted herein, Petitioner was diagnosed and treated for posttraumatic stress disorder (PTSD). Respondent disputed liability for Petitioner's PTSD condition on the basis of causality (Arbitrator's Exhibit 1).

Prior to the accident, Petitioner was caring for her father who had been diagnosed with terminal throat cancer. Approximately four months prior to Petitioner sustaining the assault at work, her father committed suicide. Petitioner testified she came home from work one day and her father was not there. Petitioner subsequently found her father in a Walmart parking lot after he had shot himself. Following her father's suicide, Petitioner took time off work, received counseling and was later able to return to work. At trial, Petitioner testified she liked getting back to work because it kept her busy and she did a significant amount of overtime. Petitioner did not lose any time from work until after she sustained the assault on January 22, 2019.

Following the accident, Petitioner was seen in the ER of Union County Hospital on January 22, 2019. At that time, Petitioner advised she had been attacked by a patient and complained of pain and a decreased range of motion in the neck. Petitioner was diagnosed with a cervical sprain, prescribed medication and discharged (Petitioner's Exhibit 3).

Petitioner was subsequently treated at Convenient Care Center on January 25, 2019, and was seen by Courtney Ledbetter, a Physician Assistant. PA Ledbetter ordered physical therapy and prescribed medication (Petitioner's Exhibit 4).

Because of her neck and low back pain, Petitioner was subsequently seen by Dr. Matthew Gornet, an orthopedic surgeon, on March 25, 2019. Petitioner informed Dr. Gornet of the accident of January 22, 2019, and that she had neck and low back pain. Dr. Gornet ordered an MRI scan which revealed the disc injury at C5-C6 and a suggestion of disc injury at C6-C7. Dr. Gornet opined Petitioner was temporarily totally disabled and recommended more conservative care (Petitioner's Exhibit 7).

When Dr. Gornet saw Petitioner on June 3, 2019, Petitioner's neck condition had improved with physical therapy. However, Petitioner complained of increased low back pain and Dr. Gornet ordered an MRI scan of Petitioner's lumbar spine. The MRI revealed a disc injury at L4-L5 and potentially at L5-S1. Dr. Gornet ordered additional physical therapy (Petitioner's Exhibit 7).

Dr. Gornet continued to treat Petitioner for her cervical and lumbar spine conditions. Ultimately, he performed disc replacement surgery at L4-L5 on December 11, 2019. Dr. Gornet subsequently released Petitioner to return to work without restrictions in regard to her neck and low back on July 6, 2020. When he subsequently saw Petitioner on June 14, 2021, he opined Petitioner was at MMI (Petitioner's Exhibits 7 and 13).

Petitioner was seen by PA Ledbetter on January 16, 2020. At that time, Petitioner advised she was scared to return to work for Respondent and work with patients. Petitioner advised she had been experiencing panic attacks and nightmares. PA Ledbetter opined Petitioner had PTSD (Petitioner's Exhibit 4).

At the direction of her counsel, Petitioner was examined by Dr. Adam Sky, a psychiatrist, on February 26, 2020. In connection with his examination of Petitioner, Dr. Sky reviewed medical reports/records provided to him by her attorney. Dr. Sky obtained a detailed history from Petitioner regarding the circumstances of the accident of January 22, 2019. Petitioner also informed Dr. Sky of the fact her father had been diagnosed with terminal throat cancer, lived with her, and committed

suicide. However, Petitioner also stated she had a suspicion her father might do this. Petitioner also advised she had been experiencing some relationship issues with her boyfriend (Petitioner's Exhibit 16).

Dr. Sky opined Petitioner had PTSD, major depressive disorder with anxious distress and postconcussion syndrome as a result of the accident of January 22, 2019. In regard to diagnoses pre-existing the accident, Dr. Sky opined Petitioner had adjustment disorder with mixed anxiety and depressed mood secondary to the death of her father and possible long standing anxiety or mood disorder. Dr. Sky opined Petitioner would have difficulties performing work tasks, interacting with the general public, supervisors and co-workers and, in particular, expressed concern about Petitioner being able to work in any kind of health care or mental health type facility. He recommended Petitioner obtain a vocational assessment (Petitioner's Exhibit 16).

Dr. Sky was deposed on April 13, 2020, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Sky's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. Specifically, Dr. Sky testified Petitioner had posttraumatic stress disorder and major depressive disorder with anxious distress related to the accident of January, 2019. Dr. Sky also testified Petitioner should not work in any kind of health environment, especially a mental health environment (Petitioner's Exhibit 18; pp 17-18, 24).

On cross-examination, Dr. Sky was questioned about the effects of the Petitioner's father having committed suicide. Dr. Sky agreed this was a traumatic event for Petitioner to experience, although given her father's health situation, it was not unexpected. Further, Dr. Sky testified Petitioner was functioning well prior to the accident, but not afterward (Petitioner's Exhibit 18; pp 34-35, 55).

At the direction of her attorney, Petitioner was evaluated by Tim Kaver, an employment/vocational expert, on July 24, 2020. In connection with his evaluation of Petitioner, Kaver reviewed medical reports/records provided to him by her counsel. Kaver also obtained employment/educational background information directly from Petitioner. Over the course of several months, Kaver provided Petitioner with vocational services and was able to successfully help her obtain employment (Petitioner's Exhibit 20).

Tim Kaver was deposed on March 30, 2021, and his deposition testimony was received into evidence at trial. Kaver's testimony was consistent with the information contained in his initial report and he reaffirmed the opinions contained therein. He also testified he was able to help Petitioner secure employment as a bank teller at the Anna-Jonesboro National Bank. Petitioner began her employment with the bank on February 18, 2021 (Petitioner's Exhibit 18; pp 12-13).

At the direction of Respondent, Petitioner was examined by Dr. Mina Charepoo, a psychiatrist, on October 1, 2020. In connection with her examination of Petitioner, Dr. Charepoo reviewed information regarding the circumstances of the accident of January 22, 2019, as well as medical records/reports regarding same. She also reviewed Dr. Sky's records and his deposition testimony. When evaluated by Dr. Charepoo, Petitioner also informed her she had been raped by an individual who also worked for Respondent, but in a different unit. Dr. Charepoo opined Petitioner had PTSD, but that it was a condition which pre-existed the accident. She attributed this primarily to her being raped and her father's suicide. She opined Petitioner had adjustment disorder with anxious mood

because of financial problems related to her work injury. Dr. Charepoo also opined Petitioner was at MMI and could return to work anywhere except with psychiatric patients (Respondent's Exhibit 4).

Dr. Charepoo was deposed on December 9, 2020. On direct examination, Dr. Charepoo's testimony was consistent with her medical reports and she reaffirmed the opinions contained therein. Specifically, Dr. Charepoo testified Petitioner had PTSD at the time she sustained the accident and she characterized the accident as being a temporary exacerbation of a pre-existing condition. She stated the only difference in Petitioner's condition after the accident was her fear of the patients (Respondent's Exhibit 5; pp 29-31, 36).

On cross-examination, Dr. Charepoo agreed Petitioner's condition was "multifactorial" and while Petitioner had problems prior to the accident, the accident caused the need for Petitioner requiring additional treatment. Further, she conceded that after Petitioner's father's suicide, Petitioner was able to return to work at full duty. When questioned whether Petitioner's current condition was due to a "combination" of various stress factors, Dr. Charepoo responded affirmatively (Respondent's Exhibit 5; pp 44-45).

With the assistance of Tim Kaver, Petitioner was able to secure employment as a bank teller on February 18, 2021. Petitioner works 40 hours a week and is paid $13.50 per hour, a total of $540.00 per week. Petitioner testified overtime in her current position was not available. When Petitioner was employed by Respondent, her stipulated average weekly wage was $684.36. Further, Petitioner testified that if she had been able to return to work for Respondent, she would be making $18.67 per hour plus whatever overtime was available or required.

Petitioner testified she continues to experience flashbacks and nightmares which usually occur twice a week. Various events can trigger these episodes which include seeing an individual wearing tennis shoes (the person who assaulted Petitioner was wearing tennis shoes at the time of the accident), loud noises and individuals who touch her from behind. Petitioner also continues to experience headaches and floaters in her right eye.

In regard to her low back, Petitioner testified that when she lifts any heavy object she does experience pain afterward. She described her range of motion of her low back as being limited but very much improved over what was previously. She stated she was very satisfied with the treatment she received from Dr. Gornet. She does continue to take some pain medication as prescribed by her family physician.

Conclusions of Law

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

The Arbitrator concludes that Petitioner's current condition of ill-being, including PTSD, is causally related to the accident of January 22, 2019.

In support of this conclusion the Arbitrator notes the following:

There was no dispute Petitioner sustained a work-related accident on January 22, 2019, and Petitioner and Respondent stipulated Petitioner's neck and low back conditions were causally related to same.

Petitioner was the victim of a vicious assault in which she was forcibly grabbed by her hair, flung around and repeatedly kicked in the face and abdominal area. Obviously, this was an assault that was not limited to a single blow.

There was no question Petitioner had some events in her life which caused significant stress prior to the accident. These included Petitioner being raped, her father's suicide and relationship issues with her boyfriend. However, prior to the accident, Petitioner was functioning well and was able to perform all of her assigned job tasks for Respondent which included working overtime.

Petitioner's Section 12 examiner, Dr. Sky, opined Petitioner had PTSD, major depressive disorder with anxious distress and postconcussion syndrome, attributable to the accident.

Respondent's Section 12 examiner, Dr. Charepoo, opined Petitioner had PTSD, but attributed it to her prior stress factors of being raped and her father's suicide. She characterized the accident as being a temporary exacerbation of the pre-existing condition. However, when deposed, on cross-examination Dr. Charepoo conceded Petitioner's condition was "multifactorial" and a result of a "combination" of various stress factors.

Petitioner's testimony regarding the circumstances of the accident of January 22, 2019, was unrebutted. The Arbitrator finds Petitioner's testimony regarding the circumstances of the accident and her continuing symptoms to be credible.

The Arbitrator finds the opinion of Dr. Sky as to the etiology of Petitioner's PTSD to be more persuasive than that of Dr. Charepoo. However, the Arbitrator notes that even Dr. Charepoo apparently conceded that the accident was a causative factor of Petitioner's current condition.

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

The Arbitrator concludes that all of the medical treatment and vocational services provided to Petitioner reasonable and necessary and Respondent is liable for payment of the medical and vocational services incurred therewith.

Respondent shall pay reasonable and necessary medical and vocational services as identified in Petitioner's Exhibits 1 and 20 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 (K) the Arbitrator makes the following conclusions of law:

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of 76 6/7 weeks, commencing January 23, 2019, through July 22, 2020.

The Arbitrator concludes Petitioner is entitled to maintenance benefits of 30 1/7 weeks commencing July 23, 2020, through February 17, 2021.

In support of these conclusions the Arbitrator notes the following:

During the period of temporary total disability, Petitioner was under active medical treatment and authorized to be off work.

During the period of maintenance, Petitioner was receiving the services of an employment/vocational expert and attempting to secure employment.

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

The Arbitrator concludes Petitioner is entitled to a wage differential award pursuant to the provisions of Section 8(d)1 of the Act, of $137.87 per week commencing February 18, 2021, and continuing until Petitioner reaches the age 67 or five years from the date of final award, whichever is later, because the injuries caused a loss of earnings, as provided in Section 8(d)1.

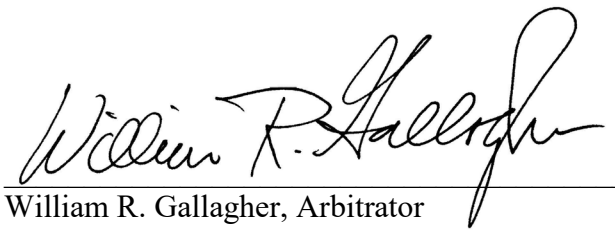
In support of this conclusion the Arbitrator notes the following:

Petitioner was unable to return to work to the job she had with Respondent or any job in which she would have contact with psychiatric patients.

Petitioner's job with Anna-Jonesboro National Bank pays $13.50 per hour and Petitioner works 40 hours a week, which amounts to $540.00 per week.

If Petitioner had continued to work for Respondent, she would, at the time of trial, have been earning $18.67 per hour. For a 40 hour work week, this computes to $746.80.

The difference between $746.80 per week and $540.00 is $206.80, two thirds of which equals $137.87



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC016292
Case Name	Mary Catherine Ryba v. Libertyville Manor Extended Care
Consolidated Cases	16WC016293; 16WC021558;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0107
Number of Pages of Decision	15
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Charles Cohn
Respondent Attorney	James Egan

DATE FILED: 3/9/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mary Catherine Ryba,

Petitioner,

vs. NO. 16WC 16292

Libertyville Manor Extended Care,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by both parties herein and notice given, the Commission, after considering the issues of accident, jurisdiction, medical expenses, causal connection, reasonableness of charges, necessity of treatment, permanent disability, reinstatement of claim, 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 21, 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.

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.

March 9, 2023

SJM/sj
o-1/11/2023
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC016292
Case Name	RYBA, MARY CATHERINE v. LIBERTYVILLE MANOR EXTENDED CARE
Consolidated Cases	
Proceeding Type	
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Erwin Cohn
Respondent Attorney	James Egan

DATE FILED: 3/21/2022

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

/s/Michael Glaub, Arbitrator

Signature

23IWCC0107

STATE OF ILLINOIS)
)SS.
COUNTY OF LAKE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Mary Catherine Ryba
Employee/Petitioner

v.

LIBERTYVILLE MANOR EXTENDED CARE
Employer/Respondent

Case # **16WC016292**

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 **Glaub/Waukegan**, Arbitrator of the Commission, in the city of Waukegan, Illinois, on December 27, 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: Whether the three dismissed cases should the underlying cases be reinstated?

FINDINGS

On February 11, 2016, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did*** 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 $**54,080.00**; the average weekly wage was $1,040.00

On the date of accident, Petitioner was **64** years of age, ***married*** with **no** dependent children.

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

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

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

Respondent is entitled to a credit of $953.59 under Section 8(j) of the Act.

ORDER

This matter was dismissed for want of prosecution on February 18, 2020. After hearing arguments from the parties on September 20, 2021 and reviewing supporting memorandum, the Arbitrator reinstated the matter for hearing instanter on December 27, 2021.

The Arbitrator finds petitioner's medical care and treatment as set forth in the medical records was causally related to her accidental injuries. Respondent shall pay any unpaid medical bills related to this treatment contained in the medical bills contained in the treating medical records pursuant to the Illinois fee Schedule

Regarding the low back claim, The Arbitrator awards 25 weeks of compensation under Section 8(d)2 of the Act representing a 5% loss of use of the body as a whole or twenty-five weeks at the PPD rate of $624.00.

Petitioner is awarded $171.20 for out-of-pocket medical expenses.

Respondent is awarded a credit totaling $953.59 for medical expense paid.

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 **MARCH 21, 2022**

Signature of Arbitrator

ARBITRATION DECISION

Applications for Adjustment of Claim were filed on this matter and Notice of Hearing was mailed to each party. The matter was heard by the Honorable Michael Glaub, Arbitrator of the Illinois Workers' Compensation Commission, in the City of Waukegan. After reviewing all of the evidence presented, the Arbitrator hereby makes findings of fact and rulings on the disputed issues below.

DISPUTED ISSUES:

C. Did Petitioner sustain accidental injuries arising out of and in the course of her employment?

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

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

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

M. Should penalties or fees be imposed upon Respondent?

N. Is the Respondent due any credit?

O. Should the cases numbered 16 WC 16292, 16 WC 16293 & 16 WC 21558 which were dismissed for want of prosecution on February 18, 2020, be reinstated?

There is no dispute that on this date an employee-employer relationship existed between Petitioner Mary Catharine Ryba and the Respondent, Libertyville Manor Extended Care (hereinafter Libertyville) At the time of the alleged injury, Petitioner was 64 years of age, unmarried, had no children under the age of 18 and was employed as a medical technologist. Petitioner's earnings during the year preceding the injury were $54,080.00 representing an average weekly wage, calculated pursuant to Section 10 of the Act of $1,040.00. The parties also agree that Notice of the injuries was tendered to the respondent and that petitioner did not lose any time from work as a result of these injuries.

The cases at issue had previously been dismissed for want of prosecution on February 18, 2020. The dismissal was based upon Petitioner failure to appear at a scheduled trial date set on

Respondent's request for hearing. The petitioner's claims were above the red line at the time these claims were dismissed.

O. Should the cases numbered 16 WC 16292, 16 WC 16293 & 16 WC 21558 which were dismissed for want of prosecution on February 18, 2020, be reinstated?

The cases at issue were dismissed for want of prosecution on February 18, 2020. The dismissal was based upon Petitioner failure to appear for hearing on Respondent's request for hearing, which was presented on November 18, 2019 and set for trial on February 18, 2020. The Dismissal of these cases occurred approximately one month prior to the Covid Emergency Shutdowns.

The parties stipulated to the fact the above-captioned matters, cases number 16 WC 16292, 16 WC 16293 and 16 WC 21588 were dismissed on February 18, 2020. A motion to reinstate was filed by counsel for Petitioner on April 29, 2021.

On February 19, 2020, Notices of Case Dismissal were issued by the IWCC and mailed to the attorneys of record.

On April 29, 2021, counsel for Petitioner filed a motion to reinstate case.

On August 20, 2021, this Arbitrator heard arguments on the motion and took the matter under advisement.

Attorney for Petitioner alleged his office did not receive any Written Notice of Case Dismissal from the Illinois Workers' Compensation Commission and as such, the sixty-day status of limitations for filing a motion to reinstate was tolled. Counsel also argued that due to the COVID pandemic and temporary changes to procedures at the IWCC, including suspension of the red line, they had been diligent in pursuing their remedies.

Attorney for Respondent argued that 436 days passed between the date of notice sent by the Commission and Petitioner's filing of the motion to reinstate, which constituted a lack of due diligence and a failure to pursue her remedies.

On December 27, 2021, this Arbitrator granted the motion to reinstate the cases and the matters proceeded to hearing on all issues.

The Arbitrator based his Decision to allow the reinstatement of these cases on petitioner's attorney claim that their office never received a written copy of the Dismissal of these Cases and the fact that the Illinois Workers' Compensation Commission shut down during the period between when the case was dismissed and the date the Petition to Reinstate would have been due. Further, the Commission suspended the Redline when it re-opened on a limited basis. In the Arbitrator's opinion, the closure of the Commission and the subsequent suspension of the red line relieved the petitioner's attorney of their duty to monitor his above the Red Line cases from the date of the Red Line suspension in March 2020 until the Red Line enforcement was renewed in November

2021. The Arbitrator also notes the that the petitioner's attorney that appeared for arguments on the Motion to Reinstate represented to the Arbitrator that the wife of the petitioner's attorney that was handling the case at the time of its dismissal subsequently passed away from Covid after this matter had been dismissed. After Hearing arguments that were presented in person with a court reporter present, the Arbitrator took the matter under advisement. The Arbitrator did subsequently advise the parties in a Webex conference that he was planning to allow the reinstatement provided petitioner's attorney was present and prepared to proceed to Hearing on December 27, 2021. Both parties appeared at that time prepared to proceed, and this matter was tried to conclusion on all issues on December 27, 2021. The Motion to Reinstate was officially granted on this date. The Arbitrator believes his Decision to Reinstate is an appealable issue to be reviewed by The Commission in conjunction with the other issues ruled upon in these cases.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Petitioner testified she worked as a unit nurse and admissions coordinator. On May 8, 2015, she was assisting a patient/resident, when the patient started to fall. In trying to steady the patient, Petitioner felt pain in her right-side, low-back. She rated her pain at 3-4 but finished her shift. She testified she had not felt pain of this nature before the date of loss.

On June 8, 2015, Petitioner presented to Dr. Juan Alzate at The American Center for Spine & Surgery for a medical evaluation of her lumbar spine. Petitioner stated she was lifting patients and since then her pain had become more severe in the previous three weeks. She felt pain in her lower back that radiated to the left lower extremity with tingling numbness. On exam, Petitioner walked with an antalgic gait and had significant limitation of mobilization of the lower back due to muscle spasm. Dr. Alzate diagnosed Petitioner with probable disc herniation and recommended an MRI before discussing options of treatment. (P. #1)

On June 18, 2015, Petitioner presented to Progressive Radiology and underwent an MRI of the lumbar spine. The impression showed a mild disc bulge and face arthrosis at L4-L5 due to mild bilateral foraminal narrowing. A small central disc protrusion at L5-S1 without associated central canal or foraminal narrowing was also seen. (P#1)

On February 11, 2016, Petitioner testified she was pushing a prospect for a tour of the facility when she felt a sharp pain in her lower back, similar to the pain on May 8th, 2015, except the pain was on the left side this time. She finished her shift and worked two more days, February 12 and 13, but was in pain. On Sunday, February 14, 2016, she was attempting to get out of bed when her right leg gave out when she tried to go down her stairs. She testified she did not fall down the stairs however her handwritten accident report dated February 19, 2016 indicated she fell down several stairs. She called in an did not go to work on the 14th. (P#2)

Petitioner’s report and her testimony indicated she called her PCP, Dr. Neyman, who instructed her to go to the ER at Condell Hospital. (P#2)

On February 15, 2016, Petitioner presented to Dr. Joshua Hallet at Condell Medical Center’s emergency department complaining of continued back pain. Petitioner stated that she was moving

a patient at work four to five days prior when she felt a "twinge" in her lower back. Petitioner then indicated she developed severe pain one day prior to her right lower back radiating to her right leg. Her right knee also buckled, and she fell. On exam, Petitioner's back showed normal range of motion, alignment, and no step-offs, but had tenderness over her right buttock. An MRI was recommended. Petitioner was diagnosed with low back pain and was admitted. (P#2)

On February 16, 2016, Petitioner complained of continued lower abdominal pain with radiation to the right lower extremity. Dr. Neyman diagnosed Petitioner with uncontrolled severe back pain with right-sided sciatica and weakness in the right leg, degenerative joint disease of the spine, possible disc herniation, and hyperlipidemia. Petitioner was transported to the regular medical floor for pain control. (P#2)

MRI of the lumbar spine showed a small central disc protrusion at L5-S1 with left foraminal stenosis without central canal stenosis. There was also spondylosis with an annular disc bulge at L4-L5 without focal herniation or spinal stenosis with bilateral foraminal stenosis due to degenerative changes. (P#2)

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On May 18, 2016, Petitioner presented to Advocate Medical Group for a Pain Management follow up. Petitioner stated she was doing well until she began to have radicular symptoms in the right lower extremity. This had begun a couple of weeks prior. IT was noted Petitioner had undergone an epidural injection a year ago and indicated she had good relief after. On exam, Petitioner exhibited tenderness on palpation and pain to the lower back. Dr. Jay Hurh diagnosed Petitioner

with continued osteoarthritis of spine with radiculopathy and recommended a repeat lumbar epidural at the L4-L5 level. Petitioner was also to start Medrol dosepak. (P32)

On June 10, 2016, Petitioner was responding to a non-responsive resident to the ground to administer CPR, she felt pain across her lower-back. (P#3)

On June 6, 2016, Petitioner returned to Dr. Hurh for follow-up following the June 10, 2016 incident. Dr. Hurh diagnosed osteoarthritis of the spine with radiculopathy in the lumbar region and discussed scheduling an injection. (P#3)

On December 19, 2016, Petitioner underwent a Section 12 examination, performed by Dr. Kern Singh. Dr. Singh analyzed the June 18, 2015 MRI images, conducted and examination and reviewed medical records. Dr. Singh opined the MRI revealed normal lumbar lordosis, a central disk protrusion at L4-5, without evidence of central or foraminal stenosis. Dr. Singh diagnosed her with a soft tissue muscular strain which had resolved and opined she could work full duty. (R#1 & 2)

The next medical record exhibit tendered by Petitioner was part of exhibit five, which revealed Petitioner returned to Dr. Hurh on February 26, 2021, with a history of chronic degenerative disc disease. She complained of low back pain radiating to the right buttocks and down the right leg. She also complained of right lateral hip pain. The note indicates Petitioner last been seen August 2019. The report indicated Petitioner had worsening pain in the last two months. The report indicated Petitioner had been seen by a neurosurgeon, but had decided against surgery, as she had been told surgery might not help. The report did not provide any history of any precipitating event to the flare-up of back pain. (Px# 5)

Dr. Hurh diagnosed degenerative disc disease and trochanteric bursitis of the right hip. An injection for the right hip was recommended and scheduled for March 11, 2021. (P#4)

On March 25, 2021, Petitioner returned to Dr. Hurh for follow-up. The hip injection helped, but she still complained of low-back pain. Dr. Hurh again diagnosed degenerative disc disease. (P#4)

Respondent presented two witnesses, Milan Stokovich and Carol McGowan. Both confirmed that no new reports of accidents or injuries at work were reported after the June 10, 2016 incident. Petitioner also confirmed same.

C Did an accident(s) occur that arose out of and in the course of Petitioner's Employment with the Respondent?

Petitioner testified she initially injured her low back on May 18, 2015 while assisting two patients over the course of her workday. Petitioner testified that she injured her low back again at work on February 11, 2016 while pushing a heavy lady in a wheelchair. Petitioner testified that she again injured herself on June 9, 2016 while administering CPR to resident that had gone into

cardiac arrest. Petitioner testified that she noticed low back pain with radiation into her right leg at this time.

The medical records introduced into evidence contain histories that are consistent with the petitioner's testimony. There was no evidence introduced that contradicted the petitioner's testimony.

Based on the petitioner's unrebutted sworn testimony and the histories contained in the medical records, the Arbitrator finds petitioner sustained accidental injuries arising out of and in the scope if her employment with the respondent on May 8, 2015, February 11, 2016 and June 9, 2016.

F. In support of the Arbitrator's decision on whether Petitioner's current condition is related to the work accidents of May 18, 2015, February 11, 2016 and June 9, 2016, the Arbitrator finds the following:

Petitioner experienced three work related injures on May 18, 2015, February 11, 2016 and June 9, 2016. Diagnostic imaging revealed a bulging disc, a disc protrusion and degenerative changes including facet arthrosis and foraminal narrowing. Petitioner underwent conservative treatment including epidural steroid injections and physical therapy. The petitioner continued to perform physical work for the respondent in between and following her three work accidents. Petitioner's medical care continued on an intermittent basis through November 3, 2021.

Dr. Singh provided an opinion finding Petitioner had attained MMI on or about December 19, 2016. However, the Arbitrator does not adopt the medical opinions of Dr. Singh. The Arbitrator found the petitioner to be a very credible witness. The petitioner worked for the respondent for twenty-five years until she recently retired from her physically intensive job at age 70.

Based on the petitioner's testimony and the Arbitrator's review of the treating medical records, the Arbitrator finds that the petitioner's low back condition is causally related to her three work injures on May 18, 2015, February 11, 2016, and June 9, 2016.

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

Petitioner sustained three work related injuries on May 18, 2015, February 11, 2016 and June 9, 2016. Diagnostic imaging revealed a bulging disc, a disc protrusion and degenerative conditions including facet arthrosis and foraminal narrowing. Petitioner underwent conservative treatment including epidural steroid injections and physical therapy. While there were gaps in petitioner's care, she continued to treat for her medical condition through 2021. Based on the Arbitrator's review of the medical records, the Arbitrator finds that all the treatment received as documented by the medical records (Px 1-Px 5) was necessary and causally related to the three work injuries.

The Arbitrator does not adopt the medical findings or conclusions of Dr. Singh. The Arbitrator does not believe petitioner has reached Maximum Medical Improvement based upon her testimony and the Arbitrator's review of the treating medical records.

Regarding whether Respondent has paid all appropriate charges for reasonable and related medical services, the only medical expenses entered into evidence as a specific exhibit was Petitioner's exhibit six, totaling $171.20 for out-of-pocket prescription costs. The Arbitrator awards $171.20 to Petitioner for these out of pocket Prescription expenses. The Arbitrator notes that no specific unpaid medical bills were listed on the Trial Stipulation Sheet. The Arbitrator further notes that there were several medical bills contained in the treating medical records. (Px1-Px5) It is unclear as to whether those medical bills remain unpaid. There was no testimony on this issue. However, the Arbitrator has specifically found that the medical treatment the petitioner received as set forth in these treating medical records is causally related to the petitioner's injuries and were medically necessary. Therefore, the Arbitrator finds that the respondent is responsible for the medical charges contained in the treating medical records if these medical bills remain unpaid, pursuant to the Illinois Medical Fee schedule.

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

The objective evidence presented at hearing demonstrated Petitioner suffered a low back injury, which was aggravated on two occasions. In determining permanent partial disability, the Arbitrator looks to Section 8.1b of the Act for guidance, and the five factors illustrated therein.

Pursuant to Section 8.1b, 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.

Regarding factor (i), no impairment rating was entered into evidence by either party, so this factor cannot be considered.

Regarding factor (ii), Petitioner recently retired on December 15, 2021 at age 70 (just prior to the December 27, 2021 Hearing) from her position as an admissions coordinator and unit nurse. No evidence of any medical restrictions was offered into evidence. Petitioner testified she assisted patients/residents, provided tours of the facility to prospective residents. There was lifting,

bending and squatting involved. The Arbitrator finds that this factor weighs in favor of decreased permanence.

Regarding factor (iii), on the date of loss Petitioner was 64-years-of-age. In her testimony, Petitioner offered testimony that she had recently retired at the age of 70 on December 15, 2021. She testified that while she had pain, she was able to perform her job until her retirement, and no records supported permanent restrictions or any human resource issues with those restrictions. It appears to the Arbitrator she was able to perform her job until she retired. The Arbitrator finds that this factor weighs in favor of decreased permanence.

Regarding factor (iv), Petitioner testified she worked her regular job after her return to work until her retirement. She worked her regular job and missed minimal time until her retirement on December 15, 2021. There was no evidence of any permanent medical restrictions. There was no evidence entered at trial that the Petitioner's future earning capacity was affected by the injury. The Arbitrator finds that this factor weighs in favor of decreased permanence.

Finally, regarding factor (v), the medical records reflect an MRI was performed on June 18, 2015 and revealed a mild disc bulge at L4-5 with evidence of mild arthrosis and mild foraminal narrowing and a central disc protrusion at the L5-S1 level measuring 5mm and mild facet arthrosis. (Px 1) An X-ray performed on February 17, 2016 revealed evidence of Degenerative Disc Disease. (Px 2) An Epidural Steroid injection were administered on February 17, 2016. (Px 2) Petitioner underwent a second Epidural Injection on May 11, 2017. (Px 4) Another Epidural injection was administered on March 11, 2021. (Px 5) There are multiple entries in the records of various treating physicians documenting petitioner's complaints of radicular pain. (Px2 -Px5) The Arbitrator finds that tis factor weighs in favor of increased permanence.

Evaluating the factors as a whole, the Arbitrator finds as follows:

Based on all of the above, the Arbitrator awards 5% loss of use of the person as a whole or 25 weeks at the PPD rate of $624.00.

M. Should penalties or fees be imposed upon Respondent?

Petitioner did not lose any time form wok. No specific unpaid medical bills are listed on the Trial Stipulation Sheet. Petitioner's attorney did enter $171.20 in receipts representing out-of-pocket prescription costs incurred. However, there was no evidence these receipts were ever previously tendered to the respondent. The medical records do contain some medical bills, but it is unclear if these bills are unpaid. Based on these facts, petitioner's attorney request for Penalties and Attorney Fees are denied.

N. Is the Respondent due any credit?

Respondent is awarded a credit of $953.59 for medical expenses paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC016293
Case Name	Mary Catherine Ryba v. Libertyville Manor Extended Care
Consolidated Cases	16WC016292; 16WC021558;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0108
Number of Pages of Decision	15
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Charles Cohn
Respondent Attorney	James Egan

DATE FILED: 3/9/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mary Catherine Ryba,

Petitioner,

vs. NO. 16WC 16293

Libertyville Manor Extended Care,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by both parties herein and notice given, the Commission, after considering the issues of accident, jurisdiction, medical expenses, causal connection, reasonableness of charges, necessity of treatment, permanent disability, reinstatement of claim, 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 21, 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.

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.

March 9, 2023

SJM/sj
o-1/11/2023
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC016293
Case Name	RYBA, MARY CATHERINE v. LIBERTYVILLE MANOR EXTENDED CARE
Consolidated Cases	
Proceeding Type	
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Erwin Cohn
Respondent Attorney	James Egan

DATE FILED: 3/21/2022

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

/s/Michael Glaub, Arbitrator

Signature

23IWCC0108

STATE OF ILLINOIS)
)SS.
COUNTY OF LAKE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Mary Catherine Ryba
Employee/Petitioner

v.

Libertyville Manor Extended Care
Employer/Respondent

Case # **16WC016293**

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 **Glaub/Waukegan**, Arbitrator of the Commission, in the city of Waukegan, Illinois, on December 27, 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: Whether the three dismissed cases should the underlying cases be reinstated?

FINDINGS

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

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

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

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

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

In the year preceding the injury, Petitioner earned $**54,080.00**; the average weekly wage was $1,040.00

On the date of accident, Petitioner was **64** years of age, ***married*** with **no** dependent children.

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

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

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

Respondent is entitled to a credit of $953.59 under Section 8(j) of the Act.

ORDER

This matter was dismissed for want of prosecution on February 18, 2020. After hearing argument from the parties on September 20, 2021 and reviewing supporting memorandum, the Arbitrator reinstated the matter for hearing instanter.

Based upon the Arbitrator's Conclusion of Law attached hereto, all benefits are awarded in case number 16WC016292.

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 **MARCH 21, 2022**

Signature of Arbitrator

ARBITRATION DECISION

Applications for Adjustment of Claim were filed on this matter and Notice of Hearing was mailed to each party. The matter was heard by the Honorable Michael Glaub, Arbitrator of the Illinois Workers' Compensation Commission, in the City of Waukegan. After reviewing all of the evidence presented, the Arbitrator hereby makes findings of fact and rulings on the disputed issues below.

DISPUTED ISSUES:

C. Did Petitioner sustain accidental injuries arising out of and in the course of her employment?

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

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

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

M. Should penalties or fees be imposed upon Respondent?

N. Is the Respondent due any credit?

O. Should the cases numbered 16 WC 16292, 16 WC 16293 & 16 WC 21558 which were dismissed for want of prosecution on February 18, 2020, be reinstated?

There is no dispute that on this date an employee-employer relationship existed between Petitioner Mary Catharine Ryba and the Respondent, Libertyville Manor Extended Care (hereinafter Libertyville) At the time of the alleged injury, Petitioner was 64 years of age, unmarried, had no children under the age of 18 and was employed as a medical technologist. Petitioner's earnings during the year preceding the injury were $54,080.00 representing an average weekly wage, calculated pursuant to Section 10 of the Act of $1,040.00. The parties also agree that Notice of the injuries was tendered to the respondent and that petitioner did not lose any time from work as a result of these injuries.

The cases at issue had previously been dismissed for want of prosecution on February 18, 2020. The dismissal was based upon Petitioner failure to appear at a scheduled trial date set on

Respondent's request for hearing. The petitioner's claims were above the red line at the time these claims were dismissed.

O. Should the cases numbered 16 WC 16292, 16 WC 16293 & 16 WC 21558 which were dismissed for want of prosecution on February 18, 2020, be reinstated?

The cases at issue were dismissed for want of prosecution on February 18, 2020. The dismissal was based upon Petitioner failure to appear for hearing on Respondent's request for hearing, which was presented on November 18, 2019 and set for trial on February 18, 2020. The Dismissal of these cases occurred approximately one month prior to the Covid Emergency Shutdowns.

The parties stipulated to the fact the above-captioned matters, cases number 16 WC 16292, 16 WC 16293 and 16 WC 21588 were dismissed on February 18, 2020. A motion to reinstate was filed by counsel for Petitioner on April 29, 2021.

On February 19, 2020, Notices of Case Dismissal were issued by the IWCC and mailed to the attorneys of record.

On April 29, 2021, counsel for Petitioner filed a motion to reinstate case.

On August 20, 2021, this Arbitrator heard arguments on the motion and took the matter under advisement.

Attorney for Petitioner alleged his office did not receive any Written Notice of Case Dismissal from the Illinois Workers' Compensation Commission and as such, the sixty-day status of limitations for filing a motion to reinstate was tolled. Counsel also argued that due to the COVID pandemic and temporary changes to procedures at the IWCC, including suspension of the red line, they had been diligent in pursuing their remedies.

Attorney for Respondent argued that 436 days passed between the date of notice sent by the Commission and Petitioner's filing of the motion to reinstate, which constituted a lack of due diligence and a failure to pursue her remedies.

On December 27, 2021, this Arbitrator granted the motion to reinstate the cases and the matters proceeded to hearing on all issues.

The Arbitrator based his Decision to allow the reinstatement of these cases on petitioner's attorney claim that their office never received a written copy of the Dismissal of these Cases and the fact that the Illinois Workers' Compensation Commission shut down during the period between when the case was dismissed and the date the Petition to Reinstate would have been due. Further, the Commission suspended the Redline when it re-opened on a limited basis. In the Arbitrator's opinion, the closure of the Commission and the subsequent suspension of the red line relieved the petitioner's attorney of their duty to monitor his above the Red Line cases from the date of the Red Line suspension in March 2020 until the Red Line enforcement was renewed in November

2021. The Arbitrator also notes the that the petitioner's attorney that appeared for arguments on the Motion to Reinstate represented to the Arbitrator that the wife of the petitioner's attorney that was handling the case at the time of its dismissal subsequently passed away from Covid after this matter had been dismissed. After Hearing arguments that were presented in person with a court reporter present, the Arbitrator took the matter under advisement. The Arbitrator did subsequently advise the parties in a Webex conference that he was planning to allow the reinstatement provided petitioner's attorney was present and prepared to proceed to Hearing on December 27, 2021. Both parties appeared at that time prepared to proceed, and this matter was tried to conclusion on all issues on December 27, 2021. The Motion to Reinstate was officially granted on this date. The Arbitrator believes his Decision to Reinstate is an appealable issue to be reviewed by The Commission in conjunction with the other issues ruled upon in these cases.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Petitioner testified she worked as a unit nurse and admissions coordinator. On May 8, 2015, she was assisting a patient/resident, when the patient started to fall. In trying to steady the patient, Petitioner felt pain in her right-side, low-back. She rated her pain at 3-4 but finished her shift. She testified she had not felt pain of this nature before the date of loss.

On June 8, 2015, Petitioner presented to Dr. Juan Alzate at The American Center for Spine & Surgery for a medical evaluation of her lumbar spine. Petitioner stated she was lifting patients and since then her pain had become more severe in the previous three weeks. She felt pain in her lower back that radiated to the left lower extremity with tingling numbness. On exam, Petitioner walked with an antalgic gait and had significant limitation of mobilization of the lower back due to muscle spasm. Dr. Alzate diagnosed Petitioner with probable disc herniation and recommended an MRI before discussing options of treatment. (P. #1)

On June 18, 2015, Petitioner presented to Progressive Radiology and underwent an MRI of the lumbar spine. The impression showed a mild disc bulge and face arthrosis at L4-L5 due to mild bilateral foraminal narrowing. A small central disc protrusion at L5-S1 without associated central canal or foraminal narrowing was also seen. (P#1)

On February 11, 2016, Petitioner testified she was pushing a prospect for a tour of the facility when she felt a sharp pain in her lower back, similar to the pain on May 8th, 2015, except the pain was on the left side this time. She finished her shift and worked two more days, February 12 and 13, but was in pain. On Sunday, February 14, 2016, she was attempting to get out of bed when her right leg gave out when she tried to go down her stairs. She testified she did not fall down the stairs however her handwritten accident report dated February 19, 2016 indicated she fell down several stairs. She called in an did not go to work on the 14th. (P#2)

Petitioner’s report and her testimony indicated she called her PCP, Dr. Neyman, who instructed her to go to the ER at Condell Hospital. (P#2)

On February 15, 2016, Petitioner presented to Dr. Joshua Hallet at Condell Medical Center’s emergency department complaining of continued back pain. Petitioner stated that she was moving

a patient at work four to five days prior when she felt a "twinge" in her lower back. Petitioner then indicated she developed severe pain one day prior to her right lower back radiating to her right leg. Her right knee also buckled, and she fell. On exam, Petitioner's back showed normal range of motion, alignment, and no step-offs, but had tenderness over her right buttock. An MRI was recommended. Petitioner was diagnosed with low back pain and was admitted. (P#2)

On February 16, 2016, Petitioner complained of continued lower abdominal pain with radiation to the right lower extremity. Dr. Neyman diagnosed Petitioner with uncontrolled severe back pain with right-sided sciatica and weakness in the right leg, degenerative joint disease of the spine, possible disc herniation, and hyperlipidemia. Petitioner was transported to the regular medical floor for pain control. (P#2)

MRI of the lumbar spine showed a small central disc protrusion at L5-S1 with left foraminal stenosis without central canal stenosis. There was also spondylosis with an annular disc bulge at L4-L5 without focal herniation or spinal stenosis with bilateral foraminal stenosis due to degenerative changes. (P#2)

Petitioner was then seen by Dr. Hurh upon being admitted to Advocate Condell Hospital. Petitioner stated she went to step down the stairs and fell because of weakness in her right leg. Neurosurgery was consulted and indicated Petitioner was not a surgical candidate. On exam, Petitioner was recommended an injection secondary to L4-L5 related lumbar spondylosis with lumbar radiculopathy. (P#2)

On February 17, 2016, Petitioner indicated her pain was better controlled. Petitioner underwent an epidural steroid injection with fluoroscopic assistance. Petitioner was later discharged from care. A return to work note indicated Petitioner was able to return to work under no restrictions on February 22, 2016. (P #2)

On March 11, 2016, Petitioner returned to Dr. Hurh for a Pain Management follow up. Petitioner stated she was doing well status post injection until recently when she started having right lower extremity pain. It was noted in the report Petitioner had yet to begin physical therapy. On exam, Petitioner was assessed with osteoarthritis of the spine with radiculopathy. Dr. Hurh again recommended physical therapy as well as an epidural steroid injection of the lumbar spine to the right side. Petitioner was also to start Medrol dosepak and gabapentin. (P#2)

On May 18, 2016, Petitioner presented to Advocate Medical Group for a Pain Management follow up. Petitioner stated she was doing well until she began to have radicular symptoms in the right lower extremity. This had begun a couple of weeks prior. IT was noted Petitioner had undergone an epidural injection a year ago and indicated she had good relief after. On exam, Petitioner exhibited tenderness on palpation and pain to the lower back. Dr. Jay Hurh diagnosed Petitioner

with continued osteoarthritis of spine with radiculopathy and recommended a repeat lumbar epidural at the L4-L5 level. Petitioner was also to start Medrol dosepak. (P32)

On June 10, 2016, Petitioner was responding to a non-responsive resident to the ground to administer CPR, she felt pain across her lower-back. (P#3)

On June 6, 2016, Petitioner returned to Dr. Hurh for follow-up following the June 10, 2016 incident. Dr. Hurh diagnosed osteoarthritis of the spine with radiculopathy in the lumbar region and discussed scheduling an injection. (P#3)

On December 19, 2016, Petitioner underwent a Section 12 examination, performed by Dr. Kern Singh. Dr. Singh analyzed the June 18, 2015 MRI images, conducted and examination and reviewed medical records. Dr. Singh opined the MRI revealed normal lumbar lordosis, a central disk protrusion at L4-5, without evidence of central or foraminal stenosis. Dr. Singh diagnosed her with a soft tissue muscular strain which had resolved and opined she could work full duty. (R#1 & 2)

The next medical record exhibit tendered by Petitioner was part of exhibit five, which revealed Petitioner returned to Dr. Hurh on February 26, 2021, with a history of chronic degenerative disc disease. She complained of low back pain radiating to the right buttocks and down the right leg. She also complained of right lateral hip pain. The note indicates Petitioner last been seen August 2019. The report indicated Petitioner had worsening pain in the last two months. The report indicated Petitioner had been seen by a neurosurgeon, but had decided against surgery, as she had been told surgery might not help. The report did not provide any history of any precipitating event to the flare-up of back pain. (Px# 5)

Dr. Hurh diagnosed degenerative disc disease and trochanteric bursitis of the right hip. An injection for the right hip was recommended and scheduled for March 11, 2021. (P#4)

On March 25, 2021, Petitioner returned to Dr. Hurh for follow-up. The hip injection helped, but she still complained of low-back pain. Dr. Hurh again diagnosed degenerative disc disease. (P#4)

Respondent presented two witnesses, Milan Stokovich and Carol McGowan. Both confirmed that no new reports of accidents or injuries at work were reported after the June 10, 2016 incident. Petitioner also confirmed same.

C Did an accident(s) occur that arose out of and in the course of Petitioner's Employment with the Respondent?

Petitioner testified she initially injured her low back on May 18, 2015 while assisting two patients over the course of her workday. Petitioner testified that she injured her low back again at work on February 11, 2016 while pushing a heavy lady in a wheelchair. Petitioner testified that she again injured herself on June 9, 2016 while administering CPR to resident that had gone into

cardiac arrest. Petitioner testified that she noticed low back pain with radiation into her right leg at this time.

The medical records introduced into evidence contain histories that are consistent with the petitioner's testimony. There was no evidence introduced that contradicted the petitioner's testimony.

Based on the petitioner's unrebutted sworn testimony and the histories contained in the medical records, the Arbitrator finds petitioner sustained accidental injuries arising out of and in the scope if her employment with the respondent on May 8, 2015, February 11, 2016 and June 9, 2016.

F. In support of the Arbitrator's decision on whether Petitioner's current condition is related to the work accidents of May 18, 2015, February 11, 2016 and June 9, 2016, the Arbitrator finds the following:

Petitioner experienced three work related injures on May 18, 2015, February 11, 2016 and June 9, 2016. Diagnostic imaging revealed a bulging disc, a disc protrusion and degenerative changes including facet arthrosis and foraminal narrowing. Petitioner underwent conservative treatment including epidural steroid injections and physical therapy. The petitioner continued to perform physical work for the respondent in between and following her three work accidents. Petitioner's medical care continued on an intermittent basis through November 3, 2021.

Dr. Singh provided an opinion finding Petitioner had attained MMI on or about December 19, 2016. However, the Arbitrator does not adopt the medical opinions of Dr. Singh. The Arbitrator found the petitioner to be a very credible witness. The petitioner worked for the respondent for twenty-five years until she recently retired from her physically intensive job at age 70.

Based on the petitioner's testimony and the Arbitrator's review of the treating medical records, the Arbitrator finds that the petitioner's low back condition is causally related to her three work injures on May 18, 2015, February 11, 2016, and June 9, 2016.

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

Petitioner sustained three work related injuries on May 18, 2015, February 11, 2016 and June 9, 2016. Diagnostic imaging revealed a bulging disc, a disc protrusion and degenerative conditions including facet arthrosis and foraminal narrowing. Petitioner underwent conservative treatment including epidural steroid injections and physical therapy. While there were gaps in petitioner's care, she continued to treat for her medical condition through 2021. Based on the Arbitrator's review of the medical records, the Arbitrator finds that all the treatment received as documented by the medical records (Px 1-Px 5) was necessary and causally related to the three work injuries.

The Arbitrator does not adopt the medical findings or conclusions of Dr. Singh. The Arbitrator does not believe petitioner has reached Maximum Medical Improvement based upon her testimony and the Arbitrator's review of the treating medical records.

Regarding whether Respondent has paid all appropriate charges for reasonable and related medical services, the only medical expenses entered into evidence as a specific exhibit was Petitioner's exhibit six, totaling $171.20 for out-of-pocket prescription costs. The Arbitrator awards $171.20 to Petitioner for these out of pocket Prescription expenses. The Arbitrator notes that no specific unpaid medical bills were listed on the Trial Stipulation Sheet. The Arbitrator further notes that there were several medical bills contained in the treating medical records. (Px1-Px5) It is unclear as to whether those medical bills remain unpaid. There was no testimony on this issue. However, the Arbitrator has specifically found that the medical treatment the petitioner received as set forth in these treating medical records is causally related to the petitioner's injuries and were medically necessary. Therefore, the Arbitrator finds that the respondent is responsible for the medical charges contained in the treating medical records if these medical bills remain unpaid, pursuant to the Illinois Medical Fee schedule.

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

The objective evidence presented at hearing demonstrated Petitioner suffered a low back injury, which was aggravated on two occasions. In determining permanent partial disability, the Arbitrator looks to Section 8.1b of the Act for guidance, and the five factors illustrated therein.

Pursuant to Section 8.1b, 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.

Regarding factor (i), no impairment rating was entered into evidence by either party, so this factor cannot be considered.

Regarding factor (ii), Petitioner recently retired on December 15, 2021 at age 70 (just prior to the December 27, 2021 Hearing) from her position as an admissions coordinator and unit nurse. No evidence of any medical restrictions was offered into evidence. Petitioner testified she assisted patients/residents, provided tours of the facility to prospective residents. There was lifting,

bending and squatting involved. The Arbitrator finds that this factor weighs in favor of decreased permanence.

Regarding factor (iii), on the date of loss Petitioner was 64-years-of-age. In her testimony, Petitioner offered testimony that she had recently retired at the age of 70 on December 15, 2021. She testified that while she had pain, she was able to perform her job until her retirement, and no records supported permanent restrictions or any human resource issues with those restrictions. It appears to the Arbitrator she was able to perform her job until she retired. The Arbitrator finds that this factor weighs in favor of decreased permanence.

Regarding factor (iv), Petitioner testified she worked her regular job after her return to work until her retirement. She worked her regular job and missed minimal time until her retirement on December 15, 2021. There was no evidence of any permanent medical restrictions. There was no evidence entered at trial that the Petitioner's future earning capacity was affected by the injury. The Arbitrator finds that this factor weighs in favor of decreased permanence.

Finally, regarding factor (v), the medical records reflect an MRI was performed on June 18, 2015 and revealed a mild disc bulge at L4-5 with evidence of mild arthrosis and mild foraminal narrowing and a central disc protrusion at the L5-S1 level measuring 5mm and mild facet arthrosis. (Px 1) An X-ray performed on February 17, 2016 revealed evidence of Degenerative Disc Disease. (Px 2) An Epidural Steroid injection were administered on February 17, 2016. (Px 2) Petitioner underwent a second Epidural Injection on May 11, 2017. (Px 4) Another Epidural injection was administered on March 11, 2021. (Px 5) There are multiple entries in the records of various treating physicians documenting petitioner's complaints of radicular pain. (Px2 -Px5) The Arbitrator finds that tis factor weighs in favor of increased permanence.

Evaluating the factors as a whole, the Arbitrator finds as follows:

Based on all of the above, the Arbitrator awards 5% loss of use of the person as a whole or 25 weeks at the PPD rate of $624.00.

M. Should penalties or fees be imposed upon Respondent?

Petitioner did not lose any time form wok. No specific unpaid medical bills are listed on the Trial Stipulation Sheet. Petitioner's attorney did enter $171.20 in receipts representing out-of-pocket prescription costs incurred. However, there was no evidence these receipts were ever previously tendered to the respondent. The medical records do contain some medical bills, but it is unclear if these bills are unpaid. Based on these facts, petitioner's attorney request for Penalties and Attorney Fees are denied.

N. Is the Respondent due any credit?

Respondent is awarded a credit of $953.59 for medical expenses paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC021558
Case Name	Mary Catherine Ryba v. Libertyville Manor Extended Care
Consolidated Cases	16WC016292; 16WC016293;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0109
Number of Pages of Decision	15
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Charles Cohn
Respondent Attorney	James Egan

DATE FILED: 3/9/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mary Catherine Ryba,

Petitioner,

vs. NO. 16WC 21558

Libertyville Manor Extended Care,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by both parties herein and notice given, the Commission, after considering the issues of accident, jurisdiction, medical expenses, causal connection, reasonableness of charges, necessity of treatment, permanent disability, reinstatement of claim, 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 21, 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.

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.

March 9, 2023

SJM/sj
o-1/11/2023
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC021558
Case Name	RYBA, MARY CATHERINE v. LIBERTYVILLE MANOR EXTENDED CARE
Consolidated Cases	
Proceeding Type	
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Erwin Cohn
Respondent Attorney	James Egan

DATE FILED: 3/21/2022

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

/s/Michael Glaub, Arbitrator

Signature

23IWCC0109

STATE OF ILLINOIS)
)SS.
COUNTY OF LAKE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Mary Catherine Ryba
Employee/Petitioner

v.

Libertyville Manor Extended Care
Employer/Respondent

Case # **16WC021558**

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 **Glaub/Waukegan**, Arbitrator of the Commission, in the city of Waukegan, Illinois, on December 27, 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: Whether the three dismissed cases should the underlying cases be reinstated?

FINDINGS

On June 9, 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 $**54,080.00**; the average weekly wage was $1,040.00

On the date of accident, Petitioner was **64** years of age, ***married*** with **no** dependent children.

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

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

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

Respondent is entitled to a credit of $953.59 under Section 8(j) of the Act.

ORDER

This matter was dismissed for want of prosecution on February 18, 2020. After hearing argument from the parties on September 20, 2021 and reviewing supporting memorandum, the Arbitrator reinstated the matter for hearing instanter.

Based upon the Arbitrator's Conclusion of Law attached hereto, all benefits are awarded in case number 16WC016292.

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 **MARCH 21, 2022**

Signature of Arbitrator

ARBITRATION DECISION

Applications for Adjustment of Claim were filed on this matter and Notice of Hearing was mailed to each party. The matter was heard by the Honorable Michael Glaub, Arbitrator of the Illinois Workers' Compensation Commission, in the City of Waukegan. After reviewing all of the evidence presented, the Arbitrator hereby makes findings of fact and rulings on the disputed issues below.

DISPUTED ISSUES:

C. Did Petitioner sustain accidental injuries arising out of and in the course of her employment?

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

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

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

M. Should penalties or fees be imposed upon Respondent?

N. Is the Respondent due any credit?

O. Should the cases numbered 16 WC 16292, 16 WC 16293 & 16 WC 21558 which were dismissed for want of prosecution on February 18, 2020, be reinstated?

There is no dispute that on this date an employee-employer relationship existed between Petitioner Mary Catharine Ryba and the Respondent, Libertyville Manor Extended Care (hereinafter Libertyville) At the time of the alleged injury, Petitioner was 64 years of age, unmarried, had no children under the age of 18 and was employed as a medical technologist. Petitioner's earnings during the year preceding the injury were $54,080.00 representing an average weekly wage, calculated pursuant to Section 10 of the Act of $1,040.00. The parties also agree that Notice of the injuries was tendered to the respondent and that petitioner did not lose any time from work as a result of these injuries.

The cases at issue had previously been dismissed for want of prosecution on February 18, 2020. The dismissal was based upon Petitioner failure to appear at a scheduled trial date set on

Respondent's request for hearing. The petitioner's claims were above the red line at the time these claims were dismissed.

O. Should the cases numbered 16 WC 16292, 16 WC 16293 & 16 WC 21558 which were dismissed for want of prosecution on February 18, 2020, be reinstated?

The cases at issue were dismissed for want of prosecution on February 18, 2020. The dismissal was based upon Petitioner failure to appear for hearing on Respondent's request for hearing, which was presented on November 18, 2019 and set for trial on February 18, 2020. The Dismissal of these cases occurred approximately one month prior to the Covid Emergency Shutdowns.

The parties stipulated to the fact the above-captioned matters, cases number 16 WC 16292, 16 WC 16293 and 16 WC 21588 were dismissed on February 18, 2020. A motion to reinstate was filed by counsel for Petitioner on April 29, 2021.

On February 19, 2020, Notices of Case Dismissal were issued by the IWCC and mailed to the attorneys of record.

On April 29, 2021, counsel for Petitioner filed a motion to reinstate case.

On August 20, 2021, this Arbitrator heard arguments on the motion and took the matter under advisement.

Attorney for Petitioner alleged his office did not receive any Written Notice of Case Dismissal from the Illinois Workers' Compensation Commission and as such, the sixty-day status of limitations for filing a motion to reinstate was tolled. Counsel also argued that due to the COVID pandemic and temporary changes to procedures at the IWCC, including suspension of the red line, they had been diligent in pursuing their remedies.

Attorney for Respondent argued that 436 days passed between the date of notice sent by the Commission and Petitioner's filing of the motion to reinstate, which constituted a lack of due diligence and a failure to pursue her remedies.

On December 27, 2021, this Arbitrator granted the motion to reinstate the cases and the matters proceeded to hearing on all issues.

The Arbitrator based his Decision to allow the reinstatement of these cases on petitioner's attorney claim that their office never received a written copy of the Dismissal of these Cases and the fact that the Illinois Workers' Compensation Commission shut down during the period between when the case was dismissed and the date the Petition to Reinstate would have been due. Further, the Commission suspended the Redline when it re-opened on a limited basis. In the Arbitrator's opinion, the closure of the Commission and the subsequent suspension of the red line relieved the petitioner's attorney of their duty to monitor his above the Red Line cases from the date of the Red Line suspension in March 2020 until the Red Line enforcement was renewed in November

2021. The Arbitrator also notes the that the petitioner's attorney that appeared for arguments on the Motion to Reinstate represented to the Arbitrator that the wife of the petitioner's attorney that was handling the case at the time of its dismissal subsequently passed away from Covid after this matter had been dismissed. After Hearing arguments that were presented in person with a court reporter present, the Arbitrator took the matter under advisement. The Arbitrator did subsequently advise the parties in a Webex conference that he was planning to allow the reinstatement provided petitioner's attorney was present and prepared to proceed to Hearing on December 27, 2021. Both parties appeared at that time prepared to proceed, and this matter was tried to conclusion on all issues on December 27, 2021. The Motion to Reinstate was officially granted on this date. The Arbitrator believes his Decision to Reinstate is an appealable issue to be reviewed by The Commission in conjunction with the other issues ruled upon in these cases.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Petitioner testified she worked as a unit nurse and admissions coordinator. On May 8, 2015, she was assisting a patient/resident, when the patient started to fall. In trying to steady the patient, Petitioner felt pain in her right-side, low-back. She rated her pain at 3-4 but finished her shift. She testified she had not felt pain of this nature before the date of loss.

On June 8, 2015, Petitioner presented to Dr. Juan Alzate at The American Center for Spine & Surgery for a medical evaluation of her lumbar spine. Petitioner stated she was lifting patients and since then her pain had become more severe in the previous three weeks. She felt pain in her lower back that radiated to the left lower extremity with tingling numbness. On exam, Petitioner walked with an antalgic gait and had significant limitation of mobilization of the lower back due to muscle spasm. Dr. Alzate diagnosed Petitioner with probable disc herniation and recommended an MRI before discussing options of treatment. (P. #1)

On June 18, 2015, Petitioner presented to Progressive Radiology and underwent an MRI of the lumbar spine. The impression showed a mild disc bulge and face arthrosis at L4-L5 due to mild bilateral foraminal narrowing. A small central disc protrusion at L5-S1 without associated central canal or foraminal narrowing was also seen. (P#1)

On February 11, 2016, Petitioner testified she was pushing a prospect for a tour of the facility when she felt a sharp pain in her lower back, similar to the pain on May 8th, 2015, except the pain was on the left side this time. She finished her shift and worked two more days, February 12 and 13, but was in pain. On Sunday, February 14, 2016, she was attempting to get out of bed when her right leg gave out when she tried to go down her stairs. She testified she did not fall down the stairs however her handwritten accident report dated February 19, 2016 indicated she fell down several stairs. She called in an did not go to work on the 14th. (P#2)

Petitioner’s report and her testimony indicated she called her PCP, Dr. Neyman, who instructed her to go to the ER at Condell Hospital. (P#2)

On February 15, 2016, Petitioner presented to Dr. Joshua Hallet at Condell Medical Center’s emergency department complaining of continued back pain. Petitioner stated that she was moving

a patient at work four to five days prior when she felt a "twinge" in her lower back. Petitioner then indicated she developed severe pain one day prior to her right lower back radiating to her right leg. Her right knee also buckled, and she fell. On exam, Petitioner's back showed normal range of motion, alignment, and no step-offs, but had tenderness over her right buttock. An MRI was recommended. Petitioner was diagnosed with low back pain and was admitted. (P#2)

On February 16, 2016, Petitioner complained of continued lower abdominal pain with radiation to the right lower extremity. Dr. Neyman diagnosed Petitioner with uncontrolled severe back pain with right-sided sciatica and weakness in the right leg, degenerative joint disease of the spine, possible disc herniation, and hyperlipidemia. Petitioner was transported to the regular medical floor for pain control. (P#2)

MRI of the lumbar spine showed a small central disc protrusion at L5-S1 with left foraminal stenosis without central canal stenosis. There was also spondylosis with an annular disc bulge at L4-L5 without focal herniation or spinal stenosis with bilateral foraminal stenosis due to degenerative changes. (P#2)

Petitioner was then seen by Dr. Hurh upon being admitted to Advocate Condell Hospital. Petitioner stated she went to step down the stairs and fell because of weakness in her right leg. Neurosurgery was consulted and indicated Petitioner was not a surgical candidate. On exam, Petitioner was recommended an injection secondary to L4-L5 related lumbar spondylosis with lumbar radiculopathy. (P#2)

On February 17, 2016, Petitioner indicated her pain was better controlled. Petitioner underwent an epidural steroid injection with fluoroscopic assistance. Petitioner was later discharged from care. A return to work note indicated Petitioner was able to return to work under no restrictions on February 22, 2016. (P #2)

On March 11, 2016, Petitioner returned to Dr. Hurh for a Pain Management follow up. Petitioner stated she was doing well status post injection until recently when she started having right lower extremity pain. It was noted in the report Petitioner had yet to begin physical therapy. On exam, Petitioner was assessed with osteoarthritis of the spine with radiculopathy. Dr. Hurh again recommended physical therapy as well as an epidural steroid injection of the lumbar spine to the right side. Petitioner was also to start Medrol dosepak and gabapentin. (P#2)

On May 18, 2016, Petitioner presented to Advocate Medical Group for a Pain Management follow up. Petitioner stated she was doing well until she began to have radicular symptoms in the right lower extremity. This had begun a couple of weeks prior. IT was noted Petitioner had undergone an epidural injection a year ago and indicated she had good relief after. On exam, Petitioner exhibited tenderness on palpation and pain to the lower back. Dr. Jay Hurh diagnosed Petitioner

with continued osteoarthritis of spine with radiculopathy and recommended a repeat lumbar epidural at the L4-L5 level. Petitioner was also to start Medrol dosepak. (P32)

On June 10, 2016, Petitioner was responding to a non-responsive resident to the ground to administer CPR, she felt pain across her lower-back. (P#3)

On June 6, 2016, Petitioner returned to Dr. Hurh for follow-up following the June 10, 2016 incident. Dr. Hurh diagnosed osteoarthritis of the spine with radiculopathy in the lumbar region and discussed scheduling an injection. (P#3)

On December 19, 2016, Petitioner underwent a Section 12 examination, performed by Dr. Kern Singh. Dr. Singh analyzed the June 18, 2015 MRI images, conducted and examination and reviewed medical records. Dr. Singh opined the MRI revealed normal lumbar lordosis, a central disk protrusion at L4-5, without evidence of central or foraminal stenosis. Dr. Singh diagnosed her with a soft tissue muscular strain which had resolved and opined she could work full duty. (R#1 & 2)

The next medical record exhibit tendered by Petitioner was part of exhibit five, which revealed Petitioner returned to Dr. Hurh on February 26, 2021, with a history of chronic degenerative disc disease. She complained of low back pain radiating to the right buttocks and down the right leg. She also complained of right lateral hip pain. The note indicates Petitioner last been seen August 2019. The report indicated Petitioner had worsening pain in the last two months. The report indicated Petitioner had been seen by a neurosurgeon, but had decided against surgery, as she had been told surgery might not help. The report did not provide any history of any precipitating event to the flare-up of back pain. (Px# 5)

Dr. Hurh diagnosed degenerative disc disease and trochanteric bursitis of the right hip. An injection for the right hip was recommended and scheduled for March 11, 2021. (P#4)

On March 25, 2021, Petitioner returned to Dr. Hurh for follow-up. The hip injection helped, but she still complained of low-back pain. Dr. Hurh again diagnosed degenerative disc disease. (P#4)

Respondent presented two witnesses, Milan Stokovich and Carol McGowan. Both confirmed that no new reports of accidents or injuries at work were reported after the June 10, 2016 incident. Petitioner also confirmed same.

C Did an accident(s) occur that arose out of and in the course of Petitioner's Employment with the Respondent?

Petitioner testified she initially injured her low back on May 18, 2015 while assisting two patients over the course of her workday. Petitioner testified that she injured her low back again at work on February 11, 2016 while pushing a heavy lady in a wheelchair. Petitioner testified that she again injured herself on June 9, 2016 while administering CPR to resident that had gone into

cardiac arrest. Petitioner testified that she noticed low back pain with radiation into her right leg at this time.

The medical records introduced into evidence contain histories that are consistent with the petitioner's testimony. There was no evidence introduced that contradicted the petitioner's testimony.

Based on the petitioner's unrebutted sworn testimony and the histories contained in the medical records, the Arbitrator finds petitioner sustained accidental injuries arising out of and in the scope if her employment with the respondent on May 8, 2015, February 11, 2016 and June 9, 2016.

F. In support of the Arbitrator's decision on whether Petitioner's current condition is related to the work accidents of May 18, 2015, February 11, 2016 and June 9, 2016, the Arbitrator finds the following:

Petitioner experienced three work related injures on May 18, 2015, February 11, 2016 and June 9, 2016. Diagnostic imaging revealed a bulging disc, a disc protrusion and degenerative changes including facet arthrosis and foraminal narrowing. Petitioner underwent conservative treatment including epidural steroid injections and physical therapy. The petitioner continued to perform physical work for the respondent in between and following her three work accidents. Petitioner's medical care continued on an intermittent basis through November 3, 2021.

Dr. Singh provided an opinion finding Petitioner had attained MMI on or about December 19, 2016. However, the Arbitrator does not adopt the medical opinions of Dr. Singh. The Arbitrator found the petitioner to be a very credible witness. The petitioner worked for the respondent for twenty-five years until she recently retired from her physically intensive job at age 70.

Based on the petitioner's testimony and the Arbitrator's review of the treating medical records, the Arbitrator finds that the petitioner's low back condition is causally related to her three work injures on May 18, 2015, February 11, 2016, and June 9, 2016.

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

Petitioner sustained three work related injuries on May 18, 2015, February 11, 2016 and June 9, 2016. Diagnostic imaging revealed a bulging disc, a disc protrusion and degenerative conditions including facet arthrosis and foraminal narrowing. Petitioner underwent conservative treatment including epidural steroid injections and physical therapy. While there were gaps in petitioner's care, she continued to treat for her medical condition through 2021. Based on the Arbitrator's review of the medical records, the Arbitrator finds that all the treatment received as documented by the medical records (Px 1-Px 5) was necessary and causally related to the three work injuries.

The Arbitrator does not adopt the medical findings or conclusions of Dr. Singh. The Arbitrator does not believe petitioner has reached Maximum Medical Improvement based upon her testimony and the Arbitrator's review of the treating medical records.

Regarding whether Respondent has paid all appropriate charges for reasonable and related medical services, the only medical expenses entered into evidence as a specific exhibit was Petitioner's exhibit six, totaling $171.20 for out-of-pocket prescription costs. The Arbitrator awards $171.20 to Petitioner for these out of pocket Prescription expenses. The Arbitrator notes that no specific unpaid medical bills were listed on the Trial Stipulation Sheet. The Arbitrator further notes that there were several medical bills contained in the treating medical records. (Px1-Px5) It is unclear as to whether those medical bills remain unpaid. There was no testimony on this issue. However, the Arbitrator has specifically found that the medical treatment the petitioner received as set forth in these treating medical records is causally related to the petitioner's injuries and were medically necessary. Therefore, the Arbitrator finds that the respondent is responsible for the medical charges contained in the treating medical records if these medical bills remain unpaid, pursuant to the Illinois Medical Fee schedule.

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

The objective evidence presented at hearing demonstrated Petitioner suffered a low back injury, which was aggravated on two occasions. In determining permanent partial disability, the Arbitrator looks to Section 8.1b of the Act for guidance, and the five factors illustrated therein.

Pursuant to Section 8.1b, 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.

Regarding factor (i), no impairment rating was entered into evidence by either party, so this factor cannot be considered.

Regarding factor (ii), Petitioner recently retired on December 15, 2021 at age 70 (just prior to the December 27, 2021 Hearing) from her position as an admissions coordinator and unit nurse. No evidence of any medical restrictions was offered into evidence. Petitioner testified she assisted patients/residents, provided tours of the facility to prospective residents. There was lifting,

bending and squatting involved. The Arbitrator finds that this factor weighs in favor of decreased permanence.

Regarding factor (iii), on the date of loss Petitioner was 64-years-of-age. In her testimony, Petitioner offered testimony that she had recently retired at the age of 70 on December 15, 2021. She testified that while she had pain, she was able to perform her job until her retirement, and no records supported permanent restrictions or any human resource issues with those restrictions. It appears to the Arbitrator she was able to perform her job until she retired. The Arbitrator finds that this factor weighs in favor of decreased permanence.

Regarding factor (iv), Petitioner testified she worked her regular job after her return to work until her retirement. She worked her regular job and missed minimal time until her retirement on December 15, 2021. There was no evidence of any permanent medical restrictions. There was no evidence entered at trial that the Petitioner's future earning capacity was affected by the injury. The Arbitrator finds that this factor weighs in favor of decreased permanence.

Finally, regarding factor (v), the medical records reflect an MRI was performed on June 18, 2015 and revealed a mild disc bulge at L4-5 with evidence of mild arthrosis and mild foraminal narrowing and a central disc protrusion at the L5-S1 level measuring 5mm and mild facet arthrosis. (Px 1) An X-ray performed on February 17, 2016 revealed evidence of Degenerative Disc Disease. (Px 2) An Epidural Steroid injection were administered on February 17, 2016. (Px 2) Petitioner underwent a second Epidural Injection on May 11, 2017. (Px 4) Another Epidural injection was administered on March 11, 2021. (Px 5) There are multiple entries in the records of various treating physicians documenting petitioner's complaints of radicular pain. (Px2 -Px5) The Arbitrator finds that tis factor weighs in favor of increased permanence.

Evaluating the factors as a whole, the Arbitrator finds as follows:

Based on all of the above, the Arbitrator awards 5% loss of use of the person as a whole or 25 weeks at the PPD rate of $624.00.

M. Should penalties or fees be imposed upon Respondent?

Petitioner did not lose any time form wok. No specific unpaid medical bills are listed on the Trial Stipulation Sheet. Petitioner's attorney did enter $171.20 in receipts representing out-of-pocket prescription costs incurred. However, there was no evidence these receipts were ever previously tendered to the respondent. The medical records do contain some medical bills, but it is unclear if these bills are unpaid. Based on these facts, petitioner's attorney request for Penalties and Attorney Fees are denied.

N. Is the Respondent due any credit?

Respondent is awarded a credit of $953.59 for medical expenses paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC023541
Case Name	Roy L Hozey v. Chicago Park District
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0110
Number of Pages of Decision	19
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Timothy Deffet
Respondent Attorney	Victor P. Shane, Leon Pawlykowycz

DATE FILED: 3/10/2023

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROY L. HOZEY,

Petitioner,

vs. NO: 19 WC 23541

CHICAGO PARK DISTRICT,

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 sustained an accidental injury in the course of his employment on May 23, 2019, whether Petitioner's current condition of ill-being is causally related to the work injury, whether medical treatment was reasonably necessary, entitlement to prospective medical care, entitlement to temporary disability benefits, the nature and extent of Petitioner's injury, and entitlement to penalties pursuant to §19(l) of the Act, and being advised of the facts and law, changes the Decision of the Arbitrator and provides additional analysis as stated below, but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

I. FINDINGS OF FACT

The Commission adopts the Findings of Fact as detailed in the Decision of the Arbitrator--except with respect to Dr. Kern Singh's February 18, 2020 section 12 report. The Commission admits the February 18, 2020 section 12 report into evidence, and supplements the Decision of the Arbitrator with the following findings and analysis. In the report, Dr. Singh noted Petitioner injured his neck and lower back on May 23, 2019 after an increased workload and while performing repetitive tasks at work for Respondent. Dr. Singh also noted Petitioner reported back pain for over 30 years and that his current pain was rated 5 out of 10. Additionally, Dr. Singh noted that Petitioner suffered from moderate discomfort, worse during the afternoon. He noted Petitioner's pain increased with standing, sitting on straight back chairs, climbing stairs, and walking. Petitioner also had difficulty sleeping and putting socks on due to his pain.

Dr. Singh reviewed prior medical records, including the August 26, 2019 lumbar spine MRI, which he opined revealed diffuse lumbar spondylosis, L4-5 and L5-S1 decreased disk signal intensity with height loss, and mild foraminal narrowing at L4-5 and L5-S1. Dr. Singh also examined Petitioner, finding full range of motion in both the cervical and lumbar spine. Dr. Singh diagnosed Petitioner with cervical and lumbar muscular strains, in addition to L4-5 and L5-S1 degenerative disk disease. He opined both muscular strains had resolved and that the degenerative disk disease pre-existed the May 23, 2019 injury--and was asymptomatic, and thus did not correlate with Petitioner's symptomatology.

Dr. Singh opined that he could not objectify Petitioner's pain complaints, reiterating that Petitioner's strains had resolved since Petitioner had no radiating leg pain, a normal neurological examination, and an essentially normal lumbar MRI, and no radiating leg pain. He opined Petitioner required no additional treatment, had reached maximum medical improvement, and was capable of returning to full duty work.

II. CONCLUSIONS OF LAW

Evidentiary Ruling

The Arbitrator barred the February 18, 2020 section 12 examination report of Dr. Singh as inadmissible hearsay. Respondent argues that Dr. Singh's report was not hearsay as Dr. Singh testified via deposition which removed the basis for the hearsay exception. Additionally, Respondent argues that it admitted the report into evidence during Dr. Singh's deposition without objection from Petitioner's counsel.

The rules of evidence apply to all proceedings before the Commission or an arbitrator, except to the extent they conflict with the Act. 50 Ill. Admin. Code § 7030.70(a) (2002); *Paganelis v. Industrial Commission*, 132 Ill. 2d 468, 479 (1989); *Greaney v. Industrial Commission*, 358 Ill. App. 3d 1002, 1010 1st Dist. 2005). It is axiomatic that an objection to hearsay evidence must be raised at the trial level and cannot be raised for the first time on appeal. *Werner v. Botti, Marinaccio & DeSalvo*, 205 Ill. App. 3d 673, 678 (5th Dist. 1990). A failure to object to the admission of evidence in proceedings before the Arbitrator or the Commission bars the party from raising the objection in judicial proceedings. *Caradco Window & Door v. Industrial Commission*, 86 Ill. 2d 92, 97 (1981).

Further, "[t]he law is well established that where... a declarant himself testifies as to prior out-of-court declarations he has made, and is therefore present in court and subject to cross-examination, the basis for excluding hearsay is removed, and no hearsay objection is appropriate." *Werner v. Botti, Marinaccio & DeSalvo*, 205 Ill. App. 3d 673, 679 (5th Dist. 1990) see also *In re Keith C.*, 378 Ill. App. 3d 252, 265 (1st Dist. 2007) ("[W]here the declarant is available in court or there is an opportunity to ascertain the veracity of the testimony by cross-examination, there is no hearsay problem."); *Chapman v. Hubbard Woods Motors, Inc.,* 351 Ill. App 3d 99, 106 (1st Dist. 2004) (Hearsay is an out-of-court-statement that is offered to prove the truth of the matter asserted therein and dependent for its value on the credibility of the out-of-court declarant... The fundamental basis for excluding such a statement is the lack of an opportunity to test the credibility of the statement through cross-examination.).

The Commission finds that Dr. Singh's section 12 report was admitted into evidence at the deposition due to a reminder from Petitioner's counsel and without objection. Pet.'s Ex. 9, p. 22. The

Commission finds that Petitioner waived any objection to Dr. Singh's section 12 report. However, assuming *arguendo* that Petitioner did object to the section 12 report—by deposing Dr. Singh, the basis for any hearsay objection has been removed. The Commission further notes that the arguments about the amount of time Petitioner's counsel had to depose Dr. Singh, the reason why the deposition was terminated, and whether the deposition could have been rescheduled or continued to a later date are irrelevant to the outcome, as this case was decided based on all the evidence in the record, including Dr. Singh's section 12 examination report.

Accident & Causal Connection

The Arbitrator concluded Petitioner proved he sustained a repetitive trauma injury manifesting on May 23, 2019, and his condition of ill-being is causally related to his work activities. Our review of the evidence yields the same result regardless of our admission of Dr. Singh's section 12 examination report. Dr. Singh opined that Petitioner sustained cervical and lumbar muscular strains as a result of the May 23, 2019 accident, which had resolved, but also opined that there was no objective evidence of Petitioner's complaints. The Commission agrees with the Arbitrator's findings that Dr. Singh's opinions are not credible as the evidence contradicts Dr. Singh's opinions.

Regarding accident, we find that the concessions made by Dr. Singh support a finding that Petitioner sustained an accidental injury under the Act on May 23, 2019. Within his section 12 examination report, Dr. Singh stated "I believe the patient sustained a soft tissue muscular strain of the cervical and lumbar spine, which has resolved and is directly correlated to the work injury dated May 23, 2019." Respondent's Exhibit 1, p.4. Dr. Singh reiterated this opinion during his deposition.

Similarly, with respect to causation, we find that Dr. Singh's admissions in his section 12 examination report and in his deposition support a finding of causal connection, at least with respect to his diagnosis of cervical and lumbar strains. Dr. Singh testified during his deposition that "I do believe his soft-tissue strain to his neck and lower back are causally related." Further, we find Dr. Singh's opinion that Petitioner only sustained cervical and lumbar strains is contradicted by a chain of events analysis.

It is well established that 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)). A causal connection between work duties and a condition may be established by a chain of events even in cases involving repetitive trauma injuries. *Darling v. Industrial Commission*, 176 Ill. App. 3d 186, 193 (1st Dist. 1988).

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 ¶26.

The Commission agrees with the Arbitrator's finding that although Petitioner previously treated for his knees and back, his work activities were never mentioned in his treatment records until May 2019 at which time he described an increase in work due to the weather. Further, Petitioner credibly testified to the differences in his pain, explaining that on his last day of work he was in tears due to excruciating pain. Here, the evidence establishes that while Petitioner had preexisting lumbar symptomatology prior to the accident, he was still able to work full duty for Respondent. It was not until May 2019, when his work duties increased, that Petitioner's pain increased to the point where it became "excruciating", and he was taken off work. Dr. Rimington's January 28, 2020 medical note shows that Petitioner still had complaints of persistent lumbar pain and tenderness which limited his flexion and extension and limited him to ambulating 2-3 blocks at a time. Petitioner's trial testimony corroborated this as he testified to constant back stiffness and aching. Petitioner's condition never returned to baseline after the instant accident, thus the evidence contradicts Dr. Singh's opinion that Petitioner's condition has resolved. The Commission finds this is clear evidence of a "deterioration" in Petitioner's condition. Accordingly, we agree with the Arbitrator's credibility assessment of Dr. Singh, who, in addition to the above, also noted Petitioner worked a medium demand level job, but indicated no awareness of Petitioner's actual job duties or the tools used.

We affirm the Arbitrator's award of penalties pursuant to section 19(l) and all else.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay directly to Petitioner the sum of $3,339.76 for medical expenses outlined in Petitioner's Exhibits 3 and 12, as provided in §8(a) and subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $527.03 per week for a period of 81 & 1/7ths weeks, representing May 23, 2019 through December 11, 2020, that being the period of temporary total incapacity for work under §8(b).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $474.32 per week for a period of 41.8 weeks, as the injuries sustained caused a 7.5% loss of use of his person as a whole as provided in §8(d)2 of the Act, and a 1% loss of use of the left leg and a 1% loss of use of the right leg as provided in §8(e)(12) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner penalties in the amount of $10,000.00 as provide in §19(l) 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 the Petitioner on account of said accidental injury.

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

March 10, 2023

DJB/wde

O: 1/11/23

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

/s/*Stephen Mathis*
Stephen Mathis

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC023541
Case Name	HOZEY, ROY v. CHICAGO PARK DISTRICT
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	, Gerald F. Cooper, Jr.
Respondent Attorney	Leon Pawlykowycz

DATE FILED: 5/31/2022

THE INTEREST RATE FOR THE WEEK OF MAY 24, 2022 1.53%

/s/ Rachael Sinnen, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Roy Hozey
Employee/Petitioner

v.

Chicago Park District
Employer/Respondent

Case # **19** WC **23541**

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 **March 7, 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 23, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**41,108.08**; the average weekly wage was $**790.54**.

On the date of accident, Petitioner was **64** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $ **6,000.00** for TTD, $**0** for TPD, $ **0** for maintenance, and $ **0** for other benefits, for a total credit of $ **6,000.00** .

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

ORDER

Respondent shall pay Petitioner directly for unpaid medical bills totaling $3,339.76, as outlined in Petitioner's Exhibits 3 and 12 as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $527.03/week for 81 1/7 weeks, commencing 5.23.19 through 12.11.20, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $474.32 a week for a total of 41.8 weeks, because the injuries sustained caused the 7.5% loss of use of the person as a whole, as provided in Section 8d2 of the Act and 1% loss of use of each leg, as provided in Section 8e12 of the Act. See Conclusions of Law for Arbitrator's considerations under §8.1b(b) of the Act.

Respondent shall pay to Petitioner penalties of $10,000.00 as provided in Section 19(l) 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.

_____ **MAY 31, 2022**

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Roy L. Hozey,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 19WC023541
Chicago Park District,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on March 7, 2022, in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing. Issues in dispute include accident, causation, unpaid medical bills, temporary total disability "TTD," penalties and nature and extent of the injury. Arbitrator's Exhibit "Ax" 1.

Petitioner's job duties and notice to Respondent

At the time of accident, Petitioner was 64 years old, married with no dependents. He is approximately 5'6", 170 pounds. Mr. Hozey started working for the Chicago Park District "CPD" in 2009, initially as a junior laborer and later promoted to laborer. His overall job duties consisted of weed eating, grass cutting, mulching, and picking up trash. He also operated a hand lawn mower, swept walkways, and lined the softball fields. In 2019, Mr. Hozey worked five days a week, normally eight hours per day. His normal shift was 6:00 A.M. to 2:30 P.M. He had one 9:15 A.M. break in the morning, and then lunch was from 11:00 A.M. to 11:30 A.M. Mr. Hozey's job was seasonal, and he typically worked from March through about September, between four and six months. Mr. Hozey said he would always get there an hour before he had to be there, at 5:00 A.M. He would prepare the van and all the equipment, so when his coworkers arrived, all they had to do was jump in truck and go. Mr. Hozey also testified he had no other jobs during the time period he worked for the CPD. He also did not have any physical hobbies, such as golf. He enjoys collecting notes and things about movies, movie history and music. (TR PP 11-16, 20, 25, 34, 38-40, 46, 61-62).

Mr. Hozey testified he worked primarily on what he called a weed eating crew. In regards to equipment, he used a weed eater, mainly a Toro or Kawasaki brand, that weighed thirteen pounds. He occasionally used something of less weight, but in 2019 it was mainly the thirteen-pound Toro. These weed eaters had straps, but he did not use them because it put pressure on his shoulders. He also used leaf blowers, both hand, and backpack, versions. The hand blower was around the

same weight as the weed eater, around thirteen pounds. The backpack blower, he believed would be at least double at twenty-six pounds. In 2019 his main job function was using the thirteen-pound Toro weed eater, on a daily basis, five and a half to six hours a day. Mr. Hozey had performed weed eating for about ten straight years working for the CPD. In the mornings, he would initially report to the yard at Kilbourn Park. They then would report to different parks every day, there were seventeen total-each day they went to different one. In 2019, there was an "excessive amount of work," due to "extreme rain," and "everything was growing like a jungle." In 2019 they were going out and doing more work per day then in previous years, which included more weed whacking. (TR PP 22-26).

Mr. Hozey testified that on May 23, 2019 his pain was "excruciating" and he "was in tears." Mr. Hozey spoke to his supervisor, Darrell Mallett, and he told him he had "extreme pain in his back and down his leg." At trial, Mr. Hozey told Mr. Mallett he had a headache and stiffness in his neck. He requested to go see a doctor, an incident report was filled out, and he was denied approval to go to a doctor. He then sought treatment on his own. (TR PP 26-30, 38, PX 4).

Petitioner's prior medical history

Mr. Hozey testified about his prior low back treatment that started on October 24, 2013 after suffering a fall. Mr. Hozey told Dr. Daniel Vatev (Empatia Care) that he had pain to his right leg, groin and hip that increased with movement. He did not have any numbness or tingling. He was mostly bothered by the hip, stating he did not hit the hip, just twisted it. Dr. Vatev diagnosed the Petitioner with pain in joint involving lower leg and osteoarthrosis involving the lower leg and arthritis of the right knee. (PX 1, PP 180). Mr. Hozey returned to his long-term internist, Dr. Vatev, for various unrelated conditions as well as occasional chronic low back pain / lumbago through March 2015. Starting in June 2015, Petitioner sought care for knee pain (generalized osteoarthrosis) with Dr. Vatev resulting in injections and pain medication. (PX 1, PP 107-133).

On April 26, 2016, Dr. Vatev examined Mr. Hozey for his complaint of lower back pain and stiffness. Mr. Hozey stated he was lifting a heavy object and had a snap in his lower back. It was noted Mr. Hozey had a lesion on his back that was increasing in size. On exam, Mr. Hozey has spasms and tenderness to palpation to the paraspinal muscles of his lower back. (PX. 1, PP 102). He was given Norco and diagnosed with lumbago with Dr. Vatev remarking, Mr. Hozey has a bulging disc with compression on the nerve, but at this time, Mr. Hozey was declining surgery. (PX. 1, PP 104). Mr. Hozey testified while Dr. Vatev recommended that he see a doctor to consider surgery, he did not see a specialist, nor did he get surgery because he had to work and "take care of himself." (TR PP 21-22, 30-31; 40).

Upon returning to Dr. Vatev on May 5, 2016, Mr. Hozey reported his lower back pain was better. Mr. Hozey denied back pain on his return visit, June 7, 2016. (PX. 1, PP 97, 93). Mr. Hozey was seen by Dr. Vatev on July 5, 2016 for a sore throat and his back was no longer an issue and removed from his diagnosis list. (PX. 1, PP 92). Mr. Hozey returned to Dr. Vatev on October 3, 2016 for bilateral hip pain (PX. 1, PP 85) from his osteoarthritis.

Mr. Hozey returned to Dr. Vatev on July 24, 2018 for muscle stiffness. On exam, Dr, Vatev found muscle spasm and tenderness to the paraspinals of Mr. Hozey's lower back. (PX. 1, PP 45) Mr.

Hozey was again diagnosed with lumbago. It was noted that Mr. Hozey has a bulging disk and compression on the neve but refusing surgery. (PX. 1, PP 47). On March 15, 2019, Dr. Vatev examined Mr. Hozey for some pain and stiffness in his lower back. On exam Mr. Hozey had tenderness on palpation to his lower back, however, straight leg raises were negative. (PX. 1, PP 26).

Petitioner's medical treatment post May 23, 2019

On May 31, 2019, Mr. Hozey reported stiffness and pain to his neck and lower back to Dr. Vatev. Dr. Vatev noted Mr. Hozey was "here today for lower back pain and stiffness" because of "increased workload and repetitive nature of his work," with the neck and back pain "worse since the week of May 23," that he has "progressive stiffness and is not able to bend and turn" and has "severe back pain on the left side" with stiffness. He first noted the pain the week of May 23rd and reported it to his supervisor. On exam, Dr. Vatev found spasms in the paraspinal muscles, with tenderness to palpation on exam. He had decreased range of motion, was unable to bend or stand. Dr. Vatev diagnosed Mr. Hozey with lumbago, prescribing Norco and Flexeril. Dr. Vatev instructed the Petitioner to do stretching exercises and remain off of work for 2 weeks. (PX. 1, PP 18, 21-22).

On June 5, 2019, Mr. Hozey obtained a radiograph of his lumbosacral spine which revealed spondylosis. (PX 8, PP 1). He returned to Dr. Vatev on June 17, 2019 and reported increased pain on the right side of his lower back. His stiffness remained unchanged. On exam, Dr. Vatev reported paraspinal muscle tenderness and rigidity in the area of L3-5 with limited range of motion. Straight leg raise on the left was positive, at 30 degrees on the left. Dr. Vatev diagnosed Mr. Hozey with lumbago and added strain of muscle, fascia, and tendon of the low back. Mr. Hozey was to continue his Norco for pain and Soma as needed. Initiating physical therapy was also mentioned. (PX. 1, PP 10, 15,17). Mr. Hozey returned to Dr. Vatev 2 days later on June 19th, his symptoms and treatment remained unchanged and that he "still has severe back pain and spasms." He was to continue pain meds and physical therapy. (PX. 1, PP 10-12).

On July 19, 2019, Mr. Hozey followed-up with Dr. Vatev and reported his low back pain and stiffness was improving somewhat but noted mild stiffness still. Dr. Vatev found low back paraspinal muscle spasming was improved on exam. Mr. Hozey was no longer tender to palpation and his range of motion was improved. Physical therapy was again discussed. Mr. Hozey remained off of work. (PX. 1, PP 4).

August 19, 2019, Mr. Hozey was examined by orthopedic surgeon Dr. Todd Rimington. Mr. Hozey reported a work-related injury to his knees and back that began in May noting that as a landscape laborer there is heavy lifting required during the beginning of the season. Mr. Hozey said he had a history of back and knee pain but never this severe and he was not having pain prior to beginning his work. Dr. Rimington noted tenderness to the lumbar spine and paraspinal muscles. He also found tenderness at the left sciatic notch. Mr. Hozey had a mild decrease to flexion and extension. Straight leg raises were found to be negative, bilaterally. X-rays obtained of Mr. Hozey's lumbar spine revealed moderate lumbar spondylosis at L4-S1 with no fracture or dislocation seen and knee films showed mild osteoarthritis. (PX 2, PP 9). Dr. Rimington diagnosed the Petitioner with lumbar spondylosis, lumbar sprain, and pain in both knees. Dr.

Rimington started Mr. Hozey on meloxicam and ordered an MRI. He instructed Mr. Hozey to return in 2 weeks to discuss the results of the MRI and the Petitioner was to remain off of work for that duration. (PX 2, PP 10).

Mr. Hozey obtained an MRI of the lumbar spine without contrast on August 16, 2019. The MRI revealed mild degenerative disc disease most pronounced at the L3-4, L4-5 and L5-S1 levels. Disc osteophyte encroachment on the ventral aspect of the spinal canal at those levels was minimal. There was narrowing of the neural foramina, mild to moderate in severity at the L4-5 level bilaterally and on the left at the L5-S1 level. (PX2-PP 13, PX 7-PP 2).

Upon returning to Dr. Rimington on August 29, 2019, Mr. Hozey reported his pain was worse with activity. He was found to have tenderness to his lumbar spine and paraspinal muscles. His range of motion remained limited. Dr. Rimington diagnosed him with lumbar spondylosis, lumbar sprain, pain in bilateral knees. Mr. Hozey did not tolerate the meloxicam, so Dr. Rimington recommended the use of turmeric. Dr. Rimington also suggested steroid and get injections to the knees and an epidural steroid injection to the back if his pain persisted. He also recommended formal physical therapy. (PX 2-PP 6).

On January 28, 2020, Mr. Hozey reported continuing pain in his back to Dr. Rimington. When asked why he waited so long to return to Dr. Rimington, Mr. Hozey testified that his pain would go down and flare up again. (TR P45). According to the treatment note, Mr. Hozey expressed his pain was persistent and was limiting the duration he is able to walk. On exam, it was noted Mr. Hozey continued to have tenderness in his lumbosacral spine with limited flexion and extension. Weakness was noted in the lower extremities with hip flexion, knee flexion and extension. There was also tenderness to both knees. Given Mr. Hozey's limitation in walking and ability to lift greater than 15 pounds, it was recommended Mr. Hozey see a spine specialist for his pain. (PX 2-PP 4).

Respondent's Section 12 examiner, Dr. Kern Singh

At the request of Respondent, Petitioner was examined by Dr. Kern Singh on February 5, 2020, pursuant to Section 12 of the Act. Mr. Hozey testified that Dr. Singh saw him for about 10 minutes tops, that he cut him off repeatedly, answered phone calls during his examination, and would not let Mr. Hozey tell him in detail about the equipment he used or his job. (TR PP50-52, PX9).

Subsequent to the examination, Dr. Singh authored a report (that was not admitted into evidence per Arbitrator's ruling as inadmissible hearsay), and, as a result of Dr. Singh's report, Respondent terminated Petitioner's TTD and medical benefits.

A video evidence deposition of Dr. Singh was scheduled and proceeded on February 26, 2020 until Dr. Singh unilaterally terminated the deposition at the beginning of cross examination. (See PX9, P42). Petitioner's counsel, Mr. Deffet, submitted that Arbitrator Kay denied Petitioner's motion to bar Dr. Singh.

Dr. Singh testified that Mr. Hozey was working at CPD since 2019 (sic) and was performing at least at a medium physical demand level, lifting a 50-lb bag frequently. Dr. Singh testified that

he did not read the cover letter that accompanied Mr. Hozey's medical records. Dr. Singh reviewed the August 26, 2019 MRI images of the lumbar spine and opined that Mr. Hozey had slight loss of the disc heights at L4-5 and L5-S1 with mild foraminal narrowing at L4-5 and L5-S1. Dr. Singh opined that Mr. Hozey suffered a soft tissue strain to the neck and low back. He opined that the MRI and four weeks of physical therapy was reasonable treatment. He believed Mr. Hozey had reached MMI and was able to return to work full duty. Dr. Singh testified that he could not objectify Mr. Hozey's current pain complaints. (PX9, PP15-19; 39).

As Petitioner's counsel started to cross-examine Dr. Singh on prior cases where the Commission found the doctor unreliable, Dr. Singh terminated the deposition. Dr. Singh claimed that Mr. Deffet had been previously banned from the medical campus and claimed that security would be escorting Mr. Deffet out. No documentation was ever produced to suggest Mr. Deffet had been banned and security never came. Instead, Mr. Deffet left voluntarily at the request of the director of operations, Venita Hester. (PX 9, PP42-45, 50-54).

CONCLUSIONS OF LAW

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

Issue C, whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124848, ¶ 34. A compensable injury occurs 'in the course of' employment when it is sustained while he performs reasonable activities in conjunction with his employment. Id.

"The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." Id. at ¶ 36. To determine whether a claimant's injury arose out of his employment, the risks to which the claimant was exposed must be categorized. Id. The three categories of risks are "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." Id. at ¶ 38. "A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." Id. at ¶ 46.

Mr. Hozey credibly described an increased workload in May 2019 that caused him excruciating pain. He asked his supervisor to go to the clinic and an incident report was made. Mr. Hozey's work duties are clearly risks distinctly associated with his employment.

The Arbitrator finds that Mr. Hozey has met his burden in proof in showing that the accident arose out of and in the course of his employment by Respondent.

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

An employee who alleges an injury based on a repetitive trauma theory must still meet the same standard of proof as other claimants alleging an accidental injury. There must be a showing that the injury is work related and not the result of a normal degenerative aging process. Peoria County Belwood Nursing Home v. Industrial Com., 115 Ill. 2d 524, 530, 505 N.E.2d 1026, 1028 (1987). The claimant need only prove that some act or phase of employment was a causative factor of the resulting injury. Three "D" Discount Store v. Industrial Com., 198 Ill. App. 3d 43, 49, 556 N.E.2d 261, 265 (4th Dist. 1989). Although medical testimony as to causation is not necessarily required, where the question is one within the knowledge of experts only and not within the common knowledge of laypersons, expert testimony is necessary to show that claimant's work activities caused the condition complained of. Nunn v. Industrial Com., 157 Ill. App. 3d 470, 477-78, 510 N.E.2d 502, 506-07 (4th Dist. 1987)

Although Mr. Hozey previously treated for his knees and back, his work activities were never mentioned in his treatment records until May 2019 where Mr. Hozey described an increase in work due to the weather. Further, Mr. Hozey credibly testified to the differences in his pain explaining that on his last day of work he was in tears due to excruciating pain. It wasn't until May 2019 that medical records show (as documented by Drs. Rimington and Vatev) that Mr. Hozey related his severe back pain to his increase in work. Despite his years of treatment prior to May 2019, it wasn't until May 2019 that Mr. Hozey was taken off work by his doctors.

While Drs. Rimington and Vatev do not provide any specific causation opinions, only documenting Mr. Hozey's correlation of his pain and increased workload, medical testimony as to causation is not required to demonstrate that some act or phase of employment was a causative factor." See Nunn, 157 Ill. App. 3d at 477-78; Three "D" Discount Store, 198 Ill. App. 3d at 49.

The Arbitrator disregards the opinions of Respondent's Section 12 examiner, Dr. Singh. The Arbitrator does not find Mr. Singh credible due, in part, to his behavior at his evidence deposition.

Further Mr. Singh's understanding of Mr. Hozey's work activities does not match the evidence presented (i.e., job descriptions as well as Mr. Hozey's testimony).

The Arbitrator finds that Petitioner met his burden in proving that his current condition of ill being is causally related to his work injury.

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

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

Overall, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders Respondent to pay Petitioner directly for the outstanding medical services totaling $3,339.76 (as shown in PX3 and PX12), pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Issue K, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. Westin Hotel v. Indus. Comm'n, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

While work status notes are evidence to support a claim for TTD benefits, they are not a requirement. See Michael Eisenhour v. Kreitner Construction Co., 2010 Ill. Wrk. Comp. LEXIS 136. In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. Archer Daniels Midland Co. v. Indus. Comm'n, 138 Ill.2d 107, 118 (1990).

Based on Mr. Hozey's testimony and the medical records submitted into evidence from Mr. Hozey's treating doctors, the Arbitrator finds Respondent liable for 81 2/7 weeks of TTD benefits (May 23, 2019 through December 11, 2020) at a weekly rate of $527.03 to be paid directly to Mr. Hozey. Respondent has paid TTD benefits in the amount of $6,000.00.

Issue L, the nature and extent of the injury, the Arbitrator finds as follows:

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 Mr. Hozey worked as a laborer for CPD but did not return to work after his work injury. The Arbitrator therefore gives little weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Mr. Hozey was 64 years old at the time of the accident and at the end of his working years. The Arbitrator gives little weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes that Mr. Hozey was not hired back by CPD but did not submit into evidence job logs to suggest that he looked for additional employment. The Arbitrator gives moderate weight to this factor.

Under Section 8.1b(b)(iv), evidence of disability corroborated by the treating medical records, the Arbitrator give great weight to this factor. Mr. Hozey's August 2019 MRI of the lumbar spine revealed mild degenerative disc disease most pronounced at the L3-4, L4-5 and L5-S1 levels, with narrowing of the neural foramina, mild to moderate in severity at the L4-5 level bilaterally and on the left at the L5-S1 level. Dr. Rimington diagnosed him with lumbar spondylosis, lumbar sprain, and pain in bilateral knees. Although he was recommended for injections and physical therapy, his treatment was limited to prescription medication due, in part, to the lack of treatment authorization from Respondent. The last treatment note put int evidence was from January 28, 2020, where Dr. Rimington recommended limitations in walking and ability to lift greater than 15 pounds. It was also recommended that Mr. Hozey see a spine specialist for his pain.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 7.5% loss of use of the person as a whole pursuant to §8d2 of the Act and 1% loss of use of each leg pursuant to §8e12 of the Act, which corresponds to a total of 41.8 weeks of permanent partial disability benefits at a weekly rate of $474.32.

Issue M, whether penalties or fees should be imposed upon Respondent, the Arbitrator finds as follows:

With regards to Section 19(1), the Act reads,

> In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $ 30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $ 10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay.

820 ILCS 305/19(1)

Case law dictates that penalties authorized by Section 19(1) serve as a late fee and apply whenever the employer or its carrier simply fails or neglects to make payment or unreasonably delays payment "without good and just cause." McMahan v. Industrial Comm'n, 702 N.E.2d 545 at 553 (1998). If the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay, an award of Section 19(1) penalties is mandatory. *Id* (emphasis added).

The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness. Board of Education of the City of Chicago v. Industrial Comm'n, 442 N.E.2d 861 at 865 (1982). The employer has the burden of justifying the delay. *Id.* The employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified. *Id.*

Respondent failed to pay any medical bills after their own Section 12 examiner, Dr. Singh, opined that Mr. Hozey suffered a soft tissue strain to the neck and low back as a result of the work injury and further opined that the MRI and four weeks of physical therapy was reasonable treatment. Although accident was marked as disputed on the Request for Hearing form, there was no real disagreement on accident. See McDonald's v. Illinois Workers' Compensation Comm'n, 2022 IL App (1st) 210928WC-U.

As the Arbitrator finds that Respondent was unable to show an adequate justification for its delay, an award of Section 19(1) penalties is mandatory. The Arbitrator fines Respondent $30.00 a day starting February 26, 2020 (date of Dr. Singh's evidence deposition). As of the date of trial, March 7, 2022, 741 days had passed. $30.00 per day multiplied by 741 days equals $22,230.00. However, Section 19(1) caps penalties at $10,000.00. **Therefore, the Arbitrator imposes penalties of $10,000.00 under Section 19(1) against Respondent, to be paid directly to Petitioner.**

While Section 19(1) penalties apply when Respondent delays payment "without good and just cause," Section 19(k) penalties require a lack of good faith. The Commission has the discretion to impose Section 19(k) penalties where there is not only a delay in payment, but the delay was in bad faith. McMahan, 702 N.E.2d at 552 citing Smith v. Industrial Comm'n, 525 N.E.2d 81 (1988).

Section 16 also requires an unreasonable or vexatious delay in payment. Vulcan Materials Co. v. Industrial Comm'n, 842 N.E.2d 204 (2005). Good faith must be assessed objectively, thus the question is whether an employer's denial of benefits was reasonable. McMahan, 702 N.E.2d at 552. The employer bears the burden of demonstrating that its denial of benefits was reasonable. Residential Carpentry, Inc. v. Workers' Compensation Comm'n, 910 N.E.2d 109 at 117 (2009).

Here, the Arbitrator declines to impose penalties and fees pursuant to Sections 16 and 19(k) upon Respondent.

It is so ordered:

Arbitrator Rachael Sinnen

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC004741
Case Name	Melissa Riley v. State of Illinois – Illinois Dept of Children & Family Services
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0111
Number of Pages of Decision	28
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Bart Markese
Respondent Attorney	Danielle Curtiss

DATE FILED: 3/13/2023

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MELISSA MATOUSEK-RILEY,

Petitioner,

vs. NO: 15 WC 4741

STATE OF ILLINOIS, DEPARTMENT OF CHILDREN & FAMILY SERVICES,

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 temporary total disability, benefit rate, medical expenses and the nature and extend of Petitioner permanent disability (specifically the finding that Petitioner was permanently and totally disabled), 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.

Findings of Fact

Petitioner worked for Respondent as a child protection specialist/investigator. On January 23, 2015 she was on a child abuse investigation accompanied by three police officers. As she was leaving the building, she fell down concrete stairs and "rolled all the way down." She injured her right foot, right ankle, and left hand. Petitioner's hand injury later resolved. Petitioner treated immediately at a local hospital Emergency Room, where she was diagnosed with knee/ankle sprains and discharged with a knee brace and a prescription for Norco. Five days later, she began treating with Dr. Komunduri, an orthopedic surgeon. He ordered MRIs of her right ankle and knee.

The MRI of Petitioner's right ankle showed an acute moderate-to-high grade partial thickness tear of the anterior talofibular ligament, mild sprains of the calcaneofibular ligament and anterior syndesmotic ligament, a longitudinal partial thickness split tear involving the posterior aspect of the peroneus brevis tendon, evidence of an osteochondral injury of the medial talar dome with bone marrow edema, and a 1.2 cm region of hyperintense inversion in the subcutaneous fact, which could represent a cyst. The MRI of Petitioner's knee showed mucinous degeneration of the menisci without tear, mild patellar tendinosis, and trace patellar tilt.

After the MRIs, Dr. Komunduri referred Petitioner to his partner, Dr. George, for her foot and ankle, which was considered the first priority. Dr. Komunduri would treat Petitioner's right knee conservatively until her ankle was stabilized. In total, Petitioner had seven surgeries, listed below, not including numerous injections. The Arbitrator found that Petitioner's left ankle and bilateral hip conditions of ill-being were caused by the initial fall or by altered gait for years after the accident. That conclusion was supported by Petitioner's treating doctors as well as one of Respondent's Section 12 medical examiners. We concur with that conclusion.

On February 27, 2015, Dr. George performed right ankle arthroscopy with debridement of medial malleolar osteotomy with osteochondral allograft transplant, excision of pseudoaneurysm, anterior talofibular ligament repair, and peroneal tendon repair for right ankle impingement with anterior talofibular ligament tear, posteromedial osteochondritis dissecans, peroneal tendon team and pseudoaneurysm of the great saphenous vein.

On November 19, 2015, Dr. Komunduri performed diagnostic right knee arthroscopy and lateral retinacular release for chronic patellofemoral instability post work-related traumatic injury.

On June 10, 2016, Dr. George performed removal of hardware and posterior tibial tendon repair for symptomatic hardware and posterior tibial tendinitis in the right ankle.

On February 11, 2017, Dr. Komunduri performed diagnostic right hip arthroscopy, acetabular osteoplasty, femoral osteoplasty, anterolateral labral repair, and removal of loose bodies for labral tear associated with existing impingement and loose bodies.

On July 28, 2017, Dr. George performed right ankle subtalar joint fusion and debridement for subtalar joint degenerative joint disease with instability and pain.

On September 7, 2018, Dr. George performed left ankle arthroscopy with debridement, sub chondroplasty of the distal tibia, and left ankle ATFL ligament repair.

Finally, on July 3, 2019, Dr. George performed right ankle peroneal tendon repair with peroneal stabilization, Kidner procedure, sub-chondroplasty of the calcaneus, and hardware removal for peroneal tendon tear with chronic subluxation syndrome, symptomatic accessory navicular, right calcaneus bone marrow edema, and symptomatic hardware.

Dr. Komunduri testified by deposition on October 18, 2018 that he was a board-certified orthopedic surgeon and treated Petitioner since 2015. He first saw her on January 28, 2015 when she reported the accident in which fell four to five feet and she injured her left hand/right ankle/right ankle. He noted possible finger fracture, global swelling of the right ankle "implying a fairly traumatic injury," limited range of motion, and suspected ligament injuries. He was also suspicious for a meniscal tear in the right knee. Dr. Komunduri ordered MRIs.

An MRI showed a possible small meniscus tear and evidence of kneecap instability. They would try to treat the knee conservatively. The right ankle had an osteochondral injury meaning a loss of bone and cartilage, rupture of the peroneus brevis tendon, and other torn ligaments. He referred Petitioner to his partner, Dr. George, to treat her foot and ankle; he's a board-certified podiatrist.

Petitioner's knee instability did not improve after a year of "pretty extensive" post-accident physical therapy, so in November 2015 Dr. Komunduri performed arthroscopic surgery with lateral release. Postop she had a course of physical therapy and gradually got better. The delay in addressing the condition caused prolonged atrophy and weakness which also delayed Petitioner's recovery. He was aware of instances in which she fell due to the knee giving out and he was aware that the ankle was unstable.

Petitioner also developed issues with her right hip which Dr. Komunduri treated. She had pre-existing impingement, but certain traumas, rehabilitation, or excess force can magnify such conditions and make them symptomatic. She had a labral tear in the hip. She failed conservative treatment and he performed surgery to remove bone spurs and stabilize the labrum. She improved in postop physical therapy.

Dr. Komunduri agreed that Petitioner's left hip was also causing Petitioner problems. She did not have complaints with either hip prior to the accident. The trouble began in the midst of her being non weightbearing with the right hip. "She was just having trouble being on one leg all the time." Dr. Komunduri acknowledged that femoral acetabular impingement has a congenital pre-existing component. A labral tear is due to repetitive use of the limb and can happen without trauma, but trauma can accelerate it" which he believed happened in Petitioner's case. It was also logical to conclude that her prolonged non-weightbearing and one leg stance put too much pressure on the left leg.

Dr. Komunduri also testified he tried to treat her left hip conservatively, but was not having any success. He believed she would need a similar procedure on the left hip. He has not received authorization for the procedure on the left hip. He thought Petitioner had a good result from the right hip surgery, but she still had trouble with her gait largely due to her ankle fusion and stiffness.

On February 4, 2021, Dr. Komunduri also prepared a narrative report at the request of her lawyer. Dr. Komunduri noted that he treated Petitioner right hip and knee arthroscopically. She

improved significantly after those surgeries and was at MMI for those conditions, though she had some persistent aches, discomfort, and limps.

Dr. George treated her chronic subtalar arthritis from a trauma. He attempted a fusion which failed as well as two peroneal tendon surgeries, both of which also failed. Petitioner was getting injections from her primary care physician. Petitioner no longer wanted to treat her condition and was "severely disabled" by the failed fusion and her almost inability to bear weight. She had an FCE which placed her in the light physical demand level. However, it did not take into consideration the physical requirements of her job or the requirements of driving, prolonged walking, endurance, stair climbing, 100% brace dependence, *etc*. The MRI suggests the reconstructed anterior talofibular ligament was re-torn.

Dr. Komunduri's assessment was Petitioner could not ambulate without the brace. However, she cannot wear the brace 24 hours a day. He agreed that she could work a sedentary job, but she could not lift significant weight, her ankle buckled frequently, and was restricted to lifting five pounds. She could not walk for more than 20 feet without essentially losing her balance and risking falling. She had chronic sensory deprivation/numbness for the surgical scars in her foot. That, as well as dependence on significant pain medication, interfere with her ability to drive safely. He did not believe she could drive more than 10 minutes from her home. Her current limitations were "absolutely permanent and are unlikely to change even with a fusion surgery."

After Petitioner concluded treatment with Dr. George for her ankles/feet and Dr. Komunduri for her knee, Petitioner continued to treat with her pain management team and Dr. Miller, a podiatrist, for her feet/ankles. On 12/4/20, Dr. Miller opined that he did not believe Petitioner could return to work at her prior job due to limitations on driving/lifting/carrying/weightbearing. He last saw Petitioner on November 19, 2021. He has never released Petitioner to work at her prior job.

Ms. Stafseth testified she was a vocational rehabilitation counselor for Vocamotive since July 1, 2008. She was hired to perform a vocational rehabilitation assessment of Petitioner. She met Petitioner on October 7, 2019, she informed her about her job activities, Ms. Stafseth reviewed medical records, and Ms. Stafseth issued an initial report on December 22, 2020. Petitioner initially had an injury to her right ankle which resulted in a number of surgeries including a failed fusion. She had been prescribed a permanent custom-made ankle brace.

Petitioner also reported injuries to her left hand, right knee, bilateral hips, and a left-ankle fracture from altered gait. She also received a report from Dr. Komunduri specifying her physical limitations. She also reviewed the FCE. Dr. Komunduri's report supplemented and provided information missing in the FCE. She also noted that it also appeared from Dr. Komunduri's report that Petitioner sustained a re-torn ligament after her interview with her.

In preparing her reports, Ms. Stafseth considered Petitioner's age, physical limitations, background, and previous job duties. She concluded that Petitioner did not have access to a viable

and stable labor market based on her limitations in ambulation and the use of pain medication affecting her ability to drive. She explained that Dr. Komunduri indicated she could only walk 20 feet in an hour and even accessing a job site would require ambulation of 20 feet. In addition, her pain medication not only affected her ability to drive, it would also affect her ability to learn a new job and maintain employment. Finally, she was still actively being treated, which boded badly for her ability to continue performing her job.

Ms. Stafseth reviewed a previous vocational assessment report from Creative Case Management, which indicated her ability to return to work was guarded. Ms. Stafseth thought that the use of the term guarded was a cop out and did not provide a real opinion. In her opinion, Petitioner was not a candidate for voc rehab services.

On cross examination, Ms. Stafseth testified that 90% of her work involved Workers' Compensation clients, but she disagreed that she was typically hired by Petitioner's lawyers. She indicated they were hired 50% by Petitioners and 50% for Respondents. She only met with Petitioner once. She did not review any official description of Petitioner's job. She did not test Petitioner's typing ability, observe her using Microsoft Office/Excel/Outlook/PowerPoint, or any data entry. At the time of her interview, Petitioner reported she had a BA in social work and was a licensed social worker. She determined that Petitioner's job required a medium PDL based on the report of Petitioner.

Ms. Stafseth acknowledged that after her assessment, she was informed that Petitioner did find employment with the Bolingbrook Park District. Her employment was terminated; it was her understanding that she was not "let go" but she could not bear the physical demands of the job due to her chronic pain. She agreed that there was some truth in the assumption that the pandemic changed the jobs that were available. Working from home could alleviate the problem of Petitioner having to drive to work.

On redirect examination, Ms. Stafseth testified she was a certified rehabilitation specialist. She believed that even with a work-at-home job the effects of her powerful pain medication, including Oxycodone, would interfere with her mental ability to perform a job. She also was not confident prospective employers would consent to her working from home.

At Respondent's request, Samantha Hoevel-Kujawa, M.A., CRC, LCPC, prepared an employment evaluation/labor market survey regarding Petitioner. She met with Petitioner on September 10, 2021 accompanied by her lawyer and husband. She noted that the FCE placed Petitioner in the "at least light" physical demand level. However, she also quoted extensively from the narrative report of Dr. Komunduri who questioned the conclusions of the FCE because it did not take into consideration the physical requirements of her job, did not consider that her anterior talofibular ligament was re-torn, that she was 100% dependent of a brace for ambulation, that she cannot walk for more than 20 feet without risking falling, her chronic sensory deprivation interfered with driving, and that her pain required significant pain medication which also impaired

driving. Dr. Komunduri believed that Petitioner could not lift over five pounds due to the instability in her ankle and her proper physical demand level was sedentary.

Ms. Hoevel-Kujawa applied a transferable skill analysis and labor market survey. She believed that Petitioner had transferable skills which could be a basis upon which she could find employment. However, she also concluded that Petitioner's return to work probability was guarded considering her 10-minute driving and 20-foot walking restriction. She would need computer training to be able to work at a desk job or at home. Because of Petitioner's lack of computer skills, she did not believe Petitioner was qualified to work from home.

Petitioner indicated she looked for jobs within a three mile radius of her home to be within her driving restriction. Petitioner got a job with Bolingbrook Park District, but she felt she could not physically do the job.

Ms. Hoevel-Kujawa limited her job search to Bolingbrook and found jobs as customer services representative, loan processor, title clerk, office clerk, receptionist, and a job in telecommunications. She found 15 potential jobs which she believed Petitioner could qualify for. The salaries for these jobs appeared to be between $30,580.00 to $35,330.00. Ms. Hoevel-Kujawa offered the services of her company to provide vocational rehab services for Petitioner. In a later meeting, Petitioner reported she was offered a part-time job performing data input for Optima Labs which did COVID testing.

Conclusions of Law

The Arbitrator found Petitioner permanently and totally disabled under the odd-lot theory of permanent disability. Initially, the Arbitrator found Petitioner to be credible in her testimony and recitation of her functional limitations, which she deemed were consistent with the medical records. She stressed that despite six years of extensive treatment Petitioner's progress, if any, was minimal. Her chronic pain, instability, and her functional limitations would not likely improve as she aged. The Arbitrator also relied on the opinions of Dr. Komunduri and Dr. Miller about Petitioner's functional limitations and she found the opinions of Ms. Stafseth more persuasive than those of Ms. Hoevel-Kujawa concerning her employability. She also noted that Petitioner was still treating with her pain management team and was still treating for her foot/ankle condition with a podiatrist who had never released her to work at her previous job.

We agree with the conclusion of the Arbitrator that Petitioner sustained her burden of proving she was permanently and totally disabled from employment under the odd-lot theory of total disability. Initially, we note that the Arbitrator specifically found the Petitioner to be a credible witness and that her testimony about her limitations were consistent with the medical records. We have no reason to disagree with that determination of the Arbitrator, who observed the witness, and indeed the Commission found Petitioner to be credible as well.

The Commission is cognizant that Petitioner did not prove she was permanently and totally disabled under the odd-lot theory based on a diligent but unsuccessful job search. In fact, not only was her job search less than diligent, it was actually successful to a degree. Nevertheless, we agree with the Arbitrator and Ms. Stafseth that her being offered parttime employment did not prove that there was a stable labor market for Petitioner. We agree with the Arbitrator and Ms. Stafseth that the combination of Petitioner's difficulty ambulating, her dependence on opiate pain medication, and her physical difficulty in driving due to sensory deprivation in her lower extremities combine to make her effectively unemployable. While she was employed for a short period of time at Bolingbrook Park District, she testified that she was unable to physically tolerate the job. Again, as we noted above, we consider Petitioner to be a credible witness, that her testimony was consistent with the medical records, and we conclude that she was physically unable to continue her parttime employment with Bolingbrook. We also note that her ability to get parttime job offers during the height of the COVID pandemic for COVID testing does not translate into her having a stable labor market based on her considerable impairment and limitations. Finally, we note that although Ms. Hoevel-Kujawa concluded that Petitioner had transferable skills and that there was a stable labor market for her, she also noted that her chances of obtaining employment was guarded.

Incidentally, we find clerical issues with the 2nd Corrected Decision of the Arbitrator. First, although she found Petitioner permanently and totally disabled, the Arbitrator neglected to include the standard language informing Petitioner and the Rate Adjustment Fund of Petitioner's entitlement to payments representing cost-of-living increases in the future. We include that language in this modified decision.

In addition, the Arbitrator awarded Petitioner temporary total disability benefits from February 1, 2015 through August 17, 2020, which she calculated as 341&3/7 weeks. She also awarded Petitioner maintenance from September 29, 2021 through January 10, 2022, which she calculated is an additional 14&6/7 weeks. It appears that the Arbitrator actually awarded temporary total disability benefits to August 17, 2021 rather than the stated termination date of August 17, 2020. We conclude that the August 17, 2020 is the correct termination date. Using that date the Commission funds that with 288&3/7 weeks (considering 2 leap years), is the correct award for temporary total disability benefits. Accordingly, we modify the decision to reflect the correct number of weeks.

Finally, The Arbitrator found Petitioner average weekly wage was $1,438.07 and she awarded her temporary total disability/maintenance benefits of $958.71 a week and permanent total disability benefits of $1,027.75 a week. The Commission notes that the temporary total disability benefit rate is 66&2/3% of the average weekly wage, the permanent partial disability benefit rate is 60% of the average weekly wage, and the permanent total disability/death benefit rate is the same as the temporary total disability rate (66&2/3%). Therefore, the Commission modifies the decision to include the correct permanent total disability rate to be $958.71.

IT IS THEREFORE ORDERED BY THE COMMISSION the 2nd Amended Decision of the Arbitrator dated June 14, 2022 is modified as outlined above and is otherwise affirmed and adopted, which is attached hereto and incorporated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $958.71 per week for a period of 288&3/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $958.71 per week for a period of 14&6/7 weeks in maintenance benefits from September 29, 2021 through January 10, 2022, pursuant to §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $55,278.16 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner the sum of $958.71 for life, commencing January 10, 2022, because she was permanently and totally disabled from gainful employment, as provided in §8(f) of the Act.

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.

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.

March 13, 2023

DLS/dw
O-1/11/23
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	15WC004741
Case Name	MATOUSEK-RILEY, MELISSA v. STATE OF ILLINOIS/ILLINOIS DEPARTMENT OF CHILDREN & FAMILY SERVICES
Consolidated Cases	
Proceeding Type	
Decision Type	2nd Amended Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Bart Markese
Respondent Attorney	Danielle Curtiss

DATE FILED: 6/14/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 14, 2022 2.16%

/s/ Jessica Hegarty, Arbitrator
Signature

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

June 14, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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
2ND AMENDED ARBITRATION DECISION

Melissa Matousek-Riley
Employee/Petitioner

v.

Case: **15 WC 004741**

State of Illinois/Illinois Department of Children and Family Services
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 **Jessica A. Hegarty,** Arbitrator of the Commission, in the city of **Joliet**, on **January 25, 2022.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **January 23, 2015**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$74,779.64**; the average weekly wage was $**1,438.07.**

On the date of the accident, Petitioner was **43** 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 $**292,833.03** for TTD, $**0.00** for TPD, $**49,718.60** for maintenance, and $**296,855.82** for other benefits, for a total credit of $**639,407.45, and any and all other payments made to date.**

ORDER

- Respondent shall pay reasonable and necessary medical services of **$55,278.16**, pursuant to Section 8(a) of the Act;
- Respondent shall receive a credit for all medical expenses paid;
- Respondent shall pay permanent and total disability benefits of **$1,027.75** per week for life, commencing **1-10-22**, as provided in Section 8(f) of the Act;
- The Respondent shall pay Petitioner TTD benefits of **$958.71**/week, for **341 and 3/7** weeks, commencing **2/1/15 through 8/17/20** pursuant to §8(a) of the Act;
- The Respondent shall pay Petitioner maintenance benefits of **$958.71**/week, for **14 and 6/7** weeks, commencing **9/29/21 through 1/10/22** pursuant to §8(a) of the Act;
- The Respondent shall receive a credit for any and all temporary total disability and maintenance payments made.

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. 7

Jason C. Mozatt

Signature of Arbitrator

JUNE 14, 2022

MELISSA MATOUSEK-RILEY)
Employee/Petitioner,)
)
v.)
) Case No. **15WC004741**
STATE OF ILLINOIS,)
DEPARTMENT OF CHILDREN)
and FAMILY SERVICES,)
Employer/Respondent

2nd AMENDED
ADDENDUM TO THE DECISION OF THE ARBITRATOR

FINDINGS OF FACT

On January 25, 2022, this matter proceeded to an arbitration hearing pursuant to section 19(b) of the Act. (Id.). The disputed issues are causation, medical bills, temporary total disability, maintenance, and nature and extent of Petitioner's injury. (Id.).

FACTS OF THE CASE

The Petitioner graduated college with a bachelor's degree in social work and human services and a minor in psychology. She worked in a child welfare job at a private agency from June 1994 until December 1, 1999, when she was hired by Respondent as a child welfare specialist before her promotion to child protection specialist/investigator in 2014, a position she retained until the accident at issue.

On January 23, 2015, the Petitioner, accompanied by 3 police officers, was conducting a child abuse investigation at a residence in Bolingbrook. As Petitioner was walking down some concrete stairs, she fell, rolling "all the way down" the stairs before losing consciousness. (Transcript "T", p. 7). Upon regaining consciousness, Petitioner drove herself to the ER at Bolingbrook Hospital where a history of pain to the right knee, right ankle, and left-hand abrasions, following a fall one hour prior, were noted. X-rays of the right knee and ankle were performed and Petitioner was discharged with a right knee brace, right ankle splint, crutches, pain medications, and instructions to follow up with an orthopedic doctor. (Petitioner's Exhibit "PX" 1).

On January 28, 2015, Petitioner presented to MK Orthopedics Sports Medicine Institute ("MK Orthopedics") in Joliet for evaluation of her right knee and ankle with Dr. Mukund Komunduri, an orthopedic surgeon. (PX 2). The Petitioner reported a history of falling down some concrete steps, landing on her left hand, twisting her right knee, and injuring her right ankle, while at work investigating a child protection case. (Id.). On exam, the doctor noted her right knee was "ballooned up in all directions implying a fairly traumatic injury". Right knee bruising and abrasions were also noted. (Id.).

On February 5, 2015, an MRI of Petitioner's right ankle revealed an acute moderate to high-grade partial thickness tear of the anterior talofibular ligament, in particular involving the attachment; a longitudinal partial-thickness split tear involving the posterior aspect of the inframalleolar segment of the peroneus brevis tendon; mild sprains of the calcaneofibular and anterior syndesmotic ligament; sequelae of an osteochondral injury along the posterior aspect of the medial talar dome, characterized by a region of subchondral bone marrow edema but without displaced osteochondral fragment; a 1.2 cm focal region of hyperintense inversion recovery

signal in the subcutaneous fat along the medial aspect of the distal tibia was found, which appeared to be associated with an avascular structure. (Id.).

On February 23, 2015, Dr. Komunduri noted Petitioner's right knee was "exquisitely" swollen, painful, and tender. (Id.). The doctor noted the metacarpal fracture to Petitioner's left hand was doing well. (Id.).
On February 27, 2015, Dr. Joe George, DPM, pursuant to a referral from Dr. Komunduri, performed a right ankle arthroscopy with debridement, medial malleolar osteotomy with osteochondral allograft transplant, excision of pseudoaneurysm, and anterior talofibular ligament and peroneal tendon repair. (Id.).

On March 23, 2015, Dr. George noted Petitioner's complaints of severe right knee pain after her crutch slipped in the foyer of her home on April 27, 2015. Dr. George noted complaints of increased pain in the anterior aspect of Petitioner's right foot and ankle. He recommended advancing physical therapy and weaning out of the CAM boot. (Id.).

In May of 2015, Dr. Komunduri administered two cortisone injections to Petitioner's right knee. (Id.).

On July 1, 2015, Dr. Komunduri noted the likelihood that Petitioner's right patella was laterally subluxated. On exam, he noted a tight lateral retinaculum, clicking and popping, and patellofemoral instability. He opined that conservative measures had failed and recommended surgery. (Id.).

On August 10, 2015, Petitioner presented, pursuant to Respondent's request, an Independent Medical Exam ("IME") at Illinois Bone and Joint with Dr. Rajeev Garapati who opined Petitioner suffered an acute right ankle injury to her right ankle causally related to her work accident. (RX 3). With regard to her right knee, Dr. Garapati opined that Petitioner sustained a twisting injury and an arthroscopy was indicated. (Id.). Petitioner would reach MMI within eight to twelve weeks. He further opined that Petitioner was not able to return to her previous job, but could return to work at a desk job with a limited amount of standing and walking. (Id.).

On September 21, 2015, Petitioner followed up at MK Orthopedics with complaints of right leg pain from her knee to ankle. (PX 2). On September 28, 2015, Petitioner reported her right knee gave out and she bumped her right foot on the wall, injuring her fourth and fifth toe followed by increased ankle pain. (Id.). On October 1, 2015, Petitioner reportedly fell twice since her last visit. (Id.).

On November 19, 2015, Petitioner underwent arthroscopic right knee surgery with lateral retinacular release performed by Dr. Komunduri. (PX 2 and PX 17). The doctor noted a post-operative diagnosis of chronic patellofemoral instability of the right knee following a traumatic injury. (Id.).

On November 30, 2015, Petitioner followed up at MK Orthopedic for right knee suture removal. (PX 2). Petitioner reported pain from the top of her right leg down to her ankle. (Id.). She began another course of physical therapy on December 4, 2015, for her right knee. (PX 15).

On December 9, 2015, MK Orthopedics noted the Petitioner's complaints of right knee swelling and problems with the buckling when traversing stairs. (Id.).

On January 23, 2016, Petitioner presented to Bolingbrook Hospital ER following a fall. (PX 1). She was diagnosed with right knee and right ankle sprains. (Id.). She continued to undergo physical therapy on her right knee. Petitioner underwent an MRI on February 29, 2016, which revealed postoperative changes consistent with surgical history and an oblique pin through the medial malleolus extending in the distal tibia. (PX 2). Mild chondromalacia with small effusion of the ankle joint was noted and anchors in the lateral malleolus were

found. (Id.). Chronic thickening superior aspect anterior talofibular ligament with thickening inferior aspect of the ligament was also noted. Accessory navicular type II with synchondrosis was further noted.

Petitioner presented to Bolingbrook Hospital on March 1, 2016, with a report of lower extremity pain and swelling. (PX 1).

On March 21, 2016, Petitioner followed up with MK Orthopedics who noted she had been walking with a limp due to intense right hip pain near the right groin and lateral greater troch area wrapping around the lumbar spine. (PX 2). Dr. Komunduri noted that Petitioner was struggling with a classic case of femoral acetabular impingement. (Id.).

A right hip MRI arthrogram revealed pincer-type femoroacetabular impingement and moderate greater trochanteric bursitis on April 11, 2016. Dr. Komunduri later diagnosed femoral acetabular impingement with a modest labral tear. The doctor opined that Petitioner's right hip pain was secondary to her work injury and wear over time. Physical therapy and a steroid injection were ordered. (PX 2).

On April 15, 2016, Petitioner presented to the Bolingbrook Hospital Emergency Room with complaints of right lateral hip pain, On April 26, 2016, Petitioner returned to the ER with complaints of right knee and hip pain. (PX 1).

On June 10, 2016, Petitioner underwent surgery consisting of a posterior tibial tendon repair on her right ankle and removal of hardware. A pre-operative diagnosis of symptomatic hardware and posterior tibial tendonitis was noted. The surgery was performed by Dr. George. (PX 2 and PX 17).

On August 15, 2016, MK Orthopedics noted Petitioner's complaints of persistent right hip pain and limited ability to progress in physical therapy. (Id.).

On October 5, 2016, Petitioner's complaints of persistent right knee and hip pain were noted by Dr. Komunduri. She reportedly fell down the steps at home causing right knee, hip, and ankle pain. Dr. Komunduri diagnosed a labral tear of the right hip. (Id.). On October 26, 2016, Dr. Komunduri noted Petitioner's right hip impingement is a pre-existing condition, but the traumatic fall resulted in a labral tear. He noted her continued use of crutches would aggravate her left hip. (Id.).

On November 3, 2016, Petitioner underwent a right hip arthrogram under fluoroscopic guidance and right hip intra-articular steroid injection at MK Orthopedics. (PX 18).

On February 11, 2017, Petitioner underwent diagnostic right hip arthroscopy, acetabular and femoral osteoplasty, anterolateral labral repair; and removal of intra-articular loose bodies performed by Dr. Komunduri. (PX 2 and PX 17). Petitioner underwent physical therapy following the surgery. (PX 16).

On March 13, 2017, Petitioner presented to MK Orthopedics with increased right ankle pain and persistent swelling. (PX 2). On March 20, 2017, she rated her right hip pain at a 5/10, and her ankle pain at a 7/10. She was utilizing a walker. (Id.).

On April 4, 2017, MRI of Petitioner's right ankle revealed low signal area on the anteromedial aspect of the ankle suggestive of post-surgical scarring, evidence of surgery with visualization of magnetic susceptibility artifacts in the distal tibia and medial malleolus in keeping with the placement of the pin, a partial tear of the tibiotalar ligament, cyst/geode in the calcaneum just below the sinus tarsus, mild ankle joint effusion, and soft tissue edema on the posterior aspect of the calcaneum. Upon comparison to the February 2016 MRI,

enlargement of the calcaneal cyst was noted along with a re-demonstration of post-surgical scarring on the anteromedial aspect of the ankle. (PX 2).

On July 7, 2017, an MRI of Petitioner's right ankle noted a slightly ill-defined and heterogeneous appearance of the anterior talofibular ligament status post repair without definite full-thickness tears, attenuated and frayed appearance of the inframalleolar segment of the peroneus brevis tendon; postoperative change at the medial malleolus and subchondral bone marrow edema in the posteromedial aspect of the talar dome with an associated artifact from postoperative change. (Id.).

On July 28, 2017, Petitioner underwent her third right ankle surgery consisting of a right ankle subtalar joint fusion and right ankle debridement, performed again, by Dr. George. (PX 2 and PX17). The surgical report noted impingement was excised (arthrotomy), a screw was placed into the heel, and bone was grafted into the subtalar joint. Petitioner's post-operative diagnosis was right ankle subtalar joint degenerative joint disease with instability and pain. She followed up post-operatively with MK Orthopedics. (Id.).

On November 29, 2017, an MRI of Petitioner's right hip revealed postoperative changes following labral repair with a small region of blunting, fraying, and irregularity involving the anterior labrum. A recurrent labral tear was not excluded. (Id.). A small chondral fissure and flap along the super medial aspect of the acetabulum were suspected. (Id.).

On June 25, 2018, Petitioner underwent an Independent Medical Examination regarding her bilateral hips with Dr. Shane Nho at Midwest Orthopedic. (RX 4). The doctor causally related Petitioner's right hip condition to the accident at issue but thought Petitioner's left labral tear and femoroacetabular impingement were degenerative in nature with no temporal or causal relationship to the accident at issue. (Id.). Dr. Nho found no further treatment was necessary for Petitioner's right hip and expected MMI would be achieved nine months after the date of surgery. (Id.).

On June 27, 2018, Dr. Muddha Bhargav at Chicagoland Pain Management Institute in Bolingbrook noted the Petitioner presented for a new patient consult. (PX 14). A history of three ankle surgeries, including an ankle fusion performed in July 2017, right knee and right hip surgeries, and left hip labral tears with femoral acetabular impingement was noted. (Id.). A fourth right ankle surgery was postponed due to a new injury to her left ankle, on May 18, 2018, after falling down some stairs. Petitioner also reported a prospective left hip surgery following an IME. (Id.). Petitioner noted the worst of her pain was in her right hip, followed by her left hip, right ankle, and right shoulder. She complained of constant pain at a 7/10 aggravated by prolonged sitting, standing, walking, and weather. (Id.). She noted ice, heat, and elevating her ankles helped alleviate her pain. She was seeing a physiatrist and psychologist and reportedly was taking the following medications: Wellbutrin, Gabapentin, Clonazepam, Escitalopram, Tizandine, and Norco. (Id.).

On exam, Dr. Muddha noted an antalgic gait and bilateral ankle swelling and warmth. (Id.). Petitioner underwent a drug screen and a pain contract was agreed upon. The doctor prescribed Percocet 5/325 mg (1 tablet, 3 times per day), and continued use of Tizandine (4 mg, 1 tablet, twice per day). The Norco prescription was discontinued. (Id.). The doctor noted a possible diagnosis of complex regional pain syndrome "CRPS", type II, involving Petitioner's lower right limb. Three lumbar sympathetic nerve blocks, one to two weeks apart were scheduled. (Id.). Petitioner was instructed to follow up in one month and not to drive or operate heavy machinery while taking her medication. (Id.).

On September 7, 2018, Petitioner underwent left ankle surgery consisting of arthroscopy with ATFL ligament repair, performed by Dr. George at Amsurg Surgicenter (PX 2 and 17). Petitioner's post-operative diagnosis

noted ankle impingement with ATFL ligament disruption and subchondral bone marrow deep lesion of the left ankle. (Id.). Petitioner began a course of physical therapy for her left ankle on October 12, 2018. (PX 2).

On September 21, 2018, Dr. Muddha noted Petitioner's complaints of bilateral neck, hip, ankle, and knee pain. (Id.). She was wearing a boot on her left foot and reported right foot pain with movement and intermittent right foot numbness. The Percocet, which was helping her pain, was causing sedation that Petitioner characterized as manageable. (Id.).

On January 11, 2019, Dr. Muddha noted Petitioner's report of falling down and twisting her right leg on January 2, 2019, while trying to take her shoes off. Petitioner reported "poorly controlled" right leg pain that originates in her foot and radiates up to her knee. She described the pain as "deep, burning type pain that is intermittent" worse at night. (Id.).

On January 18, 2019, Petitioner underwent an IME regarding her bilateral ankles with Dr. Johnny Lin at Midwest Orthopaedics at Rush. (RX 5). Pursuant to his exam and records review, the doctor opined that Petitioner's bilateral ankle condition was causally related to the accident at issue. Regarding the right ankle, Dr. Lin diagnosed a sprain with subsequent lateral ligament reconstruction, osteochondral lesion treatment, a prominent screw over the anterior heel, right ankle posterior tibial tendonitis status post posterior tibial tendon repair, and subtalar fusion. (Id.). He thought surgical removal of the symptomatic right foot hardware was reasonable followed by physical therapy and work conditioning. (Id.). Further, a right ankle CT scan was recommended to determine the status of the subtalar joint. (Id.). Regarding Petitioner's left ankle, Dr. Lin diagnosed a sprain with subsequent lateral ligament reconstruction and peroneal tendon repair. (Id.). He opined the Petitioner's left ankle sprain, instability, and surgery were causally related to the work accident, noting her abnormal gait associated with the conditions in her right ankle and knee, made her more prone to fall. Dr. Lin opined that Petitioner was capable of performing sedentary work. (Id.).

On February 11, 2019, a right L3-L4 lumbar sympathetic block, under sedation, was administered at Amita Health in Bolingbrook, pursuant to Dr. Muddha's order. (PX 14).

On March 11, 2019, Dr. Muddha noted Petitioner's complaints of poorly controlled right hip, foot, and knee pain that has significantly affected her quality of life and function. A diagnosis of type II CRPS in the left lower limb was noted. (Id.). Petitioner's Percocet (increased to 7.5/325 mg, 5 per day), Valium (10 mg every 8 hours (per her psychiatrist), and Gabapentin were refilled and injections to her right hip and right lumbar back were scheduled. (Id.).

On March 22, 2019, Petitioner underwent intra-articular injections, under sedation, to her right hip and right trochanteric bursa at Amita Health, pursuant to Dr. Muddha's order. (Id.).

On April 5, 2019, Petitioner underwent a right lumbar sympathetic plexus block at L3-L4, under IV sedation, at Amita Health in Bolingbrook, pursuant to Dr. Muddha's order. (Id.).

On April 11, 2019, an MRI of Petitioner's right ankle revealed artifact from orthopedic hardware/postoperative change which limited the exam, post-operative changes following ATFL repair, suspected attenuation and fraying of the inframalleolar segment of the peroneus brevis tendon, mild tendinosis of the posterior tibial tendon, and suspected mild bone marrow edema in the anterior aspect of the calcaneus. (PX 2).

On June 25, 2019, Petitioner underwent injections to her left intra-articular hip and left trochanteric, bursa under sedation, pursuant to Dr. Muddha's order. (PX 14).

On July 3, 2019, Petitioner underwent her fourth right ankle surgery consisting of sub chondroplasty of the right calcaneus and repair of the peroneus brevis tendon with reinforcement of the peroneal retinaculum. The procedures were performed by Dr. George at Amsurg Surgicenter. (PX 2 and PX 17).

On August 5, 2019, Dr. Muddha noted Petitioner's report of terrible pain following complex right foot surgery on July 3, 2019, which was "the worst of all 8 surgeries" she has undergone. (PX 14). Complaints of nerve pain from the right foot up the back of the leg to the knee were noted along with throbbing pain in the front of the right foot and bilateral hip pain. She reported a combination of Belbuca and Percocet were helping to manage her pain but she complained of poor quality of life and problems performing activities of daily life due to her pain. (Id.). The doctor prescribed Topamax for neuropathic pain, Belbuca which is a film taken by mouth, Diclofenac for pain and inflammation and Percocet for pain. (Id.) A diagnosis of CRPS was noted and a lumbar nerve block was ordered. Dr. Muddha also noted Petitioner was an excellent candidate for a dorsal root ganglion stimulator. (Id.).

On October 8, 2019, a right lumbar sympathetic block at L3-L4 was administered to Petitioner under sedation and on November 8, 2019, Petitioner underwent injections to her left intra-articular hip and left trochanteric bursa injection, under sedation, pursuant to Dr. Buddha's order. (Id.).
On November 19, 2019, Petitioner presented to Athletico for physical therapy for her right ankle.

On November 22, 2019, December 27, 2019, and January 22, 2020, Petitioner underwent bilateral sacroiliac joint injections at Amita Health pursuant to Dr. Buddha's order. (Id.).

On February 6, 2020, Petitioner presented to Dr. Lin for a second IME regarding her bilateral ankles. (RX 6). Dr. Lin opined that the right ankle sprain, peroneal tendon injury, osteochondral lesion, and right ankle instability were causally related to the work accident. The right posterior tibial tendon injury, in his opinion, was not causally related to the work accident. (Id.). Regarding her left ankle injury, Dr. Lin found a causal relationship to the work accident noting Petitioner's abnormal gait was caused by the right ankle and right knee injury which made her more prone to falling, resulting in the left ankle injury. (Id.). Dr. Lin noted Petitioner's complaints of functional instability. He recommended a short, articulated ankle-foot orthosis as a final means of providing right ankle stability. He thought Petitioner was a poor surgical candidate noting her ankle pain persisted despite multiple ankle surgeries. Dr. Lin did not recommend any further physical therapy. He recommended a functional capacity evaluation ("FCE") to determine final work capabilities. He opined that her current work restrictions are likely to be permanent and that Petitioner's final work capacity would be sedentary duty. Petitioner would reach MMI when she receives her custom right ankle brace and would be at MMI if she foregoes the brace. (Id.).

On February 21, 2020, Petitioner underwent bilateral sacroiliac joint injections at Amita Health. Per Dr. Buddha's order (PX 14). Petitioner continued to undergo physical therapy for her right ankle at Athletico.

Petitioner testified she ceased treating with Dr. George and began treating with Dr. Steven Miller at Hinsdale Orthopedics for her right ankle/foot.
On April 14, 2020, MRI of Petitioner's right foot noted moderate osteoarthritis at the first MTP joint, non-specific edema within the plantar fat pad underlying the fifth MTP joint, likely representing fat pad degeneration. (PX 2).

On May 8, 2020, Petitioner presented for an initial consult with Dr. Steven Miller at Hinsdale Orthopedics. (PX 3). At her initial consult, Dr. Miller noted Petitioner ambulated with a significant antalgic gait on the right. X-rays of the right ankle performed that day noted the ankle joint "is certainly not fused...there does not appear to be fusion of any of the subtalar joint either..". On exam, pain on palpation in the sinus tarsi was noted. Dr.

Miller wrote, "I feel she has certainly exhausted any surgical intervention at this point. She has had several surgical interventions and states she is no better… Any further surgical intervention would likely involve a triple arthrodesis and if she already had a failed arthrodesis and no significant improvement with her multiple surgeries I would not recommend that at this point" (Id.). Dr. Miller advised Petitioner that after 5 years she will never have "a normal foot" and likely will need some form of permanent custom bracing. (Id.). He recommended continued physical therapy and follow-up in one month after she obtained a custom brace for her right foot/ankle. (Id.).

On June 4, 2020, Petitioner followed up with Dr. Miller who noted he had reviewed some of Dr. George's records but had not received any notes from the initial right ankle surgery or from the subtalar joint fusion surgery. (PX 3). Dr. Miller again advised Petitioner that he did not recommend any further right ankle surgery. (Id.). Petitioner advised that she had been measured for a custom Arizona brace which she had not yet received. Dr. Miller instructed Petitioner to "continue to do activity to her tolerance". (Id.).

On July 2, 2020, Dr. Miller noted Petitioner's report of falling in her yard, twisting her foot two weeks ago, just prior to receiving her new Arizona brace. (Id.). She also complained of right knee pain and asked the doctor for a referral since her prior knee doctor sold his practice.. (Id.). Off-work restrictions were noted. (Id.).

On July 11, 2020, Petitioner underwent a right intra-articular knee injection and on July 24, 2020, she underwent a cervical interlaminar epidural steroid injection. Her post-operative diagnosis was degenerative disc disease and cervical radiculopathy. (PX 14.).

On August 6, 2020, Dr. Miller noted Petitioner's complaints of right foot pain on the bottom of her foot. (Id.). She reported a history of a pinched nerve in her right foot and had received an injection sometime late last year which lasted until about a week ago. (Id.). She noted shooting pain, numbness, and tingling in her third and fourth toes. Dr. Miller diagnosed recurrent Morton's neuroma in the right foot and administered a cortisone injection. (Id.). The doctor noted Petitioner was on long-term disability and unable to work. (Id.).

On August 17, 2020, Petitioner underwent a Functional Capacity Evaluation ("FCE") at Athletico, noted by the examiner to be a valid representation of Petitioner's capabilities. (PX 11). The Petitioner reportedly took pain medication just prior to her arrival at the testing facility. (Id.). Pursuant to the evaluation, the therapist concluded Petitioner was functionally employable within "at least light physical demand level" with occasional lift and carry of 20 pounds, frequent 12-inch to waist lift of 13 pounds, and frequent carrying of 15 pounds. (Id.).

On September 3, 2020, Petitioner reported to Dr. Miller that on August 13, 2020, she felt a pop on the outside of her ankle while walking in the yard. (PX 3). Reportedly, she could not wear her Arizona brace due to swelling in the right ankle. On exam, mild edema in the lateral right ankle and pain on palpation along the peroneal tendon area posterior and distal to the lateral malleolus, and mild pain over the anterior talofibular ligament was noted. X-rays revealed no fracture or dislocation. A diagnosis of a right ankle inversion injury was noted. Petitioner was instructed to wear her tall cam walker boot at all times when standing and walking. The doctor advised Petitioner she cannot wear the boot while driving as it is illegal to drive with the boot on. Dr. Miller noted Petitioner is on long-term disability and unable to work. (Id.).

On September 11, 2020, Dr. Komunduri noted Petitioner was "miserable" and "extremely distressed" with complaints of right foot pain. (PX 4). She was walking on the side of her right foot. The Petitioner reported that her doctor at Hinsdale Orthopedics said her subtalar fusion had failed. (Id.). Petitioner's quality of life was extremely limited due to her pain and she contemplated asking for an amputation. (Id.). On exam, the doctor noted swelling and gross instability at the peroneal tendons with subluxation along with radiating pain down the

peroneal tendons. (Id.). X-rays suggested an incomplete fusion of the subtalar joint. (Id.). The doctor noted it was "unacceptable" to leave Petitioner in her "current level of dysfunction." (PX 2). The only solution, according to the doctor, was a revision subtalar fusion and revision peroneal tendon stabilization. The doctor characterized the failed subtalar fusion as "the original deficit" which was "never corrected". A repeat right ankle CT scan was ordered to assess the available bone stock and recommended Petitioner follow-up in a few weeks to make a "final decision" regarding a fifth surgery to her right ankle. (Id.).

On October 1, 2020, Dr. Miller noted Petitioner presented for follow-up of right ankle pain as well as the new onset of left ankle pain. (PX 3). While wearing her Arizona brace, Petitioner thought she might have "stepped my foot down wrong" once and it became painful again. In the meantime, Petitioner's left ankle, which was fractured a few years ago followed by ORIF surgery, had "flared up" in the lateral region. X-rays of the left ankle revealed no obvious signs of fracture or dislocation. Dr. Miller ordered Petitioner to wear her cam walker boot on her right foot at all times when standing or walking and return in 2 weeks for an MRI. On the left ankle, she was placed in an ASO ankle brace. Physical therapy was ordered for the left ankle. Petitioner was ordered to only perform activity "as tolerated". Dr. Miller noted Petitioner was on long-term disability and unable to work. (Id.).

On December 4, 2020, Dr. Miller noted Petitioner's complaints of bilateral ankle pain and pain in the left great toe. (Px 3). The right ankle was reportedly 8/10 while the left was at a 2/10. Petitioner had fallen a few times since she last saw Dr. Miller. The doctor recalled advising her to go to the emergency room where she was placed in a splint. Dr. Miller noted, "the usual lateral ankle pain remains on the right" with pain on palpation over the lateral ankle, mild pain in the sinus tarsi, and mild diffuse edema of the lateral right ankle. Petitioner was wearing her Arizona brace. (Id.). Dr. Miller noted a diagnosis of contusion to the left great toe and chronic right ankle pain status post remote fall. (Id.). Dr. Miller noted Petitioner had finished physical therapy and was doing a home exercise program. (Id.).

Dr. Miller reviewed the FCE noting the testing was "done at our clinic" in Bolingbrook on August 17, 2020. (Id). The doctor reiterated the FCE conclusions in his chart noting, "Again patient states she has been still having the same chronic weakness she has had for the last several years the brace helps but she still falls and does not feel she can walk and carry any significant weight". (Id.). Petitioner brought a job description from DCFS of her duties and responsibilities as a child protection specialist with the Illinois Department of Children and Family Services. Dr. Miller noted the report states, "she does journeyman level child abuse and neglect investigations to include interviews, home and family assessments, preparation of documents, and case preparation and testimony". (Id.). Respondent reportedly told Petitioner she could return to her old job. Petitioner told Dr. Miller she did not think she could physically function at her former job due to the frequent driving, walking, stair climbing and carrying of 35 to 50 lbs. children. (Id.). Dr. Miller, after reviewing the FCE "at length" opined, "I do not feel the patient can go back to her previous occupation based on the limitation she still has with driving, lifting, carrying, and weight-bearing. (Id.).

On December 10, 2020, Petitioner underwent percutaneous implantation of the neurostimulator electrode array, epidural times three targeting dorsal root ganglion at L3, L4, L5, and S1 on the left. (PX 14). Her post-operative diagnosis noted CRPS of the left lower limb. Petitioner underwent additional operative procedures on January 20, 2021: (1) insertion of four neurostimulator leads into the spinal canal targeting dorsal root ganglion at right L4, L5, S1, and left L4, open approach; and (2) insertion of a spinal neurostimulator pulse generator. (Id.).

On February 18, 2021, Dr. Miller noted Petitioner's report that her right ankle feels the same with no new problems. (PX 3). She has pain with prolonged walking or standing. (Id.).

On May 10, 2021, Petitioner began working as a customer care representative. (RX 10).

Petitioner testified that she was off work due to her accident-related injuries from January 24, 2015, until May 10, 2021, when Respondent placed her in a job as a customer care representative with Bolingbrook Park District.

On May 13, 2021, Petitioner underwent a fourth left intra-articular hip injection and a left trochanteric bursa injection. (PX 14). Petitioner underwent a fifth bilateral sacroiliac joint injection on May 27, 2021, and on July 16, 2021, a fifth left intra-articular hip injection and a left trochanteric bursa injection. (Id.).
On May 14, 2021, Dr. Miller noted Petitioner should work no more than 24 hours per week at a sedentary job. (PX 3).

On May 26, 2021, Petitioner quit her job with the Bolingbrook Park District. (RX 10).

On July 9, 2021, Dr. Miller noted Petitioner's complaints of right ankle soreness and pain and throbbing and burning sensations on the dorsal aspect of her midfoot. Petitioner rated her pain at an 8/10. (PX 3). Petitioner also reportedly fell the night before and rolled her ankle. (Id.). She was wearing the Arizona ankle brace when she fell and it tore. Petitioner was using crutches. (Id.). Dr. Miller diagnosed a right foot sprain and fitted Petitioner for a new walking boot which he instructed her to wear at all times when walking. (Id.). On exam, mild pain was appreciated on the right lateral ankle which Dr. Miller noted was the area of "chronic pain". (Id.). Dr. Miller prescribed Meloxicam for inflammation and noted Petitioner's current medications included Oxycontin and Gabapentin. (Id.).

On July 23, 2021, Dr. Miller noted Petitioner's report that she fell again and broke a small table. Petitioner was wearing her cam walker boot which the doctor advised her to continue wearing at all times when standing or walking.

On August 27, 2021, Dr. Miller noted Petitioner's right foot pain had resolved although her right ankle pain persisted. (Id.). Petitioner reported recurrent left ankle pain behind the lateral malleolus. Dr. Miller noted the intermittent left ankle pain was likely peroneal tendinitis noting "that pain could be compensating for her chronic right ankle pain". He fitted Petitioner for a left ASO ankle brace and advised her to continue wearing her right brace. (Id.). The doctor noted Petitioner was unable to return to work. (Id.).

On October 19, 2021, Petitioner followed up with Dr. Miller who noted she was unable to return earlier due to financial issues. (PX 3). Petitioner reported left ankle pain, no new injury, but that it hurt with every step. The right ankle pain persisted and her neuroma pain had returned over the right foot. She requested another injection. (Id.). Petitioner was fitted with a Cam walking boot for her left foot and Dr. Miller ordered a left foot/ankle MRI to determine whether there is an occult fracture or internal derangement and to better assess the peroneal tendon. The doctor administered a cortisone injection for her neuroma on the right foot, noting the last injection 6 months prior had provided relief. (Id.). Dr. Miller noted a diagnosis of chronic right ankle pain and instability, recurrent Morton's neuroma, and left ankle pain/peroneal tendinitis. (Id.). The doctor noted Petitioner was unable to return to work. (Id.). Petitioner's next appointment was February 4, 2022. (Id.).

DR. KOMUNDURI IME

On February 4, 2021, Dr. Komunduri authored a narrative IME report at the request of the Petitioner's attorney. (PX 5). The doctor noted he was Petitioner's initial treating doctor following a traumatic work-related accident when she fell down some stairs. (Id.). Dr. Komunduri testified he referred Petitioner to Dr. Joseph George

regarding chronic subtalar arthritis from the accident at issue. (Id.). According to Dr. Komunduri, Dr. George attempted a subtalar fusion which failed and two peroneal tendon surgeries which failed. (Id.).

Dr. Komunduri treated Petitioner's right knee and hip including arthroscopic repair of her torn right labrum and right knee patellar subluxation and chondrosis. (Id.). Petitioner has reached the endpoint of care regarding her right hip and knee. She continues to walk with a limp and reports persistent aches and discomfort. (Id.).

Dr. Komunduri noted his findings on his last exam of Petitioner on September 11, 2020. The Arbitrator notes these findings are contained above.

Regarding the FCE, Dr. Komunduri acknowledged the noted his disagreement:

> *Unfortunately, the FCE does not discuss the functions required for her job nor does it assess work capacity in terms of driving, prolonged walking, endurance, stair climbing, and other routine activity that are a component of her job. She has confirmation of the failed subtalar fusion from an outside opinion at Hinsdale Orthopedics as well. Furthermore, she is brace dependent based upon a right ankle brace that Dr. George and the IME examiner both recommended. In the brace, she is able to walk further and longer, but again to very limited distances*. (Id.).

Regarding her work restrictions Dr. Komunduri noted:

> *So, what we have here is the patient who has had the right hip, right knee, and right foot operated on. She has gross instability of the subtalar joint that is 100% brace-dependent. She cannot ambulate without the brace. The brace cannot be worn 24 hours a day because it causes significant soft tissue impingement and pain and there are areas of skin that become quite erythematous and painful with chronic use of the brace, which essentially immobilizes her from any significant ambulation. I would agree that she can work at a desk doing sedentary duty, but I disagree that she can carry any significant weight. Her ankle is unstable and buckles on a frequent basis. Therefore she is restricted to a five-pound weight*. (Id.).

Dr. Komunduri noted that Petitioner cannot walk more than 20 feet without essentially losing her balance and being at risk for fractures to her hips or other body parts. (Id.).

Regarding driving, he noted Petitioner suffers from chronic sensory deprivation in her right foot resulting from "all the scars in her foot and persistent numbness across the dorsum of and part of the sole of the foot. Consequently, Petitioner has significant sensory loss that makes her right foot unable to manage or feel a brake pedal or accelerator pedal in a car effectively, notwithstanding the fact that she lacks the strength and stability to control a vehicle". (Id.).

Further, he noted that Petitioner's chronic pain requires significant medication and anticonvulsant medication, which can cause drowsiness and significant loss of mental capacity.

Dr. Komunduri concluded Petitioner is disabled to a sedentary only position, no more than 5–10-minute drive on a limited basis to work, lifting not to exceed 5 lbs., walking not to exceed 20 feet in a given hour. (Id.).

VOCATIONAL EVALUATIONS

On behalf of Petitioner

Kari Stafseth, a certified vocational rehabilitation manager, was retained by Petitioner's attorney to conduct a vocational assessment. (Px10). Ms. Stafseth submitted On October 7, 2019, Ms. Stafseth met with the Petitioner who described the duties and physical demands of her job for Respondent at the time of her accident which included frequent driving, walking, stair climbing, and lifting 35 to 50 lb. children. Petitioner had 42 cases at the time of her accident and worked approximately 60 hours per week. (Id.). Petitioner's territory involved parts of Will and Grundy County and her involvement in any given case began when the case entered the system until the time the case was transferred to a caseworker. (Id.). Petitioner drove frequently meeting with police, school staff, doctors, and family members. (Id.). She also met with the children who were the subject of the cases. At times, she was "on-call" between 5:00 p.m. and 8:00 a.m. If a case arose during that time, she was required to drive to the home of a child and remove a child from their home or from a placement. Petitioner developed safety plans for the children and performed home visits every 5 days to make sure the plan was being followed. (Id.). Petitioner also drove to court to attend permanency and status hearings. Her job required filling out a multitude of forms, drafting case notes and reports, and service plans. (Id.). She also attended meetings to review and evaluate the service plans. (Id.).

Although Petitioner's job for Respondent was identified in the Dictionary of Occupational Titles as a light level of physical demand, Ms. Stafseth thought Petitioner's self-reported job description more indicative of medium-duty employment according to the United States Department of Labor guidelines. (Id.). The Respondent made no formal job description available for her review. (Id.).

Ms. Stafseth opined that Petitioner has lost access to her current job as a caseworker, noting Dr. Miller's IME report in which he opined that Petitioner's restrictions limit her to driving no more than 5 to 10 minutes from home to work.

Ms. Stafseth further opined that Petitioner has lost access to a viable, stable labor market due to Dr. Komunduri's restrictions regarding lifting, walking, and driving. She noted it is unclear whether the 24-hour workweek restriction was permanent. If Petitioner has a permanent workday tolerance of 24 hours per week, and if drowsiness and loss of mental capacity impact her beyond driving abilities, these would be additional factors pointing to a loss in access to a viable stable labor market including home-based employment.

Ms. Stafseth further opined that Petitioner was not a suitable candidate for vocational rehabilitation and that her ability to maintain employment, undergo job training, or learn a new job, would be negatively impacted by her use of pain medications. (Id.).

Ms. Stafseth noted that, generally, one's ability to do a singular job is not evidence of a viable, continuous, and stable job market. (Id.).

Ms. Stafseth, on cross-exam, testified that most of her caseload was devoted to worker's compensation cases, evenly divided between petitioner and respondents' cases (Id., p.18). She did not observe Petitioner using computer programs or performing computer tasks and did not review a job description for her job (Id., 19). She determined that the actual job duties, as described by Petitioner, placed her in a medium, as opposed to, a light-duty category (Id., p.22). Petitioner reported to her that she was a licensed social worker and had completed training to be a child welfare trainer and received certification in child and family protection services. (Id., pp. 20-21).

Ms. Stafseth testified that a work at home job/setting might be an alternative to driving to a jobsite if driving was the only issue (Id., pp.25-26). Other factors relevant to Petitioner's case are her ambulation issues and the strong pain medications she takes ingests. (Id., p.29). Ms. Stafseth testified that she was not confident that an employer would accommodate Petitioner's limitations over a substantial period of time so as to provide a stable job (Id., p.31).

Ms. Stafseth's Addendum Report, dated July 15, 2021(Px13), summarizes her opinions in this case and mirrors her deposition testimony. She opined that home-based employment is not the perfect solution. Again, she noted that having a job is not the same as having a stable job. She noted concern as to whether Petitioner could maintain a job (Px13, p.8).

On behalf of Respondent

Samantha Hoevel-Kujawa's is a certified vocational rehabilitation counselor retained by Respondent who performed a Transferable Skills Analysis/Labor Market Survey following an in-person assessment of Petitioner on September 10, 2021. (Id.). Ms. Hoevel Kujawa's initial report, summarizing her interview with Petitioner on September 10, 2021, acknowledged Petitioner's surgical history, physical restrictions issued by Dr. Komunduri, and ongoing medical treatment. (RX 8, p.2). Petitioner expressed concern about her propensity to fall, adding that she has a fear of falling at work resulting in another workers' compensation claim. (Id.). Petitioner also provided paperwork from her primary doctor and therapist stating that she is not released to return to work. (Id., p.3). Petitioner's therapist noted that Petitioner's PTSD had been triggered and that she is in no condition to work at this time due to her mental status.

Ms. Hoevel-Kujawa opined that Petitioner's return-to-work probability is "guarded", noting the 10-minute driving and 20-foot walking restrictions imposed by Dr. Komunduri. She thought that Petitioner could obtain a job that allows her to work from home but would require computer training to become a competitive applicant. She further noted the possibility of Petitioner renewing her state-issued Child Welfare Certification and pursuing positions in a managerial or supervisory role with Respondent. (PX 7, p. 3-4).

Based upon Petitioner's training and experience, the vocational case manager Hoevel-Kujawa's identified the following positions that would be appropriate for Petitioner's restrictions, education level, transferable skills, and experience: customer service representative, loan processor, title clerk, office clerk, receptionist, telecommunications, with the hourly pay range of $13.00 to $15.00. (Id.). This report also noted, based on her current limitations and work restrictions, that Petitioner would be limited to jobs within a 3-mile radius of her home, 5-10 minutes away by car. (RX 7, p. 4). Petitioner's current medications were noted as Balbuca, Gabapentin, Oxycodone, Diazepam, Zofran, Quetiapine, and other medications for anxiety and depression (Id.).

PETITIONER'S TESTIMONY
Current Condition

Petitioner testified that she experiences chronic pain in her bilateral lower extremities. She takes regularly takes Belbuca and Oxycodone for pain relief. (T 32). She testified that Belbuca causes her migraine headaches. (Id.).

Regarding her right ankle, Petitioner wears the Arizona brace prescribed by Dr. Miller instructed her to wear it daily, as much as possible. She wears the brace 4-6 hours per day. Petitioner testified the brace 'is very uncomfortable".

Regarding her left ankle, Petitioner testified it "hurts all the time". She further testified a left foot/ankle MRI was performed on January 12, 2022 "showed a bone cyst that's been growing". She is scheduled to follow up with Dr. Miller, after the hearing, on February 1, 2022, regarding the recent imaging.

Regarding her right knee, Petitioner testified it is "swollen and sore". She testified that prospective right knee surgery cannot be performed due to the instability in her right ankle. (Id. 14).

Regarding her hip pain, Petitioner testified, "The pain in my right hip is a dull pain. It can get sharp. I sleep with an ice pack every single night on both hips and use the heating pad every single day and use this cushion. It's pain. It's life". (Id., 28.).

Petitioner had a dorsal root ganglion stimulator implanted in her back, with lines that lead down both legs. The device is connected to a battery pack that allows Petitioner to control the pain in her right leg, ankle, and hips. (Id. 33-34).

Petitioner testified that as a result of her accident and injuries, she has been diagnosed with post-traumatic stress disorder ("PTSD"). (Id. 50). Dr. Mullen is Petitioner's psychiatrist and Nicolette Morales is Petitioner's therapist. (Id. 51). Dr. Mullen prescribed Petitioner Gabapentin, Wellbutrin, Lexapro, and Valium. (Id. 52). Petitioner testified that she has anxiety that has worsened since the accident. (Id..). In the first year following her accident, Petitioner became very depressed because she could not return to work. (Id. 53).

The Arbitrator notes that no mental health records were submitted into evidence at trial.

Petitioner testified she participated in Respondent's vocational rehabilitation program and was offered a job as a respite worker at SOS Children's Village and a position as a home health aide in Lockport, Illinois but declined both as the driving and lifting requirements exceeded her work restrictions. (Id., 38-40). Petitioner applied for work but was not granted an interview at a law firm, a dental office, a hotel company, and a senior citizen center in Bolingbrook. (Id. 42).

Petitioner obtained a part-time, 20-hour-per-week, desk job with the Bolingbrook Park District, answering phones, doing computer work, and meeting with customers as they arrived. (Id. 40). Petitioner testified that after two weeks on the job, she quit because the amount of walking, standing, sitting, and bending caused her too much pain in her bilateral hips extending down her legs. Petitioner testified she almost fell on one occasion during her time working this job. (Id. 41).

Less than two weeks prior to the arbitration hearing, Petitioner began working as a Data Entry Clerk at a Covid-19 testing lab located 1.2 miles from her home. (Id. 36-37). The job requires her to open biohazard bags containing Covid-19 tests and enter data into a computer. She is paid $15 an hour and works 14-16 hours per week. (Id. 37-38). Petitioner wears her Arizona brace at work while she is sitting. When asked about her right ankle pain or discomfort while working in her current job, she testified, her right ankle "swells and I have to put my legs up". She testified that the other day at work, her right ankle was so swollen that she could not put on her ankle brace. Petitioner testified that her current employer accommodates her work restrictions but has made no representations or promises about the job, "Right now it's a covid crisis. It's a matter of getting it entered. I don't' know what the future holds for that place or myself." (Id. 49-50).

Petitioner testified she has a valid driver's license and drives three times per month, at most. (Id. 36). She testified that she enjoys working in her garden in the summer, and crocheting. (Id. 46). She is the secretary of the Rotary Club, a community-based organization that raises money and completes community projects such as park clean-ups. (Id. 47). In her position as secretary, Petitioner attends one-hour meetings, once a week, at a

restaurant in Bolingbrook. Petitioner is responsible for taking and sending out notes to members and coming up with ideas for activities for the club. (Id. 63).

CONCLUSIONS OF LAW

CAUSAL CONNECTION

On January 23, 2015, Petitioner, then, an able-bodied 44-year-old, went to investigate a child abuse case, accompanied by 3 police officers, at a residence in Bolingbrook. In the course of her investigation, she fell down a concrete stairway suffering acute injuries to her right ankle, right knee, and left hand.

Petitioner has undergone the following surgical procedures:

- February 27, 2015: Right ankle arthroscopy with debridement, right ankle medial malleolar osteotomy with osteochondral allograft transplant, right ankle excision of pseudoaneurysm, right ankle anterior talofibular ligament repair, right ankle tendon repair;
- November 19, 2015: Right knee diagnostic arthroscopy with debridement and lateral release;
- June 10, 2016: Right ankle removal of hardware and posterior tibial tendon repair;
- November 3, 2016: Right hip steroid injection under anesthesia;
- February 7, 2017: Right hip arthroscopy with acetabular and femoral osteoplasty and labral repair;
- July 28, 2017: Right ankle subtalar joint fusion and right ankle debridement and arthrotomy, hardware placed into the heel, bone grafted into the subtalar joint;
- September 7, 2018, Left ankle arthroscopy and left ankle ATFL ligament repair;
- July 3, 2019: Right ankle peroneal tendon repair.

Petitioner has undergone 4 surgeries to her right ankle that have failed to alleviate her chronic right ankle pain and instability. Her right failed ankle fusion and tendon repair was never revised or corrected. The medical evidence documents the worsening condition in her right ankle over the course of the last six years.

Petitioner's testimony regarding the many instances where she fell due to her right ankle instability is well documented in the medical records.

The Arbitrator finds the opinions of the various IME physicians support the conclusion that Petitioner's current condition in her bilateral hips, bilateral ankles/feet, and right knee, is related to the various complications and limitations caused by the accident. The medical evidence and opinions support a conclusion that the interplay of the condition in her bilateral ankles/feet, bilateral hips, and right knee caused a cycle of chronic pain and disability.

Regarding Dr. Nho and Dr. Miller's causation opinions as to Petitioner's left labral tear, femoroacetabular impingement, and right posterior tibial tendon, the Arbitrator finds these conclusions failed to address whether

the accident could have aggravated a pre-existing condition. Further, these opinions are not supported by medical evidence documenting complaints, treatment, or diagnoses of the respective conditions before the accident date. In addition, these opinions fail to address the fact that Petitioner functioned in a physically active job for 16 years immediately prior to the accident.

Based on the preponderance of credible evidence contained in the record, including the treating medical records, opinions of Respondent's IME physicians, the testimony and opinions of Dr. Komunduri, as well as the credible testimony of Petitioner, the Arbitrator finds **that Petitioner's current condition of ill-being in her right foot/ankle, left foot/ankle, right knee, and bilateral hips are causally related to the accident at issue.**

Regarding Petitioner's alleged PTSD, the Arbitrator found no treating records or opinions were in the record in support thereof.

MEDICAL BILLS

Based on a preponderance of credible evidence contained in the record, the Arbitrator finds the Respondent liable for reasonable and necessary medical services of **$55,286.16**, pursuant to Section 8(a) of the Act.

Respondent shall receive a credit for all medical expenses paid and shall hold Petitioner harmless for claims of any providers for services from which Respondent is receiving a credit, under Section 8(j) of the Act.

TTD & MAINTENANCE BENEFITS:

The Arbitrator finds, based on a preponderance of the credible evidence contained in the record, that Petitioner is entitled to:

- Temporary total disability benefits disability ("TTD") of **$958.71**/week, for **341 and 3/7** weeks, commencing **2/1/15 through 8/17/20** pursuant to §8(a) of the Act;
- The Respondent shall pay Petitioner maintenance benefits of **$958.71**/week, for **14 and 6/7** weeks, commencing **9/29/21 through 1/10/22** pursuant to §8(a) of the Act.

The Respondent shall receive a credit for any and all TTD and maintenance payments made thus far.

NATURE AND EXTENT OF THE INJURIES

Based on the totality of credible evidence contained in the record, including the Petitioner's credible testimony, the treating medical evidence, and the opinions of Dr. Komunduri and Petitioner's vocational rehabilitation expert, Ms. Stafseth, the Arbitrator finds that Petitioner falls into an 'odd-lot' category for purposes of determining her entitlement to PTD benefits.

Petitioner continues treatment for her bilateral ankles/feet with Dr. Miller who has not released her to return to work. She also continues treatment with her pain management team.

According to Dr. Komunduri, Petitioner is unable, at times, to bear weight on her right foot and cannot ambulate without a brace. She cannot lift more than 5 lbs., or walk more than 20 feet without essentially losing

her balance and being at risk for a fracture of her hip or other body parts. She suffers from chronic sensory deprivation in her right foot resulting from surgical scarring and persistent numbness across the dorsum and sole of the right foot. Dr. Komunduri restricted her from driving more than 10 minutes from her home. The Arbitrator finds the opinions of Dr. Komunduri, who oversaw the majority of Petitioner's treatment, credible, persuasive, and consistent with the medical evidence contained in the record.

The Arbitrator acknowledges the FCE performed in this case but places more weight on the opinions of Dr. Komunduri, Dr. Miller, and Ms. Stafseth.

Although Respondent's vocational counselor opined that a stable labor market exists for Petitioner, she failed to support this conclusion with facts.

Regarding her current condition, Petitioner wears a "very uncomfortable" right foot brace, for 4-6 hours per day, for mobility. She testified that her right knee is swollen and sore. She sleeps with ice packs on both hips and uses a heating pad daily. She takes Belbuca and Oxycodone regularly for pain.

Between January 24, 2015, and May 10, 2021, Petitioner did not work at all due to her accident-related injuries.

Kari Stafseth, a certified vocational rehabilitation manager, opined that Petitioner has lost access to a viable, stable labor market offering gainful employment. Ms. Stafseth noted the work restrictions issued by Dr. Komunduri regarding walking, driving, and use of medications were significant. Ms. Stafseth further opined that Petitioner's ability to maintain employment or undergo job training would be seriously impacted by her use of pain medications, echoing Komunduri 's concerns.

The Arbitrator agrees with Ms. Stafseth that Petitioner's current job at a Covid 19 testing facility, which she obtained less than two weeks prior to the arbitration hearing, is not evidence of a stable job market.

The Arbitrator finds the opinions of Ms. Stafseth credible, persuasive, and consistent with the medical evidence in this case.

The opinions of Respondent's vocational counselor were unsupported by facts. The Arbitrator finds it significant that her opinion noted the prospect of Petitioner's return to the labor market was "guarded".

Based on the six-year course of treatment documented in her medical records and the opinions of her treating physicians, Petitioner's condition of ill-being, her chronic pain, instability, and functional limitations, most certainly will not improve with age. Petitioner's medical treatment for her bilateral ankles/feet is ongoing. Her progress, if any, is minimal. The current condition of her left foot/ankle is unknown. The failed right ankle fusion was never repaired. She is currently engaged in pain management services and taking various medications, including opioids, to alleviate chronic pain. She has sensory deprivation in her right foot caused by surgical scarring. Her gait is affected causing her to lose balance and fall.

Respondent shall pay permanent and total disability benefits of $1,027.75 per week for life, commencing January 10, 2022, as provided in Section 8(f) of the Act.

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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC024869
Case Name	Samuel C Haras v. Metro Paramedic Services
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0112
Number of Pages of Decision	13
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Jack Linn
Respondent Attorney	Lloyd McCumber

DATE FILED: 3/13/2023

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SAMUEL C. HARAS,

Petitioner,

vs. NO: 20 WC 24869

METRO PARAMEDIC SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, temporary total disability, medical expenses, benefit rates, average weekly wage, causal connection, and credits for temporary total disability advances, group long term disability benefits and sick/ safety/hazard/payroll payments, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but makes clarifications as outlined below. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

We acknowledge that, at the hearing, Petitioner failed to provide a thorough explanation as to why the initial medical records did not corroborate his testimony indicating that he sustained an accident at work on July 22, 2020. However, the Arbitrator specifically found both Petitioner and Lt. Dovel credible. *Dec. 5*. We agree that Petitioner's testimony was supported and corroborated by Lt. Dovel's testimony. Lt. Dovel even testified that, "If Sam's injury was more substantial at the moment of injury, we would have reported it to Ron Cielek and taken care and had him evaluated at that moment." *Px13 at 12*. He explained, "we're not going to report every little Band-Aid that we hand out" (*Id. at 14*) but if Petitioner was "unable to continue his shift it would have been reported to Ron Cielek." *Id. at 15*. Significantly, Lt. Dovel testified, "Because Sam responded to me saying that he thinks he just had a tight back and kind of tweaked it a little bit and did not want more care with it at that moment**,** it is not uncommon for us not to report that because firefighting is a strenuous job that's

going to cause bumps and bruises and kind of strains here and there. The moment that it progressed to a level that he needed medical care is when we would have informed Ron Cielek of the injury." *Id. at 12*.

We are aware that the initial records of Dr. Savino and Praxis Physical Therapy specifically state that Petitioner had not sustained any injury that he could recall. *Px11 at T.196, T.205*. We are also aware that Petitioner did not "check" on the intake form that he was seeing Dr. Savino for a work injury. *Rx7 at T.309*. Additionally, on the August 25, 2020 History of Present Illness form that Petitioner completed for Dr. Marsiglia (pain management), Petitioner left blank the answer to the question "What were you doing when your pain started?" *Px10 at T.191.*

Despite these inconsistencies, we affirm the Arbitrator's findings regarding credibility and find Petitioner sustained his burden of proof.

Finally, in the Order section we add the word "credit" after "shall be given" in the last sentence of ¶2.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed March 3, 2022, is hereby affirmed and adopted with the clarifications noted above.

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

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

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

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

March 13, 2023

/s/ *Maria E. Portela*

SE/
O: 1/31/23
49

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC024869
Case Name	HARAS, SAMUEL C. v. METRO PARAMEDIC SERVICES
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Jack Linn
Respondent Attorney	Lloyd McCumber

DATE FILED: 3/3/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 1, 2022 0.67%

/s/Michael Glaub, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Samuel C. Haras
Employee/Petitioner

v.

Metro Paramedic Services
Employer/Respondent

Case # **20** WC **24869**

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 **Waukegan**, on **12/29/2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ 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, **7/22/2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**42,120.62**; the average weekly wage was $**990.93**.

On the date of accident, Petitioner was **26** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**10,800.20** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**18,900.24 ($18,400.24 long term disability, $500.00 hazard pay)** for other benefits, for a total credit of $**29,700.44**.

Respondent is entitled to a credit for the amounts paid by the Respondent's group health insurance under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $660.62 per week for a period of 70 and 6/7 weeks, from 8/21/2020 – 12/29/2021 (date of arbitration), as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the Petitioner and the disabling condition is temporary and has not yet reached a permanent condition pursuant to Section 19(b) of the Act. The Petitioner remains restricted from working as of the date of arbitration and under active medical care for causally related treatment. Respondent shall be given a credit of $29,700.44 for TTD, long term disability, and hazard pay benefits paid.

Respondent shall pay the medical providers pursuant to the fee schedule the amounts totaling $77,858.61 for reasonable and necessary medical services as determined and contained in Petitioner's Exhibits 1-8 as provided in Section 8(a) and 8.2 of the Act. Respondent shall be given for the amounts paid by the Respondent's group health insurance under Section 8(j) of the Act.

Respondent shall pay to the Petitioner $3,875.49 for amounts paid out of pocket by the Petitioner for reasonable and necessary medical services as determined and contained in Petitioner's Exhibits 2 and 5.

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.

Michael Glaub **MARCH 3, 2022**

Signature of Arbitrator

ICArbDec19(b)

RIDER TO ARBITRATION DECISION

SAMUEL C. HARAS v. METRO PARAMEDIC SERVICES - #20WC24869

FINDINGS OF FACT:

The Petitioner, a 26 year old firefighter/paramedic, began his employment with Metro Paramedic Services in April of 2018. He was placed at the Countryside Fire Protection district through Metro Paramedic Services; he also worked separately and directly for the Countryside Fire Protection District in addition to his main job with the Respondent. It is undisputed that the Respondent was aware of the Petitioner's concurrent employment with the Countryside Fire Protection District. His regular job duties involved fighting fires and were necessarily physical in nature (Trial Transcript Pages 12-13).

On July 22, 2020, while in the employ of the Respondent, the Petitioner sustained work-related injury to his lower back while pulling ceiling with a pike pull at a detached garage fire. The Petitioner testified that his supervisor at the scene of the fire was Lt. Michael Dovel. Lt. Dovel directed the Petitioner to pull down the ceiling of the garage using a pike pole (Tr. Trans. P14).

The Petitioner testified that this operation is performed by piercing through the ceiling using a long pole that has a hook on the end, and then jerking downwards through the ceiling. The Petitioner testified that while he was jerking down, the hook of the pike pole caught on a beam causing it to come to an abrupt stop (Tr. Trans P15).

The Petitioner testified that he noticed his back began to hurt immediately following the incident and he notified his supervisor, Lt. Dovel, the same day. The Petitioner testified that he did not seek immediate medical treatment as he hoped the pain would resolve itself, and he continued to work. He testified that the pain continued to worsen, and he stopped his on-shift workouts to stretch his back instead (Tr. Trans P.16-17).

As the condition of the Petitioner's lower back continued to deteriorate following the injury, he notified Lt. Ron Cielak that he was continuing to experience pain and submitted an injury report on August 24, 2020. The injury report states that the Petitioner injured his lower back pulling ceiling down with a pike pole on July 22, 2020 (Respondent's Exhibit 8).

Lt. Michael Dovel testified that he was employed as Petitioner's shift supervisor on July 22, 2020 (Petitioner's Exhibit 13, Page 5). He testified that on July 22, 2020 his unit was called to respondent to a detached garage fire and that the Petitioner was assigned to his engine. Lt. Dovel testified that he tasked the Petitioner specifically to open up the ceiling of the garage with a pike pole (PX 13, Pg. 5-6).

Lt. Dovel testified that upon their return to the station, the Petitioner notified him that day that he had tweaked his back at the fire, and it was stiff. Lt. Dovel testified that the Petitioner

wanted to continue to work, so they agreed to monitor the condition of the Petitioner's back should it worsen (PX 13, Pg. 6-7).

Lt. Dovel further testified that the Petitioner notified him his back was becoming more painful over the next few weeks and that the Petitioner was unable to do his normal on-shift workouts. Lt. Dovel testified that due to the Petitioner's ongoing lower back symptoms following the work injury they decided to prepare an injury report (PX 13, Pg. 6-7).

Lt. Dovel also testified that he prepared a report which he forwarded to Lt. Ron Cielek; in that report Lt. Dovel stated that the Petitioner notified him on July 22, 2020 that he sustained injury to his back while pulling ceiling with a pike pole that day (PX 14).

In addition, Lt. Dovel testified that he had supervised the Petitioner for approximately two years prior to the date of the injury, and that the Petitioner had no problems with his lower back during his employment with the Respondent prior to his July 22, 2020 work injury (PX 13, Pg. 18).

As the condition of the Petitioner's lower back continued to worsen, he sought treatment with Dr. Angelo Savino at Illinois Bone and Joint on August 13, 2020. Dr. Savino's office note from that date stated that the Petitioner was experiencing lower back pain along with radiculopathy over the past several weeks. Dr. Savino's office note also stated that the Petitioner had an episode of low back pain that was treated at IBJI in 2015 following a motor vehicle accident (PX 11).

The Petitioner testified he was in a minor car accident in 2015, for which he had one visit at IBJI and was prescribed medication. It is uncontroverted that he had no other treatment and had no problems with his lower back following that one visit until July 22, 2020. The Petitioner testified that he was required to take a physical exam when hired by the Respondent in 2018 which he passed (Tr Trans P. 17-18).

The Petitioner testified that he was asked by the Respondent for a copy of the initial office note of Dr. Savino. He received a copy of the office note and reviewed it; he subsequently asked Dr. Savino to correct the note (Tr. Trans. P. 19-20). Dr. Savino issued an addendum, correcting his incomplete office note, which stated that the Petitioner sustained lower back injury at work on July 22, 2020 while pulling down ceiling using a pole (PX 11).

At the August 13, 2020 office visit Dr. Savino prescribed a course of physical therapy at Praxis which the Petitioner underwent and a lower back MRI. The MRI, which took place on August 20, 2020, revealed a herniated disc at L4-5 (PX 11).

Following the MRI, Dr. Savino restricted the Petitioner from working as of August 21, 2020 and referred him to a pain specialist, Dr. Paul Marsiglia. Dr. Marsiglia's initial office note, dated August 25, 2020, stated that the Petitioner sustained injury to his lower back at work on July 22, 2020 while pulling down ceiling with a pike pole. Dr. Marsiglia prescribed an epidural steroid injection, which the Petitioner underwent. He then referred the Petitioner to a surgeon, Dr. Jonathan Citow (PX 10).

The Petitioner's initial office visit with Dr. Citow took place on November 25, 2020. Dr. Citow's office note states that the Petitioner was status post work injury on July 22 2020 when he was pulling down ceiling and had a sudden onset of back pain (PX 9).

Dr. Citow reviewed the Petitioner's MRI and prior treatment, and prescribed corrective surgery at the Petitioner's December 2, 2020 office visit. Dr. Citow performed that surgery on December 14, 2020 at the Advocate Surgery Center; the operative report detailed the following (PX 9):

Post-Operative Diagnosis: L4-5 stenosis and disk protrusion

Procedures Performed: Left-sided L5 and L5 hemilaminotomies with bilateral medial facectectomies and foraminotomies with partial diskectomy with microdissection.

Following the surgery, the Petitioner underwent a course of physical therapy at Praxis while following up monthly with Dr. Citow. He remained fully restricted from working (PX 9).

The Petitioner was sent by the Respondent for a Section 12 evaluation with Dr. Kern Singh on January 28, 2021 (PX 12). Dr. Singh testified that it was his expert opinion that the Petitioner's diagnosis was L4-5 lumbar stenosis which was causally connected to the Petitioner's July 22, 2020 work injury. Dr. Singh testified that it was his expert opinion that the back surgery performed by Dr. Citow was reasonable, necessary, and directly related to the Petitioner's July 22, 2020 work injury (PX 12 Pages 8-9).

Respondent's Section 12 examiner Dr. Singh further testified that it was his expert opinion that the Petitioner required ongoing treatment related to his July 22, 2020 work injury and that the Petitioner required ongoing work restrictions related to his July 22, 2020 work injury (PX 12 Page 9).

Dr. Singh testified that in coming to his opinions he personally reviewed the Petitioner's medical records which include the August 13, 2020 office note of Dr. Savino. Dr. Singh testified that all of his opinions were based on a reasonable degree of medical and surgical certainty (PX 13 Pages 4, 7-8).

The Petitioner continued to follow-up with Dr. Citow following the December 14, 2020 lower back surgery. At the Petitioner's April 14, 2021 office visit, Dr. Citow noted the Petitioner was experiencing ongoing lower back pain prescribed a repeat MRI. The Petitioner underwent the repeat lower back MRI on April 19, 2021; it revealed recurrent left L4-5 disc herniation with stenosis and severe L4-5 facet disease (PX 9).

The Petitioner followed up with Dr. Citow on April 21, 2021. Dr. Citow stated that the Petitioner may require a second surgery. Hoping to avoid that, Dr. Citow prescribed a course of work hardening and a repeat MRI. He kept the Petitioner fully restricted from working. The Petitioner underwent work hardening and physical therapy at Praxis (PX 9).

The Petitioner next saw Dr. Citow on August 4, 2021. At that point, Dr. Citow prescribed another series of lower back injections which were performed by Dr. Marsiglia (PX 9; PX 10). The Petitioner's most recent office visit with Dr. Citow took place on December 1, 2021. Dr. Citow prescribed a second corrective surgery and kept the Petitioner fully restricted from working (PX 9).

The Petitioner testified that as of the date of arbitration he had never received temporary total disability benefits despite being restricted from working by his own treating doctors and Respondent's Section 12 examiner following the July 22, 2020 work injury. The Petitioner testified that he had no prior lower back symptoms, injuries, or treatment following one visit to a doctor in 2015 until the July 22, 2020 work accident (Tr. Trans. P 26).

The Petitioner testified that as of the date of arbitration he continued to experience lower back pain and stiffness (Tr. Trans. P. 26).

CONCLUSIONS OF LAW:

(C.) Accident; (E.) Notice; (F.) Causal Connection

The Petitioner, while in the employ of Respondent on July 22, 2020, was called to respond to the scene of a fire in a detached garage. He was directed to pull ceiling using a pike pole by Lt. Michael Dovel. The hook end of the pike pole caught on a beam, he yanked down, and sustained injury to his lower back. He reported the injury to Lt. Dovel that same day. He completed an injury report on August 24, 2020 as directed by Lt. Ron Cielek. These facts are established by the credible testimony of the Petitioner and corroborated in exact detail by his supervisor Lt. Dovel's testimony and Respondent's accident report.

The Petitioner testified that he was involved in a minor car accident in 2015 for which he had one visit to a doctor, was prescribed medication, and had no other treatment. He passed a physical exam as a pre-requisite to his hiring by the Respondent in 2018. He worked full duty in an extremely physical job as a firefighter/paramedic from 2018 until July 22, 2020. He had no back pain or treatment during this time period, another fact corroborated by Lt. Dovel's testimony.

After giving notice of the work injury to his supervisor Lt. Dovel on the date of the accident, the Petitioner came under the care of Dr. Savino on August 13, 2020 as he had been experiencing back pain for several weeks following the July 22, 2020 work injury.

When asked by the Respondent for a copy of Dr. Savino's initial office note, he became aware that Dr. Savino's note mentioned the Petitioner had an episode of back pain in the past following a car accident in 2015. Dr. Savino issued a corrective addendum to his incomplete office note which stated that the Petitioner sustained lower back injury at work on July 22, 2020 while pulling down ceiling using a pole.

The office notes of Dr. Citow and Dr. Marsiglia clearly state that the Petitioner sustained lower-back injury following the July 22, 2020 work accident while pulling ceiling. Dr. Citow felt the Petitioner required corrective surgery due to this injury.

Respondent sent the Petitioner to a doctor of their choosing, Dr. Kern Singh, for Section 12 evaluation. Dr. Singh's expert opinion, after reviewing the records of the Petitioner's treating physicians, was that the Petitioner required corrective surgery which was causally connected to the July 22, 2020 work injury.

Based on the credible testimony of the Petitioner, the credible testimony of Lt. Dovel, the credible testimony of Dr. Singh, and the opinions and medical records of Dr. Citow, Dr. Marsiglia, and Dr. Savino, the Arbitrator finds that the Petitioner sustained an accident while working for the Respondent on July 22, 2020, the Petitioner gave notice of that accident within the required time frame to both Lt. Dovel and Lt. Cielek, and that the Petitioner's current condition of ill-being of his lower back is causally connected to the July 22, 2020 work injury.

(G.) Average Weekly Wage

It is undisputed that the Petitioner had concurrent employment that Respondent was aware of as a direct employee of the Countryside Fire Protection District.

The correct methodology for calculating the Petitioner's average weekly wage in the Petitioner's situation has been set forth by the Illinois Appellate Court in both *Mason Mfg., Inc. v. Industrial Comm'n, 331 Ill. App. 3d 575* and *Village of Winnetka v. Industrial Comm'n, 250 Ill. App. 3d 240.*

In *Mason*, the Appellate Court found that the average weekly wage should be calculated for each employer separately, then added together. In *Winnetka*, the Appellate court came to the same conclusion, finding that using the calculation method supported by the Respondent in that case (and in this present matter) would result in a comically small average weekly wage with the concurrent employer that was not a fair representation of the Petitioner's earning power ($37.87 in our present case).

It is undisputed that the Petitioner earned $1,969.00 for 9 weeks of work at his concurrent job during the 52 week period prior to the work injury (RX 12). It is undisputed that the Petitioner earned $40,151.62 over a 52 week period prior to the work injury with the Respondent (RX 11).

Utilizing the method set forth by the courts to correctly calculate the Petitioner's average weekly wage in this matter, the Petitioner's average weekly wage with the Respondent was $40,151.62 divided by 52 weeks, or $772.15. The Petitioner's average weekly wage with his concurrent employer was $1,969.00 divided by 9 weeks, or $218.78. As set forth by the Appellate Court, the two amounts are added together for an average weekly wage of $990.93.

Based on the foregoing, the Arbitrator finds that the Petitioner's average weekly wage is $990.93.

(J.) Medical Expenses

The Arbitrator's findings regarding accident, notice, and causal connection as noted above are incorporated herein.

Petitioner submitted medical bills totaling $77,858.61 in Petitioner's Exhibits 1-8.

Petitioner submitted medical bills which detailed his own out of Pocket expenses of $3,875.49 for causally related treatment in Petitioner's Exhibits 2 and 5.

Based on the Arbitrator's finding of accident and causal connection, the Arbitrator finds Respondent liable to pay to the providers the reasonable and necessary medical expenses of $77,858.61, as provided in Section 8(a) and subject to the fee schedule of Section 8.2 of the Act. Respondent is entitled to a credit for the medical bills paid by the Respondent's group health insurance under Section 8(j) of the Act.

The Arbitrator further finds that Respondent shall pay to the Petitioner the sum of $3,875.49 for amounts paid by the Petitioner for reasonable and necessary medical services as determined and contained in Petitioner's Exhibits 2 and 5.

(L.) TTD

The Arbitrator's findings regarding accident, notice, and causal connection as noted above are incorporated herein.

Based on the credible testimony of the Petitioner and the records of Dr. Savino, Dr. Marsiglia, and Dr. Citow, the Arbitrator finds that the Petitioner was temporarily and totally disabled from August 21, 2020 through December 29, 2021 (date of arbitration) a period of 70 and 6/7 weeks.

Based on the Arbitrator's finding, Respondent shall pay to the Petitioner temporary total disability benefits of $660.62 per week for a period of 70 and 6/7 weeks, as provided in Section 8(b) of the Act. Respondent shall be given a credit as outlined in section N below.

The Arbitrator further finds that the Petitioner remained restricted from working as of the date of arbitration and under active medical care for causally related treatment.

(N.) Respondent's Credit

It is undisputed that the Petitioner received $18,400.24 in group long term disability benefits for which the Respondent is entitled credit. It is undisputed that the Petitioner received $10,800.20 in temporary total disability advances for which the Respondent is entitled credit. It is undisputed that the Petitioner received $500.00 hazard pay for which the Respondent is entitled credit. These amounts total $29,700.44.

The Petitioner also was paid $617.70 for sick time and $1,529.75 for safety days, totaling $2,147.45. These sick and safety days were accrued benefits, as corroborated by the Petitioner's unrebutted testimony. The law is well settled that under the Act Respondent is not entitled to a credit for accrued benefits.

As a result, the Arbitrator finds that Respondent is entitled to a credit of $29,700.44 for long term disability, TTD advances, and hazard pay.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC003650
Case Name	Mary D Blassingame v. Empire Comfort Systems
Consolidated Cases	21WC002636;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0113
Number of Pages of Decision	14
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	James Keefe, Jr.

DATE FILED: 3/14/2023

/s/ Thomas Tyrrell, Commissioner

Signature

23IWCC0113

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)
Causal Connection	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mary D. Blassingame,

Petitioner,

vs. NO: 20 WC 003650

Empire Comfort Systems,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by both parties herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, prospective medical care, and temporary total disability ("TTD"), and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

As it pertains to the issue of causation of Petitioner's lumbar spine condition, the Commission reverses the Decision of the Arbitrator. Neither Petitioner's lumbar spine condition nor her cervical spine condition are related to the work-related accident on January 16, 2019. There was no dispute Petitioner sustained a work-related accident on January 16, 2019. However, the record is devoid of medical treatment records relating to the lumbar spine until December 4, 2019, an 11-month gap.

The Commission does not find Petitioner credible. Petitioner testified she did not seek medical treatment for her back from January 16, 2019 through December 4, 2019. T. 24-25. She testified this was because she did not have insurance. T. 25, 28. The medical records contradict these statements and show that she received medical treatment on multiple dates during the alleged 11-month gap.

The records of Belleville Memorial Hospital show that Petitioner was actually seen in the Emergency Department on January 16, 2019. PX4. The records seem to indicate she was administered an injection: "THER/PROH/DIAG INJ IV PUSH (01/16/19)" and "TX/PRO/DX INJ NEW DRUG ADDON (01/16/19)." The records of Petitioner's primary care provider, Delora Brooks, FNP, indicate that on 01/16/19, she filled acetaminophen 500 mg tablet, benzonatate 100 mg capsule, and ibuprofen 800 mg tablet. PX5.

The billing statement from MedExpress Urgent Care Illinois, P.C., shows that Petitioner was charged for services on January 31, 2019 and November 26, 2019. PX1. The records of Belleville Memorial Hospital also show Emergency Department visits on April 10, 2019, October 6, 2019, and November 12, 2019. PX4.

Petitioner was also seen by Ms. Brooks on July 12, 2019 to establish primary care. PX5. She reported bilateral knee pain, but failed to make any complaints relative to her neck or back. Further, the physical examination was normal with full range of motion of the neck and normal movement of all extremities.

Petitioner's failure to seek medical treatment for her back for 11-months is substantial, and indicates to the Commission that Petitioner did not sustain a significant injury to her lumbar spine on January 16, 2019. Petitioner's testimony that she was in constant pain during this time but did not have insurance to seek treatment was not credible, as she was able to seek medical attention on numerous occasions during this time, including on the date of injury itself at Belleville Memorial Hospital Emergency Department. Dr. Gornet's causal connection opinion was premised on Petitioner having symptoms within six weeks of the injury on January 16, 2019, yet there is no medical evidence to support this occurred. Dr. Gornet's medical opinion was given in reliance upon an inaccurate history.

When Petitioner finally does seek medical treatment for her neck and back, it is clear that her cervical spine condition took precedence. She was not even authorized off work for her lumbar spine condition until May 3, 2021, over two years after the injury of January 16, 2019. This further supports that Petitioner did not sustain a significant injury to her lumbar spine on January 16, 2019.

Petitioner failed to prove her condition of ill-being is related to the injury on January 16, 2019.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on November 4, 2021, is reversed as stated herein.

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.

March 14, 2023

o: 01/17/2023
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	20WC003650
Case Name	BLASSINGAME, MARY D v. EMPIRE COMFORT SYSTEMS
Consolidated Cases	21WC002636
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	James Keefe, Jr.

DATE FILED: 11/4/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 4, 2021 0.065

/s/William Gallagher, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Mary Blassingame
Employee/Petitioner

Case # 20 WC 03650

v.

Consolidated cases: n/a

Empire Comfort Systems
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 William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on September 27, 2021. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, January 16, 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, in part, causally related to the accident.

In the year preceding the injury, Petitioner earned $36,606.96; the average weekly wage was $703.98.

On the date of accident, Petitioner was 36 years of age, single with 2 dependent child(ren).

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 $4,000.00 for other benefits, for a total credit of $4,000.00.

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

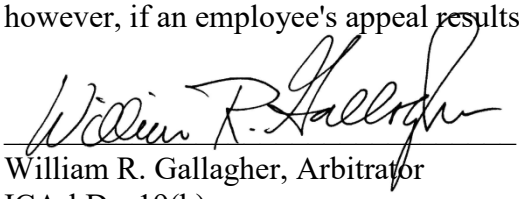
Respondent shall authorize and pay for prospective medical treatment as recommended by Dr. Matthew Gornet, including, but not limited to, the lumbar disc replacement surgery.

Respondent shall pay Petitioner temporary total disability benefits of $469.32 per week for 16 5/7 weeks, commencing May 3, 2021, through September 27, 2021, 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.



NOVEMBER 4, 2021

William R. Gallagher, Arbitrator
ICArbDec19(b)

Findings of Fact

Petitioner filed two Applications for Adjustment of Claim both of which alleged Petitioner sustained accidental injuries arising out of and in the course of her employment by Respondent. In case 20 WC 03650, the Application alleged that on January 16, 2019, Petitioner was lifting a 300 pound fireplace unit from rollers to a flatbed and sustained an injury to her "Mid to Low back, Neck, Upper and lower extremities, MAW" (Arbitrator's Exhibit 2). In case 21 WC 02636, the Application alleged that on December 4, 2019, while working on a press brake, Petitioner sustained an injury to her "Back/Body as a Whole" (Arbitrator's Exhibit 4).

These cases were tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills and temporary total disability benefits as well as prospective medical treatment. In regard to temporary total disability benefits, Petitioner claimed she was entitled to temporary total disability benefits of 70 1/7 weeks, commencing May 25, 2020, through September 27, 2021 (date of trial). The prospective medical treatment sought by Petitioner was lumbar disc replacement surgery as recommended by Dr. Matthew Gornet, an orthopedic surgeon. In both cases, Respondent agreed Petitioner sustained a work-related accident, but disputed liability on the basis of causal relationship (Arbitrator's Exhibits 1 and 3).

Petitioner's job duties for Respondent consisted of building fireplaces and operating a press brake. On January 16, 2019, Petitioner was in the process of moving a fireplace unit off of the assembly line. This required lifting/pulling of the unit and, when she did so, Petitioner testified she experienced low back pain which went up to the base of her neck. The accident was reported to Respondent and Petitioner said she continued to work in pain. Petitioner did not seek any medical treatment at that time.

In February, 2019, Petitioner left her position with Respondent and obtained a job at MAC Medical. Petitioner testified her job at MAC Medical consisted of building stretchers. Petitioner said this job was not as physically demanding as her job was with Respondent and she also had the help of coworkers on an as needed basis. However, the job at MAC Medical did not pay as well as her job with Respondent so in August, 2019, Petitioner returned to work for Respondent.

Petitioner testified that on December 4, 2019, she was in the process of operating a press brake and she sustained an aggravation of her back condition. Petitioner reported the accident to her supervisor and was directed to seek medical treatment at Med Express Urgent Care.

Petitioner was evaluated at Med Express Urgent Care on December 4, 2019. According to the medical record of that date, Petitioner advised she sustained an injury to her back at work in January and had pain in the right shoulder which radiated to the left side of the lower back and right knee. X-rays of the lumbar and thoracic spine were obtained which were negative for fractures. Petitioner was directed to apply heat to the affected areas and take over-the-counter medication (Petitioner's Exhibit 3).

Petitioner testified that between January and December, 2019, her back condition got worse. However, Petitioner explained she did not seek any medical treatment during this period of time because she did not have insurance.

On December 13, 2019, Petitioner sought medical treatment at Gateway Medical Group and was evaluated by Delora Brooks, a Nurse Practitioner. At that time, Petitioner advised NP Brooks that she hurt her back in January, 2019, and had pain which started in the right shoulder, then to her neck, and down the side of her back and leg. NP Brooks ordered x-rays of Petitioner's cervical, thoracic and lumbar spine which were performed that same day. The x-rays of the cervical spine revealed a straightened lordosis and the x-rays of the lumbar spine revealed a rightward curvature at L2, but were otherwise normal (Petitioner's Exhibit 5).

NP Brooks noted Petitioner had pain in both the cervical and lumbar spine. She directed Petitioner to apply heat as needed, prescribed medication and referred Petitioner to Dr. Jonathan Workman, an orthopedic surgeon (Petitioner's Exhibit 5).

Dr. Workman evaluated Petitioner on January 3, 2020. At that time, Petitioner informed him she injured her low back in January, 2019, while moving a fireplace unit. Petitioner describes the pain as being 90% across the low back and 10% into the right buttock. Dr. Workman opined Petitioner had lumbar spondylosis, mild scoliosis, low back pain and lumbar radiculopathy. He recommended Petitioner undergo an MRI scan of the lumbar spine. Dr. Workman's record of that date did not contain any reference to Petitioner having sustained a neck/cervical spine injury or that Petitioner had any neck/cervical spine complaints (Petitioner's Exhibit 6).

On January 9, 2020, Petitioner was again seen by NP Brooks. At that time, Petitioner complained of back pain and requested referral to Dr. Daniel Brunkhorst, a chiropractor (Petitioner's Exhibit 5).

On January 13, 2020, Petitioner was evaluated by Dr. Brunkhorst. At that time, Petitioner advised she sustained an injury in January, 2019, as she was pulling a fireplace off of the tracks. Petitioner advised that at the time of the accident she had immediate pain referable to the cervical spine, lumbar spine and right knee. According to Dr. Brunkhorst's record of that date, Petitioner informed him the initial date of her cervical and thoracic spine pain was "7/28/2020," which was the date approximately six months in the future. Petitioner did advise she had lumbar spine pain since January, 2019. Dr. Brunkhorst opined Petitioner had cervical disc displacement and radiculopathy and ordered an MRI scan of Petitioner's cervical spine (Petitioner's Exhibit 7).

The MRI of Petitioner's cervical spine was performed on January 31, 2020. According to the radiologist, the MRI revealed an annular tear and protrusion at C5-C6 and a bilateral recessed foraminal protrusion at C3-C4 (Petitioner's Exhibit 9).

On February 19, 2020, Petitioner was evaluated by Dr. Thomas Lee, an orthopedic surgeon. At that time, Petitioner advised she had sustained a work-related injury to her neck on January 16, 2019, while moving a furnace. Petitioner stated she initially developed back and right lower rib pain. Petitioner complained of right-sided neck pain going in to the trapezial region, right arm and right hand. Petitioner also complained of low back and right leg pain. Dr. Lee reviewed the MRI of Petitioner's cervical spine and he opined it revealed herniations at C3-C4 and C5-C6 and a protrusion at C4-C5. He imposed light duty work restrictions and ordered an epidural injection at C5-C6 (Petitioner's Exhibit 10).

Petitioner was subsequently treated by Dr. Helen Blake, a pain management specialist, who saw her on March 17, and June 23, 2020. On those occasions, Dr. Blake administered epidural steroid injections on the right at C5-C6 and C3-C4, respectively (Petitioner's Exhibit 11).

On July 13, 2020, Petitioner contacted Dr. Lee by telephone and advised the injections only provided her with temporary relief. Dr. Lee again reviewed the MRI of Petitioner's cervical spine and opined it revealed disc pathology at C3-C4, C4-C5 and C5-C6. He authorized Petitioner to be off work and referred her to Dr. Matthew Gornet, an orthopedic surgeon (Petitioner's Exhibit 10).

Respondent tendered into evidence surveillance video of Petitioner which was obtained on July 3, 2020. The Arbitrator watched the video which was slightly less than five minutes in length. In the video, Petitioner and some other individuals were observed spray painting a sidewalk. Petitioner was bent over using her right hand while she was spray painting (Respondent's Exhibit 5). At trial, Petitioner testified that she and some other individuals were protesting discrimination. Petitioner said her back hurt while she was spray painting and one of the individuals subsequently rubbed her back afterward. However, the five minute video did not show any other individual rubbing Petitioner's back.

Petitioner was evaluated by Dr. Gornet on September 10, 2020. At that time, Petitioner complained of neck pain which radiated into the right trapezius with intermittent numbness in the right hand and bilateral low back pain which radiated into the right buttock/hip. Petitioner attributed her symptoms to the accident of January 16, 2019, and informed Dr. Gornet she sustained the injury at work when she lifted a component for a fireplace (Petitioner's Exhibit 8).

Dr. Gornet reviewed the MRI of Petitioner's cervical spine and opined it revealed disc protrusions at C3-C4 and C5-C6, with a protrusion at C3-C4 being the most prominent. He recommended Petitioner undergo disc replacement surgery at C3-C4. Dr. Gornet also recommended Petitioner undergo an MRI scan of the lumbar spine. He authorized Petitioner to work light duty with a 10 pound lifting restriction and no overhead work (Petitioner's Exhibit 8).

The MRI of Petitioner's lumbar spine was performed on November 30, 2020. According to the radiologist, the MRI revealed an annular tear on the left at L4-L5 which impinged the left L5 nerve root and a midline annular tear at L5-S1 (Petitioner's Exhibit 9).

Dr. Gornet saw Petitioner on November 30, 2020. At that time, Dr. Gornet reviewed the MRI scan and his interpretation was consistent with that of the radiologist. He renewed his recommendation Petitioner undergo disc replacement surgery at C3-C4, but noted the disc at C5-C6 may also have played a role (Petitioner's Exhibit 8).

Dr. Gornet again saw Petitioner on December 14, 2020, and Petitioner continued to complain of neck and low back pain. At that time, Dr. Gornet again recommended Petitioner undergo disc replacement surgery at C3-C4, but also noted that disc replacements at C4-C5 and C5-C6 might also be indicated. He ordered another MRI scan of Petitioner's cervical spine (Petitioner's Exhibit 8).

The MRI was performed on March 1, 2021. According to the radiologist, the MRI revealed disc protrusions at C3-C4 and an annular tear and protrusion at C5-C6 (Petitioner's Exhibit 9).

Dr. Gornet saw Petitioner on March 1, 2021. He reviewed the MRI and opined it revealed progression of the disc pathology at C3-C4 and C5-C6. He also observed a tear on the left side of C4-C5. Dr. Gornet recommended Petitioner proceed with disc replacement surgery at C3-C4, C4-C5 and C5-C6 (Petitioner's Exhibit 8).

On March 9, 2021, Dr. Gornet performed surgery on Petitioner's cervical spine. The procedure consisted of disc replacements at C3-C4, C4-C5 and C5-C6 (Petitioner's Exhibit 13).

Following surgery, Dr. Gornet continued to treat Petitioner and authorized her to remain off work. When Dr. Gornet saw Petitioner on May 3, 2021, he indicated he would "shift gears" and treatment Petitioner for her low back pain. He continued to authorize Petitioner to remain off work. He referred Petitioner to Dr. Blake for an epidural injection on the right at L4-L5 (Petitioner's Exhibit 8).

Dr. Blake saw Petitioner on June 8, 2021. At that time, Dr. Blake administered an epidural injection on the right at L4-L5 (Petitioner's Exhibit 11).

Dr. Gornet last saw Petitioner on August 26, 2021. Petitioner advised the epidural injection did not provide her with significant relief. He opined Petitioner had disc injuries at L4-L5 and L5-S1 and recommended Petitioner undergo disc replacement surgeries at those levels. In regard to her neck, Dr. Gornet noted Petitioner was doing "extremely well" (Petitioner's Exhibit 8).

At the direction of Respondent, Dr. Peter Mirkin, an orthopedic surgeon, reviewed medical records and diagnostic studies. He prepared medical reports dated March 11, 2021, March 30, 2021, and April 14, 2021. Based upon his review of the medical records and diagnostic studies, Dr. Mirkin opined there was no injury to Petitioner's neck and no indication for three level disc replacement surgery (Respondent's Exhibit 1; Deposition Exhibits 3, 4 and 5).

Dr. Mirkin subsequently examined Petitioner on April 26, 2021. During the course of his examination of Petitioner, she informed him that she was unable to squat, bend, stoop or twist her back. Dr. Mirkin was previously provided with a copy of the surveillance video of Petitioner and he informed her that he had clear evidence she could bend. According to his report, Petitioner terminated the exam and told him "you lie." (Respondent's Exhibit 1; Deposition Exhibit 2).

Dr. Mirkin noted Petitioner informed him she did not have any neck pain until the summer of 2019. When seen by Dr. Mirkin, Petitioner complained of pain in the entire spine, right arm and low back. To the extent Dr. Mirkin was able to examine Petitioner, he described normal examination findings. In regard to Petitioner's cervical spine, Dr. Mirkin opined there was no indication Petitioner sustained any type of neck injury as a result of the accident and Petitioner did not experience any neck pain until many months afterward. He also reaffirmed his opinion cervical spine surgery was not indicated. In regard to the lumbar spine, Dr. Mirkin opined Petitioner may have sustained a lumbar strain, but there was no indication for lumbar surgery (Respondent's Exhibit 1; Deposition Exhibit 2).

Dr. Gornet was deposed on July 29, 2021, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Gornet's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. Dr. Gornet testified he watched the video of Petitioner and agreed it showed her bending. He said that he did not restrict Petitioner from bending completely, but he had directed her to refrain from repetitive bending. Dr. Gornet also stated this activity would not have an effect of Petitioner's cervical spine. In regard to causality, Dr. Gornet testified Petitioner's cervical and lumbar spine conditions were related to the accident of January 16, 2019. This was based on the history provided to him by Petitioner, the MRI findings and Petitioner's response to the conservative treatment previously provided to her (Petitioner's Exhibit 15; pp 12-14).

On cross-examination, Dr. Gornet was questioned about the delay of Petitioner's neck complaints following the accident of January, 2019. Dr. Gornet testified Petitioner may have initially had shoulder pain and noted there were symptoms in the trapezius and shoulder areas. However, Dr. Gornet admitted that if there was a correlation between the accident of January 16, 2019, and Petitioner's neck condition, Petitioner would have developed symptoms in the neck, trapezius or shoulder areas within six weeks. He agreed that if Petitioner had no symptoms until six or eight months later he "…would find that hard to make the link between that event and those symptoms." (Petitioner's Exhibit 15; pp 16-17).

Dr. Mirkin was deposed on August 13, 2021, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Mirkin's testimony was consistent with his medical reports and he reaffirmed the opinions contained therein. Specifically, he stated Petitioner informed him she did not have any neck problems until the summer of 2019. Dr. Mirkin stated a patient will generally complain of problems in the area of the body that was injured and “It’s not reasonable to wait 6 months, 11 months to complain of that and then seek this type of treatment.” He reaffirmed his opinion there was not a causal relationship between the accident and Petitioner's neck condition (Respondent's Exhibit 1; pp 7, 14, 19-20).

In regard to Petitioner's low back, Dr. Mirkin testified Petitioner terminated the examination when he informed her he had watched a video of her performing bending activities which she claimed she was unable to do. He stated Petitioner had pre-existing degenerative arthritis in her lumbar spine and may have sustained a back strain, but her current complaints were not related to the accident of January 16, 2019 (Respondent's Exhibit 1; pp 17-18).

Mary Potts, Dr. Mirkin's office manager, was in the room during his examination of Petitioner. She was deposed on August 13, 2021, and her deposition testimony was received into evidence at trial. She testified Dr. Mirkin behaved in a professional manner during the course of his examination of Petitioner (Respondent's Exhibit 2).

At trial, Petitioner testified she attended the examination with Dr. Mirkin and was cooperative. In regard to her bending, Petitioner said she bent over to touch her toes and, when coming up, she did so slowly because she became lightheaded. When Dr. Mirkin informed her he had a video of her bending over, she asked if she could watch it and Dr. Mirkin refused her request. Petitioner said Dr. Mirkin was rude to her and she did not want to continue with the examination.

Petitioner testified that following surgery, her neck condition has greatly improved, but she continues to have low back symptoms. She wants to proceed with the surgery recommended by Dr. Gornet. Petitioner also stated that prior to January 16, 2019, she did not have any injuries or treatment to either her neck or low back.

Conclusions of Law

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

The Arbitrator concludes Petitioner's current condition of ill-being in regard to her neck/cervical spine is not related to the accident of January 16, 2019.

The Arbitrator concludes Petitioner's current condition of ill-being in regard to her low back/lumbar spine is related to the accident of January 16, 2019.

In support of these conclusions the Arbitrator notes the following:

There was no dispute Petitioner sustained a work-related accident on January 16, 2019; however, Petitioner did not seek any medical treatment until approximately 11 months afterward, on December 4, 2019.

When Petitioner first sought medical treatment on December 4, 2019, she had no neck complaints and her symptoms were primarily low back. X-rays of the thoracic and lumbar spine were obtained, but not for the cervical spine.

Petitioner subsequently informed various medical providers she injured her neck in January, 2019, but she did not do so on a consistent basis.

When seen by Dr. Workman on January 3, 2020, Petitioner complained solely of low back pain, 90% across the low back and 10% into the right buttock. Dr. Workman's record of that date contained no reference to Petitioner having neck/cervical spine complaints.

Dr. Brunkhorst saw Petitioner on January 13, 2020, and his record of that date indicated an onset of cervical and thoracic spine complaints on July 28, 2020. The Arbitrator notes the year indicated had to be incorrect because the date noted was approximately six months in the future.

When seen by Dr. Mirkin, Respondent's Section 12 examiner, Petitioner informed him she began experiencing neck symptoms during the summer of 2019.

It is not possible for the Arbitrator to determine exactly when Petitioner first had neck/cervical spine complaints; however, it was a considerable period of time subsequent to the accident of January 16, 2019.

Dr. Mirkin, Respondent's Section 12 examiner, opined there was no history of an injury to Petitioner's cervical spine and there was not a causal relationship between the accident of January 16, 2019, and Petitioner's neck condition.

Dr. Gornet, Petitioner's primary treating physician, agreed that if Petitioner sustained a neck injury she would have experienced symptoms six weeks post accident and, if she had no neck symptoms until six or eight months afterward, it would be "…hard to make the link between that event and those symptoms."

Based on the preceding, the Arbitrator concludes there is not a causal relationship between the accident of January 16, 2019, and Petitioner's neck/cervical spine condition.

Petitioner consistently complained of low back symptoms to all of the medical providers who either treated or examined her which she attributed to the accident of January 16, 2019.

Unlike Petitioner's neck/cervical spine condition, the fact Petitioner delayed obtaining medical treatment for her low back/lumbar spine condition has not been determined to be a factor in determining causality.

Dr. Gornet has diagnosed disc pathology at L4-L5 and L5-S1 which is consistent with the MRI of Petitioner's lumbar spine and he relates Petitioner's low back/lumbar spine condition to the accident of January 16, 2019.

The Arbitrator is not persuaded by Dr. Mirkin's opinion that Petitioner only sustained a lumbar strain as a result of the accident of January 16, 2019.

The surveillance video of Petitioner does show her bending; however, the video was less than five minutes long and Petitioner testified her back hurt while she was performing that activity and was subsequently assisted by another individual afterward.

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 in regard to her low back/lumbar spine condition was reasonable and necessary and Respondent is liable for payment of the medical bills incurred therewith. All other medical treatment is denied.

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

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

Based upon the Arbitrator's conclusion of law in disputed issue (F) the Arbitrator concludes Petitioner is entitled to prospective medical treatment including, but not limited to, the lumbar disc replacement surgery recommended by Dr. Matthew Gornet.

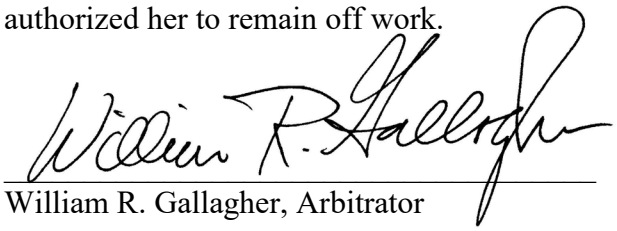
In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of 16 5/7 weeks commencing May 3, 2021, through September 27, 2021.

In support of this conclusion the Arbitrator notes the following:

Petitioner was authorized to be off work prior to May 3, 2021; however, this was because of her neck/cervical spine condition which the Arbitrator has determined not be work-related.

It was on May 3, 2021, that Dr. Gornet began to address Petitioner's low back condition and he authorized her to remain off work.



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC002636
Case Name	Mary D Blassingame v. Empire Comfort System
Consolidated Cases	20WC003650;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0114
Number of Pages of Decision	12
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	James Keefe, Jr.

DATE FILED: 3/14/2023

/s/ Thomas Tyrrell, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARY BLASSINGAME,

Petitioner,

vs. NO: 21 WC 02636

EMPIRE COMFORT SYSTEM,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 4, 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.

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.

March 14, 2023

o: 01/17/23
TJT/ldm
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/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC002636
Case Name	BLASSINGAME, MARY v. EMPIRE COMFORT SYSTEM
Consolidated Cases	No Consolidated Cases
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	James Keefe, Jr.

DATE FILED: 11/4/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 2, 2021 0.06%

/s/William Gallagher, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Mary Blassingame
Employee/Petitioner

Case # 21 WC 02636

v.

Consolidated cases: n/a

Empire Comfort Systems
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 William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on September 27, 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, 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 $36,606.96; the average weekly wage was $703.98.

On the date of accident, Petitioner was 37 years of age, single with 2 dependent child(ren).

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 $4,000.00 for other benefits, for a total credit of $4,000.00.

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

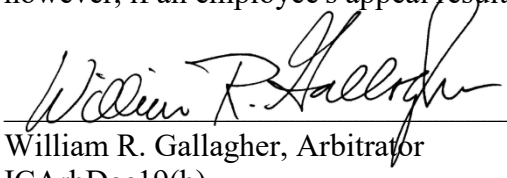
ORDER

Based upon the Arbitrator's Conclusion of Law attached hereto, claim for compensation 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.



NOVEMBER 4, 2021

William R. Gallagher, Arbitrator
ICArbDec19(b)

Findings of Fact

Petitioner filed two Applications for Adjustment of Claim both of which alleged Petitioner sustained accidental injuries arising out of and in the course of her employment by Respondent. In case 20 WC 03650, the Application alleged that on January 16, 2019, Petitioner was lifting a 300 pound fireplace unit from rollers to a flatbed and sustained an injury to her "Mid to Low back, Neck, Upper and lower extremities, MAW" (Arbitrator's Exhibit 2). In case 21 WC 02636, the Application alleged that on December 4, 2019, while working on a press brake, Petitioner sustained an injury to her "Back/Body as a Whole" (Arbitrator's Exhibit 4).

These cases were tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills and temporary total disability benefits as well as prospective medical treatment. In regard to temporary total disability benefits, Petitioner claimed she was entitled to temporary total disability benefits of 70 1/7 weeks, commencing May 25, 2020, through September 27, 2021 (date of trial). The prospective medical treatment sought by Petitioner was lumbar disc replacement surgery as recommended by Dr. Matthew Gornet, an orthopedic surgeon. In both cases, Respondent agreed Petitioner sustained a work-related accident, but disputed liability on the basis of causal relationship (Arbitrator's Exhibits 1 and 3).

Petitioner's job duties for Respondent consisted of building fireplaces and operating a press brake. On January 16, 2019, Petitioner was in the process of moving a fireplace unit off of the assembly line. This required lifting/pulling of the unit and, when she did so, Petitioner testified she experienced low back pain which went up to the base of her neck. The accident was reported to Respondent and Petitioner said she continued to work in pain. Petitioner did not seek any medical treatment at that time.

In February, 2019, Petitioner left her position with Respondent and obtained a job at MAC Medical. Petitioner testified her job at MAC Medical consisted of building stretchers. Petitioner said this job was not as physically demanding as her job was with Respondent and she also had the help of coworkers on an as needed basis. However, the job at MAC Medical did not pay as well as her job with Respondent so in August, 2019, Petitioner returned to work for Respondent.

Petitioner testified that on December 4, 2019, she was in the process of operating a press brake and she sustained an aggravation of her back condition. Petitioner reported the accident to her supervisor and was directed to seek medical treatment at Med Express Urgent Care.

Petitioner was evaluated at Med Express Urgent Care on December 4, 2019. According to the medical record of that date, Petitioner advised she sustained an injury to her back at work in January and had pain in the right shoulder which radiated to the left side of the lower back and right knee. X-rays of the lumbar and thoracic spine were obtained which were negative for fractures. Petitioner was directed to apply heat to the affected areas and take over-the-counter medication (Petitioner's Exhibit 3).

Petitioner testified that between January and December, 2019, her back condition got worse. However, Petitioner explained she did not seek any medical treatment during this period of time because she did not have insurance.

On December 13, 2019, Petitioner sought medical treatment at Gateway Medical Group and was evaluated by Delora Brooks, a Nurse Practitioner. At that time, Petitioner advised NP Brooks that she hurt her back in January, 2019, and had pain which started in the right shoulder, then to her neck, and down the side of her back and leg. NP Brooks ordered x-rays of Petitioner's cervical, thoracic and lumbar spine which were performed that same day. The x-rays of the cervical spine revealed a straightened lordosis and the x-rays of the lumbar spine revealed a rightward curvature at L2, but were otherwise normal (Petitioner's Exhibit 5).

NP Brooks noted Petitioner had pain in both the cervical and lumbar spine. She directed Petitioner to apply heat as needed, prescribed medication and referred Petitioner to Dr. Jonathan Workman, an orthopedic surgeon (Petitioner's Exhibit 5).

Dr. Workman evaluated Petitioner on January 3, 2020. At that time, Petitioner informed him she injured her low back in January, 2019, while moving a fireplace unit. Petitioner describes the pain as being 90% across the low back and 10% into the right buttock. Dr. Workman opined Petitioner had lumbar spondylosis, mild scoliosis, low back pain and lumbar radiculopathy. He recommended Petitioner undergo an MRI scan of the lumbar spine. Dr. Workman's record of that date did not contain any reference to Petitioner having sustained a neck/cervical spine injury or that Petitioner had any neck/cervical spine complaints (Petitioner's Exhibit 6).

On January 9, 2020, Petitioner was again seen by NP Brooks. At that time, Petitioner complained of back pain and requested referral to Dr. Daniel Brunkhorst, a chiropractor (Petitioner's Exhibit 5).

On January 13, 2020, Petitioner was evaluated by Dr. Brunkhorst. At that time, Petitioner advised she sustained an injury in January, 2019, as she was pulling a fireplace off of the tracks. Petitioner advised that at the time of the accident she had immediate pain referable to the cervical spine, lumbar spine and right knee. According to Dr. Brunkhorst's record of that date, Petitioner informed him the initial date of her cervical and thoracic spine pain was "7/28/2020," which was the date approximately six months in the future. Petitioner did advise she had lumbar spine pain since January, 2019. Dr. Brunkhorst opined Petitioner had cervical disc displacement and radiculopathy and ordered an MRI scan of Petitioner's cervical spine (Petitioner's Exhibit 7).

The MRI of Petitioner's cervical spine was performed on January 31, 2020. According to the radiologist, the MRI revealed an annular tear and protrusion at C5-C6 and a bilateral recessed foraminal protrusion at C3-C4 (Petitioner's Exhibit 9).

On February 19, 2020, Petitioner was evaluated by Dr. Thomas Lee, an orthopedic surgeon. At that time, Petitioner advised she had sustained a work-related injury to her neck on January 16, 2019, while moving a furnace. Petitioner stated she initially developed back and right lower rib pain. Petitioner complained of right-sided neck pain going in to the trapezial region, right arm and right hand. Petitioner also complained of low back and right leg pain. Dr. Lee reviewed the MRI of Petitioner's cervical spine and he opined it revealed herniations at C3-C4 and C5-C6 and a protrusion at C4-C5. He imposed light duty work restrictions and ordered an epidural injection at C5-C6 (Petitioner's Exhibit 10).

Petitioner was subsequently treated by Dr. Helen Blake, a pain management specialist, who saw her on March 17, and June 23, 2020. On those occasions, Dr. Blake administered epidural steroid injections on the right at C5-C6 and C3-C4, respectively (Petitioner's Exhibit 11).

On July 13, 2020, Petitioner contacted Dr. Lee by telephone and advised the injections only provided her with temporary relief. Dr. Lee again reviewed the MRI of Petitioner's cervical spine and opined it revealed disc pathology at C3-C4, C4-C5 and C5-C6. He authorized Petitioner to be off work and referred her to Dr. Matthew Gornet, an orthopedic surgeon (Petitioner's Exhibit 10).

Respondent tendered into evidence surveillance video of Petitioner which was obtained on July 3, 2020. The Arbitrator watched the video which was slightly less than five minutes in length. In the video, Petitioner and some other individuals were observed spray painting a sidewalk. Petitioner was bent over using her right hand while she was spray painting (Respondent's Exhibit 5). At trial, Petitioner testified that she and some other individuals were protesting discrimination. Petitioner said her back hurt while she was spray painting and one of the individuals subsequently rubbed her back afterward. However, the five minute video did not show any other individual rubbing Petitioner's back.

Petitioner was evaluated by Dr. Gornet on September 10, 2020. At that time, Petitioner complained of neck pain which radiated into the right trapezius with intermittent numbness in the right hand and bilateral low back pain which radiated into the right buttock/hip. Petitioner attributed her symptoms to the accident of January 16, 2019, and informed Dr. Gornet she sustained the injury at work when she lifted a component for a fireplace (Petitioner's Exhibit 8).

Dr. Gornet reviewed the MRI of Petitioner's cervical spine and opined it revealed disc protrusions at C3-C4 and C5-C6, with a protrusion at C3-C4 being the most prominent. He recommended Petitioner undergo disc replacement surgery at C3-C4. Dr. Gornet also recommended Petitioner undergo an MRI scan of the lumbar spine. He authorized Petitioner to work light duty with a 10 pound lifting restriction and no overhead work (Petitioner's Exhibit 8).

The MRI of Petitioner's lumbar spine was performed on November 30, 2020. According to the radiologist, the MRI revealed an annular tear on the left at L4-L5 which impinged the left L5 nerve root and a midline annular tear at L5-S1 (Petitioner's Exhibit 9).

Dr. Gornet saw Petitioner on November 30, 2020. At that time, Dr. Gornet reviewed the MRI scan and his interpretation was consistent with that of the radiologist. He renewed his recommendation Petitioner undergo disc replacement surgery at C3-C4, but noted the disc at C5-C6 may also have played a role (Petitioner's Exhibit 8).

Dr. Gornet again saw Petitioner on December 14, 2020, and Petitioner continued to complain of neck and low back pain. At that time, Dr. Gornet again recommended Petitioner undergo disc replacement surgery at C3-C4, but also noted that disc replacements at C4-C5 and C5-C6 might also be indicated. He ordered another MRI scan of Petitioner's cervical spine (Petitioner's Exhibit 8).

The MRI was performed on March 1, 2021. According to the radiologist, the MRI revealed disc protrusions at C3-C4 and an annular tear and protrusion at C5-C6 (Petitioner's Exhibit 9).

Dr. Gornet saw Petitioner on March 1, 2021. He reviewed the MRI and opined it revealed progression of the disc pathology at C3-C4 and C5-C6. He also observed a tear on the left side of C4-C5. Dr. Gornet recommended Petitioner proceed with disc replacement surgery at C3-C4, C4-C5 and C5-C6 (Petitioner's Exhibit 8).

On March 9, 2021, Dr. Gornet performed surgery on Petitioner's cervical spine. The procedure consisted of disc replacements at C3-C4, C4-C5 and C5-C6 (Petitioner's Exhibit 13).

Following surgery, Dr. Gornet continued to treat Petitioner and authorized her to remain off work. When Dr. Gornet saw Petitioner on May 3, 2021, he indicated he would "shift gears" and treatment Petitioner for her low back pain. He continued to authorize Petitioner to remain off work. He referred Petitioner to Dr. Blake for an epidural injection on the right at L4-L5 (Petitioner's Exhibit 8).

Dr. Blake saw Petitioner on June 8, 2021. At that time, Dr. Blake administered an epidural injection on the right at L4-L5 (Petitioner's Exhibit 11).

Dr. Gornet last saw Petitioner on August 26, 2021. Petitioner advised the epidural injection did not provide her with significant relief. He opined Petitioner had disc injuries at L4-L5 and L5-S1 and recommended Petitioner undergo disc replacement surgeries at those levels. In regard to her neck, Dr. Gornet noted Petitioner was doing "extremely well" (Petitioner's Exhibit 8).

At the direction of Respondent, Dr. Peter Mirkin, an orthopedic surgeon, reviewed medical records and diagnostic studies. He prepared medical reports dated March 11, 2021, March 30, 2021, and April 14, 2021. Based upon his review of the medical records and diagnostic studies, Dr. Mirkin opined there was no injury to Petitioner's neck and no indication for three level disc replacement surgery (Respondent's Exhibit 1; Deposition Exhibits 3, 4 and 5).

Dr. Mirkin subsequently examined Petitioner on April 26, 2021. During the course of his examination of Petitioner, she informed him that she was unable to squat, bend, stoop or twist her back. Dr. Mirkin was previously provided with a copy of the surveillance video of Petitioner and he informed her that he had clear evidence she could bend. According to his report, Petitioner terminated the exam and told him "you lie." (Respondent's Exhibit 1; Deposition Exhibit 2).

Dr. Mirkin noted Petitioner informed him she did not have any neck pain until the summer of 2019. When seen by Dr. Mirkin, Petitioner complained of pain in the entire spine, right arm and low back. To the extent Dr. Mirkin was able to examine Petitioner, he described normal examination findings. In regard to Petitioner's cervical spine, Dr. Mirkin opined there was no indication Petitioner sustained any type of neck injury as a result of the accident and Petitioner did not experience any neck pain until many months afterward. He also reaffirmed his opinion cervical spine surgery was not indicated. In regard to the lumbar spine, Dr. Mirkin opined Petitioner may have sustained a lumbar strain, but there was no indication for lumbar surgery (Respondent's Exhibit 1; Deposition Exhibit 2).

Dr. Gornet was deposed on July 29, 2021, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Gornet's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. Dr. Gornet testified he watched the video of Petitioner and agreed it showed her bending. He said that he did not restrict Petitioner from bending completely, but he had directed her to refrain from repetitive bending. Dr. Gornet also stated this activity would not have an effect of Petitioner's cervical spine. In regard to causality, Dr. Gornet testified Petitioner's cervical and lumbar spine conditions were related to the accident of January 16, 2019. This was based on the history provided to him by Petitioner, the MRI findings and Petitioner's response to the conservative treatment previously provided to her (Petitioner's Exhibit 15; pp 12-14).

On cross-examination, Dr. Gornet was questioned about the delay of Petitioner's neck complaints following the accident of January, 2019. Dr. Gornet testified Petitioner may have initially had shoulder pain and noted there were symptoms in the trapezius and shoulder areas. However, Dr. Gornet admitted that if there was a correlation between the accident of January 16, 2019, and Petitioner's neck condition, Petitioner would have developed symptoms in the neck, trapezius or shoulder areas within six weeks. He agreed that if Petitioner had no symptoms until six or eight months later he "…would find that hard to make the link between that event and those symptoms." (Petitioner's Exhibit 15; pp 16-17).

Dr. Mirkin was deposed on August 13, 2021, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Mirkin's testimony was consistent with his medical reports and he reaffirmed the opinions contained therein. Specifically, he stated Petitioner informed him she did not have any neck problems until the summer of 2019. Dr. Mirkin stated a patient will generally complain of problems in the area of the body that was injured and “It’s not reasonable to wait 6 months, 11 months to complain of that and then seek this type of treatment.” He reaffirmed his opinion there was not a causal relationship between the accident and Petitioner's neck condition (Respondent's Exhibit 1; pp 7, 14, 19-20).

In regard to Petitioner's low back, Dr. Mirkin testified Petitioner terminated the examination when he informed her he had watched a video of her performing bending activities which she claimed she was unable to do. He stated Petitioner had pre-existing degenerative arthritis in her lumbar spine and may have sustained a back strain, but her current complaints were not related to the accident of January 16, 2019 (Respondent's Exhibit 1; pp 17-18).

Mary Potts, Dr. Mirkin's office manager, was in the room during his examination of Petitioner. She was deposed on August 13, 2021, and her deposition testimony was received into evidence at trial. She testified Dr. Mirkin behaved in a professional manner during the course of his examination of Petitioner (Respondent's Exhibit 2).

At trial, Petitioner testified she attended the examination with Dr. Mirkin and was cooperative. In regard to her bending, Petitioner said she bent over to touch her toes and, when coming up, she did so slowly because she became lightheaded. When Dr. Mirkin informed her he had a video of her bending over, she asked if she could watch it and Dr. Mirkin refused her request. Petitioner said Dr. Mirkin was rude to her and she did not want to continue with the examination.

Petitioner testified that following surgery, her neck condition has greatly improved, but she continues to have low back symptoms. She wants to proceed with the surgery recommended by Dr. Gornet. Petitioner also stated that prior to January 16, 2019, she did not have any injuries or treatment to either her neck or low back.

Conclusion of Law

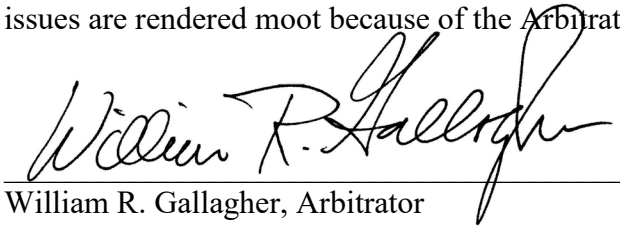
In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner's current conditions of ill-being are not related to the accident of December 4, 2019.

In support of this conclusion the Arbitrator notes the following:

There was no medical evidence Petitioner's current conditions of ill-being were related to the accident of December 4, 2019.

In regard to disputed issues (J), (K) and (L), the Arbitrator makes no conclusion of law as these issues are rendered moot because of the Arbitrator's conclusion of law in disputed issue (F).



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC000945
Case Name	Merl Sage v. State of Illinois – Illinois Department of Corrections
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0115
Number of Pages of Decision	15
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Craig Mielke, Nicholas Karayannis
Respondent Attorney	Joseph Blewitt

DATE FILED: 3/14/2023

/s/ Thomas Tyrrell, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LA SALLE)

☒ 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

MERL SAGE,

Petitioner,

vs. NO: 16 WC 00945

STATE OF ILLINOIS/ILLINOIS DEPARTMENT OF CORRECTIONS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent, herein and notice given to all parties, the Commission, after considering the issues of causal connection, permanent partial disability 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 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.

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.

March 14, 2023

O013123
TJT/ldm
051

/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	16WC000945
Case Name	SAGE, MERL v. STATE OF ILLINOIS/ILLINOIS DEPARTMENT OF CORRECTIONS
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Craig Mielke
Respondent Attorney	Joseph Blewitt, Nicholas Karayannis

DATE FILED: 3/15/2022

/s/ Paul Cellini, Arbitrator
Signature

INTEREST RATE WEEK OF MARCH 15, 2022 0.82%

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

March 15, 2022

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MERL SAGE
Employee/Petitioner

v.

STATE OF ILLINOIS / DEPARTMENT OF CORRECTIONS
Employer/Respondent

Case # **16** WC **00945**

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 **Ottawa**, 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 **December 26, 2015**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**88,752.00**; the average weekly wage was $**1,706.76**.

On the date of accident, Petitioner was **45** 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 $**22,920.57** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**22,920.57**.

Respondent is entitled to a credit for all medical expenses paid by Respondent under Section 8(j) of the Act.

ORDER

The Arbitrator finds that the Petitioner's right upper extremity condition is causally related to the December 26, 2017 work accident.

Respondent shall pay Petitioner temporary total disability benefits of **$1,137.84 per week** for **95-1/7 weeks**, commencing **December 27, 2015 through October 23, 2017**, as provided in Section 8(b) of the Act.

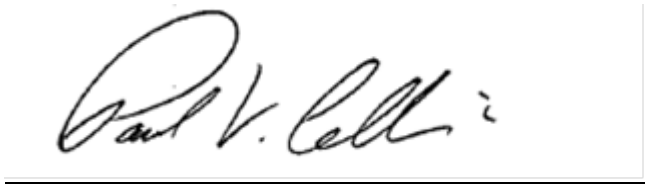
Respondent shall be given a credit of **$22,920.57** for temporary total disability benefits that have been paid.

Respondent shall pay Petitioner permanent partial disability benefits of $**755.22 per week**, the maximum allowable statutory rate, for **125 weeks**, because the injuries sustained caused the loss of use of **25% 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 **December 26, 2015** through **January 28, 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.



Signature of Arbitrator

March 15, 2022

STATEMENT OF FACTS

Petitioner began working for Respondent on 1/3/94 as a correctional officer and had to pass a physical exam at that time. He previously was in the Navy (4 years, honorable discharge), has worked as a pipefitter for about a year and has an associates degree. He has worked at Respondent's Joliet and Thompson, Illinois facilities, but after the Thompson facility closed, he worked at the Dixon, Illinois facility from May of 2010 until the alleged 12/26/15 accident date. He was promoted to Sergeant in 2004 and, after initially being demoted "due to a grievance", to Lieutenant in August 2006.

As a Lieutenant at Dixon in December 2015, his job involved making sure inmates were doing what they are supposed to, touring the building and some computer work. He had to carry a firearm at work, a revolver, and would have to qualify yearly with three different firearms. Typically, the only time he would use a gun at work was if a perimeter team was needed for an escape. He frequently would have to break up fights, estimating he has done so 100 to 200 times, noting he actually did this more frequently as a Lieutenant than as a regular officer. This could involve something as simple as cuffing inmates to being hands-on in the physical handling of multiple inmates and restraining them. Petitioner testified he enjoyed the job and had not planned to retire until December 2019 at the earliest.

Petitioner has worked for Respondent as a training coordinator and a tactical commander, as well as an internal affairs supervisor, indicating he always sought to do more and gain experience. He is right hand dominant. He denied having any right upper extremity problems prior to 12/26/15, including in the right pinky or ring fingers. He denied any past acute injuries to the right elbow or arm. He testified to having some carpal tunnel syndrome type symptoms while undergoing training, which included symptoms in the right thumb, index finger, middle finger, and palm, however this was well prior to 12/26/15 and it did not involve any symptoms going up the right arm. He had never been diagnosed with carpal tunnel prior to 12/26/15. Petitioner also denied any right knee problems prior to 12/26/15 other than "normal aches and pain as we get older." He'd had no prior acute right knee injuries and has had no new right knee injuries since 12/26/15. He had been working full unrestricted work with no lost time due related to his right knee, wrist, or elbow prior to 12/26/15.

On 12/26/15, around 11 a.m., Petitioner was advised there was a fight in Unit 38. When he arrived there, an inmate, Weed, was the only one there. After handcuffing him, Petitioner was walking Weed out when the inmate kicked a mop bucket over. Petitioner pulled him away so he couldn't do anything else, and they both fell, with Petitioner landing on his right hand and knee. He had severe right knee pain to the point he was concerned that he broke it. Another officer pulled Petitioner up and took control of inmate Weed. Petitioner went to the control room to report the injury to his shift commander. While holding the telephone in his right hand he developed numbness, though he was mainly concerned with his knee at that point. As he was completing injury paperwork for Respondent, he noticed tingling in his hand as he was writing such that he would have to stop and put the pen down and shake his hand out. He testified the nurse noticed him doing this

and noted a red mark on the left side of his palm, which was notated in the record. This was the opposite side of his hand where he'd had symptoms previously. He completed his shift that day.

Respondent's Incident Report, signed by Petitioner on 12/26/15, reflects an incident with inmate Weed where restraints/force was used. It indicates a history of the accident consistent with Petitioner's testimony, specifying that he landed on his right knee and right hand. Petitioner noted swelling and bruising to his right knee and numbness radiating from his right wrist to his right elbow. The document also references three other correctional officers as witnesses: McKenna, Rodriguez, and Frederick. The document also notes Petitioner was treated by the nurse and remained on duty. (Px7).

Petitioner initially treated at Physicians Immediate Care (PIC) on 12/28/15. Physician's Assistant (PA) Hopman documented right knee and hand pain since falling on a tile floor while escorting an inmate on 12/26/15. The hand pain radiated from the base of the hand/palm up to the elbow, shoulder, and upper back with tingling in the hand and fingers. The knee pain was patellar, worse with ambulation. Wrist and knee x-rays were normal. Diagnoses were right knee contusion and right wrist sprain. A splint and medications were prescribed, and work restrictions were issued (no ladder climbing, no prolonged stairs, use of splint and limited repetitive right hand motion). (Px4).

Petitioner testified that while he continued to treat at PIC, he began to notice he was dropping things, noting he poured a glass of wine one day and the next thing he knew he had dropped it without even knowing it. Bracing the wrist wasn't helping and his symptoms were getting more frequent and more intense, including severe pain from the right wrist through the elbow and into the shoulder. His knee was about the same with swelling and a large bruise, and he would avoid significant walking due to pain.

On 1/4/16, tingling was noted from the right hand to the elbow, and Petitioner reported no similar prior symptoms. He also noted worsening knee pain and minimally improved right wrist pain, including that he noticed he was dropping pens and cups from the hand occasionally. An updated knee x-ray was again normal. It was noted he was not working due to his restrictions, which were continued. On 1/13/16, the Petitioner reported increased hand pain with tingling that was keeping him awake at night and impacting his grip strength. Patellar pain continued despite bracing. Ongoing bracing and work restrictions were continued, and physical therapy was prescribed. On 1/27/16, Petitioner reported no improvement with therapy. PA Hopman prescribed a right knee MRI and a right upper extremity EMG. On 2/3/16, Petitioner again reported ongoing symptoms with no improvement in therapy, and that the right hand seemed to be worsening. Restrictions and medication were continued pending authorization from Respondent for the recommended testing. (Px4).

PA Hopman reported on 2/15/16 that the MRI showed no ligamentous or meniscal tears, mild patellar chondromalacia with a chronic appearing chondral defect at the inferior central femoral trochlea, and mild prepatellar edema/contusion. Petitioner reported no improvement with wrist therapy and knee pain that "comes and goes." Physical therapy was continued, along with restrictions for the wrist (no strong gripping or repetitive motion with the right hand). (Px5; Px6).

On 2/19/16, Petitioner reported improved knee pain and that he planned to start running at home. The wrist/forearm/elbow pain continued. Dr. Rozman indicated the 2/16/16 EMG showed mild to moderate cubital tunnel and mild carpal tunnel syndrome. Restrictions were continued by PA Hopman and Petitioner was referred to orthopedics for further evaluation. (Px4, Px5).

On 3/4/16, PA Hopman noted that Petitioner remained off work due to the restrictions and was awaiting workers' compensation approval for an orthopedic surgery evaluation. Physical therapy was continued. On 3/18/16, Petitioner reported ongoing right upper extremity symptoms with some relief with therapy, and that he

had continued right anterior knee pain (3/10). The orthopedic consultation had been denied by Respondent's insurer. (Px5).

Petitioner continued at treat at PIC until his 5/23/16 release (4/1, 4/7, 4/21, 5/5, 5/23/16), when he was found to be at maximum medical improvement (MMI) since nothing more was being approved. Neurontin was prescribed, which provided some temporary relief. A right elbow injection was performed on 5/5/16, and on 5/23/16 he indicated it didn't help at all and he had increasing numbness in his right ring and small fingers. He also had continued right knee complaints and it was noted that further care had been declined by workers' compensation. At this visit, the Petitioner became angry with his treatment there, indicating the PA was "only concerned with what his employer wants." Work restrictions had been continuing until 5/23/16, when Petitioner was released from care at MMI and to full duty: "the cubital tunnel has been denied for a work related injury per Pam, the sprain wrist is resolved. The knee contusion has resolved and the chronic chondromalacia has also been denied." (Px6).

Petitioner next sought treatment with orthopedic surgeon Dr. Gunderson on 6/8/16. The note indicates he was there for right wrist and elbow compression neuropathy evaluation following a work injury 5 to 6 months prior that elicited some symptoms: "The symptoms have not gone away even though the effects of the injury have seemed to improve." Chronic persistent knee pain was also noted and "currently these are not Workers' Compensation issues." Right knee x-ray showed a chronic osteochondral defect and mild to moderate osteoarthritic change. Exam noted very positive Tinel's sign at the wrist and elbow. Petitioner indicated paresthesias in the medial and ulnar distributions "and reports chronic paresthesias, if not numbness in his fingers." Noting the EMG findings, Dr. Gunderson diagnosed right carpal and cubital tunnel syndromes and, given the failure of conservative treatment and Petitioner really wanting something done, surgery was prescribed. The right knee was injected, and Petitioner was restricted to no right hand or arm use. Petitioner indicated in his intake form that his injuries had been denied by workers' compensation. (Px2).

Petitioner underwent surgery with Dr. Gunderson on 6/30/16 involving a right ulnar nerve transposition and right carpal tunnel release. (Px2). Petitioner testified that he felt relief with the carpal tunnel release. With the ulnar nerve transposition procedure, he had less pain and no more shooting pain into the shoulder but still had numbness and tingling into the right ring and small fingers and that side of the hand.

On 7/8/16, Dr. Gunderson reported Petitioner had good pain control and good relief of carpal tunnel symptoms, but not as much improvement with cubital tunnel symptoms. He was held off work and physical therapy was prescribed. On 8/5/16, Petitioner reported some paresthesias improvement and less and less elbow pain but remained very limited in his ability to do anything with his right arm. Dr. Gunderson opined he was not ready to go back to work and instituted a 5 pound weight restriction. On 9/7/16, Dr. Gunderson indicated Petitioner was "having evolving paresthesias in his ulnar nerve distribution, and his weakness is not improving as fast as he would like. He is still unable to squeeze keys or his flashlight or pepper spray, as he would need to" He was to continue with the 5 pound weight limit with the right arm. Physical therapy records through this time note slow progress. (Px2). Petitioner testified that some therapy was performed on his knee, but it mainly was directed to the right upper extremity, and that he was ultimately discharged in January due to a lack of progress.

Petitioner continued to follow up with Dr. Gunderson through 5/10/17, and while Petitioner noted there was improvement, he had ongoing grip weakness with occasional paresthesias. Dr. Gunderson continued to restrict him from full work duty given that a use of force incident could always happen at the prison, and it would not be safe for him. Petitioner reported some backsliding when therapy ended. On 5/10/17, Petitioner was noted to have ongoing paresthesias and aching in the right hand, along with weak grip with substantially less strength in the right hand versus the left. Dr. Gunderson noted ongoing diminished sensation in the ulnar distribution and that Petitioner was unlikely to improve further at this point: "For me, it has been too chronic an insult to the

nerve that is not recovering, coming up on a year now, and I discussed with him that we probably should get a functional capacity evaluation (FCE) to establish his level of ability to work. I did discuss with him that I do not believe he will be able to return to his former vocation due to his lack of grip strength and dexterity in his right hand." (Px3). Petitioner testified that he did not feel safe returning to work given his ongoing grip weakness.

On 8/9/17, Dr. Gunderson's report noted ongoing paresthesias, modest atrophy of the hyperthenar eminence and relative weakness in the dominant right hand. An updated EMG was prescribed to determine if Petitioner had worsened, which on 10/23/17 was noted to have been normal. However, given the ongoing weakness and numbness, the doctor stated: "while the transposition appears to have been successful as evidenced by what appears to be of normal (EMG), he appears to have some permanent damage to the nerve that is likely going to be permanent and stable. Because of this I would give him permanent restrictions of no use of force in his current occupation as a prison guard." He also advised that Petitioner should have limited intervals of gripping or fine motor movements at any one time, especially with moderate to heavy gripping or lifting, opining that Petitioner had reached MMI. (Px3).

Petitioner followed up with Dr. Gunderson on 1/17/18 and 7/16/18. At the latter visit, Petitioner reported ongoing symptoms, so much so that he had been unable to return to any meaningful employment. Dr. Gunderson indicated: "I discussed with him that I think that while I cannot say definitively that his injury because [sic] the issue I do think that he may have some underlying neuropathy became clinically evident secondary to the injury certainly exacerbated by the. [sic] He also is unable to seek definitive treatment for following the injury which could have compromised his ultimate outcome and have given him same restrictions no lifting or repetitive gripping with the right hand." Also indicated in the note was no use of force of right hand and no grasping or fine motor use of the right hand more than one hour at a time. (Px3).

Petitioner was examined by orthopedic surgeon Dr. Primus on 7/25/17 at Respondent's request pursuant to Section 12 of the Act. The history indicates Petitioner slipped at work, landed on his right hand and right knee, and was advised he had cartilage damage to the knee and nerve damage to the elbow. Therapy and bracing did not help his hand/elbow, but the injection in the knee resolved his symptoms ("he presents today with no real complaints for the right knee"). Petitioner complained of ongoing nerve pain, hand weakness and muscle spasms with on and off tingling and pain he described as a "stinger" with certain activities. The pain ranged from 2/10 to 8/10, and his biggest complaint regarding work was his reduced grip strength. Petitioner reported no prior right wrist, elbow, or knee pain. Dr. Primus' exam reflected pain "only directed over the Guyon's canal, over the volar aspect of the hypothenar eminence, as the ulnar nerve courses into the hand"; he also noted that "most pain was focused on the elbow where he had a medial based incision from ulnar nerve transposition" and pain to direct palpation over the cubital tunnel with positive Tinel's sign. Dr. Gunderson identified no wrist atrophy. He noted the chronic cystic appearing chondral lesion in the distal central trochlear groove of the right knee. After reviewing Petitioner's records to date and the Respondent's accident reports, Dr. Primus answered specific questions posed by the Respondent. He noted that Petitioner's stated history appeared consistent with the medical records – immediate right wrist and knee pain, some right wrist tingling, and numbness from the wrist to the elbow. Dr. Primus diagnosed a resolved right knee strain/contusion related to the accident with preexisting trochlear chondromalacia, and a resolved hand/wrist contusion and nerve contusion related to the accident with preexisting cubital and carpal tunnel syndromes per EMG: "He is still symptomatic with ulnar based hand and wrist pain status post carpal tunnel release and ulnar nerve transposition with persistent ulnar nerve based numbness and paresthesias." It was Dr. Primus' opinion that Petitioner had incidental carpal and cubital tunnel findings on EMG, and that his current symptoms were related to the surgery for these conditions, which were not related to the accident. The doctor goes on to state: "Unfortunately, we do not appreciate any medical documentation or evidence that he had carpal tunnel symptoms specifically, or cubital tunnel symptoms specifically, prior to his EMG and NCS tests. His hand symptoms and numbness and tingling right after the fall more correlated with his hand/wrist contusion and possible nerve contusion." He goes on to note that Petitioner

initially complained of lateral elbow pain on 2/15/16, and in the next therapy note (3/7/16) complained of medial elbow pain, and then the remainder of the medical documentation referenced lateral elbow pain. The doctor opined that lateral elbow pain does not speak to an ulnar nerve compression such as cubital tunnel, and there were no tests documented which clearly showed positive findings of cubital or carpal tunnel. He further opined that the right knee MRI and right upper extremity EMG were not indicated based on the clinical findings. Dr. Primus states: "we know that for traumatic causes of numbness and tingling, it is most caused by local swelling that resolves over time, or local nerve contusion that will resolve over time." He also questioned the indication for the surgeries, given EMG showed only mild carpal tunnel and mild to moderate cubital tunnel "with no clear clinical assessment or positive findings, or documentation of specific conservative care for ulnar nerve neuritis due to compression at the elbow." Dr. Primus opined that Petitioner needed no further treatment or work restrictions for the work-related diagnoses, while for the non-work related persistent right hand pain, weakness and numbness, prognosis was guarded given he had surgery and still had significant nerve related issues which Petitioner felt rendered him incapacitated, as he had "intolerance to his subjective discomfort". Noting Petitioner's treating doctor found him at MMI for the wrist as of 5/23/16 with no residual disability, Dr. Primus found Petitioner at MMI for the knee soon after his first acknowledgement of full use back on 3/2/16. (Rx1).

Petitioner testified that Dr. Gunderson indicated on 10/23/17 that he believed Petitioner had some permanent nerve damage and permanently restricted Petitioner from using force, heavy gripping or fine motor movements. At the final January 2019 visit Petitioner testified that Dr. Gunderson provided a final work note. That was the last medical treatment he received.

Orthopedic surgeon Dr. Gunderson was deposed by the parties on 11/18/21. Noting he had a limited history of Petitioner's work accident, the doctor was asked to assume the accuracy of the Respondent's accident report and the initial 2/28/15 PIC report regarding the mechanism of injury. Petitioner's main complaint was paresthesias in the right fingers and hand and grip weakness. The EMG showed compressive disease like carpal and/or cubital tunnel disease. Dr. Gunderson opined that Petitioner's 12/26/15 "direct blow" injury was an "adequate mechanism" to cause Petitioner's symptoms: "It would make sense anatomically and medically that he could have strained his elbow enough and impacted it hard enough to get what's called a neuropraxic injury to the – both nerves, but more importantly the elbow. The ulnar nerve is probably the most important." Landing on the palm of his hand could cause a stretch injury, and a direct blow to the ulnar nerve could cause a neuropraxic injury. Based on the symptoms and EMG findings, the 6/30/16 ulnar nerve transposition and carpal tunnel release surgeries were reasonable and necessary. The carpal tunnel symptoms improved. The elbow innervates the hand and grip muscles and Petitioner had pre-surgery evidence of atrophy of the hypothenar eminence. This was concerning to Dr. Gunderson as it makes it unclear how much surgery will help. It usually takes a year to determine if the condition will improve with surgery or not. While Petitioner's numbness improved, his grip strength never really improved significantly through the last visit of 7/16/18. Dr. Gunderson did not want to send Petitioner back to a job where he would potentially have to defend himself at a prison and/or use a gun given his right hand grip weakness. While he wasn't certain if the prescribed FCE had been completed or not, the doctor on 10/23/17 issued a permanent restriction on the use of force as a prison guard. (Px1).

On cross examination, Dr. Gunderson indicated he was able to test Petitioner's grip strength clinically by having him squeeze his fingers and via dynamometer testing. Being right hand dominant, Petitioner's right grip should have been stronger, but throughout the course of his treatment the right grip was significantly less than the left. Dr. Gunderson agreed it was possible Petitioner had preexisting carpal tunnel and cubital tunnel. An EMG can sometimes distinguish between compressive neuropathy and contusive neuropraxia. A person can have a "two-hit" thing where a trauma causes symptom onset, but you can't tell if there was a preexisting condition unless there were preexisting symptoms. The main reason the carpal tunnel surgery was performed

was because CTS was shown in the EMG findings and it "would be a waste of anesthetic" to do the elbow surgery and not take care of the wrist at the same time. The biggest concern with Petitioner was the hand muscle atrophy and loss of grip strength. Asked if immediate pain would be expected after suffering an acute cubital tunnel injury, Dr. Gunderson stated "[i]t's not always immediate as far as like the peak of the symptoms" and there are people who just shake it off and think they'll get better, and Petitioner was that type of person. As to whether there was objective evidence of a severe injury, Dr Gunderson testified that the lack of improvement with decompression indicates this. When asked if there was objective evidence of permanent damage to the ulnar nerve, Dr. Gunderson referenced the visible intrinsic hand muscle atrophy and grip weakness. While he didn't have Petitioner's specific job description, as a prison guard he would be in danger if having to use his hands to defend himself or to use a gun. As to whether falling on his hand and arm could cause carpal or cubital tunnel, the doctor testified: "Carpal and cubital tunnel ae really separate entities from a stretch or blunt injury to the nerve." As to whether the work accident definitely caused the nerve damage, he testified that "just by the description [of the incident] I would say it's probably more likely than not. I don't know absolutely for sure because I didn't see [the incident], but my – just by the description of the injury, from what I heard of the initial report was that he could either have stretched it by torquing his arm as he hit or even just landing directly on it. So those are both excellent mechanisms to damage the ulnar nerve." He acknowledged his 7/16/18 report noted that while he couldn't say if the work injury definitively caused the problem, "I do think that he may have neuropathy that became clinically evident secondary to the injury, certainly exacerbated by the injury." Again, it is possible that Petitioner had underlying neuropathy apart from the work accident, but there is no way to know or prove it. (Px1).

Petitioner testified that his right knee basically healed on its own with no lingering effects. He still gets numbness and tingling in the right ring and small fingers and on that side of the palm of his hand. He sometimes gets pain, particularly in the tip of his ring finger, like someone is putting needles into it, but the pain no longer radiates up the arm from the wrist. He has ongoing difficulties with grip strength, such as with opening jars or chip bags. He does have occasional pain at the surgical site, which the doctor told him was due to scar tissue. Sometimes he will awaken with numbness and a dead feeling in the hand. If this happens, he takes gabapentin, and it usually goes away in a couple of hours. He does not take any other medications for this condition. Petitioner testified if he grips anything while his right wrist is bent, even with a light grip, he gets an electrical shock feeling that causes him to have to release the grip. He can no longer do daily push-ups or yoga like he used to and can no longer lift heavier weights anymore. He no longer shoots his bow because his right arm isn't strong enough to pull the bow back. He has been a gamer and now can no longer type on a keyboard without taking multiple rest breaks. He does not believe he would be able to safely perform his regular job duties and is worried about protecting himself, other staff, or even other inmates if he had to use force. He also doesn't feel he could use a service revolver safely.

On cross-examination, Petitioner testified he has not worked anywhere since the accident date, even a part time job. He is aware of Respondent's Extended Benefit Program, where a correctional officer receives full pay if injured by an inmate. Asked whether he applied for this program, Petitioner testified: "I did what I was told to do by HR." He has received pay from either Tristar, the workers' compensation carrier for Respondent, and/or his pension. He acknowledged he did not attend the Section 12 exam originally scheduled for him (see Rx2), testifying this was due to a back condition for which he ended up in the emergency room later that night. He does have a valid FOID card but not a conceal and carry permit. He was terminated by Respondent on 8/16/19 for cause.

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:

The Arbitrator has reviewed and considered all the medical evidence along with Petitioner's credible testimony and concludes that the Petitioner has shown by the preponderance of the evidence that his current condition of ill-being in the right upper extremity is causally related to the 12/26/15 accident.

The accident in this case was stipulated. The Petitioner's testimony regarding his fall onto his right hand and knee is undisputed and is consistent with the medical records in evidence and the accident report. Petitioner testified he immediately felt pain in his knee and numbness radiating from his right wrist to right elbow. At the time he was reporting the injury to Respondent that' same day he started to notice tingling in the ulnar side of his hand. In the accident report he indicated numbness radiating from his wrist to his elbow. By his initial 12/28/15 visit to PIC he was also complaining that the pain was radiating up to his right shoulder with numbness and tingling in his hand and fingers.

Petitioner testified that his right knee injury eventually resolved itself with physical therapy, while the note of Section 12 examiner Dr. Primus documented that Petitioner stated the injection to his knee had essentially resolved his symptoms.

Petitioner underwent carpal tunnel release and ulnar nerve transposition surgeries on his right upper extremity. He testified that surgery resolved the right wrist pain and much of his symptoms in his right hand and fingers, but that he has had persistent numbness and tingling in the ulnar aspect of his right hand along with diminished right grip strength.

Petitioner testified that prior to the 12/26/15, work injury, he had never experienced any acute injury to his right upper extremity. Petitioner testified that he had never been diagnosed with right upper extremity neuropathy, or, more specifically, cubital tunnel syndrome or carpal tunnel syndrome prior to the work injury. While he admitted that he had previously experienced symptoms of carpal tunnel syndrome, he testified that the symptoms had never caused him to miss work and that he had been working full, unrestricted duties on an ongoing basis prior to 12/26/15. The Arbitrator overall found the Petitioner's testimony credible and consistent with the documentary evidence.

The Arbitrator found that the opinions of Dr. Gunderson were more persuasive than those of Dr. Primus regarding diagnosis and causation. The Arbitrator acknowledges that the Petitioner's key symptoms resulting from the accident appear to relate to the ulnar nerve more than to the median nerve, which is involved in carpal tunnel. However, Dr. Gunderson's explanation for why both carpal and cubital tunnel surgeries were performed at the same sitting. The mechanism of injury and the chain of events leads to the most likely conclusion, in the Arbitrator's view, that the Petitioner sustained a neuropraxic injury to the right ulnar nerve. Given the EMG findings, it was not unreasonable for Dr. Gunderson to perform both surgeries in the face of Petitioner's ongoing complaints. While the Petitioner testified that he had experienced carpal tunnel-like symptoms prior to the accident date, there is no indication he ever sought treatment for this or was ever diagnosed with carpal tunnel. The chain of events of Petitioner having no evidence of preexisting symptoms anywhere near the degree of symptoms he complained of immediately after the accident and on an ongoing basis is a large part of why Dr. Gunderson's opinions made more sense to the Arbitrator. Dr. Primus never explains how the Petitioner could have had the ulnar nerve complaints he's had since the accident date based on diagnoses of contusions to the hand/wrist and knee. He also does not seem to be disputing that the Petitioner has an ongoing ulnar nerve problem. He does not adequately explain his conclusion that the immediate onset of ulnar nerve symptoms following the accident, again with no evidence of similar preexisting symptoms, is unrelated to the accident. Dr. Gunderson opined that the accident was an adequate mechanism of injury to cause the neuropathic injuries

complained of by Petitioner and that it was "probably more likely than not" that the 12/26/15 accident caused nerve damage to Petitioner's right upper extremity, in particular to the ulnar nerve which manifested into persistent paresthesia and diminished grip strength in Petitioner's right hand.

The Arbitrator finds that Petitioner's ongoing problems in his right forearm and hand are causally related to the 12/26/15 accident. The Petitioner's right knee condition was related to the 12/26/15 accident on the basis of a contusion, but the Petitioner's testimony and medical records support the finding that this condition completely resolved well prior to the 2022 hearing.

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 to the issue of medical expenses, Respondent agreed to liability for only Petitioner's right knee and hand contusion injuries (see Arbx1). The Arbitrator notes that a thorough review of the records submitted into evidence did not reflect any medical bills or expenses. As such, the Arbitrator has no specific expenses to award. The Arbitrator notes that the Respondent did request credit pursuant to Section 8(j) of the Act. As such, if the Respondent paid all medical expenses pursuant to Section 8(j) via group health benefits, Respondent is entitled to credit for such payments so long as they hold the Petitioner harmless with regard to same. It is clear to the Arbitrator that the treatment Petitioner received according to the records in evidence was reasonable and necessary under Section 8(a) of the Act for both the right knee and right upper extremity conditions.

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:

According to Arbx1, Petitioner seeks TTD from 12/26/15 through 10/23/17, while Respondent argues that TTD is only due and owing from 1/4/16 through 5/23/16. Again, based on the Arbitrator's findings regarding causation, the Arbitrator finds that Petitioner is entitled to TTD benefits from 12/27/15 through 10/23/17, the date of MMI. He was either on work restrictions or completely held off work during this time by PIC and/or Dr. Gunderson. The records reflect that Petitioner reported several times that he remained off work while on restricted duty because the Respondent did not accommodate the restrictions, and there is no evidence in the record which would rebut this fact.

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. Therefore, 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 correctional officer at the time of the accident and is not able to return to work in his prior capacity as a result of said injury. This factor carries significant weight in the permanency determination.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 45 years old at the time of the accident. The Arbitrator notes that neither party has provided any specific evidence as to how Petitioner's age impacts his permanent condition. That said, the Petitioner is at a relatively young age in the grand scheme of a typical work life, and he has restrictions that may impact his future employment opportunities. This factor carries some 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 is not currently working, and so it is unclear if the work accident has negatively impacted his earning potential. This factor carries only some 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 the Petitioner testified that he continues to suffer decreased grip strength and persistent paresthesia in the ulnar aspect of his right hand. Petitioner testified that he never experienced grip strength deficiency or paresthesia in the ulnar aspect of his hand prior to the work injury on 12/26/15. Petitioner's complaints are corroborated by Dr. Gunderson's medical records. The Arbitrator gives this factor significant weight, and notes that the facts support that the Petitioner has suffered a loss of trade. However, it is also noted that it does not appear that the Petitioner has sought further employment within his current abilities.

Petitioner also sustained a contusion to the right knee which involved fairly lasting symptoms, but which ultimately resolved.

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 of the loss of use of 25% of the person as a whole pursuant to §8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC029437
Case Name	David Myers v. GMS Mine Repair & Maintenance Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0116
Number of Pages of Decision	16
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Roman Kuppart
Respondent Attorney	Julie Webb

DATE FILED: 3/14/2023

/s/ Kathryn Doerries, 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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DAVID MYERS,

Petitioner,

vs. NO: 16 WC 29437

GMS MINE REPAIR & MAINTENANCE, 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 occupational disease, causal connection, permanent partial disability, and other-Sections 1(d)-1(f) of the Occupational Disease Act, 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 31, 2022, is hereby affirmed and adopted.

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

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

Bond for 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.

March 14, 2023

d- 3/7/23
KAD/jsf

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

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

/s/*Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC029437
Case Name	MYERS, DAVID v. GMS MINE REPAIR & MAINTENANCE, INC.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Roman Kuppart
Respondent Attorney	Julie Webb

DATE FILED: 1/31/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 25, 2022 0.38%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DAVID MYERS
Employee/Petitioner

v.

GMS MINE REPAIR AND MAINTENANCE, INC.
Employer/Respondent

Case # **16** WC **029437**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **July 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 **Sections 1(d)-(f) of the Occupational Diseases Act**

FINDINGS

On **March 4, 2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did 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 $**48,230.00** and his average weekly wage was **$927.50**.

On the date of accident, Petitioner was **58** 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

No benefits are awarded.

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

JANUARY 31, 2021

PROCEDURAL HISTORY

This matter proceeded to trial on July 30, 2021, pursuant to Section 7 of the Illinois Workers' Occupational Diseases Act (820 ILCS 310) (hereinafter "the Act"). The issues in dispute are: 1) whether the Petitioner sustained an occupational disease arising out of and in the course of his employment, including whether the requirements of Sections 1(d)-(f) were met; 2) the causal connection between exposure to the occupational disease and the Petitioner's current condition of ill being; and 3) the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

An Application for Adjustment of Claim was filed on September 29, 2016, wherein the Petitioner alleged he sustained an occupational disease of his lungs and/or heart. (AX2) The Petitioner alleged he sustained the occupational disease as a result of inhalation of coal mine dust, including but not limited to coal dust, rock dust, fumes and vapors for a period in excess of 33 years, with the date of last exposure being March 4, 2016. (Id.)

The Petitioner was 59 years old at the time of his last exposure. (T. 12) He lives in Benton, Illinois, and is married. (T. 9-10) He graduated from high school and went straight to work without any other formal education. (T. 10, 14) He worked about 35 years in the mining industry – about 28 years above ground and seven below. (Id.) While working in the coal mines, he was regularly exposed to coal and rock dust and diesel fumes. (T. 11) On the last date of exposure, the Petitioner was working as a general laborer for the Respondent, a contractor for several different mines, and performed roof bolting, rock dusting, shoveling and building stoppings. (T. 11-12) He said he was exposed to coal dust on his last day of employment, at which time he was laid off. (T. 13) He had not been employed since and is receiving Social Security disability benefits for his back and knees. (T 13)

The Petitioner began his mining career in 1976 as a mail carrier, grass mower and parts deliverer with Inland Steel Coal, where he worked until 1998. (T. 14, 16-17) He then worked on a survey crew and in the office for approximately 21 years. (T. 17) While on the survey crew, the Petitioner would show the miners where to cut coal. (T. 17-18) While working in the office for two to three years during that time, the Petitioner worked both above and below ground. (T. 18) From 1998 to 2002, he did not work due to personal reasons. (T. 14). He worked in construction from 2002 to 2003 and returned to coal mining in 2003 for American Coal and Knight Hawk Coal. (T. 15) In January 2011, the Petitioner was involved in a car accident and was off work for almost two years. (Id.) Because of the accident, the Petitioner began collecting Social Security disability benefits, but he got off of Social Security because he wanted to work. (T. 16, 29-30) In 2013 through 2014, he worked for the Respondent at several different mine sites. (T. 15-16) In 2014, he went to work for White Oak Coal for approximately six month and went back to work for the Respondent until he was laid off in 2016. (T. 16) He went back on Social Security and has not worked since. (T. 33)

While working at the mines, the Petitioner underwent periodic chest X-ray screenings by the National Institute for Occupational Safety and Health (NIOSH). (T. 33-34) He received letters regarding the results of those screenings but, at the time of Arbitration, did not have copies. (T. 34) None of the prior screenings were submitted as evidence.

The Petitioner testified that he first noticed having breathing problems 15 to 20 years ago while working in the mines that caused him to have trouble walking from the face of the mine to the outside. (T. 20) He stated that since then, his breathing problems have gotten worse. (T. 22) He said he can walk about 100 feet until he has problems breathing. (T. 21) He noted that on the day of the arbitration hearing, he began breathing hard after walking a flight of steps. (T. 21-22)

He was prescribed breathing medication, but he didn't take it. (T. 25-26) The Petitioner said his breathing problems have affected his daily activities, such as dancing, swimming, yard care, running, bicycling and walking his dogs. (T. 22-25) He said that now he could not physically work in the mines as he had due to his breathing, back and knee problems. (T. 27-28)

The Petitioner's wife, Michelle Myers, testified that she has noticed changes in his ability to do things – such as yard work, walking, swimming, playing with their grandchildren, carrying groceries and dancing – because of his breathing problems. (T. 40-43) She said this had become worse over the years. (T. 41)

Prior medical records indicate that the Petitioner was a patient of Dr. Dennon Davis at Logan Primary Care Services from 2005 through 2015. (RX4) He was seen there for such things as anxiety, blood pressure, sleep issues, various injuries, prostate and urinary problems, diarrhea, headaches, dizziness, gastroenteritis, upper respiratory infections, conjunctivitis, sinusitis, allergies, arthritis, insect bites, dehydration and pain in his joints, back, shoulders, knees, legs, heels, hips and neck. (Id.) During this time, Dr. Davis reported normal lung examinations. (Id.)

Following a motorcycle accident in 2006, the Petitioner underwent chest X-rays that showed lung fields having slightly increased markings and a possible minor contusion. (Id.) The Petitioner underwent sleep studies in January and February 2012 and was diagnosed with sleep apnea, for which he used a CPAP machine. (Id.)

In 2015, the Petitioner began seeing Dr. David Szoke at Community Healthcare Clinic. (RX5) Over the next six years, Dr. Szoke treated the Petitioner for arthritis, high blood pressure, prostate/urinary issues, an infected toe, cellulitis, lesions on his knee and finger, sinus infection, cough, allergies, carcinoma, swimmer's ear, panic attacks, soft tissue mass at the base of his neck, liver disease and pain in his knees, back, neck, right flank, shoulders, chest wall, abdomen. (Id.)

Respiratory examinations were normal. (Id.) On October 3, 2018, the Petitioner reported dyspnea (shortness of breath) on exertion. (Id.) Dr. Szoke's respiratory examination that day was recorded as normal. (Id.)

On August 1, 2016, Dr. Henry K. Smith, a "B-reader" radiologist, examined a chest X-ray of the Petitioner taken on July 20, 2016, and found interstitial fibrosis of classification p/p, in all lung zones bilaterally of a profusion of 1/0. (PX1, Deposition Exhibit 2) He found no chest wall placques, calcifications or large opacities. (Id.) He diagnosed simple coal workers' pneumonoconiosis (CWP) with small opacities. (Id.)

On January 15, 2018, the Petitioner saw Dr. Suhail Istanbouly, a board-certified practitioner in internal medicine, pulmonary medicine and critical care medicine. (PX1, Deposition Exhibit 2) In his report, Dr. Istanbouly noted that the Petitioner complained of a mild, intermittent cough for years that produced white-yellowish sputum at an average of one teaspoon per day. (Id.) The Petitioner reported having significant exertional dyspnea, getting short of breath by walking for 100 feet, while he formerly ran marathons. (Id.) He reported occasional wheezing and significant runny nose and post-nasal drip. (Id.) Dr. Istanbouly conducted a respiratory examination, which was normal. (Id.)

A ventilation study (also known as a spirometry test) conducted that day at Harrisburg Medical Center was normal, with FEV1 (forced expiratory volume) of 3.23 liters, 87% predicted; FVC (forced vital capacity) of 4.37 liters, 89% predicted; and FEV1/FVC ratio of 74% -- all of which was noted to be normal. (Id.) Due to the Petitioner having normal spirometry, a postbronchodilator treatment study was not conducted. (Id.)

Dr. Istanbouly reviewed the test results and the chest X-ray from July 20, 2016, which he said revealed mild interstitial changes involving lung zones bilaterally. (Id.) Dr. Istanbouly is not

certified as an A- or B-reader of X-rays. (PX1) He diagnosed the Petitioner with simple CWP that was mild in intensity and was related to long-term coal dust inhalation. (Id.) In his report, he wrote that the Petitioner's long-term coal dust inhalation seemed to be a significant contributor to his chronic respiratory symptoms of intermittent cough with progressive exertional dyspnea. (PX1, Deposition Exhibit 2) He stated that it was advisable for the Petitioner to avoid any further coal dust inhalation to prevent the progression of his pulmonary disease. (Id.)

On April 10, 2018, at the request of the Respondent, Dr. Cristopher Meyer, a "B-reader" radiologist, reviewed the July 20, 2016, chest X-ray and found no CWP. (RX1, Deposition Exhibit B) He found that the quality of the was a "2" (with under inflation, mottle and edge enhanced) and not a "1" as Dr. Smith determined. (Id.) Dr. Meyer noted that the Petitioner's lungs were clear, and there were no small-rounded, small-irregular or large opacities. (Id.) aw atherosclerotic calcification in the thoracic aorta. (Id.) Dr. Meyer further disagreed with Dr. Smith's findings of small opacities and profusion, stating that the examination was normal. (Id.)

The Petitioner underwent another round of lung function testing on May 2, 2018, conducted by Dr. Jeffrey Selby at The Lung Centre. (RX3) Spirometry testing showed an FVC of 4.39 liters (99% predicted), an FEV1 of 3.56 (100% predicted), an FEV1/FVC of 101% and a diffusing capacity of carbon monoxide (DLCO) of 25.79 (88% predicted). (Id.)

A review of the Petitioner's medical records was conducted on June 23, 2020, by Dr. David Rosenberg, a board-certified physician in internal medicine, pulmonary disease and occupational medicine hired by the Respondent. (RX2, Deposition Exhibit B) Dr. Rosenberg reviewed the Logan Primary Care records, Dr. Szoke's records, Dr. Smith's B-reading, Dr. Istanbouly's report, Dr. Meyer's B-reading and The Lung Centre's records. (Id.) He performed his own B-reading and found that the films were of lesser quality, being underinflated with poor contrast. (Id.) He

concluded that the Petitioner did not have a respiratory-related disorder consequent to his work environment. (Id.) In addition to negative X-rays, he noted that the Petitioner's pulmonary function tests indicated no obstruction or restriction, and his medical records did not outline chronic respiratory complaints nor anything to substantiate a chronic cough or any type of chronic respiratory condition other than sleep apnea. (Id.)

In a deposition on April 29, 2019, Dr. Istanbouly testified consistently with his report, stating that the Petitioner fit the definition of having chronic bronchitis, which is a persistent, daily cough for more than six months or more than three months in two consecutive years. (PX1) He noted that it is not unusual for someone with simple CWP to be asymptomatic, have a normal physical examination or have normal pulmonary function tests. (Id.)

Dr. Rosenberg also testified consistently with his report in a deposition on July 3, 2019. (PX2) He said he saw no diagnosis of chronic bronchitis in the Petitioner's medical records. (Id.) He said that based on the pulmonary function testing, the Petitioner did not suffer from COPD and was capable of heavy manual labor from a respiratory standpoint. (Id.) He said the Petitioner would fall in a "class 0" under the AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition. (Id.) On cross-examination, Dr. Rosenberg admitted that people can have CWP without having X-ray evidence of the disease and without knowing they have it. (Id.) He, too, said someone with simple CWP can be asymptomatic, have a normal physical examination or have normal pulmonary function tests. (Id.) Regarding B-readings in general, he said they are epidemiologic tools and should not be used diagnostically. (Id.)

Dr. Smith testified consistently with his report at a deposition on December 2, 2019. (PX1) He stated that B-reading is an art, and equally qualified radiologists can have different readings of the same films. (Id.) He disagreed with Drs. Meyer and Rosenberg's opinions that the film was

of lesser quality and showed underinflation with mottle and edge enhancement. (Id.) He stated that doctors can have differing opinions on film quality as well. (Id.)

At his deposition on May 28, 2019, Dr. Meyer testified consistently with his report. (RX1) He stated that when CWP starts as an early disease with profusion levels of 1, it is typically an upper-zone-predominant disease, and as the disease becomes more extensive or more diffuse, then all six lung zones can be involved. (Id.) He said that simple CWP typically won't progress once coal dust exposure ceases. (Id.)

Dr. Meyer admitted that mild simple CWP is generally asymptomatic, and a negative film does not necessarily rule out CWP. (Id.) He said that the Petitioner could have coal macules in his lungs and have a negative chest X-ray. (Id.) He explained that very rare coal macules can occur with a negative X-ray, and it has been suggested that those macules are really a marker of coal dust exposure but not a marker of the disease. (Id.)

He acknowledged that similar experts with similar credentials may disagree on the reading of chest films especially in the lowest profusion category. (Id.) When asked to explain why Drs. Rosenberg and Smith did not find mottle or edge enhancement on the Petitioner's films, Dr. Meyer said he could not speak to Dr. Smith's grading of the films, but stated that pulmonologists are less attuned to technical deficiencies in films than radiologists are. (Id.) But he said it was possible that what he saw as edge enhancement, Dr. Rosenberg could have been referring to as poor contrast. (Id.)

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 the Petitioner suffer an occupational disease which arose out of and in the course of his employment by the Respondent?

Issue O: Other issues: Sections 1(d)-(f) of the Occupational Diseases Act.

Section 1(d) of the Act provides that the term "Occupational Disease" means a disease arising out of and in the course of the employment or which has become aggravated and rendering disabling as a result of the exposure of the employment. Further, such aggravation shall arise out of a risk peculiar to or increased by the employment and not common to the general public.

The Arbitrator finds that the Petitioner has failed to prove by a preponderance of the evidence that he has an occupational disease as defined by the Act. Although Dr. Smith reported small opacities on the Petitioner's chest X-ray and Dr. Istanbouly diagnosed the Petitioner with CWP, there were no other indications of lung disease, such as chronic bronchitis, asthma or emphysema. Dr. Istanbouly found cough and sputum production, but these symptoms were lacking during the Petitioner's numerous doctor visits from 2005 through 2020. It appeared that the Petitioner was not shy about seeking treatment for his ailments, making it more compelling that he did not seek treatment for bronchitis or any other form of lung disease that would be a hallmark of CWP. The Petitioner did report exertional dyspnea, but a connection with CWP is tenuous without more evidence. In addition, two sets of lung function tests showed normal functioning.

On the other hand, Drs. Meyer and Rosenberg's testimony correlated with the Petitioner's broader medical history. Although they recognized that different B-readers could reach different conclusions when reading X-rays and that a person with negative X-rays and normal spirometry could have CWP, this speculation does not suffice for proof by a preponderance of the evidence. In addition, Dr. Smith's interpretation of the Petitioner's chest X-ray showing opacities in all lung zones was inconsistent with what Dr. Meyer testified to as the general progression of CWP

typically beginning in the upper lung zones. Thus, the Arbitrator gives greater weight to Drs. Meyer and Rosenberg's opinions.

Regarding the element of disablement, Section 1(e) of the Act provides defines the term as 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.

There was little to no evidence of disablement that could be connected to CWP. Although the Petitioner suffered from recurrent dyspnea, other causes of the Petitioner's inability to work included his back and knee issues. Therefore, the Arbitrator finds that the Petitioner has not proved disablement due to CWP by a preponderance of the evidence.

Lastly, Section 1(f) of the Act provides that no compensation shall be payable for or on account of any occupational disease unless disablement occurs within two years after the last day of the last exposure to the hazards of the disease. Based on the findings above, this issue is not reached.

Based on all of the above, the Arbitrator finds that the Petitioner has not proved by a preponderance that he suffers from a compensable occupational disease, as defined by the Act, that arose out of and in the course of his employment with the Respondent.

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

This issue is addressed above.

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

In light of the findings above, the Arbitrator does not reach this issue.

These issues were addressed above under Issue C.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC004124
Case Name	Edward Hines v. M-Class Mining LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0117
Number of Pages of Decision	23
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Kirk Caponi
Respondent Attorney	Kenneth Werts, Julie Webb

DATE FILED: 3/14/2023

/s/Marc Parker, Commissioner

Signature

DISSENT: /s/Marc Parker, 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 Accident, Causal Connection	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Edward Hines,

Petitioner,

vs. No. 19 WC 004124

M-Class Mining, LLC,

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 occupational disease, causal connection, nature and extent, and §1(e) - §1(f)/disablement, and being advised of the facts and law, reverses the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Petitioner, a 66-year-old coal miner, alleged he developed occupational diseases including pneumoconiosis and chronic bronchitis as a result of working underground as a coal miner for various employers over 41 years. He lost no time from work for his alleged conditions and worked for Respondent the final nine years of his career until he retired on January 4, 2019.

At the February 16, 2022 arbitration hearing, Petitioner testified that he began experiencing shortness of breath and breathing difficulties while he was still working in the mines. He claimed his symptoms had eased a bit since his retirement, but he still coughs and "hacks up" phlegm with exertion. Petitioner admitted that his breathing problems did not prevent him from performing his job.

Petitioner presented the opinions of two retained medical experts. Dr. Smith, a certified B-reader, interpreted Petitioner's January 7, 2019 chest x-ray as showing the presence of simple coal workers' pneumoconiosis ("CWP"). Dr. Istanbouly, a board-certified pulmonologist, examined Petitioner on July 22, 2019 and diagnosed him with CWP and chronic bronchitis, mainly from mine exposures. Dr. Istanbouly opined Petitioner could no longer regularly work as a coal miner for over 40 hours/week. Dr. Istanbouly is not a certified B-reader.

Respondent presented the opinions of two retained certified B-readers, Dr. Meyer, a board-certified radiologist, and Dr. Rosenberg, a board-certified pulmonologist. Both read Petitioner's January 7, 2019 chest x-rays and opined they did not show CWP. Dr. Rosenberg also reviewed Petitioner's medical records but did not examine him. In addition to concluding Petitioner did not have CWP, Dr. Rosenberg opined that Petitioner's records did not reveal the presence of chronic bronchitis or respiratory problems, Petitioner was not disabled from a pulmonary perspective, and he was capable of performing heavy manual labor. Dr. Rosenberg attributed Petitioner's cough to the Lisinopril medication he was taking for hypertension.

The Arbitrator concluded that Petitioner proved he suffered from the CWP and chronic bronchitis which arose out of and in the course of his employment. The Arbitrator found Petitioner's experts more persuasive than Respondent's and awarded Petitioner 5% loss of the person-as-a-whole under §8(d)2. In so finding, the Arbitrator relied upon Dr. Istanbouly's opinions that Petitioner suffered from simple, early-stage CWP and Dr. Smith's reading of the chest x-rays as positive for CWP. The Arbitrator gave greater weight to Dr. Istanbouly's opinions because he alone examined Petitioner and took a history from him. The Arbitrator also found Petitioner credible, concluding there was no reason to doubt his testimony at arbitration or what he reported to Dr. Istanbouly.

The Commission views the evidence differently than the Arbitrator. Petitioner testified at the February 2022 arbitration hearing that his chronic cough and breathing difficulties began years earlier, while he was still working in the mines. There is mention of chronic cough in two individual hospital records (one each dating from 2008 and 2016) and once in a 2016 office note of Petitioner's primary physician, Dr. Muniz. However, Petitioner admitted that he had not discussed breathing difficulties with Dr. Muniz. Further, Dr. Muniz reported in numerous office notes that Petitioner had no chronic cough or shortness of breath, and his lungs were consistently noted to be clear to auscultation. Dr. Istanbouly's September 14, 2020 report also documented Petitioner's admission to having no significant exertional dyspnea and being able to walk 3-5 miles without breathing problems.

CWP

A diagnosis of CWP is usually made upon the reading of a chest x-ray by a B-reader. The opinions of B-readers are usually considered more reliable than those of non-B-readers. Dr. Istanbouly is not a B-reader, and the Commission does not find his opinion that Petitioner developed CWP from coal dust inhalation as persuasive as did the Arbitrator. Dr. Istanbouly admitted he did not know the difference between a 1/0 profusion and a 0/1 profusion on chest x-ray films and could not state whether Petitioner's showed a 1/0 or a 0/1 profusion. Dr. Istanbouly acknowledged he relied on Dr. Smith's interpretation of Petitioner's chest imaging.

Dr. Smith was the only B-reader who opined Petitioner suffered simple coal worker's pneumoconiosis and he was not presented for a deposition. He found no opacities in Petitioner's upper lung zones; only small ones in his middle and lower lung zones.

The Commission finds the opinions of Respondent's two B-reader experts that Petitioner did not develop CWP more persuasive. Both gave depositions in which they explained the bases of their opinions. Dr. Rosenberg is well-qualified, having been certified as a B-reader in 2000 and recertified four times since. He also worked as a medical advisor for the Social Security Administration and the Industrial Commission of the State of Ohio. Dr. Rosenberg reviewed Petitioner's chest x-ray and opined that it showed no opacities.

Dr. Meyer testified regarding the training and examination required to become a B-reader. He served as a board examiner for the American Board of Radiology and is on the American College of Radiology Pneumoconiosis Task force. He was engaged in redesigning the course, the exam, and submitting cases for the B-reading training module and exam. He currently reads an average of 200 to 250 x-rays per week. Dr. Meyer read Petitioner's chest x-ray and opined that it was normal, with no small opacities, large opacities, or findings of CWP. Dr. Meyer testified that CWP is typically an upper lung zone predominant process. He opined that the small opacities which Dr. Smith reportedly saw in the middle and lower lung zones of Petitioner's chest x-ray were not consistent with the general progression of CWP.

Chronic Bronchitis

The Commission also finds more persuasive Dr. Rosenberg's opinions that Petitioner did not develop work-related chronic bronchitis. Dr. Rosenberg has been board-certified in pulmonary disease since 1980 and holds additional board certifications in internal medicine and occupational medicine. He has taught pulmonary physiology, pulmonary medicine, respiratory physiology and pulmonary disease.

Although Dr. Rosenberg did not examine Petitioner, he did review his prior medical records, something which Dr. Istanbouly did not do. Dr. Rosenberg did not believe Petitioner had chronic bronchitis, which is defined by the World Health Organization and the American Thoracic Society as having, "a chronic cough and sputum production for three months out of a given year, for two consecutive years." Dr. Rosenberg testified that the history Petitioner provided to Dr. Istanbouly – that his cough was mostly dry and only occasionally productive – was not consistent with that definition.

Dr. Istanbouly diagnosed Petitioner with chronic bronchitis, which he stated was - with COPD and emphysema - all the same disease and all considered CWP under the federal program. However, Dr. Istanbouly acknowledged that coughing can be caused by having taken the drug Lisinopril or by having GERD. Dr. Istanbouly also admitted Petitioner's cough was not triggered by dust, smoke, fumes or vapors, but rather by laughing hard. His spirometry measures were within normal range, and he did not complain of exertional dyspnea. Dr. Istanbouly stated that Petitioner

could have CWP even though his pulmonary impairment was not measurable by pulmonary function tests, he had a normal physical exam and normal PFTs and ABGs, and he had no complaints of shortness of breath. The Commission finds Dr. Istanbouly's opinions somewhat inconsistent.

Dr. Rosenberg did acknowledge that coal mine dust can cause chronic bronchitis in some workers. However, Petitioner's pulmonary function tests showed a normal FEV_1/FVC ratio. Dr. Rosenberg opined that there was no evidence that Petitioner's sinusitis and allergic rhinitis were permanently aggravated by his work exposure to mine dust. His lung capacity was normal; there was no impairment in gas exchange. According to Dr. Rosenberg, the tests showed Petitioner was capable of heavy manual labor from a respiratory standpoint.

Considering the record as a whole, the Commission finds Petitioner did not meet his burden of proving he developed CWP or chronic bronchitis as a result of any exposures while working for Respondent. The Commission reverses the Arbitrator's finding that Petitioner proved a work-related accident/exposure on January 4, 2019, or that any current condition of ill-being is causally connected to such accident/exposure.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 19, 2022, is hereby reversed, and all benefits are 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 bond requirement in Section 19(f)(2) of the Act is applicable only when "the Commission shall have entered an award for the payment of money." 820 ILCS 305/19(f)(2). As there are no monies due and owing, there is no bond set by the Commission 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.

March 14, 2023

MP/dk
o-3/2/23
068

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

DISSENT

I respectfully dissent from the Decision of the majority. I find the reasoning provided by the Arbitrator persuasive and would have found Petitioner had proved he suffered from an occupational disease which was causally related to his work exposure. I would have affirmed and adopted the Arbitrator's Decision.

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC004124
Case Name	HINES, EDWARD v. M-CLASS MINING, LLC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Kirk Caponi
Respondent Attorney	Kenneth Werts

DATE FILED: 5/19/2022

THE INTEREST RATE FOR THE WEEK OF MAY 17, 2022 1.49%

/s/Linda Cantrell, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

EDWARD HINES
Employee/Petitioner

v.

M-CLASS MINING, LLC
Employer/Respondent

Case # **19** WC **004124**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **February 16, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Sections 1(d) - 1(f) of the Occupational Diseases Act.**

FINDINGS

On **01/4/19**, 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 **$60,704.00**; the average weekly wage was $**1,167.38**.

On the date of accident, Petitioner was **66** 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 $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

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

ORDER

Respondent shall pay Petitioner the sum of $**700.43**/week for a period of **25** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused permanent partial disability to the extent of **5% loss of Petitioner's body 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.

MAY 19, 2022

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

EDWARD HINES,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 19-WC-004124
	)	
M-CLASS MINING, LLC,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on February 16, 2022 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 41 years. The Application alleges a date of last exposure of January 4, 2019. The issues in dispute are disease, causal connection, the 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 69 years old, married, with no dependent children. He has a high school diploma. Petitioner worked 41 years and 5 months in the coal mining industry all of which were underground. In addition to pure coal dust, he was regularly exposed to and breathed silica dust and roof bolting glue fumes.

Petitioner last worked in the mines on 1/4/19 at which time he retired. He was employed by Respondent as a supply man and was exposed to coal dust on his last day of employment. Petitioner started working in the mines in 1975 for Old Ben Coal Company. He was a general laborer and one of his job duties included belt shoveling. A belt shoveler shovels coal that falls off the belts, putting it back on the belts to be taken out of the mine. Petitioner also did outby work near the entrance of the mine. He worked in idle sections where he prepared the area for production by scooping and cleaning up coal that had fallen off the ribs. He also hauled materials and equipment up for the next shift. Petitioner performed this job for approximately five months. Petitioner then became a shuttle car operator where he took coal from the face of the mine where it was being cut and transported it to the belts to be taken out of the mine. Petitioner performed this job for approximately nine months before becoming a roof bolter. Roof bolters drill holes into

the ceiling of the mine and insert a pole to help support the roof. Epoxy glue pins were placed in the hole before the bolts were screwed in to secure the roof bolts. Sometimes the pin would break and expose the epoxy glue. Petitioner described the odors from the glue pins as very strong. Petitioner was a roof bolter for approximately five years. Petitioner then became a long wall prop setter. The long wall is a shear that cuts the coal from the face of the mine. Petitioner moved the shields of the long wall so the long wall could advance. He did this job for approximately four years. For the next five years, Petitioner operated the long wall shear. Petitioner describes the long wall as creating quite a bit of dust as it cut the coal. He also rock dusted where he took silica dust and put it on the ribs of the mine to control potential fires. Petitioner spread the dust by hand and with a blower. Petitioner described this job as dusty. Petitioner left Old Ben in 1996 and worked the next two years out of the mining industry as a truck driver. In 1999, Petitioner became employed by American Coal Company where he primarily worked on the long wall. He worked there for over eleven years until 2010. Petitioner then became employed by M-Class Mining as a supply man up until the time he retired. A supply man takes materials from the surface, loads them in a cart and goes down and distributes them throughout the mine. Petitioner was in all areas of the mine delivering supplies.

Petitioner first started noticing breathing problems when he worked at Old Ben. He would cough up a lot of coal dust at the end of his shift. Petitioner testified that his breathing got a little better when he went to M-Class because he was not in the dust as much. Petitioner testified that since leaving the mine, his breathing has gotten a little better but he sometimes still coughs and hacks up phlegm with exertion. Petitioner testified he can walk between a quarter to a half a mile before starting to breathe hard. Petitioner's breathing affects him if he works hard in his garden that measures 50' x 50'. If he exerts himself, he has to stop and rest before continuing with his work. He testified that his breathing difficulties affect his daily activities very little since he is inactive due to the COVID-19 pandemic. His only other hobby is fishing.

Petitioner's treating doctor is Dr. Muniz. Petitioner testified he has not spoken to Dr. Muniz about his breathing difficulties. Petitioner is not currently a smoker. He smoked for approximately seven or eight years in his teenage years to his early twenties. He does not take breathing medication. Besides breathing problems, Petitioner describes having a bad knee and takes medications for blood pressure, thyroid, and diabetes.

On cross-examination, Petitioner testified he receives a pension from the United Mine Workers of America and 401K benefits from American Coal and M-Class Mining. Petitioner testified he treated with Dr. Tibrewala for GERD. He agreed he underwent chest x-ray screenings by NIOSH for black lung while employed in the mines.

MEDICAL HISTORY

Petitioner was examined by Dr. Suhail Istanbouly on 7/22/19. Dr. Istanbouly testified by way of evidence deposition on 9/14/20. (PX1) Dr. Istanbouly is board-certified in internal medicine, pulmonary medicine, critical care medicine and sleep medicine. He testified that Petitioner's FEV1 and FVC were within the range of normal. Dr. Istanbouly diagnosed simple coal worker's pneumoconiosis and recurring episodes of chest tightness due to bronchospasm/chronic bronchitis. Bronchospasm indicates cough clinically, cough, wheezing, and shortness of breath.

Chronic bronchitis is persistent respiratory symptoms, persistent cough on a daily basis for more than three months per year for at least two consecutive years or six months within one year. Dr. Istanbouly felt Petitioner met the criteria for chronic bronchitis. Under AMA disability guidelines, sixth edition, Petitioner tested at 74%, which is below the normal range of 75%. Dr. Istanbouly reviewed a chest x-ray and found mild interstitial changes, more prominent in the mid and lower zones, consistent with simple CWP. Dr. Istanbouly related Petitioner's CWP and bronchospasm/chronic bronchitis to his long-term coal dust inhalation. Dr. Istanbouly testified that if a chest x-ray indicates scattered reticulonodular changes they are describing interstitial lung disease which is consistent with CWP. CWP requires a tissue reaction in addition to the deposition of coal mine dust in the lungs called scarring or fibrosis. The macule of CWP or nodule trapped in coal mine dust surrounded by that fibrosis or scarring is with a halo of focal emphysema. That macule or nodule cannot perform the same function as normal healthy lung tissue. Dr. Istanbouly testified that it is possible for a person to begin their coal mining occupation at the top of the range of normal, leave at the bottom of the range of normal, and have a significant loss of lung function yet at both times be within the range of normal. In its early stages, a person can have CWP despite having no complaints of shortness of breath, having normal PFTs, ABGs, and physical examination. If a miner has CWP that is progressing, there is no medicine or medical treatment that can stop or reverse the progression. If a person has emphysema, COPD, chronic bronchitis, asthma or CWP, the best advice for them is to avoid the agents that can cause and aggravate them. Chronic bronchitis reflects chronic inflammation of the small airways causing the patient to cough on a daily basis at least three months per year or two consecutive years. In its early stages, you can have chronic bronchitis despite having normal chest x-rays and normal pulmonary function testing. In its early stages a person can have CWP and have normal radiographic studies.

B-reader, Dr. Henry K. Smith reviewed a grade 1 chest x-ray dated 1/7/19. (PX2) Dr. Smith found interstitial fibrosis of classification p/p, mid and lower zones involved bilaterally of a profusion 1/0. No chest wall plaques or calcifications were seen with normal heart size. There was a calcified aorta. Dorsal scoliosis and spondylosis were appreciated. Dr. Smith's impression was simple coal worker's pneumoconiosis with small opacities, p/p, mid and lower zones involved bilaterally of a profusion 1/0.

Respondent requested Dr. Cristopher Meyer review a PA radiograph dated 1/7/19 from Harrisburg Medical Center. Dr. Meyer testified by way of evidence deposition on 8/6/20. (RX1). Dr. Meyer has been board certified in radiology since 1992 and has been a B-reader since 1999. Dr. Meyer is currently co-director of the American College of Radiology. As a member of the ACR Pneumoconiosis Task Force, he helped complete a new syllabus for the new course as well as a test that was delivered to NIOSH in 2017. Dr. Meyer testified that one of the most important parts of the B-reading training and examination is making the distinction between a film with profusion of 0/1 which is a normal examination from 1/0 which is an almost normal but slightly abnormal examination. 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. Coal workers' pneumoconiosis (CWP) is characteristically described as small round opacities. Diseases that cause pulmonary fibrosis, like asbestosis, are described by 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 when he wants to determine the existence of lung disease, the gold standard is pathologic review of the tissue itself rather than radiology. Dr. Meyer testified that making the distinction between 0/1 and 1/0 profusion is one of the most difficult tasks of the B-reader. Dr. Meyer testified that very rarely will CWP be found in the mid and lower lung zones and not in the upper lung zones. Dr. Meyer testified there are studies that show that at autopsy 50% or more of long-term coal miners have coal macules that can be diagnosed by pathology that have not reached the degree of severity to be seen on chest x-ray. He 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. He testified that if he finds a chest x-ray negative, that would not necessarily rule out that the miner may have pneumoconiosis pathologically.

Dr. Meyer's interpretation was that the lungs were clear, with no small or large opacities. There were atherosclerotic calcifications in the thoracic aorta and some degenerative changes of the thoracic spine. He found no findings of CWP and clear lungs. He testified that to his knowledge, once there is CWP that is progressing, there is no medicine or anything modern medical science can do to stop or reverse the progression. Removing the worker from the exposure is the best response. It is true that CWP can be considered a chronic progressive disease in some coal miners. If a person has CWP at any time in their life, inasmuch as the only thing that causes CWP is coal mining exposure, it would be true they probably had CWP at some level when they left the coal mine. Silica in the coal mine generally comes from the rock that is associated with or intermixed with coal that is being mined. Occupations such as roof bolting or drilling or shooting, where you disturb the coal and there may be more rock involvement, tend to have greater silica exposures. Simple CWP at a level of 1/0 may take ten years or more to develop. Dr. Meyer testified that is would be fair to say that a miner that has 1/0 CWP probably would not know he has it until he gets a b-reading diagnosing it. Dr. Meyer testified that it is probably true that CWP could develop at any time during a coal miner's career, including in the last month or so, and may even show up radiographically a month or so after leaving the coal mine.

Dr. David Rosenberg performed a records review at Respondent's request and testified by way of evidence deposition on 10/27/20. (RX2) Dr. Rosenberg has been board certified in internal medicine since 1977. He received his board certification in pulmonary disease in 1980. In 1995, he received his board certification in occupational medicine. Dr. Rosenberg has been a B-reader since July 2000. He is a member of the American Thoracic Society and American College of Chest Physicians.

Dr. Rosenberg reviewed a chest x-ray for Petitioner dated 1/7/19. He testified that there were no parenchymal changes of pneumoconiosis and 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 determine whether small opacities are present. Dr. Rosenberg testified that his interpretation of the subject film is done with a side by side reading of the standard ILO films. He stated that the most common opacity type seen with pneumoconiosis

related to coal dust are round opacities. He stated the x-ray would need to have a profusion of 1/0 or higher for the film to be positive for pneumoconiosis. A profusion of 0/1 would be negative for pneumoconiosis and a profusion of 1/0 or higher would be positive for pneumoconiosis.

Dr. Rosenberg testified that pneumoconiosis can progress once the exposure ceases, but it is unusual. He testified there was no emphysema on the film that he reviewed and none of the other B-readers found emphysema. He agreed with the position of the American Thoracic Society that an older worker with a mild pneumoconiosis may be at low risk for working in currently permissible dust exposure levels in the mine until he reaches retirement age. Dr. Rosenberg testified that subradiographic pneumoconiosis does not have any clinical significance. He testified that Petitioner had a diffusion capacity of 100% and if Petitioner had subradiographic pneumoconiosis, there was no measurable impairment from it. Dr. Rosenberg testified that generally up to about 30% of individuals can have a negative x-ray and have a degree of CWP pathologically. Dr. Rosenberg testified that pathology is the gold standard for determining CWP.

Dr. Rosenberg testified that cough is not considered an objective determinant of pulmonary impairment. He testified that to determine whether an abnormality of pulmonary function exists, one needs objective testing which shows impairment. He testified that a variety of tests could be performed including spirometry, lung volumes, diffusing capacity, and blood gases which is required to make a determination of impairment. Dr. Rosenberg testified that with spirometry validity is determined by reproducibility. He stated that the spirometry performed on Petitioner by Dr. Istanbouly was valid and showed an increased variability in spirometry values and it did not meet validity criteria. Dr. Rosenberg testified that dysphasia or trouble swallowing and GERD are conditions associated with cough and shortness of breath. He testified that the constellation of symptoms of dysphasia and GERD can mimic cardiac etiology in an individual.

Dr. Rosenberg testified that chronic bronchitis is regular cough and sputum production for three months of the year for two consecutive years. He opined that based upon the medical records he reviewed that Petitioner had an occasional productive cough, Petitioner did not suffer from chronic bronchitis. Dr. Rosenberg testified that sinusitis and allergic rhinitis are conditions common to the general public. He testified there was no evidence in the medical he reviewed of those conditions being aggravated on a permanent basis by Petitioner's employment. Dr. Rosenberg testified that in the spirometry performed on Petitioner there was no evidence of obstruction. Dr. Rosenberg testified that with the forced vital capacity of 98% in the testing by Dr. Istanbouly and 94% according to NHANES III in the testing by Stat Care there was no concern about a restriction in Petitioner. Dr. Rosenberg testified that Petitioner's total lung capacity exceeded 100% of predicted which ruled out restriction. He testified that Petitioner's diffusion capacity was 100% which was normal. He testified that Petitioner did not have any impairment in gas exchange.

Dr. Rosenberg testified that he is familiar with the *AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition*. He testified that if he applied Table 5-4 of the *Guides* to the results of Petitioner's pulmonary function testing he would fall in Class 0 impairment. Dr. Rosenberg testified that chest imaging is not a factor in determination of impairment using the *AMA Guides*. Dr. Rosenberg agreed with the *Guides* that the correlation of chest x-ray

interpretations and physiologic measures of impairment is poor. Dr. Rosenberg testified that from a respiratory perspective, Petitioner was capable of heavy manual labor. He opined Petitioner did not have any type of lung disease or impairment related to past coal mine dust exposure.

Dr. Rosenberg testified that as a general rule, CWP starts in the upper lung zones that can involve all lung zones. He testified that it would not be expected, as a general pattern, for a disorder that predominantly involves the mid and lower lung zones to be a coal mine dust related disorder. Dr. Rosenberg testified that Petitioner was taking Lisinopril which was a blood pressure pill that commonly causes a cough. He testified that Petitioner started taking Lisinopril on 7/30/14 for hypertension and on that date his review of systems stated he had no cough.

Dr. Rosenberg testified that Petitioner was prescribed an inhaler by his black lung doctor which based on the medical was Dr. Istanbouly. Dr. Rosenberg testified that based upon the objective testing that was performed by Dr. Istanbouly and at Stat Care, there was no reason for Petitioner to be using an inhaler. Petitioner's spirometry was normal and he had no evidence of airflow obstruction.

On cross-examination, Dr. Rosenberg agreed that you can have CWP with normal pulmonary function testing and the same is true with bronchospasm. A person can have loss or reduction of lung function and still be within the range of normal on pulmonary function tests. CWP can progress even after the miner leaves the coal mine. If an x-ray for a coal miner is read as positive for CWP ten years after leaving the mine, it is probably true that he had some level of CWP when he left the mine. Dr. Rosenberg agreed with the premise that a person can have CWP and have normal pulmonary function tests, normal blood gases, normal physical exam of the chest, and no symptoms. A coal miner with simple CWP, until he gets a b-reading, probably would not know he has it. Inhalation of coal mine dust can result in emphysema, chronic bronchitis, COPD, and shortness of breath. Dr. Rosenberg testified that he has heard of patients who had CWP that progressed after leaving the mine resulting in complicated CWP and death. He has also known of patients that had CWP that progressed after leaving the mine and eventually died of corpulmonale. If a miner leaves the mine with dust trapped in his lungs some of that dust will remain for the rest of his life. A person could have CWP with a chest x-ray that is considered normal by some readers.

Medical records of Dr. Javier Muniz were admitted into evidence. RX3) Petitioner was seen on 2/12/13 in follow up for his hypothyroidism. His review of systems was negative for chronic cough, cough, dyspnea or wheezing. Physical examination of the chest revealed the lungs clear to auscultation. (RX3, p. 216-218) Petitioner was seen on 5/3/13 for hypertension and sinusitis/cough. He complained of sinus pressure and had been evaluated at work. He was given a couple of medications including Singular and Patanase nasal spray. Review of systems respiratory was negative for chronic cough, cough, dyspnea or wheezing. Physical examination of the chest revealed the lungs clear to auscultation. The assessment included sinusitis. (RX3, p. 212-215) Petitioner was seen on 11/18/13 for hypothyroidism and hyperlipidemia. Medication taken at that time was Synthroid. Review of systems respiratory was negative for chronic cough, cough, dyspnea or wheezing. Physical examination of the chest revealed the lungs clear to auscultation. (RX3, p. 208-211)

Petitioner was seen on 3/24/14. Review of systems respiratory revealed no chronic cough, cough, dyspnea or wheezing. Physical examination of the chest revealed the lungs clear to auscultation. (RX3, p. 204-207) On 7/30/14, review of systems respiratory remained negative. Physical examination of the chest revealed the lungs clear to auscultation. Petitioner was prescribed Lisinopril for hypertension. (RX3, p. 200-203). On 8/27/14, Petitioner was seen for hypertension and denied dyspnea and cough. (RX3, p. 196-199) On 12/22/14, Petitioner complained of non-productive cough since Friday, and he denied dyspne. It was noted that his cough was worse when lying down. The company doctor prescribed Azithromycin. Review of systems respiratory was negative for dyspnea but positive for cough. Physical examination of the chest was positive for non-productive cough, but auscultation was normal. (RX3, p. 192-195)

On 1/26/15, Petitioner denied dyspnea. His review of systems respiratory was negative for chronic cough, cough, dyspnea or wheezing. Physical examination of the chest revealed the lungs clear to auscultation. It was noted that his job at the mine was sedentary. (RX3, p. 188-191) On 6/15/15, Petitioner denied dyspnea. Physical examination of the chest revealed the lungs clear to auscultation. (RX3, p. 183-187) On 10/13/15, review of systems respiratory was negative for chronic cough, cough, dyspnea or wheezing. Physical examination of the chest revealed the lungs clear to auscultation. (RX3, p. 176-180)

On 3/4/16, Petitioner's review of systems respiratory was negative for dyspnea and his lungs were clear to auscultation. (RX3, p. 172-175) On 4/19/16, in follow up to hospital discharge regarding low heart rate and dry cough, it was noted Petitioner had shortness of breath. His dry cough was moderate in intensity. Review of systems respiratory was positive for cough but negative for chronic cough, dyspnea, and wheezing. Examination of the chest revealed hacky cough, but his lungs were clear to auscultation. Assessment was chronic cough. (RX3, p. 167-171) On 9/12/16, in follow up for Metformin medication, his symptoms included chronic cough, obstructive sleep apnea, and bradyarrhythmia. His review of systems respiratory was negative for chronic cough, cough, dyspnea, or wheezing. Physical examination of the chest revealed the lungs clear to auscultation. (RX3, p. 144-153)

On 2/15/17, review of systems respiratory was negative for dyspnea and his lungs were clear to auscultation. (RX3, p. 156-161) On 7/21/17 and 11/20/17, review of systems respiratory was negative for chronic cough, cough, dyspnea, or wheezing and his lungs were clear to auscultation. On 4/10/18, review of systems respiratory was negative for chronic cough, cough, dyspnea, or wheezing and the lungs were clear to auscultation. (RX3, p. 140-143) Review of systems respiratory remained negative and his lungs were clear to auscultation when seen on 8/7/18 and 12/5/18. (RX3, p. 130-139)

On 4/10/19, Petitioner denied dyspnea or fatigue. Petitioner reported he walked for exercise three to four times per week. His review of systems respiratory was negative for chronic cough, cough, dyspnea, or wheezing. The lungs were clear to auscultation with no adventitious sounds. (RX, p. 122-127) On 8/13/19, Petitioner followed up for multiple conditions including shortness of breath. Petitioner reported that he saw a black lung doctor and was told he may need an inhaler. He had a history over the past summer of four episodes in which he felt shortness of breath. He reported they always occurred when eating or drinking. He reported that he felt like he could not breathe when it occurred. Review of systems respiratory was negative for cough,

chronic cough, dyspnea, or wheezing. His lungs were clear to auscultation with no adventitious sounds. Dr. Muniz charted that Petitioner's shortness of breath was most likely secondary to difficulty swallowing and may be an esophageal spasm or even reflux. (RX3, p. 112-117) On 9/16/19, Petitioner followed up for complaints of shortness of breath and dysphasia. He had been taking PPI for two to three weeks and noticed less issues with discomfort. He was assessed with chronic cough with an onset date of 4/19/2016. Physical examination of the chest revealed no adventitious sounds. (RX3, p. 99-102)

On 1/20/20, review of systems respiratory was negative for cough, shortness of breath or any adventitious sounds. Physical examination of the chest revealed abnormal effort and breath sounds with no adventitious sounds. (RX3, p. 92-97) Petitioner's review of systems respiratory was negative for cough or shortness of breath when seen on 3/13/20. (RX3, p. 77-91) On 3/27/20, Petitioner complained of a sore throat for four weeks after swallowing tomato juice and choking on it. He denied shortness of breath. Review of systems respiratory was negative for cough or shortness of breath. Physical examination of the chest revealed normal breath sounds but no adventitious sounds. (RX3, p. 71-76) On 7/15/20, it was noted Petitioner exercised four to five times per week. Review of systems respiratory was negative for cough or shortness of breath. Physical examination of the chest revealed normal effort and breath sounds. (RX3, p. 63-70) Petitioner's review of systems respiratory was negative for cough or shortness of breath when seen on11/16/20 and 12/15/20. His physical examination of the chest on those dates revealed normal effort and breath sounds. (RX3, p. 49-62)

On 8/3/21, Petitioner complained of frequent leg cramps. He reported that he had a bad knee, and he did not walk much anymore because his leg hurt. Review of systems respiratory was positive for occasional cough but negative for shortness of breath or wheezing. Physical examination of the chest revealed normal effort and breath sounds with no adventitious sounds. (RX3, p. 19-24) On 9/1/21, review of systems respiratory was positive for chest tightness (improved) but negative for cough or shortness of breath. Physical examination of the chest revealed normal effort and breath sounds with no adventitious sounds. With regard to this substernal chest pain, it was indicated that cardiolyte stress testing was negative. (RX3, p. 13-17) On 11/30/21, Petitioner complained of right eye redness. He denied cough. Review of systems respiratory was negative for cough, shortness of breath or wheezing. Physical examination of the chest revealed normal effort and breath sounds with no adventitious sounds. (RX3, p. 4-8)

Medical records of Herrin Hospital were admitted into evidence. (RX4) Petitioner underwent a chest x-ray on 4/25/08 for chronic cough. The radiologist found no suspicious pulmonary nodules and concluded it was normal chest for age. (RX4, p. 133). Petitioner underwent nuclear medicine and myocardial spec stress test on 12/3/09 for substernal chest pain. The study was interpreted as revealing normal stress/rest myocardial profusion screens and normal left ventricular systolic function. (RX4, p. 122-126)

Petitioner was seen on an emergent basis on 3/31/16 and reported he could not breathe that morning when he woke up. He reported belching which alleviated his symptoms. It was noted that he was a former smoker. He related shortness of breath and a productive cough, with pain in the middle of his chest. Physical examination of the chest revealed the lungs to be clear. He related occasional cough with white sputum. Physical examination of the chest revealed

normal breath sounds and no wheezing. (RX4, p. 28-34) On 3/31/16, Petitioner complained of breathing problems and chest pain. He woke that morning with wheezing, shortness of breath, and low external chest pain. Petitioner reported occasional cough with white sputum. A chest x-ray was performed and was interpreted as revealing a few nodular opacities over the lower lung zones, most of which may represent bronchovascular shadows. There was a 4mm similar nodule on the right within the base which was indeterminate and could represent a granuloma or another type of nodule. (RX4, p. 58). Cardiac consultation was obtained during the hospitalization. Assessment was atypical chest pain, bradycardia, hypertension and hypothyroidism. Petitioner complained a burning-like sensation in his throat and a dry cough with frequent clearing of his throat. The doctor indicated that symptoms were consistent with GERD and no further cardiac workup was recommended. (RX4, p. 40-42) Another chest x-ray was taken on 3/31/16 and was interpreted as revealing numerous reticular nodules throughout the lung field which could be the result of prior granulomatous disease. There was no acute infiltrate or congestive failure. Follow up imaging was recommended. (RX4, p. 56).

Medical records of Dr. Sushil Tibrewala were admitted into evidence. (RX6) On 5/8/13, Petitioner reported blood in his stool. Review of systems respiratory was negative for cough or dyspnea. Physical examination of the chest revealed the lungs clear to auscultation with no adventitious sounds. (RX6, p. 41-43) On 4/29/19, a history of colon polyps was noted. Review of systems respiratory was negative for cough or dyspnea. Physical examination of the chest revealed the lungs clear to auscultation with no adventitious sounds. (RX6, p. 37-40) On 8/19/19, Petitioner complained of problems swallowing food sometimes even water. It felt like it would get caught in his throat and would swell up and he could not breathe. This had been present for three months. His review of systems respiratory was negative for cough or dyspnea and his lungs were clear to auscultation with no adventitious sounds. The doctor's assessment included dysphasia, unspecified. (RX6, p. 33-36) On 9/4/19, Petitioner underwent esophagogastroduodenoscopy with biopsies. Postoperative diagnoses were hiatal hernia and gastroesophageal reflux disease. (RX6, p. 30)

Medical records of Prairie Cardiovascular Consultants were admitted into evidence. (RX5) On 5/23/16, Petitioner presented with chest pain without exertional symptoms. Review of systems respiratory was positive for shortness of breath. Physical examination of the chest revealed the lungs clear to auscultation. (RX5, p. 100-102) On 6/12/17, review of systems respiratory was negative for cough and new or significant shortness of breath. Physical examination of the chest revealed normal breath sounds. Dr. Khan noted no significant dyspnea on exertion and felt Petitioner was doing well. (RX5, p. 73-76) On 9/24/18, it was noted that Petitioner was a former smoker of a pack a day for 10 years having quit 40.7 years prior. Review of systems respiratory was negative for cough or new or significant shortness of breath. Physical examination of the chest revealed normal effort and breath sounds. Clinically, Petitioner was noted to be doing well. (RX5, p. 62-66) On 9/23/19, Petitioner denied worsening dyspnea on exertion. Clinically he was stable. Review of systems respiratory was positive for cough, shortness of breath, and wheezing. Physical examination of the chest revealed normal effort and breath sounds. (RX5, p. 41-45) On 9/21/20, Petitioner was seen for a one year follow up. Review of systems respiratory was negative for cough or new or significant shortness of breath. Physical examination of the chest revealed normal effort and breath sounds. Dr. Khan felt Petitioner was doing well. (RX, p. 20-24) On 9/22/21, review of systems respiratory was

negative for cough or new or significant shortness of breath. Physical examination of the chest revealed normal effort and breath sounds with no adventitious sounds. Petitioner was doing well. Petitioner related substernal chest pressure-like sensation which radiated into his neck. This was classically associated with food. It was noted Petitioner had a history of gastroesophageal reflux disease and took medication for same. The doctor felt Petitioner's chest pain was likely related to GERD. (RX5, p. 2-6).

CONCLUSIONS OF LAW

Issue (C): Did an occupational disease occur that arose out of and in the course of Petitioner's employment with Respondent?

Issue (F): Is Petitioner's current condition of ill-being casually related to his occupational exposure?

The Arbitrator finds that Petitioner was last exposed to an occupational disease that arose out of and in the course of his employment with Respondent. Section 1(d) of the Illinois Workers' Compensation Diseases Act states, in pertinent part:

> "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 needs 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...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." 820 ILCS 310/1(d)

The Arbitrator found Petitioner to be a credible witness. Petitioner worked as a coal miner for over 41 years, all of which were underground. He retired from coal mining at the age of 66. Petitioner had a brief history of cigarette smoking and quit over 40 years ago. During Petitioner's coal mining career he was exposed to coal dust, silica dust, roof bolting glue fumes, and diesel fumes. His breathing problems did not cause him great difficulty in his last mining job, and since his current activities are very sedentary and he has no coal mine dust exposure, his symptoms do not have a great effect on his activities of daily living.

The Arbitrator finds the opinions of Dr. Istanbouly more credible than those of Dr. Rosenberg. Dr. Istanbouly performed a complete black lung examination. His patient history included a detailed description of Petitioner's occupational history, work requirements, and perceived pulmonary health. Such history is required for a complete pulmonary examination by the AMA Guides, 6th Edition. Dr. Istanbouly is a highly credentialed pulmonologist with a long history of serving miners from southern Illinois. There was nothing in the record to call his

credibility into question. Dr. Rosenberg is also a highly credentialed pulmonologist. The Arbitrator does not take a position on the relative value of a complete records review versus a medical examination; however, in this case, the content and use of the records review require giving greater weight to the examination. Dr. Rosenberg never spoke to or examined Petitioner. This is significant as two of the three diseases alleged by Petitioner, chronic bronchitis and bronchospasm (asthma), depend to a great degree on patient history.

Dr. Rosenberg's records review noted only 13 record entries dealing with signs and/or symptoms of pulmonary or airways disease. The Arbitrator's review of Petitioner's medical records revealed approximately 63 entries. Dr. Rosenberg documented only one diagnosis of relevant disease, but the records apparently contain three relevant diagnoses. Dr. Rosenberg noted two entries of relevant prescription medication; however, the Arbitrator notes approximately 8 such entries. In total, Dr. Rosenberg documented 16 medical record entries relevant to this inquiry, but the records appear to have approximately 74 such entries. In other words, Dr. Rosenberg apparently either was not provided with, or did not recognize almost 80% of the relevant treatment records. It is the Arbitrator's conclusion that a records review which apparently contains only approximately 20% of the relevant entries is insufficient to support testimony as to what the records support or refute. It is certainly insufficient to opine as to the chronic nature of the diseases and symptoms at issue. In addition, Dr. Rosenberg testified that if there were more medical records from Dr. Muniz or Prairie Cardiovascular which he did not see, it is possible that such other records could impact his opinions. He testified, "I never saw a chronic cough. He had intermittent coughing related to sinusitis and related to different episodes when he was coughing. There's no indication in the file---actually, there was one notation, towards the end in '19, of chronic cough." The Arbitrator, however, found 13 entries of "chronic cough" and two of "ongoing cough." The Arbitrator finds the report and testimony of Dr. Rosenberg to be less credible than that of Dr. Istanbouly.

Dr. Rosenberg confirmed that an entry of Dr. Muniz indicated Petitioner was evaluated at work and prescribed Singulair and Patanase Nasal Spray on 5/3/13. He testified that both medications are used for allergies and that Singulair can also be used as a controller for different kinds of asthma or bronchospasm. He agreed that a person can have CWP, bronchospasm, or chronic bronchitis with normal PFTs.

The Arbitrator also finds that the records support Dr. Istanbouly's diagnoses of chronic bronchitis and bronchospasm. They contain approximately 17 entries of SOB, dyspnea, or difficulty breathing. They contain six entries of cough, four of productive cough, five of dry cough, two of ongoing cough, and 13 of chronic cough. At least six of the prescriptions appear to be related to cough and/or bronchospasm. The Arbitrator finds that these entries support both of Dr. Istanbouly's diagnoses. Dr. Rosenberg testified there is no objective test of cough to determine a level of impairment, and that just because there is no way to measure cough does not mean that it is without medical significance. Dr. Rosenberg also agrees with the American Thoracic Society (ATS) position that an older worker with a mild pneumoconiosis may be at low risk for working in currently permissible dust exposure levels in the mine until he reaches retirement age, which is not the same as saying the worker will be at no risk. Dr. Rosenberg admitted that in the last sentence of the paragraph from the ATS Statement he referenced, the ATS writes that if a person has CWP, there is no safe level of exposure. Dr. Rosenberg testified

on direct examination that subradiographic (pathologically determined) CWP does not have any clinical significance. However, he admitted that when CWP is determined pathologically, the abnormalities would be of the same general constitution as those that would be seen on radiographic study.

Dr. Rosenberg testified that simple CWP can progress once exposure ceases, but that it is unusual and only occurs in a minority of cases. He admitted that in a coal miner, his "exposure never ends" as when a long-term miner leaves the coal mine some amount of the coal or silica dust he inhaled will be trapped in his lungs for life. When informed that Dr. Meyer testified that as much as 50% of the weight of a miner's lungs can be accounted for by the coal mine dust that is trapped in them, Dr. Rosenberg responded, "I'm not aware of the exact percentage but clearly a great percentage of the weight could be related to coal dust." He testified that the tissue adjacent to the trapped dust would be exposed to such dust for the rest of the miner's life. Dr. Rosenberg testified that he has heard of patients who had CWP that progressed after they left the mine resulting in complicated CWP and death.

The Arbitrator recognizes that Petitioner's pulmonary function testing (PFTs) taken by both Dr. Istanbouly and Dr. Rosenberg were within the range of normal. The testimony of Dr. Rosenberg gives important meaning to such testing. He testified that the lungs have a great reserve capacity, and that a person can have a loss or reduction of lung function and still be within the range of normal. He also testified that a person could lose an entire lobe of a lung from surgery and still have PFT values within the range of normal; that a miner could lose up to one-third of his lung capacity due to injury or disease yet still be within the range of normal; and that being within the range of normal on PFTs does not mean the lungs are free of injury or disease.

Dr. Rosenberg testified that coal mine dust inhalation can result in chronic bronchitis and aggravate reactive airways disease on a transient basis. He testified that such inhalation can result in shortness of breath. He agreed that if a person has chronic bronchitis, the best medical advice is to stay away from further exposure to those agents that can cause and aggravate it. He acknowledged that Petitioner was diagnosed as having sinusitis and was treated for it and that the environment of a coal mine can cause and aggravate sinusitis.

Lastly, Dr. Rosenberg acknowledged that on 3/31/16 x-rays noted scattered reticulonodular changes and indeterminate nodular changes. Dr. Rosenberg admitted that reticulonodular changes are sometimes called interstitial changes; that the abnormality of CWP is called a macule or nodule; that the tissue reaction of CWP is called scarring or fibrosis; and that scar tissue cannot perform the function of normal, healthy lung tissue. The Arbitrator finds the opinions of Dr. Smith and Dr. Istanbouly are supported by objective evidence.

Based on the foregoing evidence, the Arbitrator concludes that Petitioner was exposed to an occupational disease that arose out of and in the course of his employment with Respondent. The Arbitrator further finds that Petitioner's current condition of ill-being is causally connected to his work exposure.

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

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

(i) **Level of Impairment**: Petitioner's pulmonary function testing was within the range of normal. Pursuant to the medical evidence and testimony, such results do not rule out the diagnoses of CWP or its related symptoms. The Arbitrator gives some weight to this factor.

(ii) **Occupation**: Petitioner voluntarily retired from the coal mines at the age of 66. He did not obtain subsequent employment. The Arbitrator gives some weight to this factor.

(iii) **Age**: Petitioner was 66 years old at the time of his last exposure. He is currently retired. The Arbitrator gives some weight to this factor.

(iv) **Earning Capacity**: Petitioner voluntarily retired at the age of 66. The Arbitrator places some weight on this factor.

(v) **Disability**: The medical testimony supports there is no cure for coal workers' pneumoconiosis and the condition is chronic. Petitioner's medical records reflect a history of shortness of breath, dry and chronic cough, and productive cough. The treatment records contain 63 references pertaining to Petitioner's pulmonary health. Petitioner testified that since leaving the mine, his breathing has gotten a little better, but he sometimes still coughs and hacks up phlegm with exertion. Petitioner testified he can walk between a quarter to a half a mile before starting to breathe hard. Petitioner's breathing affects him if he exerts himself while gardening. He testified that his breathing difficulties affect his daily activities very little since he is inactive due to the COVID-19 pandemic. The Arbitrator places greater weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator orders Respondent to pay Petitioner the sum of $**700.43**/week for a period of **25 weeks**, as provided in Section 8(d)2 of the Act, because the injuries sustained caused **5% loss of the body as a whole.**

Issue (O): Sections 1(d)-(f) of the Occupational Diseases Act.

Section 1(e) of the Occupational Diseases Act states, in pertinent part, "{d}isablement" means an impairment or partial impairment, temporary or permanent, in the function of the body

or any of the members of the body." 820 ILCS 310/1(e). The Arbitrator finds Petitioner has satisfied the requirements of Section (e) of the Act.

Section 1(f) of the Occupational Diseases Act states, in pertinent part, "[n]o 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." 820 ILCS 310/1(f). Petitioner last worked a day of coal mine employment on January 4, 2019. Petitioner has not worked in the coal mines and has not had any other exposure to coal mine dust since that date. The Arbitrator finds that Petitioner has proven his diseases and resultant disablement to be timely. The treatment records note chronic cough and shortness of breath while he was still working as a coal miner. The testimony supports the position that if a miner suffers from CWP at any time in his life, it is more likely than not that it would have been in existence at some level when he ended his daily occupational exposure to coal mine dust. In addition, the x-ray read by Dr. Smith and Dr. Istanbouly was taken prior to the expiration of Petitioner's 1(f) period.

Based on the totality of the evidence, and the factual findings above, the Arbitrator finds that Petitioner met the requirements of Sections 1(d)-(f) of the Occupational Diseases Act.

Arbitrator Linda J. Cantrell

DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC044551
Case Name	Jon Luchsinger v. Illinois Department of Corrections
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0118
Number of Pages of Decision	9
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Mitchell Horwitz
Respondent Attorney	Drew Dierkes

DATE FILED: 3/14/2023

/s/Maria Portela, Commissioner

Signature

23IWCC0118

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JON LUCHSINGER,

Petitioner,

vs. NO: 12 WC 44551

IL DEPT OF CORRECTIONS,

Respondent.

DECISION AND OPINION ON REVIEW

A document purported to be a Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of jurisdiction and being advised of the facts and law, hereby grants Petitioner's Motion to Dismiss Respondent's Petition for Review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1) An Arbitration hearing was held in this matter on December 16, 2021.

2) The Arbitrator issued a decision via CompFile which was delivered to the parties on July 6, 2022. The deadline for either party to file a review was August 5, 2022.

3) On July 19, 2022, Respondent uploaded a document in CompFile that purported to be a Petition for Review ("PFR").

4) On September 6, 2022, Petitioner filed a "Motion to Dismiss Respondent's Petition for Review" alleging that Respondent's electronic document was an empty PDF form with all empty fields and did not contain a statement of Respondent's specific exceptions to the decision of the Arbitrator. Petitioner argued, "Since Respondent did

not timely file a proper and complete Petition for Review of Arbitration Decision, specifically stating their exceptions to the decision of the Arbitrator, Respondent's Petition for Review is defective. Accordingly, Petitioner asks that the Commission dismiss Respondent's Petition for Review of the Arbitration Decision." *P's Motion to Dismiss at 3.*

5) On September 8, 2022, Respondent filed "Respondent's Joint Response to Petitioner's Motion to Dismiss Respondent's Petition for Review and Motion to File Amended Petition Instanter," which states, in part, that the PDF document on Respondent's attorney's computer is complete and shows that it was last modified on July 19, 2022 at 1:12 p.m., which is two minutes prior to Respondent's filing of the PFR in CompFile at 1:14 p.m. Respondent claimed it was "unaware that the Petition for Review on CompFile was blank until September 6, 2022, when Petitioner filed its Motion to Dismiss Respondent's Petition for Review." Respondent argued, "As a petition for review was timely filed, the Commission has jurisdiction to allow the correction of the technical/clerical error and the amendment of the Petition on CompFile to be amended to the correct version thereof." Respondent also argued, "Petitioner would suffer no prejudice if the Petition for Review that is currently in CompFile was amended…." *R's Response at 1-2.*

6) On November 2, 2022, a hearing was held before Commissioner Portela regarding Petitioner's Motion to Dismiss, and a record was made.

7) On November 9, 2022, Petitioner filed "Petitioner's Brief in Support of his Motion to Dismiss Respondent's Petition for Review Based on Lack of Subject Matter Jurisdiction" (hereafter referred to as "*P-Brief #1*").

8) On November 10, 2022, the Commission issued an Order continuing Petitioner's Motion to Dismiss until oral arguments, at which time the parties would argue the merits of the case but also would be granted an additional five minutes to argue the jurisdiction issue.

9) On December 29, 2022, Respondent filed "Appellant-Respondent's Statement of Exceptions and Brief in Support" (hereafter "R-Brief"), in which Respondent argued the merits of the case and made additional arguments regarding jurisdiction.

10) On January 17, 2023, Petition filed "Petitioner's Brief in Response to Respondent's Statement of Exceptions" (hereafter "P's Response").

The Commission initially notes that neither party cites any statute, rule, case or decision that specifically addresses the validity of a completely blank Petition for Review. We acknowledge that, before CompFile, it was highly improbable that a party could have filed such a document because the error most likely would have been noticed by the Commission staff and the blank form rejected. Therefore, this case appears to be one of first impression. Since this situation is unique to CompFile, we begin by discussing the Rules regarding electronic filing:

Section 9015.20 Format

a) Documents must be submitted in the format prescribed by the Commission or in PDF format directly from the program creating the document, rather than the scanned image of a paper document. **All electronically filed documents shall include the case caption and nature of filing. Each document shall include the typed name, e-mail address and telephone number of the attorney filing the document.**
…

Section 9015.30 Filing
…
c) **A person who files a document electronically shall have the same responsibility as a person filing a document in the conventional manner for ensuring that the document is complete, readable and properly filed.**
…

Section 9015.40 Signatures

a) When a signature is required, or when certain consequences are provided if a document is not signed, an electronic signature will suffice.

b) **Any document electronically filed with a subscriber identifier is deemed to have been signed by the holder of the user identification and password.**
…

Section 9015.60 Document Privacy and **Errors in Electronic Filings**
….
b) The Commission shall not be liable for malfunction or errors occurring in electronic transmission or receipt of electronically filed or served documents.

c) If the electronic filing is not filed with the Commission for any of the causes listed in this subsection (c), the Commission may, upon satisfactory proof, enter an order permitting the document to be subsequently filed effective the date the filing was first attempted. The causes the Commission may consider in making this decision are:

1) an error in the transmission of the document to the vendor that was unknown to the sending party;
2) a failure to process the electronic filing when received by the vendor;
3) a rejection by the Commission;
4) other technical problems experienced by the filer;
5) the party was erroneously excluded from the service list.

d) In case of a filing error, absent extraordinary circumstances, anyone prejudiced by the

Commission's order to accept a subsequent filing effective as of the date filing was first attempted shall be entitled to an order extending:

1) the date for any response; or
2) the period within which any right, duty or other act must be performed.

Although Respondent's computer screenshots (attached to *R's Response*) may support its claim that it *intended* to upload a completed PFR, there is no evidence that the file reflected on the screenshots is actually the one that Respondent uploaded to CompFile. At the hearing on Petitioner's Motion to Dismiss, Respondent's attorney admitted that he could not say that the document he uploaded was not blank. *11/2/22 Motion Hearing at 34-35*.

Therefore, there is insufficient evidence to indicate that the blank form was uploaded due to "an error in transmission" or the e-filing vendor's "failure to process the electronic filing" or "other technical problems experienced by the filer." As such, we do not believe Rule 9015.60 applies such that it would allow the Commission to retroactively consider the document filed. Further, the issue here is not whether the PFR was filed timely. Even Petitioner's attorney admitted that it was filed before the August 5, 2021 deadline. 11/2/22 *Motion Hearing at 28*. However, the issue remains whether an uploaded blank document constitutes a valid PFR. *Id. at 29*.

Petitioner makes a valid point that the form filed by Respondent's attorney is completely blank and contains "no case name, case number, or any other information…within the four corners of the document filed that makes it a petition for review." *P-Brief #1 at 3*. However, in response, Respondent correctly points out that the document it filed was specifically uploaded to the Jon Luchsinger (12 WC 44551) case in the CompFile system. *Motion Hearing at 35; R-Brief at 3*. We find that, although not explicitly listed on the PFR (because it was blank), the following information *is* known about that filing: case number, parties' names, date of the Arbitrator's decision, and any other information that may be relevant because it is all contained in CompFile related to this case.

Another question is whether Respondent's attorney's failure to electronically sign the document is fatal to the Commission's jurisdiction. We find that it is not because under Rule 9015.40(b), "Any document electronically filed with a subscriber identifier is deemed to have been signed by the holder of the user identification and password." Therefore, even a blank document is deemed to have been signed by the user who uploaded it.

Next, the PFR (IC11) form contains a section for Proof of Service to provide notice to the opposing party. However, even though that is blank, we know that Petitioner's attorney received actual notice of the filing via an email that was sent through CompFile at 1:15pm on July 19, 2022. This email states, in relevant part:

This email is to inform you of a filing in the case below.

CASE #: 12WC044551
CASE NAME: Jon Luchsinger v. Illinois Department of Corrections

FILING: Petition for Review of Arbitration Decision
FILED ON: 07/19/2022 01:14 PM
Please log into the CompFile and then click the following link to view the filing: [Link]

The petition is being processed. You will receive an assignment notice in the future.

The filing was served through CompFile upon the parties listed below.

CompFile email timeline record 7/19/22. We note that both of the attorneys' names, law firms, email addresses and phone numbers are listed at the bottom of that email.

Therefore, many of the problems with filing a blank form prior to CompFile are not problems after CompFile because all of the information associated with the case is known, the form is deemed to have been signed, and the opposing party received actual notice of the filing via CompFile.

The only remaining issue to address is the use of the word "shall" in Section 19(b) of the Act, which states:

> Unless a petition for review is filed by either party within 30 days after the receipt by such party of the copy of the decision and notification of time when filed, and unless such party petitioning for a review shall within 35 days after the receipt by him of the copy of the decision, file with the Commission either an agreed statement of the facts appearing upon the hearing before the Arbitrator, or if such party shall so elect a correct transcript of evidence of the proceedings at such hearings, then the decision shall become the decision of the Commission and in the absence of fraud shall be conclusive. **The Petition for Review shall contain a statement of the petitioning party's specific exceptions to the decision of the arbitrator. The jurisdiction of the Commission to review the decision of the arbitrator shall not be limited to the exceptions stated in the Petition for Review.**"

820 ILCS 305/19(b) (Emphasis added). This would appear to be a clear jurisdictional requirement that the PFR "contain a statement of the petitioning party's specific exceptions to the decision of the arbitrator."

Section 19(e) of the Act provides:

> (e) This paragraph shall apply to all hearings before the Commission. Such hearings may be held in its office or elsewhere as the Commission may deem advisable. The taking of testimony on such hearings may be had before any member of the Commission. **If a petition for review and agreed statement of facts or transcript of evidence is filed, as provided herein, the Commission shall promptly review the decision of the Arbitrator and all questions of law or fact which appear from the statement of facts or transcript of evidence**. … *820 ILCS 305/19(e) (Emphasis added).*

Therefore, the Commission has jurisdiction over all issues on Review, even if an issue was not

specifically listed on a party's PFR. The Commission is also required to address issues listed on the PFR even if those issues are not specifically argued by a party in its Statement of Exceptions on Review. *See Greaney v. IC,* 358 Ill. App. 3d 1002, 1025-26, 832 N.E.2d 331, 352-53 (1st Dist. 2005).

At this point, we would like to address some potential confusion in the Act because it uses the phrase "**statement of the party's specific exceptions**" when referring to what the PFR "shall contain." *820 ILCS 305/19(b) (Emphasis added)*. However, §19(e) of the Act also provides, "Decisions shall be filed within 60 days after the **Statement of Exceptions** and Supporting Brief and Response thereto are required to be filed or oral argument whichever is later." *820 ILCS 305/19(e) (Emphasis added)*. The filing of the "Statement of Exceptions" is governed by Rule 9040.70, which requires that it be filed "not later than 30 days from the Return Date on Review." Rule 9040.70(c). Therefore, the "Statement of Exceptions" referred to in §19(e) and Rule 9040.70 is clearly different than the "statement of the party's specific exceptions" referenced in §19(b). In the case at bar, Respondent did file a timely "Statement of Exceptions" under §19(e) and Rule 9040.70(c) but its PFR under §19(b) did not contain a "statement of the party's specific exceptions," since it was completely blank.

Respondent cites two Commission decisions in support of its position that the Commission should allow its original PFR to be amended and argues:

> The Commission has previously allowed amendments to Petitions for Review after the initial 30 day date. In *Ruby Franklin v City of Chicago*, the Arbitrator rendered a decision on January 11, 2016 and both parties filed Petitions for Review, with Petitioner filing its petition on February 2, 2016 and both parties raising nature and extent as the sole issue in dispute. *Franklin v City of Chicago* 2016 Ill. Wrk. Comp. LEXIS, 726 16 IWCC 520. On April 20, 2016, Petitioner filed a motion to "Amend Petition for Review of Arbitrator's Decision" alleging medical expenses as an additional issue on review. Petitioner's motion was granted. In *Melissa J. Baczek v Charlotte Russe Corporation*, the Arbitrator issued a decision on March 15, 2010 and Petitioner filed an IC14 form on April 19, 2010. Petitioner filed an "Amended Petition for Review", utilizing From IC11, on July 22, 2010. Respondent sought dismissal of Petitioner's review based on Petitioner's use of Form IC14 rather than IC11. The Commission declined to dismiss Petitioner's review based on this technicality. *R-Brief at 2-3*.

However, neither *Franklin* nor *Baczek* addresses the situation presented to us where the original PFR is completely blank.

The Commission finds instructional the case of *Shafer v. IWCC*, in which the appellate court wrote:

> It is true that "[t]he power of the Commission to review an award comes from the Act itself, which creates the Commission's authority and fixes the time when such authority must be exercised," and that "[t]he Commission, as an administrative, nonjudicial body, has no presumption in favor of jurisdiction." Eschbaugh v. Industrial Comm'n, 286 Ill. App. 3d 963, 967, 677 N.E.2d 438, 222 Ill. Dec. 235 (1996). Thus, as the claimant notes,

> **a party seeking review before the Commission must strictly comply with the statute conferring jurisdiction** upon the Commission. However, these principles, while important, do not support the claimant's argument in this case. **Section 19(b) of the Act, which governs petitions for review filed in the Commission, does not prescribe any specific requirements regarding the form of petitions for review. See 820 ILCS 305/19(b) (West 2008). It merely requires that petitions for review be filed within 30 days and that they "contain a statement of the petitioning party's specific exceptions to the decision of the arbitrator."** Id. The Act imposes no other requirement as to the content of such petitions. The Commission's rule addressing the content of petitions for review tracks the Act's requirements and imposes no additional requirements regarding the form or content of such petitions. See 50 Ill. Adm. Code § 7040.10(a) (2011). **Because the employer's petition was filed within the statutory deadline and contained a statement of the employer's specific exceptions to the Commission's decisions in both cases, it complied with the Act's requirements notwithstanding the typographical error in one of the case numbers**. Accordingly, the Commission's finding that it had jurisdiction over the employer's appeal in case number 07-WC-56127 was neither contrary to law nor unreasonable. Moreover, we note that it would be particularly inappropriate to reverse the Commission's finding given the deference that we generally accord to the Commission's interpretation of its own rules.

Shafer v. IWCC, 2011 IL App (4th) 100505WC, ¶ 32, 976 N.E.2d 1 (Emphases added).

Therefore, in *Shafer*, the appellate court stated that, although the Commission has jurisdiction in cases where there is a typographical error in the case number, the Act does have two requirements for a PFR: 1) it must be filed within 30 days *and* 2) "contain a statement of the petitioning party's specific exceptions." As such, pursuant to *Shafer*, we find that Respondent's blank PFR in the case at bar does not comply with the Act.

We are also mindful of a previous Commission decision, *Scott v DHL Worldwide Express*, which involved a 19(b-1) review that the Commission dismissed because, in part, the "Respondent herein failed to attach the required statement of specific exceptions." *Scott v DHL Worldwide Express*, 2008 Ill. Wrk. Comp. LEXIS 509, *3 (Ill. Workers' Comp. Bd. April 10, 2008). Although not precedential, we find this to be an example of the Commission having previously dismissed a Petition for Review on that basis.

It is unfortunate that, despite all of the many benefits CompFile has brought to the efficient administration of Workers' Compensation claims, mistakes can still happen. We hope this unique situation serves as a reminder to the bar of Rule 9015.30(c) and the requirement that "A person who files a document electronically shall have the same responsibility as a person filing a document in the conventional manner for ensuring that the document is complete, readable and properly filed."

Based upon our finding that the Commission lacks jurisdiction to consider Respondent's Petition for Review, all other issues are moot.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Motion to

Dismiss Respondent's Petition for Review is hereby granted.

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.

March 14, 2023

/s/ *Maria E. Portela*

SE/
O: 2/21/23
49

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC018924
Case Name	Randall H Ressler v. State of Illinois - Department of Agriculture
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0119
Number of Pages of Decision	4
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	James W. Ackerman
Respondent Attorney	Chelsea Grubb, Perry Gentile

DATE FILED: 3/15/2023

/s/ Kathryn Doerries, Commissioner

Signature

23IWCC0119

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 No timely notice	☐ Second Injury Fund (§8(e)18)
X Remaining issues rendered moot. All compensation denied	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RANDALL H. RESSLER,

Petitioner,

vs. NO: 19 WC 18924

STATE OF ILLINOIS,
ILLINOIS DEPARTMENT OF AGRICULTURE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability and permanent partial disability, reverses the Decision of the Arbitrator and denies Petitioner's claim for compensation, for the reasons stated below.

Findings of Fact

The Commission finds, as a preliminary note, that this case had been consolidated and heard together with Ressler v Frye-Williamson Press, Inc. 19 WC 18925 (Frye) and that case was not brought up on Review and is now final. Under separate decision, accident and causal connection were found in that matter and a permanent partial disability award for Petitioner's bilateral carpal tunnel syndrome was rendered.

The Commission further notes that notice was an issue for hearing per the Request for Hearing sheet in this case (Arb X 1). The Arbitrator failed to indicate Notice as an issue (E) on the Arbitrator decision sheet (2nd page) and while the Arbitrator found timely notice under Findings, the Arbitrator did not address the issue in the Conclusions of Law to understand how he came to that finding.

The Commission further notes the issue of notice was not raised on the Petition for Review on this case. However, Section 19(b) of the Act states, in part, "The jurisdiction of the Commission to review the decision of the arbitrator shall not be limited to the exceptions stated in the Petition for Review". (*820 ILCS 305/19(b)*). "[w]hile the circuit court may only exercise appellate review," the Commission "may exercise original rather than appellate jurisdiction and make findings of fact in derogation of those made by the arbitrator." *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 63, 862 N.E.2d 918, 924 (2006).

In workers' compensation cases, the Commission exercises original jurisdiction. *R&D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (2010). The Commission has authority to determine all unsettled questions and is not bound by the arbitrator's findings. *Orkin Exterminating Co. v. Industrial Comm'n*, 172 Ill. App. 3d 753, 756, 526 N.E.2d 861, 864 (1988). The Commission weighs the evidence presented at the arbitration hearing and determines where the preponderance of the evidence lies. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924 (2006).

"Evidentiary rulings made during the course of a workers' compensation case will not be disturbed on review absent an abuse of discretion." *Certified Testing v. Industrial Comm'n*, 367 Ill. App. 3d 938, 947, 856 N.E.2d 602, 610 (2006). However, issues involving statutory construction are subject to de novo review. *Washington District 50 Schools v. Illinois Workers' Compensation Comm'n*, 394 Ill. App. 3d 1087, 1090, 917 N.E.2d 586, 589 (2009).

"The fundamental rule of statutory interpretation is to ascertain and effectuate the legislature's intent." *Beelman Trucking v. Illinois Workers' Compensation Comm'n*, 233 Ill. 2d 364, 370, 909 N.E.2d 818, 822 (2009). The best indication of legislative intent is the statutory language, given its plain and ordinary meaning. *Beelman Trucking*, 233 Ill. 2d at 370-71, 909 N.E.2d at 822. Other considerations include "the reason for the law, the problems to be remedied, and the objects and purposes sought." *Beelman Trucking*, 233 Ill. 2d at 371, 909 N.E.2d at 822-23. Considering the afore mentioned, the Commission has jurisdiction to address any and all issues and the Commission, herein, conducts a de novo review to address the issue of notice.

Petitioner testified on direct examination that he changed jobs from Frye to the Respondent November 16, 2016. Petitioner agreed PX 5 was his job description for Respondent. Petitioner testified that he did tell them that he had pre-existing bilateral carpal tunnel when he was hired by Respondent. Petitioner stated he also told them at MOHA when he went for the pre-employment physical for Respondent. (T.26-27)

Petitioner was shown PX 4, his pre-employment physical for the Respondent and he agreed on page 2 it questioned if he had other current physical or mental conditions and Petitioner stated he had answered 'yes' he had a workers' compensation with then employer (Frye). Petitioner agreed that he had signed that paper. Petitioner agreed that he then did come to work for the Respondent and Petitioner testified the work was pretty much the same, but it was a lot more relaxed at the Respondent compared to Frye as to job duties. His job title with the Respondent was Reproduction Service Technician III. Petitioner agreed his job title with the Respondent was explained in PX 5. (T.27-28)

There was no testimony provided by Petitioner as to when he advised Respondent of an alleged April 5, 2019, aggravation of his pre-existing carpal tunnel syndrome. The only evidence of notice in this case is the Application for Adjustment of Claim which was filed June 28, 2019, which would have been more than 45 days from April 5, 2019, alleged manifestation date.

Conclusions of Law

Section 6(c) of the Workers' Compensation Act provides that 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)*). It further provides that "Notice of the accident shall give the approximate date and place of the accident, if known, and may be given orally or in writing." *Id.*

"The purpose of the notice requirement is to enable the employer to investigate the alleged accident." *Seiber v. Industrial Comm'n*, 82 Ill. 2d 87, 95, 411 N.E.2d 249, 252 (1980). "Compliance with the requirement is accomplished by placing the employer in possession of the known facts related to the accident within the statutory period." *Id.* Notice required by Section 6(c) is jurisdictional and a prerequisite of the right to maintain a proceeding under the Act. *Ristow v. Industrial Comm'n*, 39 Ill. 2d 410, 413 (1968); *S&H Floor Covering, Inc. v. Workers' Compensation Comm'n*, 373 Ill. App. 3d 259, 265 (2007).

Petitioner provided no testimony that he gave notice to Respondent of an alleged work injury of April 5, 2019, within 45 days of the alleged injury date. The only possible evidence of notice is the Application for Adjustment of Claim which was filed on June 28, 2019, over 45 days after the alleged manifestation date which fails to satisfy the notice requirement of Section 6(c). As such, timely notice was not provided within the statutory period.

The Commission notes Petitioner advised Respondent of his pre-existing carpal tunnel syndrome condition during his pre-employment physical and interview. However, this pre-dates the alleged manifestation date and his employment with Respondent. Further, there is no evidence Petitioner complained that his employment tasks were aggravating his pre-existing condition. These facts also show the notice requirement of Section 6(c) was not satisfied.

Therefore, the Commission finds that Petitioner failed to prove by a preponderance of the evidence that he provided timely notice as required under Section 6(c) of the Act. Accordingly, the Arbitrator's decision is hereby reversed and Petitioner's claim for compensation is denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's award dated December 28, 2021, is vacated and Petitioner's claim for compensation is hereby denied.

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)*.

March 15, 2023

o- 1/17/23
KAD/jsf

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC037645
Case Name	Anthony Bednowicz v. Lansing Building Products
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0120
Number of Pages of Decision	14
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Robert Smoler
Respondent Attorney	William O'Brien

DATE FILED: 3/15/2023

/s/ Kathryn Doerries, Commissioner

Signature

23IWCC0120

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANTHONY BEDNOWICZ,

Petitioner,

vs. NO: 13WC037645

LANSING BUILDING PRODUCTS,

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 penalties under Sections 19(k) and 19(l) and attorneys' fees under Section 16, 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 and adopts the Arbitrator's Decision in its entirety except for the following modifications: On page two of the Arbitrator's Decision, in the Findings section (before the Order) the Commission strikes the first sentence in the second from the last paragraph and substitutes the following: "Respondent shall be given a credit of $189,994.38 for TTD, $0 for TPD, $0 for maintenance, and $413,488.66 for other benefits, for a total credit of $603,483.04."

The Commission further corrects two scrivener's errors. At the top of page four of the Arbitrator's Decision, under the Findings of Fact and Conclusions of Law section, the Commission strikes the word "face" in the first line and replaces it with the word "facet". Next, in the first paragraph on page five, the Commission strikes the word "car" from the end of the sixth sentence, and replaces it with the word "cart."

Finally, on page seven, under the section "Issue (M) whether penalties or fees be imposed upon the Respondent" the Commission modifies the first sentence, so the sentence reads as follows: "The Arbitrator finds that Respondent relied on the opinions of their Section 12 physicians, Dr.

Sean Salehi and Dr. Richard Noren, and the surveillance videos submitted into evidence to dispute Petitioner's capacity to return to work and payment of medical expenses."

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on March 23, 2022, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable and necessary medical services due to Kinnick Medical, RX Compliance Lab, Suburban Orthopedics, IWP, Advocate Aurora Health, and Persistent Labs alleged by Petitioner pursuant to Section 8(a) and Section 8.2, the Medical Fee Schedule of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent and total disability benefits of $485.80/week for life, commencing March 27, 2020, 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.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's Petitions for Penalties and Attorneys' Fees under Sections 19(k), 19(l) and 16 are 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.

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.

March 15, 2023
KAD/bsd
013123
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	13WC037645
Case Name	BEDNOWICZ, ANTHONY v. LANSING BUILDING PRODUCTS
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Robert Smoler
Respondent Attorney	William O'Brien

DATE FILED: 3/23/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 22, 2022 0.87%

/s/Gerald Napleton, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF Lake)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Anthony Bednowicz
Employee/Petitioner

v.

Lansing Building Products
Employer/Respondent

Case # **13** WC **037645**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Napleton**, Arbitrator of the Commission, in the city of **Waukegan**, on **01/26/2022**. 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 **07/31/2012**, 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 $**32,280.00**; the average weekly wage was $**640.00**.

On the date of accident, Petitioner was **44** years of age, ***married*** with **3** dependent children.

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

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

Respondent shall be given a credit of $**189,994.38** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**189,994.38**. Petitioner has been paid TTD in full and TTD is not in dispute.

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

ORDER

Respondent shall pay the reasonable and necessary medical services due to Kinnick Medical, RX Compliance Lab, Suburban Orthopedics, IWP, Advocate Aurora Health, and Persistent Labs alleged by Petitioner pursuant to Section 8(a) and the Medical Fee Schedule of the Act.

Respondent shall pay Petitioner permanent and total disability benefits of $485.80/week for life, commencing 03/27/2020, 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.

Petitioner's Petitions for Penalties 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.

/s/ Gerald W. Napleton

Signature of Arbitrator

MARCH 23, 2022

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Anthony Bednowicz,	)	
	)	
Petitioner,	)	
vs.	)	
	)	No.: 13 WC 037645
Lansing Building Products,	)	
	)	
Respondent.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Testimony of Petitioner

Anthony Bednowicz, the Petitioner in this matter, testified at arbitration that he was injured on July 31, 2012, while unloading building supplies at a residence in his duties as a material handler and truck driver for the Respondent. He testified he had undergone a prior lumbar fusion surgery at the L4-S1 level under the care of Dr. Thomas McNally in November of 2006. He testified that he had a pre-employment physical and was feeling fine the day of the accident. He had been in his position since April of 2011 which required him to lift and unload building products weighing 80 to 100 pounds and even up to two hundred pounds. On the day of the accident he had unloaded eight or nine boxes of siding about 13 feet long and weighing eighty to one hundred pounds when he felt a pop in his back while unloading one of the boxes from his shoulder to the ground. He began to feel pain going down his left leg and reported the accident immediately and went to see his primary care physician at Dreyer Medical Clinic that same day.

He was referred back to his surgeon, Dr. Thomas McNally, and saw him on August 12, 2012. He was returned to light duty work and performed office work for Respondent. Dr. McNally referred him to Dr. Dmitry Novoseletsky for pain management. Dr. McNally performed an L4-S1 laminectomy and hardware removal on August 13, 2013, at Alexian Brothers Medical

Center in Elk Grove Village. He testified the surgery and conservative care was not relieving his pain, so he was referred by Dr. Novoseletsky to Dr. Kern Singh at Midwest Orthopedics at Rush who performed his a surgery on August 14, 2014, consisting of an anterior interbody lumbar fusion at the L3-4 level. The post-operative diagnosis was adjacent level spinal stenosis at L3-4, L4-5 and L5-S1 spinal fusion with instrumentation.

Petitioner continued to have lower back pain after the surgery. He was diagnosed with a non-union fusion in May of 2016. Dr. Novoseletsky referred him to Dr. Konstantin Slavin at the University of Chicago who performed a two-stage implantation of a Medtronic low frequency spinal cord stimulator on June 8 and 10, 2016. The spinal cord stimulator did not give him any relief from his back pain so it was removed by Dr. Slavin and replaced with a Nevro high frequency device. This also failed to give relief and was complicated by an abdominal abscess and was also removed.

Petitioner underwent a second FCE on August 6, 2019, at Suburban Orthopedics that placed him at sedentary duty. On March 27, 2020, Dr. Novoseletsky released him to work 1-1/2 hours per day, sedentary duty, with 30–60-minute breaks to take his pain medications and to perform rotation exercises up to two to three times a day. The Petitioner testified that he would not be able to take additional pain medications at those break times due to the period prescribed between doses.

Petitioner testified that he has not had any subsequent injuries to his back. He currently notices pain in his back radiating down his left leg to his left foot. His low back is in constant pain. He also experiences twitching or spasms in his left leg. He has increased pain with sitting. He can sit in a chair for up to an hour to an hour and a half. He can walk about two blocks before he has pain. He has difficulty sleeping and spends most of his time in the recliner. Petitioner was

visibly uncomfortable sitting during his testimony and requested time to stand. Petitioner further testified that he can no longer meaningfully participate in fishing, basketball, football and softball, and gym exercise. He runs errands to the grocery store regularly. He takes daily doses of oxycontin, hydrocodone, and Horizant. He denied being provided with vocational rehabilitation services by Respondent. He continues to see Dr. Novoseletsky for pain management, having last seen him on January 7, 2022. His next visit is February 4, 2022. He sees him every four weeks to prescribe his pain medication.

Section 12 Examinations and Opinions

Petitioner underwent a Section 12 exam by Dr. Richard Noren on April 3, 2019. Dr. Noren testified on February 16, 2021. Dr. Noren opined that Petitioner was able to work in a light duty capacity. The Respondent placed him in temporary transitional employment with the Greyhound Adoption facility. He presented there on July 16, 2019 but was only able to work for 1-1/2 to 2 hours due to the pain.. He attempted to work for Greyhound Adoption again but with the same result.

Petitioner was examined multiple times by Dr. Sean Salehi as Section 12 exams. Dr. Salehi provided his written opinion seven times on June 4, 2013, June 2, 2014, December 7, 2015, December 6, 2016, March 28, 2017, January 16, 2018, and October 21, 2018. He provided sworn testimony on February 23, 2021.

Dr. Salehi diagnosed Petitioner with lumbosacral spondylosis and lumbar radiculopathy and later diagnosed failed back syndrome and post-laminectomy syndrome. He recommended an FCE and believed Petitioner was at MMI. Dr. Salehi on June 2, 2014 believed Petitioner did not need further spine surgery but, as mentioned above, Petitioner underwent lumbar spine

decompression and fusion at L3-4 on August 4, 2014. Dr. Salehi opined that face injections would have been a more appropriate course of action before surgery.

Functional Capacity Evaluation

Petitioner's functional capacity evaluation in February of 2015 demonstrated valid efforts with minor inconsistent efforts due to subjective pain levels. His August 6, 2019 evaluation placed him at the level of sedentary duty. Dr. Novoseletsky released Petitioner to work 1-1/2 hour days of sedentary duty with 30-60 minute breaks to take his pain medication and to perform rotation exercises two to three times a day.

Vocational Evaluation

Petitioner was evaluated by Steven Blumenthal, a vocational expert. Respondent did not submit a countervailing vocational opinion. Mr. Blumenthal has 40 years of experience in vocational rehabilitation before the Commission and is a Certified Rehabilitation Counselor and a Certified Vocational Evaluation Testing Specialist and a Licensed Clinical Professional Counselor.

Mr. Blumenthal provided testimony on November 12, 2020 where he reiterated his opinions offered on April 8, 2020. He testified that he reviewed medical records of the Petitioner, conducted an intake interview of the Petitioner, obtained a self-reported physical tolerance from the Petitioner, and obtained a work, family and financial history from the Petitioner. Mr. Blumenthal stated that Petitioner is not employable in any occupation in any stable market and that he was not a candidate for vocational rehabilitation. Petitioner testified that he performed a job search approximately five to six years ago for four to six months but was unable to obtain a job.

Respondent's Surveillance of Petitioner

Respondent offered the testimony of two investigators into evidence. Gregg McGinnis and Jeff Lestina testified at trial regarding surveillance footage they obtained. Messrs. McGinnis and Lestina work for a company called the Robison Group. Mr. McGinnis surveilled Petitioner at intervals between July 22, 2021 and July 26, 2021. Mr. Lestina testified that he surveilled Petitioner from August 2nd to September 17, 2021. The videos submitted demonstrate Petitioner walking with a fairly normal-looking gait, driving a car, and grocery shopping while pushing a shopping car. He did not limp clearly though his movements seemed mildly guarded, especially while pushing his shopping cart. He seemed to put his weight and rest on the shopping cart while using it. He was seen pushing a dolly as well which was loaded with what appeared to be small animal bedding or shavings. He was able to bend and move these items into his trunk. The items did not appear heavy. He was able to get in and out of his truck several times. His posture was mildly forward-leaning. He was not shown to be working in any capacity. The surveillance did not show any movement for an extended period of time. The clips lasted anywhere from several minutes to a half hour but were cut from various times of the day.

Petitioner testified on rebuttal that he was able to perform the activities shown in the videos because of the aid of his pain medication. He further testified that he was not restricted by his physician concerning any of the activities depicted and was encouraged to stay as active as possible. Petitioner confirmed he was not employed at any time during these videos.

Testimony of Dr. Dmitry Novoseletsky

Dr. Novoseletsky testified in support of his treating medical records and permanent light duty restrictions. He is a board-certified physician by the Physical Medicine and Rehabilitation Board as well as by the American Society of Pain Medicine. His practice with Suburban

Orthopedics is mainly in pain medicine. He began treating the Petitioner in 2012 and maintained a medical chart.

His diagnosis as of the March 27, 2020 visit was chronic low back pain with left lower extremity pain paresthesia and weakness; lumbar radiculopathy; lumbar foraminal stenosis; lumbar facet syndrome arthroplasty; status post spinal surgery; epidural fibrosis; post-laminectomy syndrome; status post spinal cord stimulator implantation and chronic pain syndrome. He opined that his diagnoses are causally related to Petitioner's work accident.

He returned the Petitioner to work on March 27, 2020, with restrictions based upon the FCE for sedentary work for one hour and thirty minutes. Further, he specified special work restrictions of needing a 30–60-minute break for rest and that he may need to take his prescribed pain medications during this break and the cycle can be repeated two to three times per day maximum.

CONCLUSIONS OF LAW

The issues in dispute as evidenced via the signed Request for Hearing ("Stip Sheet") are (J) Medical bills, (L) Nature and Extent, and (M) Penalties. See Arbitrator's Exhibit 1. For these issues the Arbitrator finds as follows:

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

The Arbitrator finds that the medical expenses submitted as Px 14-19 are reasonable and necessary and causally related to his accident and are supported by the testimony and the medical records. Accordingly, Respondent shall pay to the following providers for the following medical treatment balances pursuant to Section 8(a) and the Medical Fee Schedule in 8.2:

1. Kinnick Medical- Balance $4.000.00, Date: 01/09/2019-12/20/2021

2. RX Compliance Lab- $18,041.33, Date: 03/03/2012- 05/16/2019
3. Suburban Orthopaedics Bills- $10,096.72
4. IWP- Balance $48,037.32, Date: 02/12/2019 - 10/20/2021
5. Advocate Aurora Health- Balance $25.00, Date: 07/16/2019
6. Persistent Labs - Balance $11,715.00, Date 07/13/2021

Regarding Issue (L), the nature and extent of the injury, the Arbitrator finds as follows:

The Petitioner sustained an injury to his lower back resulting in a failed lower back syndrome which failed all surgical and pain treatment care leaving him in constant and intractable pain. The Petitioner's treating pain physician, Dr. Novoseletsky, released him to extremely limited light duty amounting to a maximum of four and a half hours a day. Petitioner testified credibly. Dr. Novoseltsky testified credibly. The Petitioner's vocational expert, Steven Blumenthal testified credibly as well. Petitioner has established, by a preponderance of the evidence, that there is no stable labor market for the Petitioner to access any form of employment in a competitive labor market and that the Petitioner is not a candidate for vocational rehabilitation. Mr. Blumenthal's opinions were unrebutted. The Arbitrator does not find the surveillance videos entered into evidence to demonstrate Petitioner was capable of work beyond the opinions of his doctors and Mr. Blumenthal. The surveillance showed briefs clips of Petitioner engaged in activities of daily life and did not show him acting beyond his restrictions. Based upon the foregoing, the Arbitrator finds that Petitioner is permanently and totally disabled.

Regarding Issue (M) whether penalties or fees be imposed upon the Respondent:

The Arbitrator finds that Respondent relied on the opinions of their Section 12 physician, Dr. Sean Salehi, and the surveillance videos submitted into evidence to dispute Petitioner's capacity to return to work and payment of medical expenses. While the Arbitrator does not find

the surveillance footage to be persuasive and convincing evidence the Arbitrator finds that Respondent's reliance on their Section 12 examinations was not unreasonable or vexatious. Accordingly, penalties are denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC014972
Case Name	Renee Murphy v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0121
Number of Pages of Decision	38
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Steven Seidman
Respondent Attorney	Elizabeth Meyer

DATE FILED: 3/16/2023

/s/Kathryn Doerries, Commissioner
Signature

DISSENT: /s/Kathryn Doerries, Commissioner
Signature

23IWCC0121

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RENEE MURPHY,

Petitioner,

vs. NO: 17 WC 014972

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 medical expenses and prospective medical, causal connection, temporary total disability, permanent disability, maintenance, wages and credits 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 and adopts the Arbitrator's Decision except with the following modifications as set forth below.

In the last paragraph of the "Findings" section on page two of the Arbitrator's Decision, the Commission strikes the $2,500.00 credit for TPD/Maintenance benefits and adjusts the total credit accordingly to $18,448,76. Further, the Respondent is entitled to the $2,550.00 credit under Section 8(j) of the Act. Therefore, the last paragraph under the Findings section now reads, "Respondent shall be given a credit of $18,448,76 for TTD, -0- for TPD/Maintenance benefits for a total credit of $18,448.76. Respondent is entitled to a credit of $2,550.00 under Section 8(j) of the Act."

The Commission further strikes the first full paragraph on page six of the Arbitrator's Decision beginning with "Dr. Grimm" and ending with "claim." The Commission further

strikes the word "bug" and replaces it with the word "bus" on page nine, in the second sentence of the Arbitrator's Decision. On page 13, in the last paragraph, the Commission strikes the phrase "company selected physicians" and replaces that phrase with "Dr. Taiwo." On page 14, the Commission strikes the second use of the word "proximate" from the fourth line (second full sentence) and replaces it with the word "contributory" so the sentence reads, "Petitioner need not prove what is the sole or proximate cause of his injuries, just that the work accident was a contributory cause of his injuries."

The Commission further strikes the second, third and fifth sentences on page 15, paragraph one and strikes the word "much" from the last sentence in paragraph two on page 15 and replaces it with the word "any." The Commission also strikes the last paragraph on page 15 in its entirety. The Commission further strikes the second paragraph on page 17 in its entirety. The Commission additionally strikes "and mental health professional" in paragraph four on page 17 of the Arbitrator's Decision.

The Commission also strikes everything after the word "injuries" in the second sentence in the first paragraph under Section (J) on page 18. The first paragraph under Section (J) now reads, "The Arbitrator adopts his findings of fact contained above and incorporates them herein by this reference. The Arbitrator finds that Petitioner's treatment for her conditions of ill-being was reasonable, necessary and causally related to her work injuries."

Finally, the Commission modifies the last sentence in Section (K) on page 22 so the sentence now reads, "The parties stipulate that Respondent has paid $18,448.76 in TTD benefits to Petitioner and $2,550.00 in nonoccupational indemnity disability benefits, for which credit may be allowed under §8(j) to date." (AX1)

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on May 2, 2022, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $28,871.11 representing $838.58 per week for 34-3/7 weeks, commencing April 29, 2017, through December 25, 2017, as provided in Section 8(a) of the Act. Respondent shall be given a credit of $18,448.76 for temporary total disability benefits that have been paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary partial disability/Maintenance benefits in the amount $37,394.00. Respondent is entitled to a credit under Section 8(j) of the Act for $2,550.00 paid in nonoccupational indemnity disability benefits.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent partial disability benefits of $754.72 per week for 100 weeks, because the injuries sustained caused the 20% loss of Petitioner's person as a whole, as provided in Section 8(d)2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay

reasonable and necessary medical services of $7,150.00, as provided in Sections 8(a) and 8.2 of the Act.

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

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

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

March 16, 2023
KAD/bsd
O022123
42

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

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

DISSENT

I respectfully dissent from my colleagues and would find that Petitioner failed to prove that she sustained a physical-mental injury that would warrant a loss of trade award. The incident Petitioner first described on the accident date of April 18, 2017, at the Occupational Health Center was that of someone "slapping" her cell phone out of her hand that resulted in a minor thumb sprain. (PX2) This type of incident does not meet the precedential criteria for "minor" physical injury that results in physical-mental claims as chronicled below. Further, Petitioner had pre-existing mental health issues, describing to Dr. Grimm that her first mental health treatment was when she was approximately 30 years old. (RX1, 4; T. 225) Petitioner was 58 years old when examined by Dr. Grimm. (RX1, 1; T. 222) The subject incident angered Petitioner and she admittedly, by her own description, was "done" with bus driving, (RX1, 3; T. 224) however, by no means did Petitioner sustain her burden of proving that she could not return to work as a bus driver as a result of this work accident.

Initially Petitioner's chief complaint was for a right thumb injury. (PX2, 10; T. 58) The History of Present Illness states that the "Patient was standing outside of the bus talking on her phone against her ear when an unknown person came and hit her hand, slapping "her her (sic) with cell phone on left (sic) ear. She notes pain to the left (sic) thumb." *Id.* The notes section, indicates under "Psychiatric: anxiety, depression, stressed." Upon physical exam, the thumb had no swelling, the x-ray was negative for any acute findings. (PX2, 11; T. 59) The Assessment states: Sprain of right thumb. The final Notes state that she was released to return to work with restrictions. (PX2, 12, 13; T. 60, 61) Petitioner had an initial physical therapy evaluation for her

right thumb on April 25, 2017, and her second therapy session on April 27, 2017, at which time she reported pain in the thumb rated at 2/10. (PX2, 22; T. 70)

Although Petitioner's initial treating records contained no connection between the incident and the notes section documenting anxiety, depression, and stress, ten days later, on April 28, 2017, Petitioner saw Dr. Taiwo, where the reason for visit, chief complaint indicates that Petitioner presented for recheck of right wrist (sic) and anxiety which was noted to be self-reported. (PX2, 26; T. 74) She reported at that time the incident of being attacked and a prior incident of attack with a knife was triggering anxiety. She requested to see a psychologist. Her thumb pain was reportedly rated at one. *Id.* The Occupational Clinic doctor, Dr. Taiwo, although not identified to be a mental health professional, diagnosed "PTSD." On that basis, Petitioner was referred to Dr. Bylsma. (PX2, 27; T. 75)

Petitioner told Dr. Grimm after the incident she tried to call psychologist Dr. Kelley whom she had seen in the past but she was undecided about seeing him again. (RX1, 2; T. 223) She also later recounted Dr. Kelley helped her manage her stress from the previous bus driving incident where a man displayed a knife to intimidate her. (RX1, 3; T. 224)

On April 28, 2017, Petitioner was seen by the physical therapist for her third and last thumb physical therapy session. Her pain rating was 2/10 however her goal status was documented to be 100% achieved. (PX2, 29, 30; T. 77, 78) Petitioner's overall progress was stated to be "Faster than expected." The therapist discharged Petitioner after the third physical therapy session secondary to the anticipated goals having been achieved. (PX2, 31; T. 79) On May 5, 2017, Petitioner reported zero pain in her right thumb, and that she was being seen by a psychologist. She was released from care by Dr. Taiwo noting that she was at maximum medical improvement with restrictions of not driving a company vehicle. (PX2, 33, 34; T. 81,82)

When Petitioner first saw Dr. Bylsma, she reported that "a man came up behind her, punched her on the right side of her head (struck her hand and fingers in which she was holding the phone to her ear; injured her thumb and 2 fingers), and then walked off without looking back." (PX3,DepX2 51; T. 136) This explanation was misleading to Dr. Bylsma and therefore his opinion was based on an embellished accident description. There is no indication in the initial treating medical records that Petitioner was "punched" or that she complained of, or was treated for, the alleged two injured fingers or for jaw or head pain. She simply had a thumb injury for which she had three physical therapy sessions and was discharged for the physical part of her claim.

The description of the incident Petitioner provided to Dr. Grimm was more consistent with Petitioner's report to the Occupational Clinic where she first treated. (RX1) Petitioner described to Dr. Grimm that once home, "my mind started thinking" and she "wanted to get him." Petitioner told Dr. Grimm that if she had the opportunity and had a knife with her, she would have stabbed the perpetrator in the back. (RX1, 2; T. 223) She further told Dr. Grimm that she worried something else might happen to her but Dr. Grimm found equally disconcerting that Petitioner began worrying about what she might do to any other individual who might give her a hard time or threatened, or, as Dr. Grimm described, Petitioner "clearly communicating concern about acting out impulsively towards such individuals." *Id.*

Petitioner went on to tell Dr. Grimm that she was hoping to overcome her fear of something happening to her or that she might act out, but provided then a long history to him of problems managing her impulses and openly stated that she feared she will harm the next person who tries to harm her. She later described being bullied as a child and being in "lots of fights" while growing up. (RX1, 4; T. 225) She also reported to Dr. Grimm that she stabbed a male acquaintance that had assaulted her on three occasions. She was arrested but reported "she was never sent to prison because it was determined to be self-defense." (RX1, 5; T. 226)

Dr. Grimm administered and analyzed four test results and provided in-depth analysis of test interpretations, (RX1, 6,7; T. 227-228) something that Dr. Bylsma did not share in his records. On the Beck Depression Inventory-2, Petitioner's results indicated she felt sad, unhappy and feeling that her future is hopeless with significant self-dislike and a tendency to visit her past in terms of numerous failures with diminished capacity to experience pleasure, irritability, and restlessness. Dr. Grimm noted that Petitioner's clinical profile had no noteworthy or significant elevations on clinical scales reflecting a major depressive disorder, anxiety disorder, bipolar disorder or post-traumatic stress-(the only elevation was on the Drug Dependence Scale which he attributed to a past problem.) *Id.* Dr. Grimm analyzed the personality pattern scales and noted that Petitioner's personality attributes are not necessarily of the magnitude indicative of a personality disorder. Of note, Dr. Grimm documented that Petitioner scored 24 on the Structured Inventory of Malingered Symptomatology, "implicating some element of symptom magnification." (RX1, 7; T. 228)

Dr. Bylsma is not a board certified psychologist. (PX3, 5,6; T. 90, 91) Dr. Bylsma based his opinion that Petitioner had an acute anxiety reaction noting she had no history of anxiety (or) of her being anxious in the past and the result of the trauma index and the history as provided. *Id.* Dr. Bylsma testified, however, he formed his diagnosis of unspecified post- traumatic stress disorder (PTSD) reaction based on "[h]er endorsement of symptoms on the State Trait Anxiety scale where she endorsed current anxiety or no history of anxiety of her being anxious in the past and the result of the trauma index and the history as provided." (PX3, 10; T. 96) At her second visit, Petitioner rode the bus to see Dr. Bylsma, and she connected the subject incident with a prior incident about her dog being attacked by a pit bull. She continued to ride the bus to her appointments in the following weeks as well.

Petitioner has a long history of anxiety as she relayed to Dr. Grimm that Petitioner apparently did not relay to Dr. Bylsma. Dr. Bylsma's test results are not analyzed in his records although he attributes 120 minutes to psychological testing at the initial evaluation and the results of only two tests he administered were listed and the results indicated "acute anxiety reaction that is having a significant negative impact on her daily experience-with prominent current anxiety noted." He then diagnosed PTSD, unspecified. (PX3, DepX2, 51; T. 136) Further, Dr. Bylsma's initial evaluation did not contain any information concerning Petitioner's past medical or psychosocial history, tarnishing his causal opinion. I would find that Dr. Bylsma's opinion is therefore not credible and is entitled to little weight. *See*, *e.g.*, S*unny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130028WC, 14 N.E.3d 16, 383 Ill. Dec. 184 (Expert opinions must be supported by facts and are only as valid as the facts underlying them.)

It is also of special note in light of her physical therapy discharge on May 5, 2017, that Dr. Bylsma testified that she was kept off work to avoid "further complicating her hand injury." (PX3 11, 12; T. 96, 97) Further, Dr. Bylsma testified that on November 11, 2017, his diagnosis was "PTSD unspecified, resolvable." (PX3, 17; T. 102) When Dr. Bylsma testified on October 1, 2019, he also confirmed that when he last saw her in December 2017, he diagnosed "PTSD resolving" and that to "see her current state, I would need to see her and evaluate her." Similarly, with regard to her work restriction, whether or not she could return to bus driving, he testified that he "would need to see her currently to make that assessment." (PX3, 18, 19; T. 103, 104). Thus, the majority awarded a job change not knowing if the "unspecified" condition Dr. Bylsma diagnosed had resolved prior to the hearing.

After his extensive interview with Petitioner, interpretation of the administered testing results, and review of her treating medical records, Dr. Grimm rendered the following opinion regarding Petitioner's diagnosis and ability to return to work:

> Her heightened sense of vulnerability, which she consciously links to driving a bus seemed somewhat selective in a sense, particularly when considering that the incident occurred while she was standing on the roadway or sidewalk outside the bus she had been operating and which had some type of mechanical failure, and was not paying close attention to her immediate surroundings while using her cell phone. The assailant was not a passenger on her bus but some individual who happened to come up from behind her. Conceivably, the incident had nothing to do with bus operations but appeared to be more or less a random assault in a public area. Although admittedly operating a bus requires CTA employees to interact and deal with an unfiltered public, Ms. Murphy did not express any significant anticipatory anxiety or apprehension riding as a passenger on CTA buses, going out in public to participate in weekly foot-dancing events, or running personal errands in public where there are no guarantees a similar unprovoked random assault will not happen, especially if not adequately aware of one's immediate surroundings.
>
> Ms. Murphy, in all probability, could return to operating a bus for the CTA, if adequately motivated and she meets all the qualifications set forth by the CTA, although she likely would be miserable doing so, with continued symptoms of hypervigilance, anticipatory anxiety, foreboding sense of dread, and other anxiety symptoms, largely reflective of the personality style described above which represent the personal coping resources she relies upon to deal with ambiguous situations, whether on a bus or in an office setting. From a clinical standpoint, an alternative job not involving operating a bus or dealing with the public would probably be best for her, but such an accommodation would not be directly related to the 4-18-17 work incident, but rather to long-standing anxieties, vulnerabilities, and insecurities unrelated to the work incident but reactivated by it.

I find Dr. Grimm's assessment to be more credible than Dr. Bylsma's vague reasons for opining that Petitioner could not return to work because of "unspecified post-traumatic stress

disorder (PTSD)." (PX1, 10; T. 96)) Further, the fact that Dr. Bylsma provided Petitioner with a full duty return to work, even at her behest, is evidence that Petitioner was dictating her return to work status. Petitioner did not want to lose her job at the CTA, however, as she reported to Dr. Grimm, she was "done" with driving a bus for CTA. Her concern about getting an alternative position was not because she was having ongoing PTSD symptoms, but because she was worried about her qualifications and ability to pass any type of written evaluation because of chronic learning difficulties which hampered her virtually all of her life. Petitioner's Exhibit 3, Deposition Exhibit 2B is a Mental Capacities Evaluation singed by Dr. Bylsma indicating that Petitioner could drive a bus for 8 hours per day and that she could resume full duties after retraining session. (PX3, T. 14, PX3, DepX2B) Dr. Bylsma notes at the bottom of that note that Petitioner "[needs] a different position at CTA—accommodation request has been filed."

Case Law Synopsis of Physical-Mental Compensable Cases

Our Courts have acknowledged. "in dealing with the physical-mental category, even a minor physical contact or injury may be sufficient to trigger compensability." See *Chicago Park District v. Industrial Comm'n,* 263 Ill. App. 3d 835, 842, 635 N.E.2d 770, 776, 200 Ill. Dec. 431 (1994). *Matlock v. Indus. Comm'n,* 321 Ill. App. 3d 167, 171, 746 N.E.2d 751, 755, 2001 Ill. App. LEXIS 24, *8, 253 Ill. Dec. 930, 934. However, those "minor" physical injuries and the resulting neuroses have context. In reviewing a case where the injury was a neurosis caused by strictly a psychological event, the Court in *Pathfinder Co. v. Industrial Comm'n* reviewed cases that were found compensable for reasons of "some" physical injury as follows:

> In *Olin Industries, Inc. v. Industrial Com.*, 394 Ill. 202, the claimant was injured while cleaning a machine when a metal guard weighing 75 pounds struck her across the right breast. [***11] She suffered no broken bones and the treating physician testified that his examination showed "there were no bruises or objective evidence of injury and that the diagnosis of contusion of the chest was based on subjective complaints and history." (*Olin Industries*, at 204.) The diagnosis was traumatic neurosis caused by the injury, and her award was affirmed by this court. Other holdings of awards for psychological disability when there was some physical injury include: *City of Chicago v. Industrial Com.*, 59 Ill.2d 284; *Spetyla v. Industrial Com.*, 59 Ill.2d 1; *Hook v. Industrial Com.*, 53 Ill.2d 245; *Thomas J. Douglas and Co. v. Industrial Com.*, 35 Ill.2d 100; *Ford Motor Co. v. Industrial Com.*, 355 Ill. 490; *Postal Telegraph Cable Co. v. Industrial Com.*, 345 Ill. 349; *Armour Grain Co. v. Industrial Com.*, 323 Ill. 80; *United States Fuel Co. v. Industrial Com.*, 313 Ill. 590. *Pathfinder Co. v. Industrial Com.*, 62 Ill. 2d 556, 564, 343 N.E.2d 913, 917, 1976 Ill. LEXIS 278, *10-11.

A review of this list of cases, however, reveals these precipitating injuries were much more severe than a sprained thumb and I would not find that Petitioner's injury would qualify for the criteria established in these cases. For instance, In *City of Chicago* the Petitioner, an iron worker, was injured when he swung a sledge hammer over his head in a room with blocked ventilation. The Court described Petitioner's injuries:

> Petitioner had tenderness to palpation of the left eighth rib at the anterior axillary line radiating along the rib posteriorly. The pain could be reproduced with less severity by percussion of the eighth rib below the angle of the scapula. Also Dr. Byla, a treating physician testified that there was a depression of pinprick sensation when he tested the petitioner with a sharp needle. This depression was noted in one particular area of the petitioner's chest. Dr. Byla also testified that during his examination there appeared to be some lack of expansion on the left side of the chest in comparison with the right side which expanded more voluminously. He attributed this lack of expansion on inhalation to the presence of pain. Dr. Byla testified that he correlated his findings with the history given to him by the petitioner in arriving at his diagnosis. Based upon this [***8] diagnosis he recommended and performed surgery. Following the surgery the petitioner continued to complain of pain in an area severed by the nerves, the roots of which had been severed. From this the doctor concluded that the pain the petitioner was then experiencing was a phantom pain much the same as one has when he continues to feel pain in a foot that has been amputated. *Chicago v. Industrial Com.*, 59 Ill. 2d 284, 289, 319 N.E.2d 749, 752, 1974 Ill. LEXIS 291, *7-8.

In *Spetyla,* Petitioner fell backward striking his head against a steel table. He subsequently developed a multitude of symptoms and the Court reviewed the Petitioner's treatment:

> Approximately 17 months after the accident petitioner was seen by Dr. Gospodinoff, a psychiatrist. He was [*4] complaining of dizziness, weakness and general symptoms of malaise. He was constantly tired and could not work. He had poor balance, felt lightheaded, and a roaring noise bothered him all the time. Dr. Gospodinoff's initial diagnosis was neurological impairment and depressive reaction. Petitioner was admitted to the hospital for a period of 15 days and was given antidepressants. He was seen by Dr. Wacaser, a neurosurgeon, who diagnosed petitioner as suffering from a post-concussion syndrome. Approximately two months later he was hospitalized for a period of approximately five weeks for the same symptoms but the symptoms of depression increased and worsened. He had suffered a weight loss earlier, and now suffered an additional weight loss. He could not sleep, had trouble [***5] concentrating, and cried all the time. It was necessary to give petitioner a series of shock treatments and Dr. Gospodinoff also called in a Dr. Chapin to treat an ulcer which had developed, but which appears to have been healed after the shock treatments. *Spetyla v. Industrial Com.*, 59 Ill. 2d 1, 3-4, 319 N.E.2d 40, 42, 1974 Ill. LEXIS 246, *4-5.

In *Hook* the Court awarded benefits because his severe injury occurred while working as a carpenter. He was working on a scaffold and fell backwards a distance of approximately 8 feet striking his back on a box and some plywood.

He saw Dr. Netzel on three occasions and was hospitalized for 12 days. He

> continued to see Dr. Netzel and on January 15, 1968, apparently at **[*247]** respondent's request, was seen by Dr. Gleason. He returned to work on March 22, 1968, and worked fairly regularly until October 15, 1968. Since that time, except for several efforts to perform odd jobs, he has not been employed. Petitioner testified that prior to the injury he had worked as a farmer, a steel worker, railroad employee, and aircraft worker. Since the accident he has suffered a great deal of pain, his weight has dropped from 165 to 150 pounds, and he had been unable to engage in sexual relations.
>
> The Court held:
>
> There is no question that a disability resulting from a traumatic neurosis is compensable. (*United States Fuel Co. v. Industrial Com., 313 Ill. 590; Douglass and Co. v. Industrial Com., 35 Ill.2d 100; International Harvester Co. v. Industrial Com., 46 Ill.2d 238*.)

For the sake of brevity, the remaining cases listed in *Pathfinder* as cases involving "some" physical injury involve much more significant injuries than a sprained thumb, i.e. respectively these cases involve the following injuries: an amputation of several toes (*Douglas*); a head wound caused by being struck on the head by a 28-pound radiator, which fell several feet from its stacked position for which Petitioner was hospitalized for several days (*Ford Motor Co.*); traumatic neurosis caused by a severe blow in the face which caused a jerking and pulling down of Petitioner's head, a twitching of the face, a movement forward of the head, involving the shoulders and arms and at times almost the entire body, for which he treated with local physicians and then Mayo Brothers, in Rochester, Minnesota, where he stayed a month under observation and treatment. *** Later he was treated in Chicago by Dr. Bayard Holmes for four months, three months of which time was spent in St. Luke's Hospital. (*Postal Telephone*); weak legs and eyes, pains with walking, cannot lift anything that is heavy and other complications (*Armour Grain*); and a fracture of the right transverse processes of the second and third vertebrae in the lumbar region of the spine from getting caught between the motor and the cribbing of the passageway while trying to get up on the motor. (*United States Fuel Co*.)

This Petitioner had a minor injury that does not qualify under the line of "physical-mental" cases. Even if, arguendo, the event triggered some anxiety about past events, she has by her own account to Dr. Grimm, a long history of mental health issues and after this incident Petitioner was just plain "done" as a bus driver as she reported to Dr. Grimm, and Dr. Bylsma opined her condition was resolving when he last saw her.

Petitioner also reported being angry enough to want to stab the person who slapped the phone out of her hand and she had stabbed someone before. Her "neuroses" were long pre-existing and "unspecified PTSD" which Dr. Bylsma never explained. The question is whether her physical encounter precipitated any mental neurosis or condition that was different than her baseline. Based upon his testing and his interview of Petitioner, Dr. Grimm opined that her condition was longstanding. It does not appear that Dr. Bylsma had prior treating records, he did not share specifics about his own testing results, rather diagnosing her with "unspecified" PTSD. That of course means that Petitioner did not meet the criteria for the diagnosis. I would find that

the incident caused a temporary exacerbation of her pre-existing condition. I would not award TPD or a loss of trade and would award Petitioner 3% loss of use of the person. For all of these reasons, I dissent from the majority opinion.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC014972
Case Name	MURPHY, RENEE v. CHICAGO TRANSIT AUTHORITY
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	27
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Steven Seidman
Respondent Attorney	Elizabeth Meyer

DATE FILED: 5/2/2022

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

/s/ Joseph Amarilio, 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

Renee Murphy
Employee/Petitioner

v.

Chicago Transit Authority
Employer/Respondent

Case # **17** WC **014972**

Consolidated cases: **N/A**

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

DISPUTED ISSUES

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

FINDINGS

On **April 18, 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 $**65,409.24**; the average weekly wage was $**1,257.87**.

On the date of accident, Petitioner was **57** 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 $**18,448.76** for TTD and $**2,500.00** for TPD/ Maintenance benefits for a total credit of $**20,998.76**. Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of $7,150.00, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $838.58 per week for 34-3/7th weeks, commencing 4/29/2017 through 12/25/2017, as provided in Section 8(a) of the Act, representing $28,871.11. Respondent shall be given a credit of $18,448.76 for temporary total disability benefits that have been paid.

Respondent shall pay Petitioner temporary partial disability/Maintenance benefits in the amount $37,394.00. Respondent shall be given a credit of $2,500.00 for TPD/Maintenance benefits that have been paid

Respondent shall pay Petitioner permanent partial disability benefits of $754.72 per week for 100 weeks, because the injuries sustained caused the 20% loss of Petitioner's 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*

MAY 2, 2022

Signature of Arbitrator Joseph D. Amarilio

THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ADDENDUM TO ARBITRATION DECISION

Renee Murphy

v. **17** WC **0014972**

Chicago Transit Authority

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Preliminary History

Ms. Renee Murphy (Petitioner) caused to be filed an Amended Application For Adjustment of Claim on May 26, 2017 with the Illinois Workers' Compensation Commission alleging that on April 18, 2017 she sustained accidental injuries which arose out of and in the course of her employment with the Chicago Transit Authority (Respondent). (PX 1)

The parties agreed that on April 18, 2017, Petitioner and Respondent were operating under and subject to the Illinois Workers' Compensation Act and that there existed an employee-employer relationship. The parties further agreed that on April 18, 2017, Petitioner sustained accidental injuries that arose out of and in the course of her employment with the Respondent. The parties further agreed Petitioner gave timely notice of an alleged accidental injury. (AX 1) On the date in question, Petitioner was employed as a bus operator and had worked for the Respondent for approximately 17 years. (RX 1, 2)

The following five (5) issues are in dispute: 1) Is Petitioner's current condition of ill-being causally related to the injury; 2) Were the medical services provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services; 3) Is the Petitioner entitled to temporary benefits consisting of temporary total disability benefits (TTD) and

temporary partial disability benefits (TPD); and 4) what is the nature and extent of the injury, if any; and 5) Is Respondent due any credit.

II. Statement of Facts

Petitioner Renee Murphy was 58 years old on April 18, 2017. (AX1; PX2.) On the date in question, Petitioner was employed as a bus operator and had worked for the Respondent for approximately 17 years. (RX1, 2) (T 11; PX2)

Over the course of Petitioner's employment with Respondent as a bus driver, she had been assaulted on approximately four occasions. (T 11-12.) Petitioner sought counseling for her prior assaults. (T 14.) (See also, RX 1, wherein three prior occasions are noted)

On April 18, 2017, Petitioner was operating a bus for Respondent when the bus broke down. (T 12.) She was on 69th Street, near the red line. (T 12.) Petitioner called control to report that the bus had broken down; she was instructed to wait 30 minutes for a replacement bus to arrive. (T 12.) After 30 minutes, no replacement bus had arrived. (T 12.) Petitioner again called control and was instructed to stay put. (T 12.) After a further 30 to 60 minutes, Petitioner got off the bus to stretch. (T 12-13.) Petitioner testified that CTA bus operators are supposed to get off the bus and stretch when they are on the bus for a long time. (T 12.) Petitioner brought out her phone and put it to her ear, intending to call control again; as she did so, a man came up behind her and struck her in her jaw, hitting her right hand and knocking her phone out of her hand. (T 13.) The phone struck her in the thigh and fell to the ground. (T 13.) Petitioner began to fall toward the bus but caught herself. (T 13.)

Petitioner testified that she felt pain in her jaw from the impact, and that her hand and thumb were "messed up" with redness and swelling near the tip. (T 13.) She developed a large bruise on her thigh. (T 13.)

Later that day, Petitioner presented to Occupational Health Centers of Illinois complaining of constant, throbbing pain in her left thumb. (PX2.) She was seen by Dr. Afiz Taiwo. (T 16; PX2.) Petitioner reported her history of injury: she was standing outside of the bus, talking on her phone when an unknown person ran up and struck her hand, smacking her phone into her ear. (PX2, 10.) On examination, Petitioner had decreased grip strength in her right hand. (PX2, 11.) An x-ray of the right thumb revealed no acute bone injuries on preliminary interpretation pending interpretation by a radiologist. (PX2, 11.)

Dr. Taiwo diagnosed Petitioner with a sprain of the right thumb and released her with prescriptions for Naproxen, a finger splint, a hot/cold compress, and further x-rays. (PX2, 12.) Dr. Taiwo imposed restrictions of no driving CTA vehicles and ordered Petitioner to wear a splint at all times. (PX2, 13.)

On April 21, 2017, Petitioner returned to Occupational Health Centers of Illinois complaining of pain throughout her right thumb. (PX2, 14.) She reported pain with certain movements. (PX2, 14.) On physical examination, Petitioner's right thumb was swollen and noted to be moderately tender. (PX2, 15.) Petitioner had limited range of motion throughout her thumb, and again exhibited decreased grip strength on the right. (PX2, 15.) Petitioner was referred for physical therapy. (PX2, 16.) Petitioner's restrictions were maintained. (PX2, 17.)

On April 25, 2017, Petitioner had her initial physical therapy evaluation at Occupational Health Centers of Illinois. (PX2, 17.) She reported pain at 4/10 in her right thumb at its worst. (PX2, 18.) On physical examination, it was noted that Petitioner had moderate tenderness in her right thumb and that she could not touch the tip of her thumb to its base. (PX2, 18.) It was noted that Petitioner had only 10

pounds of grip strength in her right hand; the physical therapist set a goal of 35 pounds of grip strength. (PX2, 18.) It was noted that Petitioner had only 5 pounds of pinch strength in her right hand; the physical therapist set a goal of 10 pounds of pinch strength. (PX2, 19.) Petitioner was assessed with impaired joint mobility, motor function, muscle performance, and range of motion as well as localized inflammation. (PX2, 19.)

On April 28, 2017, Petitioner followed up at Occupational Health Centers of Illinois reporting thumb pain at 1/10. (PX2, 26.) She was again seen by Dr. Taiwo. (PX2.) Petitioner reported that she had attended two physical therapy sessions thus far and that her thumb was responding to treatment. (PX2, 26.) However, Petitioner reported that she was experiencing psychological symptoms; the assault was bringing up memories of a previous attack with a knife, triggering anxiety in her. (PX2, 26.) Petitioner reported that she was afraid of being around people at work. (PX2, 26.) Dr. Taiwo diagnosed Petitioner with post-traumatic stress disorder and referred her to Frederick W. Bylsma, PhD. (PX2, 26., RX1, 7))

On May 3, 2017, Petitioner had her initial visit with Dr. Bylsma. (T 16; PX3 Ex. 2, 50-52.) Petitioner recounted her history of injury: she was at work when her bus broke down on 69th Street; when she exited the bus to call about a replacement bus, a man came up behind her, punched her on the right side of her head, and walked away without looking back. (PX3 Ex. 2, 51.) Beginning that same night, Petitioner began to suffer from disrupted sleep. (PX3 Ex. 2, 51.) She began experiencing intrusive thoughts about the incident during the day and became increasingly anxious and fearful. (PX3 Ex. 2, 51.) Her sleep continued to suffer; she was getting only 4 to 5 hours of sleep a night and was suffering from fatigue. (PX3 Ex. 2, 51.) Petitioner reported that she was not driving a bus. (PX3 Ex. 2, 51.)

Dr. Bylsma performed a series of psychological tests. (PX3 Ex. 2, 51.) He stated: “Her symptom endorsement pattern is consistent with an acute anxiety reaction that is having a significant

negative impact on her daily experience – with prominent current anxiety noted." (PX3 Ex. 2, 51.) Dr. Bylsma diagnosed Petitioner with PTSD. (PX3 Ex. 2, 51.) He restricted her from operating CTA buses until cleared to do so, allowed her to return to work light duty, instructed her to use over-the-counter sleep aids such as melatonin, and scheduled her for further therapeutic intervention. (PX3 Ex. 2, 52.)

Petitioner continued to treat with Dr. Bylsma over the coming months, reporting difficulty sleeping and persistent fearful thoughts about what would happen if she was assaulted again while working as a bus driver. (PX3 Ex. 2, 63, 65, 66.) Near the end of July, she reported receiving a letter from Respondent stating that she could no longer operate a bus. (PX3 Ex. 2, 68.) This produced a great sense of relief, but a September assessment to determine her status as a driver caused her anxiety to spike. (PX3 Ex. 2, 70, 72, 74.)

At the request of the Respondent, on September 13, 2017, Petitioner underwent a Section 12 evaluation by Bill H. Grimm, PhD. (RX1.) Dr. Grimm opined that a diagnosis of PTSD did not appear appropriate because Petitioner's assault "does not appear to meet the criteria for the type and magnitude of stressor required for that diagnosis." (RX1.)

Dr. Grimm opined that the assault instead "reactivated long-standing vulnerabilities, insecurity, anxiety, and depressive tendencies...including a self-defeating need to remain hypervigilant over anything conceived to be a threat, whether real or imagined, persistent anticipatory anxiety, and adaptational inflexibility, consistent with an Anxiety Disorder NOS." (RX1.) He opined that Petitioner's treatment had been reasonable and necessary, but that future treatment was likely to be unsuccessful in promoting a less negative, less anxious, less vulnerable worldview. (RX1.) In a report dated September 18, 2017 regarding the September 13, 2017 Section 12 examination, Dr. Grimm rendered a diagnosis of Anxiety Disorder, Persistent Depressive Disorder, and Avoidant-Dependent Personality Characteristics. (RX 1) It was his opinion "a diagnosis of post-traumatic stress disorder would not be applicable" to the workplace incident on April 18, 2017. *Id.* Dr. Grimm felt her

treatment had been appropriate but that further treatment would not be warranted as she had "long-standing personality attributes, ego-syntonic, and therefore likely unresponsive to further psychotherapy." *Id.* He did note that anger management might be helpful, but that would be unrelated to the incident on 4/18/2017 and would be related to her pre-existing response patterns as noted in his report. *Id.* Dr. Grimm felt Petitioner was "in all probability . . . capable of working full duty, including operating a bus," though he noted she would be "miserable . . . consistent with the personality coping style." Furthermore, he noted Petitioner had "relief after learning she would not have to operate buses again because of her driving record. *Id.* He felt she was at maximum medical improvement (MMI). Of note, Dr. Grimm specifically pointed out that Petitioner had been riding the bus to most, if not all, of her therapy appointments and had gone about her normal personal activities without experiencing a "greater than normal degree of vigilance or anxiety for her." *Id.*

Dr. Grimm in the last paragraph of page 1 of his Section 12 examination report, noted that he reviewed an Employer's First Report of injury (commonly known as a Form 45). A form completed by the Respondent pursuant to §6(b) of the Act. A form that is to remain confidential as mandated by §6(b) of the Act. The reported was admitted into evidence without a hearsay objection or any objection whatsoever. (RX 1) The Arbitrator does not assign any penalty to the violation of Section 6(b) of the Act. The Arbitrator finds that the disclosure of the Form 45 report was not done in bad faith and more importantly, the disclosure does not adversely affect the outcome of this claim.

Put into evidence as Petitioner's Exhibit 4 was a one-page note dated 1/31/2019 from Valerie Jones, LPC. (PX 4) Petitioner testified she saw Ms. Jones in 2018, but these records are not in evidence, and there is no evidence about how many times or how often she treated with her. Petitioner further noted she had not seen her "[s]ince the Covid-19 came." (T 24) Although Ms. Jones makes a statement that "it is [her] professional observations that work reassignment be granted to Ms. Murphy," we do not have the benefit of her full treatment records, and, therefore, Ms. Jones's statement will not

be given any consideration.

Petitioner continued treating with Dr. Bylsma, who continued to diagnose her with PTSD at every session. (PX3 Ex. 2, 76 *et seq*.) On Petitioner's appointment of October 7, 2017, Petitioner informed Dr. Bylsma that Respondent's Return Back To Work Coordinator, Erika Perkins, had emailed her stating that Petitioner was cleared to return to work as a bus driver following her Section 12 evaluation by Dr. Grimm. (PX3 Ex. 2, 77.) Dr. Bylsma noted that Petitioner was distraught about the possibility. (PX3 Ex. 2, 77.) Petitioner stated that she felt she was being forced to return to an unsafe environment; she shared that she felt afraid for her safety. (PX3 Ex. 2, 77.)

On October 10, 2017, Petitioner returned to Dr. Bylsma having discussed the matter with Perkins. (PX3 Ex. 2, 79.) Perkins had told her that she was required to return to operating a bus. (PX3 Ex. 2, 79.) Dr. Bylsma noted that Petitioner became anxious, distraught, and tearful talking about returning to driving a bus. (PX3 Ex. 2, 79.) He again diagnosed Petitioner with PTSD. (PX3 Ex. 2, 79.)

On October 18, 2017, Dr. Bylsma completed a form supporting Petitioner's request for time off under the Family Medical Leave Act. (PX3 Ex. 2, 84.) He wrote that his restrictions of no CTA bus operations remained in force. (PX3 Ex. 2, 84, 86.) He wrote that Petitioner suffered from acute PTSD that was in the process of becoming chronic. (PX3 Ex. 2, 85.) He opined that the condition arose when a man punched Petitioner in the head as he was walking by her bus. (PX3 Ex. 2, 85.) Dr. Bylsma noted that Petitioner was suffering from severe anxiety, fearfulness about her safety, tremulousness, sleep disturbance, and inattentiveness. (PX3 Ex. 2, 85.)

On November 14, 2017, Petitioner returned to Dr. Bylsma for another therapy session. (PX3 Ex. 2, 81.) Petitioner reported that she had become increasingly convinced that she would have to return to work as a bus operator at least temporarily until Respondent found another position for her.

(PX3 Ex. 2, 81.) Dr. Bylsma noted that, for the first time, Petitioner was able to speak of this without becoming anxious and angry; he attributed this to the medication she had been taking. (PX3 Ex. 2, 81.) Dr. Bylsma opined that the medication was successful in regulating her moods—and in particular, her anxiety. (PX3 Ex. 2, 81.) Petitioner stated that she was ready to return to operating a bus. (PX3 Ex. 2, 81.) However, as they discussed being back on the bus and possible scenarios she might encounter, Dr. Bylsma observed that Petitioner became increasingly anxious and flustered. (PX3 Ex. 2, 81.) Dr. Bylsma wrote: "It is the opinion of this psychologist, with a history of therapies with Ms. Murphy, that she is currently not capable of safely returning to CTA bus operation. She will not be able to operate a bus effectively if she gets into such a state while operating." (PX3 Ex. 2, 81.) He continued to restrict Petitioner from working as a bus operator. (PX3 Ex. 2, 81.)

That same day, Dr. Bylsma drafted a different version of his notes in which he stated that Petitioner was capable of returning to work as a bus operator as of November 20, 2017 "provided she has significant retraining prior to operating the bus in the public again." (PX3 Ex. 2, 83.)

On December 11, 2017, Petitioner followed up with Dr. Bylsma for the last time. (PX3, 17; PX3 Ex. 2, 89.) Petitioner reported that she had interviewed for a janitorial position with Respondent the previous Friday and was excited about the possibility of not having to operate a bus again. (PX3 Ex. 2, 89.) Dr. Bylsma wrote that if she were offered the new position, they would meet again so that he could clear her to return to work as soon as possible. (PX3 Ex. 2, 89.) He again diagnosed Petitioner with PTSD and imposed restrictions of "No return to CTA Bus operations without medical clearance." (PX3 Ex. 2, 89.)

On December 26, 2017, Petitioner returned to work for the CTA as a janitor. (T 21-22.)

In 2018, Petitioner began to treat with Licensed Professional Counselor Valerie Jones. (T 19.) Jones practiced talk therapy with Petitioner. (T 25.)

On January 31, 2019, Jones wrote a letter diagnosing Petitioner with PTSD and stating that

Petitioner was currently under her care. (PX4.) She wrote, "Ms. Murphy experiences extreme anxiety and paranoid thoughts of being harmed while operating a bug due to past incidents of her being physically assaulted while on duty." (PX4.) She opined that Petitioner's PTSD symptoms would worsen if she were to return to work as a bus driver. (PX4.) No medical records or itemized bills were introduced into evidence.

Petitioner continued to treat with Jones until the Covid-19 pandemic forced the clinic to shut down. (T 24-25.)

On October 1, 2019, Dr. Bylsma testified at an evidence deposition. (PX3.) Dr. Bylsma is a licensed Doctor of Clinical Psychology who has been practicing since 1989, and since 1997 in Illinois. (PX3, 5.) He specializes in neuropsychological assessment services, with a small component of his practice constituting supportive psychotherapy. (PX3, 6.) During her course of treatment, Dr. Bylsma provided psychological testing to Petitioner followed by therapy services. (PX3, 7.)

Dr. Bylsma testified to a reasonable degree of psychological and neuropsychological certainty that Petitioner's work accident of April 18, 2017 was a cause or contributing factor to her PTSD and severe anxiety. (PX3, 18.)

Asked about the two different versions of his notes from November 14, 2017, Dr. Bylsma explained that the version of his notes opining that Petitioner could not safely return to work as a bus driver reflected his original opinion. (PX3, 14.) Later that same day, Petitioner returned to Dr. Bylsma saying that she had to return to being a bus operator or she would be fired. (PX3, 14.) She asked him to change his restrictions so that she could return to work and avoid being fired. (PX3, 15.) Dr. Bylsma testified that he lifted his restriction only at Petitioner's insistence. (PX3, 15.) Dr. Bylsma testified that he would be reluctant to return Petitioner to work as a CTA bus driver given her significant anxiety about personal safety. (PX3, 18.) He would have to see her again to make a determination about her present state or her ability to return to work as a bus driver. (PX3, 18-19.)

Petitioner never returned to work as a bus driver. (T 22.) Petitioner still works for Respondent as a janitor. (T 9-10.) As part of her duties, she mops floors, wipes down tables, cleans offices, dusts, cleans toilets, and cleans bathrooms more generally. (T 21.) Petitioner cleans various CTA facilities, specifically inside of bus garages. (T 21, 33.) She does not clean bus stops. (T 33-34.)

As of the date of hearing, Petitioner testified that when driving in a car or when a bus drives by her, she will still often feel afraid and go into her head, replaying past events. (T 26.) She testified:

> I notice that a lot of times I can be in a car, a bus drive by or something, just sometimes, not all the time. I get to thinking in my mind, like, wow, thank God that, you know, I can't do that no more because I'm just afraid. I am afraid that something else might happen. Something else might happen. Because it done happened plenty of times. I kept telling myself, I will give it another shot. I gave it another shot. I gave it another shot. So this last time, that's when I just couldn't take it no more. You know, I just couldn't take it no more.

(T 26.) Petitioner testified that her thumb and thigh are better. (T 25.)

Petitioner is married with no dependent children. (AX1.) The parties have stipulated that in the year preceding the injury, Petitioner earned an average weekly wage of $1,257.87. (AX1; T 11.)

III. CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. *820 ILCS 305/1(b)3(d)*. To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980) It is well established that the Act is a humane law of remedial nature and is to be liberally construed to affect 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). 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 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. 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 may not stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972). It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission,* 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission,* 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her 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. The Arbitrator finds Petitioner's testimony to be straight forward, truthful, and consistent with the record as a whole.

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

"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, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in

disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.,* 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

In *Price v. Industrial Comm'n*, 278 Ill. App. 3d 848, 853-54 (1996), the Appellate Court considered the applicability of this principle to a case involving a preexisting condition and reasoned as follows: "The employer also contends that the facts of the present case do not support the Commission's 'chain of events' analysis because [the claimant] had a preexisting condition. The employer cites no authority for the proposition that a 'chain of events' analysis cannot be used to demonstrate the aggravation of a preexisting injury, nor do we see any logical reason why it should not. The rationale justifying the use of the 'chain of events' analysis to demonstrate the existence of an injury would also support its use to demonstrate an aggravation of a preexisting injury." *Walquist Farm Partnership v. IWCC*, (January 11, 2021) This is a Rule 23 Illinois Appellate Court decision was issued after January 1, 2021 and, therefore, is cited for its persuasiveness; not as precedent.

Pursuant to the *Sisbro* case, it is clear that a work-related accident that aggravates or accelerates a pre-existing condition can be compensable under Illinois Workers' Compensation law. Further, based on the medical records and testimony, Petitioner had a preexisting asymptomatic psychological issue. However, the chain of events presented in this case show she was made worse by her work accident.

No evidence was introduced that Petitioner missed time off work because of her preexisting condition after returning to work from her prior accidents. 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 by the company selected physicians. The Arbitrator finds it significant that although Petitioner obtained prior medical treatment,

she returned to work, the treatment following her work accident was continuous and uninterrupted and she was unable to return to work as a bus driver. 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.

The Arbitrator finds that Petitioner's PTSD is causally related to the work accident of April l8, 2017 based on the chain of events and the findings and opinions of the treating medical providers. The Arbitrator finds Petitioner's testimony to be more credible than not regarding a permanent aggravation of any preexisting condition of ill-being The Arbitrator finds the findings and opinions of Dr. Taiwo of Concentra Occupational Health and Dr. Bylsma to be more consistent with the evidence that that of Dr. Grimm. The Arbitrator also notes that the Section 12 examiners failed to persuasively explain why Petitioner continues to have symptoms consistent with PTSD.

The parties agree that Petitioner suffered an accident arising out of and in the course of her employment; the parties also agree that Petitioner's right thumb condition is causally related to the accident. (AX1.) However, Respondent disputes that Petitioner's PTSD condition is causally connected. (AX1.) For the following reasons, the Arbitrator finds that Petitioner's current condition of post-traumatic stress disorder is causally related to her work accident of April 18, 2017.

In Illinois, psychological injuries are compensable under a physical-mental theory when the injuries are related to and caused by a physical trauma or injury. *Matlock v. Indus. Comm'n*, 321 Ill. App. 3d 167, 171, 746 N.E.2d 751, 755 (1st Dist. 2001). In dealing with the physical-mental category, even a minor physical contact or injury may be sufficient to trigger compensability. *Id.* Post-traumatic stress disorder is a compensable mental injury. *See e.g. Diaz v. Illinois Workers' Comp. Comm'n,* 2013

IL App (2d) 120294WC, ¶ 34 (2d Dist. 2013).

In this case, Petitioner suffered an unprovoked, unanticipated physical attack. An attack in a dangerous area where she did not enjoy immediate assistance. She was the victim of a physical attack that could have gone much worse. The attack occurred adjacent to the expressway guardrail She could have been pushed over a guard rail on to the expressway.

Petitioner was first diagnosed with PTSD by Dr. Taiwo at Occupational Health Centers of Illinois on April 28, 2017 when treating for this attack. (PX2, 26.) She was then referred to Frederick W. Bylsma, PhD by the company clinics physician, Dr. Taiwo. Dr. Bylsma, based upon the history and psychological testing also diagnosed her with PTSD. (PX2, 26.) Dr. Bylsma continued to diagnose her with PTSD for the entirety of her course of treatment, without exception. (PX3, Ex. 2.) At his evidence deposition, Dr. Bylsma testified to a reasonable degree of psychological and neuropsychological certainty that Petitioner's work accident of April 18, 2017 was a cause or contributing factor to her PTSD and severe anxiety. (PX3, 18.) Petitioner subsequently sought care with Valerie Jones, LPC, who also diagnosed her with PTSD. (PX4.) Due to the lack of medical records of Ms. Jones, the Arbitrator is unable to give much weight to the opinion of Ms. Jones although her findings are consistent with the company selected medical providers.

It is notable that prior to seeking treatment with Ms. Jones, Petitioner did not exercise an independent choice of doctor at any point. She went to Occupational Health Centers of Illinois pursuant to Respondent's policy; she then treated with Dr. Bylsma on referral from Respondent's chosen occupational health provider. (T 14-15; PX2, 26.) Thus, it not merely Petitioner's treaters who have diagnosed her with PTSD, but Respondent's chosen providers as well. When Respondent retained Dr. Grimm to serve as a Section 12 examiner during Petitioner's treatment with Dr. Bylsma, Respondent essentially hired an expert to rebut the opinions offered within Respondent's own chain of referral.

Although Dr. Grimm opined that Petitioner was not suffering from PTSD, he stands alone among medical professionals in this case in advancing this opinion. Dr. Grimm opined that Petitioner was suffering from reactivation of avoidant-dependent personality characteristics, depressive disorder, and anxiety disorder. However, as Dr. Grimm noted, Petitioner was not anxious in general; rather, she was anxious specifically about re-entering the role that her prior assaults occurred within. Dr. Grimm characterized Petitioner's hypervigilance around buses as selective hyper-reporting, reasoning that she could be assaulted anywhere; however, Dr. Grimm appeared to be making this declaration within the context of a generalized anxiety disorder. In essence, Dr. Grimm's report appears to reflect that Dr. Grimm settled upon a diagnosis and then criticized Petitioner's reporting of symptoms for fitting PTSD better than the alternative diagnosis he had decided upon. Dr. Grimm's only stated reason for ruling out PTSD as a diagnosis is that he did not feel that the physical assault Petitioner suffered—an unexpected punch to the head that injured her hand and physically staggered her—was severe enough to cause the condition.

Although stated in his report, Dr. Grimm did not address nor take into consideration that assault took place in an area where Petitioner became subsequently realized that the perpetrator could have thrown her over the nearby expressway guard railing, nor did he take consideration that the assault took place in what the Petitioner believed to be a dangerous area.

Although noted in this report, Dr. Grimm did not address nor take into consideration the three prior assaults. He did not address nor take into consideration the cumulative effect of the prior assaults on her current condition. Although noted in his report, he did not address nor did not take into consideration that that that the assault in question, was the one that: broke the camel's back."

Although stated in his report, Dr. Grimm did not take into consideration that the Petitioner felt that she was unable to protect herself from perpetuators with a defensive weapon due to CTA policy. And, thus, felt helpless.

Here, again, Dr. Grimm is the only medical professional in this case to have advanced such an opinion. The Arbitrator does not find Dr. Grimm's proffered reason for ruling out PTSD persuasive.

Dr. Grimm appears to have viewed the assault a non-serious offense and, thus, one that could not cause PTSD. However, the Illinois legislators disagree. It views the assault on a transit worker to be very serious. Illinois law views that 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 committed a Class 4 felony. The Arbitrator is mindful of the applicable criminal law and views this assault as intended by the Illinois legislators – a serious crime; a felony.

Further, even if Dr. Grimm's diagnosis were correct, this would not sever the causal connection. The law in Illinois is that when a work accident aggravates a preexisting condition, causation is established. *See Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 215 (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." *Int'l Harvester v. Indus. Comm'n*, 93 Ill. 2d 59, 63–64, 442 N.E.2d 908, 911 (1982). Here, Dr. Grimm opined that the unexpected physical attack on Petitioner "*reactivated* long-standing vulnerabilities, insecurity, anxiety, and depressive tendencies." [*Emphasis added*] (RX1.) This describes aggravation of a preexisting condition—and thus, causal connection.

Ultimately, the Arbitrator finds Petitioner's treating doctor and mental-health professional to be more persuasive than Dr. Grimm in this matter. As such, the Arbitrator finds that Petitioner suffers from PTSD causally related to her work accident of April 18, 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:

The Arbitrator adopts his findings of fact contained above and incorporates them herein by this reference. The Arbitrator finds that Petitioner's treatment for her conditions of ill-being was reasonable, necessary and causally related to her work injuries but then opined that further treatment would not be productive as her condition had not improved based on his diagnosis and not the diagnosis of the three treating health care professionals. Dr. Grimm opined as much in his Section 12 report, and Respondent has provided no testimony bearing on Petitioner's treatment since that date. (RX1.)

Respondent's sole objection stems from its stance that some of Petitioner's treatment is not causally related to the accident. However, the bills submitted exclusively concern either treatment for Petitioner's hand at Respondent's own occupational health provider or therapeutic treatment for Petitioner's mental health condition arising out of her accident. As discussed in Section F above, these are causally related.

Petitioner has submitted exhibits showing remaining outstanding bills of $7,150.00. Respondent is ordered to pay all outstanding bills related to the accident. Respondent is entitled to credit for any bills previously paid and, any bills paid by group insurance through the CTA, if any, and will hold the Petitioner harmless for payments made, if any.

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

The Arbitrator adopts his findings of fact contained above and incorporates them herein by this reference. Respondent disputes its liability to pay temporary total disability benefits (TTD) based upon causal connection beyond September 18, 2017. Respondent asserts that Petitioner was TTD for the period of April 29, 2017 through September 18, 2017 representing 20-3/7th weeks. As discussed above, however, the Arbitrator finds that Petitioner's current PTSD condition is causally connected to her work accident. As such, the Arbitrator awards TTD from April 29, 2017 through December 25, 2017 representing 34-3/7th weeks of TTD. (See AX1)

Petitioner was restricted from driving buses on the date of accident and was never truly cleared to return to that job by any treater. (PX2.) Although Petitioner was cleared to return to work light duty with restrictions as early as May 2017, those restrictions included no driving of a bus, and the evidence shows that Respondent did not accommodate these restrictions until December 26, 2017. (PX2; PX3 Ex. 2.)

Further, although Dr. Bylsma ostensibly lifted his restriction on driving CTA buses from November 20, 2017 until December 11, 2017, Dr. Bylsma testified that this did not reflect his professional judgment; he did so solely to assuage Petitioner's fears that she would be fired otherwise, and only at her insistence. (PX3, 15.) In the original version of his notes from November 14, 2017, Dr. Bylsma opined that Petitioner could not safely return to work as a bus driver; Dr. Bylsma testified that this version of his notes reflected his actual opinion. (PX3, 14-15.) Given these facts, the Arbitrator finds that the lifting of Petitioner's restrictions contained in Dr. Bylsma's second set of notes from November 14, 2017 reflects Petitioner's fears of becoming unemployed rather than a genuine assessment of her ability to safely return to unrestricted work as a bus operator.

Based on the above, the records in this case demonstrate that Petitioner was unable to work from April 18, 2017 to December 25, 2017 (35 and 6/7ths weeks). As such, the Arbitrator finds that Petitioner's TTD benefits owed total $28,871.11 (34 and 3/7ths weeks x 2/3 x $1,257.87). Respondent claimed and Petitioner agreed that it paid $18,448.76 in TTD benefits for which it is entitled to credit in the amount of $18,448.76.

Petitioner also claims entitlement to maintenance/TPD benefits from December 26, 2017 until the date of hearing, representing 213 and 1/7ths weeks. As with TTD, Respondent disputes its liability to pay temporary partial disability benefits (TPD)/ maintenance benefits based upon causal connection; and as with TTD, the Arbitrator has found that Petitioner's condition of ill-being is causally related. As such, the Arbitrator awards benefits. Respondent claimed and Petitioner agreed that it paid $2,500.00 in maintenance benefits for which it is entitled to a credit of $2,500.00.

Petitioner's pay during the year prior to the injury, when she was working as a bus operator, was $1,257.87 per week. (AX1.) This works out to approximately $31.45 an hour working as a bus operator. Based upon the estimated pay contained within the collective bargaining agreement between Local 241 and the CTA, submitted as Petitioner's Exhibit 5, this suggests that Petitioner was a Grade 2 operator in 2016. (PX5.) However, Petitioner testified that when she left her position in 2017, her pay as a bus operator had risen to $32 an hour. (T 24.) The estimated pay of a Grade 2 operator would not rise to $32.05 until July 2018. (PX5.) A pay of $32.00 an hour in 2017 indicates that Petitioner had become a Grade 3 operator during the interim. As such, the Arbitrator uses the Grade 3 pay estimates. The pay for a Grade 3 bus operator was estimated to reach the following levels on the following dates:

July 1, 2018 –	$33.19
January 1, 2019 –	$33.53
July 1, 2019 –	$34.20

Petitioner testified that she began work as a janitor being paid $25.00 an hour. (T 23.) Petitioner testified that her pay rose incrementally during the time she worked as a janitor, and that she now makes $30.00 an hour plus change working that position. (T 24.) Without a more specific number, the Arbitrator will treat "plus change" as fifty cents. It is safe to assume that Petitioner did not receive a raise within less than one week of starting her new role as a janitor; given this, consistent annual raises would produce the following approximate rates of janitorial pay:

December 26, 2017 – $25.00

January 1, 2019 – $26.37

January 1, 2020 – $27.75

January 1, 2021 – $29.13

January 1, 2022 – $30.50

In light of the above, the Arbitrator finds that Petitioner's wage was reduced by the following amounts for the following periods:

December 26, 2017 to June 30, 2018:	$7,440.00 (($32.00/hr - $25.00/hr) x 40 hr/wk x 26 and 4/7ths weeks)
July 1, 2018 to December 31, 2018:	$8,564.40 (($33.19/hr - $25.00/hr) x 40 hr/wk x 26 and 1/7ths weeks)
January 1, 2019 to June 30, 2019:	$7,364.57 (($33.53/hr - $26.37/hr) x 40 hr/wk x 25 and 5/7ths weeks)
July 1, 2019 to December 31, 2019:	$8,187.94 (($34.20/hr - $26.37/hr) x 40 hr/wk x 26

	and 1/7ths weeks)
January 1, 2020 to December 31, 2020:	$13,452.85 (($34.20/hr - $27.75/hr) x 40 hr/wk x 52 and 1/7ths weeks)
January 1, 2021 to December 31, 2021:	$10,574.57 (($34.20/hr - $29.13/hr) x 40 hr/wk x 52 and 1/7ths weeks)
January 1, 2022 to January 25, 2022:	$507.42 (($34.20/hr - $30.50/hr) x 40 hr/wk x 3 and 3/7ths weeks)

In total, Petitioner's pay has decreased by $56,091.75 since she returned to work within her restrictions; therefore, the Arbitrator awards Petitioner $37,394.50 in TPD benefits ($56,091.75 x 2/3).

The parties stipulate that Respondent has paid $18,448.76 in TTD benefits to Petitioner and $2,500.10 in TPD to date. (AX1.)

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

The Arbitrator adopts his findings of fact contained above and incorporates them herein by this reference. As of October 18, 2017, Dr. Bylsma opined that Petitioner's acute PTSD was becoming chronic. (PX3 Ex. 2, 85.) Dr. Bylsma testified that he would need to see Petitioner again to determine whether her PTSD had resolved, and that he had not seen her. (PX3, 18-19) There has been no evidence to show that Petitioner's condition has resolved; to the contrary, Dr. Grimm opined that Petitioner's condition was unlikely to resolve with treatment. (RX1.)

Petitioner waived her right to seek benefits under an 8(d)(1) of the Act. Due to her age and current loss of earnings, the waiver is understandable. Section 8(d)(2) of the Act provides that a claimant partially incapacitated from pursuing the duties of their usual and customary line of

employment may opt to receive permanent partial disability benefits (PPD) benefits under 8(b) (2.1) "for that percentage of 500 weeks that the partial disability resulting from the injuries covered by this paragraph bears to total disability." Petitioner has elected to receive a "loss of trade" remedy; thus, the Arbitrator must calculate the percentage of 500 weeks that the partial disability bears.

Pursuant to Section 8.1b(b) of the Act, the Arbitrator considers the following factors in determining the level of permanent partial disability:

(i) Neither party submitted an impairment rating report.

(ii) Petitioner's former occupation as a CTA bus driver and her current occupation is that of a CTA janitor. (T 9-10.)

(iii) Petitioner was 58 years old at the time of her injury. (AX1; PX2.)

(iv) Evidence as to Petitioner's future earnings capacity was submitted in the form of a collective bargaining agreement and testimony as to Petitioner's wages as a janitor. (PX5; T 22, 24.) The evidence suggests that Petitioner currently earns roughly $3.70/hour less than she would have had she remained a bus driver. However, at various points the wage differential has been far greater, with Petitioner at one point earning fully $8.19 less per hour, representing a loss of approximately one-quarter of the wages she would be making as a bus driver.

(v) Petitioner offered evidence of disability in the form of testimony at the arbitration hearing as well as via medical documentation. Although Petitioner's right thumb was no longer hurting her as of the date of hearing, Petitioner suffered an injury necessitating weeks of treatment, including physical therapy. And it is evident that Petitioner enjoyed a good result from the conservative treatment she received. Accordingly, the Arbitrator finds no persuasive evidence to support a permanent partial disability finding for the hand injury.

(PX2.) More significantly, however, Petitioner continues to suffer from PTSD and may well have reactivated prior mental conditions. She testified that she will often feel fear and go into her mind replaying past her assaults when driving in a car or when a bus drives by her. (T 26.) Dr. Bylsma testified that he would be reluctant to return her to work as a CTA bus driver given her significant anxiety about personal safety. (PX3, 18-19.) Dr. Grimm opined that she should be able to return to work as a bus driver but "would be miserable doing so." (RX 1, 12) In addition to the above, the Arbitrator considers the loss of Petitioner's usual and customary trade as a factor relevant to her loss of trade remedy. Prior to her work accident, Petitioner worked as a bus operator for Respondent for 17 years. (RX 1) Petitioner now works as janitor and has not been medically cleared to return to work as a bus driver. This establishes a loss of trade in what was a long-running career for Petitioner. Further, as discussed above, the loss of Petitioner's trade as a bus operator represents a decrease to her future earnings capacity but one less that the average loss of trade case. Having weighed the relevant factors and the record as a whole as well a Commission past precedent in like and similar cases, the Arbitrator finds that Petitioner is entitled to permanent partial disability equal to 20% loss of use of her person as a whole pursuant to Section8(d)2 of the Act.

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

Respondent is entitled to credit in the total amount of $20,948.76 representing TTD and TPD/maintenance previously paid. (AX 1)

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC023455
Case Name	Jessica Sitter v. Silgan Containers LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0122
Number of Pages of Decision	20
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Neal Strom
Respondent Attorney	Miles Cahill

DATE FILED: 3/20/2023

/s/ Thomas Tyrrell, Commissioner

Signature

23IWCC0122

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

Jessica Sitter,

Petitioner,

vs. NO: 19 WC 023455

Silgan Containers, LLC,

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 accident, causation, medical expenses, prospective medical care, and temporary total disability ("TTD"), 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 of TTD benefits. After sustaining an injury on July 22, 2019, Petitioner continued to work until she was authorized to remain off work by her primary care provider, Stephanie Crawford, NP, on August 6, 2019. PX3. Petitioner testified she returned to work light duty on September 6, 2019. T. 57. Petitioner presented to NP Crawford on September 9, 2019, at which time she was again authorized to remain off work. PX3. Subsequently, Dr. Darwish continued to authorize Petitioner off work when he took up her care on February 6, 2020. PX6. At the time of the hearing on August 27, 2021, Petitioner remained authorized off work by Dr. Darwish pending surgery. The proper TTD period is from August 6, 2019 through September 5, 2019 and from September 9, 2019 through August 27, 2021.

The Commission corrects a scrivener's error in the Arbitrator's Decision on page 7, paragraph 2, sentence 1, to strike "combing" and replace with "combining."

The Commission corrects a scrivener's error in the Arbitrator's Decision on page 12, paragraph 2, sentence 7, to strike "as" and replace with "has."

The Commission corrects a scrivener's error in the Arbitrator's Decision on page 12, footnote two (2), to strike "consistent," and replace with "inconsistent."

The Commission corrects a scrivener's error in the Arbitrator's Decision on page 14, last paragraph, to strike "August 27, 2019" and replace with "August 27, 2021."

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 October 18, 2021, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED that Respondent shall pay to Petitioner temporary total disability benefits of $565.06/week for 107-1/7 weeks, commencing August 6, 2019 through September 5, 2019 and from September 9, 2019 through August 27, 2021, as provided in Section 8(b).

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical expenses to Rochelle Community Hospital Associates, Rochelle Community Hospital, Dr. Darwish, Rockford Spine Center, Rockford MRI and Salinas Chiropractic as identified in Petitioner's Exhibits 1-7 and 9-11, subject to §8(a)/§8.2 of the Act.

IT IS FURTHER ORDERED that Respondent shall authorize and pay for prospective medical treatment as recommended by Dr. Darwish, pursuant to §8(a)/§8.2 of the Act.

IT IS FURTHER ORDERED that Respondent shall receive credit of $14,853.59 for temporary total disability benefits paid to Petitioner on account of this 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.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $45,800.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 20, 2023

o: 02/21/2023
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	19WC023455
Case Name	SITTER, JESSICA v. SILGAN CONTAINERS LLC
Consolidated Cases	No Consolidated Cases
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Neal Strom
Respondent Attorney	Miles Cahill

DATE FILED: 10/18/2021

THE INTEREST RATE FOR THE WEEK OF OCTOBER 13, 2021 0.05%

/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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jessica Sitter
Employee/Petitioner

v.

Silgan Containers, LLC.
Employer/Respondent

Case # **19** WC **23455**

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 **Wheaton**, on **August 27, 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. [x] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [x] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [x] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [x] Is Petitioner entitled to any prospective medical care?
L. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On the date of accident, **July 22, 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 $**44,075.20**; the average weekly wage was $**847.60**.

On the date of accident, Petitioner was **42** years of age, ***married*** with **4** dependent children.

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

Respondent shall be given a credit of $**14,853.59** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**14,853.59**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **$565.06/week for 107 1/7 weeks**, commencing **8/5/2019 through 9/5/2019 and 9/7/2019 through August 27, 2021,** as provided in Section 8(b), as set forth in the Conclusions of Law and incorporated herein;

Respondent shall pay reasonable and necessary medical services to Rochelle Community Hospital Associates, Rochelle Community Hospital, Dr. Darwish, Rockford Spine Center, Rockford MRI and Salinas Chiropractic as identified in Petitioner's Exhibits numbers 1-7 and 9-11, pursuant to Sections 8(a) and 8.2 of the Act, subject to the fee schedule, as set forth in the Conclusions of Law and incorporated herein;

Respondent shall pay for the surgery recommended by Dr. Darwish, consisting of a laminectomy and discectomy on the left side at L4-L5 and L5-S1, as well as any reasonably related prospective medical care subsequent to that procedure, pursuant to Sections 8(a) and 8.2 of the Act, , as set forth in the Conclusions of Law and incorporated herein;

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

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

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

By: /o/ *Frank J. Soto* **OCTOBER 18, 2021**
Arbitrator

Procedural History

This case proceeded to trial pursuant to Sections 19(b) and 8(a) of the Act. The disputed issues are whether Petitioner sustained accidental injuries that arose out of and in the course of employment, whether Petitioner's current condition of ill-being is causally connected to her injury, whether Respondent is liable for unpaid medical bills, whether Petitioner is entitled to TTD benefits and whether Petitioner is entitled to prospective medical care.

Findings of Fact

Jessica Sitter (hereafter referred to as "Petitioner") testified that on July 22, 2019, she was working for Silgan Containers (hereinafter referred to as "Respondent") as a coder stacker. (T. 14-15). Petitioner testified on that date, she reported to work at approximately 6:00 p.m. (T. 15). Petitioner testified she worked for Respondent for two years as a coder stacker. (*Id*.). Petitioner testified her job duties included lifting pallets and lifting steel sheets. (T. 16). Petitioner testified the wood pallets weighed between 30 to 40 pounds, in which she would stack 15-20 pallets during a shift. (*Id*.). Petitioner testified the sheets of steel are placed on the pallets (*Id.*). Petitioner testified during a shift, she would lift between 4,000 to 5,000 sheets of steel. (T. 17). Petitioner testified she would lift between 10 to 15 steel sheets at a time. (*Id*.). Petitioner testified the steel sheets range in size from 30-by-30 inches or bigger (T. 18).

Petitioner testified on July 22, 2019, she reported to work at 6:00 p.m. (T. 21). Petitioner testified that around 10:30 p.m., she picked up a pallet and felt a tweak in her back. (*Id.)*. Petitioner testified she felt a sharp pain running through her lower back and down the back of her left leg after lifting the pallet. (T. 24-26). Petitioner testified she continued to work but she was aware something unusual happened to her back. (*Id*.). Petitioner testified at her first break, around 10:30 p.m., she was experiencing significant pain in her lower back and the back of her left leg. (T. 26-27). Petitioner testified that, during that break, she spoke to a co-worker, Alicia Craig, and told her about her low back pain. (T. 27-28). Petitioner testified Alicia gave her Ibuprofen and an ice pack for the pain. (T. 28).

Petitioner testified during her second break, at 12:30 a.m., she tried to lay down on the picnic table to relieve the pain. The picnic table was located outside of the plant. (T. 30-31). Petitioner testified that her supervisor, Janet Russell, was outside telling people to "*keep it moving*" and "*we need to get this done*". (T. 30). Petitioner testified during her third break, around 4:30 a.m., she noticed a pinching and burning sensation in her back when she tried to

stand. (T. 32). Petitioner testified that she was speaking to Alicia when Janet approached and told her see a chiropractor (T. 34).

On July 24, 2019, Petitioner sought medical treatment from Dr. Tim Salinas of Salinas Family Chiropractic. The history provided to Dr. Salinas states that Petitioner experienced a spine, rib and pelvic area condition, which is acute, caused by a work-related injury. [1] The records indicate Petitioner reported that her back became very sore and tight after lifting and sorting palates and pallets at work. The medical records state that Petitioner denied any prior injury or treatment for the back. Petitioner described sharp shooting symptoms. Dr. Salinas noted the location of the symptoms were the low back, lumbar paraspinal region, quadratus lumborum region pelvis and rib area. Petitioner rated her pain level as 8 out of 10 during activity and 5 out of 10 at rest. (Px. 1).

Petitioner testified that she returned to work on July 25, 2019 and upon returning to work she went to Janet's office to requested filing an incident report pursuant to the Union's direction and because she suffered a work injury. (T. 40). Petitioner testified Janet acknowledged her injury and Janet said she would get back to her. (T. 40-41). Petitioner testified she returned to work while seeing the chiropractor. (*Id*.).

Petitioner testified the chiropractor issued light duty restrictions on July 31, 2019. (T. 42). Petitioner testified, on August 6, 2021, she attempted to speak to Janet, again, since Janet had not gotten back to her. (T. 42-43). Petitioner testified that Frank McCoy, the press supervisor, was in Janet's office. Petitioner testified she reiterated to Janet that she needs to file an incident report. (T. 45). Petitioner testified, that at that time, Janet called Work Partners, Respondent's insurance company. (*Id.*). Petitioner testified once she told the insurance company, she was seeing a chiropractor she was told that there was nothing for them to file. (*Id.).*

Petitioner testified she was sent home from work by her supervisors Janet, Frank, and Dave on August 6, 2019. (T. 48). Petitioner testified Diane Smoody, the HR director, called her and told her to go to Physician's Immediate Care that day around noon. (T. 48-49). Petitioner testified she went to Physicians Immediate Care and was seen by a physician's assistant who was already aware of she hurt herself and that she was experiencing numbness in her legs. (T. 49-50). Petitioner testified Diane was at Physician's Immediate Care when she arrived. Petitioner

[1] The history was contained in the August 8, 2019 record which states that Petitioner's initial visit was on July 24, 2019.

testified she saw Diane speak to the doctor in the back. (*Id.*). Petitioner testified Physician's Immediate Care found that she could return to work full duty. Petitioner testified that she saw the chiropractor that same day. (T. 51).

The medical records from Physicians Immediate Care indicate Petitioner reported pain at home on July 22, 2019 and she woke up with back severe pain which continues to exist. The records also state Petitioner job consists of sorting plates and lifting pallets. The records further state Petitioner reported numbness/tingling and the back pain worsened since seeing a chiropractor. The exam noted a positive Waddell sign, pain with axial loading, positive straight leg raise test, reduced range of motion, abnormal gait and paraspinal tenderness in the right and left lumbar region. Petitioner was released to return to work full duty. The medical records state the physician's assistant spoke to a Diane, from Petitioner's work, and that the condition is not work related. (Px. 2).

Petitioner testified her chiropractor recommended she follow up with her primary care physician. (Px. 1). Petitioner testified she saw her primary care physician, Dr. Stephanie Crawford, of Rochelle Community Hospital, on August 6, 2019. At that visit, Petitioner reported experiencing low back pain at work while sorting 3 loads of metal plates and stacking pallets on 22nd of July. Petitioner further reported, the next day, the pain was still present so she told her supervisor. The medical records indicate Petitioner said she experienced some pain relief from chiropractic treatment. The records show that Petitioner complained of a constant sharp spasm across the entire lower back with shooting pain down the posterior left leg into the knee with numbness and tingling. Petitioner also described a severe burning sensation down her low back into her buttocks and own the left posterior thigh. Dr. Crawford too Petitioner off work and ordered an MRI. (Px. 3).

Petitioner underwent the MRI on August 8, 2019. The radiologist interpreted the MRI to show degenerative disc disease from L3-S1 with averting degrees of compromise of the thecal sac and neural foramina due to bulging discs and disc extrusions and spondylosis of the facet joints. (Px 4).

On August 21, 2019, Petitioner followed up at Rochelle Community Hospital. The records indicate that Petitioner had L4-5 underlying spondylosis, facet hypertrophy with a superimposed left paracentral disc protrusion as well as a left disc bulge and annular fissure at L5-S1, which displaces the S1 nerve root in the left lateral recess. At that time, Petitioner was

placed on light duty. (Px. 4). Petitioner testified epidural steroid injections and physical therapy were recommended.

Petitioner testified Respondent would not accommodate her work restrictions. (T. 57). On September 9, 2019, Petitioner returned to Dr. Crawford who recommended Petitioner continuation with physical therapy and proceed with the epidural steroid injections. (Px. 3). Petitioner underwent the first injection on September 25, 2019. (Px 4). On September 30, 2019, Petitioner returned to Dr. Crawford and reporting the injection did not provide much relief. On October 28, 2019, Petitioner followed up with Dr. Crawford who noted that Petitioner's symptoms were not improving. Petitioner received the second and third injections at Rockford Spine Center. Petitioner continued to treat with Dr. Crawford until she started to treat with Dr. Ashraf Darwish. (T. 60).

On February 6, 2020, Petitioner was examined by Dr. Ashraf Darwish of Hinsdale Orthopaedics. At that visit, Petitioner reported being injured at work on July 22, 2019 when she picked up a metal sheet, she started experiencing low back pain. Petitioner reported she continued to work and saw a chiropractor. Petitioner also reported contacting her primary care physician, Dr. Crawford, who ordered an MRI. The medical records indicate the MRI was repeated on September 28, 2019. Dr. Darwish's examination noted tenderness over the left paraspinal and left buttock, a positive laying down straight left leg test and positive seated left straight leg raise test. Dr. Darwish reviewed the MRI, which he said, showed evidence of a central and left paracentral disc herniation at L4-5 and L5-S1 causing left lateral recess and foraminal narrowing at L4-5. Dr. Darwish noted severe left L5-S1 lateral recess narrowing from the left paracentral disc herniation. Dr. Darwish diagnosed radiculopathy and herniated lumbar discs. Dr. Darwish recommended surgery consisting of a left L4-5 and L5-S1 laminectomy discectomy given that Petitioner had maximized nonoperative intervention. (Px. 6).

Petitioner testified she wants the surgery. (T. 62). Petitioner testified she has tried several ways to get the surgery scheduled but to no avail. (T. 63). Petitioner testified she was examined by Dr. Andrew Zelby at Respondent's request and she was also examined by Dr. Carl Graf. Petitioner testified she continues to feel a severe throbbing, numbing sensation of pins and needles of her lower back and that she is unable to do the activities she used to do without her back or left leg hurting. (T. 67-68). Petitioner testified she is currently taking five prescribed

medications from Dr. Crawford, in which all make her a "zombie". (T. 69). Petitioner further testified that if the surgery were to be approved, she would have it as soon as possible (T. 70).

The Arbitrator found Petitioner's testimony to be credible.

Testimony of Alicia Craig

Alicia Craig testified that she worked as a quality analyst for Respondent on the night of July 22, 2019 (T. 132). Ms. Craig testified that she worked for Respondent for almost seven years. (T. 140-140). Ms. Craig testified she had several interactions with Petitioner on the night of Petitioner's work-related injury. Ms. Craig testified at the 10:30 p.m. break, Petitioner told her that her back was killing her. (T. 133). Ms. Craig testified Petitioner said her back hurt really bad and she was experiencing a burning sensation in her lower back and that she was having trouble standing, sitting, which was getting worse as the night went on. (T. 133-134).

Ms. Craig testified that at the 2:30 a.m. break, Petitioner was having so much trouble sitting up that she laid down on a picnic bench. (T. 134-135). Ms. Craig testified she gave Petitioner an ice pack and some Ibuprofen she had in her lunchbox. (T. 135). Ms. Craig testified that Janet was rushing everyone at work that night because there was a major hold for a certain type of plate. (T. 135-136).

Ms. Craig testified that at the 4:30 a.m. break, she observed Petitioner having difficulty sitting, standing, and walking. (T. 136). Ms. Craig testified during a conversation she was having with Petitioner, Janet suggested Petitioner see a chiropractor. (T. 136).

Ms. Craig testified that at the 5:00 a.m. company meeting, Hyland Morris walked past as she was having a conversation with Petitioner about her work injury, and he asked if Petitioner was okay. (T. 140).

The Arbitrator found the testimony of Ms. Graig credible.

Testimony of Ginger Holtman

Ginger Holtman testified that she worked for Respondent for 17 years and two months. (T. 156). Ms. Holtman testified she worked the same position as Petitioner worked for 12 years. Ms. Holtman testified on July 22, 2019 she worked the first shift, from 6:00 a.m. to 6:00 p.m., and that Petitioner told her that she hurt her back during her shift. (T. 157). Ms. Holtman testified that she told Petitioner to go fill out the incident report. (Px. 158).

The Arbitrator found the testimony of Ms. Holtman credible.

Testimony of Dr. Ashraf Darwich, a treating physician.

Dr. Darwish testified he saw Petitioner on February 6, 2020 and that Petitioner reported working in a factory as a coil stacker, where she lifted metal plates and pallets. Petitioner further reported that she was picking up some sheet metal when she experienced low back pain. She said that she continued to work and the pain increased. Petitioner said she reported the accident to her supervisor the next day. (Px 7, pgs. 6-7). Dr. Darwich testified Petitioner had no prior relevant history regarding her spine. Dr. Dawich examined Petitioner and noted tenderness to palpation over the left paraspinal muscles, positive straight leg raising on the left, which could indicate nerve root irritation, and a slight weakness on the left side in the gastric as well as left extensor hallucis longus muscle. Dr. Darwich also noted Petitioner had abnormal strength consistent with left sided radiculopathy. (Px 7, pgs. 9-11).

Dr. Darwich testified that he reviewed Petitioner's MRI and found left paracentral disc herniations at L4-L5 and L5-S1 with severe L5-S1 lateral recess narrowing. Dr. Darwich testified that, in layman's terms, the disc was out of place and pushing on the left-sided L5-S1 and L4-L5 discs. (Px 7, p.12). Dr. Darwich testified that he diagnosed lumbar radiculopathy, low back pain, and a herniated disc. (Px 7, p.13).

Dr. Darwich opined that Petitioner's injury on July 22, 2019 caused the disc herniations in her lumbar spine and the lumbar radiculopathy which caused the low back pain and left lower extremity radicular symptom. (Px 7, p. 13). Dr. Darwich testified Petitioner exhausted conservative management and needs surgery consisting of a laminectomy and discectomy on the left side at L4-L5 and L5-S1.

Dr. Darwish testified he reviewed Dr. Zelby's narrative report and that he respectfully disagrees with Dr. Zelby. Dr. Darwish testified that he believes there is a cause and effect relationship between Petitioner's injury of July 22nd and her L4-5 and L5-S1 disc herniations which are causing the low back pain radiating to the left lower extremity. (Px. 7, pg. 19). Dr. Darwich testified it is common to have an inciting injury that worsens over time, as in Petitioner's case, when Petitioner continued working after the start of her symptoms. (Px. 7, pgs. 19-20).

Dr. Darwish testified Petitioner's symptoms and physical exam finding were textbook for somebody with a disc herniation at L4-5 and L5-S1. (Px. 7, p. 29). Dr. Darwish testified his exam findings were consistent with the MRI findings. Petitioner has a positive straight leg both sitting and lying down of the left side, which is the extensor hallucis longus and gastric weakness on the

left side, which indicates impingement at the L4-5 and L5-S1 levels. (Px. 7 pgs. 29-30). Regarding when the disc herniations occurred, Dr. Darwish testified that one goes back to the history and prior to July 22, 2019 Petitioner did not have low back pain or left lower extremity pain and weakness and even if they [the disc herniations] were there they were not causing any symptomatic problems. Dr. Darwish further testified that according to Petitioner and the records he reviewed she did not have any pain and weakness prior to July 22, 2019. Dr. Darwish testified that Petitioner was lifting objects at work weighing up to 50 pounds when she felt pain in her low back that started to radiate down to her extremity and cause weakness. (Px. 7, pgs. 38-39).

Dr. Darwish testified that Petitioner was precluded from engaging in any work activity based on her current pain level, which was a 7 out of 10, and use of narcotic medication to control her symptomatology, along with muscle relaxants. (Px 7, p.42).

Testimony of Dr. Andrew Zelby, Section 12 Examiner

Dr. Zelby testified that he examined Petitioner on February 17, 2020 and, at that visit, Petitioner said she was injured at work on July 22, 2019 while lifting wooden pallets she estimated weighting between 40-50 pounds from the ground to a table. Petitioner also reported lifting sheets of metal lifting 10-12 of them at a time. (Rx. 3, p. 8). Dr. Zelby testified that Petitioner reported after six hours, she went on a lunch break, at midnight, and noticed aching and tightness in her low back. Dr. Zelby testified that no particular incident brought on these symptoms and they started while doing repetitive activities (Rx. 3, p. 9).

Dr. Zelby testified the Ausut 8, 2019 MRI showed, in part, a broad-based and left disc protrusion or disc osteophyte complex extending into the inferior aspect of the foramen and hypertrophy of the ligamentum flavum with moderate to mild foraminal stenosis at L4-5 and a broad-based central disc protrusion or disc/osteophyte complex and paracentral left chronic partial thickness annular tear with hypertrophy of the ligamentum flavum combing to cause mild canal stenosis. (Rx. 3, pg. 14). Dr. Zelby testified a disc herniation could be traumatic but there was nothing about repetitive trauma that would show up in any particular way on an MRI. Dr. Zelby testified the issue of repetitive trauma versus a specific incident is a matter of the patient's history. (Rx. 3, p. 15).

Dr. Zelby opined none of Petitioner's condition would have anything to do with repetitive trauma and her disc abnormalities would not be caused or made symptomatic by repetitive activities and are not repetitive trauma conditions. Dr. Zelby opined given Petitioner's history,

while her condition might be related to the radiographic abnormalities on the MRI, there was no medical basis that her condition was caused, made symptomatic, aggravated, accelerated by repetitive activities she performed at work. (Px.3, p. 19). Dr. Zelby testified based upon Petitioner's underlying condition, which is unrelated to her reported work activities, consideration should be give to a left L4-5 and L5-S1 hemilaminotomies and possible microdochectomies but because Petitioner did not sustain a specific injury, the condition was not caused by repetitive trauma which she reported as her work activities. (Rx. 3, pgs. 20-21).

On cross-examination Dr. Zelby admitted he received PX 10, which is a letter from Respondent. He admitted that Petitioner had no prior history of low back pain or injury. He also testified that repetitive activities do not cause any injury to the spinal element. (R 3, p. 33). Dr. Zelby admitted that he could not testify to any prior or subsequent change in Petitioner's condition, having not seen her prior or after the MRI. (Rx 3, p. 35). Dr. Zelby was asked if one lifted a large metal plate and experienced low back pain and as time went on the pain started radiating down into the leg, would that be an activity related to an accidental injury at work and he responded that "*It depends on the history that you provide*." The question was asked a second time and he respondent "*Maybe*." (Rx 3, pgs. 43-44). Dr. Zelby testified that he could not provide an opinion on Petitioner's ability work (Rx 3, p. 44).

Testimony of Dr. Carl Graf, retained to provide a second opinion

Dr. Carl Graf testified Petitioner reported injuring herself at work on July 22, 2019 when she leaned over to pick up a pallet, she developed low back pain. Petitioner said she continued working and, the next morning, she woke up she was unable to move and couldn't straighten up. (Px 9, p. 7). Dr. Graf testified he reviewed the MRI which showed an L4-5 left sided disc herniation with compression of the traversing L5 nerve root and a left lateral disc bulge at the L5-S1 which led to lateral recess stenosis and compression of the S1 nerve root. (Px 9, P. 16).

Dr. Graf testified he conducted an examination which showed Petitioner had a severely antalgic gait, limited motion with radicular pain into the left leg, and patellar reflex of 1, Achilles 0, which correlated to the S1 nerve distribution. (Px 9, p. 11). Dr. Graf also testified his examination noted Petitioner had a positive distracted straight leg raising test on the left and supine straight leg raising test. Dr. Graf testified he found the tests and Petitioner to be reliable. Dr. Graf testified he did find one non-organic pain symptom during his examination but, he stated, it was not dispositive of her condition of ill-being (Px 9, pgs. 13, 25).

Dr. Graf diagnosed Petitioner with left lower extremity radiculopathy secondary to a lumbar disc herniation and lateral recess stenosis at L4-5 and L5-S1 on the left side. (Px. 9, p. 20). Dr. Graf opined the lumbar decompression surgery recommend by Dr. Darwish was reasonable. (Px. 9, p. 21). Dr. Graf further opined Petitioner's current condition was causally related to her work injury based upon the medical records, imaging studies, physical exam, and Petitioner's subjective complaints. (Px. 9, p. 21). Dr. Graf testified that everything he reviewed shows a causal connection between Petitioner's claimed injury and her diagnosis. (Px. 9, p. 22).

Dr. Graf testified he disagrees with Dr. Zelby's opinion that Petitioner sustained a muscular strain with no need for further treatment. Dr. Graf testified there was no evidence that Petitioner sustained a simple lumbar strain because she has ongoing subjective complaints and objective findings consistent with left lower extremity radiculopathy. (Px.9, p. 19). Dr. Graf further testified that Petitioner's radicular complaints of the L5 and S1 nerve roots correlated with her subjective complaints and to the objective findings on the imaging. (Px. 9, p. 20). Dr. Graf opined that Petitioner is capable for working sedentary work. (Px 9, p. 23).

On cross-examination Dr. Graf testified the one non-organic finding would not disqualify a patient for surgery. He testified Petitioner related her complaints to a specific incident on July 22, 2019. Dr. Graf testified Petitioner's injury was not from repetitive trauma. (Px 9, p. 30). Dr. Graf testified Petitioner reported that her pain worsened but that she described an initial onset of low back pain that progresses to leg pain over a short duration of time (Px 9, p. 32). Dr. Graf opined the disc did not herniate while Petitioner she was sleeping (Px 9, p. 33). Dr. Graf opined that based upon a reasonable degree of medical and surgical certainty, and given Petitioner's complaints and the documentation he reviewed, there was a causal connection between the accidental injury resulting condition of ill-being (Px 9, p. 34, 38). Dr. Graf testified the lifting of pallets and handling an extensive number of plates, on a repetitive basis, after the onset of low back pain could cause the disc to herniate more. (Px 9, p. 43).

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 (C), Whether an accident occur that arose out of and in the course of Petitioner's employment, the Arbitrator Finds as follows:

The claimant has the burden of establishing by a preponderance of the evidence that her injury arose out of and in the course of her employment. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 38 Ill. Dec. 133 (1980); *Edward Don Co. v. Industrial Comm'n*, 344 Ill. App. 3d 643, 654, 801 N.E.2d 18, 279 Ill. Dec. 726 (2003). The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *Scheffler Greenhouses, Inc., v. Industrial Comm'n,* 66 Ill. 2d 361, 366-67 (1977). "A compensable injury occurs 'in the course of' employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment." *Wise, v. Industrial Comm'n*, 54 Ill. 2d 138, 142 (1973). "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 Inc. v. Industrial Comm'n*, 207 Ill. 2d 193 (2003) Citing Caterpillar Tractor, 129 Ill. 2d at 58.

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. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38 (1987). A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. *Orsini,* 117 Ill. 2d at 45. Injuries resulting from a risk distinctly associated with employment are deemed to arise out of the claimant's employment and are compensable under the Act. *Steak 'n Shake*, 2016 IL App.(3d), 150500WC, Par. 34. A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform or (3) acts that the employee might be reasonable be expected to perform incident o her or her assigned duties. *Caterpillar Tractor*, 129 Ill. 2d at 58, see also *The Venture-Newberg-Perini, Stone & Webster v. Illinois Workers' Compensation Comm'n,* 2013 IL 115728, Par 18, *Sisbro*, 207 Ill. 2d. at 204. Risk incident to employment are those acts the employer might reasonably expect the employee to perform in fulfilling is assigned job duties. *McAllister v. v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848 (2020), citing *Orsini,* 117 Ill. App. 2d. at 45, *Ace Pest Control, Inc. v. Industrial Comm'n*, 32 Ill. 2d 386,

388 (1965). The 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 Workers' Compensation Comm'n,* 236 Ill. 2d 132, 149 (2010).

The Arbitrator finds that Petitioner proved by the preponderance of the evidence that she sustained an accidental injury that arose out of and in the course of her employment by Respondent on July 22, 2019. The Arbitrator further finds that Petitioner was performing an act incident to her employment. Petitioner credibly testified that she was lifting pallets and steel sheets when she felt immediate pain in her lower back which worsened as she continued working. Petitioner testified that she reported the incident to her supervisor. The Arbitrator also finds the testimony of Petitioner's co-workers credible.

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

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease such that the employee's current condition of ill-being can be said to have been causally-connected to the work-related injury and not simply the result of a normal degenerative process of a pre-existing condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n,* 89 Ill.2d 432, 60 Ill.Dec. 629, 433 N.E.2d 671 (1982). When an employee with a preexisting condition is injured in the course and of his employment the Commission must decide whether there was an accidental injury which arose out of the employment, whether the accidental injury aggravated or accelerated the preexisting condition or whether the preexisting condition alone was the cause of the injury. *Sisbro, Inc. Industrial Comm'n*, 207 Ill.2d 193, 278 Ill.Dec. 70,797 N.E.2d 665, (2003). Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989). Furthermore, it has long been held 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. Industrial Comm'n, 93 Ill.2d 59, 63-64 (1982). "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. *Id*. at 64.

The Arbitrator finds Petitioner proved by the preponderance of the evidence that her current condition of ill-being is causally related to her injury. Petitioner testified prior to her work accident of July 22, 2019 she was not experiencing any low back symptoms nor had she undergoing prior medical care for her back and she was able to perform all her job duties.

Dr. Darwish opined that Petitioner's work injury of July 22, 2019 caused the disc herniations in her lumbar spine and the lumbar radiculopathy caused the low back pain and left lower extremity radicular symptom. (Px 7, p. 13). Dr. Graf opined that given Petitioner's complaints and the documentation he reviewed, there is a causal connection between the accidental injury and Petitioner's condition of ill being. (Px. 9, p. 34). The Arbitrator finds the opinions of Drs. Darwish and Graf more persuasive than the opinions of Dr. Zelby. The Arbitrator finds that Dr. Zelby's causation opinion is based, in part, upon an incorrect history he took from Petitioner and/or from the history contained in the Physicians Immediate Care records. Dr. Zelby's causation opinion is based upon repetitive lifting. The Arbitrator notes the histories Petitioner provided to various medical providers and her trial testimony indicate that Petitioner was picking up or lifting items at work when she experienced a sudden onset of pain in her low back which worsen as she continued to work.[2] The Arbitrator finds that Petitioner's low back condition, which as not stabilized, occurred when she was picking up an item at work and she experienced the initial onset of pain which worsened as she continued to work. As such, the Arbitrator finds Dr. Zelby's causation opinion to be based upon repetitive trauma and he did not address whether Petitioner's condition was the result of a specific lifting incident. It is axiomatic that the weight accorded an expert opinion is measured by the facts supporting it and the reasons given for it; an expert opinion cannot be based on guess, surmise, or conjecture. *Wilfert v. Retirement Board*, 318 Ill. App. 3d. 514,15 (First. Dist. 2000).

[2] The Arbitrator notes the history contained in the medical records of Physicians Immediate Care states that Petitioner reported pain at home on July 22, 2019 and she woke up with back severe pain. The Arbitrator does not find that history reliable because it is consistent with Petitioner's trial testimony, the co-workers' testimony and the histories Petitioner provided to the other medical providers.

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 rendered was reasonable and necessary to cure and alleviate Petitioner's condition. Petitioner sought medical treatment and went to Salina's Family Chiropractic. Petitioner was directed to seek treatment at Physician's Immediate Care by Respondent. As Petitioner's condition did not improve, Petitioner started to treat with Dr. Crawford and she underwent a series of epidural steroid injections at the Rockford Spine Center. Respondent did not proffer evidence the medical treatment Petitioner received was not reasonable or necessary. Respondent disputed liability for the medical treatment based upon Petitioner's condition of ill-being not being related to her employment. Because the Arbitrator found Petitioner's accident was causally connected to her current condition of ill-being, the Arbitrator finds that Respondent is liable for the medical bills as referenced in Petitioner's exhibits 1-7 and 9-11. As such, Respondent shall pay the medical bills referenced in Petitioner's exhibits 1-7 and 9-11, pursuant to Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

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 a laminectomy and discectomy on the left side at L4-L5 and L5-S1 as recommended by Drs. Graf and Darwish. Having found Petitioner's low back condition causally related to her work accident and that her condition has

not stabilized, the Arbitrator further finds that Petitioner is entitled to the prospective medical care for her low back as recommended by Drs. Darwish and Graf. The Arbitrator notes that Dr. Zelby, who conducted the Section 12 examination, agreed with the need for the surgery although he disputed that it was causally related to her employment. As such, Respondent shall pay for the surgery recommended by Dr. Darwish as well as any reasonably related prospective medical care subsequent to that procedure, pursuant to Sections 8(a) and 8.2 of the Act.

With respect to issue "L" whether Petitioner is entitled to TTD benefits, the Arbitrator finds as follows:

"The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, "*i.e.,* until the condition has stabilized." *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized, i.e., reached MM.I. *Sunny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130028WC at 28 (June 26, 2014, Opinion Filed); *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To show entitlement to temporary total disability benefits, a claimant must prove not only that he did not work, but also that he was unable to work. *Gallentine*, 201 Ill. App. 3d at 887; *see also City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (5th Dist. 1996).

The Arbitrator finds Petitioner proved by the preponderance of the evidence that she is entitled to Temporary Total Disability (TTD) benefits from August 5, 2019 through September 5, 2019 and from September 7, 2019 through August 27, 2021. The Arbitrator notes that Respondent did not claim Petitioner worked or was capable of working. Respondent disputed liability for TTD benefits based upon Petitioner's condition of ill-being not being caused by a work accident. As the Arbitrator found that Petitioner's condition of ill-being was causally related to her work accident, the Arbitrator further finds that Respondent shall pay to Petitioner TTD benefits from August 5, 2019 through September 5, 2019 and from September 7, 2019 through August 27, 2019, as provided in Section 8(b) of the Act. Respondent shall be entitled to a credit for TTD benefits previously paid in the amount of $14,853.59.

By: /o/ Frank J. Soto — October 18, 2021

Arbitrator — Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC016123
Case Name	Jeanett Culbreath v. Illinois School Bus Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0123
Number of Pages of Decision	14
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Patrick Shifley
Respondent Attorney	Bonnie B. Bijak

DATE FILED: 3/20/2023

/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

JEANETT CULBREATH,

Petitioner,

vs. NO: 14 WC 16123

ILLINOIS SCHOOL BUS COMPANY/
COOK ILLINOIS CORP.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability, permanent partial disability, and evidentiary 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 June 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 $2,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 20, 2023

CAH/tdm
O: 3/16/23
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC016123
Case Name	CULBREATH, JEANETT v. ILLINOIS SCHOOL BUS
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Patrick Shifley
Respondent Attorney	Bonnie B. Bijak

DATE FILED: 6/13/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 7, 2022 1.71%

/s/ Jeffrey Huebsch, Arbitrator

Signature

J. Culbreath v. Illinois School Bus Co., 14 WC 016123

STATE OF ILLINOIS)
)SS.
COUNTY OF **C O O K**)

☐ 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

Jeanett Culbreath Case # **14** WC **016123**
Employee/Petitioner

Illinois School Bus
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 **November 23, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **April 4, 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 $**3,974.85**; the average weekly wage was $**189.27**.

On the date of accident, Petitioner was **49** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of **$232.30** for TTD paid.

ORDER:

Respondent shall be responsible for the bills of Dr. Shakir Moiduddin of Palos Heights Medical Center and the April 5, 2014 bill from Little Company of Mary Hospital, in accordance with Sections 8(a) and 8.2 of the Act. None of the other bills submitted were reasonable or causally related, and Respondent shall be given a credit for payments made.

Respondent has paid all appropriate TTD.

Respondent shall pay Petitioner permanent partial disability benefits of $189.27 per week for 12.5 weeks, because the injuries sustained caused the 2.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner the compensation benefits that have accrued from 4/4/2014 through 11/23/2021 in a lump sum, 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.

/S/ Jeffrey Huebsch

Signature of Arbitrator

JUNE 13, 2022

FINDINGS OF FACT

Petitioner was employed by Respondent as a Bus Monitor. She began working for Respondent on October 3, 2013. She was paid every two weeks and she started her job in the middle of a pay period. Her hours fluctuated. She would ride on the bus as a monitor, they would drop the kids off at school, then go back to the base until it was time to pick the kids up.

The Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of her employment by Respondent on April 4, 2014. The bus Petitioner was a monitor on broke down. A tow truck was sent to get the bus and Petitioner and the bus driver rode on the tow truck to go back to the base. It was raining that day, and Petitioner fell out of the tow truck, injuring her elbow, wrist and back. Petitioner testified that she felt immediate pain in her left elbow, and no pain in her wrist. She had pain in her low back that was a 9 and travelled into her left leg.

Petitioner testified that while she had prior problems with her low back, the pain never went down her left leg and it had never kept her from doing her job.

The Petitioner testified that after she got up from the fall, she talked to the bus driver and her manager and went to Little Company of Mary where they gave her X-Rays and medication. She went to Little Company of Mary on April 5, 2014 and provided a history of the fall off of a toe (sic) truck. She was unable to describe the exact mechanics of how she fell. Lumbar x-rays were negative for acute injury and did show spondylotic and other degenerative changes. The discharge diagnosis was contusion, acute lumbar strain. (RX 3, PX 3)

Petitioner testified that she went to Cook County/Provident and Christ Advocate Hospitals for treatment. She testified that they sent her to therapy and she had an MRI of her spine. She testified that she saw Dr. Siemionow at the University Health System and after blood tests and x-rays he did surgery on her back. Petitioner testified that the surgery did not resolve her complaints of pain and did not even make it a little bit better.

Petitioner testified that she had a motor vehicle accident in April 2014, after she fell off of the tow truck, but that motor vehicle accident did not cause her injuries. She testified that prior to her fall, she had never had to take time off of work because of lower back pain and no one had recommended surgery "before the accident".

Petitioner testified that she had a long history of back pain going back to 2001, that she was receiving active treatment for her low back, but it had never radiated down her left leg. She had been seen many times at Stroger for her low back. She testified that she did attend an Independent Medical Examination with Dr. Mash at the request of the insurance company and she cooperated with him and the insurance company.

Petitioner testified that she never returned to work at the bus company after the accident on direct examination, but on cross examination she testified that she did return to work at Respondent on April 17, 2014 and worked a couple of days.

On cross examination, the Petitioner was asked if she treated with Dr. Shakir Moiduddin at Palos Heights Medical. She saw Dr. Moiduddin on April 4th, April 9th and April 16th . On April 16, 2014, Dr. Moiduddin released her to return to work on April 17, 2014. (RX 2)

Petitioner testified that she did return to work but told her manager that she could not come back. She could not remember if she saw any doctor between April 16, 2014 and April 25, 2014, the day that she was involved in a motor vehicle accident. Petitioner testified that they got rammed in the back in the April 25, 2014 motor vehicle accident.

After the motor vehicle accident of April 25, 2014, Petitioner went to Little Company of Mary Hospital on April 26, 2014, just after midnight, complaining of low back pain. (RX 3, PX 3) Another x-ray was done of her lumbar spine and compared to the one that had been done on April 5, 2014. The x-ray showed no fracture or dislocation, loss of lordosis which would indicate back muscle spasm, stable 4 to 5 mm anterolisthesis of L4 on L5 without evidence for spondylolysis, facet arthropathy is suggested at L4-L5 and L5-S1, otherwise the lumbar spine x-ray was within normal limits for the patient's age, according to the report. (RX 3, PX 3)

Petitioner and her passengers made an uninsured motorist claim with Apollo Insurance regarding the MVA.

Petitioner agreed that the bill from Little Company of Mary from April 26, 2014 should not be charged to Respondent in this workers' compensation claim. Petitioner also testified that a bill for Little Company of Mary hospital in the amount of $4,642.76 for treatment for migraines, should not be charged to Respondent. Both of those bills were submitted as unpaid bills from the April 4, 2014 incident. (PX 10)

Respondent had Petitioner examined by Dr. Steven Mash, a board certified orthopedic surgeon, on June 5, 2014, and both Parties submitted the Doctor's deposition transcript into evidence. (RX6, PX 8) Dr. Mash was provided a history by the Petitioner indicating that the patient slipped from a tow truck injuring her back, right hip, right arm and right elbow. According to Dr. Mash Petitioner denied any prior history of difficulty with her back, hip, arm or shoulder. There was no mention of the motor vehicle accident of April 25, 2014 in Dr. Mash' report, nor was there any mention of her prior longtime treatment for spinal problems. Dr. Mash did note at that examination that the Petitioner appeared to be magnifying her symptomatology. (RX 6, PX 8)

Dr. Mash requested a copy of the MRI which was done on June 3, 2014 to update his report. After reviewing the MRI film and report, Dr. Mash opined that Petitioner's lumbar spine condition was an aggravation of a pre-existing condition and that she could return to work with restrictions. Dr. Mash later testified that the better term to use would have been an exacerbation of her pre-existing condition, which suggests a temporary worsening in accordance with the AMA guidelines. Dr. Mash testified that if in fact the Petitioner had prior ongoing treatment for her back that it would appear that she was not being entirely truthful with him. (RX 6, PX 8)

Respondent submitted the deposition of Dr. Julie Wehner, a board certified orthopedic surgeon, who authored a records review report. (RX 5) Dr. Wehner was deposed on April 28, 2017 based upon a records review report she generated on October 23, 2016. The Arbitrator notes that Petitioner testified that she was seen by Dr. Wehner; however, Dr. Wehner only did a records review on the claim and never saw Petitioner. (TX P 31; RX 5) Dr. Wehner opined that based upon her records review that the surgery performed by Dr.

Siemionow from UIC on October 30, 2015 was not related to the work injury of April 3, 2014. The Arbitrator notes that the Petitioner amended the application on the day of the trial to reflect the correct accident date, so that is the likely reason that Dr. Wehner referenced the incorrect date.

Petitioner submitted records from Cook County Health Systems Petitioner's Exhibits 1 and 2. Many of the records contain information for treatment such as dental work, migraines, and care unrelated to any claimed injuries from the April 4, 2014 work accident. Petitioner's SSN was redacted from dental records by the Arbitrator to comply with SCR 138. It is noted that on September 5, 2014, Petitioner advised the doctor that her low back pain started a year ago with "no apparent trauma". An accident sitting on a school bus was noted as well. In a visit to the pain clinic on January 7, 2015, Petitioner was assessed as having lumbar spinal stenosis, lumbar degenerative disc disease and neurogenic claudication. The history was of low back pain, onset a year ago, with no preceding trauma. (PX 1)

The Arbitrator also notes that nowhere in Petitioner's submitted records from the University of Illinois regarding the surgery performed by Dr. Siemionow on October 30, 2015 is a causal connection opinion rendered regarding the surgery being related to her fall of April 4, 2014. The April 4, 2014 fall is not even mentioned in the records. (PX 4) Dr. Siemionow's preoperative and postoperative diagnoses was degenerative L4-L5 spondylolisthesis with spinal stenosis. In correspondence written by Dr. Siemionow on October 27, 2015, he indicates that Petitioner is under his care for a temporary disability secondary to a degenerative spinal condition. (PX 4)

Petitioner agreed that she was told the surgery was for degenerative arthritis. Petitioner testified that she told the U of I physicians about the fall from the tow truck.

The Arbitrator notes that submitted with the Petitioner's "unpaid bills" are charges which were incurred prior to the date of the subject accident, including Cook County Health System May 12, 2013, $2,517.38; Cook County Healthy System August 4, 2013, $157.00; Cook County Health System November 6, 2013, $478.00; Cook County Health System January 6, 2014, $176.00; Cook County Health System February 4, 2014 $234.00; Cook County Health System February 8, 2014, $972.00; Cook County Health System February 10, 2014,

$176.00; Cook County Health System February 18, 2014 $211.00; Cook County Health System, February 21, 2014 $211.00; Cook County Health System February 26, 2014 $203.00; and Cook County Healthy System March 13, 2014, $160.00; (PX 10)

Charges incurred from April 8, 2014 through May 23, 2018 had no medical records so the Arbitrator has no information regarding the requested payment of those charges as being reasonable and related to the incident of April 4, 2014. With respect to the University of Illinois bills, there is no medical opinion that the treatment/surgery was causally related to the incident of April 4, 2014. (PX 10)

The only bill from Little Company of Mary that could be related to this incident is the bill for $2,012.20 from April 5, 2014, the day after the accident, and that bill appears to have been satisfied in full. (PX 10)

Petitioner's Motion to Amend the Application for Adjustment of Claim to change the accident date from 4/4/2013 to 4/4/2014 was granted. The Arbitrator has included a copy of the Amended Application as an attachment to the RFH form which was admitted as ArbX 1.

Petitioner testified that she had 9/10 back pain on the date of trial. Her wrist and elbow pain had resolved. She did not know of any activities that she could do before the accident that she could not do at present. Her left leg pain was said to be better than before the accident.

CONCLUSIONS OF LAW

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

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d).

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980)),

including that there is some causal relationship between her employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989)

Decisions of an arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

The Arbitrator notes that Petitioner, was not the best historian and, as such, he has to rely upon the medical records and exhibits that were submitted by the Parties. The Arbitrator further takes note that much of Petitioner's testimony was contrary to the medical records.

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

After weighing all of the evidence, the testimony and the records presented by both Parties, the Arbitrator finds that the Petitioner's current condition of ill-being as to her lower back is, in part causally related to the work accident of April 4, 2014. The related condition is resolved lumbar strain/sprain, based on an exacerbation of the preexisting degenerative condition of Petitioner's lumbar spine, as described by Dr. Mash.

G. What were Petitioner's earnings?

After considering Petitioner's testimony and the wage audit (RX 8) the Arbitrator determines that Petitioner's AWW was $189.27, based upon the earnings of $3,974.85 divided by 21 weeks for the 11 checks received during the time that she was employed prior to the accident. With respect to her average weekly wage, Petitioner testified that she had no reason to dispute the print out of her wages from the bus company.

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

The Arbitrator finds that the bills of Dr. Shakir Moiduddin, of Palos Medical were reasonable and necessary and related to the fall of April 4, 2014, through April 16, 2014. The Arbitrator further finds that the Respondent should be responsible for the Little Company of Mary Hospital bill from April 5, 2014. The Arbitrator further finds that based upon Petitioner's testimony and the medical records showing a significant prior history of low back complaints and treatment and the subsequent MVA, any other bills claimed by

Petitioner are not related to the incident of April 4, 2014, and that includes the Equian Lien, and, as such, they are not the responsibility of Respondent.

K. What temporary benefits are in dispute?

Petitioner was paid TTD benefits from April 8, 2014 through April 16, 2014. No further TTD benefits are due and owed, based upon Petitioner's testimony that she returned to work on April 17, 2014 and no competent evidence of medically authorized lost time related to the wor accident after the April 16, 2014 release to return to work.

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

An AMA impairment rating was not done in this matter; however, Section 8.1(b) of the Act requires the Commission's consideration of five factors in determining permanent partial disability:

1. The reported level of impairment;
2. Petitioner's occupation;
3. Petitioner's age at the time of the injury;
4. Petitioner's future earning capacity; and
5. Petitioner's evidence of disability corroborated by treating medical records.

Section 8.1(b) also states, "No single 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 a physician must be explained in a written order." The term "impairment" in relation to the AMA Guides to the Evaluation of Permanent Impairment 6th Edition is not synonymous with the term "disability" as it relates to the ultimate permanent partial disability award.

1. The reported level of impairment

   An AMA impairment rating was not done in this case. This does not preclude an award for partial permanent disability. This factor is given no weight in determining PPD.

2. Petitioner's Occupation

   On the date of the accident, Petitioner was a Bus Monitor. She was able to return to work to her usual and customary position without restrictions. This factor is given great weight in determining PPD.

3. Petitioner's age at the time of injury

   Petitioner was 49 years old at the time of injury, and she is 58 years old at the time of the hearing. Accordingly, Petitioner is nearing the end of her work life. This is relevant and should receive some weight in determining PPD.

4. Petitioner's future earning capacity

The evidence adduced shows that Petitioner has no loss of earnings. Nothing in the record, including her testimony, suggests that her future earning capacity has been affected by the injury sustained. Great weight is placed on this factor in determining PPD.

5. Petitioner's evidence of disability corroborated by medical records

As a result of the work injury, Petitioner underwent ER treatment and three visits with Dr. Shakir Moiduddin. The medical records support a finding that Petitioner is entitled to an award of permanency for contusions and a resolve lumbar strain. Dr. Moiduddin noted that Petitioner complained of low back pain and "no numbness or tingling, feels better, minimal tenderness, full range of motion SLR negative neurological exam WNL" at the last visit. (PX 6) This factor is given great weight in determining PPD.

After considering the above, and the Record as a whole, the Arbitrator finds that the injuries sustained caused Petitioner to suffer the 2.5% loss of use of a person as a whole, in accordance with Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC019892
Case Name	Diane Coartney v. Brighton Gardens of St Charles
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0124
Number of Pages of Decision	17
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Erin Sievers
Respondent Attorney	Dennis Noble

DATE FILED: 3/20/2023

/s/Christopher Harris, 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

DIANE COARTNEY,

Petitioner,

vs. NO: 18 WC 19892

BRIGHTON GARDENS OF ST. CHARLES,

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 also 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).

The Commission modifies the TTD period to commence on January 23, 2018. Petitioner first sought treatment for her work-related injuries at Concentra on January 23, 2018 and from this date through May 23, 2022, the date of arbitration, she had not been released by her treating physician to return to her regular duties. The Commission therefore finds that Petitioner is entitled to TTD benefits from January 23, 2018 through May 23, 2022. The remainder of the Arbitrator's Decision is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 8, 2022 is hereby modified as stated and otherwise 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 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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $45,300.00. 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.

March 20, 2023

/s/ *Christopher A. Harris*
Christopher A. Harris

CAH/pm
O: 3/16/23
052

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC019892
Case Name	Diane Coartney v. Brighton Gardens of St. Charles
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Rich Hannigan
Respondent Attorney	Dennis Noble

DATE FILED: 7/8/2022

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

/s/Stephen Friedman, 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
ARBITRATION DECISION
19(b)

Diane Coartney
Employee/Petitioner

v.

Brighton Gardens of St. Charles
Employer/Respondent

Case # **18** WC **019892**

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 **Geneva**, on **May 23, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **January 20, 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 $**32,702.28**; the average weekly wage was $**628.89**.

On the date of accident, Petitioner was **51** 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 $**21,142.68** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**21,142.68**.

Respondent is entitled to a credit of $**46,883.09** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $419.26/week for 226 2/7 weeks, commencing January 20, 2018 through May 23, 2022, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $**21,142.68** for TTD benefits paid.

Respondent shall pay reasonable and necessary medical services as detailed herein in the Arbitrator's finding with respect to **Medical**, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit of $46,883.09 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 authorize and pay for additional reasonable and necessary treatment consistent the recommendations of Dr. Ross including work conditioning, an FCE, and any other reasonable and necessary care.

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

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

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

/s/ Stephen J. Friedman **JULY 8, 2022**
Signature of Arbitrator

ICArbDec19(b)

Statement of Facts

Petitioner Diane Courtney testified that on January 20, 2018 she had been employed by Respondent Brighton Gardens for 14 years. She testified she had prior treatment for her back at Concentra in August 2016. The August 9, 2016 note states Petitioner fell on a wheelchair and was diagnosed with a contusion to the coccyx. She was seen in follow up on August 11, 2016 and on August 19, 2016, Petitioner was discharged at MMI (PX 1, p 37-45). She testified she was seen at Northwestern Medicine for chest pain in December 2016 with a diagnosis of chest wall pain (PX 6, p 198-202). In March 2017, she had headaches and pain in the rear of her head and neck. Records reflect that she presented with left sided headache and weakness. Examination noted a slight left facial droop. She reported increasing headaches with weakness into the left arm and leg. Petitioner was treated for migraine headaches. Stroke workup was negative. Symptoms resolved by discharge (PX 6, p 203-210).

Petitioner testified that she injured her low back on January 20, 2018, while preventing a 200 pound resident from falling. She went to Concentra on January 23, 2018 (PX 1). She provided a history of the injury and reported immediate onset of pain in her low back that radiated down her right leg following the accident. X-rays were negative. She was diagnosed with a lumbar strain, and she was put on a 20-pound restriction. She was referred for physical therapy. On January 25, 2018, she reported her right knee buckled in the shower. On January 30, 2018, she reported her right leg kept shaking from weakness. On February 1, 2018, she reported her right leg shakes sometimes. The diagnosis was lumbar strain and spasm of the right piriformis muscle. On February 5, 2018 and February 13, 2018, she reported that her right leg shakes occasionally without any particular reason. Petitioner saw Dr. Bhabhrawala at Concentra on February 12, 2018, noting numbness and tingling into the right leg and unable to stabilize the right leg. Examination noted the right leg shakes when walking. An MRI was ordered. On February 26, 2018, Petitioner was continued on restriction (PX 1). Petitioner testified she did not return to work for Respondent. She testified that she was referred by Dr. Bhabhrawala to a neurosurgeon and saw Dr. Matthew Ross.

On February 28, 2018, Petitioner saw Dr. Ross (PX 2). She described her accident and noted the onset of right leg shaking about a week later. His examination noted her right leg trembled, in an otherwise negative lumbar spine exam. He noted the MRI showed a small disc herniation at L4-5 and reviewed the MRI with him. She complained of low back and right leg pain and reported she had some trembling in her leg. His impression was a lumbar strain. The right leg tremoring was puzzling. He stated it is not caused by any pathology in the lumbar spine. He discussed the possibility of pathology in the cervical or thoracic spine or that the tremoring is anxiety related or psychogenic. He provided a Medrol dose pack and Valium as a muscle relaxant. Dr. Ross gave her a 15-pound weight restriction and recommended physical therapy and MRIs of the cervical and thoracic spine (PX 2, p 2-3). She had physical therapy at ATI from March 2, 2018 to April 26, 2018 (PX 9). On March 12, 2018, Dr. Ross noted that physical therapy was helpful in reducing back pain. There was no success with right leg trembling. She did not see much improvement in tremor with Valium and they occur unpredictably. She uses a simple cane for safety. Gait is abnormal. She does not trust the strength in her right leg. At times right leg shakes vigorously. She has improving lumbosacral strain. Right leg tremor remains problematic. It was probably triggered by her work injury. Dr. Ross recommends that she see a movement disorder neurologist. He recommended continued physical therapy a 15-pound lifting restriction (PX 2, p 11-14).

On March 27, 2018, Petitioner was evaluated by movement disorder specialist, Dr. Padmaja Vittal at Northwestern Medicine for her movement disorder and ongoing leg tremors (RX 2). She was using a cane. She reported spasm to the right leg started a week after the injury. She gets upper body jerking that started a

week or two ago as well. Tremors have been worsening. Dr. Vittal noted other histories of “complex migraine headaches in March of 2017, pounding right side of head, she had weakness in the L side of body, L side of mouth was drooping. She had an MRI brain at the time, symptoms lasted a few min.” His examination noted jerking of the trunk, right lower extremity especially when trying to rise and walk. His impression was abnormal involuntary movements, right leg tremor, upper body jerking, gait abnormality. Dr. Vittal noted a functional movement disorder. He recorded, “We had a lengthy discussion regarding the diagnosis, that even though there is no visible abnormality in the brain (if we did a microscopic or radiographic assessment), it is believed that there is a neurotransmitter abnormality at the cellular level that is not visible. The patient is not “making this happen,” it is not psychological, patient is ‘NOT faking it’. There are some genes that are being investigated but we do not know a clear link yet. We will take a multidisciplinary approach to treat this condition as it has a good prognosis (no clear underlying neurodegenerative process like parkinsonism or dystonia noted).” Dr. Vittal prescribed CBT-cognitive behavioral therapy and counseling to address the stressful trigger and to see her PCP or psychiatrist to help address anxiety. Dr. Vittal switched prescriptions from Valium to Lexapro (RX 2).

On April 16, 2018, Dr. Ross noted that her back pain was improving, and she manages the pain with ibuprofen, the movement disorder neurologist stopped the Valium and started Lexapro. He noted some improvement in tremors, but it is now spreading to her torso, shaking her body. This aggravates her back discomfort. She uses a simple cane. The right leg tremors but not vigorously. She has full mobility of lumbar spine. She has mild tenderness to palpation over right lower lumbar and upper gluteal musculature. Impression is improving lumbosacral strain. She most likely has functional movement disorder. He recommended that she do work conditioning as her job as a care manager nursing home is at least medium physical demand. Dr. Ross noted that he will defer to neurologist as to the optimal treatment for tremors. She is not able to work in any capacity until she undergoes five day per week work conditioning (PX 2, p 28-30). On April 19, 2018, she followed up with Northwestern Medicine. It was noted Petitioner has anxiety and her father being hospitalized out of state which adds to her anxiety (PX 10). .

Petitioner saw Dr. Padmanaban at UIC Medical Center on May 25, 2018 for evaluation of right lower extremity and upper body tremors. He noted a diagnosis of possible functional movement disorder and gait disorder and recommended behavioral shaping therapy at Mayo Clinic (PX 4). She saw Northwestern on June 1, 2018. She reported no changes since her last visit but is now doing cognitive and aquatic therapy (PX 2). Petitioner testified that she paid for the aquatic therapy out of pocket, and it did help. On June 12, 2018, Petitioner’s husband called Northwestern and reports that Petitioner’s condition was worsening, and her tremors had migrated to her left hand. On June 12, 2018, he telephoned to say her condition is getting worse (PX 4).

On June 29, 2018, Dr. Ross noted that since her last visit she started a program of aquatic physical therapy that was not approved by Worker's Compensation. She reported doing pool exercises and also had some massage therapy that she paid for out of pocket. She reported improving back pain and some right lower back pain. Physical exam notes tremor involving primarily the right arm and leg. Gait is otherwise normal with toe and heel walking performed well. His impression is that she has some improvement in her back injury and movement disorder. He released her to work in a sedentary capacity with a 15-pound lifting restriction. He notes he has been in conversation with movement disorder neurologists to find more effective treatment for Petitioner (PX 2, p 58-59).

On July 8, 2018, Petitioner presented to the emergency room at Northwestern Delnor Hospital with severe tremors. She was admitted until her discharge on July 19, 2018 (PX 6). She had MRIs of the thoracic spine,

cervical spine, and brain. All were negative except for some degenerative changes. She underwent an EEG that ruled out epilepsy. Dr. Grzelak noted she was evaluated by neurology with consensus that symptoms are most likely due to functional movement disorder. It was noted that Petitioner was frustrated with a lack of "unifying diagnosis" for the tremors. Dr. Santwani stated to Petitioner that she saw two specialists for movement disorders with a diagnosis of functional movement disorder. Despite their best efforts they may not be able to find a definitive etiology, but can still help her. Another neurologic consult was offered but refused (PX 6, p 37). Her discharge recommended that she see a psychologist and pursue behavioral therapy. The doctor notes that several individuals in Petitioner's family have died by suicide and there may have been some related trauma from this (PX 6, p 21). Petitioner testified that her aunt died by suicide approximately 11 years prior to the accident. In the 11 years prior to the injury, she had not been treated for depression, anxiety nor experienced panic attacks. Petitioner followed up with Northwestern on August 2, 2018, reporting that she sleeps a lot and while the medication decreases her tremors, the side effects debilitate her (PX 6, p 115-123).

On September 4, 2018, Petitioner went to the Mayo Clinic to participate in a behavioral program called the BEST program (PX 7). Mayo Clinic took a history of her work injury and treatment to date. She was diagnosed with a functional tremor disorder, functional gait disorder, chronic right back and leg pain following injury in January 2018. The functional tremor disorder and gait disorder appears to have been provoked by a back injury, but the onset was temporarily displaced (PX 7, p 2-6). On September 17, 2018, Petitioner started the BEST Program which lasts 4 days. The program included learning to suppress her tremors through relaxation breathing techniques, working on activities of daily living, such as writing, walking without assistance. She has a functional movement disorder which is improved but not eliminated at the conclusion of the week of intensive motor reprogramming. The clinic noted that she has profound functional limitations secondary to movement disorder. She has chronic right back and leg pain following injury of January 2018. The doctor noted that about one third of patients who develop functional movement disorder do so following an injury or trauma. Since she had no unusual movements prior to her January 2018 back injury, it is presumed that pain was the trigger for her disorder (PX 7, p 30). On September 21, 2018, she was discharged from the Mayo Clinic to continue her therapy at home (PX 7).

Petitioner saw Dr. Heredia at Northwestern on September 28, 2018. Dr. Heredia noted improvement with the treatment at Mayo. Petitioner still had tremors, but fine and much less degree. She was still using a walker. Dr. Heredia noted the diagnosis of an inflamed SI joint at Mayo and referred Petitioner for a cortisone injection. She diagnosed functional movement disorder, sacral dysfunction and ordered referral to physical medicine and rehabilitation (PX 6, p 124-129). On October 4, 2018, an SI Joint injection was prescribed. It was performed on October 17, 2018 (PX 6, p 131-140). Petitioner's husband contacted Dr. Heredia on October 30, 2018 concerned about Petitioner's erratic and irrational behavior. On November 1, 2018, Petitioner reported about 50% improvement from the injection. She is participating in physical therapy (PX 6, p 143-145). On November 6, 2019, Petitioner's husband again contacted Dr. Heredia about Petitioner's anxiety and behavior. On November 20, 2018, Dr. Heredia excused Petitioner from jury duty because of a neurological disorder that prevents her from sitting more than 15 minutes (PX 6, p 149). Petitioner's husband called on January 17, 2019, reporting more frequent leg tremors. A neurological consult was set for March (PX 6, p 152).

Petitioner was seen for a Section 12 examination with Dr. Harold Deutsch on February 6, 2019 (RX 1). Dr. Deutsch reviewed medical records through the November 1, 2018 visit with Dr. Ward. Petitioner reported continued need for a cane. She was seeing Dr. Ross. Physical examination of the upper extremities and cervical spine was negative. Lumbar exam was normal. Gait was with a cane. She walks very slowly and limping at times. Waddell signs were negative. Dr. Deutsch diagnosed a lumbar strain related to the work

accident. Her diagnosis based upon multiple providers is psychogenic tremor. He states the tremors are related to psychiatric issues. There is no causal connection between the lumbar strain and the tremors. There is no injury or "physical" cause of her tremors. There is no history of severe psychological stress due to the lumbar strain. The temporal relationship is incidental. He opined the SI joint injection is not causally related to the lumbar strain or the tremors. He agrees with the diagnosis of functional movement disorder. He opined that Petitioner has no restrictions relating to her lumbar strain. She continued to have extreme self-described disability related to her psychogenic tremors. She is at MMI for the lumbar strain (RX 1).

On March 21, 2019, Petitioner was seen at Northwestern. She reported ongoing tremors no better and no worse. The SI injection wore off after 4 to 6 weeks. She had not had the second SI joint injection as it had been denied by workers' compensation. The report notes she needs further evaluation with neurology. The symptoms clearly began with back injury. Dr. Heredia wrote a note stating Petitioner was totally incapacitated and unable to return to work (PX 6, p 154-158).

Petitioner saw Dr. Ross on May 7, 2019. He noted her updated medical history. She reported she needs to ambulate with a cane. His examination notes she is tremor free while conversing. When she gets up to walk, there is shaking of her torso. She walks with a strange, awkward fashion. She becomes more unstable when she walks without an assistive device. Toe and heel walking are performed with good strength. Deep knee bending is performed well. She has full range of motion in her lumbar spine. There is tenderness to palpation over the right sacroiliac joint. Motor strength is intact. Dr. Ross impression is a posttraumatic movement disorder that does not have an obvious organic basis. He recommended treatment with a hypnotist. Dr. Ross wants to defer treatment for her back until her movement disorder is better controlled as the unsteady gait exacerbates her back pain (PX 2, p 52).

On July 23, 2019, Petitioner went to the emergency room at Central DuPage Hospital with facial drooping. CT of the head was negative. She was admitted and seen by speech therapy. She was diagnosed with anxiety, hypothyroidism, chronic disability from a prior back injury (PX 6, p 160). Petitioner saw Northwestern on November 19, 2019 for a flu shot. She reported that after a long car ride to DeKalb for her husband's uncle's funeral, her right leg gave out and she fell on the stairs. She noted her mom is moving to Minnesota with mental health assisted living issues. A friend has terminal cancer and that is trying. She is very concerned she will inherit acute onset depression as her mom had (PX 10, p 34-41).

Petitioner was seen at Suburban Neurology Group on October 30, 2020. She had last been seen in patient in 2018. The assessment was tremors, anxiety, and history of spinal injury on 1/2018 resulting in back pain. The plan was to get the Mayo records, and an MRI of the lumbar spine (PX 8). The November 14, 2020 MRI was compared to the prior MRI from 2/19/18. It revealed a reduction in edema of the left L4 nerve root secondary to a reduction in the degree of foraminal disc herniation (PX 8, p 6-7). On December 21, 2020, she continued to have tremors that were episodic but somewhat improved. They prescribed baclofen and Cymbalta (PX 8, p 10-13).

Petitioner saw Dr. Ross on May 24, 2021. He noted the updated MRI did not show any definitive reason for her back and right leg symptoms. On examination he noted a slightly antalgic gait. She has a normal neurological exam. She has full mobility of the lumbar spine. There is no tenderness. Straight leg raising aggravates her pain and tremors. His impression is a right sciatic-type pain into the L4 distribution and continued post-traumatic movement disorder which is probably functional. He recommended an L4 nerve root block and transforaminal steroid injection for diagnostic and therapeutic purposes (PX 2, p 61-62). Petitioner had those

injections on July 8, 2021, August 4, 2021, and August 18, 2021 (PX 10, p 86-104). On September 7, 2021, she reported pain improvement for nearly a month and is feeling quite good since her most recent injection two weeks prior. Dr. Ross stated that her right sciatic pain does appear to be due to right L4 radiculopathy. He recommended she continue with conservative treatment and if that fails, they will consider surgical intervention (PX 2, p 64).

On October 18, 2021, Petitioner went to Immediate Care at Northwestern following a mechanical fall on the stairs. X-ray of the right knee was negative, and there was no structural damage to her right knee as a result of the fall. Petitioner's husband provided a history of a back issue from 3 years ago and this is what caused her to fall on the stairs (PX 10, p 75-80). Petitioner was referred for physical therapy which she attended at Athletico from November 4, 2021 through December 27, 2021 (PX 9, p 126-160). Petitioner saw Dr. Ross on January 12, 2022. She reported that physical therapy improved her back and right leg pain. She is still shaky, but the tremor has diminished. He recommended work conditioning and an FCE after which she would be at MMI. (PX 2, p 67-68). Dr. Ross authored a report on March 15, 2022. He renewed his recommendation for work conditioning and an FCE. He notes that Petitioner has seen multiple neurologists. He states that the prevailing thought regarding the cause of her movement disorder is that it was probably psychogenic. Nevertheless, it is clearly causally related to her work injury of January 10, 2018 (PX 2, p 69). Petitioner testified that work conditioning has not been approved.

Dr. Deutsch testified by evidence deposition taken June 12, 2019 (RX 4). He testified to his review of medical records and his examination of Petitioner. He reviewed the MRI report and films and testified it showed degenerative changes at L4-5 mostly on the left side. He agreed with Dr. Ross that Petitioner had a lumbosacral sprain and the tremor was hysterical or psychogenic and not a neurological disorder. He testified Dr. Santwani concluded she had a functional movement disorder and that there was no definitive diagnosis. He testified that Dr. Rao noted a recent suicide and recommended psychiatric treatment. He testified he did not know the relationship of the victim, or when the suicide occurred. Mayo Clinic did a normal EMG and noted they diagnosed a functional movement disorder. He did not include the statement that one third of patients who develop functional movement disorders do so after trauma. He opined that Petitioner has a lumbar strain from the accident and psychogenic tremor which is a psychiatric issue and not related to the accident. His basis is like Dr. Ross said, the back is not in any way related to the tremor. There is only a temporal relationship. It is associated with depression, anxiety, and conversion disorders (RX 4).

Dr. Deutsch testified he reviewed all the records provided. He did not mention certain information into his report. He just picked the parts that he thought were important to the facts of this case. He did not comment on the piriformis spasm. He did not mention pain radiating down the right leg. He did not document the February 5, 2018 notation of right leg shaking. He noted Dr. Ross March 12, 2018 diagnosis, but not his comment that it was probably triggered by her work injury. Dr. Deutsch testified he is not a movement disorder neurologist. He did not note that Dr. Vittal stated Petitioner was not faking. Dr. Deutsch was provided no medical documentation that Petitioner had anxiety or panic attacks before the accident date. He stated that usually in people with functional tremors there is a trivial physical inciting event or illness that is reported. (RX 4).

Dr. Padmanaban testified by evidence deposition taken December 10, 2019 (PX 5). He testified that he is a board certified neurologist with a fellowship in movement disorder. He saw Petitioner on May 25, 2018. Petitioner had been diagnosed with a functional movement disorder. He noted several features concerning for a nonorganic diagnosis. She was very anxious. The tremors varied in amplitude. When performing patterned movements with the contralateral side, the tremors would lessen and would take on the pattern. His

assessment was a functional movement disorder. He testified it would be speculative to say it was related to the accident on January 20, 2018. It was reported it occurred in close proximity to that incident, however it would be speculation to say it was related. He testified that even though his suspicion is high for a functional movement disorder, within the differential for nonorganic symptoms is malingering for secondary gain and there may have been other unreported psychological, financial, or physical stressors that predated that injury that were not relayed to him. He did not see any records that found Petitioner to be malingering. If there were no other stressors and the only thing in her history that could have caused the psychological stress was the accident, Dr. Padmanabhan would agree that the accident more likely than not was the etiology of the condition (PX 5).

Dr. Padmanabhan testified that in looking for the cause of a functional movement disorder, usually we think of some sort of stressful event or emotional trigger. We don't always find out what the stressor or the trigger is. But you look at the temporal relationship. He agrees that the right leg shaking vigorously is not an organic neurological disorder. He testified that Dr. Ross statement that this was probably triggered by the work accident would be speculation. If there was nothing else that we could pint back to as a potential stressor, potential trigger for the event, it could be very possible that this was the triggering event. Dr. Vittal statement that this could be the result of a neurotransmitter abnormality at a cellular level is a statement that has been heavily debated. Dr. Padmanabhan's opinion is that this has never been shown or proven. It is unclear from the papers how long it would take for the functional movement disorder to manifest after a trauma. While there was no organic reason for her not to return to work, the tremor would probably preclude her from lifting a patient or walking safely. It is not unusual for someone with a movement disorder to fall (PX 5).

Dr. Ross testified by evidence deposition taken January 2022 (PX 3). He testified to his treatment records. He opined that the hysterical or psychogenic shaking was causally connected to the accident, based upon the temporal profile. He reviewed Dr. Vittal's notes. He agreed that there is no structural abnormality in Petitioner's brain that is responsible for the movement disorder. The movement transmitter hypothesis is "getting ahead of his skis." There is no way to test that hypothesis. Dr. Ross testified that this is not malingering. He feels that the statement that one third of people diagnosed with movement disorders following an injury is reasonably accurate. He opined that it is more likely than not that Petitioner's movement disorder is related in whole or in part to the work injury in January 2018. The facts that Petitioner had a 2016 injury to her coccyx and a suicide of her uncle 3 years earlier and did not develop a movement disorder supports his opinion (PX 3).

Dr. Ross testified that in May 2021, Petitioner was manifesting pain in a right sciatic distribution. He prescribed injections which provided relief. He testified it is too soon to determine if there is a dysfunction of the L4 nerve root or if it is related to the accident. It can be caused by other factors: old age, degenerative conditions, natural progression. He would keep Petitioner at a sedentary work level. His opinion that the movement disorder is not a neurological disorder does not mean it is unrelated to the accident. Dr. Ross is not an expert in movement disorders. He is looking at the time profile of the onset of symptoms and what happened in proximity. There is no definitive testing that can be done to prove the opinion. Dr. Ross does not know anything about her personal life. He is not aware of any study which places a time limit on development of a movement disorder and prior psychological or stressful event. His ultimate diagnosis for the spinal injury was a lumbar strain (PX 3).

Petitioner testified that she would like to participate in a course of work conditioning should it be awarded. She was using a four-prong cane at trial. She uses it when she goes out. She cannot run. She gets extreme back pain and pain in her right leg. She cannot stand longer that 30 minutes. She still gets tremors in the upper body

and right leg. She cannot lay on her right side without pain. Her right leg still shakes and buckles. Petitioner testified she has not looked for work. She cannot drive. Petitioner identified the billing in PX 11 and testified that she had group insurance with Respondent. They paid medical bills denied by Workers' Compensation.

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).

It is stipulated and undisputed that Petitioner suffered a work injury on January 20, 2018 injuring her low back. The medical providers have diagnosed a lumbar strain. However, Petitioner developed a tremor which has been diagnosed as a functional movement disorder. Petitioner has had the right leg give out due to her movement disorder and has had additional treatment for resulting injuries to the knee. Respondent has disputed that the movement disorder and any sequelae of that condition are causally related to the accident.

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 has presented evidence to support both the chain of events and expert medical evidence of causation.

Prior to the date of accident, Petitioner was working full time at her regular job. She had a prior coccyx injury in 2016 and a hospital admission for migraine headaches in 2017 but was discharged with those conditions resolved. While evidence of remote family stressors was offered, no evidence of any prior treatment or diagnosis of anxiety, depression, or tremors was presented. Petitioner denied any such conditions. Following the work accident, the right leg tremors began within a week during her active treatment. The diagnosis of a functional movement disorder was made and there has been a consistent presentation and ongoing treatment thereafter. This evidence would support that based upon the chain of events the work accident was a cause or contributing factor in the development of the condition. 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).

In addition, the parties offered numerous medical opinions with respect to causation. The experts agreed that there was likely not an organic basis for Petitioner's tremors. Dr. Ross and Dr. Deutsch agreed that the condition was not arising from the lumbar spine. But while Dr. Deutsch opined that this resulted in the condition

not being causally related to the accident, Dr. Ross opined that the hysterical or psychogenic shaking was causally connected to the accident, based upon the temporal profile. He opined that the work injury was the trigger for the onset of the functional movement disorder.

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.

Based upon the medical evidence, the Arbitrator finds the opinion of Dr. Ross more persuasive than Dr. Deutsch and finds that it is supported by the remaining opinions contained in the treating records and deposition testimony. 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).

Dr. Padmanabhan testified that a functional movement disorder is triggered by a stressor. An injury or trauma can be such a stressor. While he testified that it would be speculative to find causal connection to the accident, he tempered this statement by saying would have to consider other stressors of which he might not be aware. Given no such contemporaneous event, he stated that it would be more likely that not that the accident was such a trigger. The Arbitrator notes that while many other events in Petitioner's remote past were raised as possible stressors, no opinion that one of those was the sole cause of the development of her movement disorder was offered and no evidence to deny that the work accident was a competent trigger for the condition was offered. Dr. Vittal confirms that Petitioner was not malingering, thus eliminated secondary gain as a possibility in this case. Dr. Deutsch found negative Waddell's signs. The Mayo Clinic records note that injury accounts for one third of the cases of functional movement disorder. Dr. Santwani noting no specific etiology of the condition does not negate that the work accident was a contributing factor in the onset. The Arbitrator finds that the medical expert evidence supports causal connection of the functional movement disorder to the accident.

Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury. *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, 993 N.E.2d 473. Where

the work injury itself causes a subsequent injury the chain of causation is not broken. *Fermi National Accelerator Lab v. Industrial Comm'n*, 224 Ill. App. 3d 899, 908, 586 N.E.2d 750, 166 Ill. Dec. 792 (1992). Petitioner reported that as a result of her tremors, her right leg would get unsteady, and she suffered some falls which resulted in treatment for her knee. These would be sequelae of the work related condition and also causally related to the accident. Dr. Ross also noted that Petitioner's altered gait exacerbates her back pain. The Arbitrator finds that additional treatment for her back including the SI injection and selective nerve blocks are also sequelae of the condition and causally related to the accident.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that her conditions of ill-being in the lumbar spine and related to her functional movement disorder are causally related to the accidental injury sustained on January 20, 2018.

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

Under section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are *necessary* to diagnose, relieve, or cure the effects of his injury. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165, 351 Ill. Dec. 63 (2011)*. Based upon the Arbitrator's finding with respect to Causal Connection, reasonable and necessary treatment for Petitioner's low back, functional movement disorder and sequelae of that condition would be causally related.

Petitioner offered PX 11 which compiles all the outstanding medical bills and details payments by Workers' Compensation and group insurance, Petitioner's out of pocket payment, as well as adjustments and outstanding balances. The Arbitrator has reviewed the charges and finds the medical care and charges reasonable, necessary, and causally related. The Arbitrator notes that Petitioner has included expenses incurred during her treatment at Mayo Clinic in Minnesota consisting of Airbnb, meals, gas, and incidentals. The Arbitrator finds that these are appropriate given the unique treatment which was not available locally.

Based upon the record as a whole and the Arbitrator's finding with respect to Causal Connection, the Arbitrator finds that Respondent shall pay to Petitioner all outstanding balances as listed on the cover spreadsheet to PX 11 totaling $15,572.16 and reimbursement to Petitioner for payments of $2,936.32 for a total of $18,508.48 pursuant to the provisions of Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit of $46,883.09 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 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 upon the Arbitrator's finding with respect to Causal Connection, prospective reasonable and necessary treatment for Petitioner's low back, functional movement disorder and sequelae of that condition would be causally related.

Dr. Ross has recommended work conditioning and followed by an FCE. The Arbitrator finds that this proposal is reasonable and necessary.

Respondent shall authorize and pay for additional reasonable and necessary treatment consistent the recommendations of Dr. Ross including work conditioning, an FCE, and other reasonable and necessary care.

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

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

Petitioner has not been released to return to regular work since the date of the accident. She has either been completely disabled or released to sedentary work only. Her job was at least in the Medium physical demand level. The treating medical opinions and records are in agreement that she cannot return to that level of activity, given her current condition.

Based upon the record as a whole and the Arbitrator's findings with respect to Causal Connection and Prospective Medical, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that she is entitled to temporary total disability commencing January 20, 2018 through May 23, 2022, being the date of the hearing in this matter, a period of 226 2/7 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC017232
Case Name	Jorge Nieves v. Groot Industries
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0125
Number of Pages of Decision	16
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	James Babcock
Respondent Attorney	Mark Vizza

DATE FILED: 3/20/2023

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jorge Nieves,

Petitioner,

vs. NO: 18 WC 17232

Groot Industries,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection and 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. 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 August 9, 2022, is hereby affirmed and adopted.

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

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

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

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

March 20, 2023
o3/8/23
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC017232
Case Name	Jorge Nieves v. Groot Industries
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	James Babcock
Respondent Attorney	Mark Vizza

DATE FILED: 8/9/2022

THE INTEREST RATE FOR THE WEEK OF AUGUST 9, 2022 3.04%

/s/Antara Nath Rivera, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jorge Nieves
Employee/Petitioner

v.

Groot Industries
Employer/Respondent

Case # **18** WC **17232**

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 **Antara Nath Rivera**, Arbitrator of the Commission, in the city of **Chicago**, on **May 25, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **May 22, 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 $**70,720.00**; the average weekly wage was $**1,360.00**.

On the date of accident, Petitioner was **39** years of age, ***married*** with **1** dependent children.

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee scheduled and as outlined in PX 2, PX 4, and PX 5, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for shoulder surgery as recommended by Dr. Tu as provided in Section 8(a) and 8.2 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
ICArbDec19(b)

AUGUST 9, 2022

STATEMENT OF FACTS

Jorge Nieves ("Petitioner") is a 43-year-old man employed by Groot Industries ("Respondent"). (Arbitrator's Exhibit ("AX") 1, line 1) Petitioner testified that he worked for Respondent, as a residential garbage man, since July 4, 2009. (Transcript "T." 11) Petitioner testified that he was assigned to the Village of Glenview from 2017 through 2018. *Id*. Petitioner testified that, while assigned to this route, he operated a front load trash garbage truck with a claw. (T. 12) Petitioner testified that a claw is a mechanical part of the front end of the truck that allows him to grab containers efficiently. *Id*. He testified that a toter tipper is a contraption that allows him to tip or empty the containers after they have grabbed them physically. *Id.* Petitioner testified that for the five years prior to 2018 he was assigned a toter cart type truck. (T. 14)

Petitioner testified that from 2017 to May 2018 he was assigned to all yard waste routes in Glenview. *Id*. Petitioner testified that he was the only one doing yard waste routes in Glenview. (T. 13) He testified that he worked the Glenview yard waste route for 5 to 6 years. *Id*. Petitioner testified that he worked 10 to 12 hours per day. *Id*. Petitioner testified that the yard waste season runs April 1 to December 1. *Id*. He testified that the village of Glenview used the 95-gallon containers as well as yard waste bags. *Id.* Petitioner testified that each day he serviced between 300 to 500 residences. (T. 14)

Petitioner testified that during his 10-hour day, his physical demands included: physically move a container a distance from the homeowner's driveway to the truck, parked on the curb, to empty it, bring the container back, and physically move the yard waste bags, as well as brush bundles. (T. 14-15) Petitioner testified that he would not know the weight of a container until he physically put both hands on it. *Id*. He testified that yard waste bags were supposed to weigh 50 pounds if dry. (T. 15-16) Petitioner testified that when it rained some of the containers would weigh 250 pounds to 300 pounds. (T. 16) Petitioner testified that he would have to lift the yard waste bags 4.5 feet to dump it in the truck. *Id*. Petitioner testified that he is 5 feet 8 inches tall. (T. 17) Petitioner testified that during leaf season, from September to December, yard waste is heavier and the number of bags per house increase. (T. 18) Petitioner testified that springtime is the second heaviest season. (T. 19)

On October 8, 2016, Petitioner went to his primary care physician, Dr. Sharon Duval, M.D., at Northwestern Medicine. (Petitioner's Exhibit "PX" 1; T. 19) Petitioner complained of intermittent symptoms with his left shoulder described as burning at its worse with certain movements exacerbating symptoms. (PX 1; T. 20, 37) Petitioner reported pain in his left shoulder and that he "[f]eels deep, intermittent, symptoms began on Tues, worse on Thurs. ….. [h]e has noticed certain movements will exacerbate this discomfort." (PX 1 at 8) Petitioner further reported that he works as a garbage man and "believes he may have strained his arm on a metal bar which allows you to adequately get into and out of the main cabin of the vehicle." *Id*. Petitioner was diagnosed with a sprain/strain. (PX 1) Petitioner was instructed to contact the office if symptoms worsened for possible diagnostics. *Id.* Petitioner testified that there were no x-rays or MRIs taken. (T. 20) Petitioner testified that he was prescribed a topical. *Id*.

On November 15, 2016, and on December 1, 2017, Petitioner underwent physicals, at Northwestern Medicine. (PX 1; T. 21) He testified that he did not notify anyone of complaints of his left

shoulder. (T. 21) The results of both physicals indicated negative for joint pain, tenderness or deformity. (PX 1)

Petitioner testified that he continued to pick up trash with a toter tipper because he did not have seniority. (T. 23) Petitioner testified that, in the winter of 2017, he continued to service Glenview and other surrounding towns. (T. 24) He testified that he would occasionally get out of the truck, get the tote, and put it on the tipper. *Id.* Petitioner testified that, depending on what town he is servicing, he would have to physically pick up bulk garbage items, such as mattresses and sofas, and bring them to the truck, in wet and dry weather. (T. 24-25)

On May 22, 2018, Petitioner presented to Dr. Duval because of stiffness and soreness of his left shoulder and the inability to raise it above his head. (PX 4; T. 22) Petitioner testified that he informed Dr. Duval's nurse practitioner that he had pain for 7 months. (T. 38, 39) Petitioner testified that, after this exam, he was allowed to return to work and has been working continuously since. (T. 22) An MRI was ordered by Dr. Duvall during this visit. (PX 4)

On May 30, 2018, Petitioner underwent an MRI at Smart Choice MRI. (PX 4; T. 25) The MRI revealed a postsuperior glenoid labrum tear with large paralabral cyst. (PX 4)

On June 6, 2018, Petitioner presented to Concentra after Respondent referred him there. (PX 2; T-25-26) Petitioner was examined by Dr. William Weaver, M.D.. (PX 2) Petitioner reported that he had pain in his left shoulder and that he "works as a route driver/waste pickup and states the developed pain over time in his left shoulder. Recently worsened symptoms with symptoms noted on and off since 2014." (PX 2 at 8) Dr. Weaver opined that Petitioner's injury occurred at work. *Id*. (T. 36)

On June 18, 2018, Petitioner returned to Concentra because of pain and limited mobility. (PX 2; T-25-26) Petitioner was referred to Dr. Kevin Tu, M.D., an orthopedic surgeon. (PX 2, 3; T. 27)

On June 25, 2018, Petitioner presented to Dr. Tu. (PX 2; T. 27) Petitioner complained of left shoulder pain from two years ago which worsened in late April. (PX 2 at 16) Petitioner also reported that as of June 6, 2018, he started having difficulty sleeping, reaching overhead and other reaching activities. *Id.* The records also indicated that Petitioner denied having any prior left shoulder symptoms. *Id.* Dr. Tu diagnosed Petitioner with left shoulder pain and ordered an MRI. (PX 2 at 20)

On July 16, 2018, Petitioner followed up with Dr. Tu and reviewed the MRI which revealed a posterior superior labral tear with paralabral cyst. (PX 2 at 22) Dr. Tu diagnosed Petitioner with posterior superior labral tear with paralabral cyst and left shoulder secondary impingement. *Id.* Dr. Tu recommended surgery. (PX 2 at 23) The notes indicated that Petitioner wanted to work without restrictions. *Id.*

On January 28, 2019, Dr. Tu administered a cortisone injection to Petitioner's left shoulder. (PX 2 at 33) Dr. Tu administered the injection based on Petitioner's pain and while waiting for the independent medical exam ("IME"). Id.

Petitioner testified that he wants to have the surgery because has difficulty with his left shoulder because his shoulder has gotten worse since the first time he saw Dr. Tu. (T. 28) Petitioner testified that he ices the shoulder and puts the topical on it. *Id.*

On February 7, 2019, Petitioner underwent an IME with Dr. Peter Hoepfner, M.D.. (PX 3 at 46-51) Dr. Hoepfner reviewed the MRI and indicated that there was evidence of superior labral injury consistent with SLAP lesion with paralabral cyst. (PX 3 at 50) Dr. Hoepfner opined that proceeding with surgery was reasonable based on his physical condition and based on the fact that conservative treatment failed. (PX 3 at 50-51) Dr. Hoepfner, however, opined that causal connection cannot be reliably drawn because the medical records he reviewed did not reflect a specific report injury. *Id.*

Petitioner testified that he initialed the page, on the Injury Report, where the date of injury was initially listed as 2015-2016, and then a line was drawn though it and changed to 2014-2015. (T. 35) Petitioner further testified that he made that change himself. *Id*. Petitioner testified that this date range covered his Glenview route as well as other towns. (T. 36) Petitioner also testified that he changed it to 2014-2015 because that was when he assumed was the time of the injury. *Id.* Petitioner testified that, in the Injury Report, he wrote that he hurt his "shoulder over time with lifting various materials, bags of yard waste, trash, construction material, and household goods." (T. 43) He further testified that those were activities that he performed five years prior to 2018. *Id*.

Petitioner testified that, in 2019, he was reassigned to the Algonquin route with a claw arm truck. (T. 29) Petitioner testified that working with the claw allowed him to get the work done but with pain. *Id.* Petitioner further testified that he was never taken off of work by any of his doctors and nor did he lose any time during his medical visits. (T. 26, 40) He also testified that he has never been told by his employer that he has not been doing his job. (T. 40) Petitioner testified that he has not done yard waste for four to five years. (T. 42) Petitioner testified that since he stopped doing yard waste, he has been using the claw truck to do regular waste and that his job duties have been lighter than that in 2017-2018. (T. 42-43)

Testimony of Steve Folkerts

Mr. Folkerts testified that he is currently employed by Respondent as a district manager. (T. 47) He testified that he has been with Groot for 17 years. (T. 47). Mr. Folkerts testified that, in 2018, he was the operations manager in the Elk Grove Village yard. *Id.* Mr. Folkerts testified that his job duties entailed making sure routes were picked up and over see normal operations of the day. (T. 48)

Mr. Folkerts testified that Petitioner was one of his employees. *Id.* Mr. Folkerts testified that, in 2018, Petitioner was a driver assigned to Algonquin doing trash and recycle hybrid routes. *Id.* Mr. Folkerts testified that Petitioner was not doing yard waste routes in 2018. *Id.* Mr. Folkerts testified that Petitioner worked yard waste in late 2014 or early 2015 when he was assigned to Algonquin. (T. 49) Mr. Folkerts testified that yard waste season is between April 1 and November 30. *Id.* Mr. Folkerts testified that when the yard waste truck is different than that of the regular waste. (T. 50) Mr. Folkerts testified that the yard waste was picked up in "a basic toter tipper on the front." *Id*. Mr. Folkerts further testified that yard waste routes have, on average, 1500 homes. *Id*. Mr. Folkerts testified that the weight of the toter would depend on the type of yard waste. (T. 51)

Mr. Folkerts testified that the report from when they call in a claim to the insurance carrier contained the date of accident as June 6, 2014. (T. 52) Mr. Folkerts testified that this date was based upon Petitioner's statement when he filled out his Injury Report. (T. 53) Mr. Folkerts testified that he spoke with Petitioner regarding the alleged incident, in the presence of district manager, Glen Long, and George (no last name given). *Id*. Mr. Folkerts testified that Petitioner told him he had pain in his shoulder and that it had been happening for several years. *Id.* Mr. Folkerts testified that Petitioner could not tell him when it happened but that he filled out the report. *Id*. Mr. Folkerts testified that since Petitioner told him that it may have happened four to five years ago, they used the month and day they spoke and went back four years. (T. 54) Mr. Folkerts testified that Petitioner currently works full duty and has never requested assistance in performing his job duties in the past four years. (T. 54-55) Mr. Folkerts testified that Respondent provided assistance if someone requested it. (T. 55)

Testimony of Dr. Kevin Tu

Dr. Tu testified that he is in the private practice of medicine at G&T Orthopedics. (PX 6) He specializes in orthopedic surgery with a concentration in sports medicine. He testified that 40% of his practice is the shoulder, that 40% is the knee, and that 20% for miscellaneous. Dr. Tu testified that he has admitting privileges at Elmhurst Hospital and Alexian Brothers Hospital. Dr. Tu testified that he also works at Concentra since 2004 as a consultant. Dr. Tu testified that there is no monetary benefit, however patients who are referred for surgery are referred to his practice. Dr. Tu testified that he works at the Elk Grove location. *Id.*

Dr. Tu testified that he first saw Petitioner, at Concentra, on June 25, 2018. *Id.* Dr. Tu testified that the x-rays that were done at that time were normal, and that Petitioner was treated with an oral anti-inflammatory. Dr. Tu testified that Petitioner gave a history of pain in his left shoulder two years prior to the visit. Dr. Tu testified that it was through repetitive lifting and overhead work. Dr. Tu testified that he found impingement and a labral problem. Dr. Tu testified that the Neer's test was positive for impingement but can also indicate rotator cuff problems and the Hawkin's test was also positive, again that is for impingement and rotator cuff problems. *Id.*

Dr. Tu testified that Petitioner related that he had left shoulder pain for two years. *Id.* Dr. Tu testified that he recommended an MRI and returned Petitioner to work with no restrictions. Dr. Tu testified that when he saw Petitioner, on July 16, 2018, Petitioner had the same complaints. Dr. Tu testified that he reviewed both the actual MRI films and the radiologist's report and observed that there was a posterior superior labral tear with a cyst. Dr. Tu testified that his diagnosis was posterior superior labral tear and impingement. Dr. Tu testified that the cyst indicated that the tear had been there for some period of time. Dr. Tu testified that he recommended an injection and physical therapy. Dr. Tu testified that surgery was also a possibility. Dr. Tu testified that surgery would be decompression above the rotator cuff and a repair of the labral tear. *Id.*

Dr. Tu testified that Petitioner was seen at Concentra on August 20, 2018, with an increase in symptoms. *Id.* Dr. Tu testified that the examination showed a decrease in Petitioner's range of motion. Dr. Tu testified that he recommended surgery. Dr. Tu testified that he recommended surgery again on

December 10, 2018, because there was no change. Dr. Tu testified that on January 28, 2019, he gave Petitioner a cortisone injection. Dr. Tu testified that he put restrictions on Petitioner at this time of no lifting greater than 10 pounds, but he could drive a commercial vehicle. Dr. Tu testified that he noted that Petitioner got no relief from the injection. Dr. Tu testified that on April 1, 2019, with no change in Petitioner's complaints, and same range of motion, he continued the restrictions and once again recommended surgery. Dr. Tu testified that Petitioner informed him that if Petitioner continued to work with restrictions, he would be let go. Dr. Tu testified that he released Petitioner to return to work full duty at that time and told him if he had significant problems to return. *Id*.

Dr. Tu testified that he prepared a narrative report dated July 1, 2019, after his review of the IME report. *Id*. Dr. Tu testified that he disagreed with the IME opinion which indicated that there was no specific traumatic event. Dr. Tu testified that he felt that it was a repetitive-type injury that caused this problem. Dr. Tu testified that repetitive movement would be more than 10 times a day, and overhead work would be chest high or above. Dr. Tu testified that Petitioner told him that he had to do a lot of lifting and overhead work. Dr. Tu testified that he believed Petitioner's employment caused or contributed to the diagnosis due to overhead work and reaching and constant flipping. Dr. Tu testified that he if Petitioner was on a truck that was an auto lifting type of truck which requires less personal lifting, it might change his opinion. *Id.*

Testimony of Dr. Peter Hoepfner

Dr. Hoepfner testified that he is an orthopedic hand and upper extremity surgeon. (Respondent's Exhibit "RX" 3) Dr. Hoepfner testified that he has been Board Certified since 2007. Dr. Hoepfner testified that he saw Petitioner for an independent medical evaluation on February 7, 2019. Dr. Hoepfner testified that he reviewed medical records and an MRI of the left shoulder done May 30, 2018. Dr. Hoepfner testified that the MRI showed a posterior superior labral tear a pair labral cyst and a slap lesion. Dr. Hoepfner testified that paralabral cysts are known to develop in the setting of a labral injury, this is something that is found later after the actual injury. Dr. Hoepfner testified that it is not something that occurs immediately. Dr. Hoepfner testified that it takes time for the paralabral cyst to form, approximately six months to form. *Id*.

Dr. Hoepfner testified that Petitioner related that he had been performing the work as a garbageman for 10 years. Dr. Hoepfner testified that in 2015, Petitioner was placed on a regular route that required some occasional lifting because of his use of an automatic lifting type truck. Dr. Hoepfner testified that in June 2014, Petitioner informed his supervisor that he had left shoulder pain but continued to work. Dr. Hoepfner testified that he in June 2018, Petitioner reported left shoulder pain once again and that it was affecting his daily activities. Dr. Hoepfner testified that Petitioner underwent an orthopedic assessment an MRI and cortisone injections in the left shoulder. Dr. Hoepfner testified that he at the time of evaluation, Petitioner was working light duty. Dr. Hoepfner testified that Petitioner denied any prior left shoulder pain or injury. Dr. Hoepfner testified that there was tenderness over the biceps tendon in the anterior part of the shoulder. Dr. Hoepfner testified that provocative test for rotator cuff tendinitis were positive, that there was some weakness in the muscle the left shoulder, and that the speeds sign in O'Brien's test for positive on the left. *Id.*

Dr. Hoepfner testified that his diagnosis was a left shoulder slap lesion with paralabral cyst. *Id*. Dr. Hoepfner testified that a slap lesion is an acronym that stands for superior labrum anterior-posterior lesion. Dr. Hoepfner testified that there are different types of slap lesion's. Dr. Hoepfner testified that there are also various mechanisms of injury. Dr. Hoepfner testified that high force twisting injury to the shoulder, hyperextension injuries where the arm is for instance pulled back behind the body, where there is extreme stress the biceps tendon as it enters the shoulder joint, extreme lifting against resistance in awkward twisting.

Dr. Hoepfner testified that he reviewed a surveillance video but found nothing of substance in the video. Dr. Hoepfner testified that, occasionally, in surveillance videos, he would be interested in seeing whether Petitioner is performing outside his capabilities. Dr. Hoepfner testified that he did not see anything inconsistent with Petitioner's presentation in the surveillance video. (RX 3, page 20)

Dr. Hoepfner testified that he noted Petitioner reported no specific incident caused his shoulder pain Dr. Hoepfner testified that there is nothing in the records where he specifically reported an incident while working causing injury to his left shoulder. Dr. Hoepfner testified that he did not relate a specific incident the date of exam to the doctor to indicate there is a specific event during his work that caused the shoulder complaint. Dr. Hoepfner testified that while this type of injury can be caused by repetitive trauma, it is more probable that this type of injuries due to a singular extreme event. Dr. Hoepfner testified that surgery, in this case, would not be related to any workplace injury, however, would be reasonable given Petitioner's "constellation of symptoms." (RX 3 at 17) Dr. Hoepfner testified that while Petitioner is capable of working full duty, Petitioner was not at maximum medical improvement ("MMI") with conservative treatment, but would be at MMI after full recovery from shoulder surgery. (RX 3)

Dr. Hoepfner testified that his opinion is based upon the lack of a specific reported injury, by Petitioner, within the records. (RX 3) Dr. Hoepfner testified that it was more probable that this type of tear would be caused by single event as opposed to repetitive trauma. *Id*.

CONCLUSIONS OF LAW

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

Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission,* 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external

inconsistencies with his testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and found him to be a credible witness. Petitioner was calm, well-mannered, composed, and spoke clearly. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Petitioner credibly testified that he worked for Respondent, as a residential garbage man, since July 4, 2009. (T. 11) The Arbitrator notes that Petitioner testified that he was assigned to the Village of Glenview from 2017 through 2018, and was reassigned to Algonquin in 2019. (T. 11, 29) The Arbitrator further notes that Mr. Folkerts, Respondent's district manager, testified that Petitioner was one of his employees. (T. 48)

The Arbitrator notes that Petitioner testified that, on October 8, 2016, he went to his primary care physician, Dr. Duval, where he complained of intermittent symptoms with his left shoulder as result of his job. (T. 19-20, 37) The Arbitrator also notes that Petitioner went to Dr. Duval, on May 22, 2018, because of stiffness and soreness of his left shoulder and the inability to raise it above his head and that he had been in pain for 7 months. (T. 22) The Arbitrator notes that Petitioner presented to Dr. Tu where he continued to complain of left shoulder pain from two years ago which worsened in late April 2018. (PX 2 at 16; T. at 27)

The Arbitrator notes that Dr. Weaver indicated that Petitioner's injury occurred at work. *Id*. (T. 36) Dr. Tu testified that Petitioner's injury occurred through repetitive lifting and overhead work. (PX 6)

To obtain benefits under the Act, a claimant must establish by a preponderance of the evidence that he sustained an accidental injury "arising out of" and "in the course of" his employment. 820 ILCS 305/1(d) (West 2014); *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848; *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003) (collecting cases). The "arising out of" component is primarily concerned with causal connection. *McAllister*, 2020 IL 124848. An injury is said to "arise out of" one's employment if its origin is in some risk connected with or incidental to the employment so that

there is a causal connection between the employment and the accidental injury. *Id.*; *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989). A risk is "incidental to the employment" when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. *McAllister*, 2020 IL 124848; *Purcell v. Illinois Workers' Compensation Comm'n*, 2021 IL App (4th) 200359WC. An injury is considered "accidental" under the Act if it is caused by the performance of a claimant's job, even though it develops gradually over a period of time as a result of repetitive trauma. *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 529–30 (1987); *Fierke v. Industrial Comm'n*, 309 Ill. App. 3d 1037, 1040 (2000).

The Arbitrator notes that, in 2016 and in 2018, Petitioner presented to medical personnel regarding pain in his left shoulder. Based on Petitioner's testimony, Mr. Folkerts testimony, Dr. Tu's testimony, and the medical records, the Arbitrator finds that the accident arose out of and in the course of Petitioner's employment by Respondent.

WITH RESPECT TO ISSUE (D), WHAT WAS THE DATE OF THE ACCIDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Petitioner's testimony and medical records, the Arbitrator finds that the date of the accident was May 22, 2018, the manifestation date.

The standard for determining the manifestation date in a repetitive trauma case is flexible and fact-specific and is guided by considerations of fairness. *Durand v. Industrial Comm'n, 224 Ill. 2d 53, 65, 69, 71; 862 N.E.2d 918, 308 Ill. Dec. 715 (2006)*. ("The facts must be closely examined in repetitive-injury cases to ensure a fair result for both the faithful employee and the employer's insurance carrier."); see also *Oscar Mayer & Co. v. Industrial Comm'n*, 176 Ill. App. 3d 607, 612, 531 N.E.2d 174, 126 Ill. Dec. 41 (1988); *Three "D" Discount Store v. Industrial Comm'n*, 198 Ill. App. 3d 43, 49, 556 N.E.2d 261, 144 Ill. Dec. 794 (1989).

The date on which the employee notices a repetitive trauma injury is not necessarily the manifestation date. *Oscar Mayer & Co*., 176 Ill. App. 3d at 611; see also *Durand*, 224 Ill. 2d at 68. Instead, the date on which the employee became unable to work, due to physical collapse or medical treatment, helps determine the manifestation date. *Oscar Mayer & Co*., 176 Ill. App. 3d at 611; see also *Durand*, 224 Ill. 2d at 68-69. "[C]ourts considering various factors have typically set the manifestation date on either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities." *Durand*, 224 Ill. 2d at 72. A formal diagnosis is not required. *Id.* However, because repetitive trauma injuries are progressive, the employee's medical treatment, as well as the severity of the injury and particularly how it affects the employee's performance, are relevant in determining objectively when a reasonable person would have plainly recognized the injury and its relation to work. *Id.*; see also *Oscar Mayer & Co*., 176 Ill. App. 3d at 610.

The date of injury in repetitive trauma cases is the date on which the injury manifests itself, meaning the date on which the fact of the injury and the causal relation to work would have become plainly apparent to a reasonable person. *Edward Hines Precision Components*, 356 Ill. App. 3d at 194. The date of manifestation for repetitive trauma injures is the date on which the claimant became aware of the condition

and reasonably should have known it may be work-related. *Gieselman v. State of Illinois*, 18 IWCC 80 citing *Peoria County Bellwood Nursing Home v. Industrial Commission*, 115 Ill.2d. 524 (1987)

The Arbitrator notes that on October 8, 2016, Petitioner sought medical attention from Dr. Duval. (PX 1; T. 19) Petitioner complained of intermittent symptoms with his left shoulder described as burning at its worse with certain movements exacerbating symptoms. (PX 1; T. 20, 37) The Arbitrator notes that Petitioner reported that he worked as a garbage man and "believes he may have strained his arm on a metal bar which allows you to adequately get into and out of the main cabin of the vehicle." *Id*. The Arbitrator notes that while Petitioner was diagnosed with a sprain/strain, Petitioner did not report this to Respondent. (PX 1)

The Arbitrator further notes that on May 22, 2018, Petitioner presented to Dr. Duval because of stiffness and soreness of his left shoulder and the inability to raise it above his head. (PX 4; T. 22) Petitioner testified that he informed Dr. Duval's nurse practitioner that he had pain for 7 months. (T. 38, 39) The Arbitrator notes that while Petitioner had a gap in treatment from 2016 to 2018, that the May 22, 2018, visit prompted several medical visits to multiple treating physicians for the purposes of diagnosis and treatment due to Petitioner's condition of ill being.

The Arbitrator notes that both Dr. Weaver and Dr. Tu opined that Petitioner's left shoulder injury was related to Petitioner's work-related duties. (PX 2) The Arbitrator further notes that while Petitioner sought treatment in 2016, the injury manifested in 2018, when Petitioner experienced pain and the inability to work and adequately perform his job duties. (PX 1; PX 2; RX 4; RX 5)

Based upon Petitioner's testimony and the medical opinions of Dr. Weaver and Dr. Tu, the Arbitrator finds that Petitioner proved that he suffered an accident arising out of and in the course of his employment on May 22, 2018.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING 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 as long as he can show that his employment was also a causative factor. *Id.* Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Id.* "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59 (1982).

The Arbitrator notes that, in 2016, Dr. Duval diagnosed Petitioner with a sprain/strain. (PX 1) The Arbitrator notes that, in 2018, Petitioner underwent an MRI which revealed a postsuperior glenoid labrum tear with large paralabral cyst. (PX 4) The Arbitrator notes that both Dr. Tu and Dr. Hoepfner both diagnosed Petitioner with a left shoulder posterior superior labral tear with paralabral cyst. (PX 2; RX 3)

The Arbitrator notes that after this diagnosis, Dr. Tu recommended surgery. (PX 2 at 22-23) Due to Petitioner's pain, Dr. Tu also administered a cortisone injection to Petitioner's left shoulder while waiting for the IME. (PX 2 at 33) The Arbitrator notes that Petitioner testified that he wants to have the surgery because has difficulty with his left shoulder because his shoulder has gotten worse since the first time he saw Dr. Tu. (T. 28)

As the Arbitrator previously found that Petitioner suffered an accident arising out of and in the course of his employment with the Respondent, and based on the above, the Arbitrator finds that Petitioner's current condition if ill-being is causally related to the repetitive nature of his work-related injury.

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 injury, the Arbitrator finds that the medical treatment and services Petitioner received at Concentra ($2,701.59) and Smart Choice MRI ($600.00) were necessary. (PX 2, 5; PX 4) The Arbitrator finds that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee scheduled and as outlined in PX 2, PX 4, and PX 5, as provided in Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

As the Arbitrator found that Petitioner's current condition of ill-being was causally related to his employment with the Respondent, the Arbitrator finds that Respondent is liable for the prospective medical treatment plan recommended by Dr. Tu. Respondent shall authorize and pay for shoulder surgery as recommended by Dr. Tu as provided in Section 8(a) and 8.2 of the Act.

Arbitrator Antara Nath Rivera

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC006949
Case Name	Jon Kent v. State of Illinois – Illinois Department of Corrections
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0126
Number of Pages of Decision	9
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Kevin Morrisson
Respondent Attorney	Bradley Defreitas

DATE FILED: 3/21/2023

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF McLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jon Kent,

Petitioner,

vs. NO: 19 WC 6949

State of Illinois - Department of Corrections,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the sole issue of 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 6, 2022, is hereby affirmed and adopted.

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

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

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

March 21, 2023

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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	19WC006949
Case Name	KENT, JON v. ILLINOIS DEPARTMENT OF CORRECTIONS
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Kevin Morrisson
Respondent Attorney	Bradley Defreitas

DATE FILED: 10/6/2022

THE INTEREST RATE FOR THE WEEK OF OCTOBER 4, 2022 3.85%

/s/ Bradley Gillespie, Arbitrator
Signature

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

October 6, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Jon Kent
Employee/Petitioner

v.

Illinois Department of Corrections
Employer/Respondent

Case # **19** WC **006949**

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 **Kurt Carlson**, Arbitrator of the Commission, in the city of **Bloomington**, on **9/20/2022**. By stipulation, the parties agree:

On the date of accident, **8/4/2017**, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $**63,744.00**, and the average weekly wage was $**1,225.85**.

At the time of injury, Petitioner was **51** years of age, ***married*** with **0** dependent children.

Necessary medical services benefits have been provided by Respondent.

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

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

ORDER

Petitioner has suffered 3% Loss of use of a person as a whole, for a total loss of 15 weeks at rate of $735.51 per week, per §8(e) 9 of the Illinois Worker's Compensation Act

Respondent shall pay reasonable and necessary medical services as provided in Sections 8(a) and 8.2 of the Act and per the stipulation of the parties.

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.

OCTOBER 6, 2022

Bradley D. Gillespie
Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JON KENT,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case # 19WC006949**
	)	
STATE OF ILLINOIS,	)	
DEPT. OF CORRECTIONS,	)	
	)	
Respondent.	)	

ADDENDUM TO DECISION OF ARBITRATOR

This matter proceeded to hearing on September 19, 2022, in Bloomington, Illinois. (Arb. Ex. 1). The following issues were in dispute at arbitration:

- Causal Connection
- Medical Bills
- Nature and Extent of Injury

FINDINGS OF FACT

Jon Kent [hereinafter "Petitioner"] testified that he is currently employed by the Illinois Department of Corrections [hereinafter "Respondent"] at Decatur Correctional Facility as a stationary engineer. (Tr. p. 10) Petitioner was fifty-one at the time of trial. (Arb. Ex. 1)At the time of Petitioner's accident, he was a Correctional Food Service Supervisor II at Logan Correctional Center. (Tr. p. 11) He described his job as supervision of inmates, preparing meals for the facility and assuring cleanliness/sanitation. *Id.* Petitioner testified that on August 4, 2017, he was leaving work and walking quickly to catch up with two other supervisors when he tripped on a metal bar which went over the steam tunnels. (Tr. pp. 12-13) He said that he fell onto his right hand and knee causing his radio to fly off his side. An accident report completed by Petitioner described injuries to his right hand and scraped his right knee. (PX #1) Petitioner's description of the accident was consistent with the witness statement and the supervisor report. *Id.*

Petitioner testified he did not seek medical treatment immediately other than nursing staff at Logan Correctional Center. (Tr. p. 16) Petitioner testified that within a couple of days, he began having pain in his shoulder, neck and back. *Id.* Petitioner went to his primary care provider on August 24, 2017. (Tr. p. 17) Petitioner saw Ashley Kaesebier (APN) at Springfield Clinic Sherman and provided a history of falling three weeks ago. (PX #2) He reported neck and right shoulder pain. *Id.* Petitioner was placed off work. Mrs. Kaesebier (APN) noted the headaches correlate with a neck injury and recommended Petitioner follow up in a week.(PX #2)

On August 28, 2017, Petitioner returned for further evaluation of his neck, upper back and right shoulder pain. (PX #2 P. 18) Petitioner reported he suffered from headaches initially, but the headaches were almost resolved. *Id.* Nurse Practitioner Kaesebier noted pain to palpation of his cervical spine primarily on the right and the paraspinous muscles down into the trapezius. *Id.* She also noted decreased range of motion in the cervical spine, that was improving. *Id.* On that date, he was referred for an orthopedic walk in appointment. *Id* After reviewing the clinical and radiographic findings, the doctor opined that Petitioner's condition was most consistent with a cervical/upper trapezius strain (PX #2 p. 15) Formal physical therapy was recommended to improve his range of motion and decrease his pain. *Id.* Dr. Sharma advised that Petitioner should continue the medications prescribed by his primary care provider for two weeks. *Id.* Use ice/heat was recommended and Petitioner was continued off work for one more week. *Id.*

Petitioner followed up again on September 1, 2017, noting that his headaches had improved but physical therapy had not been approved by insurance. (PX #2 p. 21) Petitioner reported feeling better in the mornings and worse throughout the day. *Id.* He was to continue his medication as needed. *Id.*

Petitioner followed up on September 25, 2017. (PX #2 p. 24) Physical therapy had still not been approved. *Id.* Petitioner reported approximately 75% improvement in his pain which he attributed to range of motion exercises. *Id.* He noted some discomfort with overhead and outreaching activities for extended periods. *Id.* Dr. Sharma noted that Petitioner had been working full duty but still recommended Petitioner undergo formal therapy. (PX #2 p. 24) This was the last visit noted for the Petitioner concerning this injury.

Petitioner testified the physical therapy as it was never approved by workers' compensation. (Tr. p. 19) He testified that he was compensated for his time off. (Tr. p. 20) Petitioner stated that continues to have some issues with limited range of motion when turning his head in certain directions. *Id.*

CONCLUSIONS OF LAW

Regarding Causation and Medical Care;

The Arbitrator finds that Petitioner established causation for the following reasons: Petitioner appeared honest and forthcoming in his testimony regarding the nature of his accident. Furthermore, the Arbitrator notes that his description of the accident correlated with those provided by his supervisor and the other witness.

The Arbitrator observes that the description of accident contained in Petitioner's initial treatment notes is consistent with his testimony at trial. Petitioner attributed his neck, shoulder and upper back pain to the accident. No contrary evidence was introduced regarding Petitioner's injury or medical treatment. Given Petitioner's credible testimony and the consistency of the medical records submitted, the Arbitrator finds and concludes that Petitioner's injuries are causally related to his August 4, 2017 accident. The Arbitrator finds and concludes the conservative treatment undergone by Petitioner was reasonable and causally related to Petitioner's work accident.

Regarding Nature and Extent of Injuries;

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no AMA rating was provided for Petitioner's neck, upper back or right shoulder. Therefore, the Arbitrator gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Petitioner resumed his previous position and then switched jobs with Respondent with similar pay. *Little* weight was given to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 55 years old at the time of the trial. Petitioner is relatively young and will have serveral more years of work. The Arbitrator therefore gives *some* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings' capacity, Petitioner testified that he resumed his prior position after being released and found new employment with Respondent with a similar pay scale, this factor is given *little* weight.

With regard to subsection (v) of §8.1b (b), evidence of disability corroborated by the treating medical records, Petitioner has continued complaints regarding his neck. Because his complaints are consistent with the record, this factor is given *greater* weight.

Petitioner has suffered 3% Loss of use of a person as a whole, for a total loss of 15 weeks at rate of $735.51 per week, per §8(e) 9 of the Illinois Worker's Compensation Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC018473
Case Name	Frankie King v. City of Peoria
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0127
Number of Pages of Decision	12
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Kevin Day

DATE FILED: 3/21/2023

/s/Marc Parker, 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

Frankie King,

Petitioner,

vs. No. 19 WC 18473

City of Peoria,

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 maintenance benefits and permanent partial disability, and being advised of the facts and law, supplements 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.

Pursuant to §8.1b(b) of the Act, for injuries that occur after September 1, 2011, the Commission is to base its determination of the level of permanent partial disability upon five enumerated factors, set forth in subparagraphs (i) through (v). The Commission notes that the Arbitrator, in his decision, omitted assigning a weight to subparagraph (v) of §8.1b(b), "evidence of disability corroborated by the treating medical records." In reaching his determination of permanent partial disability, the Arbitrator did address the evidence supporting this factor and explain its relevancy. However, the Arbitrator neglected to assigning it a weight, as required by §8.1b(b).

For the reasons stated in the Arbitrator's decision, with which the Commission agrees, the Commission now assigns moderate weight to subparagraph (v) of §8.1b(b). Regarding the factors in subparagraphs (i) through (iv), the Commission affirms and adopts the findings, determinations

and weights which the Arbitrator assigned, and further affirms and adopts the §8(d)2 award of 27.5% loss of use of person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 8, 2022, is hereby supplemented as stated herein, and otherwise affirmed and adopted.

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

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

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.

March 21, 2023

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/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	19WC018473
Case Name	Frankie King v. City of Peoria
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Kevin Day

DATE FILED: 9/8/2022

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 7, 2022 3.32%

/s/Bradley Gillespie, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

FRANKIE KING
Employee/Petitioner

v.

CITY OF PEORIA
Employer/Respondent

Case # **19** WC **018473**

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 **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Peoria**, on **April 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 **August 15, 2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**65,083.20**; the average weekly wage was $**1,251.60**.

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 paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**29,348.51** for TTD, $**0** for TPD, $**834.40** for maintenance, and $**0** for other benefits, for a total credit of $**30,182.91**.

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

ORDER

- Petitioner sustained an accident that arose out of and in the course of his employment with Respondent on August 15, 2018.
- Petitioner's condition of ill-being is causally related to the August 15, 2018, work injury.
- Petitioner's correct average weekly wage is $1,251.60
- Respondent shall pay Petitioner the sum of **$750.96**/week for a further period of **137.5 weeks**, totaling **$103,257.00**, because the injuries alleged by Petitioner resulted in **27.5%** loss of use of the person-as-a-whole pursuant to §8(d)(2) of the Act.
- Respondent shall pay Petitioner maintenance benefits in the sum of **$750.96/week** from April 13, 2021, through June 24, 2021, a period of **10 3/7** weeks. as set forth in the 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.

SEPTEMBER 8, 2022

Bradley D. Gillespie

Signature of Arbitrator

BEFORE THE WORKERS' COMPENSATION COMMISSION

FRANKIE KING,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 19 WC 18473**
	)	
CITY OF PEORIA,	)	
	)	
Respondent.	)	
	)	

DECISION OF THE ARBITRATOR

This matter proceeded to hearing on April 25, 2022, in Peoria, Illinois. (Arb. Ex. 1). The following issues were in dispute at arbitration:

- Maintenance Benefits
- Nature and Extent

FINDINGS OF FACT

I. August 15, 2018 Accident and Claim for Compensation

In August of 2018, Petitioner, Frankie King, was a fifty-nine (59) year-old maintenance worker for Respondent, City of Peoria. At that time, he had been employed by Respondent for twenty (20) years. Res. Ex. 1. Petitioner's job duties included plowing snow in the wintertime as well as asphalt work on roads, shoveling, and some concrete work. Res. Ex. 1. Petitioner worked with jackhammers, shovels, and his position required lifting heavy weights. Res. Ex. 1. Petitioner testified the Maintenance Worker job description submitted into evidence at that time as Respondent's Exhibit 5 accurately described his work duties for Respondent. Res. Ex. 1.

On August 15, 2018, Petitioner was working for Respondent on the south-end of Peoria, near Kettelle Street, when a vehicle struck the left side his truck. Petitioner testified he had his hand on the steering wheel and the impact caused the steering wheel to twist, snapping his right wrist and causing his right arm to strike the iron console inside the truck. Res. Ex. 1. Petitioner was taken to the hospital by his supervisor following the accident. Res. Ex. 1.

Petitioner filed an Application for Adjustment of Claim on June 17, 2019, alleging an injury to his right hand as a result of a work-related auto accident. Pet. Ex. 4.

II. April 12, 2021 Arbitration

This case was previously tried on a 19(b) basis. Tr. 4. At that time, the issues were casual connection, AWW, TTD, and maintenance. Tr. 5. On July 2, 2021, a decision was rendered awarding Petitioner causation, an average weekly wage of $1,251.60, TTD benefits for the time periods of 3/17/2020 through 8/4/2020 and 12/23/2020 through 4/5/2021, maintenance benefits from 4/6/2021 through 4/12/2021, and Respondent was ordered to authorize and pay for the Functional Capacity Evaluation recommended by Dr. Vander Naalt. Pet. Ex. 4.

III. Issues in Dispute at April 25, 2022 Arbitration

At arbitration, the parties submitted a Request for Hearing, which was admitted into evidence as Arbitrator's Exhibit 1. Arbitrator's Exhibit 1 lists the following issues in dispute: (1) whether maintenance benefits are owed from the purported time period of April 12, 2021 through September 13, 2021, a period of 22 weeks, which is disputed by Respondent and (2) the nature and extent of Petitioner's injury. Arb. Ex. 1; Tr. 4-5.

IV. Petitioner's Medical Treatment

On April 5, 2021, Petitioner was seen by Dr. Vander Naalt. Dr. Vander Naalt felt Petitioner would be unable to work in a full-duty capacity given his symptoms over the last year. Dr. Vander Naalt placed Petitioner at MMI for his right wrist injury. Dr. Vander Naalt ordered a functional capacity evaluation to finalize Petitioner's work restrictions and kept Petitioner on a thirty-five (35) pound weight restriction for his right hand. Res. Ex. 2.

On May 12 and 13 of 2021, Petitioner was seen by Sean McGinn for a functional capacity evaluation. Following the two-day evaluation, Petitioner's restrictions were elevated. It was recommended that Petitioner not carry or lift from the ground to his waist more than sixty (60) pounds at an occasional level. It was further recommended that he not lift more than fifty (50) pounds to shoulder height at an occasional level. Grip and pinch test should be limited to his tolerance level. Pet. Ex. 1.

Petitioner was seen by Dr. Vander Naalt on May 24, 2021. During this examination, Dr. Vander Naalt confirmed and finalized the permanent restrictions placed on Petitioner during the FCE. Pet. Ex. 2.

V. Petitioner's Testimony at Arbitration

At arbitration, Petitioner testified he attended an FCE on or about May 14th, 2021. Tr.11. The FCE indicated Petitioner had certain restrictions on his work activities and he was unable to return to work in his normal capacity. Tr. 11-12. Petitioner then followed up with his surgeon, Dr. Vander Naalt, where Petitioner was provided with permanent work restrictions. Tr. 12.

Petitioner testified his wrist hasn't been the same since the injury, and it bothers him on and off every night. Tr. 19. He described waking up around 2:00 or 3:00 in the morning "because constant hurting." *Id.* Petitioner decided he wasn't going to do any more work and would deal with it the best he can. *Id.* He testified that his hand feels like it is tightening up throughout the night.

Id. During arbitration, Petitioner was wearing a brace which he stated helps his wrist from swelling. Tr. 20.

Petitioner stated he does not have any problems or any concerns about climbing ladders but has to be extra careful because he doesn't have a full grip. *Id.* Petitioner further stated the weather affects his hand and wrist all the time. Tr. 20-21.

Petitioner has not returned to see any doctors for his right wrist or hand since his last visit with Dr. Vander Naalt on or about May 24, 2021. Tr. 17. Petitioner testified he would have sought further treatment on his wrist if he felt it was necessary. Tr. 24.

Petitioner testified he tried to go out and find a job following the permanent restrictions placed on him by Dr. Vander Naalt. Tr. 13. Petitioner stated he went to the local union hall around May to see if they had work for him within his restrictions. *Id*. The local union hall never got back to Petitioner. *Id.* Petitioner did not offer any documents into evidence regarding any job search he conducted. Tr. 25.

Petitioner elected to take the early retirement incentive offered by Respondent which was effective June 25, 2021. Tr. 14. Petitioner testified he elected to retire early because the package deal that was offered in conjunction with his hand restrictions. Tr. 14-15. He wanted to retire and be done with it. Tr. 15.

On September 13, 2021, Petitioner received an email from Respondent offering a vocational assistance appointment. Tr. 16. Petitioner decided to not move forward with that process because he no longer wanted to go back to work, he wanted to enjoy his retirement. *Id.* Petitioner further testified Respondent had previously offered two separate vocational assessments which Petitioner declined and opted to move forward with the 19(b) trial on April 12, 2021. Tr. 22. Petitioner has never asked for vocational assistance following the 19(b) decision which was filed on July 2, 2021. Tr. 22-23. Further, Petitioner has at no time participated in a vocational assessment offered by the Respondent. Tr. 23.

FINDINGS OF LAW

Vocational Rehabilitation and Maintenance

Petitioner placed maintenance benefits from the purported time period of April 12, 2021, through September 13, 2021, a period of 22 weeks, at issue.

Section 8(a) of the Act requires an employer to pay only those maintenance costs and expenses that are incidental to rehabilitation. An employer is obligated to pay maintenance benefits only "while a claimant is engaged in a prescribed vocational-rehabilitation program." *W.B. Olson, Inc.,* 2012 IL App (1st) 113129WC at ¶ 39; see also *Nascote Industries,* 353 Ill. App. 3d at 1075. Thus, if the claimant is not engaging in some type of "rehabilitation," the employer's obligation to provide maintenance is not triggered. *Jimenez v. Illinois Workers' Comp. Comm'n*, 2012 IL App (2d) 120154WC-U, ¶ 44

The evidence establishes Respondent requested Petitioner's cooperation with, and attendance at, three separate vocational assessments with Respondent's retained vocational consultant. Res. Ex. 5-7; 10. At arbitration, Petitioner testified he declined each of Respondent's requests and never participated in the vocational assessments offered by Respondent. Tr. 22-23. On March 15, 2021, Respondent requested Petitioner's cooperation with a vocational assessment with Respondent's retained vocational consultant on March 23, 2021. Res. Ex. 5. Respondent again requested Petitioner's cooperation with the March 23rd vocational assessment on March 17, 2021. Res. Ex. 6. On April 7, 2021, Respondent again requested Petitioner's attendance at a vocational assessment. Res. Ex. 7. Petitioner declined to attend the vocational assessment and elected to proceed with arbitration under Section 19(b) on April 12, 2021, placing vocational assistance and maintenance benefits at issue. Pet. Ex. 4. However, the Arbitrator notes, consistent with the previous 19(b) hearing, that Respondent's offer of vocational assistance was premature without the benefit of the FCE and permanent restrictions to guide a meaningful and productive job search. (*See* Pet. Ex. 4)

On May 14, 2021, the Functional Capacity Evaluation along with recommendations for permanent restrictions was issued. Pet. Ex. 1. On May 24, 2021, Petitioner returned to Dr. Vander Naalt and received permanent restrictions. Pet. Ex. 2. On the same day, Petitioner expressed his intention to retire from his employment with Respondent on June 25, 2021. Resp. Ex. 8. On June 25, 2021, Petitioner voluntarily retired from his employment with Respondent. Tr. 14. Petitioner testified he elected to retire early based on the early retirement incentives offered and his hand restrictions. Tr. 14-15. He wanted to retire and be done with it. Tr. 15. Petitioner testified that he was not offered any position by Respondent up to June 25, 2021. *Id.*

A Section 19(b) Arbitration Decision was issued on July 2, 2021. Pet. Ex.4. Petitioner testified he never requested vocational assistance following the Decision. Tr. 22-23. On September 13, 2021, Respondent requested Petitioner's participation in a vocational assessment scheduled for September 16, 2021. Res. Ex. 10. On September 15, 2021, Petitioner, through his counsel, advised he wished to discuss settlement "before we start the Vocational [*sic*] assessment Process [*sic*]." At arbitration, Petitioner testified he did not participate in vocational rehabilitation, because he no longer wanted to work and wanted to enjoy retirement. Tr. 22-23.

The records show that Petitioner was on restricted duty as of April 5, 2021. Resp. Ex. 2. Respondent was no longer accommodating Petitioner's restrictions at that point. Tr. 12; *see also* Pet. Ex. 4. On April 7, 2021, Respondent offered Petitioner a vocational assessment. Resp. Ex. 7. On April 12, 2021, Petitioner declined that offer and instead proceeded with the 19(b)/8(a) hearing. Pet. Ex. 4. As indicated above, the Arbitrator found that the offer of vocational assessment premature without a FCE to gauge Petitioner's need for permanent restrictions. On May 14, 2021, the Functional Capacity Evaluation along with recommendations for permanent restrictions was issued. Pet. Ex. 1. On May 24, 2021, Petitioner returned to Dr. Vander Naalt and received permanent restrictions. Pet. Ex. 2. On the same day, Petitioner expressed his intention to retire from his employment with Respondent on June 25, 2021. Resp. Ex. 8. On June 25, 2021, Petitioner voluntarily retired from his employment with Respondent. Tr. 14. Petitioner testified that he was not offered any light duty work up until June 25, 2021. Tr. 15. Petitioner was not offered any type of position following the issuance of his permanent restrictions on May 24, 2021, and his retirement on June 25, 2021. Petitioner showed a desire to retire and had no intention of

returning to the workforce. Petitioner did not provide any evidence of a self-directed job search at arbitration other than his testimony that he went to the local union hall and was not provided work. Tr. p. 13. The Arbitrator finds Respondent attempted to fulfill its obligations pursuant to 50 ILL. Admin Code 9110.10(a), but Petitioner did not wish to receive rehabilitation and re-enter the workforce.

Wherefore, the Arbitrator finds and concludes that Petitioner has established entitlement to maintenance benefits from April 13, 2021, through June 24, 2021. Petitioner removed himself from the workforce on June 25, 2021, by retiring and declining Respondent's offer of vocational rehabilitation, he is not entitled to maintenance benefits for the period of June 25, 2021, through September 13, 2021.

Nature and Extent

Section 8.1b of the Illinois Workers Compensation Act requires consideration of the following enumerated factors in determining an employee's permanent partial disability:

(i) The reported level of impairment pursuant to an American Medical Association 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.

Section 8.1b further provides no single factor shall be the sole determinant of disability. Additionally, Illinois Appellate Courts have affirmed the aforementioned factors are not exclusive, meaning the Commission is free to evaluate other relevant considerations. See *Flexible Staffing Services v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 151300WC. In accordance with Section 8.1b, the relevance and weight of any factors used in reaching a conclusion in this matter are set forth below.

(i) First, with regard to the reported level of impairment pursuant to the AMA 6th Edition Guidelines, an AMA impairment rating was not submitted by either party. Accordingly, the Arbitrator gives no weight to this factor.

(ii) Second, regarding the occupation of the injured employee, the Arbitrator notes Petitioner was a public works employee for the City of Peoria at the time of the August 15, 2018, work accident. The Arbitrator acknowledges the heavy-duty nature of Petitioner's occupation and gives some weight to this factor.

(iii) Third, regarding the age of the injured employee, the evidence establishes Petitioner was fifty-nine (59) years old at the time of his work-injury. The Arbitrator considers Petitioner's

age at the time of the accident and his relatively long average life expectancy. Based on the foregoing, the Arbitrator places some weight on this factor.

(iv) Fourth, with regard to Petitioner's future earning capacity, the Arbitrator finds Petitioner was placed at MMI on April 5, 2021. Further, Petitioner underwent an FCE on May 12 and 13 of 2021 where he was given permanent restrictions. Petitioner elected to pursue an early retirement incentive through Respondent on June 25, 2021, and testified he is enjoying retirement. As such, the Arbitrator places some weight on this factor.

(v) Lastly, with regard to evidence of disability corroborated by the treating medical records, the Arbitrator notes the medical records in evidence establish Petitioner underwent a right scapholunate ligament reconstruction with free tendon graft, a right radial styloidectomy and posterior interosseous neurectomy of his right wrist on March 17, 2020, performed by Dr. Steven Vander Naalt. Petitioner subsequently underwent approximately six months of post-op physical therapy where he was discharged on November 20, 2020.

On April 5, 2021, Petitioner was placed at MMI by Dr. Vander Naalt and an FCE was recommended to confirm and finalize Petitioner's permanent work restrictions. Petitioner attended the FCE on May 12 and May 13 of 2021. The following recommendations are based off Mr. King's performance in the functional capacity assessment: It is recommended that he not carry or lift from the ground to his waist more than 60 pounds at an occasional level. It is further recommended that he not lift more than 50 pounds to shoulder height at an occasional level. Grip and pinch test should be limited to his tolerance level. Petitioner was seen by Dr. Vander Naalt on May 24, 2021, where the restrictions from the FCE were finalized.

Petitioner has not returned to see any doctors for his right wrist or hand since his last visit with Dr. Vander Naalt on May 24, 2021. Petitioner testified he would have sought further treatment on his wrist if he felt it was necessary. Petitioner ultimately retired from his position with Respondent on June 25, 2021.

Based on the above factors, and the record taken as a whole, the Arbitrator finds Petitioner sustained permanent partial disability to the extent of 27.5% loss of use of the person-as-a-whole, totaling 137.5 weeks, or $103,257.00 pursuant to §8(d)(2) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC002086
Case Name	Justin Beattie v. United Iron Workers
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0128
Number of Pages of Decision	15
Decision Issued By	Marc Parker, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Clare Behrle
Respondent Attorney	Richard Day

DATE FILED: 3/21/2023

/s/Marc Parker, Commissioner
Signature

DISSENT: /s/Christopher Harris, 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 Employment, Accident.	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Justin Beattie,

Petitioner,

vs. No. 21 WC 002086

United Ironworkers,

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 employer-employee relationship, accident, causal connection, medical expenses, benefit rates, temporary disability, and permanent disability, and being advised of the facts and law, reverses the Decision of the Arbitrator, which is attached hereto and made a part hereof.

On July 14, 2020, Petitioner, a 39-y/o ironworker, felt a sharp, stabbing pain in his abdomen as he was moving a stand he had built. At that time, another co-worker was welding a few feet away from him. Evidence shows that a piece of wire, from a wire wheel the co-worker had been using to clean welds, flew off that tool and pierced Petitioner's abdomen.

Petitioner was taken to Convenient Care for medical treatment, then Sparta Community Hospital. A CT scan revealed a piece of metal inside his abdomen. After an unsuccessful attempt to remove the metal without general anesthesia, Petitioner was taken to an operating room, and while under anesthesia, a two inch piece of wire was removed from his abdomen. Petitioner testified that the piece of wire which was removed, though black, looked similar to the wires on a wire wheel.

Petitioner was discharged from the hospital later on the day of his accident and surgical procedure. He followed up with his surgeon at Red Bud Clinic, and was released from care without restrictions on August 7, 2020.

Petitioner testified he had been hired to perform welding by Kim Rasnick, owner of Respondent company, the week before his accident. Although Petitioner testified he received a 1099 form at the end of the year, he believed he was hired as a union ironworker after he had informed Rasnick that he was in good standing with the union. Petitioner testified that welding was part of an ironworker's duties, and that he was very proficient at it.

Rasnick testified on behalf of Respondent that he hired Petitioner as an independent contractor to perform welding, because Petitioner had been unemployed and in need of work. On July 7, 2020, Rasnick instructed Petitioner to come in and begin working the following day.

The Arbitrator found Petitioner to be an independent contractor at the time of his injury, and denied all benefits. The Arbitrator weighed the factors that courts have considered in determining whether a worker is an employee or independent contractor, including whether the employer controlled the person's work and dictated the person's schedule. Other factors the Arbitrator considered included whether the worker was paid hourly, and had income taxes and social security taxes withheld.

The Arbitrator believed Petitioner was an independent contractor because he did not go through Respondent's usual hiring process, which included completing an application, undergoing safety training and submitting to a drug test. The Arbitrator found that no evidence showed that the hours Petitioner worked were scheduled by Respondent.

The Arbitrator also found that Respondent did not control or direct Petitioner's work. Petitioner was hired to do a few days of welding work – a task at which Petitioner was experienced and which required no supervision. Rasnick was not present to direct Petitioner, and the shop manager, Bill Davis, was not a welder and not in a position to supervise Petitioner's welding work.

The Arbitrator considered it significant that Petitioner was paid by check rather than direct deposit; no taxes taken from his paycheck; and he received a 1099 form from Respondent at the end of the year. Finally, the Arbitrator believed that Rasnick had hired Petitioner in order to help him out financially, after being asked by both Petitioner and his mother to provide him with any kind of work.

The Commission views the evidence differently than the Arbitrator, and finds Petitioner proved he was an employee of Respondent at the time of his accident.

Employer-employee relationship:

The Illinois Supreme Court has identified factors to be considered to help determine when a person is an employee. Those include: whether the employer may control the manner in which the person performs the work; whether the employer dictated the person's schedule; whether the employer pays the person hourly; whether the employer withholds income and social security taxes

from the person's compensation; whether the employer may discharge the person at will; whether the employer supplies the person with materials and equipment; and whether the employer's general business encompasses the person's work. *Roberson v. Indus. Comm'n, (P.I. & I. Motor Express, Inc.),* 225 Ill. 2d 159l, 866 N.E.2d 191 (2007). The Supreme Court has held that no single factor is determinative. The right to control the work is often called the most important consideration. *Id.*

The Commission finds Respondent had the right to control Petitioner's work, and that it exercised that right. The welding which Petitioner performed was only one of the many tasks he was assigned to perform. All of the other tasks he was given were assigned by Bill Davis. Those tasks included installing a fuel pump on a boat, building signs, moving materials, and cleaning the shop. It is clear from the record that Bill Davis assigned, directed, and supervised all of Petitioner's tasks, with the exception of Petitioner's welding. Accordingly, the Commission finds Respondent's control over Petitioner's cumulative work activities to have been significant.

The Commission also finds Respondent also had the right to dictate Petitioner's work schedule. When Petitioner was hired, he asked Rasnick what time he should come in to work. Rasnick instructed him to begin work at 8:00 am. No evidence shows that Petitioner chose his own work hours, or set his own work schedule.

Although Rasnick testified he only planned to pay Petitioner $20.00/hour for a few days of welding work, it's clear to the Commission that he continued to provide additional work. Petitioner was not paid by the job. Rasnick admitted he sometimes hired employees who did not work steady, or who might be employed for just a few weeks or a month. The Commission finds these facts suggestive of an employment relationship.

The evidence also supports a finding that Petitioner was an "at will" employee. No evidence of written or oral contract suggests otherwise. Respondent had the right to terminate Petitioner's employment for any reason.

Respondent supplied Petitioner with all of the materials and most of the equipment he used for work. Other than bringing his own hard hat and welding hood, all of the other tools and materials which Petitioner used were provided by Respondent. Those tools included grinders, a welder, wrenches, and brooms.

Finally, the Commission observes that Respondent's general business encompassed the work it assigned Petitioner to perform. The work he performed was a fundamental part of Respondent's business. In ascertaining an employment relationship, the Supreme Court has attributed increased significance to the nature of the work performed by the person in relation to the general business of the employer. *Ragler Motor Sales v Indus. Comm'n,* 93 Ill. 2d 66; 442 N.E.2d 903 (1982).

The Commission acknowledges that Petitioner did not submit an application, undergo drug testing or go through safety training; nor did Respondent withhold income and social security taxes from Petitioner's paycheck. Although those factors weigh in favor of Petitioner being found an independent contractor, the Commission finds there is a greater preponderance of evidence in the record to support a finding of an employer-employee relationship at the time of Petitioner's injury. The Commission therefore reverses the Arbitrator's finding that Petitioner was an independent contractor on July 14, 2020.

Having found Petitioner to be an employee at the time of his injury, the Commission next addresses the other issues raised on Review.

Accident:

Petitioner proved his injury arose out of and in the course of his employment. At the time he was injured, he was performing an assigned task: picking up moving rebar stands onto a forklift. He testified he experienced a sharp, stabbing pain to his abdomen. A co-worker was welding just feet away, and the evidence shows a piece of wire from the co-workers wire wheel broke off and flew into Petitioner's abdomen. This conclusion is supported by the results of the surgery Petitioner underwent on the day of his accident: a 2-inch piece of wire was removed from his abdomen. No evidence was offered to show that Petitioner's injury occurred in any other manner.

Causal Connection; Medical Expenses:

There is little question that all of the medical treatment Petitioner received beginning July 14, 2020 through August 7, 2020 was causally related to his work injury. His treatment at Convenient Care and Sparta Community Hospital on July 14, 2020 was directly related to his abdominal injury, and surgery was necessary to remove the piece of wire. Petitioner made one follow-up visit to his doctor on August 7, 2020, at which time he was released from care and allowed to return to work without restrictions. On Review, Petitioner claims that $12,776.95 of his medical expenses remains unpaid. The Commission finds Petitioner's medical expenses were reasonable, necessary, and causally related to his July 14, 2020 accident, and finds Respondent liable for his unpaid medical bills incurred between July 14, 2020 and August 7, 2020, pursuant to the fee schedule.

Benefit Rates:

At arbitration, Petitioner presented evidence that he was paid $20.00/hour. Since Petitioner began working at Respondent, he worked 32.5 hours over the four days prior to his day of injury. That averages 8.125 hours/day, or 40.625 hours in a five day work week. In his Request for Hearing, Petitioner claimed his average weekly wage was $800.00. The Commission finds Petitioner's average weekly wage to be $800.00.

Temporary Disability:

Petitioner underwent surgery on July 14, 2020, and was discharged with instructions to limit his activities to those he could tolerate. He testified he had pain and soreness after the surgical procedure. Two days after Petitioner's accident, Respondent informed Petitioner that they had no work for him. Petitioner was not released from his work restrictions until August 7, 2020. Petitioner is therefore entitled to 3-3/7 weeks of temporary total disability, from July 15, 2020 through August 7, 2020.

Permanent Disability:

Pursuant to §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 from a physician; (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). The Commission considers these factors, and assigns relevance and weight to them as follows:

(i) **Disability impairment rating:** *no relevance or weight,* because neither party submitted an AMA impairment rating.

(ii) **Employee's occupation:** *moderate relevance and weight,* because Petitioner worked a heavy job as an ironworker.

(iii) **Employee's age:** *moderate relevance and weight,* because at 39 years of age at the time of his injury, Petitioner will have to live with his disability for an extended period of time.

(iv) **Future earning capacity:** *little relevance and weight,* because no evidence was presented to show that Petitioner's future earning capacity would be impaired.

(v) **Evidence of disability corroborated by the treating records:** *significant relevance and weight,* because the piece of metal penetrated through Petitioner's peritoneum and lodged above his stomach. Petitioner required emergency bedside exploration, and ultimately surgery under general anesthesia to remove the foreign piece of metal. He was unable to work his regular job for over three weeks.

Based on the foregoing evidence and factors, the Commission finds that Petitioner sustained permanent partial disability to the extent of 3% loss of his body as a whole, as provided under §8(d)2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 27, 2022, is reversed. Petitioner proved he was an employee of Respondent's on July 14, 2020.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's average weekly wage is $800.00.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $533.33 per week for 3-3/7 weeks, for the period of July 15, 2020 through August 7, 2020, as provided by §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the outstanding reasonable and necessary medical expenses incurred in treating his abdominal injury between July 15, 2020 and August 7, 2020, as provided by §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of $480.00 per week for a period of 15 weeks, as provided by §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of use of 3% body as a whole.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $24,000.00. 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.

March 21, 2023

/s/ *Marc Parker*
Marc Parker

MP/mcp
o-03/03/23
068

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

DISSENT

I respectfully dissent from the Majority's opinion. I would have affirmed and adopted the Arbitrator's thorough and well-reasoned decision.

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC002086
Case Name	BEATTIE, JUSTIN v. UNITED IRONWORKERS
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Clare Behrle
Respondent Attorney	Richard Day

DATE FILED: 6/27/2022

/s/William Gallagher, Arbitrator

Signature

INTEREST RATE WEEK OF JUNE 22, 2022 2.39%

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

Justin Beattie
Employee/Petitioner

v.

United Ironworkers
Employer/Respondent

Case # 21 WC 02086

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 May 20, 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 14, 2020, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did not 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 $n/a; the average weekly wage was $n/a.

On the date of accident, Petitioner was 39 years of age, single with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $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

Based upon the Arbitrator's Conclusion of Law attached hereto, claim for compensation is denied.

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

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

William R. Gallagher, Arbitrator

June 27, 2022

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment by Respondent on July 14, 2020. According to the Application, Petitioner sustained an injury "While welding metal frames, when employee was stabbed in the stomach by a piece of metal" which caused Petitioner to sustain an injury to his "Abdomen" (Arbitrator's Exhibit 2). Respondent disputed liability primarily on the basis that there was no employee/employer relationship and Petitioner was an independent contractor. Respondent also disputed accident and causal relationship (Arbitrator's Exhibit 1).

Petitioner testified he has worked as an ironworker since 1997 and as a welder since 2008. Petitioner testified that being an ironworker is a physically demanding job which required him to climb columns while wearing a harness with 50 to 70 pounds of tools attached to it, welding, running a grinder, swinging hammers and walking on narrow beams. Petitioner stated he worked out of a union hall and worked on projects across the country.

Shortly before Petitioner sustained the accident on July 14, 2020, he had been working in Las Vegas. Petitioner returned to his home in Marissa, Illinois, because his mother became ill and wanted him to return and he also had his truck stolen.

Respondent is a business located in Steeleville, Illinois. Kim Rasnick is the president and owner of United Ironworkers, and Petitioner has known him for a long time because his mother previously dated Rasnick's brother and he worked for Respondent sometime in the 1990s.

Petitioner also previously worked for Respondent in August/September, 2019. At that time, Petitioner was welding/building stands, facility maintenance and working on signs (Respondent's Exhibit 2). Petitioner testified that, at that time, he was not current with his union dues and was working to be able to pay his union dues so he would again be in good standing with the union.

Petitioner acknowledged he was paid $20.00 an hour for the work he performed for Respondent in August/September, 2019. He also acknowledged having received a 1099 form from Respondent for the income he made in 2019. Petitioner agreed that when he worked for Respondent in August/September, 2019, he did not complete an application, was not drug tested and did not go through any safety training.

On cross-examination, Petitioner testified he did not work at all from September, 2019, until he again worked for Respondent in July, 2020. Petitioner was able to pay his union dues and had been reinstated; however, he had not been able to secure employment.

A series of text messages exchanged between Petitioner and Kim Rasnick were received into evidence at trial. The messages were from March 1, 2020, and July 22, 2020. In various text messages of the Petitioner from March 1, through July 7, 2020, Petitioner asked Rasnick if he had any work available for him. Rasnick sent Petitioner a response on July 7, 2020, which stated Petitioner could "…help Roy weld tomorrow" (Respondent's Exhibit 3).

Petitioner testified it was his understanding that he was going to work as an iron worker at a job site, but was also told he was going to weld so he brought his welding hood, hardhat and work boots with. When Petitioner reported for work, he did not complete an application, was not drug tested and did not receive any safety training.

Petitioner testified that when he arrived at the shop, he reported to Bill Davis, the shop foreman. Petitioner was initially directed to put a fuel filter in a boat. He subsequently worked on a flagpole, built stands and signs, moved materials and cleaned up the shop. Petitioner testified Bill Davis directed him to do the work and supervised his activities.

Petitioner testified he used tools/equipment owned by Respondent when he performed the work. This included the welder, grinder, broom, chipping hammer, wire brush and wrenches. As aforestated, Petitioner brought his own welding hood, hardhat and worker boots. While welding, Petitioner fabricated frames for plywood signs which included welding, cutting and grinding. Petitioner also painted the signs. Petitioner was an experienced welder and, once he was told what to do, he could do the welding without supervision.

Petitioner testified he did not discuss wages with Rasnick, but thought he was going to be paid the wages of a union ironworker, but subsequently determined he was paid $20 an hour. Petitioner texted Rasnick and informed him of the number of hours he worked. He would then later pick up his check in a black box and Respondent's office. Petitioner acknowledged there were no taxes withheld from his checks.

Rasnick testified on behalf of Respondent. He was the president and owner of United Ironworkers, and had been so for approximately 20 years. He stated Respondent was a union structural steel company which installed rebar and structural steel.

Rasnick testified he has known Petitioner for essentially all of Petitioner's life. He confirmed his brother previously dated Petitioner's mother. Rasnick testified Petitioner has never been hired as an employee of Respondent. In order to be employed by Respondent, Rasnick testified an individual must complete an application, take a drug test and go through safety training. The safety training is 10 hours long and takes place over two days.

In regard to the work Petitioner performed for Respondent in August/September, 2019, Rasnick testified Petitioner did some welding work for Respondent at that time. Petitioner did not complete an application, did not undergo drug testing and received no safety training. Rasnick testified Petitioner was not an employee of Respondent, but he gave Petitioner some work so that Petitioner could pay his union dues. He also testified Respondent is not permitted to hire non-union ironworkers. Once Petitioner completed the welding duties in August/September, 2019, Respondent had no other work for him to do.

Rasnick testified he received several text messages from Petitioner for several months prior to July, 2020, wherein Petitioner was asking for work. He also stated he received calls from Petitioner's mother asking him for work for Petitioner. When Petitioner reported for work on July 8, 2020, Rasnick did not have him complete an application, be drug tested or undergo safety training. He informed Petitioner about the welding he wanted him to do and Petitioner started

doing the work. Rasnick described Petitioner as a "professional" welder who did not require supervision. He also stated that Bill Davis did not oversee or supervised Petitioner's welding because of the preceding and, further, Davis was not a welder and could not provide instructions to Petitioner.

Rasnick testified employees of Respondent were required to clock in and out for work. Petitioner was not required to do this because he was not an employee. He stated Petitioner and he agreed that Petitioner would be paid $20.00 an hour, Petitioner would text him the hours that he had worked and a check would be left for Petitioner in a black box at the office. Rasnick said this was how all outside contractors were paid, but employees would have their checks directly deposited or mailed to their home addresses.

Rasnick testified no taxes were taken out of the checks issued to Petitioner. Respondent issued 1099 forms for the work Petitioner performed in both August/September, 2019, and July, 2020.

In regard to the accident of July 14, 2020, Petitioner testified he and another individual were lifting up some stands which he had recently welded to load them onto a forklift. When he turned, Petitioner felt as though he had been stabbed in the lower abdomen. Petitioner stated there was another individual working about 10 to 15 feet away from him at the time of the accident, but he was not completely certain as to exactly what had happened.

Petitioner initially sought medical treatment at Convenient Care on July 14, 2020. At that time, Petitioner complained of right sided abdominal pain. Petitioner provided a history of the accident that had occurred earlier that same day. Petitioner was diagnosed as possibly having sustained a hernia, but was directed to go to an ER (Petitioner's Exhibit 1).

Petitioner was subsequently seen in the ER of Sparta Community Hospital on July 14, 2020. A CT scan was performed which revealed the presence of a metallic foreign body in the right lower abdomen. Multiple attempts were made to remove the piece of metal without surgery, but were unsuccessful. Petitioner ultimately underwent surgery and a piece of metal which appeared to be wire was removed (Petitioner's Exhibit 2).

Petitioner testified he thought the piece of metal removed from this abdomen was a piece of wire that came off of a wire wheel used in grinding. However, he stated the wire in the wire wheel is made of stainless steel, but the wire that was removed from this abdomen was black in color.

Petitioner was not able to return to work after undergoing surgery. He was subsequently seen at the Red Bud Health Clinic. He was released to return to work without restrictions effective August 10, 2020 (Petitioner's Exhibit 3).

At trial, Petitioner testified he continues to experience lower abdominal pain. He experiences pain when he gets out of bed and when he is lifting/turning. The pain is not constant, but he notices it when he is active.

Conclusion of Law

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

The Arbitrator concludes there was not an employee/employer relationship between Petitioner and Respondent because Petitioner was an independent contractor.

In support of this conclusion the Arbitrator notes following:

There are a number of factors to be considered when making a determination as to whether an individual is an employee or independent contractor they are (1) whether the employer controls the manner in which the person performs the work; (2) whether the employer dictates the person's schedule; (3) whether the employee's compensation is on an hourly basis; (4) whether the employer withholds income and Social Security taxes from the person's compensation; and (5) whether the employer may discharge the person at will. The most important factor is whether the employer has the right to control the actions of the employee. *Esquina v. Illinois Workers' Compensation Commission*, 51 N.E.3d 5 (Ill. App. 1st Dist. 2016).

Petitioner had sought work with Respondent for several months and Petitioner's text messages and responses clearly indicated an employment relationship was not contemplated. Respondent was simply attempting to assist Petitioner by providing him with some work because Petitioner was in dire financial straits.

Respondent's business was fabrication of steel which included welding; however, Petitioner was not asked to work on any projects as an ironworker. Petitioner was primarily provided with work as a welder, an area which Petitioner had considerable expertise. Rasnick acknowledged Petitioner's abilities as a welder and described him as being a "professional." The Petitioner contended that his work was supervised by Bill Davis, Respondent's shop foreman; however, Davis was not a welder and was not in any position to direct how Petitioner performed welding tasks.

Petitioner did not go through the usual hiring process required by Respondent of completing an application, being drug tested or undergoing safety training.

While Respondent provided much of the tools and equipment used by Petitioner, Petitioner provided his own welding hood, hardhat and work boots.

There was no evidence Petitioner worked any hours scheduled by Respondent. He was not required to clock in/out as employees were required to do. Petitioner texted Respondent and advised him of the number of hours he worked.

Respondent only provided welding work to Petitioner when it had a need for same. Respondent previously provided work to Petitioner in 2019, but when he had no work to provide to him the relationship was ended.

Respondent paid Petitioner $20.00 an hour and did not withhold any income taxes or Social Security. For monies earned by Petitioner in 2019 and 2020, Respondent provided Petitioner with 1099 tax forms.

Based upon the preceding, but primarily upon the fact that Respondent exercised no control over the manner in which Petitioner performed his welding tasks, the Arbitrator concludes Petitioner was not an employee of Respondent, but an independent contractor.

In regard to disputed issues (C), (F), (G), (J), (K), and (L), the Arbitrator makes no conclusions of law as these issues are rendered moot because of the Arbitrator's conclusion of law in disputed issue (B).

William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC014322
Case Name	Carman Golf v. City of Chicago
Consolidated Cases	19WC017488; 20WC027615;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0129
Number of Pages of Decision	10
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Brian McManus, Jr.
Respondent Attorney	Stephanie Lipman

DATE FILED: 3/21/2023

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CARMAN GOLF,

Petitioner,

vs. NO: 17 WC 14322

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical treatment, whether the Application for Adjustment of Claim was properly amended, and whether Petitioner exceeded his choice of two physicians under Section 8(a) of the Act, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

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

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired

without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

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.

March 21, 2023

CAH/tdm
O: 3/16/23
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC014322
Case Name	Carman Golf v. City of Chicago
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	Brian McManus, Jr.
Respondent Attorney	Stephanie Lipman

DATE FILED: 7/18/2022

/s/ Antara Nath Rivera, Arbitrator

Signature

INTEREST RATE WEEK OF JULY 12, 2022 2.68%

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)

Carman Golf
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **17** WC **14322**

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 **5/3/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **9/14/16**, 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 $**84,229.17**; the average weekly wage was $**1,926.81**.

On the date of accident, Petitioner was **61** years of age, ***single*** with **0** dependent children.

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, and as outlined in PX 1 and PX 4, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall approve and pay for any restorative work to tooth #20 , as recommended by Dr. Johnson, as provided in Section 8(a) and 8.2 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

July 18, 2022

ICArbDec19(b)

STATEMENT OF FACTS (17WC014322)

Carman Golf ("Petitioner") is a 66-year-old man who was employed by the City of Chicago, Department of Transportation ("Respondent") as a hoisting engineer for Local 150. (Transcript "T." 43, 71) Petitioner testified that he has been employed by Respondent since April 1, 2014. (T. 42) Petitioner testified that he worked Monday through Friday, 7:00AM through 3:30PM. (T. 73) Petitioner further testified that he has dental insurance through Respondent. (T. 82)

Petitioner testified that at the end of his workday, on September 14, 2016, he approached the machine, to get on it, when he stepped on a rake, and "it smacked me right in the face." (T. 43) Petitioner testified that the laborers left an asphalt rake on the back of the machine instead of putting it in the bucket in front of the machine. *Id.* Petitioner testified that he immediately felt that one of his teeth was loose. (T. 44) Petitioner testified that his supervisor, Bobby Pandola, was "right there" when the accident occurred and that was how he notified his supervisor. (T. 44,48) At hearing, Petitioner was shown the City of Chicago Report of Occupational Injury or Illness ("Report"). (T. 45; Petitioner's Exhibit "PX" 3) Petitioner testified that the document was an explanation about what happened that day from his supervisor. *Id.* Petitioner testified that he immediately when to his dentist, Dr. Barbara Klapinska. (T. 49)

On September 27, 2016, Petitioner presented to dentist, Dr. James Hudson, DDS (PX 2 at 52) Petitioner reported that a rake hit his mouth at work. (PX 2 at 54) Dr. Hudson conducted a limited oral/emergency exam and recommended the extraction of Petitioner's left tooth #20. (PX 2 at 51-52) Dr. Hudson referred Petitioner to Dr. Tyran Johnson, DDS, at Oral and Maxillofacial Surgery Associates, for the extraction. *Id.*

On December 20, 2016, Petitioner presented to Dr. Johnson. (PX 2 at 59; T. 50) Dr. Johnson evaluated Petitioner and conducted the following surgical procedures: Panorex film, endosteal implant placement #20, surgical extraction #20, and bone replacement graft for ridge preservation-per site #20. (PX 2 at 59)

On May 19, 2017, Petitioner returned to Dr. Johnson replaced tooth #20 with an implant. (PX 2 at 81; T. 50) Petitioner testified that he did not miss any time from work due to the September 14, 2016, injury. (T. 51)

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. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that an accident occurred in the course of Petitioner's employment. Petitioner testified that he has been employed by Respondent since April 1, 2014. (T. 42) Petitioner testified that, on September 14, 2016, he was employed as a hoisting engineer for Respondent. (T. 43) Petitioner testified that he worked Monday through Friday from 7:00AM through 3:30PM. (T. 73) He testified that, at the end of his shift, he stepped on the rake and the rake hit him in his face. (T. 43) Petitioner testified that he immediately felt that one of his teeth was loose. (T. 44) The Arbitrator notes that Petitioner's testimony was corroborative of the City of Chicago Report of Occupational Injury or Illness with respect to his employment and accident. (PX 3) The Arbitrator notes that there was no evidence presented that was contrary to this. As such, the Arbitrator finds that Petitioner sustained an accident that arose out of an in the course of his employment.

WITH RESPECT TO ISSUE (D), WHAT WAS THE DATE OF THE ACCIDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Consistent with the Arbitrator's prior finding that an accident occurred, the Arbitrator finds that the date of the accident occurred on September 14, 2016. The Arbitrator notes that the City of Chicago Report of Occupational Injury or Illness documented the date of the accident as September 14, 2016. (PX 3) The Arbitrator notes that Petitioner's testimony regarding the date of the accident was corroborated by the City of Chicago Report of Occupational Injury or Illness.[1]

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that timely notice of the accident was given to Respondent. Petitioner testified that his supervisor, Bobby Pandola, was present when the accident occurred. (T. 44,48) Additionally, the Arbitrator notes that the City of Chicago Report of Occupational Injury or Illness documented that Petitioner's supervisor, Robert Pandola, was a witness to the accident. (PX 3) As such, the Arbitrator finds that timely notice was provided to Respondent of the September 14, 2016, work related injury.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING 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).

The Arbitrator finds that Petitioner established a causal connection between the September 14, 2016, work-related accident and his current condition of ill-being with respect to his tooth #20. In so finding, the Arbitrator relies on the opinions of Petitioner's medical professionals, Dr. Hudson and Dr. Johnson. Dr. Hudson conducted a limited oral/emergency exam and recommended the extraction of Petitioner's left tooth #20. (PX 2 at 51-52) Subsequently, Dr. Johnson performed a surgical extraction as well as a dental implant of tooth #20 due to Petitioner's injury. (PX 2 at 59, 81) The Arbitrator notes that Petitioner's

[1] The Arbitrator notes that, on May 3, 2022, before the trial began, there was a discussion, on the record, among the parties regarding the amendment of the application with respect to the date of the accident. Petitioner's attorney made a motion to amend the date of the accident on the Request for Hearing before the hearing began. The Arbitrator notes that amendments to the Request for Hearing and/or application can be made throughout the trial until the close of proofs, under the Act. In *Mora v. Industrial Com'n, 312 Ill.App.3d 266 (2000)*, the Court cited that a party's right to amend is not absolute. That Court found that the respondent would have been prejudiced by being deprived of opportunity to present evidence regarding the amendment of the application. *Id* In this case, the Arbitrator notes that Respondent had notice of the September 14, 2016, date of accident, as evidenced by the City of Chicago Report of Occupational Injury or Illness, and would not be prejudiced by this amendment. Thus, the Arbitrator finds that based on the physical and testimonial evidence presented at hearing, there was sufficient to establish that the date of the accident was September 14, 2016.

testimony and presentation to the dentists were consistent. Thus, the Arbitrator finds that Petitioner's current condition of ill-being with respect to Petitioner's tooth was casually related to the September 14, 2016, work-related accident.

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

Consistent with the Arbitrator's prior finding as to causal connection, the Arbitrator finds that Petitioner's medical treatment, and services, Petitioner received were reasonable and necessary. At arbitration, Petitioner presented the following unpaid medical expenses: 1) Oral and Maxillofacial Surgery Associates, PC., ($3,200.00) (PX 1; PX 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 PX 1 and PX 4, as provided in Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), WHETHER PETITIONER IS ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

As the Arbitrator found that Petitioner's current condition of ill-being was casually related to the September 14, 2016, work-related accident, the Arbitrator finds that Respondent shall approve and pay for any restorative work to tooth #20 , as recommended by Dr. Johnson, as provided in Section 8(a) and 8.2 of the Act.

Arbitrator, Antara Nath Rivera

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC027615
Case Name	Carman Golf v. City of Chicago
Consolidated Cases	17WC014322; 19WC017488;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0130
Number of Pages of Decision	12
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Brian McManus, Jr.
Respondent Attorney	Stephanie Lipman

DATE FILED: 3/21/2023

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CARMAN GOLF,

Petitioner,

vs. NO: 20 WC 27615

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

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

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

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

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

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.

March 21, 2023

CAH/tdm
O: 3/16/23
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC027615
Case Name	Carman Golf v. City of Chicago
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	Michael Folga
Respondent Attorney	Stephanie Lipman

DATE FILED: 7/18/2022

/s/Antara Nath Rivera, Arbitrator

Signature

INTEREST RATE WEEK OF JULY 12, 2022 2.68%

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

CARMAN GOLF
Employee/Petitioner

v.

CITY OF CHICAGO
Employer/Respondent

Case # **20** WC **027615**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Arbitrator Antara Nath Rivera**, Arbitrator of the Commission, in the city of **Chicago**, on **5-3-22**. 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 **10-19-20**, 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 **$107,744.00**; the average weekly wage was $**2,072.00**.

On the date of accident, Petitioner was **65** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of **$41,895.57** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of **$41,895.57**.

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

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, and as outlined in PX 3C, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner PPD benefits of $871.73/week for 50 weeks, because the injuries sustained caused the 10% 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.

Signature of Arbitrator

July 18, 2022

STATEMENT OF FACTS (20WC027615)

Carman Golf ("Petitioner") is a 66-year-old man who was employed by the City of Chicago, Department of Transportation ("Respondent") as a hoisting engineer for Local 150. (Transcript "T." 43, 71) Petitioner testified that he has been employed by Respondent since April 1, 2014. (T. 42)

Petitioner testified that, on October 19, 2020, he was operating a roller and while loading the roller onto a 40-foot tractor trailer, Petitioner fell off of the machine onto the ground and lost consciousness. (T. 60) Petitioner testified that his coworker saw what happened and rushed over to him. *Id.* He testified that an ambulance took him to Stroger Hospital. (T. 61) Petitioner testified that he was in a "daze" for almost 30 minutes and that, after coming out of his daze, he noticed that his left arm, elbow, lower back, neck, left ankle, and toe were in pain. (T. 62) At Stroger Hospital, Petitioner reported that was working on a machine and fell backwards and complained of pain. (PX 4A at 340) The records also indicated that Petitioner did not recall the events of the injury. (PX 4A at 350) The records noted that Petitioner fell approximately 10 feet. (PX 4A at 351) Petitioner was diagnosed with trauma as a result of a fall, with concussion, and with blunt head trauma. (PX 4A at 324, 348, 351) The records indicated medial epicondyle on left elbow and imaging studies were positive for mild osteoarthritis and negative for fracture or significant injury to Petitioner's left ankle, head, elbow, spine, and ankle. (PX 4A at 348-349, 352)

Chicago Fire Department records indicated that ambulance was called to a person injured from a fall. (PX 4A at 342) The report also indicated that Petitioner's coworkers witnessed this incident and observed Petitioner lose consciousness "for a few moments." *Id.*

On November 5, 2020, Petitioner presented to Dr. Edward Forman, D.O., from Chitown Orthopedics & Sports Medicine. (PX 5C; T. 63) Petitioner reported that he was working for Respondent loading a roller onto a low boy and fell over and did not remember anything. (PX 5C at 409) Petitioner complained of right ankle, left shoulder, and left elbow pain. *Id.* Dr. Forman diagnosed Petitioner with mild impingement in the left shoulder, pain in left shoulder, pain in right ankle, and pain in left elbow. (PX 5C at 411) Dr. Forman ordered MRIs of Petitioner's left shoulder and right ankle. *Id.* Dr. Forman encouraged Petitioner to exercise. *Id.* Petitioner testified that Dr. Forman told him to go to physical therapy. (T. 63) Petitioner testified that he went to Team Rehabilitation Physical Therapy in Park Ridge. (T. 64)

On November 11, 2020, Petitioner returned to Dr. Forman. Dr. Forman reviewed the MRIs of the shoulder which indicated that there was no tear in the RTC and that he did not require surgery. (PX 5C at 419) The MRI of the right ankle demonstrated small effusion and bruising of the talar dome. (PX 5C at 437) Dr. Forman indicated that there was nothing on the physical exam which was positive with respect to the elbow. *Id.* Dr. Forman opined that the subjective symptomatology would "quiet down" with anti-inflammatories. (PX 5C at 411)

On January 24, 2021, Petitioner reported to Dr. Forman for a follow up. (PX 5C at 416) Petitioner continued to report back pain and ankle pain. *Id.* As a result of his ongoing complaints, and instability, Dr. Forman opined that Petitioner may benefit from a right ankle lateral ligament reconstruction. (PX 5C at 417) Petitioner did not want to proceed with the reconstruction. *Id.*

On February 4, 2021, Petitioner presented to Suman Shaw, nurse practitioner, at Modern Pain Consultants for his left shoulder, right ankle, neck, thoracic, and low back. (PX 6C at 440) Petitioner reported that he was loading a roller onto a tractor trailer that was 12 to 15 feet high when he fell. *Id.* Petitioner complained of pain in his left shoulder, right ankle, neck, thoracic, and low back. *Id.* Nurse Shaw diagnosed Petitioner with acute pain due to trauma, myofascial pain, lumbago, lumbar radiculitis, cervicalgia, cervical radiculitis, pain in thoracic spine, thoracic radiculitis, pain in right ankle and joints, and pain in left shoulder all due to a work-related injury. (PX 6C at 444) Nurse Shaw recommended a treatment plan consisting of medication, physical therapy, and imaging orders. (PX 6C at 445)

On February 12, 2021, Petitioner underwent an MRI. On February 25, 2021, nurse Shaw reviewed the MRI results and noted multilevel degenerative changes in the spine, lumbar radiculopathy, and cervical radiculopathy. (PX 6C at 449-451) Nurse Shaw recommended interventional pain procedure. (PX 6C at 451)

On April 15, 2021, Petitioner presented to Dr. Brian Forsythe from Midwest Orthopedics at Rush because he wanted a second opinion. (T. 64; PX 2C) Dr. Forsythe diagnosed Petitioner with impingement syndrome of left shoulder region and recommended physical therapy. (PX 2C at 292)

On May 25, 2021, Dr. Forsythe placed Petitioner at maximum medical improvement ("MMI") for his left shoulder. (PX 2C at 297-298) Dr. Forsythe referred Petitioner to Dr. Craig Best and Dr. Divya Agarwal for pain management and Dr. Beth Pieroth for concussion management. *Id.*

Petitioner testified that he is back to work full time. (T. 65) Petitioner testified that he is in constant pain in his neck, lower back, right hand, and right elbow. (T. 66) Petitioner testified that he also had difficulty with his neck while at home washing the car. *Id.* Petitioner testified that he has neck pain at work from turning back and forth and back pain from climbing up and down a machine about 20 times a day. (T. 67) Petitioner testified that his left ankle still hurts feels as though his ankle could sprain any moment. (T. 69) Petitioner testified that he never injured his left shoulder, left elbow, right ankle, lower back, and neck prior to October 19, 2020. (T. 87-88)

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. The Arbitrator acknowledges some inconsistencies associated with Petitioner's testimony as to his injuries and recollection. The Arbitrator, however, did not find that these inconsistencies deem the witness so unreliable as to defeat his claim.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING 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 as long as he can show that his employment was also a causative factor. *Id.* Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Id.* "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59 (1982).

The Arbitrator finds that Petitioner established a causal connection between the October 19, 2019, work-related accident and his current condition of ill-being with respect to his left shoulder, left elbow, right ankle, lower back, and neck. In so finding, the Arbitrator relies on the opinions of Petitioner's medical professionals, Dr. Forman, Dr. Forsythe, and Nurse Shaw.

Petitioner credibly testified that, on October 19, 2020, he was operating a roller and while loading the roller onto a 40-foot tractor trailer, Petitioner fell off of the machine onto the ground and lost consciousness. (T. 60) Petitioner testified that his coworker saw what happened and rushed over to him. *Id.* Petitioner was taken to Stroger Hospital where he was diagnosed with trauma as a result of a fall, concussion, and blunt head trauma. (PX 4A at 324, 348, 351)

The Chicago Fire Department run sheet indicated that an ambulance was called to a person injured from a fall. (PX 4A at 342) The report also indicated that Petitioner's coworkers witnessed this incident and observed Petitioner lose consciousness "for a few moments." *Id.*

Dr. Forman diagnosed Petitioner with mild impingement in the left shoulder, pain in left shoulder, pain in right ankle, and pain in left elbow. (PX 5C at 411) Dr. Forman encouraged Petitioner to exercise and told him to go to physical therapy. (T. 63) Dr. Forsythe diagnosed Petitioner with impingement syndrome of left shoulder region and recommended physical therapy. (PX 2C at 292) Nurse Shaw diagnosed Petitioner with acute pain due to trauma, myofascial pain, lumbago, lumbar radiculitis, cervicalgia, cervical radiculitis, pain in thoracic spine, thoracic radiculitis, pain in right ankle and joints, and pain in left shoulder all due to a work-related injury. (PX 6C at 444) Nurse Shaw recommended a treatment plan consisting of medication, physical therapy, and imaging orders. (PX 6C at 445)

Thus, the Arbitrator finds that, based on the medical evidence, the Chicago Fire Department report, and the opinions of Dr. Forman, Dr. Forsythe, and Nurse Shaw, the October 19, 2019, accident is casually related to Petitioner's current condition of ill-being with respect to his left shoulder, left elbow, right ankle, lower back, neck, and respective symptomatic pain which was asymptomatic prior to the work accident.

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

Consistent with the Arbitrator's prior finding as to causal connection, with respect to the shoulder, lower back, and neck, the Arbitrator finds that Petitioner's medical treatment, and services, Petitioner received were reasonable and necessary. At arbitration, Petitioner presented the following unpaid medical expenses: 1. Midwest Orthopedics at Rush ($257.51); 2. Chitown Orthopedics & Sports ($6,357.74); 3. Hinsdale Modern Pain Consultants ($325.48)

As the Arbitrator has found that Petitioner's treatment has been reasonable and necessary, as to the lower back and neck, the Arbitrator finds that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, and as outlined in PX 3C, as provided in Sections 8(a) and 8.2 of the Act.

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

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

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

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

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that an American Medical Association ("AMA") impairment rating was not performed in this case. As such, the Arbitrator relies on the other four factors of PPD.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a hoisting engineer for Respondent since April 1, 2014. The Arbitrator notes that Petitioner went back to work full duty with no restrictions. The Arbitrator gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 65 years old at the time of the accident. 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 did not have any loss of earnings during this time and there was no evidence that his future earning capacity was affected by the injury sustained. The Arbitrator gives some weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that the medical records support a finding that Petitioner is entitled to

an award of permanency, for his left shoulder, left elbow, right ankle, lower back, and neck, as a result of the October 10, 2019, work related accident. The Arbitrator relies on the medical diagnosis and reports of Dr. Forman, Dr. Forsythe, and Nurse Shaw with respect to Petitioner's injuries and finds that Petitioner sustained injuries to his lower back and neck. The Arbitrator notes that while Petitioner credibly testified to his injury and symptoms, his statements about which ankle was injured were inconsistent. Petitioner testified that his left ankle still hurts, however, all of the medical reports addressed Petitioner's right ankle. (T. 69; PX 5C; PX 6C) The Arbitrator takes into consideration that Petitioner was placed at MMI of his left shoulder by Dr. Forsythe on May 25, 2021. (PX 2C at 297-298) The Arbitrator further notes that while Petitioner testified about his current pain to his left shoulder, left elbow, ankle, lower back, and neck, there was no evidence presented on whether Petitioner sought treatment from the doctors Dr. Craig Best and Dr. Divya Agarwal for pain management as recommended by Dr. Forsythe. 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 $871.73/week for 50 weeks, because the injuries sustained caused the 10% loss of use of the person as a whole as provided in Section 8(d)2 of the Act.

Arbitrator, Antara Nath Rivera

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC017488
Case Name	Carman Golf v. City of Chicago
Consolidated Cases	17WC014322; 20WC027615;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0131
Number of Pages of Decision	11
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Brian McManus, Jr.
Respondent Attorney	Stephanie Lipman

DATE FILED: 3/21/2023

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CARMAN GOLF,

Petitioner,

vs. NO: 19 WC 17488

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, prospective medical treatment, and whether Petitioner exceeded his choice of two physicians under Section 8(a) of the Act, and being advised of the facts and law, corrects the scrivener's error noted below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission 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, herein, corrects the scrivener's error under the findings section on page 3 of the Decision. The correct date of accident should be noted as April 10, 2019, not September 14, 2016.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 19, 2022 is hereby affirmed and adopted, other than the correction of the scrivener's error noted above.

IT IS FURTHER ORDERED BY THE COMMISSION that 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.

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.

March 21, 2023

CAH/tdm
O: 3/16/23
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC017488
Case Name	Carman Golf v. City of Chicago
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	Michael Folga
Respondent Attorney	Stephanie Lipman

DATE FILED: 7/19/2022

/s/ Antara Nath Rivera, Arbitrator

Signature

INTEREST RATE WEEK OF JULY 12, 2022 2.68%

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)

Carman Golf
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **19** WC **17488**

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 **5/3/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **9/14/16**, 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 $**104,000**; the average weekly wage was $**2,000.00**.

On the date of accident, Petitioner was **61** years of age, ***single*** with **0** dependent children.

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

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

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

ORDER

Respondent shall not pay for parking costs but shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, and as outlined in PX 3A, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall approve and pay for any care and treatment plans, as recommended by Dr. Johnson and Dr. Chan, as prescribed by Dr. Johnson, as provided in Section 8(a) and 8.2 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

July 18, 2022

ICArbDec19(b)

STATEMENT OF FACTS (19WC017488)

Carman Golf ("Petitioner") is a 66-year-old man who was employed by the City of Chicago, Department of Transportation ("Respondent") as a hoisting engineer for Local 150. (Transcript "T." 43, 71) Petitioner testified that he has been employed by Respondent since April 1, 2014. (T. 42)

Petitioner testified that on April 10, 2019, he lifted the hood of the roller to check the oil. (T. 52) Petitioner testified that it was raining hard. *Id.* He testified that the roller was old and possibly made in 1940 or 1950. *Id.* Petitioner testified that someone put a latch in the front of the hood that should not have been there. (T. 52-53) Petitioner testified that when he took the hood down, the latch popped forward and hit Petitioner in the face. (T. 53) Petitioner testified that the hood sheared off a few of his teeth. *Id.* Petitioner testified that his supervisor witnessed the accident. *Id.*

Petitioner testified that he immediately went to his dentist, Dr. Barbara Klapinska, DDS. *Id.* He testified that she referred him to Dr. Robert Hudson, DDS, his oral surgeon. *Id.* Petitioner testified that Dr. Hudson referred him to Dr. Christopher Chan, DDS. (T. 54) Petitioner testified he currently goes to Dr. Chan for treatment. *Id.* Petitioner testified that a friend referred him to another dentist, Dr. Timothy Aiossa, DDS. (T. 55) Petitioner testified that Dr. Aiossa extracted his front teeth as a result of the second accident. *Id.*

On April 15, 2019, Petitioner presented to Dr. Aiossa for an oral evaluation as a result of the April 10, 2019, accident. *Id.* Dr. Aiossa diagnosed Petitioner with fracture horizontal for teeth #8 and #11. *Id.* Petitioner treated with Dr. Aiossa for the April 10, 2019, accident from April 15, 2019, to August 29, 2019. (PX 3A at 121; PX 4A)

Petitioner testified that Dr. Johnson and Dr. Christopher Chan, DDS, worked on Petitioner's implants. (T. 56) Dr. Johnson worked on the first set of implants followed by Dr. Chan. *Id.*

On December 30, 2019, Petitioner presented to Dr. Christopher Chan, DDS, for teeth #8 and #11. (PX 2A at 88) Dr. Chan indicated that Petitioner was missing teeth #8 through #11 and that those teeth needed to be replaced. *Id.* Dr. Chan, using Dr. Johnson's reports, opined that Petitioner would be best suited with implant placement #8, #9, #11 with 9-11 FPD. *Id.* Dr. Chan also opined that #6 and #7 needed restoration due to tissue and bone loss, #20 was well-integrated but loose and may be an aspiration hazard, and #29 was fractured with distal carious decay. *Id.*

On January 7, 2020, Dr. Chan removed the loose crown on tooth #20 to obtain an impression. *Id.* Dr. Chan indicated that the "loosening was not a result of his recent accident" and he explained that to Petitioner. *Id.*

On January 20, 2020, Petitioner reported to Dr. Chan for fracture of the crown on tooth #12, which Petitioner reported fracture two days prior. Dr. Chan opined that the "tooth was stressed excessively from trauma from accident as well as clasp from interim partial denture putting additional stress on brittle tooth." *Id.* On that day, Dr. Chan placed the implant on tooth #20 and excavated decay from tooth #29. *Id.*

On January 25, 2020, Petitioner returned to Dr. Chan. *Id.* Dr. Chan discussed a treatment plan with Petitioner which entailed the following: removal of #12 "due to poor long-term prognosis, lack of ferrule, minimal tooth structure." *Id.* Dr. Chan recommended implants for teeth #12 and #8-#11 "stemming from the original accident." (PX 2A at 89) Dr. Chan also indicated that final treatment would cover teeth #6 and #7 due to tissue and bone loss. *Id.*

On June 23, 2020, Petitioner presented to Dr. Christopher Chan, DDS. (PX 2A at 87) Dr. Chan indicated that Petitioner "was involved in a workplace accident that damaged several of his maxillary teeth necessitating the removal of the unrestorable fractured teeth." *Id.* Dr. Chan placed Petitioner on a comprehensive treatment plan for Petitioner's teeth and crowns, in conjunction with Dr. Johnson's surgery. *Id.*

On September 17, 2020, Petitioner was examined by independent medical examiner ("IME") Dr. Herbert M. Kanter, DDS. (Respondent's Exhibit ("RX") 6 at 476) Petitioner testified that the exam took 15 mins and that x-rays were taken. (T. 58, 59) Petitioner further testified that he explained what happened to him on April 10, 2019. (T. 82) Dr. Dr. Kanter listed records that he reviewed in conjunction to the examination. (RX 6 at 477-479) Dr. Kanter noted that Petitioner "appeared to be very casual regarding dates and injuries sustained. *Id.* With respect to the incident where Petitioner stepped on a rake, Petitioner "stated that in approximately February of 2016" he was injured "while on his lunch break", and that resulted in a possible avulsion of tooth #20." (RX 6 at 477)

Dr. Kanter opined that the fabrications of crowns for #12 and #14 was probably a result of his "tripping", or a "result of dental neglect and recurrent caries", which is decay and crumbling of a tooth or bone. (RX 6 at 5) Dr. Kanter further opined that the fabrications of crowns for teeth #12 and #14 was probably as result of his "tripping", or a "result of dental neglect and recurrent caries", which is decay and crumbling of a tooth or bone. (RX 6) Dr. Kanter also felt that the removal of residual roots on tooth #12, were unlikely related to April 10, 2019, incident, noting that dental records dating back to October of 2014 related the tooth alluded to "interference" to the tooth due to "habit of trauma or habit of grinding. *Id.* Dr. Kanter indicated that teeth #8 – #11 were related to trauma. (RX 6 at 480) With respect to tooth #20, Dr. Kanter agreed with Dr. Chan, in that that treatment for the crown of that tooth was not related to work, and also opined that tooth #29 was not related either. (RX 6 at 481)

Dr. Kanter felt that determining causation to the restorative treatment on teeth #6 and #7 was difficult to determine, and that restorative work to teeth #14, #19, #20 were not related. (RX 6 at 480)

Petitioner testified that he plays the trumpet and is a professional singer. (T. 57) Petitioner testified that it is hard for him to perform with a bridge with a bridge in his mouth. (T. 56) Petitioner further testified that the bridge is painful and bothersome on a daily basis. (T. 57) Petitioner testified that Dr. Johnson wants to put the implants in and that is something Petitioner wants to get done. (T. 56) Petitioner testified that he wants to undergo the implant surgery but cannot afford it due to economic reasons. (T. 59)

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. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING 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).

The Arbitrator finds that Petitioner's present condition of ill-being with respect to teeth #8 and #11 were causally related to the April 10, 2019, accident. The Arbitrator also finds that teeth #20 was aggravated as a result of the April 10, 2019, accident.[1] The Arbitrator relies on the diagnosis and treatment of Dr. Chan and Dr. Aiossa.

Dr. Aiossa diagnosed Petitioner with fracture horizontal for teeth #8 and #11. Petitioner treated with Dr. Aiossa for the April 10, 2019, accident. (PX 4A at 135) Dr. Chan indicated that Petitioner was missing teeth #8 through #11 and that those teeth needed to be replaced. *Id.* Dr. Chan, using Dr. Johnson's reports, opined that Petitioner would be best suited with implant placement #8, #9, #11 with 9-11 FPD. *Id.* Dr. Chan further indicated that #6 and #7 needed restoration due to tissue and bone loss, #20 was well-integrated but loose and may be an aspiration hazard, and #29 was fractured with distal carious decay. *Id.*

The Arbitrator notes that while Dr. Kanter agreed with the treating oral surgeons and dentists on a number of causal connection issues, Dr. Kanter stated, "the presumptive diagnosis of Mr. Golf's injury is of traumatic involvement of teeth #'s 8 through 11." (RX 6 at 480) The Arbitrator notes that there is no evidence that Dr. Kanter was advised of the history of Petitioner's tooth #20 extraction and implant as a result of the September 14, 2016, accident. (RX 6)

The Arbitrator finds the opinions of Dr. Aiossa and Dr. Chan to be more persuasive than that of Dr. Kanter. Thus, the Arbitrator finds that Petitioner established a causal connection between the April 10, 2019, work-related accident and his current condition of ill-being with respect to his tooth #8, #11, and #20, as an aggravation.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT

[1] The Arbitrator, in 17WC014322, found that Petitioner established a causal connection between the September 14, 2016, work-related accident and his current condition of ill-being with respect to his tooth #20.

PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Consistent with the Arbitrator's prior finding as to causal connection, the Arbitrator finds that Petitioner's medical treatment, and services, Petitioner received from Dr. Aiossa and Dr. Chan were reasonable and necessary. At arbitration, Petitioner presented the total amount of unpaid medical expenses were $3,492.37 (PX 3A at 122) and any out-of-pocket medical expenses incurred by Petitioner. (PX 3A) The Arbitrator notes that Respondent shall not for parking costs. As such the Arbitrator finds that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, and as outlined in PX 3A, as provided in Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), WHETHER PETITIONER IS ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

As the Arbitrator found that Petitioner's current condition of ill-being for teeth #8 and #11were casually related to, and teeth #20 was aggravated by, the April 10, 2019, work-related accident, the Arbitrator finds that Respondent shall approve and pay for any care and treatment plans, as recommended by Dr. Johnson and Dr. Chan, as prescribed by Dr. Johnson, as provided in Section 8(a) and 8.2 of the Act.

Arbitrator, Antara Nath Rivera

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC026074
Case Name	Jeffrey D. Tenney v. Hertz Corporation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0132
Number of Pages of Decision	9
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	John Budin
Respondent Attorney	Michael Chalcraft II

DATE FILED: 3/21/2023

/s/Carolyn Doherty, 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

JEFFREY D. TENNEY,
Petitioner,

vs. NO: 12 WC 26074

HERTZ 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, prospective medical care, and permanent partial disability (PPD), and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

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

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

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

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.

March 21, 2023

O: 03/16/23
CMD/ma
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC026074
Case Name	Jeffrey D. Tenney v. Hertz Corporation
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	John Budin
Respondent Attorney	Michael Chalcraft II

DATE FILED: 8/31/2022

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

/s/Gerald Granada, 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
ARBITRATION DECISION

Jeffrey D. Tenney
Employee/Petitioner

v.

Hertz Corporation
Employer/Respondent

Case # **12** WC **026074**

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 **Geneva**, on **7/19/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **9/15/11**, 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 $**104,000.00**; the average weekly wage was $**2000.00**.

On the date of accident, Petitioner was **57** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**0** 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 for any benefits it may have paid under Section 8(j) of the Act.

ORDER

Respondent shall pay for any outstanding, related, reasonable and necessary medical services, pursuant to the medical fee schedule, as set forth in Petitioner's medical evidence, including the reimbursement of related medical expenses paid by Petitioner out of pocket in the amount of $6,864.41 as provided in Sections 8(a) and 8.2 of the Act.

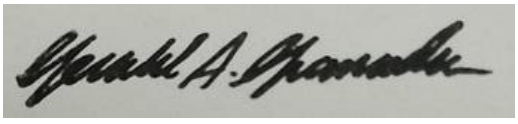
Respondent shall be given a credit for medical benefits that it has paid or for any medical paid through group insurance, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $695.78 /week for 356.40 weeks, because the injuries sustained caused the 45% loss of each hand, 25% loss of the right arm, 35% loss of the right leg, and 20% loss of the right foot, as provided in Section 8(e) of the Act.

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

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

AUGUST 31, 2022



Signature of **Arbitrator Gerald Granada**

FINDINGS OF FACT

This case involves Petitioner Jeffrey D. Tenney, who alleges to have sustained injuries while working for the Respondent Hertz Corporation on September 15, 2011. Respondent disputes Petitioner's claim with the issues being: 1) accident; 2) causation; 3) medical expenses; and 4) nature and extent.

On September 15, 2011, Petitioner worked for Respondent as a branch manager, supervising 25 people. That day, Petitioner was walking down a stairway used only by employees, carrying some parts related to his job. Two thirds of the way down the stairs, he stepped on something and fell. At the time of his fall, he rolled sideways and tried to grab the handrail with his right arm, which hit the upright on the stairway. He grabbed onto the handrail and broke his fall so that he did not land head first on the concrete stair landing below. His right leg and right ankle rolled and were hyperextended. He reported the fall to Terry Countryman, the service manager.

On September 19, 2011, Petitioner went to the company medical clinic, Dreyer Medical Clinic. He treated there until December 15, 2011, when they referred him to an Orthopedic surgeon. Dreyer Medical personnel stated that as a result of his fall on September 15, 2011, he sustained injuries to his: right knee; right ankle; right elbow; right lower leg contusion; and low back pain. (See, Pet. Ex. #1, p. 2,4,6,9) He was noted to be limping due to his right knee and right ankle injuries. He underwent physical therapy, received pain medications, including steroids, and sent for diagnostic testing.

His past medical history included right elbow surgery in 1989, from which he made a complete recovery. (Pet. Ex. #1, p. 4.) Petitioner testified that he had a motor vehicle crash in 2007 which resulted in injuries and surgery to his right shoulder, and right knee. (See, Pet. Ex. #1, p. 4) He made a complete recovery from those injuries.

Dreyer Clinic recommended that petitioner see an orthopedic surgeon. On December 29, 2011, he returned to his orthopedic surgeon from his prior car accident, Dr. Daryl Luke, of Barrington Orthopedics. (Pet. Ex. #8, Barrington Orthopedic records, p. 2) Dr. Luke stated that as a result of his fall of September 15, 2011, Petitioner sustained an injury to his right hand with complaints of numbness and tingling; right forearm/elbow; right shoulder injury; right knee injury with stiffness and "popping", and right ankle injury with instability. (Pet. Ex. #8, Barrington Orthopedic records, p. 9-13) Dr. Luke performed cortisone injections on Petitioner's right elbow and right knee. He also prescribed an ankle brace, therapy for his right hand and on February 6, 2012, scheduled surgery for his right elbow. The surgery was not performed because workers' compensation refused to approve it. Dr. Luke sent medical reports to the workers' compensation adjuster on December 29, 2011, and February 6, 2012. In his February 6, 2012, report he informed the adjuster that as a result of his fall of September 15, 2011, Petitioner would require right elbow surgery and likely right knee and right ankle surgery as well. He also had "chronic pain to the right shoulder," as a result of his fall at work.

On March 1, 2012, Respondent sent Petitioner for an Independent Medical exam with Hythem Shadid, M.D. (Resp. Ex. #1) Dr. Shadid indicated that Petitioner had complained of injuries to his right elbow/forearm, right knee, and leg, right shoulder, right ankle, and low back pain as a result of the fall. Dr. Shadid provided the following impressions regarding the Petitioner's injuries: 1) right elbow epicondylitis – this was a pre-existing condition that was not related to Petitioner's September 15, 2011 fall; 2) right knee – Petitioner sustained a strain and/or contusion that should have resolved; 3) right shoulder – the cause of any pain is unknown and there was no evidence of any injury indicated; 4) right ankle – while Petitioner may have strained his ankle,

there were no residual symptoms present. Dr. Shadid indicated that the objective findings from Petitioner's records did not support his subjective complaints and Petitioner appeared to exhibit symptom magnification at his examination.

In December, 2012, Petitioner fell when his right knee gave out while walking up to his son's house, landing on his left hand and tearing a ligament in that hand. He had a subsequent fall in which his right knee gave out at home on January 8, 2013, from which he reinjured his right elbow and right knee. Both of these incidents were unwitnessed.

On March 28, 2013, Petitioner underwent a right knee arthroscopy with partial medial and lateral meniscectomy performed by Dr. Rosseau to address tears to the medical and lateral meniscus. On September 9, 2014, Petitioner underwent a second, identical surgery performed by Dr. Park to that same knee.

Dr. Huang performed a number of surgeries on Petitioner's right arm and both hands. On May 23, 2013, Petitioner underwent a posterior interosseous nerve decompression of his right forearm by Dr. Huang. Dr. Huang performed four separate surgeries on Petitioner's left wrist, including a ligament repair on July 11, 2013, fusion on March 20, 2014, and hardware removal on September 30, 2013 and May 29, 2014. Dr. Huang also performed four separate surgeries on Petitioner's right wrist including ligament repair on August 4, 2014; hardware removal on October 2, 2014; scaphoid excision on January 22, 2015; and k-wire removal on March 19, 2015.

On November 21, 2014, Petitioner underwent a surgery to his right ankle involving synovectomy and ligament reconstruction to address his diagnosed instability and loose bodies in the ankle. This procedure was performed by Dr. Arndt.

On January 8, 2019, David Tulipan, M.D. testified via evidence deposition. (Pet. Ex. #3) Dr. Tulipan is currently treating Petitioner for both wrists and opined that Petitioner's wrist injuries and resulting surgeries were due to Petitioner's right knee giving out in December, 2012 and June, 2014, which he related back to Petitioner's initial fall from September 15, 2011. He explained that Petitioner's fall in December, 2012 caused Petitioner to injure his left wrist, when he broke his fall, and which required multiple surgeries; Petitioner's fall from June, 2014 resulted in Petitioner's right wrist injuries which required surgery. He testified that Petitioner has lost 50% strength and range of motion in both wrists, and that he is currently treating Petitioner with regular cortisone injections into both wrists as well as his right elbow. Dr. Tulipan testified that Dr. Huang's surgery on Petitioner's right elbow was not entirely successful as Petitioner, still has problems with that elbow.

On August 19, 2019, Dr. Richard Rosseau, of DuPage Medical Group testified via evidence deposition. (Pet. Ex. #4) Petitioner's primary care physician at DMG, Dr. Rojas, referred Petitioner to Dr. Rosseau. On March 28, 2013, Dr. Rosseau performed surgery on Petitioner's right knee involving arthroscopy with partial medial and lateral meniscectomy – which he opined was causally connected to Petitioner's September 15, 2011, fall. He further opined that Petitioner's current complaints are related to the fall at work. Dr. Rousseau testified that following the unsuccessful surgery of March 28, 2013, he referred petitioner to his partner, Samuel Park, M.D. who performed a second surgery on Petitioner's right knee on September 9, 2014. Dr. Rosseau acknowledged that Petitioner's fall in December of 2012, was from his right knee giving out due to the injury sustained on September 15, 2011. (Pet. Ex. #4, p. 40-41). Dr. Rosseau testified that Petitioner has been and will continue to receive injections into his right knee due to pain and continued swelling. Petitioner, while not wanting any more surgery, will likely require total knee replacement.

Petitioner testified that he currently experiences pain with increased activity and has difficulty doing work around the house, working on cars or doing home maintenance. The injuries have affected his sex life and his ability to bowl or play golf. He has difficulty standing for long periods of time due to his knee pain. Petitioner continues to experience swelling in his right knee for which he continues to receive injections on a regular basis. He also complains of loss of hand strength and problems with sleep due to pain. Petitioner lost no time from work from Respondent as he had a desk job and his bills were mostly paid through his group insurance for which Petitioner made co-payments out pocket. Petitioner left his employment with Respondent and began work as the operations director for a different employer in September, 2012.

CONCLUSIONS OF LAW

1. Regarding 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 preponderance of the medical evidence – all of which support Petitioner's claim that he fell down the stairs while working for the Respondent on September 15, 2011. There was no evidence offered to rebut the Petitioner on this issue. Therefore, the Arbitrator finds that the Petitioner sustained an accident arising out of an in the course of his employment with Respondent on September 15, 2011.

2. Regarding the issue of causation, the Arbitrator finds that the Petitioner has met his burden of proof. In support of this finding, the Arbitrator relies on the Petitioner's unrebutted testimony and the preponderance of the medical evidence which show that Petitioner sustained injuries to his right arm/elbow, right knee, right ankle, and both hands. Respondent relies on the IME report of Dr. Shadid, who believed Petitioner's conditions were not related because they were either pre-existing or had already resolved. The evidence appears to support Dr. Shadid's opinions regarding Petitioner's right shoulder condition and back condition, as there does not appear to be any treatment for those alleged conditions nor did Petitioner provide any testimony on those conditions. However, the Arbitrator finds persuasive the essentially unchallenged testimony of Petitioner's treating physicians on this issue regarding the Petitioner's other injured body parts. Petitioner's medical evidence shows that he initially sustained injuries to his right arm, right knee, right ankle and right hand from his September 15, 2011, for which he continued to seek medical treatment. His testimony regarding complaints in those body parts is corroborated by the medical evidence. Furthermore, Petitioner credibly testified that his right knee condition from his September 15, 2011 work accident caused his knee to give out in December, 2012 and January, 2013, leading to further injuries to both hands and his right knee. Both Dr. Tulipan and Dr. Rousseau provide a causal connection opinion between the Petitioner's original accident, his subsequent falls, and the current conditions in his hands and knee. There were no subsequent IME opinions nor any testimony provided to rebut either Dr. Tulipan's or Dr. Rousseau's opinions and testimony. Based on the above, the Arbitrator concludes that the Petitioner's current condition of ill-being in his right arm, right knee, right ankle and both hands are causally connected to his September 15, 2011 work accident.

3. Regarding the issue of medical expenses and consistent with the findings on the issues above, the Arbitrator finds that the Petitioner's medical treatment as set forth in the medical evidence has been reasonable and necessary to address his work-related conditions. As such, the Arbitrator awards the Petitioner the medical expenses set forth in Petitioner's Exhibits, subject to the Fee Schedule. As some of these bills may have been paid either by Respondent directly or by Petitioner's group insurance carrier, any co-payments made or out of

pocket medical expenses paid by Petitioner are awarded to the Petitioner and payment of any outstanding, related bills shall be paid by Respondent directly to the medical providers. Respondent shall be given a credit for medical benefits that have been paid and Respondent shall hold Petitioner harmless from any claims by any providers for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

4. Regarding the issue of the nature and extent of the Petitioner's injuries, the Arbitrator applies the factors set forth in Section 8.1b of the Act and notes the following: (i) no impairment rating was submitted into evidence and the Arbitrator gives no weight to this factor; (ii) Petitioner was a manager in a supervisory position and was able to return to work to this type of work following this accident - a factor to which the Arbitrator gives significant weight; (iii) Petitioner was 57 years old at the time of injury - a factor to which the Arbitrator gives some weight; (iv) there was no evidence of future earnings due to this injury, and the Arbitrator gives no weight to this factor; (v) there was evidence of disability which show that the Petitioner sustained an injury to 1) both hands involving ligament damage (requiring four surgeries to each hand, including ligament repair, fusion and the insertion/removal of hardware), 2) right elbow resulting in epicondylitis (requiring a nerve decompression surgery), 3) right knee resulting in meniscal tears (requiring two surgeries involving arthroscopy and meniscectomy followed by regular injections), and 4) right ankle resulting in instability (requiring surgical arthroscopy and ligament reconstruction) - from which Petitioner still experiences pain and weakness that has resulted in difficulty with household, intimate and recreational activities that require Petitioner to either cease or limit some of his activities - the Arbitrator gives great weight to this factor. Based on the factors above, the Arbitrator concludes the injuries sustained by Petitioner caused a 1) 45% loss of use of each hand, 2) 25% loss of use of the right arm, 3) 35% loss of use of the right leg, and 4) 20% of the right foot as a result of the September 15, 2011 work incident.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC003636
Case Name	Claudia Ramos v. Win Cup Holdings, Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0133
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Jack Epstein
Respondent Attorney	Brent Halbleib

DATE FILED: 3/21/2023

/s/Carolyn Doherty, 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

CLAUDIA RAMOS,

Petitioner,

vs. NO: 20 WC 003636

WIN CUP HOLDINGS, 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 accident, causal connection, temporary total disability (TTD), medical expenses, and prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 29, 2022 is hereby affirmed and adopted.

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

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

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

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

March 21, 2023

O: 03/16/23
CMD/ma
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC003636
Case Name	Claudia Ramos v. Win Cup Holdings, Inc
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Jack Epstein
Respondent Attorney	Brent Halbleib

DATE FILED: 8/29/2022

/s/Frank Soto, Arbitrator

Signature

INTEREST RATE WEEK OF AUGUST 23, 2022 3.11%

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
ARBITRATION DECISION
19(b)

Claudia Ramos
Employee/Petitioner

v.

Win Cup Holdings, Inc.
Employer/Respondent

Case # **20** WC **03636**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Frank Soto**, Arbitrator of the Commission, in the city of **Geneva, Illinois**, on **June 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, **10/1/2019**, 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 $$62,124.32; the average weekly wage was $1,200.54.

On the date of accident, Petitioner was **51** 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

Medical benefits
Respondent shall pay reasonable and necessary medical services, identified in Px 2, 3, and 4, pursuant to the medical fee schedule to Illinois Orthopedic Network, DuPage Medical Group, and Midwest Specialty Pharmacy, as provided in Sections 8(a) and 8.2 of the Act.

Prospective medical benefits
Respondent shall pay the surgical procedure recommended by Dr. Poepping including reasonable post-operative care, post-operative therapy, medication, radiographic imaging, and other associated treatments, pursuant to Sections 8.2 and 8 (a) of the Act.

Temporary Total Disability
Respondent shall pay Petitioner temporary total disability benefits of $800.36/week for 142 weeks, commencing October 2, 2019, through June 21, 2022, as provided in Section 8(b) of the Act.

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

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

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

By: /o/ Frank J. Soto
Arbitrator **August 29, 2022**

ICArbDec19(b)

Procedural History

This cause was tried on June 21, 2022 pursuant to Sections 19(b) and 8(a) of the Act. The disputed issues were whether Petitioner sustained an accidental injury that arose out of and in the course of her employment, whether Petitioner's current condition of ill-being is causally related to her employment injury, average weekly wage, whether Respondent is liable for unpaid medical bills, whether Petitioner is entitled to total temporary disability benefits and prospective medical care. (Arb. Ex. #1).

Finding of Facts

Claudia Ramos (hereinafter "Petitioner") testified she was employed by Win Cup Holdings (hereinafter "Respondent") and, on October 1, 2019, she injured her left shoulder while packing boxes and lifting the boxes overhead and stacking them. Petitioner testified she reported the injury to her supervisor on October 1, 2019 who did nothing. Petitioner testified, the following day, she went to work but could not perform her duties due to her left shoulder so she reported the accident to human resources and, thereafter, was sent to receive medical treatment.

Petitioner presented to Tyler Medical Services on October 2, 2019 and she was seen by Dr. Pappas. The Tyler Medical Services records indicate Petitioner reported developing left shoulder pain at work and the following day she was unable to move her left shoulder. At that time, Petitioner rated her pain level as 8 out of 10. Petitioner denied any prior injury to her left shoulder. Dr. Pappas noted, during his exam, that Petitioner could not abduct past 10 degrees and her flexion and extension was only 20 degrees. (Px. 1).

On October 4, 2019, Petitioner presented to Dr. Julio Gonzales of Glen Ellen Orthopedics (hereinafter "Glen Ellyn"). At that time, Dr. Gonzales took a history from Petitioner through the Petitioner's daughter who reported Petitioner had pain for three days and while at work she experienced chest started hurting and pain radiated into her arm the following day. Petitioner told Dr. Gonzalez she performed packaging work in a factory. Dr. Gonzalez recommended an MRI and he prescribed medications. (Px. 2)

Petitioner underwent an MRI of the left shoulder at DuPage Medical Group. (Px. 3). On October 22, 2019, Petitioner followed up with Dr. Gonzalez who reviewed the MRI and noted an abnormal sclerotic area along the humeral head with surrounding edema and partial thinness tear in her supraspinatus tendon. At that time, Dr. Gonzales kept Petitioner off work, (Px. 2). Petitioner also underwent at CT scan of the left shoulder, on October 29, 2019, which showed

problems with the infraspinatus tendon, supraspinatus tendon and the posterior infraspinatus tendon. (Px. 3).

On November 1, 2019, Petitioner followed up with Dr. Gonzalez recommended injections and physical therapy after reviewing the CT and MRI. At that time, Dr. Gonzales indicated that surgery may be necessary if Petitioner doesn't respond to conservative treatment. (Px. 2).

On November 5, 2019, Dr. Gonzalez performed a left subacromial/subdeltoid bursa injection and, on November 26, 2019, Petitioner returned to Dr. Gonzalez who noted while the injection provided some relief Petitioner continued to experience pain. Dr. Gonzalez continued to recommend physical therapy and to keep Petitioner off work. (Px. 2). On December 17, 2019 and December 20, 2019, Petitioner attended physical therapy at DMG Physical Therapy. (Px. 2).

On October 23, 2019, Petitioner followed up with Dr. Gonzalez who noted Petitioner continued to struggle with her left shoulder after physical therapy. At that time, Dr. Gonzalez recommended consultation with a surgeon. (Px. 2). On January 6, 2020, Petitioner presented to Dr. Marc Asselmeier who opined Petitioner suffered from adhesive capsulitis in her left shoulder. Dr. Asselmeier told Petitioner to continue with physical therapy and to remain off work. (Px. 2).

On January 7, 2020, Petitioner was examined by Dr. Paul Papierski pursuant to Section 12 of the Act. Dr. Papierski's examination noted tenderness in the neck and trapezius area and into the bicipital tendon region of the left shoulder. Dr. Papierski also performed a records review of the Petitioner's treatment. Dr. Papierski noted the initial treatment record of Tyler Medical Services incorrectly states Petitoiner's initial visit as October 1, 2019 when the initial visit occurred on October 2, 2019. Dr. Papierski was provided with a job description for a packer and a job grid analysis. The job description, dated March 4, 2014, stated a packer occasionally lifts and move up to 25 pounds. According to Dr. Papierski, the job grid analysis shows a packer lifts and carries 10 to 20 pounds occasionally and 0 to 10 pounds continuously with no lifting greater than 20 pounds. (Rx. 2).

Dr. Papierski diagnosed left shoulder calcific tendonitis with a left humeral head lesion. Dr. Papierski opined the treatment and work restrictions were appropriate. Dr. Papierski indicated Petitioner could benefit from additional conservative measures and that surgery was an option if conservative treatment fails. (Rx. 2).

Dr. Papierski opined Petitioner's left condition did not result from a work injury because her left shoulder condition is a pre-existing condition. (Rx. 2).

Petitioner continued with Physical therapy. On February 27, 2020, Petitioner followed up with Dr. Asselmeier who continued to recommend Petitioner remain off work and continue with physical therapy. (Px. 2).

On September 15, 2020, Petitioner presented to Dr. Poepping who noted that Petitioner already underwent physical therapy, injection, anti-inflammatories, and activity modifications, yet continued to have pain. Dr. Poepping recommended a left shoulder arthroscopy, subacromial decompression, debridement, and likely rotator cuff repair, depending on the arthroscopic appearance. At that time, Dr. Poepping kept Petitioner off work and submitted the procedure to insurance. (Px. 3).

Petitioner returned to Dr. Poepping on November 11, 2020 and February 9, 2021 who continued to recommend surgical intervention consisting of a left shoulder arthroscopy, subacromial decompression, debridement, and possible rotator cuff repair. (Px. 3).

Petitioner testified she began work for Respondent approximately two years before her injury and, prior to her injury, she never experienced problems with her left arm, hand, elbow, or shoulder (T. 11-12). Petitioner testified her work shift was from midnight until noon or 12:00 a.m. to 12:00 p.m. Petitioner testified overtime was not voluntary and she was not permitted to leave.

Petitioner testified she was injured on October 1, 2019 and that she reported her injury to her supervisor who laughed at her and told her to return to work. (T. 28). The following day, Petitioner reported her injury to Human Resources and, at that time, she was sent to Tyler Medical Center. (T. 29). Petitioner testified she is not currently working and has not worked since the accident.

Laura Selayandia testified she worked for Respondent for 11 years and she currently works as a lead packer. (T. 50). Ms. Selayandia testified in 2019 she also worked the midnight shift which was 12 hours long and there were times when she worked more than three or four days a week which was mandatory. (T. 54).

Ms. Selayandia testified the number of boxes she would form for each machine depended on the area you were working. (T. 56). Ms, Selayandia testified in 2014, there were boxes that weighed 10 pounds which was the same as the box's currently weight. Ms. Selayandia testified in

2014, a packer would occasionally stack three of these boxes on top of one another, and the packer was required to move these three boxes together. Ms. Selayandia testified she was not present for any conversations Petitioner had about safety, how much she was supposed to lift, or how things were supposed to be worked around the factory. (T. 71-72). Ms. Selayandia testified she was not present for any conversations Petitioner had with her supervisors about when Petitioner was to work or the days in which Petitioner was to work. (T. 72).

The Arbitrator found Petitioner's testimony credible.

Conclusions of Law

The Arbitrator adopts the finding of fact in support of the Conclusions of Law as Set forth below. The burden is upon the party seeking an award to prove by a preponderance of the credible evidence the elements of her claim. *Peoria County Nursing Home v. Industrial Comm 'n*, 115 lll.2d 524, 505 N.E.2d 1026 (1987).

Regarding issue (C), Whether Petitioner sustained an accidental injury which arose out of and in the course of her employment, the Arbitrator finds as follows.

To obtain benefits under the Act, a claimant must establish by a preponderance of the evidence that he sustained an accidental injury "arising out of" and "in the course of" his employment. 820 ILCS 305/1(d) (West 2014); *McAllister*, 2020 IL 124848, Par. 32; *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d. 193, 203 (2003); The "arising out of" component is primarily connected with causal connection. *McAllister*, 2020 IL 124848, Par. 36. An injury is said to "arise out of" one's employment if its origin is in some risk connected with or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Id.* Par. 36; *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989). A risk is "incidental to the employment" when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. *McAllister*, 2020 IL 124848, Par. 36; *Purcell v. Illinois Workers' Compensation Comm'n*, 2021 IL App. (4th) 200359WC, Par. 18.

To determine whether a claimant's injury arose out of his or her employment, we must first categorize the risk to which the employee was exposed. *McAllister*, 2020 IL 124848, Par. 236; *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 278 (2011). Illinois courts recognize three categories of risks: (1) risks distinctly associated with the employment, (2) risks personal to the employee, and (3) neutral risks. *McAllister*, 2020 IL 12484, Par. 38; *Baldwin*, 409 Ill. App. 3rd at 478.

The first category of risks involves risks that are distinctly associated with employment. "Employment risks include the obvious kinds of industrial injuries and occupational diseases and are universally compensated." *McAllister*, 2020 IL 124848, Par. 40; *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 149 (2000). Examples of employment-related risks include "tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing some work-related task which contributes to the risk of falling." *McAllister,* 2020 IL 124848, Par. 40; *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 106 (2006). Injuries resulting from a risk distinctly associated with employment are deemed to rise out of the claimant's employment and are compensable under the Act. *McAllister,* 2020 IL 124848, Par 40; *Steak 'n Shake v. Illinois Workers' Compensation Comm'n,* 2016 IL App. (3rd) 150500WC, Par. 35.

The second category of risks involves risks personal to the employee. "Personal risks include nonoccupational diseases" and "injuries caused by personal infirmities such as a trick knee." *McAllister*, 2020 IL 12484. Par. 40; *Illinois Institute of Technology Research Institute,* 314 Ill. App. 3d at 162-63. Injuries resulting from personal risks are generally do not arise out of employment. *McAllister*, 2020 IL 12484, Par. 40. An exception to this rule exists when the workplace conditions significantly contributed to the injury or expose the employee to an added or increased risk of injury. *Id.; Rodin v. Industrial Comm'n*, 316 Ill. App. 3d 1224, 1229 (2000).

The third category of risks involves neutral risks that have no particular employment or personal characteristics. *McAllister*, 2020 IL 12484, Par. 44. 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.; Springfield Urban League v. Illinois Workers' Compensation Comm'n,* 2013 IL App. (4th) 120219WC, Par. 27. 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. *McAllister*, 2020 IL 12484, Par. 44; *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010. 1014 (2011).

The first step is to determine which category of risk the employee was exposed. A risk is distinctly associated with one'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. *McAllister,* 2020 IL 124848, Par. 46; *Caterpillar Tractor Co*., 129 Ill. 2d. at 58.

The Arbitrator finds Petitioner proved by the preponderance of the evidence that she sustained an accident that arose out and in the course of her employment on October 1, 2019. Petitioner was injured within the time period of employment, at a place where the employee can reasonably be expected to be in the performance of her duties, and while performing her job duties. The Arbitrator finds Petitioner's testimony and the histories she provided to her treating doctors were credible and consistent. The Arbitrator finds the totality of the evidence establishes that Petitioner sustained a work-related accident on October 1, 2019. Petitioner testified she injured her left shoulder while lifting and moving boxes at work. Petitioner testified the following day she could not move her left arm so she reported the incident to human resources who sent her to Tyler Medical Group for treatment. The Tyler Medical Services records indicate Petitioner reported developing left shoulder pain at work and that the following day she was unable to move her left shoulder. The entirety of Petitioner's actions indicates an incident occurred while she was working on October 1, 2019.

Regarding issue (F), whether Petitioner's current condition of ill-being is causally related to her employment 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). A work activity is a sufficient cause of the aggravation of a

pre-existing condition if the work activity presented risks greater than those to which the general public is exposed. *Twice Over Clean, Inc. v. The Industrial Commission*, 809 N.E.2d 778 (Ill.App.3 Dist. 2004). "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). Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove 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 the accident and decreased ability to still perform immediately after an accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill.2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96-97, 197 Ill. Dec. 502, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 666, Ill. Dec. 347, 442 N.E.2d 908 (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 her left shoulder conditions is causally related to her work accident of October 1, 2019, as set forth more fully below.

Petitioner was working full duty without incident prior to her injury on October 1, 2019. Petitioner credibly testified that prior to that date, she suffered no injury or had symptoms in her left shoulder. There is no evidence in the record that Petitioner had shoulder symptoms or required any treatment or underwent diagnostic studies prior to October 1, 2019. Petitioner testified she injured her left shoulder while lifting and pushing boxes at work on October 1, 2019. "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 is not persuaded by the opinions of Dr. Papierski who performed the Section 12 examination. Dr. Papierski opined Petitioner's left shoulder medical condition was preexisting. The Arbitrator notes that Dr. Papierski failed to address whether Petitioner's work accident of October 1, 2019 aggravated or accelerated her preexisting condition or whether her preexisting condition alone was the cause of Petitioner's injury. Petitioner told Dr. Papierski she experienced pain in her left shoulder after lifting boxes at work on October 1, 2019.

The Arbitrator does not find Dr. Papierski's opinions persuasive because Dr. Papierski ignored the history of the injury provided by Petitioner and failed to address whether Petitioner's work activities aggravated or accelerated her preexisting condition. Dr. Papierski failed to explain why he gave little or no weight to history of the injury provided by Petitioner. A patient's history is widely known as a significant tool used by the medical community to diagnose conditions and determine the cause of those conditions. Dr. Papierski failed to explain if he believed Petitioner's history was inaccurate or untruthful.

It appears, Dr. Papierski inferred Petitioner's job could not have caused her injuries based upon the Job Description and Job Grid provided by Respondent. The Job Description and Job Grid do not appear to be completely accurate. The Job Description states a packer is required to lift up to 25 pounds. (Rx. 3). Respondent's witness, Ms. Selayandia, testified she would occasionally lift 30 pounds but the Job Grid states a packer was required to lift 20 pounds. The Job Description and the Job Grid were dated March 4, 2014 but Respondent did not provide any evidence the Job Description and Job Grid continued to be accurate at the time Petitioner was injured in October of 2019.

In addition to finding Petitioner's left shoulder condition is causally related to her work accident of October 1, 2019, Petitioner has also presented sufficient evidence that of a chain of events which connects her left shoulder condition to her injury. "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 Comm'n*, 93 Ill. 2d 59, 63, 442 N.E.2d 908, 922 (1982).

Regarding issue (G), what is the Petitioner's Average Weekly Wage, the Arbitrator finds as follows:

According to the wage records submitted into evidence by Respondent, Petitioner earned $45,451.08 regular wages during the 52 weeks prior to the accident. (Rx. 1). Petitioner also earned overtime wages during that period, at the straight time rate, of $16,673.24. The combined wages are $62,124.32. (Rx 1). Overtime is to be included in the calculation of Average Weekly Wage if the overtime is mandatory and regular. *Edward Hines Lumber Co v. Industrial Comm 'n.*, 215 Ill. App. 3d 659, 575 N.E.2d 1234, 159 Ill. Dec. 174 (1990). The Arbitrator finds Petitioner's overtime was both mandatory and regular. Petitioner testified credibly that Respondent ordered her to work a 12-hour shift and that overtime was mandatory. Respondent's

witness also testified that the overtime was mandatory (T. 54). As such, the Arbitrator finds Petitioner's earnings for the 52 weeks prior to the injury were $62,124.32 and an average weekly wage of $1,200.54.

Regarding issue (J), were the medical services that were provided to Petitioner reasonable and necessary, the Arbitrator finds as follows:

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

Respondent disputed liability for the medical bills based upon accident and causation. Respondent's Section 12 examiner opined the medical treatment Petitioner received was reasonable and necessary. The Arbitrator finds Petitioner proved by the preponderance of the evidence the medical treatment she received was related and reasonably required to cure or relieve Petitioner from the effects of her accidental injury. As such, Respondent to pay the following medical bills, pursuant to Sections 8.2 and 8 (a) of the Act and subject to the Fee Schedule to the Petitioner and her attorney:

1. Illinois Orthopedic Network $562.24
2. DuPage Medical Group $8,501.00
3. Midwest Specialty Pharmacy $277.32

Respondent shall be given credit for all medical bills that have been paid, and Respondent shall hold Petitioner harmless from any claims by medical bills which Respondent claims a credit pursuant to Section 8(j) of the Act.

Regarding issue (K), Whether Petitioner is entitled to future medical expenses or approval for future surgery.

The Arbitrator finds Petitioner proved by the of the preponderance evidence that she is entitled to prospective medical treatment. Respondent denied the recommended treatment based upon accident and causation. As stated above, the Arbitrator found Petitioner's condition was caused by her work accident. Petitioner testified she would like to proceed with the recommended surgery. As such, Respondent shall pay for the left shoulder surgery recommended by Dr.

Poepping including reasonable post-operative care, post-operative therapy, medication, radiographic imaging, and other associated treatments, pursuant to Sections 8.2 and 8 (a) of the Act.

Regarding issue (L), Whether Petitioner is entitled to Temporary Total Disability benefits, the Arbitrator finds as follows:

The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, "*i.e.,* until the condition has stabilized." *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized, *i.e.,* reached MM.I. *Sunny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130028WC at 28 (June 26, 2014, Opinion Filed); *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To show entitlement to temporary total disability benefits, a claimant must prove not only that he did not work, but also that he was unable to work. *Gallentine*, 201 Ill. App. 3d at 887; *see also City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (5th Dist. 1996).

The Arbitrator finds Petitioner proved by the of the preponderance evidence that she is entitled to TTD benefits from October 2, 2019 through June 21, 2022, or 142 weeks. Petitioner was taken off work by her treating physicians as of October 2, 2019 and she continues to be off work. The Arbitrator finds Petitioner's condition has not stabilized given that she is still off of work and surgier has been recommend. As such, Respondent shall pay Petitioner TTD benefits from October 2, 2019 through June 21, 2022, or 142 weeks.

By: /o/ Frank J. Soto

Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC022624
Case Name	Joseph Adams v. Lamp Automotive Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0134
Number of Pages of Decision	16
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Dean Caras
Respondent Attorney	Brad Antonacci

DATE FILED: 3/21/2023

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOSEPH ADAMS,

Petitioner,

vs. NO: 18 WC 22624

LAMP AUTOMOTIVE, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, permanent partial disability (PPD) benefits and Petitioner's choice of physicians, 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 finding of a work-related accident. The Commission specifically notes that the testimony and medical evidence corroborate Petitioner's testimony that he had heard a pop and felt pain in his left buttock/hip area while retrieving a fire extinguisher to put out a car fire at work on May 29, 2018, and as a result, he sustained a temporary exacerbation of his pre-existing left hip and low back issues. Petitioner underwent conservative treatment for his work-related injuries and his treating physician, Dr. Alpert, released him to work without restrictions on October 10, 2018. The Commission finds that Petitioner reached maximum medical improvement (MMI) on this date.

The Commission next modifies the Arbitrator's Decision with respect to PPD. The Act states that for accidental injuries occurring on or after September 1, 2011, PPD shall be established using the criteria set forth in Section 8.1b of the Act. In *Corn Belt Energy Corp. v. Ill. Workers' Comp. Comm'n*, 2016 IL App (3d) 150311WC, the Appellate Court found that the Commission failed to comply with the Act "when it did not explain the relevance or weight it attributed to each

factor when determining claimant's level of disability." *Id.* at ¶ 52. The Court determined that this constituted a reversible error. As such, the Commission modifies the Arbitrator's Decision to reflect the weight given to the five factors under Section 8.1b of the Act and additionally finds as follows:

(i) Impairment Rating: The parties did not offer any impairment rating into evidence. The Commission gives this factor no weight.

(ii) Occupation of Injured Employee: Petitioner testified that he was not employed as of the date of arbitration. However, he had returned to his regular duties as a mechanic with no restrictions after his discharge from treatment in October 2018. The Commission gives this factor little weight.

(iii) Petitioner's Age: Petitioner was 57 years old on the accident date; neither party submitted evidence into the record which would indicate the impact of Petitioner's age on any permanent disability resulting from the May 29, 2018 accident. Nonetheless, the Commission finds that Petitioner must still live with this disability and gives some weight to this factor.

(iv) Petitioner's Future Earning Capacity: There is no evidence in the record as to reduced earning capacity. The Commission gives this factor no weight.

(v) Evidence of Disability: Evidence of Petitioner's disability is corroborated by the treating medical records. Following the May 29, 2018 work accident, Petitioner was diagnosed with left hip trochanteric bursitis with left gluteus medius partial tendon tear, as well as a disc herniation on the left at L4-5 and left lower extremity lumbar radiculopathy. Petitioner was prescribed medication, underwent physical therapy and received an injection to the hip. Petitioner reached MMI and released full duty on October 10, 2018. The Commission gives this factor great weight.

In light of the foregoing, with no single enumerated factor being the sole determinant of disability, the Commission affirms the Arbitrator's finding that Petitioner is entitled to PPD benefits of five-percent (5%) loss of use of the person as a whole pursuant to Section 8(d)2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 21, 2022 is hereby modified as stated and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent 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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $25,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

March 21, 2023

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

CAH/pm
O: 3/16/23
052

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC022624
Case Name	Joseph Adams v. Lamp Automotive, Inc.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Dean Caras
Respondent Attorney	Brad Antonacci

DATE FILED: 7/21/2022

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

/s/ Paul Seal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF LAKE)

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

JOSEPH ADAMS
Employee/Petitioner
v.
LAMP AUTOMOTIVE, INC.
Employer/Respondent

Case # **18 WC 022624**

An *Application for Adjustment of Claim* was filed in this matter on July 31, 2018, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal,** Arbitrator of the Commission, in the city of **Waukegan** on **May 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. **X** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

D. What was the date of the accident?

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

F. **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. ___ What temporary benefits are in dispute?

___TPD ____ Maintenance ___ TTD

L. _**X**_ What is the nature and extent of the injury?

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

N. ___ Is Respondent due any credit?

O.____Other

FINDINGS

On **5/29/2018**, Respondent ***was*** operating under and subject to 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 **$59,890.00**; the average weekly wage was **$1150.00.**

On the date of the accident, Petitioner was **57** years of age, **married** with **0** dependent children.

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW
ARBITRATOR'S FINDINGS OF FACT AS TO CAUSATION, NATURE AND EXTENT, AND MEDICAL BILLS

(C) OCCURRENCE OF ACCIDENT ARISING FROM EMPLOYMENT

Petitioner is a 57-year-old employee of the Respondent and currently resides in Wauconda, Illinois. (Transcript of Proceedings on Arbitration, Page 10). The Respondent states Petitioner was employed for 10 years as a mechanic. (Transcript of Proceedings, Page 48). The Respondent also stipulated that Petitioner gave notice about his injury orally and that the notice was given within 60 days of the accident. (Transcript of Proceedings, Pages 50, 67). Petitioner's duties included car repairs and fixing other car-related issues for customers as they came in. (Transcript of Proceedings, Page 10). On May 29, 2018, Petitioner began to feel pain in his left gluteus medius tendon after running to put out a fire under the hood of a smoking car. (Transcript

of Proceedings, Page 12). Petitioner testified that he heard "a loud pop" as he was running, and immediately began to feel the pain upon hearing the pop. (Transcript of Proceedings, Page 12). He also testified that he had not had any trouble with his left buttocks prior to the accident. Petitioner testified that it was amongst his job duties to extinguish the fire and to run and get a fire extinguisher as a result of the fire under the hood. (Transcript of Proceedings, Page 14). Petitioner described the pain as very sharp, "kind of like being stabbed." (Transcript of Proceedings, Page 15). He also testified that the pain was different from any pain he ever had from arthritis. (Transcript of Proceedings, Page 41).

(F) CAUSATION

The Respondent stipulated that Petitioner gave notice about his injury orally and that the notice was given within 60 days of the accident. (Transcript of Proceedings, Pages 50, 67). Petitioner presented a witness at the arbitration hearing on 5/25/22, his co-worker Harrison Warner, who testified that he had witnessed Petitioner run for the fire extinguisher on the date of the injury. (Transcript of Proceedings, Page 72). Warner testified that he recalled Petitioner making a statement about hearing a pop while running after the fire was extinguished. (Transcript of Proceedings, Page 74). Aaron McCombs, a worker's compensation specialist at Auto-Owners, was also presented as a witness at the 5/25/22 hearing, where McCombs testified that it was true the Petitioner told him he was running to the front of the shop to get a fire extinguisher on the day of the injury, and that he slipped and felt a pop in his hip. (Transcript of Proceedings, Page 92). McCombs also testified that Petitioner had never had a torn gluteus medius prior to May 29, 2018. (Transcript of Proceedings, Page 99).

(J) CHARGES FOR REASONABLE AND NECESSARY MEDICAL SERVICES

Petitioner suffered a partial thickness tear of his left gluteus medius tendon, far left lateral disc herniation, lumbar back pain, and left hip pain as a result of his injury on May 29, 2018. Petitioner went to Centegra Hospital on May 30, 2018, and gave a history of a left hip injury at work, began physical therapy at Lindsey Chiropractic on June 5, 2018, received an MRI on June 12, 2018 at Centegra Health Center, and began treatment on July 6, 2018 at Midwest Bone and Joint Institute, including additional MRIs on 8/30/18 and 8/31/18. The Petitioner's medical services that were provided are reasonable and necessary. Petitioner testified that he has received medical bills from Midwest Bone and Joint Institute in the amount of $8,313.38. He also testified that worker's compensation did not pay for those bills. (Transcript of Proceedings, Page 25-26).

(L) FACTS AS TO CAUSATION, NATURE AND EXTENT

Petitioner presented to Centegra Hospital in McHenry, Illinois, the day following his injury, on 5/30/2018, at 7:55 pm and gave a history of injuring his left hip. He was diagnosed with acute left hip pain, acute traumatic lumbar back pain associated with muscle strain; degenerative joint disease of the lumbar spine; and degenerative disc disease of the lumbar spine with sciatica present on the left. He was given a Toradol shot and told that he should remain off work for three days. X-rays were also conducted on his left hip and pelvis areas. He was additionally referred to a physical therapist, with instructions to follow up even if the pain subsided. He also followed up with an orthopedist, who diagnosed his hip and back pain as related to his sciatic nerve. He began therapy at Lindsey Chiropractic on 6/5/18, with his complaints stated as sharp, severe left back pain that radiates into the left hip and buttock, then into his anterior thigh to his knee. He stated that his pain level was an 8 out of 10, and that the pain gets worse as the day progresses. On 6/12/18, he presented to Drs. Elissa Brebach and

Privesh Patel at Centegra Health Center, who ordered him an MRI in accordance with his complaints of acute left hip pain suffered after tripping on an object and feeling a pop in his hip. The MRI assessment stated there was a partial thickness tear of the gluteus medius tendon at its insertion. On 6/14/18, he saw Dr. Patel again, still complaining of left-sided hip pain, difficulty going up and down stairs, difficulty walking, and difficulty standing for prolonged periods of time. Dr. Patel recommended physical therapy and prescribed an anti-inflammatory for treatment. On 7/6/18, he presented to Dr. Joshua Alpert at Midwest Bone & Joint Institute (See Petitioner's Exhibit 2), with complaints of left hip pain and sharp pains in his left hip. Dr. Alpert also recommended a cortisone shot and therapy.

On 7/19/18, he was assessed by Leslie D. Ferrigan, PT, DPT. (See Petitioner's Exhibit 2), with similar complaints of pain at left lateral hip, running from his thigh to his knee. Ferrigan recommended he attend physical therapy for treatment two times a week for six weeks. On 8/3/18, Petitioner saw Dr. Alpert again regarding ongoing issues with left lateral hip pain and back pain shooting down his left leg with some numbness and tingling. Dr. Alpert treated the patient for inflammation and pain and told him to see Dr. Tom Stanley in order to evaluate his lumbar spine for possible lumbar radiculopathy. On 8/21/18, the Petitioner met with Dr. Stanley, who scheduled an MRI of his lumbar spine. On 8/24/18, Dr. Alpert also scheduled an MRI of the Petitioner's left hip. The lumbar spine MRIs were conducted on 8/30/18 and 8/31/18. (See Petitioner's Exhibits 6, 7). On 9/21/18, Dr. Stanley met with the Petitioner to assess his lumbar spine MRIs, stating that the MRIs showed far lateral disc herniation on the left side at L4-5, and left L4 radiculopathy. The Petitioner continued to attend physical therapy sessions until 11/8/18. (See Petitioner's Exhibit 5).

Petitioner testified that he experienced pain from May 29, 2018 to October 10, 2018, and that the pain required him to seek medical treatment and go to physical therapy. (Transcript of Proceedings, Page 23). However, Petitioner also testified he still experiences pain in the left buttock region, in particular, a stabbing pain running down his leg and back. (Transcript of Proceedings, Page 25).

CONCLUSIONS OF LAW

As to C, whether the accident arose out of and in the course of the Petitioner's employment, the Arbitrator concludes as follows:

The Arbitrator finds that the Petitioner's current condition with respect to his left hip and back pain occurred in the course of the Petitioner's employment as a result of the accident on 5/29/2018. Petitioner testified at trial that he works as a mechanic at Lamp Automotive, Inc. The Petitioner testified that he experienced pain in his left hip and back as a result of the fall that occurred on 5/29/2018, when Petitioner was running to find a fire extinguisher to put out a fire that had sparked under the hood of a car he was working on. Petitioner presented two witnesses, his co-worker Harrison Warner and his worker's compensation representative Aaron McCombs, who testified that Petitioner told them his injury resulted after he heard a pop in his left hip while running to get the fire extinguisher on Lamp Automotive's premises. Additionally, the Respondent stipulated to the fact that the Petitioner provided oral notice to his employer within 60 days of the accident.

As to F, whether the petitioner's condition of ill-being is causally related to the injury, the Arbitrator concludes as follows:

The Arbitrator finds that Petitioner's current condition with respect to his left hip and back pain are causally related to the accident of 5/19/2018. The Petitioner testified at trial that he

experienced pain in his left hip and back as a result of the slip while running that occurred on 5/29/2018 at Lamp Automotive. Petitioner gave a history as to all of his subsequent medical treatment of this injury as a result of the fall that occurred on 5/29/2018. Petitioner's treating physicians in their medical records diagnose the Petitioner with a partial thickness tear in his gluteus medius tendon, left lateral hip pain, left-side disc herniation at L4-5, and left L4 radiculopathy as a result of the injury at work on 5/29/2018.

Likewise, the Respondent does not offer any contradictory medical testimony regarding the causation of Petitioner's injury. "Medical evidence is not an essential ingredient to support [***14] the conclusion of the Commission that an industrial accident caused the [claimant's] disability." *International Harvester v. Industrial Comm'n,* 93 Ill.2d 59, 63, 442 N.E.2d 908, 911, 66 Ill.Dec. 347 (19820; see also *Pulliam Masonry v. Industrial Comm'n*, 77 Ill.2d 469, 471, 397 N.E.2d 834, 835, 34 Ill. Dec. 162 (1979) ("It is not necessary to establish a **causal connection** by medical testimony."). "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,* 93 Ill.2d at 63-64, 442 N.E.2d at 911.

Here, the facts show that the Petitioner gave uncontradicted testimony that he had no prior problems with his left hip for 10 years before the accident, sought medical treatment immediately the day after his injury and gave a history that he hurt his left hip at work when he slipped while running to get a fire extinguisher on May 19, 2018. (See Transcript of Proceedings, Page 12). Petitioner injured his left hip when performing work duties that were related to his employment, clearly a chain of events which demonstrated a previous condition of good health,

an accident, and a subsequent injury which are sufficient to prove the causal nexus between the accident and petitioner's injury.

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

As to J, the charges for reasonable and necessary medical services, the Arbitrator concludes as follows:

With respect to Petitioner's medical services, the medical services provided were reasonable and necessary. Petitioner suffered from a partial thickness tear of his left gluteus medius tendon, far lateral disc herniation, lumbar back pain, and left hip pain as a result of his injury on May 29, 2018. Petitioner went to Centegra Hospital on May 30, 2018, and gave a history of a left hip injury at work, began physical therapy at Lindsey Chiropractic on June 5, 2018, received an MRI on June 12, 2018 at Centegra Health Center, and was treated, including additional MRIs in August of 2018, at Midwest Bone and Joint Institute beginning on July 6, 2018. Petitioner additionally testified that he has received medical bills from Midwest Bone and Joint Institute in the amount of $8,313.38. (See Petitioner's Exhibits 1-8). Worker's compensation did not pay for those bills. (Transcript of Proceedings, Page 25-26).

Therefore, the charges for medical services provided by Petitioner ***were*** reasonable and necessary.

As to L, the nature and extent of the injury, the Arbitrator concludes as follows:

Petitioner sustained an injury to his left hip that ultimately required intensive physical therapy and continuous medical treatment. The findings from the 6/12/18 MRI on his left hip were that the Petitioner had sustained a partial thickness tear in his left gluteus medius tendon. The findings from the August 2018 MRIs done at Midwest Bone & Joint Institute were that Petitioner had also suffered left disc herniation in L4-5 and left L4 radiculopathy. In addition,

Petitioner was found to have left lateral hip pain and lumbar back pain associated with the fall on 5/29/18. Clearly, these findings were consistent with a new traumatic injury. The 57-year-old Petitioner is an automotive mechanic, and he is unable to return to his prior employment because of the injury sustained on 5/29/2018.

The Arbitrator finds that Petitioner testified credibly that his left hip injury causes him pain and continues to affect him.

ORDER

1. The Petitioner sustained a partial thickness tear of his left gluteus medius tendon, far lateral disc herniation, lumbar back pain, and left hip pain while employed at Lamp Automotive on May 29, 2018. The Petitioner experienced a pop in his hip and sharp pain on that date when he ran to get a fire extinguisher in order to put out a fire that had started under the hood of a car he was working on. The Arbitrator finds that Petitioner's claim is arose out of his employment and therefore, is compensable.
2. The Petitioner's partial thickness tear of his left gluteus medius tendon, far lateral disc herniation, lumbar back pain, and left hip pain was caused by the work accident on May 29, 2018. The Arbitrator finds that the Petitioner has met his burden proving the requisite causal connection with respect to his injuries.
3. The Arbitrator finds that the medical expenses incurred by the Petitioner were reasonable and necessary. Payment shall be made for those reasonably necessary medical services to the following providers, pursuant to the fee schedule:
    - Midwest Bone and Joint Institute in the amount of $8,313.38
4. Petitioner has sustained a permanent loss of 5% man as a whole as a result of the May 29, 2018 accident. Petitioner sustained a partial thickness tear in his left gluteus medius

tendon, far lateral disc herniation, lumbar back pain, and left hip pain. He was off of work for a total of approximately six weeks, until he was terminated from his employment at Lamp Automotive on July 20, 2018. He returned to work full-duty on October 10, 2018.

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

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

JULY 21, 2022

Signature of Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC041790
Case Name	Aliya Carey v. Dynamic Dogs Training & Behavior & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0135
Number of Pages of Decision	24
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Daniel Davis
Respondent Attorney	Joseph Blewitt

DATE FILED: 3/21/2023

/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: Earnings, Average weekly wage, Benefit rates, TTD, TPD, PPD	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ALIYA CAREY,

Petitioner,

vs. NO: 15 WC 041790

DYNAMIC DOGS TRAINING & BEHAVIOR,
and ILLINOIS STATE TREASURER &
EX-OFFICIO CUSTODIAN of the ILLINOIS
INJURED WORKERS' BENEFIT FUND,

Respondents.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent Illinois Injured Workers' Benefit Fund (IWBF, Fund) herein and notice given to all parties, the Commission, after considering the issues of jurisdiction, employment relationship, earnings, average weekly wage, benefit rates, temporary total disability, temporary partial disability, permanent partial disability, and insurance compliance, 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. Earnings / Average Weekly Wage

The Arbitrator concluded that Petitioner's earnings were $30,000.00 in the year preceding the accident, with a corresponding average weekly wage (AWW) of $576.92. Respondent argues that Petitioner failed to prove her earnings because she submitted no documentary evidence of her earnings. The Commission previously has relied on unrebutted testimony to establish a claimant's earnings. *E.g.*, *Scanlon v. Rivera*, Ill. Workers' Comp. Comm'n, No. 12 WC 20817, 18 IWCC 491 (Aug. 7, 2018); see *Corral v. Kerry, Inc.*, Ill. Workers' Comp. Comm'n, No. 12 WC 41360, 17 IWCC 639 (Oct. 11, 2017) (affirming Decision relying on unrebutted testimony including regular and mandatory overtime).

In this case, Petitioner claimed $30,000.00 in gross earnings in the year preceding the accident. However, Petitioner testified without rebuttal that she worked a 40-hour week with *occasional non-mandatory overtime* and was paid $11.00 per hour wage plus a 7 percent commission from the successful sale of a training program to new customers. Based on this testimony, Petitioner's baseline annual earnings would be $22,880.00. Section 10 of the Act explicitly states that overtime is to be excluded in calculating the average weekly wage. 820 ILCS 305/10 (West 2022). However, "those hours which an employee works in excess of his regular weekly hours of employment are not considered overtime within the meaning of section 10 and are to be included in an average-weekly-wage calculation if the excess number of hours worked is consistent *or* if the employee is required to work the excess hours as a condition of his employment." (Emphasis in original.) *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 436 (2011) (citing *Airborne Express Inc. v. Illinois Workers' Compensation Comm'n*, 372 Ill. App. 3d 549, 554 (2007)). Petitioner's testimony does not establish that her overtime hours were consistent or required by her employer. Moreover, beyond the baseline earnings, Petitioner's testimony is too speculative to establish how much of the remaining $7,120.00 in claimed annual earnings represented non-mandatory overtime versus sales commissions. Accordingly, the Commission modifies the Decision of the Arbitrator to reflect annual earnings of $22,880.00 and an average weekly wage of $440.00.

II. Temporary Total Disability

The Arbitrator ordered Respondent to pay directly to Petitioner the sum of $2,059.60, representing the 3 and 4/7ths week period Petitioner was temporarily totally disabled from the December 13, 2013, accident through January 7, 2014. The Commission's modification of Petitioner's earnings and average weekly wage requires a corresponding modification of the temporary total disability (TTD) benefits awarded. Given an average weekly wage of $440.00, the Commission modifies the TTD rate to $293.33 per week, for a total award of $1,047.61, representing the 3 and 4/7ths weeks of benefits awarded.

III. Temporary Partial Disability

The Arbitrator ordered Respondent to pay directly to Petitioner the sum of $1,977.04 representing 10 and 2/7ths weeks of temporary partial disability (TPD) benefits at a rate of $192.32 per week, representing the period from January 8, 2014 (the date Petitioner returned to work) through March 21, 2014 (the date Petitioner reached maximum medical improvement), a period when Petitioner worked only 20 hours per week. As with the TTD award, the Commission's modification of Petitioner's earnings and average weekly wage requires a modification of the TPD award. Given an average weekly wage of $440.00, the Commission modifies the TPD rate to $220.00 per week, for a total award of $2,262.86, representing the 10 and 2/7ths weeks of benefits awarded.

IV. Permanent Partial Disability

The Arbitrator awarded Petitioner permanent partial disability (PPD) benefits representing a 20% loss of use of the left hand. The IWBF argues that a 7.5% award would be more appropriate.

The Commission affirms the award of PPD benefits but adjusts the benefit rate. Given an average weekly wage of $440.00, the Commission modifies the PPD rate to $264.00, with a total award of $10,824.00, representing 41 weeks of benefits.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated June 21, 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 annual earnings are $22,880.00 and the average weekly wage for this claim is $440.00.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $293.33 per week commencing from December 13, 2013, through January 7, 2014, a period of 3 and 4/7ths weeks, that being the period of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary partial disability benefits of $220.00 per week commencing January 8, 2014, through March 21, 2014, a period of 10 and 2/7ths weeks, as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent partial disability benefits of $264.00 per week for 41 weeks because the injuries sustained caused the 20% loss of use of the left hand, as provided in Section 8(e)(9) 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. The Illinois State Treasurer as *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 the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. In the event the Respondent-Employer fail to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner pursuant to Sections 5(b) and 4(d) of this Act. 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.

Bond for the removal of this cause to the Circuit Court is hereby fixed at the sum of $46,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 21, 2023

o: 3/16/23
CMD/kcb
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC041790
Case Name	CAREY, ALIYA v. DYNAMIC DOGS TRAINING & BEHAVIOR & ILLINOIS STATE TREASURER & EX-OFFICIO CUSODIAN OF THE ILLINOIS INJURED WORKERS' BENFIT FUND
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Daniel Davis
Respondent Attorney	Joseph Blewitt

DATE FILED: 6/21/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 14, 2022 2.16%

/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

Aliya Carey
Employee/Petitioner

Case # **15** WC **041790**

v.

Consolidated cases: _____

Dynamic Dogs Training & Behavior & Illinois State Treasurer & Ex-Officio Custodian of the Illinois Injured Workers' Benefit Fund
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 **William McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **April 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 **IWBF/UNINSURED EMPLOYER**

FINDINGS

On **December 13, 2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**30,000.00**; the average weekly wage was $**576.92**.

On the date of accident, Petitioner was **27** 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 $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**2,949.43** for other benefits, for a total credit of $**2,949.43**.

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

ORDER

Respondent-Fund shall pay directly to Petitioner all medical bills as outlined in Section J of the Arbitrator's Conclusions of Law and pursuant to Sections 8(a) and 8.2 of the Act, less a credit for charges paid by Respondent-Employer as outlined in Section N of the Arbitrator's Conclusions of Law.

Respondent shall pay directly to Petitioner the sum of $2,059.60, representing the 3 & 4/7ths week period Petitioner was temporarily, totally disabled from the December 13, 2013 accident through January 7, 2014.

Respondent shall pay directly to Petitioner the sum of $1,977.04 representing 10 and 2/7ths weeks of temporary partial disability at a rate of $192.32 per week, beginning Petitioner's return-to-work date of January 8, 2014 and her MMI date of March 21, 2014, as outlined in Section K of the Arbitrator's Conclusions of Law.

Respondent shall pay directly to Petitioner $17,712.51 representing 20% loss-of-use of the left hand, or 51.25 weeks at a PPD rate of $345.61 as outlined in Section L of the Arbitrator's Conclusions of Law.

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.

JUNE 21, 2022

Signature of Arbitrator

Finding of Facts

On December 13, 2013, Petitioner, Aliya Carey, was employed as a dog trainer for Dynamic Dogs Training (Respondent-Employer) – a company that provided dog day-care and training services. Prior to the alleged December 13, 2013 accident, Petitioner had worked for respondent for approximately four years. (Transcript of Hearing "Tx"), 9. Petitioner testified that her duties as a trainer involved day-today training of the dogs, client correspondence and training other staff members. Tx, 9. Petitioner testified this was a full-time position and that she worked working 40 hours per week with occasional non-mandatory overtime. Tx, 9-12.

On December 13, 2013, the day of the alleged accident, Petitioner was training an 80-pound husky mix with a known history of biting. Tx, 13-14. Petitioner assumed responsibility of training this dog as the previous trainer assigned to this dog had quit their job. *Id.* During a training session that day, Petitioner testified that the dog walked away into a corner and as she attempted to retrieve the dog by his collar and leash, the dog bit down hard on Petitioner's left forearm and did not let go. Tx, 14. Petitioner called for help, and Jennifer Hack, the owner of Dynamic Dogs Training & Behavior (Respondent-Owner) Jennifer Hack pulled the dog off of Petitioner's arm. Tx, 14. Petitioner testified that she felt deep puncture wounds and an immediate loss of use of her hand due to rapid, severe swelling, throbbing and deep pain. Petitioner testified to a moderate amount of bleeding at the wound sites as well.

Following the accident, Petitioner testified that Respondent-owner Jennifer Hack helped Petitioner clean the wound and drove Petitioner to Peterson Occupational Health, a nearby urgent care clinic. Tx, 15. Petitioner presented to Dr. Celso Del Mundo the same day with a history of a dog bite to the left wrist the same day with severe pains and moderate bleeding. (Petitioner's Exhibit "Px") 1, 7. Physical exam revealed 7 puncture wounds on the dorsal and lateral aspect of the left wrist with full range of motion intact. Px1, 7. X-ray studies conducted that day revealed a 2mm bone fragment just distal to the radial styloid with subcutaneous emphysema. Px1, 11. Petitioner received antiseptics, fresh wound dressings and was discharged with antibiotics and ibuprofen. Px1, 8. Petitioner received work restrictions for her left hand with limited grasping,

pushing/pulling and fine manipulation. *Id.* Finally, Petitioner received instructions to follow up within 24 hours. Px1, 8.

On December 15, 2013, Petitioner returned to Peterson Occupational health under the care of Dr. Aurora Atienza. Px1, 13. Petitioner presented with ongoing swelling in her left wrist accompanied by multiple open wounds to the dorsal and ventral side of the wrist. Petitioner's wounds were cleaned with saline and re-dressed. Px1, 13. Petitioner received renewed left-hand work restrictions, additional antibioitics and instructions to follow up in 4-days' time. *Id.*

Following Petitioner's second consultation with Peterson occupational health, Petitioner received a referral to Dr. Irvin Weisman due to the bone fragment previously revealed on xray. Px1, 15. The notes indicate "employer is aware and agreed. Patient will no longer seek treatment at Peterson Occupational Health under Dr. Del Mundo's Care". Px1, 15.

On December 20, 2013, Petitioner presented to Dr. Wiesman at Illinois Orthopedic Network for an initial evaluation. Dr. Wiesman noted a history of a dog bite managed with antibiotics for a week, with progressive pain and swelling. Physical exam indicated pain with passive and active extension/flexion and pain with gentle range of motion in the wrist itself. Px2, 12. Dr. Wiesman diagnosed Petitioner with a left-wrist flexor tenosynovitis, extensor tenosynovitis, possible subarticular arthritis, or septic joint. Px2, 12.

On the same day, Dr. Wiesman performed the following procedures: (1) extended carpal tunnel release with synovectomy of flexor tendons and washout of volar wrist, (2) first extensor compartment decompression, (3) second extensor compartment decompression, (4) third extensor compartment decompression, (5) arthrotomy through the fourth extensor compartment, (6) washout of the dorsal wrist and (7) collection of cultures. Px2, 12.

On December 26, 2013, Petitioner returned to Dr. Wiesman for a post-operative evaluation, reporting improvement, but with significant ongoing edema, swelling and pain with range of motion in the ulnar three fingers. Dr. Wiesman recommended an intrinsic splint and occupational therapy 2-3 times weekly to improve range of motion and desensitization. Dr. Wiesman placed her off work for two weeks' time. Px2, 14.

On January 7, 2014, Petitioner returned to Dr. Wiesman for a second post-operative evaluation, reporting once again improved by significant ongoing edema, swelling, and pain with range of motion in her fingers. Dr. Wiesman released her to regular work duties and renewed recommendations for occupational therapy. Px2, 16.

On January 10, 2014, Petitioner presented to Precision Hand Therapy to begin occupational therapy. Px2, 21.

On February 11, 2014, Petitioner returned to Dr. Wiesman with improved but still-ongoing complaints of reduced range of motion and ongoing pain. Dr. Wiesman recommended ongoing splinting and reaffirmed Petitioner's ability to return to work full duty.

On March 21, 2014, Petitioner returned to Precision Hand therapy for her final occupational therapy session, having completed 22 sessions total since beginning post-operative therapy. Px2, 54-55. This date of service concludes her medical treatment relative to the alleged December 13, 2013 accident.

Regarding her relationship with her employer, Petitioner testified that she considered herself an employee of Respondent, though she received a 1099 form rather than a W-2. Tx, 12. Petitioner testified that Respondent-Owner Jennifer Hack was responsible for curating new customer leads, but that Petitioner would receive commissions for successfully selling training programs to new customers. Tx, 11. Petitioner testified that she had not prior experience as a dog trainer and received training from Respondent-Owner and her co-worker, Ben Bartelstein. Tx, 10. Petitioner testified that she would use several items as training tools, including collars, leashes, toys, and treats which were supplied at the Respondent-owner's expense. Tx, 11. Petitioner further testified that she could have been terminated from her position at any time. Tx, 13.

Regarding her medical treatment, Petitioner recalled the small bone fragment revealed on x-ray at Peterson Occupational health and recalled the correlating soft tissue swilling. Tx, 16. Petitioner recalled that they "stitched" her wound and gave her anti-biotics. Tx, 17. Petitioner recalled that when she returned on December 15, 2013, her wound was infected and there was redness and throbbing pain from the tips of her fingers up to her elbow. Tx, 18. Petitioner testified that the pain and swelling appeared immediately after the initial accident but that her subsequent infection exacerbated the sensation. Tx, 18.

Petitioner testified that after her second evaluation at Peterson occupational health, she was referred to Illinois Orthopedic Network immediately for surgery. Tx, 19. Petitioner testified that when she initially presented to Dr. Wiesman, her infection had worsened based on redness, throbbing pain, and significant swelling. Tx, 20. Petitioner recalled that Dr. Wiesman was concerned about nerve damage and a puncture into bone that could become a bone infection, in addition to the bone fragment discovered at Peterson Occupational Health. Tx, 21. Petitioner testified that she subsequently underwent surgery immediately upon presenting to Illinois Orthopedic Network. Tx, 22.

Petitioner testified that between December 13, 2013 and December 26, her first post-operative evaluation, she remained completely off work. Petitioner testified that after the surgery, they placed her in a cast and physical therapy, which she underwent at Precision Hand Therapy. Tx, 23. Petitioner testified when she started therapy, her ability to grasp, twist or carry anything with her left hand was difficult, but made gradual improvements over the course of her therapy. Tx, 24.

Petitioner testified she first attempted to return to work "about two or three weeks" after the surgery for secretarial work, but did not have set hours. She recalled working only 20 hours per week at that time, without change to her hourly rate of pay. Petitioner testified she only returned to work full duty after the final date of her physical therapy on March 21, 2014.

After Petitioner's return to work, she testified that she continued working until the summer of 2014, when the Respondent-Owner closed the business and moved out of state. Tx, 26.

After Petitioner concluded her medical treatment, Petitioner testified that she still has some nerve damage that is aggravated by something directly hitting her wrist, as well as a keloid scar that developed from the surgery. Tx, 27. Petitioner also testified she can no longer put full bearing weight on her wrist, even today. Tx, 27.

Petitioner testified that after she concluded her treatment, she continued to struggle with opening and closing doors, opening jars and any other activities involving a twisting motion. She also testified that she was

physically active prior to the accident and that her injuries impacted her ability to take yoga or Pilates classes. Tx, 28.

With respect to workers' compensation insurance coverage, Petitioner testified that she was initially unaware that Respondent-owner did not have workers compensation coverage at the time of the accident, then later learned so after Precision Hand Therapy asked her to begin paying her medical bills, and that Petitioner deduced that Respondent-owner didn't carry workers' compensation insurance. Tx, 29. However, Petitioner confirmed, when presented with billing records introduced as evidence that Respondent-Owner directly paid for her urgent care bills and some of the charges incurred for her treatment at Illinois Orthopedic network. Tx, 32.

On direct examination, Petitioner testified that she sought employment with Respondent-Employer after she was initially a customer of Respondent-Employer herself, and asked Respondent if they were looking for new hires. Tx, 33. Petitioner testified she was hired on an informal basis and was initially assigned to work 11:00am-7:00pm, five days per week. Tx, 34. Petitioner testified the schedule did not change during her time with Respondent-Employer. Tx, 34. Petitioner testified she did not have taxes deducted from her paycheck and did not have restrictions on working elsewhere simultaneously, though she did not have a second job while working for Respondent-Employer. Tx, 34. Petitioner testified that after Respondent stopped paying her medical bills, she did not submit other bills to Respondent for payment. Tx, 35. Further, Petitioner testified that she did not receive any TTD while she was off of work. *Id.* Petitioner confirmed he was not married at the time of the accident. *Id.*

On Redirect examination, Petitioner testified that there were 5-6 other employees besides herself. Petitioner testified there was one other dog trainer, and the remaining individuals were kennel staff who take care of the dogs on a day-to-day basis. Tx, 36. Petitioner testified she had some discretion over which trainer a client's dog would be assigned to for a training program. She also testified she had some discretion regarding whether Respondent-Employer would accept a new dog into the training program. *Id*. Petitioner testified that she had some control over whether a new client-dog would be accepted. *Id.* Finally, Petitioner testified that she

was expected to employ the dog-training techniques as instructed to her by Respondent-Owner or her co-worker Ben Bartlestein. *Id.*

CONCLUSIONS OF LAW

A. Was respondent operating under and subject to the Illinois Workers' Compensation and Occupational Diseases act?

Section 3 of the Illinois Workers' Compensation Act provides:

"The provisions of this Act hereinafter following shall apply automatically and without election to the state, county, city, town, township, incorporated village or school district, body politic or municipal corporation, and to all employers and all their employees, engaged in any department of the following enterprises or businesses which are declared to be extra hazardous, namely: …

13(a): Any business or enterprise in which goods, wares or merchandise are sold or in which services are rendered to the public at large, provided that this paragraph shall not apply to such business or enterprise unless the annual payroll during the year next preceding the date of injury shall be in excess of $1,000." 820 ILCS Sec. 3.13(a).

At the time of the accident, Respondent-employer was a dog-training service located in Chicago, Illinois with dog-training services offered to the public at large. Petitioner testified that Respondent-Employer retained two dog-trainers and five others as kennel staff. Petitioner herself claimed an hourly rate of $11.00 per-hour plus commissions, with gross earnings of $30,000.00 in the year preceding the alleged December 13, 2013 accident. Neither the Illinois State Treasurer (Respondent-Fund) nor Respondent-Employer presented any evidence at trial indicating they fell outside the automatic coverage provisions of the Act. The Arbitrator concludes that Respondent was operating under and subject to the Illinois Workers' Compensation Act on the day of the alleged accident.

B. Was there an employee-employer relationship between Petitioner and Respondent-Employer?

The Arbitrator finds that an employee-employer relationship did exist between Petitioner and Respondent-Employer on the day of the alleged accident.

No rigid rule of law exists regarding whether a worker is an employee or an independent contractor" (*Ware v. Industrial Comm'n*, 318 Ill. App. 3d 1117, 1122 (2000) (citing *Area Transportation Co. v. Industrial Comm'n*, 123 Ill. App. 3d 1096, 1099 (1984)), and the "term 'employee,' for purposes of the Act, should be broadly construed." *Ware*, 318 Ill. App. 3d at 1122 (citing *Chicago Housing Authority v. Industrial Comm'n*, 240 Ill. App. 3d 820, 822 (1992)).

The Illinois Supreme Court, however, has provided a list of various factors for a court to consider when determining whether an employment relationship exists, including whether the employer: (1) may control the manner in which the person performs the work; (2) dictates the person's schedule; (3) pays the person hourly; (4) withholds income taxes and social security from the person's compensation; (5) may discharge the person at will; and (6) supplies the person with materials and equipment. *Roberson v. Industrial Comm'n* (P.I. & I. Motor Exp, Inc.), 225 Ill. 2d 159, 175 (citing *Wenholdt v. Industrial Comm'n*, 95 Ill. 2d 76, 81 (1983)) (quoting *Morgan Cab Co. v. Industrial Comm'n*, 60 Ill. 2d 92, 97 (1975)). ¶ 35.

The right to control the manner in which the worker performs the work is the single most important factor to consider (*Roberson*, 225 Ill. 2d at 175 (citing *Bauer v. Industrial Comm'n*, 51 Ill. 2d 169, 172 (1972)); *Horwitz v. Holabird & Root*, 212 Ill. 2d 1, 13 (2004), although, no one factor is determinative (*Davis v. Industrial Comm'n*, 261 Ill. App. 3d 849, 853 (1994) (citing *Earley v. Industrial Comm'n*, 197 Ill. App. 3d 309, 314-15 (1990)).

With respect to factor (1), Petitioner testified credibly and without rebuttal that her employer controlled the manner in which Petitioner performed her work as a dog trainer. Petitioner testified she initially began working for Respondent-Employer without prior dog-training experience and learned training techniques from Respondent-Owner. Petitioner further testified she was expected to train the dogs in the same manner. Petitioner further testified that the dog toys, treats, collars and leashes were provided at Respondent-Employer's expense. Petitioner was required to train the dogs in the manner instructed by Respondent-Owner and used equipment

chosen by Respondent-Owner. Hence, Respondent-Owner maintained significant control over the manner and method in which Petitioner performed her duties as a dog trainer. The Arbitrator applied critical weight to this factor in .

With respect to factor (2), Petitioner testified without rebuttal that she was assigned an 11:00am to 7:00pm shift by Respondent owner. Petitioner did not testify she maintained independent control over her working hours. The Arbitrator applied significant weight to this factor.

With Respect to factor (3), Petitioner testified without rebuttal that she was paid an hourly rate plus a commission on the successful sale of new training programs to customers. The Arbitrator applied significant weight to this factor.

With Respect to factor (4), Petitioner testified without rebuttal that though she was paid an hourly rate, she filed taxes with a 1099 form rather than a W-2. The Arbitrator applied minimal weight to this factor.

With Respect to factor (5), Petitioner testified without rebuttal that she was an at-will employee and could be terminated at any time. The Arbitrator assigns significant weight to this factor.

With Respect to factor (6), Petitioner testified that she used dog toys, treats, leashes and collars in during the training process, all supplied at the company's expense. The Arbitrator assigns significant weight to this factor.

The Arbitrator concludes, weighing all 6 *Roberson* factors in whole, that an employee-employer relationship did exist between Petitioner and Respondent-Employer on the day of the alleged accident.

C. <u>Did an accident occur that arose out of and in the course of Petitioner's employment with Respondent?</u>

The Arbitrator concludes that Petitioner sustained an accident that arose out of and in the course of her employment.

At trial, Petitioner's testimony was that she sustained a dog bite at work. Petitioner testified that Respondent-Owner pulled Petitioner away from the dog, performed first aid at the job site, then immediately drove Petitioner to urgent care at Peterson Occupational Health. This unrebutted testimony is corroborated by

the contemporaneous medical records closest in time to the accident, specifically the urgent care records from Peterson Occupational Health which document Petitioner's history of a dog bite sustained while at work. Px1 at 13.

Further, medical records from Peterson Occupational Health indicate that Respondent-Owner herself endorsed an authorization form in which the box "work-related" is checked. Px1, 6. Respondent-Fund presented no evidence at trial in dispute. The Arbitrator thus concludes Petitioner sustained an injury that arose out of and in the course of her employment for Respondent-Employer.

D. What was the date of the Accident?

The Arbitrator concludes December 13, 2013 is the alleged date of accident. At trial, Petitioner testified credibly and without rebuttal that she sustained a dog bite to her left wrist on December 13, 2013. This is corroborated by the contemporaneous medical records of both Peterson Occupational Health and Illinois Orthopedic Network, which both note a December 13, 2013 accident. Respondent-Owner endorsed Peterson Occupational Health's authorization form with a check boxed indicating a work-related accident. Neither Respondent-Fund nor Respondent-Owner presented witness testimony or medical records in dispute. The Arbitrator thus concludes the date of accident was December 13, 2013.

E. Was Timely Notice of the Accident Given to Respondent?

The Arbitrator concludes that timely notice was given by Petitioner to respondent.

At trial, Petitioner credibly testified without rebuttal that Respondent-Owner (1) immediately rushed to Petitioner's aid after the accident, (2) performed immediate first aid at the job site, (3) accompanied Petitioner personally to Peterson Occupational Health (4) endorsed documentation from Peterson Occupational Health indicating a work-related accident and (5) personally assumed responsibility for some of Petitioner's medical bills. Neither Respondent-Fund nor Respondent-Employer presented any witness testimony or other evidence in dispute. The Arbitrator thus concludes timely notice of the accident was given to Respondent-Employer

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

The Arbitrator concludes that Petitioner's current condition of ill-being is causally related to the accident. At trial, Petitioner testified without rebuttal that, following the accident, she had difficulty using her left hand, particularly in twisting motions or weight-bearing activities – particularly yoga and pilates classes. Petitioner also testified she has a keloid scar as a result of the accident and that there is residual sensitivity at the site of the puncture wounds caused by the accident. Petitioner testified credibly and without rebuttal that these symptoms are permanent. Neither Respondent-Fund nor Respondent-Owner presented witness testimony or medical evidence disputing Petitioner's own credible testimony or the contemporaneous medical records documenting her complaints. The Arbitrator thus concludes Petitioner's current condition of ill-being is causally related to the December 13, 2013 accident.

G. What were Petitioner's earnings?

At trial, Petitioner claimed $30,000.00 in gross earnings in the year preceding the accident and confirmed the same in her own credible, unrebutted testimony. Petitioner testified she was compensated with an $11.00-per-hour wage plus a 7% commission from the successful sale of a training program to new customers. Respondent-Fund did not present any contravening evidence of Petitioner's claimed earnings. The Arbitrator thus concludes Petitioner's earnings were $30,000.00 in the year preceding the accident, with a corresponding average weekly wage of $576.92.

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

Petitioner claims an unrebutted birth date of July 17, 1986. The Arbitrator concludes Petitioner was 27 on the day of the accident.

I. What was Petitioner's Marital Status at the time of Accident?

At trial, Petitioner credibly testified without rebuttal on cross-examination that she was single on the day of accident with zero dependent children. Tx, 13. The Arbitrator concludes the same.

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

At trial, Petitioner introduced the following bills into evidence:

1.	Peterson Occupational Health:	$324.07 in total charges
2.	Illinois Orthopedic Network/Precision Hand Therapy:	$32,867.64 in total charges
3.	Metro Anesthesia Consultants:	$2,057.90 in total charges
	Total:	**$35,249.61**

The Arbitrator concludes that the services provided to Petitioner were reasonable and necessary and that Respondent has not paid all appropriate charges.

Petitioner credibly testified without rebuttal that after the accident, she sustained "profuse" bleeding, pain, swelling and reduced function to her left hand. She was transported immediately to Peterson occupational health where her wounds were dressed, and antibiotics were provided. Further, x-rays revealed a small bone fragment in her left wrist. Petitioner testified credibly and without rebuttal that as the first week passed, her condition progressively worsened, and that pain & swelling progressed up to her elbow and encompassed her whole arm.

Petitioner testified that she was immediately brought into surgery upon presenting to Illinois Orthopedic Network. The operative report produced by Illinois Orthopedic network provides a clinical indication for surgery based on a severe infection, swelling and soft tissue damage caused by the puncture wounds sustained during the accident. The operative report further indicates that significant repair was rendered to Petitioner's extensor compartments and median nerves of Petitioner's left wrist.

Petitioner testified credibly and without rebuttal that following surgery, she underwent a brief, conservative course of physical therapy from January 10, 2014 through March 21, 2014. Petitioner testified that she had improvement in her wrist function over the course of therapy. The medical records corroborate this history and document Petitioner's own subjective improvement during subsequent post-operative evaluations. Petitioner credibly testified without rebuttal to some residual symptoms, particularly a keloid scar as a result of

the surgery, ongoing sensitivity in her left wrist, and difficulty with weight-bearing exercises. Petitioner further testified that after two to three weeks following her surgery and remaining off of work, she returned to work performing secretarial work at reduced hours. Petitioner did not undergo any use of prescription pain medications or intensive pain management care following her surgery and discontinued treatment following her final date of therapy with ION/Precision Hand Therapy. Petitioner's care consisted of (1) initial first aid rendered by Peterson Occupational Health, (2) an emergency surgery to combat & repair the extensive infection and soft-tissue damage to her left wrist and (3) a limited course of conservative care consisting of splinting and occupational therapy. Neither Respondent-Fund nor Respondent-Employer presented conflicting medical evidence. The Arbitrator thus concludes Petitioner's treatment to-date has been reasonable and necessary.

K. <u>What temporary benefits are in dispute?</u>

At trial, Petitioner testified that she remained completely off-work from the day of the accident until approximately two-three weeks after her surgery when she was permitted to return to work without restrictions by Dr. Wiesman. The contemporaneous medical records indicate that Petitioner was placed on light duty left-hand restrictions from Peterson Occupational Health and then placed off of work by Dr. Wiesman until January 7, 2014, when she was released to work full duty. Petitioner testified that in the weeks between her December 20, 2013 operation and her return-to-work date, she worked 20 hours per-week performing secretarial duties only without change to her rate of pay. Petitioner testified she resumed full duty work only after her final session of physical therapy.

Petitioner testified that following her surgery, she was placed in a 'cast'. The contemporary medical records indicate that Petitioner received recommendations for ongoing splint use as of February 11, 2014 but was released to regular duties. The Arbitrator concludes that Petitioner was unable to resume regular dog training duties due to the ongoing need for a splint following her surgery along with ongoing credible, subjective complaints of reduced function in her left wrist. The Arbitrator concludes that Petitioner voluntarily resumed

light duty work following her January 7, 2014 release but remained temporarily partially disabled until she concluded her physical therapy on March 21, 2014 and returned to work full duty thereafter.

Respondent-Fund presented no evidence at trial disputing Petitioner's own trial testimony or expert medical opinions disputing the work restrictions provided by Dr. Wiesman or Petitioner's own testimony regarding light-duty work.

As such, the arbitrator concludes that Petitioner was temporarily totally disabled from December 13, 2013 through January 7, 2014 – a period of 3 and 4/7ths weeks. The Arbitrator further concludes that Petitioner was temporarily partially disabled and worked reduced hours on light duty between January 8, 2014 through March 21, 2014, a period of 10 and 2/7ths weeks. The difference between her earnings and her half-time working hours is $288.46 per week, with a TPD rate of $192.32 per week.

L. <u>What is the Nature and Extent of the Injury?</u>

With Respect to this issue, the Arbitrator applies the five factors as outlined in Sec. (8)(1)(b) of the Act:

1. The reported level of impairment;
2. Petitioner's occupation;
3. Petitioner's age at the time of the injury;
4. Petitioner's future earning capacity;
5. Petitioner's evidence of disability corroborated by treating medical records.

With respect to factor (1), neither party produced an impairment rating. This factor is not considered.

With respect to factor (2) Petitioner worked as a dog trainer for Respondent-Employer and discontinued working with Respondent after Respondent-Owner closed the business and moved out of state. Petitioner now trains dogs at another dog training company. This factor is given negligible weight.

With respect to factor (3) Petitioner was twenty-seven on the day of the accident, with many years left in the workforce. This factor is given moderate weight.

With respect to factor (4) Petitioner did not assert the accident has impacted her future earning capacity. This factor is given no weight.

With respect to factor (5), Petitioner testified that she has a keloid scar from the resulting surgery and ongoing sensitivity her left wrist. Petitioner also testified that she continues to experience difficulty bearing weight on her left wrist.

Considering each of the above-mentioned factors, the Arbitrator concludes that Petitioner's injuries have caused a permanent disability to the extent of 20% LOU of the left hand.

N. Is Respondent due any credit?

At trial, Petitioner testified that Respondent-Owner Jennifer Hack paid for some of her medical treatment, including all charges from Peterson Occupational Health and a limited number of sessions of occupational therapy with Precision Hand Therapy. Petitioner's medical billing records demonstrate that Respondent-Owner paid $324.07 directly to Peterson Occupational Health and $2,625.36 in directly to Illinois Orthopedic Network for which Respondent-Employer is entitled to a credit for a total of $2,949.43 in medical benefits paid to Petitioner's providers.

O. Is the Injured Workers' Benefit Fund liable for payment of Petitioner's award?

1. Insurance Compliance

At trial, Petitioner introduced certification from the National Council on Compensation Insurance (NCCI) certifying that Respondent-Employer did not carry a valid workers' compensation insurance policy at the time of the December 13, 2013 accident. Px6. Petitioner's credible and unrebutted trial testimony was that she eventually learned that Respondent-Employer did not carry workers' compensation insurance after Respondent-Owner stopped paying for Petitioner's occupational therapy. Petitioner testified that despite Respondent-Owner's direct involvement in Petitioner's care, Respondent owner never provided workers' compensation insurance information to Petitioner. Having previously concluded that Respondent did fall under the automatic coverage provisions of the Illinois Workers' Compensation Act, Arbitrator concludes that the Injured Workers' Benefit Fund is liable for Petitioner's award, less the credit owed to Respondent-Employer for medical benefits paid directly to Petitioner's providers.

2. Notice to Respondent-Employer

At trial, Petitioner presented original copies of its trial notice letter and its corresponding certified mail receipt which was forwarded to Respondent-Employer's last known address. Px4. The receipt was returned to Petitioner prior to hearing without the requested signature confirmation. Tracking does not indicate that mail delivery of the trial notice letter was unsuccessful or refused. (The Arbitrator takes judicial notice of this information as provided by the USPS online tracking service). The Arbitrator concludes that adequate notice was provided to Respondent-Employer and that Respondent-Owner failed to claim the letter after delivery was attempted.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC004174
Case Name	Paula Anderson v. Cook County Sheriff's Department
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0136
Number of Pages of Decision	10
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Alexander Pino
Respondent Attorney	Megan Inskeep

DATE FILED: 3/23/2023

/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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Paula Anderson,

Petitioner,

vs. NO: 14 WC 004174

Cook County Sheriff's Department,

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, nature and extent of Petitioner's permanent disability, and credit for prior compensation paid to Petitioner for the loss of use of the left leg, 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.

With regard to the nature and extent of Petitioner's injury, the Commission notes that the Arbitrator properly considered and weighed each of the five factors required by §8.1b(b) of the Act. However, the Commission finds the Petitioner sustained permanent partial disability to the extent of 45% loss of use of the left leg and 10% loss of use of the person-as-a-whole and modifies the Arbitrator's award accordingly. The Respondent is given a credit for prior settlements totaling 40% of the leg.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 4, 2022, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner $721.66 per week for a period of 10.75 weeks for the 5% net loss of use of the left leg, as provided in §8(e) of the Act. The injury sustained caused a 45% loss of use of the left leg. Pursuant to §8(e)17, Respondent is entitled to a total credit of 40% loss of use of the left leg for prior settlements of case numbers 07 WC 015769 (25%) and 08 WC 035658 and 12 WC 010574 (15%), leaving a net of 5% loss of use of the left leg in this case.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner $721.66 per week for a period of 50 weeks, for the 10% loss of use of the person-as-a-whole, as provided in §8(d)2 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.

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.

March 23, 2023

MP:dak
o 3/16/23
68

/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	14WC004174
Case Name	Paula Anderson v. Cook County Sheriff's Department
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Alexander Pino
Respondent Attorney	Megan Inskeep

DATE FILED: 10/4/2022

THE INTEREST RATE FOR THE WEEK OF OCTOBER 4, 2022 3.85%

/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 ARBITRATION DECISION

Paula Anderson, **Case # 14 WC 04174**
Employee/Petitioner
v.
Cook County Sheriff's Department,
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 **July 26, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
☒ Other **Respondents credits for prior settlements 07WC15769, 08WC35658, 12WC10574**

FINDINGS

On **January 16, 2014**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$70,574.40**; the average weekly wage was $**1,357.40**.

On the date of accident, Petitioner was 46 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.

ORDER

- First Responders Wellness Center - The Arbitrator orders Respondent to pay Petitioner directly for dates of services of August 18, 2020, October 27, 2020 and November 23, 2020, pursuant to the Fee Schedule.

- The Arbitrator orders the Respondent to pay Petitioner TTD from January 17, 2014 through May 12, 2015 or 68 and 4/7 weeks.

- The Arbitrator awards Petitioner 62.5 weeks of compensation or the equivalent of 12.5% loss of a man as a whole at a rate of $721.66 per week or $45,103.75.

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

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

OCTOBER 4, 2022

/s/ Raychel A. Wesley

Signature of Arbitrator

Findings of Fact:

This matter proceeded to hearing on July 26, 2022, in Chicago, Illinois before Arbitrator Raychel A. Wesley on Petitioner's Request for Hearing. Issues in dispute are causation, medical bills, temporary total disability benefits, and the nature and extent of the injury. Arbitrator's Exhibit "Arb. Ex" 1.

It is stipulated by the parties that on January 16, 2014, Paula Anderson (hereinafter referred to as "Petitioner") sustained an injury in the course and scope of her employment with Cook County Sheriff's Department (hereinafter referred to as "Respondent"). Her job title was Deputy Sheriff. (Tr. 11).

Accident of January 16, 2014:

Petitioner testified that on January 16, 2014, she was assigned the task of visiting the Daley Center with her partner to pick up an Order of Protection and then return to her office. At about 5:00 p.m. Petitioner was involved in a motor vehicle accident collision as the passenger in the vehicle. (Tr. 12). Petitioner testified that the location of the accident was at the intersection of Lake Street and Green Street and there were two vehicles involved in the accident. Petitioner stated that her vehicle was impacted on the driver's side just before the front tire. Regarding the severity of the accident, Petitioner testified that she hit her head, left knee and hand. Petitioner testified that the airbags in the vehicle deployed and her car was pushed into a column for the CTA tracks. (Tr. 13). Further, she testified that her vehicle was inoperable after the accident (Tr. 14). Petitioner testified that immediately after the accident she could not breathe and she had a horrible headache. (Tr. 15). She testified that she exited the vehicle on her own and she was taken from the scene by ambulance to the Rush Emergency Room. (Tr. 16).

Medical Treatment:

Petitioner was evaluated at the Rush Emergency Department with complaints of headache, bilateral knee pain, and left hand pain. X-Rays of the left hand and left knee were performed with negative results. A CT of the brain was performed, which was negative. Petitioner was prescribed Tylenol and Ultram, and was discharged home to follow up with primary care.

On January 19, 2014, Petitioner presented to the Swedish Covenant Hospital emergency room with complaints of muscle pain, dizziness, and nausea. Petitioner was diagnosed with muscle strain and head injury.

On January 24, 2014, Petitioner underwent an initial evaluation with Dr. Blair Rhode at Orland Park Orthopedics. Petitioner complained of a large bump to the top of her head, left knee pain and bruising of the left knee. Petitioner was diagnosed with left knee contusion and concussion secondary to a work related motor vehicle accident which occurred on January 16, 2014. Dr. Rhode recommended that Petitioner remain off work. Petitioner pursued a conservative course of treatment both at Orland Park and Swedish Covenant, with continued complaints of anterior left knee pain and periodic headaches with episodes of dizziness secondary to increased motion. Petitioner also reported headaches right sided parietal temporal region and complaints of fluent speech but with the wrong words coming out, numbers dialed wrong and it taking longer to process things. On October 22, 2014, Petitioner attended a follow up appointment at Orland Park Orthopedics wherein she reported falling two weeks ago due to passing out or losing feeling in her legs. The doctor recommended Petitioner remain off duty. Conservative treatment continued through her return to work in May of 2015.

Throughout the course of treatment, Petitioner reported that she continued to experience neurologic symptoms. Petitioner reported that she was improving however had a recent work related left foot injury which resulted in a sudden jump in neurologic symptoms. The doctor recommended continued modified light/medium duty due to safety concerns.

Dr. Rhode recommended a neuropsychological evaluation if symptoms persisted and in that regard, Petitioner saw Dr. Tonya Fuller on May 1, 2015. Petitioner attended the initial evaluation with Dr. Tonya Fuller at Neurology Associates LTD. Petitioner reported that since the work injury she was having nearly daily headaches and difficulty speaking. Petitioner also reported having severe difficulty with her memory and did not feel that she could carry out her job duties. Petitioner also reported fragmented sleep, vertigo, lightheadedness, anxiety, and anger issues. Petitioner was diagnosed with episodic memory loss, memory difficulties, headache, head concussion, head injury, and cervicogenic headache. The neurologist ordered a number of labs, an EEG test, and an MRI of the brain in relation to her condition of episodic memory loss. Petitioner was referred for psychological treatment with Ronald Ganellen for her condition of episodic memory loss and recommended that Petitioner remain off work. The Petitioner continued a course of conservative treatment with Dr. Fuller, whose assessment was concussion without loss of consciousness and unspecified visual disturbance. The neurologist recommended that Petitioner continue to work light duty only through a continued course of conservative treatment resulting in her clearance to return to work without restrictions.

On July 25, 2014, Petitioner attended an Independent Medical Evaluation with Dr. Andrew Zelby. Dr. Zelby opined that Petitioner suffered a concussion which resulted in a mild post- concussion syndrome as a result of the January 16, 2014 accident.

On October 22, 2014, Petitioner attended an Independent Medical Evaluation with Dr. Aaron Bare. Dr. Bare opined that Petitioner developed left knee anterior knee pain, patellofemoral pain and patellar tendonitis as a direct result of the January 16, 2014 accident.

Conclusions of Law:

In support of the Arbitrator's decision relating to (F), whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

Petitioner's treating orthopedic surgeon, Dr. Rhode opined that Petitioner's concussion and left knee injury were causally related to her work accident. Petitioner's Neurologist, Dr. Tonya Fuller, also noted a work accident and provided causal connection opinions for the head injury.

Respondent's IME, Dr. Andrew Zelby, opined that Petitioner suffered a concussion which resulted in a mild post-concussion syndrome as a result of the January 16, 2014 accident.

Respondent's IME, Dr. Aaron Bare, opined that Petitioner developed left knee anterior knee pain, patellofemoral pain and patellar tendonitis as a direct result of the January 16, 2014 accident.

Based on the medical and Petitioner's testimony, the Arbitrator finds Petitioner's current condition of ill-being causally related to the injury.

In support of the Arbitrator's decision relating to (J) whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

The Arbitrator notes that all bills have been paid to fee schedule with the exception of First Responders Wellness.

With regards to the First Responders Wellness Center. The Arbitrator orders Respondent to pay Petitioner directly for dates of service of August 18, 2020, October 27, 2020 and November 23, 2020, pursuant to the Fee Schedule.

In support of the Arbitrator's decision relating to (K), whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

Petitioner claims TTD from January 17, 2014 through May 12, 2015. Petitioner's treating orthopedic surgeon, Dr. Rhode placed Petitioner off work from the initial consultation through her return to modified duty at the Cook County Sheriff's Department on May 12, 2015. Petitioner's neurologist Dr. Tonya Fuller placed Petitioner off work until "Further Notice" at the initial evaluation on May 1, 2015.

In respondent's IME of July 25, 2014, Dr. Andrew Zelby opines that Petitioner should avoid interactions that could result in altercations with suspects until she had an MRI of her brain.

Based on the foregoing, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits of $904.80 for 68 and 4/7 weeks, commencing January 17, 2014 through May 12, 2015, as provided in Section 8(b) of the Act.

In support of the Arbitrator's decision relating to (L), the nature and extent of the injury, the Arbitrator finds as follows:

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 Section 8.1(b), the occupation of the employee, Petitioner was unable to return to pre-injury work. She did return to work on a modified duty basis. Petitioner is currently on disability for unrelated conditions. The Arbitrator gives some weight to this factor but acknowledges that it is challenging to assess this due to the unrelated disability.

With regard to Subsection (iii) of Section 8.1(b), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 46 years old at the time of the accident and has many working years ahead of her but for the unrelated medical disability. The Arbitrator gives some weight to this factor.

With regard to Subsection (iv) of Section 8.1(b), Petitioner's future earning capacity, Arbitrator notes that Petitioner is disabled due to unrelated conditions and is not working. The Arbitrator gives some weight to this factor but acknowledges that Petitioner's unrelated disability again presents a challenge to the analysis.

With respect to Subsection (v) of Section 8.1(b), evidence of disability corroborated by treating medical, the Arbitrator notes that petitioner testified at hearing that she currently suffered from symptoms

of depression, anxiety, and left knee pain. Further, both Dr. Fuller's records and Dr. Rhodes records support the diagnosis of head injury as testified to by the Petitioner.

Petitioner testified that, due to her ongoing left knee pain, she cannot stand for long periods of time and has trouble walking up and down stairs. Petitioner reports having these issues a two to three times per week and when she has these issues they last all day. To help alleviate her knee pain, Petitioner takes pain killers, ice, CBD ointment, and tries to stay off the injured knee.

Petitioner testified that she suffers from symptoms of anxiety since having the work accident of January 16, 2014. Petitioner testified that she now has panic attacks multiple times per week. To alleviate her symptoms of anxiety she does some self help activities. Petitioner further testified that she suffers from symptoms of depression since having the work accident. She reported often feeling helpless and has trouble performing activities of daily living.

Based on all of the foregoing, including Petitioner's demeanor and credible testimony, and the medical evidence submitted, the Arbitrator finds the opinions of Petitioner's physicians credible and adopts their findings of head injury, an injury to the left knee, and left hand and awards permanent partial disability equal to 12.5% loss of a man as a whole.

In support of the Arbitrator's decision relating to (O) , Is Respondent entitled to credits for prior settlements in 07 WC 15769, 08 WC35658 and 12 WC 10574?

Respondent claims a credit for prior settlements of claims involving an injury of the left leg. In the claim herein, Petitioner suffered injuries of multiple body parts including the head, psychological injuries, and left hand, along with an injury to the left leg. In light of the multiple body parts involved, the Arbitrator has awarded a 12.5% loss of a man as a whole. Accordingly, Respondent is not entitled to a credit for prior settlements of the left leg.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC011789
Case Name	Curtis Keene v. St Clair County
Consolidated Cases	20WC001995; 20WC002110;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0137
Number of Pages of Decision	16
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Kevin Boyne, Jason Going
Respondent Attorney	Rodney Thompson

DATE FILED: 3/23/2023

/s/ Deborah Baker, 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

CURTIS KEENE,

Petitioner,

vs. NO: 19 WC 11789

ST. CLAIR COUNTY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's current condition of ill-being is causally related to the undisputed November 2, 2018 work accident, entitlement to temporary disability benefits, and entitlement to incurred medical expenses as well as prospective medical care, and being advised of the facts and law, clarifies the Decision as stated below but 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

This case was consolidated for hearing with case numbers 20 WC 01995 and 20 WC 02110. All three cases involve undisputed accidental injuries to Petitioner's spine: 19 WC 11789 involves a November 2, 2018 accident; 20 WC 02110 involves an August 12, 2019 accident; and 20 WC 01995 involves a September 24, 2019 accident. Finding Petitioner suffered an initial neck injury and had not reached maximum medical improvement ("MMI") before he suffered subsequent "exacerbations" on August 12, 2019 and September 24, 2019, the Arbitrator concluded Petitioner's current condition of ill-being is causally related solely to the November 2, 2018 accident. The Commission agrees, in part[1], as we likewise conclude Petitioner has not reached MMI. We write

[1] As detailed in companion cases 20 WC 02110 and 20 WC 01995, the Commission views the evidence regarding causal connection to the August 12, 2019 and September 24, 2019 accidents differently.

separately not only to detail our MMI analysis, but also to clarify that although Petitioner's neck complaints have been the primary focus of his treatment, there are both neck and low back components to Petitioner's current condition of ill-being.

Petitioner sustained an undisputed accidental injury on November 2, 2018. Arb.'s Ex. 1. Petitioner testified he was standing on the bed of the paint truck discussing a repair with his supervisor, Matt Flanagan, when the injury occurred:

> …I stepped in the hole on the bed of the truck where the piping from the paint tanks go through the bed, and the engine cowling went flying, because I still had it in my hands, and I tried to arrest my fall by grabbing anything possible, and I hit the bed of the truck on my butt and went over the side backwards. T. 21.

Petitioner explained he ended up hanging over the side of the truck by his foot, which had gotten caught in the hole, and it took two people to get him back up onto the truck. T. 22-23.

Petitioner commenced a course of treatment at Midwest Occupational Medicine, coming under the care of Dr. Bradley Breeden on November 9, 2018. Petitioner testified he told Dr. Breeden that he had pain in numerous areas since the fall, including his neck, left knee, groin, left ribs, and low back. T. 25, 44-45. This is consistent with Dr. Breeden's November 9, 2018 office note, wherein Dr. Breeden memorialized that Petitioner reported multiple complaints but his neck symptoms were the most significant. Within two weeks of the accident, Dr. Breeden concluded Petitioner's complaints of "shock-type sensation with rotation of the neck" which "occurred only after his fall" warranted further workup, and Dr. Breeden ordered a neck MRI "to rule out disc herniation as a possible cause of his symptoms." Pet.'s Ex. 2. The MRI was performed on November 30, 2018, and per the radiologist's report, the scan demonstrated a left lateralized disc herniation at C6-7. Pet.'s Ex. 10. At the December 6, 2018 re-evaluation, Dr. Breeden memorialized that Petitioner's low back complaints were improving but his "left neck continues to be his main area of discomfort with 9/10 discomfort whenever he turns his head…still gets an electric shock type sensation with some of his movement." Pet.'s Ex. 2. After reviewing the MRI, Dr. Breeden concluded specialized care was necessary: "Based on the MRI study, it is my recommendation the patient be evaluated by orthopedic spine specialist for further evaluation and treatment of the C6-7 herniated disc." Pet.'s Ex. 2.

Pursuant to Dr. Breeden's referral, Petitioner presented to Dr. Matthew Gornet on February 7, 2019. Dr. Gornet's office note reflects that Petitioner complained of neck pain and low back pain which began after the November 2, 2018 fall. Dr. Gornet's examination findings included left arm deficits consistent with neck pathology; on review of the MRI, Dr. Gornet noted the scan was of moderate to poor quality but nonetheless demonstrated "a fragment of disc at C6-7 on the left, which correlates with his objective physical examination" as well as foraminal narrowing right at C4-5, C5-6 and C6-7 and on the left side predominantly at C5-6 and C6-7. Pet.'s Ex. 4. Dr. Gornet's impression was that Petitioner "suffered a disc injury at a minimum at C6-7, but also potentially an aggravation of some preexisting degeneration in his cervical spine at C4-5 and C5-6." Pet.'s Ex. 4. Dr. Gornet ordered a high resolution MRI of the neck, indicated treatment of Petitioner's low back would be deferred but initial workup would begin with a lumbar spine MRI, and provided prescription Meloxicam and Cyclobenzaprine. Pet.'s Ex. 4. As to causation, Dr. Gornet noted Petitioner had no prior back or neck symptoms and opined Petitioner's symptoms were causally connected to the November 2, 2018 work injury.

Later on February 7, 2019, the high resolution neck MRI was performed and per the radiologist's report, it revealed "Central-left foraminal protrusion at C6-7 with a midline annular tear and a small caudally extruded disc fragment in the midline resulting in ventral cord flattening, mild central canal stenosis with severe left foraminal stenosis." Pet.'s Ex. 8. The record reflects Dr. Gornet reviewed the scan that day and concluded it confirmed the presence of a disc fragment at C6-7 on the left and also revealed smaller central herniations at C3-6; Dr. Gornet recommended conservative care with an epidural steroid injection at C6-7 as well as physical therapy, and allowed Petitioner to continue working. Pet.'s Ex. 4.

On February 26, 2019, Petitioner underwent a left C6-7 epidural steroid injection by Dr. Helen Blake, whose post-procedure diagnosis was left cervical radiculopathy. Pet.'s Ex. 5. On March 5, 2019, Petitioner started physical therapy at St. Elizabeth's Hospital. Pet.'s Ex. 6. On March 12, 2019, Dr. Blake performed a second injection, this at C5-6; the post-procedure diagnosis was again left cervical radiculopathy. Pet.'s Ex. 5.

On April 11, 2019, Petitioner underwent a lumbar spine MRI, after which he followed up with Dr. Gornet. The record reflects Petitioner continued to have neck pain as well as low back pain, the injections had not provided sustained relief, and his physical examination was unchanged. On review of the lumbar spine MRI, Dr. Gornet observed "a central herniation at L5-S1, which correlates best with his symptoms," but the doctor reiterated low back treatment would be deferred until Petitioner's more problematic neck symptoms were addressed; noting that Petitioner's neck symptoms were primarily left-sided and "his MRI scan clearly shows structural pathology on the left side, which correlates best at C5-6 and C6-7," Dr. Gornet recommended disc replacement at C5-6 and C6-7. Dr. Gornet allowed Petitioner to continue working pending surgery but noted "he is fairly miserable and I may have to take him off work soon." Pet.'s Ex. 4. Petitioner next saw Dr. Gornet on June 20, 2019, and Petitioner's status was unchanged: Petitioner's complaints persisted ("he is fairly miserable") and Dr. Gornet repeated his surgical recommendation. Pet.'s Ex. 4.

With this clinical picture in mind, we consider the opinions of Respondent's expert, Dr. Michael Chabot. In his August 14, 2019 §12 report, Dr. Chabot described Petitioner's status as "presently not under any treatment" and "using no pain medications" to moderate his symptoms. Resp.'s Ex. 1, Dep. Ex. 3. Dr. Chabot further noted Petitioner's physical examination was "devoid of objective physical findings." Resp.'s Ex. 1, Dep. Ex. 3. Dr. Chabot memorialized he reviewed the November 30, 2018 MRI as well as the February 7, 2019 X-rays. Dr. Chabot opined the MRI revealed significant spondylosis anteriorly at C4-7 as well as "evidence of left sided disc protrusion in a combination with spondylotic spurring resulting in left greater than right foraminal narrowing" at C6-7, though he recommended a CT scan for further evaluation. Dr. Chabot additionally opined the X-ray revealed evidence of large communicating anterior spondylotic spurs from C4 to C7, which could be a form of diffuse idiopathic skeletal hyperostosis ("DISH") disease. Resp.'s Ex. 1, Dep. Ex. 3. Ultimately, Dr. Chabot opined the November 2, 2018 accident resulted in strains of the neck, back, and groin from which Petitioner had fully recovered and reached MMI. Resp.'s Ex. 1, Dep. Ex. 3. During his deposition, Dr. Chabot testified Petitioner's DISH disease was so advanced that it had already "essentially autofus[ed] his spine from C4 to C7. So essentially there was no motion at those segments, because the spurs are preventing any motion." Resp.'s Ex. 1, p. 19-20. Dr. Chabot further testified he had subsequently reviewed a March 5, 2020 CT scan, and it was not consistent with a soft herniated disc associated with an acute injury but rather "suggest[ed]

that the previously diagnosed herniation at C6-7 on the left is actually a posterior spondylotic spur" and it is the chronic spur that is causing the neural foraminal stenosis. Resp.'s Ex. 1, p. 36.

The Commission, like the Arbitrator, finds Dr. Chabot's opinions are unpersuasive. Initially, the Commission finds it incredible that Dr. Chabot described a person with an active surgical recommendation as not being under medical care; as detailed above, the records Dr. Chabot reviewed demonstrate that Petitioner remained under the care of Dr. Gornet and was on a prescription regimen of Meloxicam and Cyclobenzaprine while awaiting surgery. Pet.'s Ex. 4. The Commission further finds Dr. Chabot's reading of the underlying imaging is inconsistent with the interpretations of all the other physicians, including the radiologists, Dr. Breeden, and Dr. Gornet. To be clear, whereas the treating physicians and radiologists identified either a disc herniation or protrusion at C6-7 resulting in foraminal encroachment/stenosis, Dr. Chabot felt that although "Disc bulging at C6-7 is present," it was a chronic "spondylotic spur at C6-7" that resulted in the left neural foraminal stenosis. Resp.'s Ex. 1, Dep. Ex. 4. Moreover, Dr. Chabot's assertion that Petitioner's neck is auto-fused, thus negating the need for surgery, is also contradicted by the medical evidence. The Commission observes that neither the February 7, 2019 X-rays nor the March 5, 2020 CT scan indicate there was abnormal motion. We further note Dr. Gornet specifically disagreed with Dr. Chabot's claim: Dr. Gornet's February 7, 2019 office note memorializes the X-rays were "stable on flexion/extension" (Pet's Ex. 4), and during his deposition, Dr. Gornet confirmed that fact: "He had movement on flexion and extension, so we would not feel that the spurs were bridging at that point." Pet.'s Ex. 11, p. 26. When pressed on the contradictory interpretations, Dr. Chabot denied his prior testimony: "They made no mention of abnormal motion to the area. Did I say that he has no motion, however? No, I didn't say that." Resp.'s Ex. 1, p. 65. The Commission finds Dr. Chabot's opinions are inconsistent with the treating records and entitled to little weight. *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, including the treating records, Dr. Gornet's opinions, and Petitioner's testimony, establishes that Petitioner's neck and low back conditions have not reached maximum medical improvement. The medical records consistently document an onset of nerve-related neck complaints ("electrical shock type symptoms with movement of his neck" (Pet.'s Ex. 2)) as well as low back pain after the November 2, 2018 accident, which have not resolved, and Dr. Gornet confirmed not only that Petitioner continues to have deficits on examination which correlate to his neck complaints and require surgical intervention, but also that Petitioner's low back condition will not be addressed until neck treatment is complete. Pet.'s Ex. 11, p. 20. The Commission finds Petitioner's current neck and low back conditions are causally related, in part, to the November 2, 2018 accident. The Commission clarifies that, consistent with our determination Petitioner had not reached maximum medical improvement prior to his subsequent undisputed accidents, all benefits are awarded under the instant case 19 WC 11789.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 13, 2022, as clarified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $491.39 per week for a period of 134 6/7 weeks, representing September 29, 2019 through April 29, 2022, 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 the reasonable and necessary medical expenses as detailed in Petitioner's Exhibit 1, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for spine treatment as recommended by Dr. Gornet, including but not limited to cervical spine surgery and any necessary pre-operative clearance 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.

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.

March 23, 2023

/s/ *Deborah J. Baker*

DJB/mck

O: 1/25/23

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC011789
Case Name	KEENE, CUTIS v. ST CLAIR COUNTY
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Jason Going
Respondent Attorney	Rodney Thompson, Kevin Boyne

DATE FILED: 6/13/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 7, 2022 1.71%

/s/William Gallagher, 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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Curtis Keene
Employee/Petitioner

v.

St. Clair County
Employer/Respondent

Case # 19 WC 11789

Consolidated cases: n/a

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Mt. Vernon, on April 29, 2022. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, November 2, 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 $n/a; the average weekly wage was $737.08.

On the date of accident, Petitioner was 53 years of age, married with 1 dependent child(ren).

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

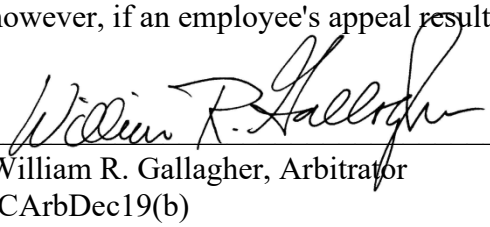
Respondent shall pay Petitioner temporary total disability benefits of $491.39 per week for 134 6/7 weeks, commencing September 29, 2019, through April 29, 2022, as provided in Section 8(b) of the Act.

Respondent shall authorize and pay for prospective medical treatment including, but not limited to, cervical disc replacement surgery at C5-C6 and C6-C7, as recommended by Dr. Matthew Gornet.

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.



JUNE 13, 2022

William R. Gallagher, Arbitrator
ICArbDec19(b)

Findings of Fact

Petitioner filed three Applications for Adjustment of Claim which alleged he sustained accidental injuries arising out of and in the course of his employment by Respondent. In case 19 WC 11789, the Application alleged that on November 2, 2018, Petitioner "Fell on work truck" and sustained an injury to his "Lower extremities, upper extremities, body as a whole" (Arbitrator's Exhibit 2). In case 20 WC 02110, the Application alleged that on August 12, 2019, Petitioner "Fell at work" and sustained an injury to his "Head, neck, shoulders, and body as a whole" (Arbitrator's Exhibit 6). In case 20 WC 01995, the Application alleged that on September 24, 2019, Petitioner "Stuck Fire Hydrant while driving equipment" and sustained an injury to his "Head, neck, shoulders, and body as a whole" (Arbitrator's Exhibit 4).

The cases were tried in a 19(b) proceeding in which Petitioner sought an order for payment of medical bills and temporary total disability benefits as well as prospective medical treatment. In regard to temporary total disability benefits, Petitioner claimed he was entitled to temporary total disability benefits of 134 6/7 weeks, commencing September 29, 2019, through April 29, 2022 (date of trial). The prospective medical treatment sought by Petitioner was cervical disc replacement surgery as recommended by Dr. Matthew Gornet, an orthopedic surgeon. In all three cases, Respondent stipulated Petitioner sustained a work-related accident, but disputed liability on the basis of causal relationship (Arbitrator's Exhibits 1, 3 and 5). At trial, counsel for Petitioner and Respondent stipulated that if the Arbitrator ruled in favor of Petitioner and awarded benefits, said benefits would be attributed to the first accident/filing, 19 WC 11789.

Petitioner began working for Respondent in September, 2013, and was employed as an airport maintenance specialist at Mid America Airport in Mascoutah, Illinois. Petitioner's job duties included grass cutting and general maintenance around the airport.

On November 2, 2018, Petitioner was operating the paint truck which was a truck with a painting device that painted lines on the airport runways. At that time, Petitioner stepped in a hole in the bed of the truck which caused to him fall backward over the side of the truck. Petitioner's foot got caught in the hole which caused Petitioner to hang off the side of the truck. Another employee provided assistance to Petitioner and helped him get back into the truck.

At the direction of Respondent, Petitioner was evaluated at Midwest Occupational Medicine by Dr. Bradley Breeden. When seen by Dr. Breeden, Petitioner complained of neck, left shoulder, left knee and right groin pain. Dr. Breeden diagnosed Petitioner with upper back pain and a groin pull. He ordered x-rays of the cervical spine and directed Petitioner to take over-the-counter pain medication (Petitioner's Exhibit 2).

Dr. Breeden saw Petitioner on November 16, 2018. At that time, Petitioner's primary complaints were in regard to the neck. Dr. Breeden reviewed the x-rays of Petitioner's cervical spine and opined they revealed foraminal narrowing at C4-C5 and C5-C6. He ordered an MRI scan of Petitioner's cervical spine (Petitioner's Exhibit 2).

The MRI of Petitioner’s cervical spine was performed on November 30, 2018. According to the radiologist, the MRI revealed a spur disc complex at C5-C6 and a left sided disc herniation at C6-C7 with severe left and moderately severe right foraminal encroachment (Petitioner's Exhibit 2).

Dr. Breeden again saw Petitioner on December 6, 2018, and reviewed the MRI scan. His interpretation of the MRI was consistent with that of the radiologist. He opined Petitioner should be evaluated by an orthopedic surgeon (Petitioner's Exhibit 2).

On February 7, 2019, Petitioner was evaluated by Dr. Matthew Gornet, an orthopedic surgeon. Petitioner informed Dr. Gornet of the accident of November 2, 2018, and that he had neck and bilateral shoulder pain, left greater than right, low back and bilateral buttock/hip pain, bilateral knee pain and right groin pain. However, Petitioner's most severe symptoms were in respect to his neck. Dr. Gornet reviewed the MRI and opined it revealed a fragment of disc on the left at C6-C7, and foraminal narrowing at C4-C5, C5-C6 and C6-C7. He opined Petitioner had sustained a disc injury at C6-C7 and a potential aggravation of pre-existing degenerative changes at C4-C5 and C5-C6. He opined Petitioner's symptoms were causally related to the accident of November 2, 2018. He ordered a high resolution MRI scan (Petitioner's Exhibit 4).

The high resolution MRI scan was performed on February 7, 2019. According to the radiologist, the MRI revealed a left foraminal protrusion at C5-C6 and an annular tear with an extruded disc fragment at C6-C7 (Petitioner's Exhibit 8).

Dr. Gornet reviewed the MRI of February 7, 2019, and his interpretation was consistent with that of the radiologist. He recommended Petitioner undergo a steroid injection on the left at C6-C7 and possibly a steroid injection on the left at C5-C6 as well. He referred Petitioner to Dr. Helen Blake (Petitioner's Exhibit 4).

Dr. Blake saw Petitioner on February 26, 2019, and March 12, 2019. On those occasions, she administered steroid injections on the left at C6-C7 and on the left at C5-C6, respectively (Petitioner's Exhibit 9).

Dr. Gornet saw Petitioner on April 11, 2019. At that time, Petitioner informed him he had received injections from Dr. Blake, but they did not provide him with any sustained relief. Dr. Gornet discussed risks/benefits of disc replacements at C5-C6 and C6-C7, and noted Petitioner would require a CT or CT myelogram (Petitioner's Exhibit 4).

Dr. Gornet saw Petitioner on June 20, 2019. At that time, Petitioner continued to have neck and bilateral shoulder pain. Dr. Gornet noted he had requested authority to perform cervical disc replacement surgery at C5-C6 and C6-C7 (Petitioner's Exhibit 4).

Petitioner continued to work during the preceding period of time when he was being treated by Dr. Gornet. On August 12, 2019, Petitioner opened the door to the paint truck and discovered there was a wasp nest in the door jamb. The wasps swarmed and, when Petitioner attempted to get away, his right heel hit a cargo loader which caused him to fall to the ground landing on his butt/back. Petitioner testified this aggravated the pain symptoms he had in the same anatomical areas he had injured in November, 2018.

At the direction of Respondent, Petitioner was examined by Dr. Michael Chabot, spine surgeon, on August 14, 2019. In connection with his evaluation of Petitioner, Dr. Chabot reviewed medical records and diagnostic studies provided to him by Respondent. Petitioner testified he informed Dr. Chabot of the accidents of both November 2, 2018, and August 12, 2019; however, Dr. Chabot's report only makes reference to the accident of November 2, 2018. When seen by Dr. Chabot,

Petitioner complained of neck and back pain, but denied any radiation of symptoms into his upper extremities (Respondent's Exhibit 1; Deposition Exhibit 3).

On examination, Dr. Chabot noted the range of motion of the cervical spine was limited by 20% in all directions, but the range of motion of the shoulders was full. Dr. Chabot reviewed the MRI of November 30, 2018, and opined it revealed significant spondylosis at C4-C5, C5-C6 and C6-C7, foraminal narrowing at C3-C4, C4-C5 and C5-C6 and there was a left sided disc protrusion at C6-C7, but no disc herniation. Dr. Chabot noted Petitioner rated his level of pain as being 7/10, but this was not consistent with the findings on examination. He opined all of the medical treatment that had been provided to Petitioner to date was reasonable and necessary, but no surgery was indicated, Petitioner was at MMI and could continue to work without restrictions (Respondent's Exhibit 1; Deposition Exhibit 3).

Petitioner was seen by Dr. Gornet on September 23, 2019. At that time, Petitioner informed Dr. Gornet of the August, 2019, accident and that he felt it made his neck/back pain worse. Dr. Gornet noted there were no significant changes in his examination findings, but Petitioner's subjective complaints were worse. He requested authority to proceed with disc replacement surgery at C5-C6 and C6-C7 (Petitioner's Exhibit 4).

On September 24, 2019, Petitioner was mowing grass while driving a tractor. As he was in the process of performing this task, he turned his head to make certain he was not going to hit any debris in the area. At that time, the tractor struck a fire hydrant which caused Petitioner to experience a jarring sensation primarily in his neck. Petitioner testified he experienced an increase in his pain symptoms at the time of the accident.

Petitioner contacted Dr. Gornet's office by telephone on October 10, 2019, and informed Allyson Joggerst, a Physician Assistant, of the accident of September 24, 2019. Petitioner advised he ceased working because of the symptoms on September 26, 2019. PA Joggerst noted she was going to mail him an off work slip (Petitioner's Exhibit 4).

Dr. Gornet subsequently saw Petitioner on November 25, 2019. At that time, Dr. Gornet confirmed Petitioner was authorized to be off work. Dr. Gornet reviewed Dr. Chabot's report of August 14, 2019. He disagreed with Dr. Chabot's opinion that the MRI of November 30, 2018, did not reveal a disc herniation at C6-C7 and noted it was clearly visible on multiple images. Further, he noted the radiologist who performed the study also opined there was a disc herniation at that level. Dr. Gornet also noted Dr. Chabot did not comment on the more recent MRI which he opined was of superior quality when compared to the earlier MRI. Dr. Gornet's treatment recommendation remained the same and he ordered a new CT scan and MRI to determine if the recent accident had caused any further pathology (Petitioner's Exhibit 4).

The CT scan was performed on March 5, 2020. According to the radiologist, it revealed disc protrusions at C2-C3 and C4-C5, spurs at C4-C5, C5-C6 and C6-C7, and a disc bulge at C6-C7 (Petitioner's Exhibit 8).

Dr. Gornet saw Petitioner on March 5, 2020, and reviewed the CT scan which was performed that same day. He noted Petitioner had axial neck pain and pain between the shoulder blades. Dr. Gornet renewed his recommendation Petitioner undergo disc replacement surgery at C5-C6 and

C6-C7, but also opined there was the possibility Petitioner might require treatment at C3-C4 and C4-C5 as well (Petitioner's Exhibit 4).

At the direction of Respondent, Petitioner was again examined by Dr. Chabot on April 20, 2020. In connection with his evaluation of Petitioner, Dr. Chabot reviewed up to date medical records and diagnostic studies provided to him by Respondent. On examination, the range of motion of Petitioner's cervical spine was reduced by 40% in all directions, but the remainder of the examination findings were benign. In regard to Dr. Chabot's review of the CT scan of March 5, 2020, he noted there were spondylotic spurs at C4-C5, C5-C6 and C6-C7. He opined the spur at C6-C7 was previously diagnosed as a herniated disc in the MRI of November 30, 2018. He noted that his prior opinion of there being a left sided disc herniation at C6-C7 was incorrect because the CT scan of March 5, 2020, revealed that it was, in fact, a spondylotic spur (Respondent's Exhibit 1; Deposition Exhibit 4).

Dr. Chabot opined that Dr. Gornet's recommendation Petitioner undergo a two or maybe a four level disc replacement surgery supported the fact Dr. Gornet was not certain where Petitioner's complaints were originating from. He opined Petitioner sustained a strain injury, did not need further treatment, was at MMI and could return to work without restrictions. Dr. Chabot also opined Petitioner had an AMA impairment rating of three percent (3%) of the body as a whole in regard to the three accidents (Respondent's Exhibit 1; Deposition Exhibit 4).

Dr. Gornet last saw Petitioner on February 4, 2021. Petitioner's condition remained the same and Dr. Gornet once again renewed his recommendation Petitioner undergo disc replacement surgery at C5-C6 and C6-C7 as well as possible treatment at C3-C4 and C4-C5. He continued to authorize Petitioner to remain off work (Petitioner's Exhibit 4).

Dr. Gornet was deposed on February 11, 2021, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Gornet's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. Specifically, Dr. Gornet testified he recommended Petitioner undergo disc replacement surgery at C5-C6 and C6-C7, but that there was also additional disc pathology at C3-C4 and C4-C5. He testified he reviewed the MRI scans of November 30, 2018, February 7, 2019 and that, on comparison, they both revealed disc pathology at C5-C6 and C6-C7 (Petitioner's Exhibit 1; pp 10-12).

Dr. Gornet testified he reviewed Dr. Chabot's reports and disagreed with Dr. Chabot's interpretation of the diagnostic studies. In regard to the pathology noted in the diagnostic studies, Dr. Gornet said that the radiologist who performed the studies also opined there was disc pathology. He testified Petitioner's subjective complaints correlated well with the findings on examination and diagnostic studies. In regard to causality, Dr. Gornet testified Petitioner's symptoms and need for treatment were related to the accident of November 2, 2018, and the subsequent aggravations of August, and September, 2019 (Petitioner's Exhibit 1; pp 17-19).

On cross-examination, Dr. Gornet agreed there were spurs in the cervical spine, but they would not cause any neurological symptoms. He testified there was a disc fragment at C6-C7 which encroached on the foramen. He described Petitioner's condition as being "…structural failure with neurologic impingement and irritation." (Petitioner's Exhibit 1; pp 21-23).

Dr. Chabot was deposed on April 16, 2021, and his deposition testimony was received into evidence at trial. Specifically, Dr. Chabot testified there were no positive objective findings in either of his examinations of Petitioner. He diagnosed Petitioner with neck, back and groin strains which he related to the accident of November 2, 2018, and opined Petitioner was at MMI and could return to work without restrictions. He also opined Petitioner had an AMA impairment (which he referred to as PPD) rating of three percent (3%) to the body as a whole (Respondent's Exhibit 1; pp 16, 24, 30-31, 45-46).

Dr. Chabot testified Petitioner had Dish disease which he said was large spurs projecting off the front of the vertebrae and extending to each other to the point they were "…essentially autofusing his spine from C4 to C7." In regard to his review of the MRI of November 30, 2018, Dr. Chabot testified it revealed foraminal narrowing at C3-C4, C4-C5, C5-C6 and C6-C7 as well as a left sided disc protrusion at C6-C7 (Respondent's Exhibit 1; pp 20-22).

Dr. Chabot subsequently testified he recommended a CT scan be performed to determine whether the protrusion at C6-C7 was, in fact, a spondylotic spur, because a disc protrusion and a spondylotic spur have the same signal on an MRI. Based on his review of the CT scan, Dr. Chabot testified the previously diagnosed herniation at C6-C7 was actually a spondylotic spur (Respondent's Exhibit 1; pp 25-26).

On cross-examination, Dr. Chabot agreed the diagnostic studies revealed multiple abnormal findings in the cervical spine. He also agreed that if Petitioner had no symptoms prior to the accident of November 2, 2018, but symptoms afterward, it was possible the accident aggravated the condition which caused Petitioner to become symptomatic (Respondent's Exhibit 1; pp 62-63).

At trial, Petitioner testified he was authorized to be off work on September 29, 2019, and has not been able to work since then. Petitioner continues to have ongoing neck complaints on a daily basis which also causes him to experience sleep disruption and headaches. He wants to proceed with the disc replacement surgery as recommended by Dr. Gornet.

Conclusions of Law

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

The Arbitrator concludes Petitioner's current condition of ill-being is causally related to the accident of November 2, 2018.

In support of this conclusion the Arbitrator notes following:

There was no dispute Petitioner sustained a work-related accident on November 2, 2018.

Petitioner credibly testified that he has had neck pain/symptoms from November 2, 2018, up to and including the present.

In spite of his symptoms, Petitioner continued to work subsequent to the accident of November 2, 2018, and sustained accidents on August 12, 2019, and September 24, 2019, in which he reinjured the same areas of the anatomy he injured on November 2, 2018. These two subsequent accidents were exacerbations of the injury he sustained on November 2, 2018.

An MRI of Petitioner's cervical spine was performed on November 30, 2018. According to the radiologist, the MRI revealed a disc herniation at C6-C7. The radiologist did not diagnose Petitioner with a spondylotic spur at that level.

Dr. Gornet reviewed the MRI of November 30, 2018, and his interpretation of it was consistent with that of the radiologist.

A high resolution MRI of Petitioner's cervical spine was performed on February 7, 2019. According to the radiologist, the MRI revealed an annular tear and an extruded disc fragment at C6-C7. The radiologist did not diagnose Petitioner with a spondylotic spur at that level.

Dr. Gornet reviewed the MRI of February 7, 2019, and his interpretation of it was consistent with that of the radiologist.

A CT scan a Petitioner's cervical spine was performed on March 5, 2020. According to the radiologist, it revealed a disc bulge at C6-C7. The radiologist did not diagnose Petitioner with a spondylotic spur at that level.

Respondent's Section 12 examiner, Dr. Chabot, initially opined the MRI of November 30, 2018, revealed a disk protrusion at C6-C7. When he reviewed the CT scan on March 5, 2020, Dr. Chabot changed his opinion that Petitioner had a spondylotic spur, not a herniated disc, at C6-C7.

Dr. Chabot's opinion as to the pathology present at C6-C7 was contrary to that of Dr. Gornet, as well as the radiologists who performed/read the MRI and CT scans.

Based on the preceding, in regard to causality, the Arbitrator finds the opinion of Dr. Gornet to be consistent with the opinions of the radiologists who performed/read the diagnostic studies and that his opinion is more persuasive than that of Dr. Chabot.

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

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

Respondent shall pay reasonable and necessary medical services as identified in Petitioner’s Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

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

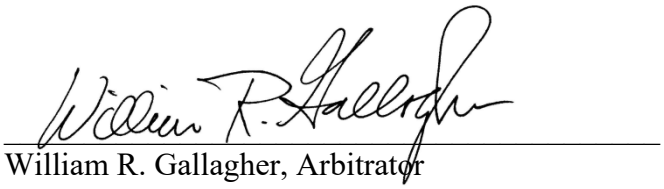
Based upon the Arbitrator's conclusion of law in disputed issue (F) the Arbitrator concludes Petitioner is entitled to prospective medical treatment including, but not limited to, disc replacement surgery at C5-C6 and C6-C7, as recommended by Dr. Gornet.

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

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of 134 6/7 weeks, commencing September 29, 2019, through April 29, 2022.

In support of this conclusion the Arbitrator notes the following:

Pursuant to Dr. Gornet's restrictions, Petitioner has not been able to return to work to his regular job.



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC001995
Case Name	Curtis Keene v. St Clair County
Consolidated Cases	19WC011789; 20WC002110;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0138
Number of Pages of Decision	13
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Jason Going, Kevin Boyne
Respondent Attorney	Rodney Thompson

DATE FILED: 3/23/2023

/s/ Deborah Baker, 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 Causal Connection	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CURTIS KEENE,

Petitioner,

vs. NO: 20 WC 01995

ST. CLAIR COUNTY,

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 whether Petitioner's current condition of ill-being is causally related to the undisputed September 24, 2019 work accident, entitlement to temporary disability benefits, and entitlement to incurred medical expenses as well as prospective medical care, and being advised of the facts and law, reverses the Decision of the Arbitrator and finds Petitioner's current condition of ill-being is causally related, in part, to the September 24, 2019 work accident. 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).

FINDINGS OF FACT

The Commission affirms and adopts the Statement of Facts as set forth in the Decision of the Arbitrator and incorporates such facts herein.

CONCLUSIONS OF LAW

This case was consolidated for hearing with case numbers 19 WC 11789 and 20 WC 02110. All three cases involve undisputed accidental injuries to Petitioner's spine: 19 WC 11789 involves a November 2, 2018 accident; 20 WC 02110 involves an August 12, 2019 accident; and 20 WC 01995 involves a September 24, 2019 accident. Finding that Petitioner suffered an initial injury on

November 2, 2018 (case no. 19 WC 11789) and had not reached maximum medical improvement prior to his injury on September 24, 2019 (the instant case), the Arbitrator concluded Petitioner's current condition of ill-being is solely related to the November 2, 2018 accident. The Commission views the evidence differently. The Commission finds Petitioner's current condition of ill-being is causally related, in part, to the September 24, 2019 work accident.

We begin with a review of the applicable legal standard. 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). 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.

Turning to the medical evidence, the Commission finds it important to clarify Petitioner's clinical picture leading up to the undisputed September 24, 2019 accident. Prior to his November 2, 2018 injury, Petitioner had no history of spine symptoms or treatment and was able to perform a physically demanding job without issue. T. 31, 40. On November 2, 2018, Petitioner stepped into a hole in the bed of the paint truck, tumbled backwards onto the deck, and came to rest hanging by his foot over the side of the truck. T. 21. Petitioner sought medical care at Midwest Occupational Medicine for multiple complaints but primarily severe neck symptoms; after diagnostic workup of Petitioner's neck, Dr. Bradley Breeden referred Petitioner to Dr. Matthew Gornet. Pet.'s Ex. 2. At the initial evaluation on February 7, 2019, Dr. Gornet recommended conservative care in the form of epidural steroid injections and physical therapy for Petitioner's neck, with workup of his low back complaints thereafter. Pet.'s Ex. 4. Despite these interventions, Petitioner's symptoms did not resolve, and on April 11, 2019, Dr. Gornet recommended cervical disc replacement. Pet.'s Ex. 4. Dr. Gornet permitted Petitioner to continue working pending surgery. Pet.'s Ex. 4. It is while Petitioner was awaiting surgery that he sustained the accident at issue here.

On September 24, 2019, Petitioner was driving a tractor with a 15-foot brush hog, mowing the airport grounds, and when he turned his head to make sure he was not hitting debris beside the road, he "hit a fire hydrant…And in doing so, jarring myself." T. 38. Petitioner testified that after the September 24, 2019 accident, his pain worsened and the frequency of his symptoms increased. T. 38, 61. Petitioner further testified that he attempted to continue working, but he was only able to work two more days before "I couldn't do it no more." T. 59. After a telephonic visit with Dr. Gornet's office on October 10, 2019, Petitioner was authorized off work pending his previously scheduled follow-up appointment in November.

On November 25, 2019, Petitioner was re-evaluated by Dr. Gornet. Dr. Gornet memorialized that Petitioner was being treated for a multilevel cervical problem as well as low back issues stemming from the November 2, 2018 work accident, and was pending cervical disc replacement. Since his last visit, Petitioner had sustained a further work-related accident ("He was mowing and ran into a fire hydrant and this caused him to have significant headaches radiating

into both shoulders. This obviously aggravated his underlying condition.") and Petitioner had been authorized off work as a result. Pet.'s Ex. 4. Dr. Gornet's treatment recommendation was unchanged, as he reiterated his recommendation for cervical disc replacement, and Dr. Gornet further concluded Petitioner remained "temporarily totally disabled, as his new injury has aggravated his underlying condition." Pet.'s Ex. 4. During his deposition, Dr. Gornet explained that although Petitioner's November 25, 2019 examination did not reveal any new neurological deficits, Petitioner's condition had appreciably deteriorated:

> Because subjectively, and knowing him both before and after, this gentleman who has always gone to work and always tried. He was just miserable…I just felt it was appropriate at this point. I always try to keep people working, but really his symptoms, at least in my opinion in following for quite some time, had dramatically worsened. Pet.'s Ex. 11, p. 30.

Dr. Gornet further testified that Petitioner's current condition is causally related to all three work accidents: "I believe that his symptoms and requirement for treatment are directly related to his initial work injury of [November 2, 2018] and subsequent aggravations or injuries in August '19, and, I believe, September 24th of '19." Pet.'s Ex. 11, p. 19.

The Commission finds Petitioner's current neck and low back conditions are causally related, in part, to the September 24, 2019 work accident. Following the September 24, 2019 accident, the symptoms which had persisted since the November 2, 2018 injury worsened and Petitioner's complaints became more frequent, leading Dr. Gornet to authorize Petitioner off work. The Commission does not believe either work accident superseded the other; rather, it is the aftereffects of the events in concert which are responsible for Petitioner's current constellation of symptoms: the credible and persuasive conclusions of Dr. Gornet establish that the neck and low back pathology was present after the November 2, 2018 accident, and the evidence further shows the September 24, 2019 accident worsened Petitioner's symptoms and he has yet to return to his pre-exacerbation symptomatic baseline. Consistent with our determination that Petitioner's current neck and low back conditions are causally related to his undisputed work accidents but initiated with the November 2, 2018 accident, all benefits are awarded under case 19 WC 11789.

IT IS THEREFORE ORDERED BY THE COMMISSION the Decision of the Arbitrator filed June 13, 2022 is reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's current neck and low back conditions of ill-being are causally related, in part, to the September 24, 2019 work accident.

IT IS FURTHER ORDERED BY THE COMMISSION that all benefits are awarded in companion case 19 WC 11789.

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.

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.

March 23, 2023

/s/ *Deborah J. Baker*

DJB/mck

O: 1/25/23

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC001995
Case Name	KEENE, CURTIS v. ST CLAIR COUNTY
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Jason Going
Respondent Attorney	Kevin Boyne, Rodney Thompson

DATE FILED: 6/13/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 7, 2022 1.71%

/s/William Gallagher, 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
19(b)

Curtis Keene
Employee/Petitioner

Case # 20 WC 01995

v.

Consolidated cases: n/a

St. Clair County
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 William R. Gallagher, Arbitrator of the Commission, in the city of Mt. Vernon, on April 29, 2022. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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 24, 2019, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is not causally related to the accident.

In the year preceding the injury, Petitioner earned $n/a; the average weekly wage was $737.08.

On the date of accident, Petitioner was 53 years of age, married with 1 dependent child(ren).

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.

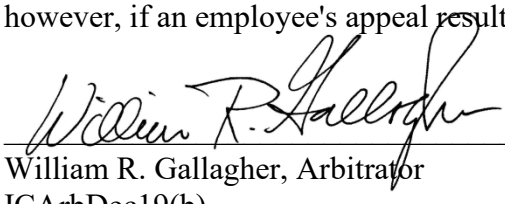
ORDER

Based upon the Conclusion of Law attached hereto, all benefits are awarded in case 19 WC 11789.

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.



JUNE 13, 2022

William R. Gallagher, Arbitrator
ICArbDec19(b)

Findings of Fact

Petitioner filed three Applications for Adjustment of Claim which alleged he sustained accidental injuries arising out of and in the course of his employment by Respondent. In case 19 WC 11789, the Application alleged that on November 2, 2018, Petitioner "Fell on work truck" and sustained an injury to his "Lower extremities, upper extremities, body as a whole" (Arbitrator's Exhibit 2). In case 20 WC 02110, the Application alleged that on August 12, 2019, Petitioner "Fell at work" and sustained an injury to his "Head, neck, shoulders, and body as a whole" (Arbitrator's Exhibit 6). In case 20 WC 01995, the Application alleged that on September 24, 2019, Petitioner "Stuck Fire Hydrant while driving equipment" and sustained an injury to his "Head, neck, shoulders, and body as a whole" (Arbitrator's Exhibit 4).

The cases were tried in a 19(b) proceeding in which Petitioner sought an order for payment of medical bills and temporary total disability benefits as well as prospective medical treatment. In regard to temporary total disability benefits, Petitioner claimed he was entitled to temporary total disability benefits of 134 6/7 weeks, commencing September 29, 2019, through April 29, 2022 (date of trial). The prospective medical treatment sought by Petitioner was cervical disc replacement surgery as recommended by Dr. Matthew Gornet, an orthopedic surgeon. In all three cases, Respondent stipulated Petitioner sustained a work-related accident, but disputed liability on the basis of causal relationship (Arbitrator's Exhibits 1, 3 and 5). At trial, counsel for Petitioner and Respondent stipulated that if the Arbitrator ruled in favor of Petitioner and awarded benefits, said benefits would be attributed to the first accident/filing, 19 WC 11789.

Petitioner began working for Respondent in September, 2013, and was employed as an airport maintenance specialist at Mid America Airport in Mascoutah, Illinois. Petitioner's job duties included grass cutting and general maintenance around the airport.

On November 2, 2018, Petitioner was operating the paint truck which was a truck with a painting device that painted lines on the airport runways. At that time, Petitioner stepped in a hole in the bed of the truck which caused to him fall backward over the side of the truck. Petitioner's foot got caught in the hole which caused Petitioner to hang off the side of the truck. Another employee provided assistance to Petitioner and helped him get back into the truck.

At the direction of Respondent, Petitioner was evaluated at Midwest Occupational Medicine by Dr. Bradley Breeden. When seen by Dr. Breeden, Petitioner complained of neck, left shoulder, left knee and right groin pain. Dr. Breeden diagnosed Petitioner with upper back pain and a groin pull. He ordered x-rays of the cervical spine and directed Petitioner to take over-the-counter pain medication (Petitioner's Exhibit 2).

Dr. Breeden saw Petitioner on November 16, 2018. At that time, Petitioner's primary complaints were in regard to the neck. Dr. Breeden reviewed the x-rays of Petitioner's cervical spine and opined they revealed foraminal narrowing at C4-C5 and C5-C6. He ordered an MRI scan of Petitioner's cervical spine (Petitioner's Exhibit 2).

The MRI of Petitioner’s cervical spine was performed on November 30, 2018. According to the radiologist, the MRI revealed a spur disc complex at C5-C6 and a left sided disc herniation at C6-C7 with severe left and moderately severe right foraminal encroachment (Petitioner's Exhibit 2).

Dr. Breeden again saw Petitioner on December 6, 2018, and reviewed the MRI scan. His interpretation of the MRI was consistent with that of the radiologist. He opined Petitioner should be evaluated by an orthopedic surgeon (Petitioner's Exhibit 2).

On February 7, 2019, Petitioner was evaluated by Dr. Matthew Gornet, an orthopedic surgeon. Petitioner informed Dr. Gornet of the accident of November 2, 2018, and that he had neck and bilateral shoulder pain, left greater than right, low back and bilateral buttock/hip pain, bilateral knee pain and right groin pain. However, Petitioner's most severe symptoms were in respect to his neck. Dr. Gornet reviewed the MRI and opined it revealed a fragment of disc on the left at C6-C7, and foraminal narrowing at C4-C5, C5-C6 and C6-C7. He opined Petitioner had sustained a disc injury at C6-C7 and a potential aggravation of pre-existing degenerative changes at C4-C5 and C5-C6. He opined Petitioner's symptoms were causally related to the accident of November 2, 2018. He ordered a high resolution MRI scan (Petitioner's Exhibit 4).

The high resolution MRI scan was performed on February 7, 2019. According to the radiologist, the MRI revealed a left foraminal protrusion at C5-C6 and an annular tear with an extruded disc fragment at C6-C7 (Petitioner's Exhibit 8).

Dr. Gornet reviewed the MRI of February 7, 2019, and his interpretation was consistent with that of the radiologist. He recommended Petitioner undergo a steroid injection on the left at C6-C7 and possibly a steroid injection on the left at C5-C6 as well. He referred Petitioner to Dr. Helen Blake (Petitioner's Exhibit 4).

Dr. Blake saw Petitioner on February 26, 2019, and March 12, 2019. On those occasions, she administered steroid injections on the left at C6-C7 and on the left at C5-C6, respectively (Petitioner's Exhibit 9).

Dr. Gornet saw Petitioner on April 11, 2019. At that time, Petitioner informed him he had received injections from Dr. Blake, but they did not provide him with any sustained relief. Dr. Gornet discussed risks/benefits of disc replacements at C5-C6 and C6-C7, and noted Petitioner would require a CT or CT myelogram (Petitioner's Exhibit 4).

Dr. Gornet saw Petitioner on June 20, 2019. At that time, Petitioner continued to have neck and bilateral shoulder pain. Dr. Gornet noted he had requested authority to perform cervical disc replacement surgery at C5-C6 and C6-C7 (Petitioner's Exhibit 4).

Petitioner continued to work during the preceding period of time when he was being treated by Dr. Gornet. On August 12, 2019, Petitioner opened the door to the paint truck and discovered there was a wasp nest in the door jamb. The wasps swarmed and, when Petitioner attempted to get away, his right heel hit a cargo loader which caused him to fall to the ground landing on his butt/back. Petitioner testified this aggravated the pain symptoms he had in the same anatomical areas he had injured in November, 2018.

At the direction of Respondent, Petitioner was examined by Dr. Michael Chabot, spine surgeon, on August 14, 2019. In connection with his evaluation of Petitioner, Dr. Chabot reviewed medical records and diagnostic studies provided to him by Respondent. Petitioner testified he informed Dr. Chabot of the accidents of both November 2, 2018, and August 12, 2019; however, Dr. Chabot's report only makes reference to the accident of November 2, 2018. When seen by Dr. Chabot,

Petitioner complained of neck and back pain, but denied any radiation of symptoms into his upper extremities (Respondent's Exhibit 1; Deposition Exhibit 3).

On examination, Dr. Chabot noted the range of motion of the cervical spine was limited by 20% in all directions, but the range of motion of the shoulders was full. Dr. Chabot reviewed the MRI of November 30, 2018, and opined it revealed significant spondylosis at C4-C5, C5-C6 and C6-C7, foraminal narrowing at C3-C4, C4-C5 and C5-C6 and there was a left sided disc protrusion at C6-C7, but no disc herniation. Dr. Chabot noted Petitioner rated his level of pain as being 7/10, but this was not consistent with the findings on examination. He opined all of the medical treatment that had been provided to Petitioner to date was reasonable and necessary, but no surgery was indicated, Petitioner was at MMI and could continue to work without restrictions (Respondent's Exhibit 1; Deposition Exhibit 3).

Petitioner was seen by Dr. Gornet on September 23, 2019. At that time, Petitioner informed Dr. Gornet of the August, 2019, accident and that he felt it made his neck/back pain worse. Dr. Gornet noted there were no significant changes in his examination findings, but Petitioner's subjective complaints were worse. He requested authority to proceed with disc replacement surgery at C5-C6 and C6-C7 (Petitioner's Exhibit 4).

On September 24, 2019, Petitioner was mowing grass while driving a tractor. As he was in the process of performing this task, he turned his head to make certain he was not going to hit any debris in the area. At that time, the tractor struck a fire hydrant which caused Petitioner to experience a jarring sensation primarily in his neck. Petitioner testified he experienced an increase in his pain symptoms at the time of the accident.

Petitioner contacted Dr. Gornet's office by telephone on October 10, 2019, and informed Allyson Joggerst, a Physician Assistant, of the accident of September 24, 2019. Petitioner advised he ceased working because of the symptoms on September 26, 2019. PA Joggerst noted she was going to mail him an off work slip (Petitioner's Exhibit 4).

Dr. Gornet subsequently saw Petitioner on November 25, 2019. At that time, Dr. Gornet confirmed Petitioner was authorized to be off work. Dr. Gornet reviewed Dr. Chabot's report of August 14, 2019. He disagreed with Dr. Chabot's opinion that the MRI of November 30, 2018, did not reveal a disc herniation at C6-C7 and noted it was clearly visible on multiple images. Further, he noted the radiologist who performed the study also opined there was a disc herniation at that level. Dr. Gornet also noted Dr. Chabot did not comment on the more recent MRI which he opined was of superior quality when compared to the earlier MRI. Dr. Gornet's treatment recommendation remained the same and he ordered a new CT scan and MRI to determine if the recent accident had caused any further pathology (Petitioner's Exhibit 4).

The CT scan was performed on March 5, 2020. According to the radiologist, it revealed disc protrusions at C2-C3 and C4-C5, spurs at C4-C5, C5-C6 and C6-C7, and a disc bulge at C6-C7 (Petitioner's Exhibit 8).

Dr. Gornet saw Petitioner on March 5, 2020, and reviewed the CT scan which was performed that same day. He noted Petitioner had axial neck pain and pain between the shoulder blades. Dr. Gornet renewed his recommendation Petitioner undergo disc replacement surgery at C5-C6 and

C6-C7, but also opined there was the possibility Petitioner might require treatment at C3-C4 and C4-C5 as well (Petitioner's Exhibit 4).

At the direction of Respondent, Petitioner was again examined by Dr. Chabot on April 20, 2020. In connection with his evaluation of Petitioner, Dr. Chabot reviewed up to date medical records and diagnostic studies provided to him by Respondent. On examination, the range of motion of Petitioner's cervical spine was reduced by 40% in all directions, but the remainder of the examination findings were benign. In regard to Dr. Chabot's review of the CT scan of March 5, 2020, he noted there were spondylotic spurs at C4-C5, C5-C6 and C6-C7. He opined the spur at C6-C7 was previously diagnosed as a herniated disc in the MRI of November 30, 2018. He noted that his prior opinion of there being a left sided disc herniation at C6-C7 was incorrect because the CT scan of March 5, 2020, revealed that it was, in fact, a spondylotic spur (Respondent's Exhibit 1; Deposition Exhibit 4).

Dr. Chabot opined that Dr. Gornet's recommendation Petitioner undergo a two or maybe a four level disc replacement surgery supported the fact Dr. Gornet was not certain where Petitioner's complaints were originating from. He opined Petitioner sustained a strain injury, did not need further treatment, was at MMI and could return to work without restrictions. Dr. Chabot also opined Petitioner had an AMA impairment rating of three percent (3%) of the body as a whole in regard to the three accidents (Respondent's Exhibit 1; Deposition Exhibit 4).

Dr. Gornet last saw Petitioner on February 4, 2021. Petitioner's condition remained the same and Dr. Gornet once again renewed his recommendation Petitioner undergo disc replacement surgery at C5-C6 and C6-C7 as well as possible treatment at C3-C4 and C4-C5. He continued to authorize Petitioner to remain off work (Petitioner's Exhibit 4).

Dr. Gornet was deposed on February 11, 2021, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Gornet's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. Specifically, Dr. Gornet testified he recommended Petitioner undergo disc replacement surgery at C5-C6 and C6-C7, but that there was also additional disc pathology at C3-C4 and C4-C5. He testified he reviewed the MRI scans of November 30, 2018, February 7, 2019 and that, on comparison, they both revealed disc pathology at C5-C6 and C6-C7 (Petitioner's Exhibit 1; pp 10-12).

Dr. Gornet testified he reviewed Dr. Chabot's reports and disagreed with Dr. Chabot's interpretation of the diagnostic studies. In regard to the pathology noted in the diagnostic studies, Dr. Gornet said that the radiologist who performed the studies also opined there was disc pathology. He testified Petitioner's subjective complaints correlated well with the findings on examination and diagnostic studies. In regard to causality, Dr. Gornet testified Petitioner's symptoms and need for treatment were related to the accident of November 2, 2018, and the subsequent aggravations of August, and September, 2019 (Petitioner's Exhibit 1; pp 17-19).

On cross-examination, Dr. Gornet agreed there were spurs in the cervical spine, but they would not cause any neurological symptoms. He testified there was a disc fragment at C6-C7 which encroached on the foramen. He described Petitioner's condition as being "…structural failure with neurologic impingement and irritation." (Petitioner's Exhibit 1; pp 21-23).

Dr. Chabot was deposed on April 16, 2021, and his deposition testimony was received into evidence at trial. Specifically, Dr. Chabot testified there were no positive objective findings in either of his examinations of Petitioner. He diagnosed Petitioner with neck, back and groin strains which he related to the accident of November 2, 2018, and opined Petitioner was at MMI and could return to work without restrictions. He also opined Petitioner had an AMA impairment (which he referred to as PPD) rating of three percent (3%) to the body as a whole (Respondent's Exhibit 1; pp 16, 24, 30-31, 45-46).

Dr. Chabot testified Petitioner had Dish disease which he said was large spurs projecting off the front of the vertebrae and extending to each other to the point they were "…essentially autofusing his spine from C4 to C7." In regard to his review of the MRI of November 30, 2018, Dr. Chabot testified it revealed foraminal narrowing at C3-C4, C4-C5, C5-C6 and C6-C7 as well as a left sided disc protrusion at C6-C7 (Respondent's Exhibit 1; pp 20-22).

Dr. Chabot subsequently testified he recommended a CT scan be performed to determine whether the protrusion at C6-C7 was, in fact, a spondylotic spur, because a disc protrusion and a spondylotic spur have the same signal on an MRI. Based on his review of the CT scan, Dr. Chabot testified the previously diagnosed herniation at C6-C7 was actually a spondylotic spur (Respondent's Exhibit 1; pp 25-26).

On cross-examination, Dr. Chabot agreed the diagnostic studies revealed multiple abnormal findings in the cervical spine. He also agreed that if Petitioner had no symptoms prior to the accident of November 2, 2018, but symptoms afterward, it was possible the accident aggravated the condition which caused Petitioner to become symptomatic (Respondent's Exhibit 1; pp 62-63).

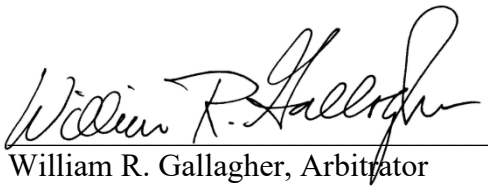
At trial, Petitioner testified he was authorized to be off work on September 29, 2019, and has not been able to work since then. Petitioner continues to have ongoing neck complaints on a daily basis which also causes him to experience sleep disruption and headaches. He wants to proceed with the disc replacement surgery as recommended by Dr. Gornet.

Conclusion of Law

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

Based upon the Arbitrator's Conclusions of Law in case 19 WC 11789, the Arbitrator concludes Petitioner's current condition of ill-being is not related to the accident of September 24, 2019.

In regard to disputed issues (J), (K), and (L) the Arbitrator makes no conclusions of law as these issues are rendered moot because of the Arbitrator's conclusion of law in disputed issue (F).



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC002110
Case Name	Curtis Keene v. St Clair County
Consolidated Cases	19WC011789; 20WC001995;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0139
Number of Pages of Decision	13
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Kevin Boyne, Jason Going
Respondent Attorney	Rodney Thompson

DATE FILED: 3/23/2023

/s/ Deborah Baker, 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 Causal Connection	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CURTIS KEENE,

Petitioner,

vs. NO: 20 WC 02110

ST. CLAIR COUNTY,

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 whether Petitioner's current condition of ill-being is causally related to the undisputed August 12, 2019 work accident, entitlement to temporary disability benefits, and entitlement to incurred medical expenses as well as prospective medical care, and being advised of the facts and law, reverses the Decision of the Arbitrator and finds Petitioner's current condition of ill-being is causally related, in part, to the August 12, 2019 work accident. 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).

FINDINGS OF FACT

The Commission affirms and adopts the Statement of Facts as set forth in the Decision of the Arbitrator and incorporates such facts herein.

CONCLUSIONS OF LAW

This case was consolidated for hearing with case numbers 19 WC 11789 and 20 WC 01995. All three cases involve undisputed accidental injuries to Petitioner's spine: 19 WC 11789 involves a November 2, 2018 accident; 20 WC 02110 involves an August 12, 2019 accident; and 20 WC 01995 involves a September 24, 2019 accident. Finding that Petitioner suffered an initial injury on

November 2, 2018 (case no. 19 WC 11789) and had not reached maximum medical improvement prior to his injury on August 12, 2019 (the instant case), the Arbitrator concluded Petitioner's current condition of ill-being is solely related to the November 2, 2018 accident. The Commission views the evidence differently. The Commission finds Petitioner's current condition of ill-being is causally related, in part, to the August 12, 2019 work accident.

We begin with a review of the applicable legal standard. 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). 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.

Turning to the medical evidence, the Commission finds it important to clarify Petitioner's clinical picture leading up to the undisputed August 12, 2019 accident. Prior to his November 2, 2018 injury, Petitioner had no history of spine symptoms or treatment and was able to perform a physically demanding job without issue. T. 31, 40. On November 2, 2018, Petitioner stepped into a hole in the bed of the paint truck, tumbled backwards onto the deck, and came to rest hanging by his foot over the side of the truck. T. 21. Petitioner sought medical care at Midwest Occupational Medicine for multiple complaints but primarily severe neck symptoms; after diagnostic workup of Petitioner's neck, Dr. Bradley Breeden referred Petitioner to Dr. Matthew Gornet. Pet.'s Ex. 2. At the initial evaluation on February 7, 2019, Dr. Gornet recommended conservative care in the form of epidural steroid injections and physical therapy for Petitioner's neck, with workup of his low back complaints thereafter. Pet.'s Ex. 4. Despite these interventions, Petitioner's symptoms did not resolve, and on April 11, 2019, Dr. Gornet recommended cervical disc replacement. Pet.'s Ex. 4. Dr. Gornet permitted Petitioner to continue working pending surgery. Pet.'s Ex. 4. It is while Petitioner was awaiting surgery that he sustained the accident at issue here.

On August 12, 2019, Petitioner's assigned task was to run the engines on all the equipment. When he opened the paint truck door, he encountered a wasp nest:

> … the air became red with wasps. And I, being allergic to wasps, was vacating that area as quickly as possible. And in backing up away from that vehicle, my right heel hit the cargo loader, which caused me to spin and fall to the ground and landed on my butt and back…
> Instantly my neck because I could feel -- as soon as I landed, I was seeing stars from the compression of the land. T. 35-36.

Petitioner testified he had increased pain in his neck and lower back after the fall. T. 36.

On September 23, 2019, Petitioner was re-evaluated by Dr. Gornet. Dr. Gornet memorialized that Petitioner was being treated for a multilevel cervical problem as well as low back issues stemming from the November 2, 2018 work accident, and was pending cervical disc replacement. Since his last visit, Petitioner had sustained a further work-related accident ("…he was working and encountered a wasp nest and began to run. He tripped over some objects and fell hard to the ground.") and he complained of worsened neck and low back symptoms thereafter. Pet.'s Ex. 4. Dr. Gornet's treatment recommendation was unchanged, as he reiterated his recommendation for cervical disc replacement, but Dr. Gornet warned that if Petitioner's "symptoms continue to be increased in their level of severity since this new fall," then repeat imaging would be considered.[1] Pet.'s Ex. 4. The record reflects Petitioner's heightened symptoms following the August 12, 2019 accident persisted through the date of the third undisputed accident on September 24, 2019. During his deposition, Dr. Gornet testified that Petitioner's current condition is causally related to all three work accidents: "I believe that his symptoms and requirement for treatment are directly related to his initial work injury of [November 2, 2018] and subsequent aggravations or injuries in August '19, and, I believe, September 24th of '19." Pet.'s Ex. 11, p. 19.

The Commission finds Petitioner's current neck and low back conditions are causally related, in part, to the August 12, 2019 work accident. Following the August 12, 2019 accident, the neck and low back symptoms which had persisted since the November 2, 2018 injury worsened. The Commission does not believe either work accident superseded the other; rather, it is the aftereffects of the events in concert which are responsible for Petitioner's current constellation of symptoms: the credible and persuasive conclusions of Dr. Gornet establish that the neck and low back pathology was present after the November 2, 2018 accident, and the evidence further shows the August 12, 2019 accident worsened Petitioner's symptoms and he did not return to his pre-exacerbation symptomatic baseline prior to his subsequent injury on September 24, 2019. Consistent with our determination that Petitioner's current neck and low back conditions are causally related to his undisputed work accidents but initiated with the November 2, 2018 accident, all benefits are awarded under case 19 WC 11789.

IT IS THEREFORE ORDERED BY THE COMMISSION the Decision of the Arbitrator filed June 13, 2022 is reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's current neck and low back conditions of ill-being are causally related, in part, to the August 12, 2019 work accident.

IT IS FURTHER ORDERED BY THE COMMISSION that all benefits are awarded in companion case 19 WC 11789.

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

[1] On September 24, 2019, Petitioner sustained a third work related accident, which is addressed in the decision for case number 20 WC 01995.

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.

March 23, 2023

/s/ *Deborah J. Baker*

DJB/mck

O: 1/25/23

43

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC002110
Case Name	KEENE, CURTIS v. ST CLAIR COUNTY
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Jason Going
Respondent Attorney	Kevin Boyne, Rodney Thompson

DATE FILED: 6/13/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 7, 2022 1.71%

/s/William Gallagher, 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
19(b)

Curtis Keene
Employee/Petitioner

v.

St. Clair County
Employer/Respondent

Case # 20 WC 02110

Consolidated cases: n/a

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Mt. Vernon, on April 29, 2022. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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, August 12, 2019, Respondent was operating under and subject to the provisions of the Act.

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

On this date, Petitioner did 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 $n/a; the average weekly wage was $737.08.

On the date of accident, Petitioner was 53 years of age, married with 1 dependent child(ren).

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

Based upon the Conclusion of Law attached hereto, all benefits are awarded in case 19 WC 11789.

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.

William R. Gallagher

JUNE 13, 2022

ICArbDec19(b)

Findings of Fact

Petitioner filed three Applications for Adjustment of Claim which alleged he sustained accidental injuries arising out of and in the course of his employment by Respondent. In case 19 WC 11789, the Application alleged that on November 2, 2018, Petitioner "Fell on work truck" and sustained an injury to his "Lower extremities, upper extremities, body as a whole" (Arbitrator's Exhibit 2). In case 20 WC 02110, the Application alleged that on August 12, 2019, Petitioner "Fell at work" and sustained an injury to his "Head, neck, shoulders, and body as a whole" (Arbitrator's Exhibit 6). In case 20 WC 01995, the Application alleged that on September 24, 2019, Petitioner "Stuck Fire Hydrant while driving equipment" and sustained an injury to his "Head, neck, shoulders, and body as a whole" (Arbitrator's Exhibit 4).

The cases were tried in a 19(b) proceeding in which Petitioner sought an order for payment of medical bills and temporary total disability benefits as well as prospective medical treatment. In regard to temporary total disability benefits, Petitioner claimed he was entitled to temporary total disability benefits of 134 6/7 weeks, commencing September 29, 2019, through April 29, 2022 (date of trial). The prospective medical treatment sought by Petitioner was cervical disc replacement surgery as recommended by Dr. Matthew Gornet, an orthopedic surgeon. In all three cases, Respondent stipulated Petitioner sustained a work-related accident, but disputed liability on the basis of causal relationship (Arbitrator's Exhibits 1, 3 and 5). At trial, counsel for Petitioner and Respondent stipulated that if the Arbitrator ruled in favor of Petitioner and awarded benefits, said benefits would be attributed to the first accident/filing, 19 WC 11789.

Petitioner began working for Respondent in September, 2013, and was employed as an airport maintenance specialist at Mid America Airport in Mascoutah, Illinois. Petitioner's job duties included grass cutting and general maintenance around the airport.

On November 2, 2018, Petitioner was operating the paint truck which was a truck with a painting device that painted lines on the airport runways. At that time, Petitioner stepped in a hole in the bed of the truck which caused to him fall backward over the side of the truck. Petitioner's foot got caught in the hole which caused Petitioner to hang off the side of the truck. Another employee provided assistance to Petitioner and helped him get back into the truck.

At the direction of Respondent, Petitioner was evaluated at Midwest Occupational Medicine by Dr. Bradley Breeden. When seen by Dr. Breeden, Petitioner complained of neck, left shoulder, left knee and right groin pain. Dr. Breeden diagnosed Petitioner with upper back pain and a groin pull. He ordered x-rays of the cervical spine and directed Petitioner to take over-the-counter pain medication (Petitioner's Exhibit 2).

Dr. Breeden saw Petitioner on November 16, 2018. At that time, Petitioner's primary complaints were in regard to the neck. Dr. Breeden reviewed the x-rays of Petitioner's cervical spine and opined they revealed foraminal narrowing at C4-C5 and C5-C6. He ordered an MRI scan of Petitioner's cervical spine (Petitioner's Exhibit 2).

The MRI of Petitioner’s cervical spine was performed on November 30, 2018. According to the radiologist, the MRI revealed a spur disc complex at C5-C6 and a left sided disc herniation at C6-C7 with severe left and moderately severe right foraminal encroachment (Petitioner's Exhibit 2).

Dr. Breeden again saw Petitioner on December 6, 2018, and reviewed the MRI scan. His interpretation of the MRI was consistent with that of the radiologist. He opined Petitioner should be evaluated by an orthopedic surgeon (Petitioner's Exhibit 2).

On February 7, 2019, Petitioner was evaluated by Dr. Matthew Gornet, an orthopedic surgeon. Petitioner informed Dr. Gornet of the accident of November 2, 2018, and that he had neck and bilateral shoulder pain, left greater than right, low back and bilateral buttock/hip pain, bilateral knee pain and right groin pain. However, Petitioner's most severe symptoms were in respect to his neck. Dr. Gornet reviewed the MRI and opined it revealed a fragment of disc on the left at C6-C7, and foraminal narrowing at C4-C5, C5-C6 and C6-C7. He opined Petitioner had sustained a disc injury at C6-C7 and a potential aggravation of pre-existing degenerative changes at C4-C5 and C5-C6. He opined Petitioner's symptoms were causally related to the accident of November 2, 2018. He ordered a high resolution MRI scan (Petitioner's Exhibit 4).

The high resolution MRI scan was performed on February 7, 2019. According to the radiologist, the MRI revealed a left foraminal protrusion at C5-C6 and an annular tear with an extruded disc fragment at C6-C7 (Petitioner's Exhibit 8).

Dr. Gornet reviewed the MRI of February 7, 2019, and his interpretation was consistent with that of the radiologist. He recommended Petitioner undergo a steroid injection on the left at C6-C7 and possibly a steroid injection on the left at C5-C6 as well. He referred Petitioner to Dr. Helen Blake (Petitioner's Exhibit 4).

Dr. Blake saw Petitioner on February 26, 2019, and March 12, 2019. On those occasions, she administered steroid injections on the left at C6-C7 and on the left at C5-C6, respectively (Petitioner's Exhibit 9).

Dr. Gornet saw Petitioner on April 11, 2019. At that time, Petitioner informed him he had received injections from Dr. Blake, but they did not provide him with any sustained relief. Dr. Gornet discussed risks/benefits of disc replacements at C5-C6 and C6-C7, and noted Petitioner would require a CT or CT myelogram (Petitioner's Exhibit 4).

Dr. Gornet saw Petitioner on June 20, 2019. At that time, Petitioner continued to have neck and bilateral shoulder pain. Dr. Gornet noted he had requested authority to perform cervical disc replacement surgery at C5-C6 and C6-C7 (Petitioner's Exhibit 4).

Petitioner continued to work during the preceding period of time when he was being treated by Dr. Gornet. On August 12, 2019, Petitioner opened the door to the paint truck and discovered there was a wasp nest in the door jamb. The wasps swarmed and, when Petitioner attempted to get away, his right heel hit a cargo loader which caused him to fall to the ground landing on his butt/back. Petitioner testified this aggravated the pain symptoms he had in the same anatomical areas he had injured in November, 2018.

At the direction of Respondent, Petitioner was examined by Dr. Michael Chabot, spine surgeon, on August 14, 2019. In connection with his evaluation of Petitioner, Dr. Chabot reviewed medical records and diagnostic studies provided to him by Respondent. Petitioner testified he informed Dr. Chabot of the accidents of both November 2, 2018, and August 12, 2019; however, Dr. Chabot's report only makes reference to the accident of November 2, 2018. When seen by Dr. Chabot,

Petitioner complained of neck and back pain, but denied any radiation of symptoms into his upper extremities (Respondent's Exhibit 1; Deposition Exhibit 3).

On examination, Dr. Chabot noted the range of motion of the cervical spine was limited by 20% in all directions, but the range of motion of the shoulders was full. Dr. Chabot reviewed the MRI of November 30, 2018, and opined it revealed significant spondylosis at C4-C5, C5-C6 and C6-C7, foraminal narrowing at C3-C4, C4-C5 and C5-C6 and there was a left sided disc protrusion at C6-C7, but no disc herniation. Dr. Chabot noted Petitioner rated his level of pain as being 7/10, but this was not consistent with the findings on examination. He opined all of the medical treatment that had been provided to Petitioner to date was reasonable and necessary, but no surgery was indicated, Petitioner was at MMI and could continue to work without restrictions (Respondent's Exhibit 1; Deposition Exhibit 3).

Petitioner was seen by Dr. Gornet on September 23, 2019. At that time, Petitioner informed Dr. Gornet of the August, 2019, accident and that he felt it made his neck/back pain worse. Dr. Gornet noted there were no significant changes in his examination findings, but Petitioner's subjective complaints were worse. He requested authority to proceed with disc replacement surgery at C5-C6 and C6-C7 (Petitioner's Exhibit 4).

On September 24, 2019, Petitioner was mowing grass while driving a tractor. As he was in the process of performing this task, he turned his head to make certain he was not going to hit any debris in the area. At that time, the tractor struck a fire hydrant which caused Petitioner to experience a jarring sensation primarily in his neck. Petitioner testified he experienced an increase in his pain symptoms at the time of the accident.

Petitioner contacted Dr. Gornet's office by telephone on October 10, 2019, and informed Allyson Joggerst, a Physician Assistant, of the accident of September 24, 2019. Petitioner advised he ceased working because of the symptoms on September 26, 2019. PA Joggerst noted she was going to mail him an off work slip (Petitioner's Exhibit 4).

Dr. Gornet subsequently saw Petitioner on November 25, 2019. At that time, Dr. Gornet confirmed Petitioner was authorized to be off work. Dr. Gornet reviewed Dr. Chabot's report of August 14, 2019. He disagreed with Dr. Chabot's opinion that the MRI of November 30, 2018, did not reveal a disc herniation at C6-C7 and noted it was clearly visible on multiple images. Further, he noted the radiologist who performed the study also opined there was a disc herniation at that level. Dr. Gornet also noted Dr. Chabot did not comment on the more recent MRI which he opined was of superior quality when compared to the earlier MRI. Dr. Gornet's treatment recommendation remained the same and he ordered a new CT scan and MRI to determine if the recent accident had caused any further pathology (Petitioner's Exhibit 4).

The CT scan was performed on March 5, 2020. According to the radiologist, it revealed disc protrusions at C2-C3 and C4-C5, spurs at C4-C5, C5-C6 and C6-C7, and a disc bulge at C6-C7 (Petitioner's Exhibit 8).

Dr. Gornet saw Petitioner on March 5, 2020, and reviewed the CT scan which was performed that same day. He noted Petitioner had axial neck pain and pain between the shoulder blades. Dr. Gornet renewed his recommendation Petitioner undergo disc replacement surgery at C5-C6 and

C6-C7, but also opined there was the possibility Petitioner might require treatment at C3-C4 and C4-C5 as well (Petitioner's Exhibit 4).

At the direction of Respondent, Petitioner was again examined by Dr. Chabot on April 20, 2020. In connection with his evaluation of Petitioner, Dr. Chabot reviewed up to date medical records and diagnostic studies provided to him by Respondent. On examination, the range of motion of Petitioner's cervical spine was reduced by 40% in all directions, but the remainder of the examination findings were benign. In regard to Dr. Chabot's review of the CT scan of March 5, 2020, he noted there were spondylotic spurs at C4-C5, C5-C6 and C6-C7. He opined the spur at C6-C7 was previously diagnosed as a herniated disc in the MRI of November 30, 2018. He noted that his prior opinion of there being a left sided disc herniation at C6-C7 was incorrect because the CT scan of March 5, 2020, revealed that it was, in fact, a spondylotic spur (Respondent's Exhibit 1; Deposition Exhibit 4).

Dr. Chabot opined that Dr. Gornet's recommendation Petitioner undergo a two or maybe a four level disc replacement surgery supported the fact Dr. Gornet was not certain where Petitioner's complaints were originating from. He opined Petitioner sustained a strain injury, did not need further treatment, was at MMI and could return to work without restrictions. Dr. Chabot also opined Petitioner had an AMA impairment rating of three percent (3%) of the body as a whole in regard to the three accidents (Respondent's Exhibit 1; Deposition Exhibit 4).

Dr. Gornet last saw Petitioner on February 4, 2021. Petitioner's condition remained the same and Dr. Gornet once again renewed his recommendation Petitioner undergo disc replacement surgery at C5-C6 and C6-C7 as well as possible treatment at C3-C4 and C4-C5. He continued to authorize Petitioner to remain off work (Petitioner's Exhibit 4).

Dr. Gornet was deposed on February 11, 2021, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Gornet's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. Specifically, Dr. Gornet testified he recommended Petitioner undergo disc replacement surgery at C5-C6 and C6-C7, but that there was also additional disc pathology at C3-C4 and C4-C5. He testified he reviewed the MRI scans of November 30, 2018, February 7, 2019 and that, on comparison, they both revealed disc pathology at C5-C6 and C6-C7 (Petitioner's Exhibit 1; pp 10-12).

Dr. Gornet testified he reviewed Dr. Chabot's reports and disagreed with Dr. Chabot's interpretation of the diagnostic studies. In regard to the pathology noted in the diagnostic studies, Dr. Gornet said that the radiologist who performed the studies also opined there was disc pathology. He testified Petitioner's subjective complaints correlated well with the findings on examination and diagnostic studies. In regard to causality, Dr. Gornet testified Petitioner's symptoms and need for treatment were related to the accident of November 2, 2018, and the subsequent aggravations of August, and September, 2019 (Petitioner's Exhibit 1; pp 17-19).

On cross-examination, Dr. Gornet agreed there were spurs in the cervical spine, but they would not cause any neurological symptoms. He testified there was a disc fragment at C6-C7 which encroached on the foramen. He described Petitioner's condition as being "…structural failure with neurologic impingement and irritation." (Petitioner's Exhibit 1; pp 21-23).

Dr. Chabot was deposed on April 16, 2021, and his deposition testimony was received into evidence at trial. Specifically, Dr. Chabot testified there were no positive objective findings in either of his examinations of Petitioner. He diagnosed Petitioner with neck, back and groin strains which he related to the accident of November 2, 2018, and opined Petitioner was at MMI and could return to work without restrictions. He also opined Petitioner had an AMA impairment (which he referred to as PPD) rating of three percent (3%) to the body as a whole (Respondent's Exhibit 1; pp 16, 24, 30-31, 45-46).

Dr. Chabot testified Petitioner had Dish disease which he said was large spurs projecting off the front of the vertebrae and extending to each other to the point they were "…essentially autofusing his spine from C4 to C7." In regard to his review of the MRI of November 30, 2018, Dr. Chabot testified it revealed foraminal narrowing at C3-C4, C4-C5, C5-C6 and C6-C7 as well as a left sided disc protrusion at C6-C7 (Respondent's Exhibit 1; pp 20-22).

Dr. Chabot subsequently testified he recommended a CT scan be performed to determine whether the protrusion at C6-C7 was, in fact, a spondylotic spur, because a disc protrusion and a spondylotic spur have the same signal on an MRI. Based on his review of the CT scan, Dr. Chabot testified the previously diagnosed herniation at C6-C7 was actually a spondylotic spur (Respondent's Exhibit 1; pp 25-26).

On cross-examination, Dr. Chabot agreed the diagnostic studies revealed multiple abnormal findings in the cervical spine. He also agreed that if Petitioner had no symptoms prior to the accident of November 2, 2018, but symptoms afterward, it was possible the accident aggravated the condition which caused Petitioner to become symptomatic (Respondent's Exhibit 1; pp 62-63).

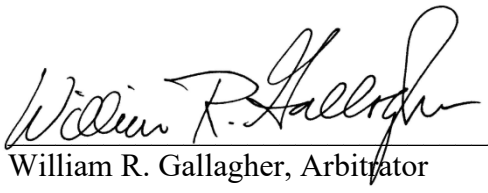
At trial, Petitioner testified he was authorized to be off work on September 29, 2019, and has not been able to work since then. Petitioner continues to have ongoing neck complaints on a daily basis which also causes him to experience sleep disruption and headaches. He wants to proceed with the disc replacement surgery as recommended by Dr. Gornet.

Conclusion of Law

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

Based upon the Arbitrator's Conclusions of Law in case 19 WC 11789, the Arbitrator concludes Petitioner's current condition of ill-being is not related to the accident of August 12, 2019.

In regard to disputed issues (J), (K), and (L) the Arbitrator makes no conclusions of law as these issues are rendered moot because of the Arbitrator's conclusion of law in disputed issue (F).



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC007044
Case Name	Sheila Mortenson v. City of Rock Falls
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0140
Number of Pages of Decision	19
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Tracy Jones
Respondent Attorney	Gregory Rode

DATE FILED: 3/27/2023

/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

SHEILA MORTENSON,

Petitioner,

vs. NO: 18 WC 7044

CITY OF ROCK FALLS,

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 (TTD), permanent partial disability (PPD), and whether the Petitioner is entitled to maintenance benefits, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 20, 2022 is hereby affirmed and adopted.

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

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

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

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

March 27, 2023

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

CAH/tdm
O: 3-16-23
052

/s/ *Marc Parker*
Marc Parker

SPECIAL CONCURRENCE

While I agree with the majority on the finding of accident, causal connection and TTD, I believe the PPD award should have been modified down to 35% loss of the person-as-a-whole, representing a loss of trade. The Petitioner underwent a single level fusion at L4-L5 resulting in permanent work restrictions. She testified to ongoing back pain with increased activity that has impacted her ability to work. While I concur with the majority's analysis of Section 8.1(b) of the Act, I find that an award of 35% loss of the person-as-a-whole is more appropriate.

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC007044
Case Name	MORTENSON, SHEILA v. CITY OF ROCK FALLS
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Tracy Jones
Respondent Attorney	Gregory Rode

DATE FILED: 5/20/2022

THE INTEREST RATE FOR THE WEEK OF MAY 17, 2022 1.49%

/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

Sheila Mortenson
Employee/Petitioner

v.

City of Rock Falls
Employer/Respondent

Case # **18 WC 007044**

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 **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Rock Island**, 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. ☒ 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, **December 12, 2016,** Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the Petitioner's injury, Petitioner's average weekly wage was **$783.09.**

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

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

ORDER

- The Respondent shall pay the petitioner temporary total disability benefits of $ **522.06** /week for **131 & 2/7** weeks, from **December 13, 2016 through January 9, 2017 and from January 26, 2017 through July 7, 2019** , as provided in Section 8(b) of the Act.

- The Respondent shall pay temporary partial disability/maintenance benefits in the amount of **$302.06** / week for **5 & 1/7** weeks from **July 8, 2019 through August 13, 2019**, as provided in Section 8(a) of the Act.

- The Respondent shall pay temporary partial disability/maintenance benefits in the amount of **$197.70** / week for **44 & 5/7** weeks from **August 14, 2019 through June 22, 2020**, as provided in Section 8(a) of the Act.

- The Respondent is due a credit of **$32,391.05** for temporary total disability paid and a credit of **$37,497.36** for maintenance benefits paid.

- The Respondent shall pay the Petitioner the sum of **$469.85** / week for a period of **225** weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused **45%** **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.

Bradley D. Gillespie **MAY 20, 2022**

Signature of Arbitrator

ICArbDec

BEFORE THE ILLINOIS WORKERS COMPENSATION COMMISSION
ROCK ISLAND, ILLINOIS

SHEILA MORTENSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case Nos.: 18WC007044**
	)	**18WC010863**
CITY OF ROCK FALLS,	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

STATEMENT OF FACTS

The parties stipulated that Sheila Mortenson [hereinafter "Petitioner"] was an employee of the City of Rock Falls [hereinafter "Respondent"] on December 12, 2016. The parties stipulated that timely notice of Petitioner's December 12, 2016, injury was provided to Respondent. The parties stipulated that Petitioner's average weekly wage relative to her injury was $783.09 and that Petitioner was 43 years of age, single, with 1 dependent child at the time of her injury. The parties stipulated that Petitioner had received $32,391.05 in temporary total disability benefits and $37,497.36 in maintenance benefits from Respondent.

Petitioner testified that she began working for Respondent in 2007. She was part-time for approximately 4 years before moving to full time employment around 2011. Petitioner worked primarily as a janitor. She also performed Section 8 housing inspections for approximately 2 hours a day. Petitioner performed janitorial work inside and outside of buildings such as City Hall and the Police Department for the majority of her workday. Her work also included lawncare and snow removal.

On December 12, 2016, Petitioner was shoveling the entranceway at the back of a community building. She testified she had been shoveling snow for approximately an hour and a half when she heard a pop in her lower back. Petitioner testified to experiencing numbness initially, followed by pain in her lower back. Petitioner testified that she went inside and told her boss that she had sustained an injury. Petitioner was instructed to call MedCore, a telephone service to which injuries are to be reported. Petitioner testified that she called MedCore and was advised to take Tylenol and go home.

Petitioner testified that she had experienced bouts of back pain previously. Her records noted that she had experienced s strain to her back and shoulders while shoveling snow on

December 9, 2013. (Px. 1). She underwent a week or two of physical therapy and was released with a "resolved strain" to full duty on December 20, 2013. (Px. 1). Petitioner testified she had no problems with her back or performing her job following that incident through her December 12, 2016 injury.

Petitioner was directed to Physician's Immediate Care the next day, December 13, 2016. (Px. 2). The history Petitioner provided was that she experienced right sided low back pain after feeling a pop while shoveling snow the day before. She was provided with restrictions to avoid bending or twisting and no lifting greater than 5 pounds. *Id*. Petitioner returned on December 21, 2016, reporting ongoing pain. Her restrictions were continued. *Id*. On December 27, 2016, Petitioner noted that she was improving with rest. Restrictions against prolonged bending or twisting and lifting more than 20 pounds were provided. Petitioner was referred to physical therapy. *Id*.

Petitioner commenced physical therapy at KSB on December 30, 2016. (Px. 4). On January 4, 2017, the therapist noted that she had felt better after therapy, but experienced soreness later in the day. *Id.* On January 6, 2017, Petitioner indicated that her back was very sore. *Id*. Petitioner followed up with Physicians Immediate Care on January 9, 2017, and reported no pain with rest, but 3/10 pain with bending. She was given a note to return to work. (Px. 2). Petitioner returned to work for about 2 weeks but remained in physical therapy. On January 16, 2017, she reported lower back pain. (Px. 4). On January 17, 2017, Petitioner was seen in the emergency room at KSB due to a potential allergic reaction, possibly to Tramadol or Meloxicam. She was prescribed Prednisone. (Rx. 3). She followed up with Physician's Immediate Care on January 19, 2017 and reported that her pain had been worsening upon her return to work. She did noted that she had been placed on Prednisone for an unrelated issue which had helped her back pain. An MRI was prescribed. (Px. 2). On January 25, 2017, she described worsening pain in her back after lifting a vacuum at work. (Px. 2, 4). At that point, her pain was noted to be radiating down her right leg. Restrictions were reinstated against bending, twisting, or lifting greater than 10 pounds. (Px. 2). At that point, Petitioner was off work given Respondent's inability to accommodate her restrictions.

An MRI was performed on January 27, 2017. It was interpreted as showing L4-5 moderate to severe central and moderate bilateral neuroforaminal stenosis. (Px. 1). On February 1, 2017, restrictions were provided, medications were prescribed, and Petitioner was referred to Rockford Back and Spine. (Px. 2). Petitioner was continued in physical therapy. On February 2, 2017, Petitioner reported that her pain was considerably worse lately. On February 9, 2017, the Physicians Immediate Care records indicate that Petitioner was told by Rockford Spine Center that she was not a surgical candidate. Petitioner was noted to be unhappy with her continued pain and was interested in other options. Petitioner was then

referred for consultation with a pain specialist and advised to continue physical therapy and her current restrictions. (Px. 2).

Petitioner continued in physical therapy. On February 20, 2017, she noted improvement in her pain, though she continued to have "flare-ups." She reported no pain on February 27, 2017. On March 1, 2017, she was a little sore. On March 7, 2017, she denied pain. (Px. 4). Petitioner testified that physical therapy did help, but that she also continued to have recurrent lower back pain.

Petitioner was seen by Dr. Dahlberg at Rockford Pain Center on March 13, 2017. (Px. 5). She described an onset of lower back and buttock pain in December while shoveling snow at work. The records report that she reinjured her back lifting a vacuum cleaner on 1/24/17. Dr. Dahlberg noted that Petitioner had gone through 27 visits of physical therapy with some temporary improvement in her pain. She described ongoing pain exacerbated by heavy lifting, housework, and yardwork. (Px. 3). She was prescribed a Medrol Dosepak and advised to return to work in 1 week. (Px. 3). Petitioner testified that the Medrol Dosepak did not help. Petitioner followed up at Rockford Pain Center on March 24, 2017. The record noted she had reinjured her back cleaning around her home. At that time, a lumbar epidural steroid injection at L4-5 was performed. (Px. 3). Petitioner testified that the initial injection helped for approximately two weeks. On April 21, 2017, Petitioner returned to Rockford Pain Center. She described improvement with the injection for two weeks, after of which her pain recurred. Another L4-5 lumbar epidural steroid injection was performed. (Px. 3). Petitioner testified that the second injection did not help at all.

On May 19, 2017, Petitioner was seen by Dr. Borchardt at Ortho IL. (Px. 4). She reported lower back pain after shoveling snow on December 12, 2016. She was referred to see spine specialist, Dr. Braaksma. (Px. 4). Petitioner was initially seen by Dr. Braaksma on June 2, 2017. Dr. Braaksma interpreted the MRI to demonstrate an L4-5 disc herniation and moderate to severe stenosis. He diagnosed bilateral L4 and L5 radiculopathy which had failed appropriate and exhaustive conservative treatment. Dr. Braaksma recommended surgery. (Px. 4).

Petitioner underwent L4-5 fusion, laminectomy, discectomy, and facetectomy on June 27, 2017. (Px. 4). Petitioner noted that she was sore after the surgery. Initially she had improvement, but her pain returned within approximately 2 months. On July 10, 2017, Dr. Braaksma continued Petitioner off work to recover from surgery. On August 18, 2017, Petitioner complained of bilateral hip and lower back pain. Physical therapy was recommended along with limitations to light duty work. (Px. 4). Petitioner underwent physical therapy from August 24, 2017 through October 6, 2017. (Px. 4). On September 28, 2017, she reported stiffness every morning with shooting pain in her right buttocks with walking and

activity. She reported the desire to return to work but also reported pain when doing housework. (Px. 4). Petitioner testified that housework, lifting vacuum cleaners, and cleaning were the type of activities that aggravated her back pain after her injury.

Petitioner was seen by Dr. Braaksma on September 29, 2017 with ongoing lower back pain. To evaluate her ongoing pain complaints, a follow up MRI was performed on November 1, 2017. It showed no evidence additional pathology. (Px. 4). Due to ongoing pain in the back and hips, Dr. Braaksma referred Petitioner to Dr. Van Thiel, an orthopedic surgeon, for evaluation of her hips. (Px. 4). Petitioner was seen by Dr. Van Thiel on November 13, 2017. An MRI was performed and interpreted to be normal. On November 27, 2017, Dr. Van Thiel opined that Petitioner's hip pain was due to lumbar pathology. (Px. 4).

On December 8, 2017, Dr. Braaksma referred Petitioner back to Dr. Borchardt for evaluation of her work capability. (Px. 4). Petitioner was seen by Dr. Borchardt on December 13, 2017. He noted ongoing pain in Petitioner's back and hips and recommended an EMG. At that time, he restricted Petitioner to sedentary work. (Px. 4). Petitioner underwent an EMG on January 11, 2018, which was interpreted to be normal. (Px. 4).

Petitioner was sent to Dr. Levin for an Independent Medical Examination, at Respondent's request, on February 12, 2018. (Px. 4). She described the onset of her lower back pain while hand shoveling snow on December 12, 2016. Petitioner reported she had experienced a prior back injury in 2013 that resolved within about two weeks. She noted she had to lift 50-pound bags of salt while working for Respondent. She described ongoing lower back pain radiating into her buttocks increased with activity. She reported she had worked for about 4 ½ weeks after her injury but that she had been off work since her job required her to be full duty. Dr. Levin reviewed Petitioner's medical records. On February 20, 2018, after review of Petitioner's job description with Respondent, Dr. Levin opined that a lifting restriction of a maximum of 40 pounds would be reasonable. (Px. 4).

On February 26, 2018, Petitioner was seen at Hanson Chiropractic Clinic for consultation. (Rx. 7). Her injury was described as well as her treatment thereafter. She reported pain approximately two months and ten days post-surgery with tingling in both legs and feet. She indicated she could walk 3 blocks before having to stop and that she was unable to grocery shop due to pain. She described pain with lifting a gallon of milk. (Rx. 7). She underwent chiropractic care at Hanson Chiropractic Clinic through April 20, 2018. (Rx. 7).

On March 12, 2018, Dr. Borchardt noted that Petitioner would not be able to return to work without restrictions. He noted that she had been placed on 40-pound restrictions following an Independent Medical Examination and suggested a Functional Capacity Evaluation. (Px. 4).

On March 21, 2018, Petitioner signed a Severance Agreement and Release from Respondent. (Rx. 2). She testified that she had a meeting with Respondent and the Severance agreement was presented to her due to their inability to accommodate her restrictions.

On February 18, 2019, Petitioner began vocational rehabilitation services with Ed Steffan of EPS Rehabilitation Inc. She searched for work within her 40-pound lifting restriction, applying to positions she found and those found by Mr. Steffan. (Px. 7).

Petitioner was seen by Dr. Jain, her primary care physician, on February 26, 2019. At that time, she reported the fusion did not help her back pain. She described dull pain that got worse with activity and moving. Medications were prescribed. (Px. 1). On May 13, 2019, Petitioner began treatment with Jensen Chiropractic. (Px. 5). She reported that her back pain keeps her from heavy lifting and walking, sitting, or standing for long periods of time. (Px. 5). Petitioner underwent chiropractic treatment with Jensen Chiropractic through June 2019 with improvement in her back pain. Petitioner testified that the adjustments helped, though she still had some pain in the lowest part of her back with activity.

In May of 2019, Petitioner secured a part-time job at a slot-machine bar. She worked there for 4 days but was advised to seek other employment by Ed Steffen.

On June 26, 2019, the chiropractor noted that Petitioner had no physical restrictions placed upon her in regard to working. (Px. 5). Petitioner testified she asked to be released without restrictions to try working. At that time, Petitioner secured a position at St. John's Lutheran Church. She began work on July 8, 2019, working 30 hours a week, at $11.00 per hour. (Px. 8). Petitioner testified she performed janitorial services for St. John's but did not have to shovel. Based on her acquisition of that position, vocational rehabilitation services were terminated on July 9, 2019. On July 24, 2019, Dr. Jensen noted she was doing well at her new job, without recent lower back pain. (Px. 5). The documentation from St. John's also contain a signed note that Petitioner would not be responsible for snow removal. (Rx. 13). Respondent's Exhibit 1 documents that TTD/maintenance benefits were paid through July 20, 2019. (Rx. 1).

On August 14, 2019, Petitioner secured full time employment with Lee County performing janitorial work on a full-time basis. (Px. 9). Petitioner testified she took this position as it was full time and had better benefits. She was to earn a salary of $25,300.00. (Px. 9). Petitioner indicated the position was only cleaning and consisted predominantly of cleaning bathrooms and offices. She did not have to perform lawn care or snow removal. She testified that she initially did well at the position. She believed the chiropractor had solved her back problem. With return to full time employment, Petitioner began experiencing increased

back pain. On October 7, 2019, Petitioner reported the return of stiffness in her lower back to Jensen Chiro. (Px. 5). On October 15, 2019, Jensen Chiropractic provided a note to observe a lifting weight restriction of no more than 40 pounds for the next three months. (Px. 5).

On November 13, 2019, Petitioner was re-evaluated by Dr. Levin, at Respondent's request. Dr. Levin provided a report on November 21, 2019. At that time, Dr. Levin opined that Petitioner had sustained only a lumbar and pelvic strain on December 12, 2016, which had resolved by March 7, 2017, when a physical therapy note indicated Petitioner had denied pain. Dr. Levin then provided an AMA rating relative to a lumbar sprain. (Rx. 19, 20, 21).

Petitioner continued to follow up with Jensen Chiropractic. (Px. 5). On February 12, 2020, Petitioner reported the return of pressure in her lower back and noted feeling a strain in her hips as of that day. On April 13, 2020, Petitioner described low back soreness while cleaning in her attic. It was noted she was working through the pandemic. Petitioner reported she had missed work on June 18, 2020, due to pain. She indicated that work "gets to me" noting that by the end of the day, she needs a cold pack and heat for 20 minutes each. She felt that she could no longer perform her line of work. She was given an off work slip for June 18 and 19, 2020. (Px. 5).

On June 22, 2020, Petitioner quit her job at Lee County due to her back pain. Petitioner testified that she had done well with the job until June when the back pain became intolerable. She was seen at Jensen Chiropractic on June 23, 2020, noting she had quit her job at Lee County the day before. She noted that her right buttock pain had returned to a similar state as after her initial injury in 2016 and that she was having trouble going up steps. (Px. 5). Petitioner continued in chiropractic care. On July 20, 2020, she reported varying back pain day to day with pain between 3/10 and 5/10. She reported her legs were numb all the time. On July 27, 2020, she described trouble keeping up with housework. She noted she cleans her house, but no longer vacuums stairs as it is excruciating for her. It was also noted she tried to get someone to mow her yard. (Px. 5).

Petitioner began working for White Glove Janitorial and Building on August 26, 2020. (Px. 10). She testified that with this job, she cleans three different buildings in Dixon, working only about 20 hours a month. She testified that she had recently quit the position, putting in her two weeks' notice on July 1, 2021. She testified that she needed two days to recuperate after working due to pain in her lower back and hips. She did not feel the job was worth the pain. Petitioner testified she continues to see the chiropractor with treatment helping for a day or so before it comes back. The Jensen Chiropractic records from January 2021 note lower back pain requiring approximately five Ibuprofen daily. On March 1, 2021, it was recommended she avoid all cleaning jobs and attempt to retrain for office work. (Px. 5).

Dr. Jeffrey Coe performed a records review on June 21, 2021, at Petitioner's attorney's request. Dr. Coe disagree with Dr. Levin. He noted that while Petitioner did have improvement with physical therapy, the records at that time also noted she was being referred for pain management. Dr. Coe noted that she was referred to a spine surgeon shortly after being referred to pain management and underwent surgery shortly thereafter. Dr. Coe opined that her current condition of ill-being was causally related to her December 12, 2016, injury. He also opined that she could benefit from additional pain management and suggested restrictions to the sedentary demand level. (Px. 6).

At the hearing, Petitioner testified to ongoing pain. She notes that it is tolerable if she does little. The more she does, the more pain she has. She no longer takes over the counter medication as they didn't help. She will use a heat back before bed. Petitioner described aggravation of her pain with sweeping and vacuuming. She can walk about 1 ½ blocks before she has increased pain. She reported standing or sitting for an hour are her limit, noting difficulty sitting long enough to watch a movie. She testified that she is up and down all day to ease her pain. Petitioner testified she has not been looking for other work at this time.

CONCLUSIONS OF LAW

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

The Arbitrator adopts the statement of facts detailed above and finds that Petitioner sustained an accident that arose out of and in the course of her employment on December 12, 2016. Petitioner's initial medical record from December 13, 2016 documents that she was being seen after feeling a pop in her back while shoveling snow the day prior. Petitioner testified that snow removal was part of her duties for Respondent, as well as cleaning and lawn care. No contradictory evidence was provided. Petitioner's subsequent treatment records as well as the notes from Respondent's examining physician, Dr. Levin, document that she sustained accidental injuries while shoveling snow on December 12, 2016. Petitioner's testimony regarding her injury was very credible and supported by the medical records. No evidence was provided that Petitioner did not sustain an accident as described. As such, the Arbitrator finds and concludes that Petitioner sustained accidental injuries on December 12, 2016 that arose out of and in the course of her employment with Respondent.

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

The Arbitrator adopts the conclusions stated above and incorporates them herein by this reference. The Arbitrator finds that Petitioner's current condition of ill-being is causally

related to her work injury of December 12, 2016. The Arbitrator relies upon Petitioner's treating physicians' records, the opinions of Dr. Jeffrey Coe, as well as Petitioner's credible testimony.

The Arbitrator relies upon the well-established rules set forth by the Illinois Supreme Court that "the fact that an employee may have suffered from a preexisting condition will not preclude an award if the condition was aggravated or accelerated by the employment. The employee need not prove employment was the sole causative factor or even that it was the principal causative factor, but only that it was **a causative factor** in the resulting injury." *Williams v. Industrial Com.*, 85 Ill. 2d 117, 122 (1981).

Petitioner's treatment records support a causal relationship between her current condition of ill-being of her lower back and her injury on December 12, 2016. Petitioner testified credibly regarding the onset and continuation of her lower back pain. Petitioner noted she had experienced a prior lower back injury, also while shoveling snow, in December of 2013. Petitioner testified that she fully recovered from that injury after 2 weeks of physical therapy. The medical records document that Petitioner was released full duty, with a resolved strain, on December 20, 2013. Petitioner testified she had no problems with her lower back thereafter until her injury on December 12, 2016. She testified to performing her regular job, without issue from 2014 through December 12, 2016. There was no medical documentation provided to contradict Petitioner's lack of treatment or symptoms from December 20, 2013, through December 12, 2016.

Following her injury on December 12, 2016, Petitioner's treatment records document ongoing and persistent lower back pain. While the severity of Petitioner's lower back pain has fluctuated in severity since her injury, the records are devoid of an extended period of time where Petitioner was asymptomatic sufficient to break the causal connection. Dr. Coe opined that Petitioner's current condition is causally related to her injury due to the onset of her symptoms, the persistence of her symptoms, and her consistent treatment, including the fusion she underwent in June 2017. (Px. 6).

The Arbitrator notes that Dr. Levin's opinion that Petitioner reached maximum medical improvement for a lumbar sprain as of March 7, 2017, relies upon a notation from physical therapy that she was pain free on that date. (Rx. 19, 20). The Arbitrator finds Dr. Coe's opinions more persuasive and more consistent with the treatment records as a whole. While Petitioner did report a lack of pain on March 7, 2017, she had reported some pain only 4 days prior. (Px. 4). She was also seen by the pain management specialist, Dr. Dahlberg, only six days later. (Px. 3). Less than two weeks after that, she underwent her first of two lumbar epidural steroid injections, on March 24, 2017. She had another injection on April 21, 2017 due to continued pain. (Px. 3). Further, Dr. Braaksma, the spinal surgeon, interpreted

Petitioner's January 27, 2017 MRI to evidence a disc herniation at L4-5. (Px. 4). The MRI was performed approximately 6 weeks prior to the pain-free physical therapy visit. Further, Petitioner testified to improvement in her pain with physical therapy. Further, Petitioner was not working at the time that she was reporting improvement. Petitioner returned to work for approximately two weeks after her injury, from January 9, 2017 through January 25, 2017. (Rx. 1). During that time, she reported worsening pain in her back. When seen at Physician's Immediate Care on January 19, 2017, she reported an increase in her back pain after she went back to work. (Px. 2). She then reported worsening pain again on January 25, 2017 at which point she was put back on work restrictions. (Px. 2). Thereafter, Petitioner's restrictions were not accommodated, and she was off work. Moreover, Petitioner was taking Norco and Prednisone during the course of her physical therapy.

As such, the Arbitrator does not find that a single physical therapy visit noting a lack of pain, during a period of time in which Petitioner was activity treating, was taking pain medication, and was off work, is sufficient to sever the causal relationship between her injury and her current condition of ill-being. The records establish that Petitioner's medication, rest, and physical therapy, were doing their job to improve her symptoms, not that she had fully recovered.

Thereafter, Petitioner underwent surgery on June 27, 2017 in the form of a L4-5 fusion, laminectomy, facetectomy, and discectomy. Her treatment continued thereafter with physical therapy, medication, and work restrictions. While she temporarily improved with the surgical procedure, her symptoms came back and did not resolve. Petitioner had another period of improvement in her symptoms with chiropractic care at Jensen Chiro beginning in June of 2019. At that time, she began working a part-time job at St. John's Lutheran Church. After switching to a full-time position at Lee County, her chiropractic records indicate an increase in symptoms, prompting resumption of a lifting restriction. Back pain was noted again in February of 2020 and April of 2020. By June of 2020, Petitioner quit her job at Lee County due to the inability to continue to withstand her back pain.

Petitioner testified to ongoing symptoms in her lower back, made worse with activity. Her testimony regarding improvement with rest, therapy, medication, and increase in symptoms with activity is sufficiently supported by the treatment records.

The Arbitrator finds and concludes that Petitioner's current condition of ill-being is causally related to her work injury of December 12, 2016. Petitioner's symptoms since her injury, though they have waxed and waned in severity, have been consistently documented since her injury. Dr. Coe's opinion regarding causation is more persuasive and consistent with the records as a whole. As such, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to her December 12, 2016 injury.

K. What temporary benefits are in dispute?

The Arbitrator finds that Petitioner is owed Temporary Total Disability benefits from December 13, 2016, through January 9, 2017, and from January 26, 2017, through July 7, 2019. Further, Petitioner is entitled to Temporary Partial Disability/Maintenance benefits from July 8, 2019, through June 22, 2020.

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 initially taken off work from December 13, 2016, through January 9, 2017. She then attempted to return to work before being restricted again on January 25, 2017. Thereafter, Respondent would not accommodate her restrictions. Petitioner then underwent physical therapy and injections before undergoing surgery on June 27, 2017. After surgery, Petitioner resumed physical therapy followed by chiropractic treatment. Petitioner was then provided with vocational rehabilitation in an attempt to secure employment within her restrictions as of February 18, 2019. Petitioner complied with vocational rehabilitation services, looking for work until securing employment on July 8, 2019, at St. John's Lutheran Church. As such, the Arbitrator finds and concludes that Petitioner is entitled to temporary total disability benefits through July 7, 2019.

Thereafter, Petitioner earned $330.00 a week at St. John's Lutheran Church through securing full-time employment on August 14, 2019, at Lee County. At that time, Petitioner secured employment making $486.54 per week. Petitioner then attempted to perform the position at Lee County, a similar, but lighter duty position than that for Respondent, through

June 22, 2020. Petitioner testified she did not have to perform lawn care, nor snow removal for Lee County, which was performed for Respondent. At times, she performed this position without restrictions. At other times, she performed the job with restrictions due to an increase in back pain with her return to full time employment. By June 22, 2020, Petitioner quit the position at Lee County given a gradual increase in her back pain.

Therefore, the Arbitrator awards temporary partial disability/maintenance benefits through June 22, 2020. The Arbitrator declines to award additional benefits beyond June 22, 2020, given that Petitioner had no specific restriction note keeping her off work. Petitioner has continued to work on a part-time basis, working minimal hours for White Glove Cleaning Service, though no physician has restricted her hours.

Wherefore, the Arbitrator awards temporary total disability benefits from December 13, 2016, through January 9, 2017 and from January 26, 2017 through July 7, 2019, in the amount of $522.06 per week for 131 & 2/7 weeks.

The Arbitrator also awards temporary partial disability/maintenance benefits in the amount of $302.06 per week for 5 & 1/7 weeks from July 8, 2019, through August 13, 2019, reflecting 2/3 of the difference between Petitioner's average weekly wage for Respondent and her weekly earnings at S. John's Lutheran Church.

Lastly, the Arbitrator awards temporary partial disability/maintenance benefits in the amount of $197.70 per week for 44 & 5/7 weeks from August 14, 2019, through June 22, 2020 reflecting 2/3 of the difference between Petitioner's average weekly wage for Respondent and her weekly earnings at Lee County.

The Arbitrator notes that Respondent did pay TTD/maintenance benefits from December 13, 2016, through January 9, 2017, and from January 26, 2017, through July 20, 2019, in the amount of $69,888.41 for which a credit is owed. (Rx. 1).

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

The Arbitrator adopts the findings of fact and conclusions of law stated above and incorporates them herein by 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." An impairment rating was offered by Respondent from Dr. Jay Levin. However, Dr. Levin's AMA impairment rating was based on a lumbar strain. Given the finding that

Petitioner's lumbar disc herniation and subsequent surgery was causally related to her December 12, 2016, injury, Dr. Levin's impairment rating is given little weight.

2) The occupation of the injured employee. Petitioner worked for Respondent for approximately 9 years before her December 12, 2016, injury as a Janitor. For Respondent, Petitioner testified that she cleaned City Hall and the Police Department and was also in charge of lawn care and snow removal. Petitioner also performed Section 8 inspections for part of her day. Petitioner has attempted to return to similar work since her injury. Petitioner took a position at St. John's Lutheran Church on a part-time basis for approximately 5 weeks. She then took a full-time janitorial position with Lee County in which she cleaned offices and bathrooms, performing that job through June 22, 2020. Petitioner has not returned to janitorial work that required performance of the duties of lawn care and snow removal that she performed for Respondent. Her chiropractor and Dr. Coe have offered the opinion that she should not return to the same type of work she did for Respondent. Therefore, some weight is given to this factor.

3) The age of the employee at the time of the injury. Petitioner was 43 years old at the time of her initial injury on December 12, 2016. Significant weight is given to this factor as Petitioner likely had 24 years left in the labor force to achieve full retirement age.

4) The employee's future earning capacity. Petitioner has been able to secure employment since her injury. When looking for work, with assistance of Ed Steffen, vocational counselor, Petitioner was unable to secure full time employment within her restrictions for over four months. Only after Petitioner asked for her restrictions to be lifted, to attempt to work, did she secure employment. Petitioner was paid $330 per week at St. John's Lutheran Church. Subsequently, she secured employment with Lee County, earning $486.54 per week on a full-time basis. Both jobs paid her significantly less than the $783.09 she earned per week while working for Respondent. Again, the Arbitrator gives significant weight to this factor.

5) Evidence of disability corroborated by the treating medical records. Petitioner testified to ongoing back pain that increases with activity. This has been found to be supported by her treating records. Petitioner was restricted to no lifting greater than 40 pounds and was seeking employment based on those restrictions. She was able to secure employment only after the removal of the restrictions. However, with the return to similar employment, though without the lawn care and snow removal required with Respondent, Petitioner experienced an increase in her symptoms. Less than 2 months after securing employment with Lee County, Petitioner reported

increased stiffness with return to full time work. A week later, her 40-pound restriction was again implemented. Petitioner continued the work until June of 2020 when she quit, due to a gradual increase of back pain with her job duties. Petitioner has continued to see her chiropractor with ongoing complaints of pain with activity, consistent with the surgical procedure she underwent. The Arbitrator gives some weight to this factor.

After carefully weighing the five factors above, the Arbitrator finds and concludes that Petitioner has sustained a significant and permanent injury to her lower back that has resulted in the loss of her ability to perform her former on a continued basis. Petitioner attempted a similar, but lighter duty position at Lee County and could not maintain the job longer than 10 months. That position didn't require the lawn care nor the snow removal that she performed for Respondent. Since attempting the job for Lee County, Petitioner has performed only part-time work due to her ongoing symptoms. The Arbitrator adopts the opinions of Petitioner's chiropractor and Dr. Coe who have opined that Petitioner is not capable of performing the work she performed for Respondent. As such, the Arbitrator finds and concludes that Petitioner has sustained a loss of occupation. As such, the Arbitrator finds Petitioner has sustained a loss of his career and is entitled to 45% loss of a person as a whole under Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC014372
Case Name	Richard Williams v. Ardagh Group Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0141
Number of Pages of Decision	8
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Julie Themer
Respondent Attorney	Emilie Miller

DATE FILED: 3/27/2023

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF McLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Williams,
Petitioner,

vs. NO: 19 WC 14372

Ardagh Group,
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, occupational disease and permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 5, 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.

March 27, 2023
o3/22/23
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC014372
Case Name	WILLIAMS, RICHARD v. ARDAGH GROUP, INC.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Julie Themer
Respondent Attorney	Emilie Miller

DATE FILED: 5/5/2022

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

/s/Bradley Gillespie, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Richard Williams
Employee/Petitioner

v.

Ardagh Group, Inc.
Employer/Respondent

Case # **19 WC 014372**

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 **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Bloomington**, on **March 30, 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 **4/07/2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

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

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**73,755.00**; the average weekly wage was $**1,418.75**.

On the date of accident, Petitioner was **58** 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

Because Petitioner failed to prove a compensable accident arising out of and in the course of employment, 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.

Bradley D. Gillespie **MAY 5, 2022**

Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RICHARD WILLIAMS,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 19 WC 014372**
	)	
ARDAGH GROUP, INC.	)	
Respondent.	)	
	)	

MEMORANDUM OF DECISION OF THE ARBITRATOR

FINDINGS OF FACT

Petitioner alleges hearing loss pursuant to the Occupational Disease Act resulting from his work for Respondent. Petitioner worked for Respondent from April 4, 2001, until May of 2019. Petitioner testified his employment with Respondent ended after the plant he worked at closed.

Petitioner testified during his employment with Respondent he worked in different positions. Petitioner testified that he first worked in the carton department building boxes. Petitioner testified that he remained in that position for less than a year and then moved to palletizing.

Petitioner testified he remained in palletizing until 2005. Petitioner testified that during his time as a palletizer he worked in the "cold end" of the plant.

In 2005, Petitioner testified that he moved into the maintenance department, where he first worked swing shift as a shift mechanic in the "cold end" of the plant but in 2016 moved to straight days on the "hot end".

Petitioner testified that during his employment with Respondent he was required to wear ear protection. Petitioner testified he first used an ear plug that you twist to put in your ear, but because of the nature of his job in maintenance requiring him to get his hands dirty switched to an ear bud that he did not have to twist. Petitioner testified he continued to use an ear bud as hearing protection until 2017 when he switched to an over-the-ear earmuff after a coworker complained that he was having difficulty hearing while working and causing a safety risk.

Petitioner testified that he continued to work in maintenance in the "hot end" of the plant until the plant closed in 2019. Petitioner testified that while working for Respondent he worked at least an eight hour shift each day.

Petitioner testified that he was required by Respondent to undergo a preemployment hearing test as well as yearly hearing tests. Copies of those tests were admitted into evidence as Petitioner's Exhibit 2. It is noted that aside from annual tests, Petitioner was sometimes required to undergo validity testing or retesting following his annual test.

Petitioner's first baseline hearing test was completed on March 15, 2001, prior to the start of his employment. Petitioner was found to have hearing in his left ear of 10 dB(HL) at 1,000 hertz, 5 dB(HL) at 2,000 hertz, and 15 dB(HL) at 3,000 hertz, and in his right ear of 15 dB(HL) at 1,000 hertz, 5 dB(HL) at 2,000 hertz, and 10 dB(HL) at 3,000 hertz.

After his hearing test on August 22, 2012, Petitioner was referred for further evaluation by an audiologist. A referral order from St. Mary's Occupational Health confirms that Petitioner was being referred to an audiologist due to "complaints of ringing in his left ear for four to five years and non-work-related hearing loss". No record of Petitioner's treatment with an audiologist was admitted into evidence.

Petitioner hearing test on August 22, 2012, confirmed hearing in his left ear of 65 dB(HL) at 1,000 hertz, 50 dB(HL) at 2,000 hertz and 99 dB(HL) at 3,000 hertz, and in his right ear of 5 dB(HL) at 1,000 hertz, 0 dB(HL) at 2,000 hertz, and 40 dB(HL) at 3,000 hertz.

Petitioner's last hearing test was completed on July 15, 2019, at Midwest Occupational Health Associates. See Petitioner's Exhibit 3. That testing was completed as part of a pre-employment examination for a new job with International Paper. Petitioner was found to have hearing in his left ear at the relevant frequencies of 85 dB(HL) at 1,000 hertz, 90 dB(HL) at 2,000 hertz, and 90 dB(HL) at 3,000 hertz and in his right ear of 25 dB(HL) at 1,000 hertz, 45 dB(HL) at 2,000 hertz, and 90 dB(HL) at 3,000 hertz. It is also noted from MOHA's records that Petitioner reported using a hearing aid in his left ear. No evidence was admitted regarding a prescription for a hearing aid for Petitioner.

Petitioner also admitted into evidence as part of his Exhibit 2, a Noise Survey completed at Respondent's facility on September 26 and 27, 2012. At the time the noise survey was completed, it was noted Petitioner was still working in the "cold end" of the plant as a shift maintenance mechanic. In the shift maintenance area, mean noise exposure for personnel was noted to be 91 dBA per 12-hour shift, which exceeded the average allowed exposure of 82 dBA for 12-hour shift and required ongoing use of ear protection.

CONCLUSIONS OF LAW

Regarding disputed issues (C) and (F), the Arbitrator finds that Petitioner did not sustain an accident that arose out of and in the course of his employment by Respondent and in support thereof, finds as follows:

Section 7(f) of the Occupational Disease Act provides in pertinent part as follows:

"No claim for loss of hearing due to industrial noise shall be brought against an employer or allowed unless the employee has been exposed for a period of time sufficient to cause permanent impairment to noise levels in excess of the following:"

Sound Level DBA Slow Response	**Hours Per Day**
90	8
92	6
95	4

97	3
100	2
102	1 1/2
105	1
110	1/2
115	¼

(820 ILCS 310/7(f)) (from Ch. 48, par. 172.42)

In 2012, a noise survey confirmed sound levels in excess of the statutory limits of Section 7(f) of the Act. (PX #2 p. 005) However, Petitioner testified that he was required to use hearing protection and did so during his employment with Respondent, which included, at different times, the use of ear plugs, ear buds or earmuffs. Petitioner gave no testimony that the hearing protection provided was inadequate or did not reduce the noise level. Neither party introduced evidence of the amount of protection afforded by the hearing protection provided to Petitioner by Respondent. There was no evidence presented that Petitioner did not use hearing protection as required by Respondent, nor was there any evidence presented that the Respondent's hearing loss prevention program was not enforced.

In *United States Steel Corp. v. Industrial Comm'n* (1985), 132 Ill.App.3d 101, 106, 87 Ill.Dec. 490, 493, 477 N.E.2d 237, 240, the Appellate Court held that it was proper to infer that an employer would not have given an employee ear protection if it did not serve the purpose indicated, that is, to eliminate excessive noise and that because the employee began to use it on a specific date the Commission properly found that date to be the date of last exposure. As Petitioner admitted using hearing protection from the start of his employment with Respondent and provided no evidence that the hearing protection was inadequate, it cannot be found that he was exposed to sufficient noise levels to cause permanent impairment under the Act, and therefore, his claim is barred by statute.

Even if Petitioner could prove that he was exposed to noise levels in excess of those provided in Section 7(f), he still bears the burden of proving that his condition is causally related to his employment. *Excelsior Leather Washer Co. v. Industrial Com.*, 54 Ill.2d 318, 326, 297 N.E.2d 158) No expert medical evidence as to causation was admitted by Petitioner. In fact, the only evidence admitted that speaks to causation at all is the audiologist referral from St. Mary's Occupational Health from August 22, 2012, that notes Petitioner is being referred for further evaluation by an audiologist for "non-work-related hearing loss". Petitioner did not introduce any records from this referral, nor did he introduce any records related to his prescription for his left ear hearing aid.

While causation can be established by a chain of events, there is insufficient evidence here to do so. Not only did Petitioner admit to utilizing hearing protection during the entire time of his employment with Respondent, but the disproportionate extent of hearing loss between Petitioner's left and right ear has not been explained.

With regard to (L), the Arbitrator finds Petitioner is not entitled to compensation consistent with the finding that he did not prove a compensable accident that arose out of and in the course of his employment.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC010975
Case Name	Debby B Smith v. Carillon At Cambrige Lakes
Consolidated Cases	19WC026973;
Proceeding Type	Remand from Circuit Court of Kane County
Decision Type	Commission Decision Remand Arbitration
Commission Decision Number	23IWCC0142
Number of Pages of Decision	7
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Michael Rothmann
Respondent Attorney	John O'Grady

DATE FILED: 3/27/2023

/s/Marc Parker, 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

Debby Smith,

Petitioner,

vs.

No. 19 WC 10975, consolidated w/ 19 WC 26973

Carillon at Cambridge Lakes,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Kane County, which reversed the Commission's July 14, 2021 decision, "as to AWW and penalties." The Circuit Court ordered the Arbitrator to:

a. consider all relevant factors related to principal/agency and employer/employee, to determine whether Smith was an independent contractor or employee of Centre of Elgin, and whether wages from the Centre of Elgin should be included in her AWW, and
b. consider the issues of penalties and provide a factual basis as to why penalties are either assessed or denied.

Procedural History:

Petitioner, a part-time fitness instructor, filed two separate Applications for Adjustment of Claim, alleging work injuries on October 30, 2018 (19 WC 10975), and November 27, 2018 (19 WC 26973).

On May 8, 2020, both claims were consolidated and tried together before Arbitrator Seal. On June 17, 2020, the Arbitrator entered a decision in which he awarded Petitioner benefits, but denied her request for penalties and attorney's fees.

On June 23, 2020 and July 10, 2020, Respondent and Petitioner filed respective Reviews before the Commission. Following oral arguments, the Commission issued separate decisions on July 14, 2021. In them, we modified the Arbitrator's AWW calculation, but affirmed the denial of penalties and attorney's fees.

Thereafter, the parties filed cross-appeals in the Kane County Circuit Court. On February 17, 2022, the Circuit Court entered its Order reversing parts of the Commission's decision. On May 5, 2022, Arbitrator Soto granted a motion to have these cases returned to the docket of Arbitrator Seal, who had written the Arbitration decision in this matter.

Commission Rule 9060.20(b) states: "Upon receipt of an Order from a reviewing court, the Commission shall docket the Order and set the matter for hearing in the same manner as Petitions for Review, except that, when practical, the cause shall be returned to the original Commissioner." 50 Ill. Adm. Code 9060.2(b) (2016). The Commission, now having jurisdiction, addresses the mandates in the Circuit Court's Order – to consider relevant factors and provide factual bases for its decisions regarding the issues of AWW and penalties.

Average Weekly Wage (AWW):

At arbitration, the Arbitrator noted the parties' stipulation that Petitioner's AWW from Respondent was $158.65. The issue at that time regarding Petitioner's AWW was whether Petitioner's $145.14/week business income, received as an independent contractor from Centre of Elgin ("Elgin"), should be included as concurrent wages in her AWW calculation. The Arbitrator believed that it should, and determined Petitioner's AWW to be $303.79.

In our July 14, 2021 decision, we acknowledged that in some circumstances, Section 10 of the Act does allow wages from a concurrent employer to be included in the AWW calculation. However, we found that Petitioner's business income earned as an independent contractor at Elgin, was not from an "employer," and did not constitute "wages." In our decision, we found Petitioner's AWW to be $158.65, and explained in detail why the *Paoletti*[1] case, cited by the Arbitrator, did not apply or provide an exception to that provision of Section 10. We now adopt and incorporate herein by reference the reasoning from our July 14, 2021 decision as to why *Paoletti* does not apply.

On initial Review before the Commission, Petitioner's counsel acknowledged that Petitioner was an independent contractor for Elgin. At no time was an argument was made that she was an employee of Elgin.

[1] *Paoletti v. Industrial Comm'n,* 279 Ill. App. 3d. 988 (1996).

Notwithstanding the above, and pursuant to the Circuit Court's mandate, the Commission has also considered all relevant factors related to principal/agency (none), and employer/employee relationship (discussed below) in determining whether Petitioner was an independent contractor or employee of Elgin at the time of her work accidents.

In *Roberson v. Indus. Comm'n, (P.I. & I. Motor Express, Inc.),* 225 Ill. 2d 159l, 866 N.E.2d 191 (2007), the Illinois Supreme Court identified factors to be considered to help determine when a person is an employee. Those included: whether the employer may control the manner in which the person performs the work; whether the employer dictated the person's schedule; whether the employer pays the person hourly; whether the employer withholds income and social security taxes from the person's compensation; whether the employer may discharge the person at will; whether the employer supplies the person with materials and equipment; and whether the employer's general business encompasses the person's work. The Supreme Court held that no single factor is determinative, although the right to control the work is often considered most important.

The Commission finds Petitioner provided no testimony showing that Elgin controlled or directed the performance of her work. She was simply assigned to teach certain aerobics classes, and then taught them. Petitioner was well qualified to teach aerobics classes without supervision or control; she had multiple certifications to teach such classes, and had experience working as a certified fitness instructor since 1984. She presented no testimony that her classes needed to be, or ever were supervised, or that anyone directed her how to teach them.

Petitioner presented no evidence that her schedule at Elgin was dictated by anyone, rather than being her decision to choose which classes she would teach, and how often. No evidence was offered to show whether the equipment which Petitioner used in teaching classes at Centre of Elgin, if any, was provided by them or owned by her.

Petitioner offered her pay details from Elgin into evidence. Those showed she was paid as a vendor, and showed a vendor number and an account number for each payment. No taxes or other deductions were taken from her checks. Petitioner admitted that at the end of the year, she received a 1099, not a W-2.

The Commission has also considered that, upon direct questioning, Petitioner admitted that she was an independent contractor for Elgin. She acknowledged signing an independent contractor agreement with Elgin. No evidence was presented to show whether Elgin had, or did not have, the right to discharge her at will. While Petitioner's independent contractor agreement with Elgin may have provided answers to some of these questions, that document was not offered into evidence.

The Commission acknowledges that Petitioner was paid hourly by the Elgin, a factor which weighs in favor of Petitioner being found an employee. However, the Commission finds there is a greater preponderance of evidence in the record to support finding that Petitioner was an independent contractor of Elgin at the time of her accidents. The Commission therefore finds that

Petitioner's income as an independent contractor from Elgin should not be included in the calculation of her AWW. The Commission finds Petitioner's AWW, in both 19 WC 10975 and 19 WC 26973, to be $158.65.

Penalties and Attorney's Fees:

The Commission has considered the issue of penalties and attorney's fees, and again affirms and adopts the Arbitrator's finding that Petitioner failed to prove by a preponderance of the evidence that Respondent's conduct warranted penalties under section 19(k) or 19(l), or attorney's fees under Section 16.

The requirements for an award of penalties under Section 19(l) of the Act are specific. That section states,

> "*If the employee has made written demand for payment* of benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In the case of demand for payment of medical benefits under Section 8(a), the time for the employer to respond shall not commence until the expiration of the allotted 30 days specified under Section 8.2(d)." *(Emphasis added.)*

Petitioner did not present evidence that she made any written demand for benefits, as required by Section 19(l). The Commission finds penalties under Section 19(l) are unwarranted.

The standard for awarding penalties under Section 19(k) is higher than the standard under 19(l). Section 19(k) of the Act provides, in pertinent part:

> "In case where there has been any *unreasonable* or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award. Failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of this Act shall be considered unreasonable delay." *(Emphasis added.)* 820 ILCS 305/19(k).

Section 16 of the Act provides for an award of attorney fees when an award of additional compensation under Section 19(k) is appropriate. 820 ILCS 305/16. Section 16 provides, in pertinent part:

> "Whenever the Commission shall find that the employer, his or her agent, service company or insurance carrier *** has been guilty of unreasonable or vexatious

> delay, intentional underpayment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier."

Sections 19(k) and 16 require more than an "unreasonable delay" in payment of an award. *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 514-15 (1998). It is not enough for the claimant to show that the employer simply failed, neglected, or refused to make payment or unreasonably delayed payment without good and just cause. *Id.* Instead, Section 19(k) penalties and Section 16 fees are "intended to address situations where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose." *Id.* In addition, while Section 19(l) penalties are mandatory, the imposition of penalties and attorney fees under Section 19(k) and Section 16 is discretionary. *Id.*

In denying certain medical expenses, Respondent believed Petitioner had exceeded her choice of two medical providers and their chain or referrals. Although we ultimately found Petitioner did not exceed her permitted number of medical provider choices, there was some inconsistent evidence on that issue – Dr. Dickey testified that Petitioner was not referred to her by anyone. Respondent's argument that Petitioner exceeded her choice of two doctors and chain of referrals was not without some basis in the evidence.

In denying benefits related to Petitioner's left knee, Respondent relied upon the opinions of Dr. Levin that Petitioner symptoms existed since 2017 as a result of preexisting degenerative arthritis. Respondent also relied upon Dr. Holmes' opinions that Petitioner's plantar plate tear and Morton's neuroma were not related to her October 30, 2018 injury, when it terminated TTD and medical benefits after March 13, 2019.

The Commission acknowledges that in our July 14, 2021 decision, we found the opinions of Petitioner's treating physicians more persuasive on causation issues. Dr. Daniels and Dr. Dickey opined that Petitioner's years of fitness training could have or would have caused or contributed to her injuries. However, the Commission does not find that Respondent's failure to pay benefits was done deliberately, in bad faith, or for an improper purpose. The Commission therefore affirms and adopts the Arbitrator's decision denying Petitioner penalties under Section 19(k), Section 19(l), and attorney's fees under Section 16 of the Act.

Lastly, the Commission finds that Arbitrator Soto did not have jurisdiction on May 5, 2022, when he granted a motion to transfer these claims to Arbitrator Seal. That order is vacated.

IT IS THEREFORE ORDERED BY THE COMMISSION that its decision of July 14, 2021, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that at the time of Petitioner's work accidents, she was an independent contractor and not an employee of Centre of Elgin, and that her business income from that work is not included in the calculation of her AWW. The Commission finds Petitioner's average weekly wage to be $158.65.

IT IS FURTHER ORDERED BY THE COMMISSION that the penalties and attorney's fees are denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Arbitrator Soto's order, dated May 5, 2022 is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be **remanded to Arbitrator Seal** for further proceedings consistent with this Decision, and 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), 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 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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $34,900.00. 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.

March 27, 2023

MP/mcp
o-05/20/21
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	19WC026973
Case Name	Debby B Smith v. Carillon At Cambridge Lakes
Consolidated Cases	19WC010975;
Proceeding Type	Remand from Circuit Court of Kane County
Decision Type	Commission Decision Remand Arbitration
Commission Decision Number	23IWCC0143
Number of Pages of Decision	7
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Michael Rothmann
Respondent Attorney	John O'Grady

DATE FILED: 3/27/2023

/s/Marc Parker, 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

Debby Smith,

Petitioner,

vs.

No. 19 WC 26973, consolidated w/ 19 WC 10975

Carillon at Cambridge Lakes,

Respondent.

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a. consider all relevant factors related to principal/agency and employer/employee, to determine whether Smith was an independent contractor or employee of Centre of Elgin, and whether wages from the Centre of Elgin should be included in her AWW, and
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On June 23, 2020 and July 10, 2020, Respondent and Petitioner filed respective Reviews before the Commission. Following oral arguments, the Commission issued separate decisions on July 14, 2021. In them, we modified the Arbitrator's AWW calculation, but affirmed the denial of penalties and attorney's fees.

Thereafter, the parties filed cross-appeals in the Kane County Circuit Court. On February 17, 2022, the Circuit Court entered its Order reversing parts of the Commission's decision. On May 5, 2022, Arbitrator Soto granted a motion to have these cases returned to the docket of Arbitrator Seal, who had written the Arbitration decision in this matter.

Commission Rule 9060.20(b) states: "Upon receipt of an Order from a reviewing court, the Commission shall docket the Order and set the matter for hearing in the same manner as Petitions for Review, except that, when practical, the cause shall be returned to the original Commissioner." 50 Ill. Adm. Code 9060.2(b) (2016). The Commission, now having jurisdiction, addresses the mandates in the Circuit Court's Order – to consider relevant factors and provide factual bases for its decisions regarding the issues of AWW and penalties.

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At arbitration, the Arbitrator noted the parties' stipulation that Petitioner's AWW from Respondent was $158.65. The issue at that time regarding Petitioner's AWW was whether Petitioner's $145.14/week business income, received as an independent contractor from Centre of Elgin ("Elgin"), should be included as concurrent wages in her AWW calculation. The Arbitrator believed that it should, and determined Petitioner's AWW to be $303.79.

In our July 14, 2021 decision, we acknowledged that in some circumstances, Section 10 of the Act does allow wages from a concurrent employer to be included in the AWW calculation. However, we found that Petitioner's business income earned as an independent contractor at Elgin, was not from an "employer," and did not constitute "wages." In our decision, we found Petitioner's AWW to be $158.65, and explained in detail why the *Paoletti*[1] case, cited by the Arbitrator, did not apply or provide an exception to that provision of Section 10. We now adopt and incorporate herein by reference the reasoning from our July 14, 2021 decision as to why *Paoletti* does not apply.

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[1] *Paoletti v. Industrial Comm'n,* 279 Ill. App. 3d. 988 (1996).

Notwithstanding the above, and pursuant to the Circuit Court's mandate, the Commission has also considered all relevant factors related to principal/agency (none), and employer/employee relationship (discussed below) in determining whether Petitioner was an independent contractor or employee of Elgin at the time of her work accidents.

In *Roberson v. Indus. Comm'n, (P.I. & I. Motor Express, Inc.),* 225 Ill. 2d 159l, 866 N.E.2d 191 (2007), the Illinois Supreme Court identified factors to be considered to help determine when a person is an employee. Those included: whether the employer may control the manner in which the person performs the work; whether the employer dictated the person's schedule; whether the employer pays the person hourly; whether the employer withholds income and social security taxes from the person's compensation; whether the employer may discharge the person at will; whether the employer supplies the person with materials and equipment; and whether the employer's general business encompasses the person's work. The Supreme Court held that no single factor is determinative, although the right to control the work is often considered most important.

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The Commission acknowledges that Petitioner was paid hourly by the Elgin, a factor which weighs in favor of Petitioner being found an employee. However, the Commission finds there is a greater preponderance of evidence in the record to support finding that Petitioner was an independent contractor of Elgin at the time of her accidents. The Commission therefore finds that

Petitioner's income as an independent contractor from Elgin should not be included in the calculation of her AWW. The Commission finds Petitioner's AWW, in both 19 WC 10975 and 19 WC 26973, to be $158.65.

Penalties and Attorney's Fees:

The Commission has considered the issue of penalties and attorney's fees, and again affirms and adopts the Arbitrator's finding that Petitioner failed to prove by a preponderance of the evidence that Respondent's conduct warranted penalties under section 19(k) or 19(l), or attorney's fees under Section 16.

The requirements for an award of penalties under Section 19(l) of the Act are specific. That section states,

> "*If the employee has made written demand for payment* of benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In the case of demand for payment of medical benefits under Section 8(a), the time for the employer to respond shall not commence until the expiration of the allotted 30 days specified under Section 8.2(d)." *(Emphasis added.)*

Petitioner did not present evidence that she made any written demand for benefits, as required by Section 19(l). The Commission finds penalties under Section 19(l) are unwarranted.

The standard for awarding penalties under Section 19(k) is higher than the standard under 19(l). Section 19(k) of the Act provides, in pertinent part:

> "In case where there has been any *unreasonable* or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award. Failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of this Act shall be considered unreasonable delay." *(Emphasis added.)* 820 ILCS 305/19(k).

Section 16 of the Act provides for an award of attorney fees when an award of additional compensation under Section 19(k) is appropriate. 820 ILCS 305/16. Section 16 provides, in pertinent part:

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> delay, intentional underpayment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier."

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In denying certain medical expenses, Respondent believed Petitioner had exceeded her choice of two medical providers and their chain or referrals. Although we ultimately found Petitioner did not exceed her permitted number of medical provider choices, there was some inconsistent evidence on that issue – Dr. Dickey testified that Petitioner was not referred to her by anyone. Respondent's argument that Petitioner exceeded her choice of two doctors and chain of referrals was not without some basis in the evidence.

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The Commission acknowledges that in our July 14, 2021 decision, we found the opinions of Petitioner's treating physicians more persuasive on causation issues. Dr. Daniels and Dr. Dickey opined that Petitioner's years of fitness training could have or would have caused or contributed to her injuries. However, the Commission does not find that Respondent's failure to pay benefits was done deliberately, in bad faith, or for an improper purpose. The Commission therefore affirms and adopts the Arbitrator's decision denying Petitioner penalties under Section 19(k), Section 19(l), and attorney's fees under Section 16 of the Act.

Lastly, the Commission finds that Arbitrator Soto did not have jurisdiction on May 5, 2022, when he granted a motion to transfer these claims to Arbitrator Seal. That order is vacated.

IT IS THEREFORE ORDERED BY THE COMMISSION that its decision of July 14, 2021, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that at the time of Petitioner's work accidents, she was an independent contractor and not an employee of Centre of Elgin, and that her business income from that work is not included in the calculation of her AWW. The Commission finds Petitioner's average weekly wage to be $158.65.

IT IS FURTHER ORDERED BY THE COMMISSION that the penalties and attorney's fees are denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Arbitrator Soto's order, dated May 5, 2022 is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be **remanded to Arbitrator Seal** for further proceedings consistent with this Decision, and 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), 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 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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $34,900.00. 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.

March 27, 2023

MP/mcp
o-05/20/21
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	20WC003529
Case Name	Monica Housley v. Liberty Village of Marion
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0144
Number of Pages of Decision	17
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Molly Price
Respondent Attorney	Timothy Steil

DATE FILED: 3/28/2023

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Monica N. Housley,

Petitioner,

vs. NO: 20 WC 3529

Liberty Village of Marion,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses and permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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 23, 2022, is hereby affirmed and adopted.

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

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

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

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

March 28, 2023
o3/22/23
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC003529
Case Name	HOUSLEY, MONICA N. v. LIBERTY VILLAGE OF MARION
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Molly Price
Respondent Attorney	Dru Dennis

DATE FILED: 5/23/2022

THE INTEREST RATE FOR THE WEEK OF MAY 17, 2022 1.49%

/s/ Jeanne AuBuchon, 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
ARBITRATOR'S DECISION
19(b)

MONICA N. HOUSLEY
Employee/Petitioner

v.

LIBERTY VILLAGE OF MARION
Employer/Respondent

Case # **20** WC **03529**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Herrin**, on **January 20, 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, **December 16, 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 $**16,471.25**; the average weekly wage was $**430.81**.

On the date of accident, Petitioner was **43** 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 $**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 for medical expenses as listed in Petitioner's Exhibit 7 pursuant to Section 8(a) of the Act. Respondent is entitled to 8(j) credit for all benefits paid through the group insurance for those expenses.

Respondent shall authorize medical care – specifically further evaluation and treatment, including surgical intervention, physical therapy and follow-up care as recommended by Dr. Beyer.

TTD benefits are 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.

Jeanne L. AuBuchon

Jeanne Aubuchon

MAY 23, 2022

PROCEDURAL HISTORY

This matter proceeded to trial on January 20, 2022, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of her employment; 2) the causal connection between the accident and the Petitioner's left knee condition; 3) payment of medical bills; 4) entitlement to TTD benefits; and 5) entitlement to prospective medical care to the Petitioner's left knee.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 43 years old and had been employed by the Respondent as a CNA. (AX1, T. 12) On December 16, 2019, the Petitioner was helping another CNA pull up a patient. (T. 12) When she went to grab the draw sheet to pull him up, her knee turned, and she heard a pop. (Id.) The Petitioner testified that she had a knee injury in 2018 when she bruised her knee in a fall. (T. 35, 37) At that time, she sought treatment at Good Samaritan Hospital which consisted of using ice. (T. 36) She said she had no knee pain after that until the time of the work accident. (T. 37)

On the day of the accident at issue, The Petitioner sought treatment at Heartland Regional Medical Group Occupational Health. (PX2) She gave a description of the accident consistent with her testimony. (Id.) An examination of her knee showed minimal swelling, tenderness to palpation and decreased range of motion. (Id.) X-rays showed no acute abnormality. (Id.) Physician Assistant Sherri Parr suggested that further diagnostic testing may be necessary. (Id.) She advised the Petitioner to use ice, elevation and naproxen and placed the Petitioner on restricted duty until December 23, 2019. (Id.) The Petitioner returned on December 23, 2019, with continuing symptoms and was prescribed pain medication, referred for an MRI and given work

restrictions. (Id.) The MRI performed on January 3, 2020, at Diagnostic Imaging Center of Carterville showed a small inner-margin tear of the posterior body of the lateral meniscus, minimal patellofemoral joint effusion, a small Baker's cyst and minimal subchondral cystic/edematous change within the lateral tibial plateau that was likely degenerative or due to prior trauma. (PX3) On January 7, 2020, Dr. Lawrence Splitter at Heartland Regional referred the Petitioner to orthopedics and continued work restrictions. (IPX2.)

On January 20, 2020, the Petitioner saw Dr. Craig Beyer, an orthopedic surgeon at Heartland Regional, to whom she gave a consistent history and complained of achy pain in her knee, a sense of giving way, stiffness, loss of motion and swelling. (PX4) Dr. Beyer examined the Petitioner and reviewed X-rays and the MRI. (Id.) He noted significant implications for knee issues due to her weight, which was double her ideal body weight for her height. (Id.) On the MRI, Dr. Beyer saw patellar tilt, intact menisci and ligaments and slight subchondral intraosseous edema in the lateral tibial plateau consistent with early degenerative changes. (Id.) The physical examination showed no instability signs, well-maintained range of motion, positive grind test, minimal subpatellar crepitation, tenderness over the lateral patellar facet trochlear articulation and an increased anatomical and functional Q-angle. (Id.) Dr. Beyer diagnosed the Petitioner with patellofemoral pain for which she would be predisposed due to obesity. (Id.) He recommended using ice, modifying activities and wearing a brace. (Id.) He prescribed physical therapy, performed a steroid injection and continued work restrictions. (Id.) The Petitioner underwent two physical therapy sessions at Heartland Regional on January 29, 2020, and February 3, 2020. (RX5) The second therapy note said the Petitioner had improved gait and left knee flexion that day. (Id.)

The Petitioner testified that the injection provided relief for about four days. (T. 15) She said she tried icing, elevating and bracing her knee as well as medications and physical therapy,

but her pain continued. (T. 16-17) At a follow-up visit on February 17, 2020, Dr. Beyer found that nonsurgical treatment had failed and offered diagnostic arthroscopy and lateral release. (Id.) He referred the Petitioner to a bariatric surgeon for weight loss. (Id.)

On February 21, 2020, a peer review report was prepared by Dr. Clarence Fossier, an orthopedic surgeon in North Carolina. (RX4, RX3) After reviewing the Petitioner's medical records and Official Disability Guidelines, he found that the diagnostic arthroscopy and lateral release was not related to the work injury and was not medically reasonable and necessary due to the work injury occurring only two months prior, the Petitioner's obesity and the fact that she was not moving her leg well. (Id.)

On March 20, 2020, the Petitioner underwent a Section 12 examination by Dr. Lyndon Gross, an orthopedic surgeon at The Orthopedic Center of St. Louis. (RX2) The Petitioner gave a consistent description of the accident. (Id.) Dr. Gross examined the Petitioner and reviewed her medical records, X-rays and MRI. (Id.) The physical examination showed diminished range of motion as compared to her right knee, negative instability signs and pain with flexion and patella mobilization and compression. (Id.) On the MRI, Dr. Gross found intact ligaments, some signal in the inner margin of the posterior horn of the lateral meniscus, some underlying subchondral edema, some thinning of the patella cartilage and a small amount of joint fluid. (Id.)

Dr. Gross diagnosed the Petitioner with left knee pain related to a strain of her patellofemoral joint and pre-existing patella chondromalacia. (Id.) He believed the work injury caused a temporary exacerbation of the patella chondromalacia and that the Petitioner had reached maximum medical improvement as it related to the work injury. (Id.) He said the Petitioner had appropriate nonoperative treatment but acknowledged that she continued to have symptoms that he believed were related to the pre-existing patella chondromalacia that he said was not aggravated

or accelerated by the work accident based on the mechanism of injury and review of the imaging studies. (Id.) He noted that there was a question of a possible lateral meniscus tear that may have been more consistent with degeneration of the meniscus and cartilage. (Id.) He did not believe any further management was necessary as it related to the work injury. (Id.) Nor did he believe that surgical intervention was appropriate due to the Petitioner not having significant cartilage damage to the patella or trochlear groove. (Id.) He noted some thinning of the cartilage in the patella and no significant thinning of the cartilage in the trochlear groove nor underlying subchondral edema. (Id.) He said that if the Petitioner did have lateral patella compression syndrome, the more appropriate management from a surgical standpoint would be an anterior tibial tubercle osteotomy. (Id.) He did not believe the Petitioner was a candidate for this surgery for the same reasons that she was not a candidate for arthroscopy with lateral release. (Id.) He believed the Petitioner was capable of working without restrictions, and any work restrictions would be related to her pre-existing patella chondromalacia. (Id.)

The Petitioner returned to Dr. Beyer on December 21, 2020, and he found tightness of the lateral restraints with a positive grind test, minimal crepitation, some lateralization of tibial tubercle and exceedingly tight patellar mobility. (PX4) He continued to recommend a lateral release and bariatric surgery. (Id.) He stated that Dr. Gross's opposition to a lateral release was completely opposite to the reality that a lateral release was likely to be more effective in a person with minimal degenerative change and simple lateral patellar compression syndrome with cartilage overload and pain. (Id.)

Dr. Beyer testified consistently with his reports at a deposition on February 1, 2021. (PX1) He said the Petitioner had patellofemoral pain with maltracking and that chondromalacia was a consequence of maltracking. (Id.) He said that maltracking and chondromalacia were intrinsic

conditions, and that an acute injury could aggravate underlying patella chondromalacia. (Id.) In addition to disagreeing with Dr. Gross's surgical assessment, Dr. Beyer pointed out that Dr. Gross did not note – and apparently did not test for – patellar tilt, which Dr. Beyer said was a very important indicator. (Id.) Dr. Beyer testified that in the absence of any records showing previous problems with her knee, her ongoing knee problems were a combination of patellar wear and obesity and appeared to be instigated by injury. (Id.) He also said the work injury was an aggravation of the Petitioner's pre-existing condition in that it made her asymptomatic condition become symptomatic. (Id.) He opined that the treatment to date was reasonable, necessary and causally related to the work injury and that the need for surgery was due to the Petitioner's anatomy and an injury event. (Id.)

On cross-examination, Dr. Beyer testified that obese people with patellofemoral maltracking are more likely to be symptomatic, and symptoms can come on spontaneously without a traumatic event. (Id.) He stated that he could not know with certainty from an objective standpoint whether the diagnostic findings were acute but noted that the Petitioner had no symptoms before the accident and developed pain and swelling after, suggesting they were acute. (Id.) He said he would not have a problem with the Petitioner working because activities would not damage her knee any further, but it might cause some aggravation. (Id.) He said he preferred patients to maintain as a high a level of activity as they can tolerate. (Id.)

Dr. Gross testified consistently with his report at a deposition on February 18, 2021. (RX1) He stated that on the X-rays he obtained he saw no significant patella tilt or subluxation. (Id.) He saw what he classified as Grade 2 chondromalacia that probably was exacerbated by the work injury as well as a patellofemoral joint strain. (Id.) He did not review the X-rays from December 16, 2019, or January 20, 2020. (Id.) He disagreed with Dr. Beyer's diagnosis of lateral patella

syndrome because the MRI did not show any significant damage to the lateral facet of the patellar groove or underlying subchondral edema. (Id.) He said he saw no maltracking of the patella and said chondromalacia is not necessarily a consequence of maltracking. (Id.)

Dr. Gross's definition of temporary exacerbation was the same as Dr. Beyer's definition of aggravation – something that makes an underlying problem symptomatic but does not change the underlying problem. (Id.) He defined an aggravation as something that changes the underlying anatomic problem. (Id.) Regarding the lateral release recommended by Dr. Beyer, Dr. Gross said the procedure would be performed for a lateral tilt but not for lateral subluxation. (Id.)

Dr. Fossier testified consistently with his report at a deposition on October 13, 2021. (RX3) He said he stopped operating in 2010, and better than 99 percent of his practice was performing medical/legal work such as independent medical evaluations and peer reviews. (Id.) He volunteered at a community clinic two days per month. (Id.) Regarding his review of the Petitioner's records, Dr. Fossier said he reviewed the imaging reports but not the studies themselves. (Id.) He said the MRI report did not reference patellar maltracking or tilt. (Id.) Dr. Fossier clarified his opinion that Dr. Beyer's proposed surgery was not reasonable or necessary "for that time period" and should be reserved for people who have failed a full course of conservative treatment. (Id.) He said the Petitioner's physical therapy was minimal. (Id.) Another basis for his opinion was that the differences between the MRI report and Dr. Beyer's observations were not reconciled. (Id.)

The Petitioner testified that at the time of arbitration, she had pain in her knee, throbbing and numbness that affected her activities, such as exercising, bowling, skating, walking, bending, lifting and carrying heavy items and performing household chores. (T. 17-20, 24) She said she experienced stiffness in her knee, had trouble sleeping and had achy and throbbing pain in cold

weather. (T. 21-22) The Petitioner stopped working for the Respondent in July 2020 and began working for a memory care center in August 2020, where she worked until August 2021. (T. 41-42) She said she had soreness in her knee while working at the memory care center but she worked the night shift and did not have to do any lifting because the residents were asleep. (T. 42-43) On October 4, 2021, she began working as a CNA at Herrin Hospital. (T. 42) She was working without restrictions but said the job did not require as much physical demand. (T. 23, 30) She said she had pain with being on her leg for long periods at work. (T. 38)

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?

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 the claimant's employment and (2) that the injury arose out of the claimant's employment. *McAllister v. Ill. Workers' Comp. Com'n, 2020 IL 12484, ¶ 32.*

There was no evidence to contradict that the Petitioner's testimony that she twisted her knee while transferring a patient. The doctors agreed this caused an injury but disagreed on the nature of that injury. The real issue is whether the Petitioner's current condition is causally related to the accident. This will be addressed below. Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that her injuries occurred in the course of and arose out of her employment.

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

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Indus. Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n,* 371 Ill.App.3d 882, 888, 864 N.E.2d 266, 309 Ill.Dec. 400 (5th Dist. 2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm.,* 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill.Dec. 6 (1982). Employers are to take their employees as they find them. *A.C.& S. v. Industrial Comm'n*, 304 Ill.App.3d 875, 883, 710 N.E.2d 837, 238 Ill.Dec. 40 (1st Dist. 1999)

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital*, 371 Ill.App.3d at 888.

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Industrial. Comm'n*, 77 Ill. 2d 469, 471-472, 397 N.E.2d 834, 34 Ill.Dec. 162 (1979).

Drs. Beyer and Gross agreed that the Petitioner had pre-existing conditions but disagreed as to what they were. Dr. Beyer found thinning cartilage and patellar tilt and malignment, while Dr. Gross found only thinning cartilage. They disagreed on lateral and patellar tightness. Dr. Beyer believed the work accident aggravated her pre-existing conditions, while Dr. Gross believed

there was a temporary exacerbation. They disagreed on the definition of aggravation. For the purposes of finding a causal connection, this is a distinction without a difference. Whether or not the accident changed the Petitioner's anatomy, it worsened her condition to the extent that she was experiencing symptoms and needed treatment. Neither doctor doubted the veracity of the Petitioner's reports, and the Arbitrator finds her to be credible.

The circumstantial evidence supports Dr. Beyer's opinions. The Petitioner 's knee was asymptomatic until the accident of December 16, 2019. Also, the Petitioner's symptoms continued after conservative treatment, and she was still unable to perform manual duties that she was able to perform before the accident. This circumstantial evidence belies Dr. Gross's opinion that the Petitioner suffered only a temporary exacerbation and was at maximum medical improvement.

Also, as the Petitioner's treating physician, Dr. Beyer has had more opportunities to become familiar with the Petitioner and her condition. For all these reasons, the Arbitrator gives his opinions greater weight and finds that the Petitioner proved by a preponderance of the evidence that her work injury aggravated and/or exacerbated her pre-existing conditions – thus establishing a causal connection between the accident and her current condition.

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

Dr. Gross believed the medical treatment the Petitioner received was reasonable and necessary. Therefore, the Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 7, with 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).

Dr. Gross's opinion that no further treatment was necessary was based on his findings regarding causation. As stated above, this opinion is flawed in that the Petitioner is still experiencing symptoms. Dr. Fossier's opinion that surgery was not reasonable or necessary was based on his findings that the Petitioner did not have sufficient conservative treatment and that Dr. Beyer saw pathology on the imaging studies that the radiologist did not. Dr. Fossier did not review the studies himself. Again, the Arbitrator gives Dr. Beyer's opinions greater weight.

The effects of the Petitioner's injury have not been relieved or cured. She has been able to work full duty at jobs that are not as physically demanding as her job with the Respondent. But she still is experiencing pain in her knee that affects her activities.

Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care, specifically further evaluation and treatment, including surgical intervention, physical therapy and follow-up care as recommended by Dr. Beyer. The Respondent shall authorize and pay for such.

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

According to the Request for Hearing (AX1), the parties dispute temporary total disability benefits for the period of January 27, 2020, through February 3, 2020.

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

The records reflect that the Petitioner had been working restricted duty. There was no evidence presented that the Petitioner did not work on those days or that she was not accommodated. Therefore, TTD benefits are 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.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC022997
Case Name	Loxie U Sanders III v. Autozone
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0145
Number of Pages of Decision	15
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	James Keefe, Jr., Ron Coffel
Respondent Attorney	Christopher Crawford

DATE FILED: 3/27/2023

/s/Marc Parker, Commissioner

Signature

23IWCC0145

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

Loxie U. Sanders, III,

Petitioner,

vs. NO: 20 WC 022997

AutoZone,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, prospective medical care, and temporary total disability ("TTD"), 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

The Commission modifies the Arbitrator's award of TTD benefits. The Request for Hearing form indicates that Petitioner was married with one (1) dependent child. AX1. Therefore, the proper minimum rate for an accident occurring on June 17, 2020 would be $320.67.

The Commission corrects a scrivener's error in the Arbitrator's Decision on page 3, the first sentence under the heading "TESTIMONY" should read that Petitioner was 58 years old.

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 January 19, 2022, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED that Respondent shall pay to Petitioner temporary total disability benefits of $320.67/week for 70-1/7 weeks, commencing June 24, 2020 through October

27, 2021, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical expenses outlined in Petitioner's Group Exhibit 8, subject to §8(a)/§8.2 of the Act.

IT IS FURTHER ORDERED that Respondent shall authorize and pay for prospective medical treatment as recommended by Dr. Gornet, pursuant to §8(a)/§8.2 of the Act.

IT IS FURTHER ORDERED that Respondent shall receive credit of $10,805.07 for temporary total disability benefits paid to Petitioner on account of this 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.

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

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

March 27, 2023
o: 03/07/2023
MP/ahs
51

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC022997
Case Name	SANDERS III, LOXIE U v. AUTOZONE
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	Christopher Crawford

DATE FILED: 1/19/2022

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

/s/Linda Cantrell, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Loxie U. Sanders, III
Employee/Petitioner

v.

AutoZone
Employer/Respondent

Case # **20** WC **022997**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Collinsville**, on **10/27/21**. 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, **6/17/20**, 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 $**21,221.12**; the average weekly wage was $**408.10**.

On the date of accident, Petitioner was **58** 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 $**10,805.07** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**10,805.07**.

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

ORDER

Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's Group Exhibit 8, as provided in §8(a) and §8.2 of the Act. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits and Respondent shall hold Petitioner harmless from claims by any providers of the services for which Respondent is receiving this credit.

Respondent shall pay reasonable and necessary prospective medical care to Petitioner's cervical and lumbar spine as recommended by Dr. Gornet until Petitioner reaches maximum medical improvement.

Respondent shall pay Petitioner temporary total disability benefits of $**283.67 (Min rate)**/week for **70-1/7ths weeks** for the period **6/24/20 through 10/27/21**, as provided in Section 8(b) of the Act. Respondent shall receive a credit of $10,805.07 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.

JANUARY 19, 2022

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

LOXIE U. SANDERS, III,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 20-WC-022997
	)	
AUTO ZONE,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Collinsville on October 27, 2021 pursuant to Section 19(b) of the Act. The parties stipulated that on June 17, 2020 Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent. The issues in dispute are causal connection, medical bills, temporary total disability benefits, and prospective medical care. All other issues have been stipulated.

TESTIMONY

Petitioner was 48 years old, married, with one dependent child at the time of accident. He was hired by Respondent in May 2020 as a delivery driver. Petitioner identified that the essential job functions identified in Respondent's Exhibit 4 fairly and accurately represent the job demands and functions of his position. Petitioner testified he had no physical issues performing his job duties when he was hired. Petitioner delivered auto parts to AutoZone stores located in Illinois and Kentucky. His longest trip was approximately thirteen hours. His job involved loading and unloading parts from his truck that weighed as little as a light bulb to as much as a motor that required a lift or four men to carry.

Petitioner testified that on 6/17/20 he traveled to Kentucky to make a delivery. While attempting to make a left turn through an intersection, a vehicle drove through a stoplight and struck the driver's side of his truck between the door and front end. Petitioner testified he was knocked to the right and his body jerked. His vehicle was towed from the scene.

Petitioner testified a crowd gathered around the scene and shouted racist words at him. His grandfather was from Africa and his grandmother was from Ireland. His mother is Cherokee Apache. He felt law enforcement could not control the situation and he wanted to leave the scene. Petitioner rode in the tow truck and called a representative of Respondent who picked him

up and drove him back to Illinois. He stated he initially injured his neck and back that progressed to shooting pains into his left groin and leg. Petitioner followed up with his primary care physician Dr. Nathan Oldham who ordered MRIs of his cervical and lumbar spine and placed him off work. Dr. Oldham referred him to Dr. Gornet who examined him on 9/22/20. Dr. Gornet continued him off work. Petitioner underwent cervical and lumbar injections that provided temporary relief. He had nerve ablations in his lumbar spine that provided temporary relief. He believes Dr. Gornet has recommended a four-level cervical disc replacement, followed by a three-level lumbar disc replacement.

Petitioner testified that prior to 6/17/20 he had no injuries or problems with his cervical spine. He stated he is an ex-train conductor for Amtrak Corporation. Petitioner testified that in 2011 he was on an Amtrak train that was struck by a mining truck. The mining truck hit a crew car containing 27 crew members that were asleep. He described an explosion that caused all three train cars to be locked down and the passengers were locked inside. He broke a window and cleared the crew car. Petitioner stated he proceeded to save 198 passengers aboard the train. Petitioner suffered mental injuries as a result of the incident, including PTSD and conversion disorder that caused imbalance and the use of a cane. He testified that MRIs were performed at that time that were normal and he did not treat with a surgeon for his neck or back as a result of the train accident.

Petitioner testified he had a right shoulder injury in 2015 as a result of falling off a ladder. He underwent shoulder surgery and had no injuries to his neck. Dr. Oldham's records state Petitioner suffered from chronic low back pain. Petitioner denied ever treating for back problems and explained that his father has the same name, had a history of back problems, and also treated with Dr. Oldham. Petitioner testified he was not taking any pain medication for an orthopedic condition at the time of his accident.

Petitioner stated he desires to undergo the recommended cervical surgery. He rates his cervical pain 8 out of 10 and he no longer takes Hydrocodone per Dr. Gornet's orders. He does not feel capable of performing his work duties at present.

Petitioner testified his low back pain is 8 out of 10 without pain medication. He is cane dependent and sometimes cannot lift his left leg. He testified he treated for injuries from the train wreck from 2011 through 2013 and used a cane during that period. He was not using a cane when he was hired by Respondent.

On cross-examination, Petitioner testified he traveled to Mexico by bus in September 2021. He stated he also lives in Mexico where his wife and daughter reside. He testified he sat on the bus for extended periods of time. He stated he had a driver drive him to the arbitration hearing because he cannot turn his head.

MEDICAL HISTORY

On 6/19/20, Petitioner presented to Ferrell Hospital Emergency Room where he reported left shoulder pain due to a motor vehicle accident two days ago. Petitioner denied direct impact to his left arm or shoulder. He stated that a few hours after the accident he began having

aching/throbbing pain in his shoulder. He acknowledged a history of injuring his left arm in the past. There is no past medical history for cervical or lumbar conditions. X-rays of the left shoulder were negative for fracture. He was provided a Toradol injection, prescribed Tramadol, and ordered to follow up with his primary care physician.

Medical records from Petitioner's primary care physician, Dr. Nathan Oldham, were admitted into evidence. The only record that pre-dates Petitioner's work accident is on 6/29/15. At that time Petitioner presented with left shoulder pain from a fall one week ago. Dr. Oldham noted Petitioner's prior history of a traumatic brain injury and movement disorder with chorea that resulted from a train accident several years ago. He noted Petitioner walks with a cane due to the history of movement disorder. X-rays of Petitioner's left shoulder were negative. Dr. Oldham prescribed Tramadol and Norco and recommended an MRI if his symptoms failed to improve. There are no additional medical records following this visit until after his work accident of 6/17/20.

On 6/24/20, Petitioner presented to Dr. Oldham with significant pain in the left side of his neck, trapezius, and shoulder with intermittent numbness and tingling into his left hand. He provided a history of injury stating he was driving a box van when another vehicle came through the intersection and ran into him. Petitioner had muscle tension and tenderness in the low back. Dr. Oldham noted Petitioner's history of a severe train accident and stated Petitioner had chronic back issues, but he had not taken pain medication for at least five years. He noted Petitioner stated his low back pain was much worse than his baseline and he had difficulty sleeping. Dr. Oldham's record notes a past medical history of chronic joint pain since 2012 but does not specify which joints. There is no past medical history for cervical or lumbar conditions contained in Dr. Oldham's records.

Dr. Oldham performed a physical exam that revealed spasm and tenderness in Petitioner's left cervical paraspinous, trapezius, and deltoid. Range of motion in the left shoulder was reduced due to pain and left grip was decreased compared to the right. Straight leg raising was negative bilaterally. Dr. Oldham ordered x-rays of the spine, physical therapy, and prescribed Hydrocodone with Naproxen. X-rays of the left shoulder taken that day revealed no fracture with mild to moderate osteoarthritis. Dr. Oldham placed Petitioner off work. He noted Petitioner could not take Tramadol as prescribed in the emergency room and Dr. Oldham ordered Naproxen and Norco.

On 7/28/20, Dr. Oldham noted x-rays of Petitioner's cervical, thoracic, and lumbar spine were normal. Petitioner continued to have increasing neck and lumbar pain, with numbness/tingling down his left arm into his hand and radiculopathy in both legs, worse on the right. Physical examination revealed increasing tension and tenderness in the cervical and trapezius muscles with markedly reduced range of motion, worsening left grip strength, and positive straight leg raises on the right. X-rays performed on 7/17/20 revealed mild to moderate osteoarthritis through Petitioner's cervical spine, excluding C2-3, and chronic degenerative changes at L5-S1, facet arthropathy at L4-5 and L5-S1, and minor chronic degenerative anterolistheses at L4 on L5. Dr. Oldham's impressions were cervical and lumbar neurologic structural injury. He continued Petitioner off work and noted Petitioner was not able to start

physical therapy. He again recommended physical therapy and ordered cervical and lumbar MRIs .

On 8/25/20, Petitioner reported continued neck and low back pain despite therapy. He had been treating at the VA for a flare up of PTSD since the work accident. Dr. Oldham noted Petitioner's legs were randomly giving out on him causing him to fall. Dr. Oldham stated he could not get insurance approval for the recommended MRIs and continued Petitioner off work pending additional therapy.

MRIs of Petitioner's cervical and lumbar spine were performed on 9/4/20. The cervical MRI revealed disc osteophyte complexes at C3-4, C4-5, C5-6, and worse at C6-7. The lumbar MRI revealed L4-5 spondylolisthesis with severe degenerative changes at the facet joints and L5-S1 moderate degenerative changes at the facet joints with posterior disc osteophyte complete.

On 9/22/20, Petitioner was examined by Dr. Matthew Gornet for complaints of neck pain to both trapezius and tingling in his fingertips, left greater than right. He had low back pain particularly to the right groin and down the right leg to his knee. Petitioner related his problems to the 6/17/20 accident. He noted no improvement after ten physical therapy sessions. Petitioner denied previous problems of significance with his neck or low back. Physical examination revealed decreased strength on the left of EHL, ankle dorsiflexion and plantar flexion at 4/5 to 4-/5. Sensation was decreased in the L5-S1 dermatome on the left.

Dr. Gornet reviewed the MRIs and felt the cervical MRI revealed a C6-7 disc herniation with protrusions at C3-4, C4-5, and C5-6. He felt the lumbar MRI revealed a central herniation at L5-S1 with an annular tear at L4-5. Dr. Gornet diagnosed disc injury at L4-5, L5-S1 and aggravation of pre-existing stenosis and degenerative spondylolisthesis. He opined the accident aggravated the underlying degenerative condition in the cervical spine and potentially caused disc injuries from C3 to C7. Petitioner had fairly classic whiplash pain. Dr. Gornet took Petitioner off work and recommended injections.

On 9/22/20, Dr. Helen Blake performed a C6-7 epidural steroid injection. Petitioner returned to Dr. Oldham on 9/30/20 and reported nausea, vomiting, and a headache from the injection that resulted in him being admitted to the hospital on 9/25/20. He was discharged the next day and was doing well.

Dr. Blake performed an L4-5 ESI on 10/6/20, an L5-S1 ESI on 10/20/20, and L4-5, L5-S1 medial branch blocks on 11/10/20. On 11/16/20, Petitioner called Dr. Blake's office stating during the local anesthetic his back felt incredible. The pain returned after the anesthetic wore off and he has had ongoing pain to its baseline. He denied radiating pain. Based upon the response, Dr. Blake recommended ablations at L4-5, L5-S1 which were performed on 11/24/20 and 12/8/20.

On 12/7/20, Dr. Gornet noted no change in physical exam of Petitioner's cervical and lumbar spines. Petitioner reported some improvement from the injections. Dr. Gornet kept him off work and prescribed medication.

On 12/14/20, Petitioner was examined by Dr. Daniel Kitchens pursuant to Section 12 of the Act. Dr. Kitchens opined Petitioner sustained cervical and lumbar strains as a result of the work accident. He opined that Petitioner could return to work without restrictions and was at maximum medical improvement.

On 4/1/21, Petitioner reported to Dr. Gornet he had temporary relief from the injections. Dr. Gornet recommended high quality MRIs of the cervical and lumbar spines. He reviewed Dr. Kitchens' Section 12 report. Dr. Gornet opined that in light of Petitioner's history of no significant pain or symptoms in the neck and low back, the work accident was the only plausible explanation for his current state of health. He kept Petitioner off work pending further diagnostics.

On 6/1/21, Petitioner underwent updated cervical and lumbar MRIs. The radiologist interpreted an L5-S1 central protrusion with right extruded disc fragment and L4-5 spondylolithesis with protrusion. The cervical MRI revealed C3-4, C4-5, C5-6, C6-7 disc protrusions with stenosis. Based on the MRI results, Dr. Gornet recommended C3-7 disc replacement surgery and likely an anterior/posterior L4-5, L5-S1 fusion. He continued Petitioner off work.

Dr. Kitchens reviewed the updated MRI scans and his opinions as to causal connection remained unchanged.

Petitioner concurrently remained under the care of Dr. Oldham. On 10/12/20, Petitioner reported that his PTSD symptoms were worse since the accident. Dr. Oldham prescribed Valium and recommended more aggressive counseling. He opined that Petitioner's accident caused a flare up of PTSD. On 3/24/21, Petitioner told Dr. Oldham he attempted some holistic treatments involving physical therapy and massage while in Mexico. He had not used his pain medicine in three months; however, his cervical and lumbar symptoms were not improved.

Dr. Matthew Gornet testified by way of evidence deposition on 5/17/21. Dr. Gornet is a board-certified orthopedic surgeon whose practice is devoted to spine surgery. Dr. Gornet testified the MRIs dated 9/4/20 showed C6-7 disc herniation with smaller protrusions at C3-4, C4-5, and C5-6. He opined Petitioner's symptoms were consistent with the MRI results and fairly classic after what he sees following a motor vehicle accident. Dr. Gornet testified the lumbar MRI showed L4-5 spondylolisthesis with an annual tear, as well as a central herniation and annular tear at L5-S1. He opined the results correlated with Petitioner's subjective complaints and physical exam. Dr. Gornet kept Petitioner off work.

Dr. Gornet opined that the work accident aggravated Petitioner's underlying degenerative cervical condition and caused disc injuries at C3-4, C4-5, C5-6, and C6-7. He opined the work accident aggravated the pre-existing lumbar stenosis and facet arthropathy and contributed to disc injuries at L4-5 and L5-S1 on the left.

Dr. Daniel Kitchens testified by way of evidence deposition on 6/2/21. Dr. Kitchens is a board-certified neurosurgeon. He reviewed the lumbar MRI and felt it showed a right-sided disc herniation at L5-S1 and spondylolisthesis at L4-5 with disc bulging. He did not see a disc

herniation on the left side. He reviewed the cervical MRI and felt it showed degenerative changes at C3-4, C4-5, C5-6, and C6-7 with disc bulging. He did not appreciate disc herniation. Dr. Kitchens opined there was no objective correlation between the MRIs and Petitioner's left leg pain or upper extremity complaints. He opined Petitioner did not sustain acute injuries to the cervical or lumbar spines as a result of the work accident. He diagnosed cervical and lumbar strains and opined Petitioner did not require cervical and lumbar spine surgery.

Dr. Kitchens reviewed Petitioner's job duties to include: frequent bending, twisting, rotating trunk, arms, and legs; standing 100% of the time; walking 99% of the time; climbing 10% of the time. Petitioner has to frequently move parts and stock weighing up to 35 pounds, carrying 10 to 50 feet; occasionally move parts and stock weighing up to 50 pounds, pushing and pulling occasionally; frequently move merchandise weighing 10 to 25 pounds from floor to counter; and occasionally stock overhead parts weighing 5 to 15 pounds. Dr. Kitchen's testified he considered these job functions when he opined Petitioner was able to return to full duty work without restrictions.

On cross examination, Dr. Kitchens agreed Petitioner tried all reasonable conservative measures for his cervical and lumbar spine. He agreed the findings on the cervical MRI from 9/4/20 could cause neck pain. He testified that trauma like the motor vehicle accident suffered by Petitioner could not cause a degenerative neck condition to become symptomatic because that is the natural course of the disease. Dr. Kitchens conceded that degenerative changes without nerve root compression can produce neck pain. He opined the disc herniation at L5-S1 was asymptomatic. He agreed that the L4-5 spondylolisthesis can produce back pain without radiculopathy.

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).

The record is clear that Petitioner was working full duty without incident prior to the undisputed accidental injury on June 17, 2020. Petitioner credibly testified that prior to that date, he suffered neither symptoms nor required treatment or diagnostic studies for his cervical or lumbar spine. He was not taking any medications for an orthopedic condition prior to the accident. Petitioner testified that the AutoZone Store Essential Job Functions was an accurate description of his job duties. He was able to perform frequent bending, twisting, rotating trunk, arms, and legs; stand 100% of the time; walk 99% of the time; climb 10% of the time. Petitioner

was able to frequently move parts and stock weighing up to 35 pounds, carrying 10 to 50 feet; occasionally move parts and stock weighing up to 50 pounds, pushing and pulling occasionally; frequently move merchandise weighing 10 to 25 pounds from floor to counter; and occasionally stock overhead parts weighing 5 to 15 pounds.

Petitioner returned to Illinois following the accident and presented to the emergency room on 6/19/20 with chief complaints of left shoulder pain. He reported a consistent history of accident and no past medical history for cervical or lumbar conditions were noted. Petitioner stated a few hours after the accident he began having aching/throbbing pain in his shoulder.

Petitioner followed up with his primary care physician, Dr. Oldham, on 6/24/20 and reported a consistent history of accident. Petitioner complained of significant pain in the left side of his neck, trapezius, and shoulder with intermittent numbness and tingling into his left hand. Muscle tension and tenderness was noted in Petitioner's lumbar spine. Although Dr. Oldham noted a past medical history of chronic joint pain since 2012, Petitioner denied ever having back pain. Petitioner credibly testified that his father has the same name, had a history of back problems, and also treated with Dr. Oldham. Dr. Oldham's past medical history lists chronic joint pain and does not specify which joints, or lists any conditions related to Petitioner's cervical or lumbar spine.

The only medical record admitted into evidence pre-dating Petitioner's work accident is dated 6/29/15. Petitioner presented to Dr. Oldham with left shoulder pain from falling off a ladder. Petitioner was prescribed medication and was told to follow up for an MRI if his symptoms did not resolve. There is no evidence that Petitioner returned to Dr. Oldham until after his work accident of 6/17/20. Although Petitioner testified MRIs were performed as a result of the train accident in 2012, no medical records were admitted into evidence regarding his treatment related to the train accident.

Following the work accident, Petitioner remained symptomatic despite medication, physical therapy, epidural steroid injections, and ablations. The objective medical evidence of his cervical and lumbar spine shows clear evidence of pathology. The findings on these studies were further buttressed by the temporary relief Petitioner received from injections and ablations. The Arbitrator finds the opinions of Dr. Gornet more persuasive than the opinions of Dr. Kitchens. Dr. Kitchens opined Petitioner sustained a cervical and lumbar sprain and there was no correlation between the MRI findings and Petitioner's left leg or upper extremity symptoms. His opinion that trauma like the motor vehicle accident suffered by Petitioner could not cause a degenerative neck condition to become symptomatic because that is the natural course of the disease is unreasonable and contradicts the medical evidence. Dr. Kitchens agreed the findings on the cervical MRI could cause neck pain and that degenerative changes without nerve root compression can produce neck pain. He agreed that the L4-5 spondylolisthesis can produce back pain without radiculopathy.

Dr. Gornet testified the MRIs dated 9/4/20 showed C6-7 disc herniation with smaller protrusions at C3-4, C4-5, and C5-6. Dr. Kitchens observed degenerative disc bulging from C3-7, without evidence of herniation. Dr. Gornet opined Petitioner's symptoms were consistent with the MRI results and fairly classic after what he sees following a motor vehicle accident. Dr.

Gornet testified the lumbar MRI showed L4-5 spondylolisthesis with annual tear as well as a central herniation and annular tear at L5-S1. He opined the results correlated with Petitioner's subjective complaints and physical exam. Dr. Kitchens also observed the disc herniation at L5-S1 and spondylolisthesis at L4-5 with disc bulging but did not appreciate a herniation or annual tears. Dr. Kitchens testified he only reviewed the MRIs performed on 9/4/20. He is not aware of any MRIs performed prior to 6/17/20 or that Petitioner treated for neck or low back issues prior to his work accident. Dr. Kitchens agreed there were no additional conservative measures for Petitioner to consider prior to undergoing surgery. He testified that just because Petitioner is reporting pain and has a bad looking neck that the findings on the cervical MRI is what is causing him pain. He stated that Petitioner's pain could be caused by multifactorial issues and not related to the pathology in his neck or back at all. Dr. Kitchens opined that Petitioner's neck and back sprains resolved and he had no explanation why Petitioner remained symptomatic.

Dr. Gornet opined that the work accident aggravated Petitioner's underlying degenerative cervical condition and caused disc injuries at C3-4, C4-5, C5-6, and C6-7. He opined the work accident aggravated the pre-existing lumbar stenosis and facet arthropathy and contributed to disc injuries at L4-5 and L5-S1 on the left.

Based on the medical evidence and testimony, the Arbitrator finds Petitioner's current condition of ill-being in his cervical and lumbar spine is causally connected to his work accident of 6/17/20.

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 any prospective medical care?**

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

The Arbitrator finds that the care and treatment Petitioner received has been reasonable and necessary. The Arbitrator further finds Petitioner has not reached maximum medical improvement and is entitled to receive the additional care recommended by Dr. Gornet.

Respondent shall therefore pay the medical expenses outlined in Petitioner's Group Exhibit 8 as provided in Section 8(a) and Section 8.2 of the Act. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits and Respondent shall hold Petitioner harmless from claims by any providers of the services for which Respondent is receiving this credit.

Respondent is responsible for reasonable and necessary prospective medical care to Petitioner's cervical and lumbar spine as recommended by Dr. Gornet until Petitioner reaches maximum medical improvement.

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

Based upon the above finding on the issue of causal connection, the Arbitrator finds Petitioner is entitled to temporary total disability benefits. On 6/24/20, Dr. Oldham placed Petitioner off work and continued him off work until Petitioner was examined by Dr. Gornet. On 9/22/20, Dr. Gornet placed Petitioner off work and continued him off work pending surgery.

Respondent shall pay Petitioner temporary total disability benefits from 6/24/20 through 10/27/21, for a total period of 70-1/7th weeks. Respondent shall receive a credit of $10,805.07 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	20WC017526
Case Name	Phillip Grinslade v. Keystone Consolidate Industries, Inc DBA Liberty Steel & Wire
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0146
Number of Pages of Decision	12
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	John Lesaganich
Respondent Attorney	R. Mark Cosimini

DATE FILED: 3/28/2023

/s/ Deborah Simpson, 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

Phillip Grinslade,
Petitioner,

vs. NO: 20 WC 17526

Keystone Consolidate Industries, Inc. d/b/a
Liberty Steel & Wire,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 20, 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 $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.

March 28, 2023
o3/22/23
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC017526
Case Name	GRINSLADE, PHILLIP S. v. KEYSTONE CONSOLIDATE INDUSTRIES, INC. D/B/A LIBERTY STEEL & WIRE
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	John Lesaganich
Respondent Attorney	R. Mark Cosimini

DATE FILED: 4/20/2022

THE INTEREST RATE FOR THE WEEK OF APRIL 19, 2022 1.25%

/s/ Adam Hinrichs, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Phillip S. Grinslade
Employee/Petitioner

Case # 20WC017526

v.

Keystone Consolidate Industries, Inc., d/b/a Liberty Steel & Wire
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 **Arbitrator Adam Hinrichs**, Arbitrator of the Commission, in the city of **Peoria,** on **2/25/22**. 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 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 20, 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 alleged 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 **$78,694.72**; the average weekly wage was **$1,513.36**.

On the date of accident, Petitioner was **53** years of age, **single**, with **0** children under 18.

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 **$9,100.00** for other benefits, for a total credit of **$9,100.00**.

Respondent is entitled to a credit of **$22,427.73** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of $2,702.01, as set forth in Petitioner's Exhibit 5, pursuant to the fee schedule and as provided in Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC. Respondent shall also reimburse Petitioner for his out-of-pocket payments for reasonable, necessary and related medical services totaling $894.97.

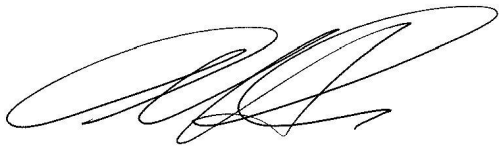
Respondent shall pay Petitioner temporary total disability benefits of $1,008.91 per week for 34 1/7th weeks commencing June 21, 2020 through February 14, 2021.

Respondent shall be given a credit of $**13,327.73** for medical benefits and $**9,100.00** for non-occupational disability benefits that have been paid. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving these credits, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner the sum of $836.69 per week for 33.4 weeks, because the injuries sustained caused the 20% loss of use to Petitioner's left foot, as provided in Section 8(e) of the Act.

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

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of 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

FINDINGS OF FACT

Petitioner is employed by Respondent as a heavy equipment operator. He has been employed with Respondent for almost 29 years. (T. 12) His job duties include that of an engineer on a locomotive, switchman on a locomotive, truck operator, and hydraulic crane operator. (T. 12-13)

On June 20, 2020, Petitioner alleges that he slipped and fell while ascending a flight of stairs on Respondent's property. The stairs were outside and there was a heavy rainstorm at the time of the accident.

Petitioner's Exhibit 1 is an aerial photograph of Respondent's property. The photograph shows the service building at the top of the photo and a path which extends from the service building across two sets of railroad tracks and leading to the stairs in question (circled and with yellow highlight marks in PX1). At the bottom of the photograph is a guard shack. Below the guard shack, and not visible on Petitioner's Exhibit 1, is the employee parking lot where Petitioner parks his vehicle.

Petitioner testified the path depicted on Petitioner's Exhibit 1 is the only way to get from the parking lot to his place of employment. (T. 18) On cross exam, Petitioner acknowledged there are other ways to get from the service building to the parking lot, but the other ways would not be a direct route and would not be efficient. The path from the service building to the guard shack is the most direct route to get to the parking lot. (T. 40-41) Petitioner testified the public is not allowed in the areas depicted on Petitioner's Exhibit 1 other than delivery drivers or semis dropping off supplies. (T. 19)

Petitioner testified that he worked a 12-hour shift June 20, 2020. (T. 38) After he clocked out at 5:53 p.m., he was headed home into a two-week vacation period. (T. 20, 38) Petitioner confirmed he was not performing any job duties from the time he clocked out until the time he fell on the stairs. (T. 40)

Petitioner testified that at about 5:30 p.m. it started raining. Petitioner testified it was downpour. (T. 21, 26)

Petitioner was wearing the same steel toed boots at trial as he wore June 20, 2020. The Arbitrator noted there was tread on the bottom of both shoes. (T. 27-28)

Petitioner testified that the path between the service building and the stairs was covered in mud and water was starting to pool. (T. 20) Petitioner was in a hurry because it was raining. He testified he was not running, but he was taking large steps. (T. 25)

When describing his alleged accident, Petitioner testified he slipped on the first step and hyperextended his ankle or Achilles tendon and caused it to rupture off the heel bone. (T. 30) Petitioner testified his slip and fall was caused by mud on his boots and the stairs were slippery. (T. 32). The accident occurred at 5:58 p.m. (PX2)

On cross exam, Petitioner further explained that he stepped on the bottom step with the front part of his boot up to about the balls of his feet. His foot then slid backwards off the step. (T. 45-46)

Respondent's Exhibit 2 is a photograph of the stairs where Petitioner slipped. The Arbitrator has reviewed the photograph and notes that the sky appears clear, there is no standing water on or around the steps, there is loose gravel on each step, and what appears to be dried dirt and dust on all of the steps. Petitioner testified to the authenticity of the photograph, RX 2, but he stated that at the time of

his accident, there was more mud and water on the stairs. Petitioner explained that when it rains, water runs down the steps. (T. 44)

Petitioner acknowledged there were no structural defects with the stairs and they were of a standard height. (T. 47) He also acknowledged the risers on the stairs are painted yellow which is a safety precaution. (T. 47-48)

Christopher Bart testified on behalf of Respondent. He was working as a scrap foreman at the time Petitioner was injured. (T. 55) He explained he was the front line supervisor in charge of production. (T. 55-56) Mr. Bart testified there is a safety rule at Respondent's facility prohibiting running either inside or outside of the building. (T. 56) Mr. Bart testified that Petitioner was not disciplined for running on the path in the area depicted in PX 1. (T. 68).

Mr. Bart confirmed that the path between the guard shack to the service entrance was the most direct path from Respondent's parking lot where the Petitioner parked. (T. 65) Mr. Bart testified that the area depicted in PX 1 is Respondent's property. (T. 66). Mr. Bart testified that the general public is not allowed in the area depicted in PX 1 without a visitor's pass. (T. 64).

Mr. Bart was working in his office when Petitioner was injured. Mr. Bart reported to the scene. Petitioner was in the guard shack near the stairs where he was injured. (T. 57-58) Mr. Bart testified that Petitioner "slipped or tripped. I don't remember verbatim the conversation." (T. 59)

With respect to the weather, Mr. Bart testified it rained for a short period of time, and there was a downpour of rain when Petitioner fell. (T. 59, 69). Mr. Bart testified that Petitioner is an honest person. (T. 63).

Mr. Bart testified there were no defects with the stairs, and no puddles formed on the stairs. He testified he took the photograph of the stairs depicted in Respondent's Exhibit 2 the same evening as when Petitioner fell. (T. 61) He believed the stairs are of a standard size, and that puddles do not form on the stairs when it rains. He also testified no mud on the stairs in the photograph he took and he did not notice any mud on the stairs when he took the picture. (RX 2, T. 61-62)

Petitioner completed an accident report June 20, 2020. He wrote he was climbing stairs in a hurry due to a downpour of rain and caught the bottom step with only the toe of his boot and slipped stretching a tendon. (RX 3, PX 2)

A telephone call was placed from Respondent to Janice Burk, a nurse at the OSF Occupational Health facility. A history was provided indicating Petitioner was going up wet stairs "(do [sic] to rain)" and slipped twisting his left ankle. Petitioner reportedly heard a pop and was having trouble putting weight on his left foot. Petitioner was referred to the emergency room. (PX 2a)

When Petitioner reported to the St. Francis Medical Center Emergency Department, Nurse Samantha Bennett recorded a history from Petitioner indicating he was working out in the rain and slipped and felt pain in his Achilles tendon right after that. The history recorded by Dr. Alexis Gazda, a resident working in the emergency room, indicates Petitioner was walking up a step outside while it was raining when his foot slipped. Dr. Paul Matthews noted Petitioner slipped on a step. (PX 3 pp. 7, 8, 13)

The clinical exams performed at the emergency room were concerning for an Achilles tendon rupture. Petitioner was noted to have decreased strength with plantar flexion and a positive Thompson test of

the left foot. X-rays taken of the left foot revealed an avulsion fracture of the left calcaneal tuberosity. (PX 3)

Petitioner was referred to Dr. Giselle Tan, an orthopedic surgeon. (PX 3)

Petitioner first saw Dr. Tan June 26, 2020. Dr. Tan recorded a history of Petitioner clocking out at work, running to his car because it was raining, and slipping on some stairs on June 20, 2020. Following a clinical exam, Dr. Tan provided a walking boot for Petitioner and ordered an MRI to determine the precise location of Petitioner's left ankle pain complaints. (PX 4, pp. 1-2)

An MRI of the left ankle was performed July 2, 2020. The report indicates Petitioner had a full-thickness full-width distal Achilles insertional tear with up to 4.8 cm retraction and hemorrhagic retrocalcaneal bursitis. The MRI report also revealed a torn plantaris tendon. (PX 4a)

On July 14, 2020, Dr. Tan performed surgery on Petitioner's left foot and ankle. The procedure consisted of a left Achilles tendon repair with removal of osteophytes at the insertion of the Achilles. The postoperative diagnosis was a left Achilles tendon rupture at the insertion. (PX 4b)

Petitioner's postoperative treatment consisted primarily of physical therapy and follow-up visits with Dr. Tan. Petitioner attended physical therapy from August 14, 2020 through March 4, 2021. (PX 4c)

Petitioner returned to work in a light-duty capacity February 15, 2021.

Petitioner's last visit with Dr. Tan took place March 5, 2021. The treatment note from that date indicates Petitioner did not have any pain in his left ankle. He was not experiencing any numbness or tingling. Petitioner did report occasional aching pain after being on his feet most of the day. Petitioner was taking ibuprofen as needed. (PX 4)

At trial, Petitioner testified he was off work from June 21, 2020 through February 14, 2021. He received sickness and accident benefits, but did not receive temporary total disability benefits. (T. 34). Dr. Tan released Petitioner to return to work without restrictions on March 5, 2021. (PX 4(e) p. 9)

After being discharged from care by Dr. Tan, Petitioner returned to his regular job as a heavy equipment operator. He testified he was earning the same amount of money as he would have been earning if the accident never occurred. (T. 36)

With respect to his current condition, Petitioner testified he has not returned to 100% strength in the left foot and ankle. He does feel confident when walking on it, and he was beginning to jog a little bit. He further explained his foot felt pretty good, but he has to stretch it every so often because of the tendency to tighten up. He reported this most often happens in cold weather. (T. 37)

Petitioner acknowledged he has not received any medical treatment for his injury after being discharged from care by Dr. Tan. He also acknowledged Dr. Tan did not impose any restrictions on his activities. (T. 51)

Petitioner further acknowledged he has not missed any time from work since returning in a full-duty capacity, and he has been capable of performing his regular job duties since that time. (T. 50)

Christopher Bart testified he talks to Petitioner at least a couple of times per week at work, and Petitioner has not made any complaints about the condition of his left foot or ankle. (T. 63)

On August 21, 2020, Dr. Tan wrote a letter to Petitioner's attorney. Dr. Tan's letter contains the history that Petitioner was outside when it was raining and his foot slipped on some stairs because of the rain. Dr. Tan described the injury as not being in the normal area for an Achilles tendon rupture. Dr. Tan noted Petitioner had some calcification in the area of the fracture. Dr. Tan rendered an opinion that the fall was the cause of Petitioner's condition as he was not experiencing any symptoms prior to that time. Dr. Tan further opined the calcification of the insertion of the Achilles had been present for some time, but the fracture of the calcification of the insertion of the Achilles as well as the MRI finding of the acute rupture of the Achilles tendon at the insertion was likely from the fall. (PX 4d)

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

When an employee is injured in an area which is 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 Healthcare Center v. Industrial Comm'n, 349 Ill. App. 3d 486, 491, 812 N.E.2d 401, 285 Ill. Dec. 581 (2004)* "Special hazards or risks encountered as a result of using a usual access route satisfy the "arising out of "requirement of the Act". *Litchfield Healthcare Center, 349 Ill. App.3d at 491,* (citing *Bommarito v. Industrial Comm'n, 82 Ill. 2d 191, 412 N.E.2d 548, 45 Ill. Dec. 197 (1980)).*

Accidental injuries sustained on property that is either owned or controlled by an employer within a reasonable time before or after work are generally deemed to arise out of and in the course of employment when the claimant's injury was sustained as a result of the hazardous condition of the employer's premises. The 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 he was exposed to the risk of that hazard to a greater extent than are members of the general public. In other words, such injuries are not analyzed under "neutral risk" principal; rather they are deemed to be risks "distinctly associated" with the employment. *Archer Daniels Midland v. Industrial Comm'n, 91 Ill. 2d 210 at 216, 437 N.E2d 609, 62 Ill Dec. 921 (1982); Mores-Harvey v. Industrial Comm'n,, 345 Ill. App. 3d 1034, at 1040, 804 N.E. 2d 1086, 281 Ill. Dec. 791 (2004); Suter v. Ill. Workers' Comp. Comm'n, 2013 Il App (4th) 130049WC ¶ 40, 376 Ill. Dec. 261, 998 N.E.2d 971*.

Both Petitioner and Respondent's witness, Christopher Bart, testified that the industrial yard area depicted in PX1 is Respondent's property and is not accessible to the general public. Petitioner testified that before punching in at the service building Petitioner was required to first report to the guard shack to enter the pathway in the yard known to Petitioner as the "green zone". The accident scene as marked on PX1 occurred between the Jersey Barriers marked with yellow paint, which the parties circled and labeled "alleged accident scene." Petitioner testified that he had walked the "green zone" to and from the service building during the 29 years he has been employed by Respondent and it is the most direct route from the parking lot.

Petitioner's testimony, corroborated by Respondent's witness, Mr. Bart, established that a downpour of rain began at approximately 5:30 p.m. on June 20, 2020. Petitioner punched out of the service building at approximately 5:53 p.m. on June 20, 2020.

Petitioner testified that when it rained water would puddle in the path area between the service building door and the railroad tracks pictured in about the middle of PX1. Petitioner explained that the water

puddled in this path area because when it was originally poured the "green zone" was below grade. Petitioner testified that when he exited the door of the service building he encountered puddled water and mud which muddied his boots. As Petitioner approached the stairs between the Jersey Barriers (marked with yellow in PX1), he was hurrying due to the downpouring rain and caught the bottom step with the area of the toe to the ball of his left foot, slipped and injured his left ankle. The accident occurred at 5:58 p.m. (PX2)

When asked what caused his fall Petitioner testified that it was because of the mud on his boots and the slippery stairs. (T. 32) Petitioner's accident report and treating medical records all confirm Petitioner's testimony that he slipped on a step during a rainstorm.

Mr. Bart testified he took the photograph of the stairs depicted in Respondent's Exhibit 2 the same evening as when Petitioner fell. (T. 61) He believed the stairs are of a standard size, and that puddles do not form on the stairs when it rains. Mr. Bart testified there were no defects with the stairs, no puddles formed on the stairs, no mud on the stairs in the photograph he took and he did not notice any mud on the stairs when he took the picture. (RX 2, T. 61-62) The Arbitrator has reviewed the photograph and notes that the sky is clear, there is no standing water on or around the steps, there is, however, a noticeable amount of loose gravel, and what appears to be dried dirt and dust on all of the steps.

Petitioner confirmed Mr. Bart's testimony that no puddles form on the stairs, as when it rains, water runs down the steps. (T. 44)

The Arbitrator observed the Petitioner and found him to be sincere, consistent and credible. Respondent's witness Mr. Bart testified that the Petitioner is an honest individual.

All of the witnesses testified that a downpouring of rain occurred at the time of the accident. The Arbitrator finds that the downpour by itself created a hazardous condition, and that the incident occurred only five minutes after Petitioner clocked out for the day, a reasonable period of time after work. Petitioner's testimony that he slipped on a step on Respondent's property during a rainstorm is supported by all the medical in the record.

Moreover, the Arbitrator finds it is more likely than not that Petitioner had mud accumulate on the tread of his work boots as he hurried through the Respondent's industrial yard area where puddles and mud had formed in the approximately 20 minutes of downpouring rain that had occurred prior to Petitioner entering the yard.

The Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he sustained an accident arising out of and in the course of his employment by the Respondent.

Issue (F): <u>Is Petitioner's current condition of ill-being causally related to the injury?</u>

Incorporating the above, On June 20, 2020, Petitioner was performing his full work duties for Respondent. That evening, the accident occurred and Petitioner sought medical attention at the emergency department of St. Francis Medical Center. The clinical exams performed at the emergency room were concerning for an Achilles tendon rupture. X-rays taken of the left foot revealed an avulsion fracture of the left calcaneal tuberosity. (PX 3) Petitioner was taken off-work beginning June 21, 2020, due to this injury.

The emergency department at St. Francis referred Petitioner to Dr. Tan for an orthopedic consult. Dr. Tan ordered an MRI of Petitioner's left ankle. On July 2, 2020, the MRI revealed a full thickness full width distal Achilles insertional tear with up to 4.8 cm retraction and hemorrhagic retrocalcaneal bursitis and torn plantaris tendon.

On July 14, 2020, Dr. Tan performed a left Achilles tendon repair with removal of osteophytes at the insertion of the Achilles. Following this surgery, Petitioner was released to return to work without restrictions on March 5, 2021. (PX 4(e) p. 9).

On August 21, 2020 Dr. Tan provided a narrative letter with responses to interrogatories. Dr. Tan rendered an opinion that the fall was likely the cause of Petitioner's condition as he was not experiencing any symptoms prior to that time. Dr. Tan further opined the calcification of the insertion of the Achilles had been present for some time, but the fracture of the calcification of the insertion of the Achilles as well as the MRI finding of the Achilles tendon acute rupture at the insertion was likely from the fall. Dr. Tan's opinion is unrebutted.

Given the sequence of events and the opinion of Dr. Tan, the Arbitrator finds that Petitioner's current condition of ill-being in his left foot and ankle is causally related to his work injury on June 20, 2020.

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?

Petitioner introduced evidence of medical bills incurred as a result of the accidental injuries of June 20, 2020 totaling $2,702.01. Payments from Petitioner's group health carrier, UMR, were made and total $13,327.73. Petitioner has related out-of-pocket expenses for reasonable and necessary medical services totaling $894.97. (PX 5)

Incorporating the above findings, the Arbitrator finds the medical treatment rendered to Petitioner with regard to his left foot and ankle was reasonable, necessary and causally related to the accidental injuries of June 20, 2020.

Respondent shall pay reasonable and necessary medical services of $2,702.01as set forth in Petitioner's Exhibit 5, and as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit of $13,327.73 for medical benefits that have been paid by UMR, 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 also reimburse Petitioner for his out-of-pocket payments totaling $894.97 for reasonable, necessary and related medical services.

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

Incorporating the above, the evidence establishes that Petitioner was off work by his treating physicians from June 21, 2020 through February 14, 2021. (PX 4(e)).

Therefore, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits commencing June 21, 2020 through February 14, 2021, representing 34 1/7th weeks, at the rate of $1,008.91 per week.

Respondent is entitled to a credit under 8(j) of $9,100.00 for its payment of nonoccupational disability benefits.

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

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 is to be established considering the following criteria:

(i) the reported level of impairment pursuant to subsection (a) of §8.1b of the Act;
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records.

The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that neither party submitted an impairment rating. 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 Petitioner is a heavy equipment operator and does heavy work. The Arbitrator therefore gives some weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 53 years of age at the time of the accident. 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 that no evidence was introduced indicating that Petitioner's future earnings were diminished by this injury. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that effects of the accidental injuries at issue resulted in left Achilles tendon rupture, surgically repaired, and a return of Petitioner to his full work duties. Petitioner testified he has not returned to 100% strength in the left foot and ankle. He does feel confident when walking on it, and he was beginning to jog a little bit. He further explained his foot felt pretty good, but he has to stretch it every so often because of the tendency to tighten up. He reported this most often happens in cold weather. Petitioner's testimony is corroborated by the final chart note of Dr. Tan. 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 a 20% loss of use to his left foot pursuant to §8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC026887
Case Name	Anola Stewart v. Valley Meats LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0147
Number of Pages of Decision	13
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Thomas Cady
Respondent Attorney	Jeffrey Rusin

DATE FILED: 3/28/2023

/s/ Deborah Simpson, 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

Anola Steward,

Petitioner,

vs. NO: 21 WC 26887

Valley Meats, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, temporary disability and future medical causation 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 April 4, 2022, is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $7,000.00. 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.

March 28, 2023
o3/22/23
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC026887
Case Name	STEWART, ANOLA v. VALLEY MEATS, LLC
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Thomas Cady
Respondent Attorney	Jonathan Zarate

DATE FILED: 4/4/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 29, 2022 1.05%

/s/Adam Hinrichs, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

ANOLA STEWART
Employee/Petitioner

v.

VALLEY MEATS, LLC
Employer/Respondent

Case # **21** WC **026887**

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 **ADAM HINRICHS**, Arbitrator of the Commission, in the city of **PEORIA, ILLINOIS**, on **2/22/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **6/4/21**, 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 $**31,237.56**; the average weekly wage was $**867.71**.

On the date of accident, Petitioner was **55** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**8,677.50** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**8,677.50**.

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

ORDER:

Respondent shall pay all outstanding medical charges for Petitioner's reasonable, necessary and related medical treatment, as outlined in Petitioner's Exhibits 6 and 7. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

Respondent shall provide and pay for the reasonable, necessary, and related medical treatment prescribed by Petitioner's treating orthopedic surgeon, Dr. Michael Berry.

Respondent shall pay all medical charges pursuant to Sections 8(a) and 8.2 of the Act.

Respondent shall pay TTD benefits from September 1, 2021 through February 22, 2022, at Petitioner's TTD rate of $578.47. Respondent shall be given a credit of $8,677.50 for 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.

Signature of Arbitrator

FINDINGS OF FACT

Anola Stewart, hereinafter "Petitioner," alleges an accident to her low back occurring on June 4, 2021, while working at Valley Meats, LLC, hereinafter "Respondent." Respondent is a meat processing plant with approximately 100 workers. Petitioner began working for Respondent on September 28, 2020.

On the date of accident, Petitioner was working as a quality control tech. As a quality control tech, Petitioner walked throughout the plant and pulled samples of meat every 15 minutes to check the quality of the meat being processed, including temperature and packaging.

Petitioner testified that from the time she began working at Respondent's facility, through the alleged work accident on June 4, 2021, she had no work restrictions and could perform all aspects of her job. (TX pp.14-15).

On June 4, 2021, Petitioner's shift began at approximately 5:00 AM. At approximately 11:30 AM Petitioner testified that she was performing her job as a quality control tech when she stepped on a piece of meat fat on the floor, slipped, and fell on the left side of her back and hip. (TX p.15). Petitioner testified that she had immediate pain in her low back and left hip. Respondent submitted an 11-second video of the accident supporting Petitioner's testimony of a slip and fall at their facility. (RX 5)

Petitioner completed an "Employee Statement of Injury" wherein she gave a consistent history of accident, and reported a sore hip (left side), with an injury to her left side (hip). The report was signed by Petitioner and a Supervisor, and dated "6.4.21." (RX 3)

Petitioner testified that her direct supervisor, Ben Naive, gave her an ice pack and she was sent home for the day. (TX p. 21). Laurie Martin, the Human Resources Manager for Respondent, testified that she became aware of the Petitioner's accident on the day that it happened. (TX p. 71). Ms. Martin testified that she understood Petitioner's injury to be to her left hip. (TX p. 73)

Petitioner testified that her condition worsened over the weeks following the accident, including increased pain in her left hip, left leg and low back, as well as numbness in her legs. (TX. p. 24). Petitioner testified that over the course of the summer, she needed to take six days off due to her low back pain, and she would call Ms. Martin and leave a voicemail, and text the same information to Mr. Naive, to properly take these sick days. Petitioner testified that she did not seek medical treatment as she did not have a primary care physician ("PCP"). (TX p. 25).

Petitioner testified that over the summer she communicated with Ms. Martin about her worsening physical condition and need to see a doctor. (TX p. 24) Respondent referred Petitioner to a chiropractor at Discover Chiropractic on September 1, 2021. (TX p. 69). Ms. Martin testified that this was the first time Petitioner requested medical care following her work accident. (TX p. 75).

On September 1, 2021 Petitioner presented to Discover Chiropractic for an initial evaluation by Vanessa Anderson, DC. Petitioner gave a consistent history of a work accident, and reported "numb, [spasms], pain, [not legible], hip leg foot." (PX 2, p. 9) Chiropractor Anderson examined the

Petitioner, performed an adjustment, found Petitioner to be suffering from "extreme unrelenting radiating lower back pain," ordered an MRI and took Petitioner off work. (PX 2, p. 11-15).

On September 7, 2021, Petitioner underwent an MRI. The MRI revealed L4-5 spondylolisthesis secondary to moderate facet degenerative changes which affected L5 transiting nerve roots on the left greater than the right. (PX 3, p. 3).

The Respondent's workers' compensation carrier, Berkshire Hathaway, referred Petitioner to an orthopedic spine surgeon, Michael Berry, MD, at ORA. (PX 1, p. 10). Dr. Berry took a consistent history of accident from the Petitioner, performed a physical exam, reviewed the MRI and diagnosed mobile L4-5 spondylolisthesis with neural foraminal stenosis and left L4 radiculopathy. Dr. Berry indicated that in cases of dynamic instability like this one, physical therapy and pain management do not provide lasting relief. Therefore, Dr. Berry recommended an L4-5 decompression and transforaminal lumbar interbody fusion. Petitioner was taken off work through December 31, 2021. (PX 1, p. 17-19).

At Petitioner's initial visit, Dr. Berry opined that Petitioner's instability at L4-5 was made symptomatic by her fall at work, causing intractable pain and, but for her fall at work, the L4-5 spondylolisthesis was asymptomatic. (PX 1 p. 19).

Utilization review certified Dr. Berry's surgical recommendation. (PX 5).

Petitioner testified that due to her low back muscle spasms, she fell on the steps at her home on October 14, 2021. She indicated that she did not further injure her back in this fall. Petitioner testified that since her June 4, 2021 work accident, she has had no other accidents involving her low back. (TX p. 31).

On October 14, 2021, Petitioner was seen at the Urgent OrthoCare Clinic. Petitioner complained of left foot and ankle pain. Petitioner reportedly fell down the stairs the previous day at home and landed on her foot. She rated her pain at the level of 10/10. She was weight-bearing, but she could not bend her toes. X-rays of the left foot did not reveal any acute fractures. There were post-surgical changes to the distal forth metatarsal. Petitioner was diagnosed with a left foot/ankle strain. She was provided with a CAM boot and was instructed on therapy exercises. If Petitioner did not improve, she was instructed to see a podiatrist. (PX 1 p. 23)

On October 27, 2021, Petitioner presented for an initial evaluation at Rock Valley Physical Therapy ("PT"). Petitioner testified that Respondent wanted her to try PT, and that's why she was at Rock Valley, but the records indicate this was on referral from Dr. Berry, who indicated in his initial evaluation that PT would be unhelpful. (TX p. 44). At her PT evaluation, Petitioner reported a consistent history of accident. It was noted that Petitioner was recommended for a spinal fusion. Petitioner ambulated with a CAM boot and cane. Petitioner complained of incontinence issues. Petitioner's level of disability was noted to be 88%, with issues in her back and left lower extremity. Her pain ranged from the level of 4-9/10. The therapist did not believe that therapy was appropriate given the severity of her pain, weakness, and presence of incontinence due to nerve dysfunction. Petitioner was discharged from care at Rock Valley PT the same day. (PX 4 pp. 1-3)

Petitioner testified that her condition was worsening. She testified that she continued to suffer from low back pain, and that the frequency of muscle spasms and incontinency had increased. (TX p. 28). Petitioner testified that her incontinency involved both urination and defecation and that it was

occurring one to two times per week. (TX p. 29). Petitioner was prescribed Tylenol 3 with codeine, as well as a back brace and cane. (TX pp. 29-30). Petitioner testified that if Dr. Berry's proposed course or care is authorized, she would undergo said care.

Petitioner testified that she had a low back injury in 2010 and sought treatment at ORA where she was diagnosed with low back stenosis. (PX 1, p.8). She testified that she had a discussion with the doctor in 2010 about injections, but she declined to have an injection. Petitioner testified that the symptoms present in 2010 resolved within a couple months. (TX p. 35).

Petitioner testified that she did not have any low back treatment between that indicated in the 2010 ORA records and the treatment she received after her June 4, 2021 work injury.

Respondent's Section 12 exam

At Respondent's request, and pursuant to Section 12, Petitioner was seen by Dr. Harrel Deutsch on January 4, 2022. Dr. Deutsch's note indicates that Petitioner alleges a June 4, 2021 work accident that Petitioner says happened in August 2021. Petitioner testified that she told Dr. Deutsch that she last worked in August 2021, and that her injury was in June 2021. (TX p. 42).

Petitioner reported that she slipped on meat and fell on her back and hip. Petitioner indicated that she felt immediate back pain following the incident, but continued to work. Following the accident, Petitioner first received medical care on September 1, 2021 and has not returned to work since August 30, 2021. Petitioner reported that she previously slipped on ice in 2010 and sustained an injury. Petitioner denied any back pain leading up to the June 4, 2021 incident. Petitioner denied any prior work accidents. (RX 1 p. 1)

Petitioner reported low back pain at 8/10. Petitioner denied any leg pain, but did report numbness in the lower extremities. It was noted that Petitioner was a poor historian and had difficulty remembering dates and details related to her treatment. (RX 1, p. 5)

Dr. Deutsch performed an exam and noted that Petitioner provided inconsistent effort with the left leg. Her back brace was removed for the examination. Straight leg raise was negative bilaterally. There was diffuse tenderness over the lumbar spine. Range of motion was within normal limits. Dr. Deutsch reported 5/5 positive Waddell sign findings, and noted Petitioner was magnifying her complaints. (RX 1, p. 6)

Dr. Deutsch reviewed pre-accident records from 2006 through 2015, as well as post-accident records. Dr. Deutsch's report indicates that the last time Petitioner received care for her low back was in 2010. (RX 1 p. 1-5) Dr. Deutsch reviewed the video of the accident. (RX 1, p. 1)

Generally, Dr. Deutsch noted that the Petitioner was moaning, angry, and a poor historian. Petitioner advised Dr. Deutsch that she was frazzled by the long car ride to the exam. (RX 1, p. 5) Petitioner testified that Dr. Deutsch spent 22 minutes with her after her three and one-half hour plus ride, due to traffic, for the exam. (TX pp. 39-40).

Dr. Deutsch diagnosed spondylolisthesis at L4-L5 as a result of degenerative lumbar facet arthropathy. Dr. Deutsch opined that Petitioner's condition was not related to the work accident on June 4, 2021. In

support of his opinion, Dr. Deutsch noted Petitioner's the lack of prompt treatment, the MRI which he opined showed degenerative changes with no evidence of an acute injury, and Petitioner's inconsistent effort and symptom exaggeration. (RX 1, pg. 7)

Dr. Deutsch did believe that Petitioner's treatment to date had been reasonable. Dr. Deutsch also opined that the recommended surgery would be reasonable, however, the necessity of the surgery was questionable given Petitioner's symptom magnification. Dr. Deutsch opined that lumbar epidural steroid injections should be considered before surgery. (RX 1, pp. 7-8)

Testimony of Luis Medina

Luis Medina testified that he is Petitioner's fiancée and that he has known Petitioner for approximately three years. He further testified that prior to June 4, 2021 he had observed Petitioner and noted that she did not have any noticeable back symptoms prior to the June 4, 2021 work accident.

Mr. Medina testified that Petitioner had not walked with a cane prior to the June 4, 2021 accident nor did she wear a back brace. Medina testified that he is familiar with Petitioner's incontinence issues as he would help clean up afterwards. He further testified that the incontinence included both urination and defecation and that the frequency was increasing. (TX pp. 62-65).

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

Petitioner testified that on June 4, 2021 she slipped on a piece of meat fat that was on the floor of Respondent's processing facility, falling onto her low back and left hip. She testified that she landed on a floor grate.

Petitioner completed an "Employee Statement of Injury" wherein she gave a consistent history of accident, and reported a sore hip (left side), with an injury to her left side (hip). The report was signed by Petitioner and a Supervisor, and dated "6.4.21." (RX 3)

Laurie Martin, the Human Resources Manager for Respondent, testified that Petitioner followed the proper accident protocols and she became aware of the Petitioner's accident on the day that it happened. (TX p. 71-73). Respondent also offered into evidence a video supporting Petitioner's testimony of a slip and fall at work. (RX 5).

The Arbitrator finds that the Petitioner has proven by a preponderance of the evidence that on June 4, 2021, she sustained an accident that arose out of and in the course of her employment by Respondent.

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

Incorporating the above, in September 2020 Petitioner began working for Respondent. Prior to her start date with Respondent, Petitioner had a history of two low back injuries: one in 2006 while working for American Airlines when baggage fell on her, and another in 2010 which resulted in her getting an MRI with complaints of low back pain and left sided radiating pain. Petitioner testified that her low back complaints resolved shortly after each of these incidents. Petitioner further testified that after her complaints in 2010 resolved, she did not seek any medical treatment for her low back until after the June 4, 2021 work accident with Respondent. Petitioner's testimony is supported by the record.

Petitioner did not immediately seek medical treatment following her work accident. Petitioner testified that she communicated her ongoing and increasing low back problems to her immediate supervisor as well as to the Human Resources Manager, Laurie Martin. Petitioner testified that, after the accident and over the course of the summer, she took six days off work due to pain in her low back. Petitioner testified that she did not have a primary care doctor, and requested treatment from Respondent. Ms. Martin testified that Petitioner made no complaints to her, or requests for treatment, following her work accident until September 1, 2021. Ms. Martin testified that she sent Petitioner to Discover Chiropractic on September 1, 2021.

At Discover Chiropractic, Petitioner provided a consistent history of a work-related accident. Vanessa Anderson, DC, took Petitioner off work and referred her for an MRI due to Petitioner's unrelenting and radiating lower back pain.

Given the MRI findings, Respondent's insurance carrier directed Petitioner to a spine surgeon, Michael Berry, MD, for treatment. Dr. Berry took a consistent history of accident, performed a physical exam, and reviewed the September 7, 2021 MRI. Dr. Berry found that Petitioner's complaints were consistent with her mobile spondylolisthesis as well as neural foraminal stenosis, and recommended an L4-5 decompression with fusion. (PX 1, pp. 17-19).

In that September 30, 2021 chart note, Dr. Berry opined that Petitioner's instability at L4-5 was made symptomatic by her fall and causing intractable pain. Dr. Berry indicated that the best course was surgery, as PT and pain management is typically unsuccessful in cases of dynamic instability.

On January 4, 2022, Dr. Harel Deutsch examined the Petitioner and prepared a report, pursuant to Section 12, at Respondent's request. Dr. Deutsch highlighted that the Petitioner was moaning, angry, and a poor historian at the exam. Dr. Deutsch diagnosed spondylolisthesis at L4-L5 as a result of degenerative lumbar facet arthropathy. Dr. Deutsch opined that Petitioner's condition was not related to her work accident on June 4, 2021, because Petitioner did promptly seek treatment, took no time off work following the accident, the Petitioner gave an inconsistent effort and magnified her symptoms, and the MRI findings, which he opined showed degenerative changes with no evidence of an acute injury. (RX 1, pg. 7)

Dr. Deutsch's report fails to specifically address whether Petitioner's condition in her lumbar spine was aggravated, accelerated or precipitated by her fall at work, it incorrectly states that Petitioner took no time off work following her work accident, and disregards the findings on MRI which were asymptomatic prior to the work accident. The Arbitrator is not persuaded by Dr. Deutsch's opinion, and notes that no other medical provider found Petitioner to be magnifying her symptoms.

Petitioner had no complaints of pain in her low back for approximately 10 years prior to her work injury in June 2021. There is no evidence of any other accidents or injuries causing Petitioner's complaints of pain in her low back. Dr. Berry specifically addressed Petitioner's instability at L4-5, opined that it was made symptomatic by her fall at work, causing intractable pain and, but for her fall at work, the L4-5 spondylolisthesis was asymptomatic. Dr. Berry found that Petitioner's complaints correlated with his objective findings, and the need for surgery. The Arbitrator is persuaded by the opinion of Dr. Berry.

The Arbitrator observed the Petitioner and found her to be sincere, consistent and credible. It is clear in the record that the Petitioner suffered a traumatic work injury on June 4, 2021. All of the medical histories support the Petitioner's testimony of a work-related accident leading to her complaints of intractable back pain. The Petitioner returned to work following her accident, and she credibly testified that her delay in receiving medical care was due to her not having a PCP, that she made continued requests for medical care, and required multiple days off due to pain in her low back.

Given the totality of the evidence, including the persuasive opinion of Dr. Berry, the Arbitrator finds that Petitioner's current condition of ill-being in her low back is causally related to her work accident.

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

Incorporating the above, the Arbitrator finds that all of the medical services provided to Petitioner for treatment of her low back was reasonable and necessary. The Respondent has not paid all appropriate charges for these reasonable and necessary medical services.

The Respondent shall pay all outstanding medical bills for Petitioner's reasonable and necessary medical care related to her low back, as outlined in Petitioner's Exhibits 6 and 7, pursuant to Sections 8(a) and 8.2 of the Act.

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

Incorporating the above, the Arbitrator finds that the Petitioner is entitled to prospective medical treatment.

Dr. Berry indicated the in cases of dynamic instability like Petitioner's, PT and pain management do not provide lasting relief. Therefore, Dr. Berry recommended an L4-5 decompression and transforaminal lumbar interbody fusion.

Respondent sent Dr. Berry's recommendation for utilization review, which certified the prescribed course of care. Respondent's Section 12 examiner, Dr. Deutsch also agreed that Dr. Berry's prescribed surgical course was reasonable, though injections should be attempted first.

The Arbitrator is persuaded by the treatment recommendations of Petitioner's treating surgeon, Dr. Michael Berry, and finds that the Petitioner has yet to reach maximum medical improvement.

Respondent is ordered to provide and pay for the reasonable and necessary medical care, pursuant to Section 8(a) and 8.2 and subject to the medical fee schedule, as prescribed by Dr. Berry, to cure and relieve Petitioner's current condition of ill-being in her low back.

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

Incorporating the above, the record shows that Petitioner was taken off work by her treating physicians or given restrictions that were not accommodated by Respondent from September 1, 2021 through the date of hearing.

The Arbitrator finds that Petitioner is entitled to temporary total disability benefits from September 1, 2021 through February 22 2022, as provided in Section 8(b) of the Act, at the rate of $578.47 per week. Respondent shall be given a credit of $8,677.50 for TTD payments made during this period.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC030396
Case Name	Mary K Webster v. Walgreens Distribution Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0148
Number of Pages of Decision	17
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Steven Hanagan
Respondent Attorney	Michael Karr

DATE FILED: 3/30/2023

/s/Marc Parker, Commissioner

Signature

23IWCC0148

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

Mary K. Webster,

Petitioner,

vs. NO: 19 WC 030396

Walgreens Distribution Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability ("TTD") and permanent partial disability ("PPD"), and being advised of the facts and law, modifies the Decision of the Arbitrator as set forth below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

As it pertains to TTD benefits, the Commission modifies the Decision of the Arbitrator to account for the period Petitioner returned to work light duty. Petitioner was off work from February 20, 2019 through June 25, 2019. Petitioner returned to work light duty on June 26, 2019. T. 15-16. After an increase in her symptoms, Petitioner returned to Dr. Froehling on July 31, 2019, and was taken off work. T. 20; PX2. The Commission agrees Petitioner reached maximum medical improvement on October 24, 2019. The Commission finds Petitioner entitled to TTD benefits from February 20, 2019 through June 25, 2019, and from July 31, 2019 through October 24, 2019, a period of 30-1/7 weeks.

As it pertains to PPD benefits, the Arbitrator's Section 8.1b(b) analysis gave proper weight to the enumerated factors. The Commission, however, views the level of disability differently than the Arbitrator. The Commission modifies the Arbitrator's Decision to increase Petitioner's PPD award from 20% loss of use of the person as a whole to 30% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act.

As it pertains to medical expenses, the Commission clarifies the Decision of the Arbitrator. The Arbitrator found "Respondent has or will pay all appropriate charges for all reasonable and necessary medical services" and awarded a credit of $3,381.58 for medical benefits paid by Respondent. The parties stipulated, "Respondent has paid $3,381.58 in medical bills and has or

will pay related and necessary medical bills pursuant to the fee schedule." AX1. Pursuant to Rule 9030.40, this stipulation is binding on the parties. *Walker v. Indus. Comm'n*, 345 Ill. App. 1084 (2004).

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 October 1, 2021, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner temporary total disability benefits of $436.37/week from February 20, 2019 through June 25, 2019 and from July 31, 2019 through October 24, 2019, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner medical expenses for all reasonable and necessary medical services, subject to the fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $392.74 per week for a period of 150 weeks, as provided in §8(d)2 of the Act, for the reason that the injury sustained to the right shoulder caused the loss of use of 30% of the person as a whole.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $52,900. 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.

March 30, 2023

o: 03/07/2023
MP/ahs
51

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC030396
Case Name	WEBSTER, MARY K v. WALGREENS DISTRIBUTION CENTER
Consolidated Cases	No Consolidated Cases
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Steven Hanagan
Respondent Attorney	Michael Karr

DATE FILED: 10/1/2021

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 28, 2021 0.05%

/s/Linda Cantrell, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Mary K. Webster
Employee/Petitioner

v.

Walgreens Distribution Center
Employer/Respondent

Case # **19** WC **030396**

Consolidated cases: _____

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

DISPUTED ISSUES

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

FINDINGS

On **2/19/2019**, 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 $**34,037.12**; the average weekly wage was $**654.56**.

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 ***hasor will pay*** all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**15,834.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**3,381.58** for medical benefits, for a total credit of $**19,215.58**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $**436.37**/week for the period **2/20/19 through the date she reached MMI on 10/24/19**, representing **35-2/7th** weeks.

The Arbitrator finds that the appropriate award should be for loss of an occupation/trade as provided in Section 8(d)2 of the Act because the evidence supports Petitioner is not able to return to her usual and customary duties as a split case picker. Respondent shall pay Petitioner the sum of $**392.74**/week for a period of **100** weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused **20%** loss of use of the person as a whole.

Respondent shall pay Petitioner compensation that has accrued from 10/24/19, when Dr. Froehling released Petitioner at maximum medical improvement, through 7/13/21, and shall pay the remainder of the award, if any, in weekly payments.

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

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

OCTOBER 1, 2021

Arbitrator Linda J. Cantrell

ICArbDec

STATE OF ILLINOIS)
) **SS**
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MARY K. WEBSTER,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 19-WC-030396
	)	
WALGREENS DISTRIBUTION CENTER,	)	
	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Collinsville on July 13, 2021 on all issues. The parties stipulated that on February 19, 2019 Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent and that Petitioner's current condition of ill-being is causally connected to her injury. The issues in dispute are temporary total disability benefits and the nature and extent of Petitioner's injuries. All other issues have been stipulated.

TESTIMONY

Petitioner was 60 years old, married, with no dependent children at the time of accident. She was employed by Respondent as a split case picker. She stated her job duties involved repetitive bending, stretching, and turning to pick products, place them in totes, and roll the totes to another picker. She was employed by Respondent for 19 years and her job duties have always involved physical labor. Petitioner testified that on February 19, 2019 she bent down to pick up lipsticks and attempted to push a case of lipsticks back when it felt like someone punched her in the stomach. Her pain radiated around to her back and she could hardly stand up. Petitioner immediately reported the accident.

Petitioner testified she sought medical treatment the next day and began therapy at Respondent's on-site clinic. She was referred to Dr. Froehling who gave her a cortisone injection and continued her physical therapy. She stated the injection provided temporary relief. Petitioner stated that her condition improved to the point she felt she could return to light duty work and did so on 6/26/19. She later requested that Dr. Froehling return her to half full duty and half light duty shifts because Respondent did not allow more than 90 days of light duty work. She began working that schedule on 7/29/19 six hours per day.

Petitioner's full duty work caused her back to stiffen and she used Biofreeze and Advil during her breaks which did not help alleviate her symptoms. She testified that the next morning she could barely move and Dr. Froehling took her back off work on 7/31/19. Petitioner stated she has not worked since.

Petitioner testified she had one prior episode of low back symptoms in 2018 while working for Respondent. She was performing "high volumes" and pulled product down with a Shepherd's hook at an odd angle causing low back pain. She filled out an incident report and saw the triage person, who recommended hot and cold packs and Biofreeze. Petitioner could not recall if she treated with a doctor but thinks she received physical therapy. She stated her back pain improved within a couple of weeks and she did not take time off work.

Petitioner testified that her low back gets stiff after doing housework and she sits to avoid increased pain. Her pain is located in the low back to the right side and SI joint. She uses a "grabber" to avoid bending as much as possible. When she bends she has difficulty straightening back up. Petitioner testified that the heaviest lifting she has done in the past four months is lift a 10-pound bag of kitty litter which she can remove from the store shelve without bending. She testified she is limited in her ability to stand, sit, and walk. She is unable to sit for long periods of time. She stated that the chairs at the hearing site are hard and lean back slightly which hurts her back. She could not say how long she can sit without an increase in pain, but she turns to the side to alleviate her symptoms. She can walk for approximately 20 minutes on a level surface before she has an increase in symptoms. She stated she can stand approximately 10 to 15 minutes before her symptoms increase and she shifts her weight to minimize her pain. Her back pain increases with cold and rainy weather. Petitioner stated she is limited in how long she can comfortably drive or ride in a car, but she did not state how long.

Petitioner testified it sometimes takes double the amount of time to do housework depending on her symptoms. She testified she has at least three good days per week and the rest are bad days. She exercises and stretches in the morning if she is not in too much pain. She uses Biofreeze, Advil, and a hot water bottle to alleviate her symptoms. She lays down to stretch her back. She uses a ball to rub out the tension and muscle spasms in her low back which are frequent. Petitioner testified she has high blood pressure, anxiety, and suffers from dyslexia, which prevents her from reading very well. She testified she has never worked a sedentary job.

On cross examination, Petitioner testified she has not returned to Dr. Froehling since 3/5/20, noting that the lady with Sedgwick ended it, and she has not treated with any other doctor since that time. She no longer takes muscle relaxers. She testified that Dr. Froehling prescribed a lumbar corset which she still wears if she performs outdoor activities such as gardening. She purchased a raised garden to avoid bending. Petitioner testified that she discussed surgery with Dr. Froehling but he could not promise her condition would improve and recommended against surgery. Petitioner testified she gets muscle spasms when she forgets to use her grabber and reaches up to get something. She stated she walks the shopping mall for exercise once or twice a week. She has two sets of single steps at her house that she goes up and down twice a day. She stated that in May 2019 she played video games with her grandson that required her to move her arms and not bend over, but she rarely plays anymore.

Petitioner testified that when she was working light duty in June and July 2019, she was sorting damaged products by placing them in totes and counting other product. She sent the totes up the line mechanically. She sat to perform her job duties, but also had to walk and go upstairs to get totes. She stated that most of the time someone put the tote on or off the line for her. Petitioner testified that in August 2019 she fell at home and struck her left low back or hip on the arm of a chair. She had a bruise and increased low back pain that resolved.

Petitioner stated she is always in pain. She does not use Biofreeze or a hot water bottle everyday unless the weather is rainy. She testified that she worked as a CNA and Hab Tech until 2003 when she was hired by Respondent. She stated she applied and was approved for social security disability benefits. Dr. Froehling completed her paperwork for disability benefits and she listed her back condition and a right cornea transplant from 2001 on the application.

Petitioner testified she has not looked for employment since she last worked for Respondent other than when her long-term disability carrier, Prudential, told her to apply for employment. She testified she attempted a job search and applied for various jobs with Respondent but was not offered employment.

MEDICAL HISTORY

On 2/20/19, Petitioner was examined at Respondent's in-house clinic, The Healthy Living Center. She reported her work-related low back injury and complained of constant low back pain. Physical examination revealed decreased range of motion, tenderness, and spasms. She was diagnosed with acute midline back pain, prescribed Flexeril, and referred to physical therapy. She was ordered off work. On 2/21/19, Petitioner began physical therapy at the same facility and reported her work accident and a prior history of low back pain in 2018 which was diagnosed as a back strain that resolved on its own.

On 2/26/19, Petitioner reported to her physical therapist her back was improving on the left with minimal pain. On 3/7/19, Petitioner reported a decrease in her symptoms post treatment. On a disability questionnaire that day she reported that washing and dressing herself increased her pain, but she could do it without modification and she could perform most of her job/homemaking duties. Petitioner further reported pain that prevented her from performing physically stressful activities and walking long distances. Petitioner stated she could sit as long as she liked as long as it was the right surface and she could stand as long as she wanted but her pain increased.

Petitioner continued to treat at The Healthy Living Center while undergoing physical therapy. The records indicate that Petitioner continued to have decreased range of motion, back pain, and spasms aggravated by activities involving bending, standing, and twisting. She reported that physical therapy provided mild relief. On 4/5/19, Petitioner reported dissatisfaction with her slow improvement and that most of her pain was in the right lower lumbar area and no longer wrapped around to her abdomen. Her symptoms were aggravated by bending and position. Examination revealed tenderness and spasm in the right paraspinal muscles and flexion and side-to-side movement increased her pain. She was continued in physical therapy. X-rays were obtained on 4/8/19 that showed scattered changes of arthritis in the thoracic spine and

sacrum/coccyx, with multilevel osteoarthritis in the lumbar spine. She was referred to an orthopedic surgeon for further evaluation. Although Petitioner reported improvement in her symptoms on 4/8/19, she experienced an increase in back spasms following x-rays which resolved after rest and using ice packs. Petitioner rated her pain 1 out of 10 and 3 out of 10 at worst. On 4/10/19, Petitioner reported to her therapist that she increased her activity level and was walking indoors at the mall. She rated her pain 0 out of 10 that day and again on 4/15/19.

On 4/25/19, Petitioner was examined by Dr. Alan Froehling at which time Petitioner reported her condition was gradually improving, with continued pain in her right sacroiliac region. She was able to bend over to touch her toes, but had difficulty straightening up due to weakness in her extensor muscles. Dr. Froehling diagnosed SI joint degeneration, mild asymptomatic spondyloarthropathy, and probable variation of diffuse idiopathic skeletal hyperostosis syndrome. He recommended extensor strengthening and a lumbosacral corset. He administered a sacroiliac joint trigger point injection and did not believe Petitioner was a surgical candidate. Dr. Froehling opined that Petitioner could work light duty.

On 5/9/19, Petitioner reported to Dr. Froehling that her pain was minimal and she had full range of motion. He noted she had not returned to physical therapy per his recommendation and felt under pressure to provide light duty restrictions. He ordered an FCE to determine if Petitioner could safely return to work. He believed Petitioner required work hardening or core trunk strengthening.

On 5/16/19, Petitioner underwent a FCE at NovaCare Rehabilitation. Petitioner's medical history form showed a self-reported history of arthritis, degenerative disc disease at L4-5, high blood pressure, fracture, and smoking. Petitioner reported an ache/pain on the right side of her low back within the pain diagram. The FCE revealed Petitioner demonstrated the ability to perform in a medium physical demand level, to include exerting 20 to 50 pounds of force occasionally, and/or 10 to 25 pounds of force frequently, and/or greater than negligible up to 10 pounds of force constantly to move objects.

On 5/29/19, Dr. Froehling noted Petitioner still had flexion deficits in her lumbar spine and was unable to tolerate bending past 25 degrees of flexion. Dr. Froehling compared the FCE findings to Petitioner's job description and opined she could perform light duty if it was available. He continued Petitioner off work until light duty was offered and recommended she continue therapy and strengthening exercises.

On 6/26/19, Dr. Froehling noted Petitioner was able to bend over to touch her toes and her flexion intolerance had resolved. He assessed improved lumbago following a lumbar strain and advised Petitioner could return to light duty work lifting 22 pounds frequently and 25 pounds occasionally. On 6/27/19, Petitioner reported to her physical therapist she was walking up to 4.5 laps through her walking program and spent approximately 6 to 8 hours per day on her feet.

On 7/25/19, Dr. Froehling documented Petitioner continued to have right side lumbar pain and spasms, but she was able to work light duty. Petitioner requested Dr. Froehling to release her to work half regular shifts and half light duty shifts. Examination revealed full range of motion of the lumbar spine, but Petitioner continued to have difficulty straightening up after

bending over to touch her toes due to weakness in the extensor muscles. Dr. Froehling allowed Petitioner to return to half full duty and half light duty and recommended continued therapy and exercises.

On 7/31/19, Dr. Froehling noted that after working two hours of full duty Petitioner's symptoms increased. Examination revealed signs of tenderness and aggravation and restricted range of motion. Dr. Froehling assessed chronic low back pain with exacerbation following return to work. He took Petitioner back off work and ordered a lumbar CT scan. The CT scan was performed on 8/19/19 and showed a minimal 4-mm anterior subluxation at L4-5, moderate to severe facet hypertrophy at the mid and lower lumbar levels with minimal disc bulges, mild to moderate central canal stenosis throughout the lumbar region, moderate neural foraminal stenosis at the mid and upper lumbar levels, and moderate to severe bilateral foraminal stenosis at L3 and below.

On 8/22/19, Dr. Froehling opined Petitioner was not a surgical candidate. He noted Petitioner was not able to tolerate eight-hour days on hard concrete floors or long shifts involving bending and lifting. Dr. Froehling recommended sedentary work and opined Petitioner would likely qualify for social security disability if she could not return to her previous employment.

On 9/19/19, Dr. Froehling noted Petitioner's chronic low back pain varied from day to day but remained stable. Dr. Froehling reported Petitioner had low back pain, facet arthropathy, and degenerative changes in the lumbar spine. He kept Petitioner off work and noted she was not offered a light duty position with Respondent and was approved for SSDI benefits.

On 10/24/19, Dr. Froehling again noted Petitioner's pain varied with activity. Examination revealed minimal findings. Petitioner was able to bend over to touch her toes, with negative leg raises and no neurologic deficits. Petitioner advised she was considering taking classes to pursue a more sedentary position as a secretary. Dr. Froehling believe Petitioner had reached MMI and could not return to her previous employment due to mechanically sensitive low back pain. He opined he did not have much more to offer Petitioner, but he was available for further consultation upon request.

Petitioner last saw Dr. Froehling on 3/5/20 at which time she continued to have low back pain that increased with physical activities. He noted Petitioner modified her activities to avoid aggravation and she occasionally took Advil to alleviate her symptoms. He opined Petitioner was unable to return to her previous employment and did not have skills to transfer to a lighter job. He noted that Petitioner received SSDI certification. Examination revealed full range of motion, negative leg raises, intact reflexes, and no radicular symptoms. Again, he opined Petitioner had reached MMI and she could return on an as-needed basis. Dr. Froehling's final diagnosis was a lumbar strain which aggravated a pre-existing degenerative condition.

On 11/26/19, Petitioner was examined by neurosurgeon Dr. Daniel Kitchens pursuant to Section 12 of the Act. Dr. Kitchens testified by way of evidence deposition on 6/10/20 and his testimony was consistent with his Section 12 report. Dr. Kitchens is board-certified and devotes 90% of his practice to surgeries involving the cervical, thoracic, and lumbar spines. Dr. Kitchens

also performs surgeries involving the upper extremities for conditions such as carpal tunnel syndrome and ulnar neuropathy. Dr. Kitchens testified that Petitioner reported pain in her low back on a daily basis, with occasional severe pain and spasms that radiate up the sides of her back. She denied pain in her buttocks, legs, and feet. She reported increased pain with pulling, sitting, standing, and walking, which she alleviated by lying on her back or side. Dr. Kitchens opined that the absence of pain or weakness in Petitioner's buttocks and legs indicates she does not have nerve compression or radiculopathy.

Dr. Kitchens testified he has examined split case pickers that work for Respondent and has a good understanding of their job duties. Dr. Kitchens' sensory and motor examinations of Petitioner were normal which indicated she did not suffer a neurologic or nerve injury/impingement. Petitioner had a normal gait. He stated that Petitioner had subjective complaints of pain with range of motion of the lumbar spine and decreased range of motion. He did not observe spasms or trigger points. Petitioner had a positive Faber's test bilaterally which indicated subjective complaints of hip dysfunction.

Dr. Kitchens testified he reviewed Petitioner's medical records, with the exception of Dr. Froehling's records. His review of the lumbar CT scan dated 8/19/19 revealed degenerative conditions, including anterior traction spurs and degenerative changes from L1-2 through L4-5, facet hypertrophy, mild rotoscoliosis, and bone spurring at T11-12 and T12-L1. Dr. Kitchens opined that Petitioner sustained a lumbar strain as a result of her work accident on 2/19/19 which is producing her subjective complaints of low back pain. He stated it is difficult to know if Petitioner's degenerative conditions are causing her pain; however, he attributes her pain to a strain and not an acute change to her degenerative condition based on the squatting and reaching activity she performed when her pain started. He opined that Petitioner's degenerative condition was not aggravated or exacerbated by her work accident of 2/19/19.

Dr. Kitchens opined that Petitioner reached MMI and could return to work without restrictions. He further opined that Petitioner could perform her job duties as a split case picker with a medium physical demand level as determined by the FCE. Dr. Kitchens testified that all of the treatment provided to Petitioner up to the date of his examination was reasonable and necessary as a result of the lumbar strain she sustained on 2/19/19. He did not note any symptom magnification by Petitioner.

On cross-examination, Dr. Kitchens testified that the results of the FCE performed in May 2019 were not indicative of her condition at the time he examined her in November 2019. He acknowledged that Petitioner's condition improved and she unsuccessfully attempted to return to work in July 2019 but was placed back off work due to an increase in symptoms. Dr. Kitchens agreed Petitioner suffered moderate to severe facet hypertrophy, degenerative changes, central canal stenosis, changes at levels L3 and below, and moderate neural foraminal stenosis at the mid to upper lumbar levels. He noted Petitioner continued to have daily pain that was severe at times when bending over, sitting, standing, and walking. He was not aware of any significant low back problems or treatment, or that Petitioner missed work due to her low back prior to 2/19/19. Dr. Kitchens testified he had no reason to dispute Petitioner's complaints of pain and agreed the conditions identified on Petitioner's CT scan could cause pain.

When asked why Petitioner's condition did not resolve from 2/19/19 until she saw him in November 2019 if she sustained a lumbar strain, Dr. Kitchens stated it is very difficult to determine the true cause of pain because there is no test and without clear objective signs you can only speculate as to the source of the pain. He testified that Petitioner's ongoing pain could be caused by degenerative changes but disagreed that an injury can cause an aggravation and make a degenerative condition symptomatic. Dr. Kitchens testified he had no evidence that Petitioner had any functional problems with her low back prior to 2/19/19. He did not perform a Gaenslen's test or any testing to rule out the sacroiliac joint as being the source of Petitioner's pain. Dr. Kitchens testified he had no reason to believe Petitioner suffered SI joint dysfunction based on her history and what she reported on physical examination. He stated that Petitioner's lumbar strain was still symptomatic when he examined her in November 2019.

Dr. Alan Froehling testified by way of evidence deposition on 9/28/20. Dr. Froehling testified he reviewed x-rays that were taken prior to Petitioner treating with him. The x-rays revealed degenerative changes in the lumbar spine with some changes in the sacroiliac joint suggesting mild spondyloarthropathy, which is a degenerative disease that involves multiple joints in the lower thoracic and upper lumbar region called diffuse idiopathic skeletal hyperostosis. Dr. Froehling suspected Petitioner had a ligament injury at the top of her right sacroiliac joint. He ordered conservative treatment consisting of a cortisone injection, physical therapy, a lumbosacral corset, and work restrictions. He stated that he ordered an FCE to determine light duty, not permanent, restrictions.

Dr. Froehling testified that in May 2019 Petitioner could safely handle occasional lifting up to 20 to 25 pounds, but she still had pain with bending and squatting. He continued her off work after comparing the FCE findings to her job description until light duty work was available. In June 2019, Petitioner's flexion improved and Dr. Froehling released Petitioner to light duty. At that time Petitioner was able to bend over to touch her toes, but had difficulty straightening up and complained of pain, soreness, and muscle spasms on the right side of her low back. Dr. Froehling noted Petitioner seemed motivated and wanted to wean into full duty work. Petitioner's return to half light duty and half full duty which caused an aggravation in her condition and decreased motion.

Dr. Froehling testified that the CT scan performed in August 2019 demonstrated she had multilevel degenerative changes with bone spurs and overgrowth of the facets. She had slight spondylosis at L4-5 with developing spinal stenosis at that level due to facet overgrowth. He opined Petitioner was not able to tolerate standing eight hours on a concrete floor or perform repetitive bending and lifting. He opined that Petitioner was suitable for sedentary activity and could not return to her position as a split case picker. Dr. Froehling recommended that Petitioner apply for social security disability if she was not able to find sedentary work.

Dr. Froehling testified that Petitioner's pain was activity driven. He stated that the degenerative changes shown on Petitioner's CT scan developed over time and that her work accident aggravated the preexisting degenerative condition in her lumbar spine. He opined that Petitioner's work activity would further aggravate her condition and she was permanently and totally disabled as a practical matter.

On cross-examination, Dr. Froehling testified that he has toured Respondent's facility and observed split case pickers perform their job duties. He stated the job requires a lot of bending and lifting. Dr. Froehling testified that Petitioner's injury was sudden and abrupt and was not the culmination of repetitive trauma. He diagnosed Petitioner with a lumbar strain, as well as preexisting degeneration and spondyloarthropathy, and probable DISH syndrome. He opined the lumbosacral strain and aggravation of her preexisting condition were caused by her work accident. He testified that in the absence of pre-existing pathology, a lumbosacral strain will typically improve within three to four weeks. But with the presence of preexisting pathology a full recovery is not always expected. He testified that Petitioner's back condition will last for years and he is not sure he could parse out what was due to the back strain and what was due to the preexisting condition. He did not believe the Petitioner was a surgical candidate.

Dr. Froehling agreed that Petitioner never had radicular symptoms. She had a spot at the top of her SI joint that did not follow a radicular pattern. He reviewed the CT scan himself and the findings appeared to be longstanding degenerative changes. He could not tell if the findings would have been caused by her lumbar strain without comparing her CT scan to pre-accident diagnostics. He opined that if Petitioner put more strain on her back she might require surgery. Dr. Froehling testified that Petitioner's condition was stable and chronic by 9/19/19. He placed her at MMI on 10/24/19 and opined she was not capable of a returning to her previous employment due to mechanically sensitive low back pain. He based his opinion on the fact Petitioner attempted to return to work in July and failed. He opined that Petitioner had a significant pathologic condition of the lumbar spine that had been aggravated to the point she was sensitive to mechanical stress and did not tolerate repetitive bending and lifting, which her job duties required, and she should avoid these activities.

Dr. Froehling admitted he has no vocational expertise and he did not perform a labor market survey or vocational assessment on Petitioner. He opined Petitioner could perform part-time sedentary work. He stated Petitioner did not require additional treatment after her last visit on 3/5/20.

CONCLUSIONS OF LAW

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

The law in Illinois holds that "[a]n employee is temporarily totally incapacitated from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit." *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill. 1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill., 1990) citing *Ford Motor Co. v. Industrial Comm'n*, 126 Ill.App.3d 739, 743, 467 N.E.2d 1018, 81 Ill.Dec. 896 (1984).

Petitioner claims entitlement to TTD benefits for the periods 2/20/19 through 6/25/19 and 7/30/19 through 3/5/20. Respondent disputes liability for TTD benefits beyond the 36-2/7^{ths} weeks paid to Petitioner.

The medical evidence supports Petitioner reached maximum medical improvement on 10/24/19. On said date, Dr. Froehling opined Petitioner's condition was stable though she continued to have low back pain that was activity driven. Dr. Froehling stated he did not have much more to offer her and he was available for further consultation at her request. Dr. Froehling's last office note dated 3/5/20 does not indicate why Petitioner returned to his office. Petitioner's complaints and physical examination remained the same as on 10/24/19. Dr. Froehling's diagnosis remained the same and he advised Petitioner to return on an as-needed basis or if her condition changed.

The Arbitrator concludes that Petitioner is entitled to TTD benefits for the period 2/20/19 through the date she reached MMI on 10/24/19. The Arbitrator finds Petitioner is entitled to temporary total disability benefits of $**436.37**/week for the period **2/20/19** through **10/24/19**, representing **35-2/7th** weeks. Respondent shall receive credit for **$15,834.00** in TTD benefits paid for **36-2/7th** weeks.

Issue (L): **What is the nature and extent of the injury?**

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

(i) **Level of Impairment**: Neither party submitted an AMA rating. Therefore, the Arbitrator places no weight on this factor.

(ii) **Occupation**: Petitioner was employed as a split case picker for Respondent at the time of accident. Petitioner was able to return to light duty work for approximately one month and advanced her work capacity to half light duty and half full duty in July 2019. Petitioner's full duty shift caused an aggravation of symptoms and she was taken back off work on 7/31/19 and has not worked for Respondent since. It is undisputed that Petitioner's position as a split case picker involves lifting, twisting, turning, bending, walking, and standing. The Arbitrator has carefully considered the testimony of Petitioner and finds she was credible. The Arbitrator also considered the testimony of Drs. Froehling and Kitchens and the FCE findings that placed Petitioner at a medium physical demand level. Dr. Froehling testified that the FCE was intended to place temporary restrictions on Petitioner as she requested to return to work and he felt pressured to do so. Dr. Froehling determined in May 2019 that Petitioner could safely handle occasional lifting up to 20 to 25 pounds, but she still had pain with bending and squatting. He did not believe that her restrictions compared to the FCE findings allowed her to return to work.

Dr. Froehling testified he has personally toured Respondent's facility and observed split case pickers perform their job duties which requires a lot of bending and lifting. He testified that Petitioner consistently reported that such activities cause her pain and he opined

Petitioner was not able to tolerate standing eight hours on a concrete floor or perform repetitive bending and lifting. He opined that Petitioner is capable of sedentary, part-time work and could not return to her position as a split case picker due to her work accident causing an aggravation of a preexisting condition. Dr. Froehling also recommended Petitioner apply for social security disability which she is currently receiving. Dr. Froehling provided unrebutted testimony that Petitioner's pain is permanent.

Although the parties stipulated as the issue of causal connection, the Arbitrator does not find Dr. Kitchens' causation opinion to be credible as it relates to Petitioner's ability to return to her pre-accident employment with Respondent. Dr. Kitchens was asked, "Doctor, would you agree that an injury can aggravate a degenerative condition and make it become symptomatic?" Dr. Kitchens replied, "No, sir." If Dr. Kitchens' opinion were true that an injury cannot aggravate or accelerate a preexisting condition such that an employee's condition becomes symptomatic and prevents her from returning to her pre-accident employment, the Commission would have ruled quite differently in cases such as *Sisbro, Inc. v. Indus. Comm'n*, 797 N.E.2d 665 (Ill. 2003). The law is clear that if a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Constr. v. Indus. Comm'n*, 227 N.E.2d 65, 67-68 (Ill. 1967); see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 362 N.E.2d 339 (Ill. 1977).

Dr. Kitchens acknowledged that Petitioner unsuccessfully attempted to return to work in July 2019 but was placed back off work due to an increase in symptoms. He did not dispute that Petitioner continued to have daily pain that was severe at times when bending over, sitting, standing, and walking. Dr. Kitchens testified he had no reason to dispute Petitioner's complaints of pain and agreed the conditions identified on Petitioner's CT scan could cause pain.

Dr. Kitchens testified it is very difficult to determine the true cause of pain because there is no test and without clear objective signs you can only speculate as to the source of the pain. He testified that Petitioner's ongoing pain could be caused by degenerative changes but disagreed that Petitioner's accidental injuries caused a change in her degenerative lumbar spine and, according to his testimony, was not possible in causing such an aggravation. However, he was not aware of any significant low back problems or treatment, or that Petitioner missed work due to her low back prior to 2/19/19. He had no evidence that Petitioner had any functional problems with her low back prior to her work accident. He stated that Petitioner's lumbar strain was still symptomatic when he examined her in November 2019.

The Arbitrator gives greater weight to this factor and concludes, based on the totality of the evidence, that Petitioner was not able to return to her pre-accident employment with Respondent.

(iii) **Age**: Petitioner was 60 years old at the time of the accident. Given Petitioner's advanced age, it will not necessitate her to manage the effects of her injury for a longer period of time. Petitioner applied for and is currently receiving social security disability benefits and is no longer employed. The Arbitrator therefore places some weight on this factor.

(iv) **Earning Capacity**: The Arbitrator notes that Petitioner applied for and is currently receiving SSDI benefits. Dr. Froehling completed Petitioner's social security disability paperwork and listed her lumbar condition as one of the disabling factors. Although neither side presented direct evidence concerning Petitioner's future earning capacity apart from the medical records and testimony of Drs. Froehling and Kitchens, Petitioner was unable to return to her pre-accident employment with Respondent which negatively affected her future earnings. The Arbitrator therefore gives some weight to this factor.

(v) **Disability**: The Arbitrator finds that the appropriate award should be for loss of an occupation/trade as provided in Section 8(d)2 of the Act because the evidence supports Petitioner is not able to return to her usual and customary duties as a split case picker as fully set forth in paragraph (ii) above. The Arbitrator therefore gives the greatest weight to this factor.

Based upon the above factors and the record taken as a whole, the Arbitrator orders Respondent to pay Petitioner permanent partial disability benefits of $**392.74**/week for **100** weeks because the injuries sustained caused **20%** loss of use of the person as a whole pursuant to Section 8(d)2 of the Act.

Arbitrator Linda J. Cantrell DATED:

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	07WC034574
Case Name	Stanley Elinsky v. Walsh Construction Co
Consolidated Cases	
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	23IWCC0149
Number of Pages of Decision	23
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	David Barish
Respondent Attorney	Robert Finley

DATE FILED: 3/30/2023

/s/ Deborah Baker, Commissioner

Signature

23IWCC0149

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ 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

Stanley Elinsky,

Petitioner,

vs. NO: 07 WC 34574

Walsh Construction Co.,

Respondent.

DECISION AND OPINION PURSUANT TO
SECTIONS 8(a) and 19(h)

This matter comes before the Commission on Petitioner's Petition for Review Under Sections 8(a) and 19(h) of the Act. Former Commissioner Tyrrell conducted two hearings in this matter in Chicago, IL. Petitioner testified on November 1, 2021, and proofs were closed on June 1, 2022. The Commission, having thoroughly considered the totality of the evidence, hereby finds Petitioner failed to meet his burden of proving his condition regarding his cervical spine and radiculopathy is causally related to the June 14, 2007, work incident. Additionally, the Commission finds that Petitioner failed to meet his burden of proving his condition has materially worsened since the prior arbitration hearing. Therefore, the Commission denies Petitioner's petition in its entirety.

Findings of Fact

Background

Petitioner worked as a journeyman carpenter for over 20 years. On June 14, 2007, he sustained an injury when a piece of rebar fell from the top of a bridge and struck him on the back of his neck. He was taken to the ER that day. The next day he complained of a mild headache, pain and stiffness in the neck, and left shoulder soreness. His doctor diagnosed him with a neck contusion and mild back strain. Petitioner's original neurologist diagnosed Petitioner with post-concussive headaches. The case originally proceeded to a 19(b) hearing on February 10, 2009, and September 22, 2009. When asked about his current complaints during the hearing, Petitioner testified:

"Good day would be not a bad headache. A few episodes, you know,

> a dozen, and tinnitus. It's tough sleeping at night…everything becomes quiet and then all of a sudden you go to bed and you have noise, you know. You need a background so you can go to sleep easier…Many days where I have a severe headache and/or migraine and it seems like the ringing in the ears compounds with that. So if you got a bad headache, the ringing seems to get stronger and just makes life a little difficult…You have a hard time paying attention to things because you got pain to deal with…but it depends if it's a good or bad day, you know. There's always a headache. There's always ringing. It just depends on how severe it is."

(February 10, 2009, Tr. at 37-38). He testified the time between good and bad days varied. He testified that on bad days he did not want to do anything and it would feel like he was almost immobilized due to the pain and ringing in his ears. On good days he could still communicate and accomplish things. Petitioner testified about his balance issues and testified that his perception was off. He testified that when he mowed the lawn, he had several—up to five dozen—episodes of visual problems. He testified that the act of turning as well as the presence of leaves on the ground could give him the feeling that things were warped. He testified that he would feel nauseous, but would not vomit, and at times suffered from an upset stomach. Petitioner did not testify that he suffered from any complaints relating to his cervical spine or any radicular symptoms.

In the Arbitration Decision filed in December 2009, the Arbitrator concluded that Petitioner sustained a mild concussion that had resolved, cervical disk bulges at C3-C4, C4-C5, and C5-C6, and associated subjective complaints of headaches and dizziness. The Arbitrator wrote that while Petitioner was unemployed at the time of the hearing, the reasons for his unemployment were unclear. The Arbitrator also determined that Petitioner did not prove vocational rehabilitation was proper.

Petitioner filed a review of the Arbitration Decision and the Commission issued a decision on November 16, 2010, in which it partially modified the Arbitration Decision. The Commission ordered Respondent to comply with Section 7110.10 (now Section 9110.10) of the IWCC rules by preparing a vocational assessment. The Commission also determined that Petitioner reached maximum medical improvement ("MMI") as of June 26, 2008, and modified the temporary total disability ("TTD") award accordingly.

The case proceeded to a final arbitration hearing on October 19, 2012, and October 29, 2012. Maintenance benefits and the nature and extent of Petitioner's injuries were in dispute. Petitioner testified that his condition since the prior 19(b) hearing had generally remained the same. Petitioner testified that he continued to have good and bad days. He testified that he took a few medications to address his migraines as well as at least one muscle relaxant. When asked about his symptoms regarding his head and neck, Petitioner testified:

> "It depends on the activities I do. This time of year kind of sucks because of the leaves on the ground. I have a vestibular problem. As I'm walking and I watch the leaves and they move, I get vertigo. I have problems with spinning out. If I'm active, let's say, I'm on the

> computer or reading too much, I'm prone to headaches and then possibly migraines…If I'm doing any physical events, say, in my trade, messing around with stuff in the house, if I get a little [overconfident] and push it and go too hard, I pay back mainly with migraines. I get a huge headache, and then sometimes it develops into a migraine. That can go a day, sometimes two days. Four is long… But typically I have to be very careful what I do. I've been kind of an extremist, and I have to lay back on how I do things…"

(October 19, 2012, Tr. at 54). Petitioner testified that he developed a particularly bad migraine after he helped his father install a stone wall. He testified that despite taking his medicine, his migraine symptoms lasted for two days. Petitioner further testified:

> "Just mowing the lawn, if I do the lawn on a vertical or horizontal pattern, every time I turn, the ground in front of me spins out. I have to have a three-to-one contact with the lawn mower, my two feet on the ground and a hand on the mower, and I just kind of do a blur-out vision and come back around, and I have vision again after a couple of seconds, and then carry on and do the next line of mowing. That occurs every time…It's nauseous at times…you have—not a floating, but you just feel like you're off a little bit, you know, not a good day, but that typically characterizes everything that I do in a day, whether I'm loading a dishwasher with a dish and I move too quick, it blurs out on me."

(October 19, 2012, Tr. at 57-58).

Petitioner testified that he tried to perform his vestibular exercises five times a week. After completing the exercises, he would feel off and nauseous for around 30-40 minutes. He testified that he spins out if he puts an object in his hand against a wall with loud patterns. He has the same reaction whether he is holding a card, a piece of paper, a piece of plywood, etc. His vestibular exercises are meant to help him keep items in focus and to stop the backgrounds from becoming distorted.

In the Arbitration Decision filed in January 2013, the Arbitrator denied Petitioner's claim for maintenance benefits. The Arbitrator concluded that Petitioner sustained a 25% loss of the whole person due to the work injury. Petitioner filed a review of the Arbitration Decision, and in its June 2014 Decision, the Commission partially modified the Arbitration award. The Commission affirmed the denial of maintenance benefits; however, it determined Petitioner sustained a 50% loss of the whole person due to the June 14, 2007, work incident. In particular, the Commission noted Petitioner's testimony regarding his frequent headaches, migraines, and vestibular and balance issues as well as his permanent work restrictions when reaching its conclusion. Petitioner filed the pending 8(a)/19(h) petition on June 24, 2016.

November 1, 2021, 8(a)/19(h) Hearing

Petitioner currently lives in Jonesborough, Tennessee. Petitioner testified that since the 2012 arbitration hearing, he underwent neck surgery that alleviated all the pain in his neck, shoulders, and back. He testified:

> "I still have constant headaches. I still have tinnitus. I still get frequent migraines and have problems with vestibular and some speech, but I'm getting better with that."

(November 1, 2021, Tr. at 4). He testified that his dizziness was constant. He testified that he never returned to work since the last arbitration hearing.

Petitioner testified that Dr. Panzica was his PCP when he lived in Illinois. He testified that in 2015 the tension in the left side of his neck and shoulder started "going to the other side," and that he began having problems with his right shoulder. (November 1, 2021, Tr. at 5). He testified that he told Dr. Panzica that he was nervous and wanted to do something about his symptoms. Petitioner testified that before then, he typically had neck and shoulder pain on the left side. He testified:

> "I didn't have anything radiating down the right side until later…My left shoulder, left clavicle, and my back was always sore and extremely tight, and it was really tight on my front because I was having troubles with—I would pull my rib out a little bit in one and two, so I was having physical therapy with that and chiropractic therapy, seven years, eight years, on and off with Dr. Wolfe."

(November 1, 2021, Tr. at 5-6). He denied suffering from any new accidents or injuries. He testified that Dr. Panzica referred him to Dr. Siemionow.

Petitioner testified that he told Dr. Siemionow about his history of complaints since the June 2007 work incident. He testified that Dr. Siemionow took him off work and prescribed an EMG. Petitioner underwent cervical surgery on June 20, 2016. He testified that before the surgery, he had tension in his back and front. He testified that he underwent a few courses of chiropractic treatment each year, with three to five sessions each course, due to the tightness in his neck. Petitioner testified:

> "…the neck would get so tight that I was having trouble with one and two in the ribs and that goes around to the back. It's like somebody punched me in the back on the left shoulder, and I had that constant. So I was taking muscle relaxers for that pretty much on a constant basis from the time I got hurt to surgery."

(November 1, 2021, Tr. at 9). When asked how he felt after the surgery, he testified:

> "Wonderful. No pain in the neck area. I didn't have problems with

> my ribs. Chiropractic, I would go in once in a while, but I was pain free in my back, shoulders, neck, and it was a wonderful relief."

(November 1, 2021, Tr. at 9). He testified that while he was pain free, he continued to have severely limited range of motion in his cervical spine:

> "It's immobilized. I can't turn my head in a vehicle to see a lane. Downward and upward is not totally restrictive, but if I have to turn my head right or left for a long period of time, I get stiffness in the neck or if I sleep wrong. I cannot sleep on my stomach. That's a big no-no for neck surgery. So that probably took me months to figure out how to sleep on my side and back so I didn't wake up with a stiff neck, which I got used to that, but compared to what it was prior, no. It was a huge difference. I would do it anytime again."

(November 1, 2021, Tr. at 10). Petitioner testified that looking to the left and right changed because he lacked the mobility to get his chin to his shoulders. He testified, "Sometimes you have to turn your body to get your line of vision correct." (November 1, 2021, Tr. at 11).

Petitioner testified that after Dr. Siemionow released him, he continued treatment at Tri-State Mountain Neurology mainly for his migraines. He testified that he once had a 10-day long migraine and visited the hospital. Petitioner's current doctor, Dr. Bryant, referred Petitioner to a specialist regarding his chronic migraines. He testified that he now takes Ajovy, which does not eliminate his migraines, but shortens the duration of his migraines. He testified that his migraines typically lasted three to five days, and the medication has cut the duration to approximately two days. Since he began using the medication two years earlier, he had not experienced a migraine lasting longer than three days. He testified that when he has a migraine, he is unable to concentrate. He testified that approximately six months earlier, he began using another medication which helped reduce the strength of his migraines. He testified that it has allowed him to better function during migraines.

Petitioner testified that he has had a headache every day over the prior few years and continued to suffer from severe tinnitus. He testified that typically he knew that a migraine was imminent when his tinnitus felt "…like [he's] got a train going through [his] head." (November 1, 2021, Tr. at 14). He testified that during the hearing, the sound of the HVAC triggered his tinnitus. He testified, "Your ears are just hissing highly. When it gets to the point when I'm coming on with a migraine, it just takes the volume and goes full tilt on it." (November 1, 2021, Tr. at 14). He testified that generally he now only suffers from migraines two to three times a month.

Petitioner testified that he continues to suffer from vestibular issues. He testified:

> "Loud carpeting, the floor will move on me. Shopping…the cereal section with all the loud colors and stuff actually I react to and I kind of blur stuff out. It looks like you're going down the highway and you look out your window at the side of the street going fast. It's just a blur of color. That happens quite often with me. My hand to eye

> sucks. I can't take a card and move it across and put it down on the floor or a dish into a dishwasher. I spin out, and I have episodes constantly. That's been happening from day one of my injury, and I've just learned how to deal with it. You can spin out for seconds, and a second and a half, maybe five seconds, and then your mouth waters a little bit. You don't get nauseous, but you're off. You just feel a little funky and you regain your sense, I guess, and go on."

(November 1, 2021, Tr. at 21-22). He testified that sounds affect him as well, such as the pitch of small motors. He testified that autumn is difficult for him because the leaves on the ground and the different colors blowing around cause him to spin out often. He testified that he fuzzes out and zones out for around one second. Petitioner testified in detail regarding circumstances in which he will spin out such as walking down a store's cereal aisle and mowing the lawn. He testified that Medicare paid all his bills since 2010 except for the outstanding Dr. Siemionow bills.

Under cross-examination, Petitioner testified that Dr. Panzica treated him for various conditions. Petitioner agreed he told Dr. Panzica about a 2014 ski accident. He agreed that he reported a sudden onset of neck pain to Dr. Panzica in March 2015. Petitioner testified that no doctor referred him to Watauga Orthopaedics; instead, he found the practice in the phone book. He testified that Dr. Bryant referred him to Tri-State Mountain Neurology. Petitioner did not recall visiting Watauga Orthopaedics for complaints relating to his neck. He did not recall telling a doctor at Watauga Orthopaedics about an injury in August or September 2017. He did not recall reporting to the doctor that he believed his additional neck symptoms were from painting and sleeping. Petitioner did not remember whether a doctor told him in January 2018 that there were no radicular symptoms relating to his neck and that he required no more surgeries. Petitioner believed he last received treatment at Watauga Orthopaedics in 2019 or 2020. He testified that he did not have any future appointments relating to his neck at the facility. He testified that he has continued to undergo treatment at Tri-State Neurology and last saw his neurologist three weeks before the hearing. Petitioner testified that he visits the neurologist typically three to four times a year.

Petitioner testified that he had not been keeping a headache diary in the past few months. He testified that he shared his headache diary with his neurologist a year earlier. He testified:

> "We found that some of the migraines were brought on from mowing, doing the lawn, and I had been doing a pool deck. We took a part of a pool deck down, and it was when I used a skill saw or saw and I use ear protection all the time, but there's times that that bothers my head."

(November 1, 2021, Tr. at 33). He testified that he does household tasks such as cleaning, washing dishes, cooking, mowing the lawn, and a bit of gardening. His property in Tennessee is 2.5 acres.

Vicki Elinsky—Petitioner's Witness

Mrs. Elinsky has been married to Petitioner for 19 years. She testified that Petitioner never complained about his neck or shoulders before 2007. She testified that before the 2016 cervical

surgery, Petitioner had neck complaints as well as some tingling down the arm. She testified that these complaints began after his work accident and that Petitioner became worried when his symptoms started traveling down his right arm. Mrs. Elinsky testified that Petitioner had experienced a headache every single day since the date of accident. She testified that Petitioner also suffered from balance issues, tinnitus, and brain freezes. She testified that over the prior seven to eight years, she observed Petitioner suffering from mild to severe headaches that would last a few days. When asked how she knew whether Petitioner's headache was mild, she testified:

> "I can pretty much look at him and his eyes are bright red and his brow is furrowed and he's way more short-tempered than he used to be, not a lot of patience."

(November 1, 2021, Tr. at 40). Mrs. Elinsky testified that Petitioner continued to suffer from ringing in the ears and issues with his balance. She testified that he trips going up stairs and never did this before his work injury. Regarding her observations regarding Petitioner's condition, she further testified:

> "After the neck surgery, trouble swallowing, things going down the wrong pipe, coughing during dinner, still, like, range of motion. So the neck pain got better and shoulder pain, but range of motion, you're driving in the car. You can't really check the blind spots."

(November 1, 2021, Tr. at 41). She testified that Petitioner only uses his mirrors when he drives and does not completely turn his head when checking his blind spots.

Mrs. Elinsky testified that in the past few years, Petitioner has experienced brain freezes where he would stop in the middle of a sentence and she would have to finish his sentence. She testified that Petitioner also spins out when something catches his eye and gets dizzy for a minute. She testified:

> "Once we were at a doctor's office and they had read his chart. So they rolled up the big area rug because they saw where…certain patterns made it seem like the floor was moving, but I know it's a brain injury. It's not just the neck."

(November 1, 2021, Tr. at 43).

Medical Treatment

In January 2013, Dr. Panzica, Petitioner's PCP, examined Petitioner before he underwent a partial knee replacement surgery. The examination notes no complaints of neck pain and Dr. Panzica wrote that Petitioner's neck was supple with full range of motion. There were no complaints of pain radiating from Petitioner's neck into either arm. Petitioner returned to Dr. Panzica in October 2013 for a routine physical. At that time, Petitioner complained of neck pain and reported that physical therapy and spinal manipulations had worsened his neck pain. Petitioner also complained of headaches for many years with sharp, stabbing occipital pain lasting 15-20

minutes preceded by severe tinnitus. He reported experiencing six such headaches during the prior few months. Petitioner rated the severity of the headaches as moderate to severe. Petitioner injured his ankle in a skiing accident in February 2014. In April 2014, during a follow up appointment relating to his ankle injury, Petitioner did not complain of neck pain or pain radiating into either arm.

On February 17, 2015, Petitioner complained to Dr. Panzica of neck pain that had worsened over the prior four months with numbness and radiation into his left shoulder and chest. He also complained of worsening low back pain. Petitioner also complained of weekly migraines due to recent overhead work. The office visit note reflects Petitioner's prior report of intermittent headaches with sharp, stabbing pain. There was no change to Petitioner's vestibular dizziness. Dr. Panzica's examination of Petitioner's neck revealed full range of motion with point tenderness at the left subscapular bursa.

In June 2015, Petitioner complained to Dr. Panzica of pain at the nape of his neck over the prior three months. He also complained of pain radiating into his bilateral shoulders, worse on the right. Dr. Panzica noted the following findings during his examination: vertebral cervical spine tenderness, paraspinal muscle spasm bilaterally, normal cervical range of motion, trapezius tenderness bilaterally, and positive spurling test with rotation on the left and the right. The doctor ordered a cervical MRI and referred Petitioner to an orthopedic surgeon. The August 20, 2015, cervical spine MRI had the following impression when compared to a September 2007 study: 1) posterior disc osteophytes from C3-C4 through C5-C6 slightly increased in severity with mild abutment of the cord at C3-C4 but no myelomalacia; and 2) neural foraminal narrowing that was slightly increased in severity. Cervical spine x-rays taken that day revealed degenerative disc disease and degenerative joint disease. In March 2016 Petitioner returned to Dr. Panzica and complained of a mass on his neck for the past year. The doctor did not note any cervical spine pain; however, he referred Petitioner to Dr. Siemionow, an orthopedic surgeon.

Dr. Siemionow's physician assistant examined Petitioner on April 1, 2016. Petitioner's primary complaint was neck pain radiating into the left trapezial and deltoid regions with some associated numbness and tingling of the left 3rd, 4th, and 5th digits. Petitioner provided background regarding his original work incident and reported that he had experienced a lot of pain and numbness, as well as vestibular issues since the work injury. He reported last attending physical therapy in 2015 and reported undergoing a few epidural steroid injections. He reported the injections provided no relief. Petitioner rated his pain at 4/10. He also reported changes with his balance, coordination, and dexterity. The exam revealed full range of cervical motion with some pain symptoms at the extremes. There was some mild spinous process tenderness to palpation from C3-C7 and some tenderness and spasming to the left-sided paraspinal and trapezial musculature. The physician assistant also noted minimal tenderness and spasming along the right paraspinal and trapezial musculature. He opined that the August 2015 cervical spine x-rays showed an approximate 50% collapse in disc height at C4-C5. He interpreted the August 2015 cervical MRI as showing a disc bulge at C3-C4 resulting in mild neural foraminal narrowing bilaterally, a disc herniation at C4-C5 resulting in bilateral neural foraminal stenosis, and mild spondylotic changes. The physician assistant diagnosed cervicalgia, cervical disc herniation at C4-C5, and cervical radiculopathy. He recommended Petitioner remain off work and ordered updated cervical x-rays and an EMG of the bilateral upper extremities.

Dr. Siemionow first examined Petitioner on May 25, 2016. Petitioner's primary complaints were neck pain with pain radiating into the left trapezial and deltoid regions, left 3rd, 4th, and 5th finger numbness and tingling, and headaches. The doctor noted questionable decreased sensation to light touch in the palm of Petitioner's hand as well as in the C5 and C6 dermatomal distributions. He wrote that while Petitioner's gait was normal, it appeared he was "somewhat off balance" after walking down the hall. Dr. Siemionow diagnosed cervical disc herniations at C3-C4, C4-C5, and C5-C6, cervical spondylosis at C5, and cervical pain. He recommended Petitioner remain off work and ordered a CT scan to better define the pathology and plan for surgery. The doctor wrote that Petitioner's EMG was positive for left upper extremity radiculopathy and that Petitioner would benefit from surgery. When Dr. Siemionow next examined Petitioner on June 1, 2016, Petitioner's complaints were unchanged. Petitioner decided to proceed with the recommended fusion surgery.

On June 20, 2016, Dr. Siemionow performed an anterior cervical discectomy and fusion at C3-C4, C4-C5, and C5-C6. The postoperative diagnosis was cervical spondylosis and disc herniation with radiculopathy at C3-C4, C4-C5, and C5-C6. PA Welsch, Dr. Siemionow's physician assistant, provided most of Petitioner's post-operative care. On July 8, 2016, Petitioner reported that his pre-surgery neck pain and radicular symptoms appeared to have completely resolved. In August 2016, Petitioner reported some residual numbness and tingling sporadically. He also complained of stiffness in the posterior neck and trapezial region. In September 2016, Petitioner reported that his pre-surgery radicular symptoms had not recurred. He complained of neck stiffness and pain but reported feeling significantly better than his pre-surgery condition.

On December 14, 2016, Petitioner reported his neck pain and radicular symptoms had completely resolved. He complained of continued left trapezial tightness and soreness he rated at 1/10 and was advancing activities as tolerated. Petitioner reported returning to the gym and doing weight training. PA Welsch wrote:

> "He does have a history of an injury that caused some neurologic symptoms. As a result, he continues to have some episodic falls which are not abnormal for him."

(PX 2). Petitioner reported that his PCP recently referred him to an ENT for evaluation regarding his continued neurologic symptoms. After examining Petitioner and reviewing updated x-rays, PA Welsch told Petitioner to advance activities as tolerated, including weights. Petitioner was to continue his home exercise program ("HEP") as needed. The physician assistant wrote that Petitioner was doing very well. Petitioner was to return in six months for the one-year anniversary of the surgery.

On January 18, 2017, PA Welsch examined Petitioner. The PA wrote:

> "He presents to the office today to provide me some additional information regarding his injury. He advised me that on approximately 06/2007, he had a work-related injury where he was hit in the back of his head and neck with rebar. Ultimately, he ended up having some neurologic complaints and deficits which resulted in dizziness, lightheadedness, double vision, numbness to the upper

extremities, and occasional hallucinations…"

(PX 2). Petitioner reported he received a lot of benefit from the surgery. PA Welsch wrote that Petitioner's neck pain and radicular symptoms had resolved. Petitioner complained of residual left trapezial tightness he rated at 1/10. Petitioner was advancing his activities as tolerated and was doing lightweight training and cardio including walking and using an exercise bike. Petitioner was to continue to advance his activities and to continue his HEP.

PA Welsch examined Petitioner on June 1, 2017, for his one-year checkup. He wrote that Petitioner was doing very well and reported having essentially no pain. Petitioner reported some neck soreness and stiffness as well as some left-sided spasming if he was too active or did certain activities involving lifting. Petitioner otherwise rated his pain at 0/10 and reported being very happy with his recovery and improvement in symptoms compared to his pre-operative condition. PA Welsch reviewed cervical spine x-rays taken that day and wrote that they showed good placement of the hardware without any evidence of loosening or migration. He noted what appeared to be arthrodesis at C3-C4 and C4-C5 and incomplete bony bridging at C6-C7. Petitioner was to continue to advance his activities as tolerated and to continue his regimented exercise program. Petitioner was to follow up as needed.

On January 30, 2018, Petitioner was examined by FNP Baker at Watauga Orthopaedics. Petitioner complained of posterior neck pain going into the left shoulder. He reported that the date of onset was three to four months earlier and stated his symptoms were worsening. Petitioner reported experiencing popping, clicking (worse with turning over at night), and weakness, and said his symptoms worsened when he painted his new house. He reported vision changes when his head was down and tightness in the left shoulder. The examination revealed facet pain exacerbated with extension at left C5-C6. Both active and passive range of motion were normal. FNP Baker interpreted cervical x-rays taken that day as revealing some lucency around the screws at C6. Petitioner did not have any radicular symptoms on examination but had primarily left-sided C5-C6 and C6-C7 facet joint pain. FNP Baker wrote: "He has had a fusion several years ago nonunion was noted and discussion of surgery [at] previous treatment facility was discussed." (PX 4). Petitioner was to continue using anti-inflammatories. FNP Baker wrote: "This was also discussed with Dr. Duncan and he agreed that nonunion is pretty typical in the cervical spine and there is nothing surgical to do this time if he has no radicular symptoms." (PX 4). He recommended Petitioner follow up with his PCP and possibly a vascular surgeon to discuss Petitioner's reports of vision changes with flexion. FNP Baker wrote the following:

> "Patient with a history of a cervical spine injury workman's comp. Had a previous fusion from C3-C6. Upon exam today has no radicular symptoms primary facet joint pain in the C5-6 and C6-7 pattern. Would recommend doing nothing since he is getting some good decent relief with anti-inflammatories. Even though he has some lucency around the screws at C6 and probable nonunion at the level nothing serious or dangerous on exam…"

(PX 4).

Dr. Bryant, Petitioner's current PCP, examined Petitioner on November 19, 2018. Dr. Bryant wrote that Petitioner complained of an acute migraine occurring in a persistent pattern for four days. Petitioner reported it was increasing in severity and he characterized it as severe and pounding. The migraine was in the back of his head and symptoms were aggravated by tension/nervous strain. Petitioner reported waking up with a headache almost every day that could then progress to a migraine. He had recently restarted verapamil and reported experiencing no further migraines since then. Petitioner also discussed his history of falling during the visit. He complained of right arm pain after a ground level fall week(s) earlier. He reported falling 10-20 times since his last visit, primarily when going up stairs. Petitioner reported that his surgeon recently told him that the "…screws from [his] fusion may be shaking loose." (PX 4). Dr. Bryant noted the cervical spine MR arthrogram Petitioner recently underwent was normal. Petitioner was to continue his medications and Dr. Bryant referred him to neurology.

On February 21, 2019, Petitioner first sought treatment with NP Howard for his chronic migraines. The nurse practitioner recorded the following history:

> "He has a history of post concussion syndrome. On 06/14/2017, he was involved in an accident at work in which a 20 lb bar dropped 50+ feet and hit him in the back of the head and neck. He suffered from severe whiplash. Initially, he had diplopia, inability to comprehend, disequilibrium, numbness in the arms and confusion. He reports at least 2 years of cognitive and vestibular therapy. He was also followed by a Neuropsychologist. After a few years, deficits were felt to be static and he eventually had to file for disability as he was making a lot of mistakes as a carpenter."

(PX 4). Petitioner reported suffering from a daily frontal headache, tinnitus, impaired depth perception, and cognitive impairment. Petitioner reported that over the prior six months, he had had an increase in the frequency of his migraines. He reported that at least four days each month, his headaches intensified and became severe with photophobia and worsening tinnitus. Petitioner reported that the louder the tinnitus, the worse his headache. NP Howard wrote: "When headaches become severe, he has an ice pick sensation in the back of his head 'like someone is trying to pull [his] brain out.'" (PX 4). Petitioner also reported that several times a month he experienced visual aura without a migraine. NP Howard prescribed Ajovy and recommended a trial of Botox. Petitioner was to keep a headache diary and follow up in three months.

In March 2019, Petitioner returned to NP Howard. Petitioner reported he had been keeping a headache diary for the past three months and noted a worsening headache after mowing the lawn. He believed this was due to his numerous seasonal allergies. He reported that before the Ajovy his migraine headaches could last seven to ten days, but that after he began using the medication, the migraines lasted one to two days. In August 2019, NP Howard once again examined Petitioner. Petitioner reported that while the Ajovy significantly improved the severity of his headaches, he continued to have daily headaches. Petitioner reported having an intense occipital headache that waxed and waned over the prior month. He rated his current headache at 6/10. He also reported chronic tinnitus that worsened with his headaches. NP Howard diagnosed chronic migraine without aura, chronic daily headache, and post-concussive syndrome. The nurse practitioner also

prescribed a Botox injection and a trial of cyclobenzaprine for his muscle contraction headache.

On October 30, 2019, NP Howard once again examined Petitioner. Petitioner reported suffering from a daily headache since his concussion on the date of accident. He also complained of chronic tinnitus that worsened with the intensity of the headache. Petitioner believed the Ajovy worsened his tinnitus, but lessened the severity of his headaches. Petitioner reported experiencing a severe headache with throbbing pain at least 16 days each month superimposed on his normal daily headache. NP Howard wrote Petitioner suffered from chronic migraine headache with superimposed daily headache and post-concussion syndrome with static cognitive impairment, impaired depth perception, tinnitus, and daily headaches. The nurse practitioner performed Botox injections to treat Petitioner migraines that day. Petitioner was to keep taking Ajovy, maintain a headache diary, and was to follow up in three months.

Expert Opinions

Dr. Kris Siemionow—Treating Physician

Dr. Siemionow testified via evidence deposition on Petitioner's behalf on June 11, 2019. (PX 3). He is a board-certified orthopedic spine surgeon. He testified that any history Petitioner provided regarding his injury was noted in the April 1, 2016, office visit note. Dr. Siemionow reviewed Dr. Mekhail's October 2017 narrative report at the request of Petitioner's attorney. He also authored a narrative report dated August 24, 2018; however, this report is not in evidence. The doctor testified that he agreed with Dr. Mekhail's finding that there was pseudarthrosis at C5-C6. He testified that he did not see evidence of acute findings when he reviewed the 2017 cervical MRI. During direct examination, the following exchange occurred:

> Q. And assuming that Mr. Elinsky was injured on June 14, 2007, when a piece of rebar fell many feet and hit him across the base of the skull and the top of his neck and the back of his head, and that he received treatment for a number of years, mostly for the neurological results of the head injury, but that he did receive some care for the cervical spine, and did in June of 2017 have a small posterior disc osteophyte complex at C4-5 with some degenerative change, could or might the injury of June 14, 2007, have caused, aggravated or accelerated the condition that led to the need for the surgery that you performed essentially nine years later on June 20, 2016?
> A. Based on the information that I have, which we have sort of gone through and found in my medical record, that was my opinion.

(PX 3 at 16-17). He testified that while he believed Petitioner had a good result from the surgery, Petitioner's cervical range of motion was limited and might restrict him from performing certain activities. The doctor testified that Petitioner complained of the most common issue following fusions during his last visit—the perception of stiffness and muscle tightness.

Under cross-examination, Dr. Siemionow testified that any history he received from

Petitioner regarding his condition is reflected in the office visit notes. Dr. Siemionow testified that Petitioner's herniations were degenerative and that the work injury could have accelerated Petitioner's degenerative process. When asked what the normal degenerative process in Petitioner's spine would have been, the doctor testified:

> "Just like in anybody else's spine, we will continue on wearing our spine out, and there will be a degenerative process in all of us. However, it will not be symptomatic in the great majority of us. So we will have X-ray or MRI finding of wear and tear, and its implications on our images, but we will not have any symptoms. Obviously, people do develop symptoms as a result of that, and those people may not have been involved in any type of injury, but we do know that an injury can sort of wake up the process that has been quiet. So an asymptomatic degeneration can become symptomatic as a result of a traumatic event."

(PX3 at 24).

Dr. Siemionow testified that without the work injury, Petitioner's condition would have continued to degenerate; however, it would not be associated with symptomology. He testified that to the fact that Petitioner's complaints of neck and radicular arm pain was supported by the positive EMG supported his causation opinion. He testified that the EMG showed there was a problem with the nerve due to the spine wearing out. He testified that this meant Petitioner's symptoms were pathological. He testified that without the work injury Petitioner most likely never would have become symptomatic. He testified that without the work injury, Petitioner would have had a 1% chance of developing symptoms and eventually needing surgery. He testified that 99% of people similar to Petitioner—people struck by rebar in the back of the head and sustaining a head or neck injury—would be symptomatic.

Dr. Siemionow did not recall ever reviewing the 2007 cervical MRI. He testified that the issue of causal connection was more challenging because he relied on a "short snippet" of Petitioner's medical history. (PX 3 at 30). He testified that he only knew the "broad strokes" of Petitioner's cervical spine treatment from 2008 until he began treating Petitioner. (PX 3 at 30). Dr. Siemionow testified: "…I pointed out in that note that should more information become available, my opinion may change. That's certainly the case. However, I would need to spend time and review the documentation." (PX 3 at 31). The following exchange occurred:

> Q. So if you were made aware that he…did not treat in 2009, that he treated five times for headache complaints with a chiropractor in 2010, three times with a chiropractor in 2011, no treatment in 2012, no treatment in 2013, no treatment in 2014, nine treatments in 2015, and three treatments in 2016, how would that information affect your causation opinions? Would it make it more likely or less likely that the condition that you treated was related to an event from 2007?
> A. Right. I still don't think I'm seeing the full picture. So my opinion

> will remain unchanged until I have access to the documentation myself and I'm actually able to confront [Petitioner] with that.

(PX 3 at 31-32).

Dr. Anis Mekhail—Respondent's Section 12 Examiner

Dr. Mekhail examined Petitioner on Respondent's behalf on October 26, 2017. (RX 1 at Exh. A). Petitioner reported that for the most part his neck and arm pain had resolved. He reported occasionally getting a twinge in the back of his neck and said the condition started with his 2007 work injury. Petitioner reported that after his surgery, "…he felt significant improvement, no more radicular symptoms, he has some residual global weakness in his body but no focal weakness; no numbness or tingling; no pain radiating down the arms; no significant neck pain." (RX 1 at Exh. A). Petitioner reported that he still occasionally experienced dysphagia. He also reported that his hoarseness was significantly improved. Petitioner complained of having headaches, tinnitus, and dizziness.

The doctor conducted a physical examination and determined that Petitioner had good cervical range of motion considering the fusion. Dr. Mekhail's examination revealed no back or posterior neck tenderness, and no pain with range of motion in the shoulders, elbows, or arms. He did note Petitioner's imbalance with heel-to-toe and tandem walking. X-rays taken that day revealed good positioning of the hardware, fusion from C3-C6, and evidence of healing at C3-C4 and C4-C5. However, C5-C6 did not appear to be healed. The doctor also noted a radiolucent line across the disc and some halos around the screws at C6. Dr. Mekhail wrote that he could not give an opinion regarding causation until he reviewed Petitioner's medical records. However, based on his examination, he opined that Petitioner was at MMI and did not require any additional treatment.

On February 23, 2018, Dr. Mekhail added an addendum to his original report after he reviewed the films and report of the September 2017 cervical MRI. (RX 1 at Exh. B). He opined that the MRI did not explain Petitioner's radicular symptoms radiating down both arms, including pain, numbness, and/or weakness. He wrote: "There are no acute findings on the MRI that could have been the result of the alleged injury. I believe that the alleged injury couldn't have caused the degenerative findings in the cervical spine and wouldn't have necessitated the surgery performed." (RX 1 at Exh. B).

On June 28, 2020, Dr. Mekhail authored a new narrative report after reviewing records provided by Respondent. (RX 1 at Exh. C). The medical records dated as far back as the date of accident. After considering his original examination of Petitioner, and a review of the medical records and diagnostic films, Dr. Mekhail agreed with the opinions of Drs. Metrou and Piekos, two of Petitioner's earlier physicians, that Petitioner sustained a neck contusion and post-concussion headaches due to the June 2007 work incident. He wrote that Petitioner denied radiculopathy on multiple occasions but did continue to complain of chronic neck pain over the years. The doctor wrote:

> "…Clearly, Mr. Elinsky had been functioning well for years after the alleged injury and before presenting to Dr. Siemionow with his

> neck complaint…Radiographic studies after the alleged injury, including CT of the cervical spine on 6/14/2007 and MRI of the cervical spine on 9/7/2007 showed degenerative changes without significant neural compression. These degenerative changes progressed naturally minimally as demonstrated on the MRI from 8/20/2015. Even then, the stenosis was minimal and wouldn't explain significant symptoms…"

(RX 1 at Exh. C). Dr. Mekhail further opined:

> "Dr. Siemionow opined that if [Petitioner] developed neck pain and radicular symptoms immediately after the accident then the accident was a direct cause of the cervical radiculopathy. [Petitioner] reported left arm radicular pain and bilateral hand numbness for the first time on 8/20/2015 when he was seen by Dr. Panzica. According to Dr. Siemionow's statement, [Petitioner's] radicular symptoms wouldn't be a direct cause of the alleged injury. On 4/24/2008, Dr. Pi[e]kos placed [Petitioner] at MMI. [Petitioner] had received extensive medical treatment for his neck condition prior to that date with some improvement. To a reasonable degree of Orthopaedic certainty, any treatment provided to [Petitioner], after reaching MMI, more than over the counter NSAIDs were not causally related to the 6/14/2007 work accident, including the surgical procedure."

(RX 1 at Exh. C).

Dr. Mekhail testified via evidence deposition on February 21, 2022, on Respondent's behalf. (RX 1). He is a board-certified orthopedic surgeon. He testified that he needed a copy of the cervical MRI to determine whether Petitioner's surgery was due to myelopathy or radiculopathy. He testified that myelopathy means there is severe pressure on the spinal cord and possibly resulting damage in the spinal cord. Radiculopathy is pain, numbness, tingling, or weakness in the distribution of a nerve root that is being irritated in the spine. He testified that he reviewed a copy of the September 2017 cervical MRI film and testified that it showed degeneration of the disc between C4-C5. He further testified that the 2017 MRI revealed no evidence of spinal cord or nerve root stenosis or pinching on the nerves.

Dr. Mekhail testified that the 2017 MRI findings were preexisting degenerative changes that generally occur with age. He testified that Petitioner's June 2007 work injury did not cause the degenerative changes in Petitioner's cervical spine. The doctor testified that he reviewed medical records covering the entire period following Petitioner's work injury. Dr. Mekhail testified that regarding the cervical spine, Petitioner sustained a neck contusion from the metal bar hitting his neck. He testified:

> "As far as the neck is concerned, he only had neck pain, didn't have any radicular symptoms in any of the medical records for years. We are talking about over eight years. And this is a contusion that

> basically completely resolved, and then years later he started…complaining of some neck pain that is basically not related to the accident. And even when he had some arm symptoms [they] were not in the distribution of the nerves that were involved in the surgery…So I believe that he was at maximum medical improvement basically the same year after the contusion. And all the treatment that was rendered afterwards, including Dr. Siemionow's surgery, is completely unrelated to his original neck injury."

(RX 1 at 20). He also testified that the EMG showed evidence of carpal tunnel syndrome and ulnar neuropathy, and that ulnar neuropathy could explain some of the newer symptoms on the ulnar aspect of Petitioner's hand.

Under cross-examination, Dr. Mekhail testified that Petitioner's ability to ski and golf in the years leading up to his surgery was important because they are both very demanding sports. He testified:

> "…but if you are cleared by an [FCE] to go back to carpentry and yet you're disabled and the nature of the injury…basically is just a neck contusion…you're going to be able to go skiing, but if indeed you have a significant condition that prevents you from performing carpentry, I don't think you would be able to go skiing because skiing is a very demanding sport…So I don't see if I have significant neck pain radiating down the arm that I would be able to go skiing and golfing…"

(RX 1 at 23). The doctor testified that Petitioner's ability to go skiing was evidence that he did not have significant neck pain radiating down his arm. He testified that skiing is a demanding sport for someone with neck complaints because it is not gentle and one must constantly move one's neck and turn one's head. He testified that golfing is also very demanding on the neck because one must twist one's body and one's neck. Dr. Mekhail testified that most people who can ski and golf are not in a significant amount of pain and would not be disabled due to their pain.

Dr. Mekhail testified that after examining the 2017 cervical MRI, he did not believe any surgery was indicated. The following exchange occurred:

> Q. But isn't it true that the disc space seems to be pushing into the white area that you described as the pipe?
> A. Not really, no. The disc is not compressing on the spinal cord at all, zero. Again, there is no neural compression. Even if there is like mild to moderate, I would have stated that. I mean, I'm reading it very objectively…I don't see any indication of any surgical intervention.
> Q. So would one of the main differences between your opinion and that of Dr. Siemionow be that you do not see any radiculopathy, and Dr. Siemionow apparently does or did?

> A. Yeah. The patient reported arm symptoms, and the EMG showed ulnar neuropathy. Dr. Siemionow reported in his office notes that the symptoms are going on the ulnar aspect of the hand, meaning it's on the pinky and the ring finger, and…this area is supplied by the nerve root C8, which is not even involved in the [C3-C6 levels] that were performed surgery on. So his symptoms…do not relate with the levels that are involved. And I believe the arm symptoms that [Petitioner] was stating…they basically could have been explained by the ulnar mononeuropathy on the EMG, but it wouldn't be explained by the [C3-C6] levels that were for which surgery was performed.

(RX 1 at 30-31). He further testified:

> "And besides, [Petitioner] had no radiculopathy from the time of the injury or any arm symptoms—I wouldn't even call it radiculopathy—any arm symptoms from the time of the accident, which was 2007, until he was seen by Dr. Siemionow in 2015…If he was to develop radicular symptoms hypothetically after eight years, you cannot link that to any injury. No one would link a condition eight years after the occurrence of an injury to that injury."

(RX 1 at 32). The doctor testified that in 2015, Petitioner reported neck pain for the prior four months with radiation to the left shoulder and chest to Dr. Panzica. He testified that he did not know what triggered Petitioner's complaints at that time.

Dr. Mekhail did not dispute that Petitioner had headaches. He testified that one gets neck pain with headaches because the headache comes in the back of the head. He testified that Petitioner likely did have intermittent neck pain; however, that pain was not related to any disc pathology. He testified that a patient with a successful C3-C6 fusion should be able to perform all activities of daily living without restrictions. They should also be able to participate in sports and work usually without restrictions. Dr. Mekhail testified that a patient would have decreased range of motion compared to a normal spine following a fusion surgery. He testified that he reviewed the September 2007 cervical MRI films and further testified that while the MRI showed no neural foraminal stenosis, no acute injury, and no herniated disc, it did show degenerative changes from C3-C6. The doctor testified:

> "…So he had degenerative changes immediately after the injury, and it carried over to later, when he had the other MRI. So both MRIs immediately after the injury and about eight years later, basically all of them showed no significant neural compression, but just degenerative changes."

(RX 1 at 39-40). He testified that Petitioner's degenerative changes had continued to progress during those years.

Dr. Mekhail disagreed that having a 17-pound piece of rebar fall from a height and hit a person on the back of the head or neck automatically meant cervical surgery would be necessary. He testified that it depended on the magnitude of the injury sustained. He testified:

> "…So if it breaks your neck and it renders the spine unstable, yes, you might need surgery. If it herniates a disc, usually it doesn't happen from direct injury. Usually it's a torque or twisting injury, but if it does and the herniating disc is causing symptoms, yes, you might need surgery. But just because of the magnitude of the injury or the neck pain you sustain doesn't mean people require surgery. So if someone gets a blunt injury and they have severe contusion, it might be severe pain…but it doesn't mean the solution is surgery if you don't get better."

(RX 1 at 42).

Conclusions of Law

Petitioner bears the burden of proving each element of his 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 finds that Petitioner did not meet his burden of proving an entitlement to additional benefits pursuant to Section 8(a) of the Act. The Commission also finds that Petitioner did not meet his burden of proving his level of disability has materially worsened since the October 2012 arbitration hearing. Therefore, the Commission must deny Petitioner's 8(a)/19(h) petition in its entirety.

Petitioner claims that his treatment for cervical radiculopathy, including the cervical fusion surgery, is causally related to his June 14, 2007, work incident. In particular, he seeks benefits relating to his cervical spine condition including medical expenses and TTD. However, after reviewing the evidence, the Commission finds that Petitioner's cervical spine condition is not causally related to his work injury. In reaching this decision, the Commission carefully considered the credible evidence of Petitioner's complaints, diagnoses, and treatment from the June 2007 injury through his April 2016 visit with Dr. Siemionow. The Commission also considered the expert testimony and opinions of Drs. Siemionow and Mekhail.

The Commission finds that the credible evidence shows that Petitioner did complain, at least intermittently, of neck pain after his injury. However, complaints of neck pain—particularly in a case involving chronic symptoms of severe headaches and migraines—differ greatly from complaints of radiculopathy or left shoulder pain. Petitioner attempts to equate evidence of his intermittent complaints of neck pain as evidence that he complained of, and received, treatment relating to complaints of radicular pain or pain in the left shoulder. In February 2015, Petitioner first complained to Dr. Panzica of worsening neck pain "…*with numbness and radiation into the left shoulder and chest*…" (PX 1, emphasis added). Petitioner's claim for benefits pursuant to Section 8(a) is not simply for treatment relating to Petitioner's complaints of neck pain. Instead, the treatment at issue involves Petitioner's complaints of neck pain with radiation first into the left shoulder and then into the bilateral shoulders. The outstanding bills and Petitioner's request for

TTD benefits relate to Dr. Siemionow's treatment of Petitioner's radicular complaints, not simply his intermittent complaints of neck pain. To meet his burden of proving an entitlement to these benefits, Petitioner must prove the neck pain and radicular complaints he reported to Dr. Panzica in 2015 are causally related to the June 14, 2007, work incident.

Petitioner's testimony during the November 2021 hearing paints a picture of a claimant who has suffered from pain radiating into his left arm and shoulder since June 2007. He testified that he experienced this pain constantly until he underwent the cervical fusion surgery in June 2016. Petitioner testified that the pain radiating into his left shoulder was so intense, that it felt like someone punched him in the back of the shoulder and that it even felt as if his ribs would pull out. He testified that he took muscle relaxants daily to manage this severe pain. He also testified that he either attended physical therapy or underwent chiropractic care throughout the seven or eight years after his injury. Petitioner testified that the pain did not begin radiating into his right shoulder until shortly before he saw Dr. Panzica in 2015. Vicki Elinsky, Petitioner's wife, also testified that Petitioner had complained of neck pain and tingling down the left arm since the date of accident. She testified that Petitioner became worried when his pain began radiating down his right arm as well. However, none of this testimony is corroborated by the credible medical evidence.

Petitioner's complaints and treatment from the date of injury until the October 2012 arbitration hearing are thoroughly documented in the prior Commission Decisions. Additionally, Petitioner testified during the 2009 and 2012 arbitration hearings about his symptoms and complaints. There is no question that Petitioner has suffered from chronic and significant vestibular issues, headaches, and migraines since June 2007. However, the evidence presented during the prior arbitration hearings overwhelmingly shows that Petitioner did not suffer from constant neck pain or any pain radiating into his left shoulder during the first five years following his injury. Petitioner certainly did not undergo treatment relating to complaints of radicular pain. Additionally, Petitioner did not testify that he experienced neck pain or pain radiating into either shoulder during the 2009 and 2012 arbitration hearings. In fact, when asked about his current complaints during the 2009 arbitration hearing, Petitioner did not testify that he endured any radicular or shoulder pain. Instead, his current complaints related solely to his vestibular issues and his chronic headaches and migraines. After reviewing the evidence, including medical records and Petitioner's testimony, the Commission found that Petitioner sustained a mild concussion that had resolved, and cervical disk bulges at C3-C4, C4-C5, and C5-C6 with associated complaints of headaches and dizziness. Similarly, during the 2012 arbitration hearing, Petitioner again did not identify any complaints of neck pain, left shoulder pain, or pain radiating into the left shoulder. Instead, Petitioner testified that his complaints had generally remained unchanged since the 2009 hearing. Once again, when asked about his current complaints, Petitioner's only complaints related to his vestibular symptoms and complaints of chronic headaches and migraines.

During the period covering the date of accident through the October 2012 arbitration hearings, the Commission only notes two examples of Petitioner complaining of neck pain radiating into the left shoulder. Interestingly, both of examples involve expert evaluations related to determining Petitioner's work capabilities—the September 2009 report authored by Dr. Sweet, and the January 2011 report authored by Ms. Entenberg. Notably, Petitioner could not identify any other evidence of complaints of constant neck pain, left shoulder pain, or pain radiating into the left shoulder. Petitioner also failed to present any medical records corroborating his testimony that

he continued to undergo treatment relating to his complaints of neck pain and pain radiating into the left shoulder after the October 2012 hearing. While Petitioner testified that in the seven or eight years following his injury, he received treatment from Dr. Wolfe at least a few times each year due to his complaints of constant pain in his neck and left shoulder, he submitted no medical records relating to this alleged treatment. The evidence shows that Dr. Panzica examined Petitioner in 2013 and 2014; however, Petitioner never complained of radicular or left shoulder pain during any visits before the February 2015 visit.

Dr. Siemionow testified that Petitioner's complaints of neck pain and radiculopathy are causally connected to the June 14, 2007, work incident. He testified that Petitioner's injury could have accelerated his normal degenerative process. He opined that absent the June 14, 2007, incident, Petitioner's pre-existing degenerative condition would never have become symptomatic. Dr. Siemionow testified that this opinion was supported by the fact that Petitioner's complaints of neck and radicular arm pain when he examined Petitioner in 2016 were supported by a positive EMG. However, the Commission finds that Dr. Siemionow's opinions regarding causal connection are not credible. The doctor's credibility is irreparably damaged by the limited knowledge he had of Petitioner's history of treatment and complaints in the almost nine years preceding his first examination of Petitioner. In fact, the very little knowledge the doctor had about Petitioner's history since the June 2007 injury was inaccurate. Dr. Siemionow admittedly did not review any prior medical records or diagnostic studies. He also admitted that his opinion was based only on a short snippet of Petitioner's self-reported medical history. The credible evidence shows that this snippet of Petitioner's history completely conflicted with the actual medical records. Dr. Siemionow's opinion that Petitioner's radicular complaints and need for cervical fusion surgery in 2016 is entirely premised on Petitioner's report that he had experienced constant radicular pain and numbness since the date of accident. The doctor also believed that Petitioner underwent treatment for his cervical and radicular complaints throughout the almost nine years before he began treating Petitioner in April 2016. Dr. Siemionow readily acknowledged that his opinions might change if Petitioner's self-reported history was inaccurate.

Unlike Dr. Siemionow, Dr. Mekhail's causal connection opinion was based on his review of treatment records including diagnostic studies, physical therapy records, and functional capacity evaluations covering the entire period since the June 2007 work incident. After reviewing these records, Dr. Mekhail was able to provide an informed opinion based on Petitioner's actual medical history—not Petitioner's inaccurate self-reported history. Therefore, his well-informed opinion that Petitioner's complaints of neck pain and radicular pain and his related cervical fusion surgery are not causally related to the June 14, 2007, work incident are very credible. Dr. Mekhail credibly testified that Petitioner did not complain of any radicular symptoms to his treating doctors from the date of his injury until Dr. Panzica examined him in early 2015. He also credibly testified that while a patient who constantly suffered from significant cervical radiculopathy most likely would not have been able to engage in demanding activities such as skiing and golfing, the medical records show that Petitioner engaged in such activities in the few years preceding his February 2015 visit with Dr. Panzica. Dr. Mekhail also credibly testified that one could not link a condition that first arose over eight years after an injury to that injury.

For these reasons, the Commission finds Petitioner's cervical and radicular complaints, and the treatment provided by Dr. Siemionow are not causally related to his June 14, 2007, work injury.

Therefore, the Commission denies Petitioner's 8(a) petition.

As the Commission has determined that Petitioner's cervical and radicular complaints are not causally related to his injury, only Petitioner's condition relating to his chronic vestibular symptoms and his chronic headaches and migraines are relevant to his 19(h) petition. After carefully considering the totality of the evidence, the Commission finds Petitioner failed to prove his level of disability has materially worsened since the October 2012 arbitration hearing.

In relevant part, Section 19(h) states:

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

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

It is undisputed that Petitioner continues to suffer from significant vestibular issues. He also continues to suffer from daily headaches and chronic migraines. However, the evidence shows that Petitioner's condition has remained virtually unchanged since the October 2012 arbitration hearing. In fact, Petitioner's testimony during the 2009 and 2012 arbitration hearings regarding his vestibular and neurologic symptoms is almost identical to his testimony during the November 2021 19(h) hearing. Petitioner testified that he regularly spins out due to certain stimuli and identified grocery shopping and mowing the lawn as examples of activities that trigger his symptoms. He testified that he also at times zones out for a few seconds. Petitioner also testified that he has suffered from headaches every day since the date of accident. He testified that he continues to experience regular migraines; however, he fortunately has started new medications that help to lessen the severity of his migraines and headaches. Petitioner also suffers from significant tinnitus. These are the same complaints and symptoms that Petitioner identified during the October 2012 arbitration hearing. The Commission finds that Petitioner has not submitted any evidence that his symptoms have worsened, let alone materially worsened, since the last arbitration hearing. Therefore, the Commission must deny Petitioner's 19(h) petition.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Petition for Review Under Sections 19(h) and 8(a) of the Act is hereby **denied**.

March 30, 2023
o: 1/31/23
jds
51

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

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

SPECIAL CONCURRING OPINION

This case was scheduled for oral argument on January 31, 2023, before a three-member panel of the Commission including members Thomas J. Tyrrell, Maria E. Portela, and Kathryn A. Doerries, at which time oral arguments were either heard, waived, or denied. Subsequent to oral arguments and prior to the departure of member Tyrrell on March 17, 2023, a majority of the panel members reached agreement as to the results set forth in this Decision and Opinion, as evidenced by the internal Decision worksheet initialed by the entire three-member panel. However, no formal written decision was signed and issued prior to member Tyrrell's departure.

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

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

Petitioner Attorney	David Caplan
Respondent Attorney	Nicole Breslau

DATE FILED: 3/31/2023

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANKAKEE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Joseph Versetto,

Petitioner,

vs. NO: 20 WC 012068

PR Walker,

Respondent.

DECISION AND OPINION ON REVIEW

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

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

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

IT IS FURTHER ORDERED that Respondent shall pay to Petitioner temporary total disability benefits of $373.72/week for 63-3/7 weeks, commencing June 2, 2020 through September 30, 2021, as provided in Section 8(b) of the Act.

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

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

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 31, 2023

o: 03/28/2023
DJB/ahs
43

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

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

Petitioner Attorney	David Caplan
Respondent Attorney	Nicole Breslau

DATE FILED: 1/14/2022

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

/s/ Jessica Hegarty, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JOSEPH VERSETTO
Employee/Petitioner

v.

PR WALKER
Employer/Respondent

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

Consolidated cases: _____

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

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☐ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Prospective medical treatment pursuant to 8(a)**

FINDINGS

On **05/16/2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**29,150.18**; the average weekly wage was $**560.59**.

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

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

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

Respondent shall be given a credit of $**12,976.26** – $11,343.90 for paid medical expenses and $1,566.00 for a PPD advance.

ORDER

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

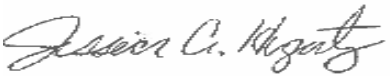
- Respondent shall pay the following outstanding medical bills: Illinois Orthopaedic Institute $786.00 and OCS Tinley Park Clinic in the amount of $1,641.36;

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

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

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

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.
STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

JANUARY 14, 2022

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

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

ADDENDUM TO THE DECISION OF THE ARBITRATOR

STATEMENT OF FACTS

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

PETITIONER'S TESTIMONY

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

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

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

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

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

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

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

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

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

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

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

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

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

RONALD CARTER TESTIMONY

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

MEDICAL RECORDS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DR. KUO TESTIMONY

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

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

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

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

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

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

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

DR. SINGH TESTIMONY

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

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

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

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

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

ARBITRATOR'S CONCLUSIONS

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

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

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

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

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

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

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

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

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

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

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

J. WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?

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

K. IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?

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

L. TTD

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