ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018033
Case Name	Linda Wagner v. Sam's Club
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0196
Number of Pages of Decision	21
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Neal Strom
Respondent Attorney	Julie Schum

DATE FILED: 5/2/2023

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LINDA WAGNER,

Petitioner,

vs. NO: 16 WC 18033

SAM'S CLUB,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review under §19b/8a having been filed by the Respondent and Petitioner herein, and notice given to all parties, the Commission, after considering the issues of accident, causal connection, notice, temporary total disability, medical expenses, prospective medical, and Other-evidentiary issues, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission notes Petitioner's attorney withdrew their Petition for Review at oral arguments. 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 2, 2022, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired

without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

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

May 2, 2023

o- 4/18/23
KAD/jsf

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018033
Case Name	LINDA WAGNER v. SAM'S CLUB
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Neal Strom
Respondent Attorney	Julie Schum

DATE FILED: 8/2/2022

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

/s/Steven Fruth, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

LINDA WAGNER
Employee/Petitioner

v.

SAM'S CLUB
Employer/Respondent

Case # **16 WC 018033**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Douglas Steffenson**, Arbitrator of the Commission, in the city of **Chicago**, on **May 4, 2021**. The decision was written by Arbitrator **Steven Fruth**. 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, **July 15, 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 $**60,230.00**; the average weekly wage was $**1,160.00**.

On the date of accident, Petitioner was **60** years of age, ***married*** 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 $**16,818.35** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**16,818.35**.

Respondent is entitled to a credit of $**16,818.35** under §8(j) of the Act.

ORDER

Respondent shall pay Petitioner Temporary Total Disability benefits of $772.56 /week for 234 weeks, commencing June 14, 2016 through December 13, 2016 and from June 6, 2017 to the present, as provided in §8(b) of the Act.

Respondent shall be given a credit of $16,818.35 for temporary total disability benefits that have been paid.

Respondent shall pay any and all medical charges not yet paid that were reasonably necessary to cure or relieve the effects of Petitioner's injuries, adjusted in accord with the Medical Fee Schedule provided in §8.2 of the Act.

Respondent shall authorize and pay for the revision total knee replacement surgery recommended by Drs. Gregory McComis and Tad Gerlinger, as well as all reasonable and necessary post-operative rehabilitative care.

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

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

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

before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

AUGUST 2, 2022

Signature of Arbitrator

ICArbDec19(b)

Linda Wagner v. Sam's Club
16 WC 018033

INTRODUCTION

This matter proceeded to hearing before Arbitrator Douglas Steffenson. The parties stipulated to Arbitrator Steven Fruth reviewing the evidence and rendering a decision.

The disputed issues were: ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to 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 prospective medical care?; ***L:*** What temporary benefits are in dispute? TTD

STATEMENT OF FACTS

This matter arises from a claimed work-related accident that took place on or July 15, 2015. Petitioner Linda Wagner testified that she initially worked at Kmart but began working for Respondent Walmart when Walmart bought Kmart and it became a Sam's Club. Petitioner testified that she then worked at the Lansing Sam's Club for about 12 years before being transferred to the Matteson store. She held a number of positions, the last being an Audit Lead.

On July 15, 2015, Petitioner testified she was working the morning shift and went to the membership desk to use the computer. The store was under remodeling at the time and there was a lot of construction around the store, including by the membership desk. As she was walking around the desk, Petitioner stated she slipped on two floor mats that had been stacked next to the desk. She testified the mats were slippery and "flew out from underneath her footing", resulting in her landing on her left knee and hip on the concrete floor. Petitioner testified there were several witnesses to her fall, including two of her supervisors, Rhonda Torres and Laretha. Laretha helped her up, but she went back to work.

Petitioner testified that after her fall, she was allowed to sit in the break room for a while and then returned to work for a couple of hours. After her lunch break, she approached Rhonda about her continued pain in her left hip and knee. She requested to fill out an accident report and did so then with Rhonda (PX #1). She gave that report to her attorney.

Petitioner testified that after the accident she continued to work but her left knee kept getting "worse and worse." She testified that after the injury she told Rhonda that her knee wasn't getting any better and that she couldn't use ladders anymore. Petitioner testified "they all knew" about the difficulties she was having.

Petitioner testified that she was not offered any medical care by Respondent on the date of her accident. She made an appointment to see an orthopedic doctor, Dr. Blair Rhode, on her own and was scheduled to see him on August 17, 2015. When she informed her manager, Rhonda, of her appointment, she was told she needed to get a drug test before she could see the doctor because of company policy.

Petitioner went to Ingalls Urgent Care as directed on August 17 for the drug test but had to wait several hours without being seen. She had to leave because she would have missed her appointment with Dr. Rhode. She saw Dr Rhode later that day and was prescribed a knee brace (PX #2).

Petitioner testified that after her initial doctor's appointment, she continued to work for Respondent, even though her right knee was getting worse as time went on. Three days after seeing Dr. Rhode, Petitioner reported her ongoing knee pain to her immediate manager, Troy Walker. She told him her knee was "really bothering" her and that the brace caused more pain. Petitioner testified that Mr. Walker said he had viewed video of her accident. She asked to see the video, but he said she wasn't allowed to see it.

In October 2015, Petitioner consulted her primary care physician, Dr. Sheillah Gentile, and was referred to an orthopedic surgeon, Dr. Gregory McComis (PX #3). Dr. McComis first recommended physical therapy and injections. However, on March 9, 2016 Dr. McComis recommended a unicondylar knee replacement surgery for her injured knee (PX #4). The prescribed surgery was approved and Dr. McComis performed the procedure on June 14, 2016 (PX #4, PX #11, & PX #13). The underlying diagnosis was osteoarthritis.

Following surgery, Petitioner underwent post-surgical treatment, including physical therapy. She testified she returned to work with restrictions about December 13, 2016. Dr. McComis's records indicate Petitioner was released with no restrictions by APN-C Julie Prium on December 13 (PX #4). Petitioner testified her knee started bothering her again when she returned to work. She continued to work light duty.

Petitioner returned to Dr. McComis January 19, 2017, when he aspirated 15 cc of fluid from her gave her left knee. The doctor performed another aspiration of fluid from

the knee on March 16, 2017 and gave work restrictions of "no stairs or ladders." Petitioner testified these interventions did not help. A bone scan May 3, 2017 showed that there was a loosening of the hardware. Dr. McComis then recommended a total knee replacement surgery, which was scheduled for June 6, 2017 (PX #4).

On the day before Petitioner's scheduled second surgery, Petitioner worked her last day with Respondent. Petitioner testified that the store manager, Esquio "Chico" Montenegro, called her into his office. Petitioner testified that she was informed her department and position were being eliminated and that she either needed to take a new position or resign and take a severance package. Petitioner testified that she told Chico that she did not feel comfortable signing something immediately, especially on the eve of her surgery, but that he told her "[Y]ou have to."

Respondent's witness Esiquio Montenegro offered conflicting testimony regarding this meeting and job offer. Mr. Montenegro first said that Petitioner decided to decline the job and take her severance package but then said that Petitioner accepted the job offer they made to her on that date.

Following her second knee surgery on June 6, 2017, Petitioner once again began receiving TTD benefits from Respondent. Petitioner underwent an IME with Dr. Troy Karlsson on October 3, 2017, at Respondent's request. Petitioner testified Dr. Karlsson spent 5 minutes with her during the appointment and that following the IME, her benefits discontinued.

Petitioner continued to treat with Dr. McComis following her IME. After having a bone scan October 30, 2017, the doctor recommended a revision total knee replacement surgery (PX #4). Petitioner testified that she would like to get the revision total knee replacement surgery, however authorization for the surgery has been denied.

Petitioner testified that she did not return to work for Respondent following her second surgery. Petitioner stated that she tried to contact Respondent to discuss a light duty position, but her phone calls were never returned.

Mr. Montenegro testified Petitioner first either accepted the severance or the job offer made in July 2017, but then revoked it and then rejected a light duty job offer that was mailed to her in August 2017.

At Respondent's request orthopedic surgeon Dr. Troy Karlson conducted an IME of Petitioner on October 3, 2017. In addition to conducting a clinical examination of Petitioner Dr. Karlson also reviewed Petitioner's medical records from North Point

Orthopaedics/Dr. McComis, as well as diagnostic testing which included plain X-rays, a nuclear bone scan, and a job description for inventory audit lead. The doctor's narrative report was marked as Exhibit #2 in his evidence deposition on February 12, 2018 (PX #8).

Petitioner gave a history of an injury to her left knee and left hip on July 15, 2015 while working as an associate for cents. She described slipping on stacked chair mats. Her feet went up in the air and she fell onto her left side. Petitioner followed with her primary care doctor who told her she had arthritis. She was referred to Dr. McComis who injected her knee but that did not help. She also had physical therapy but that did not help either.

Petitioner had a partial knee replacement in June 2016. However, she continued to have pain with walking. She had fluid drained from her knee approximately 8 times. Following a CT and bone scan she was told the cement was loose. She had a revision of her partial knee replacement with a total knee arthroplasty June 6, 2017, followed by therapy. Petitioner reported that she had her early improvement with therapy but after 6 weeks there was no further improvement. She was continuing with physical therapy at the time of the IME.

At the examination Petitioner complained of localized pain to the outer side and posterior aspect of her knee. She reported that she gets some swelling posteriomedially. She reported difficulty with bending the knee and having problems with stairs. Petitioner reported she was taking two Norco pills at a time 2 to 3 times a day. She also was taking Mobic. A recent short course of prednisone provided no relief.

Petitioner reported that she was currently off work. She reported that prior to her total knee replacement she had been on sedentary work due to the looseness of her unicondylar replacement. She reported that she was currently retired, having taken a severance package in July 2017 because her job had been eliminated.

On examination Dr. Karlson noted reduced left knee range of motion and some swelling. Muscle strength was normal. There was lateral joint line tenderness. Routine orthopedic testing of the knee was negative, as was the right knee. Dr. Karlson noted Petitioner walked with a cane in the right hand, placing it down with each left leg step. He noted her gait was fairly normal. The doctor found diminished range of motion in the left knee. Both legs had good muscle strength. There was left knee swelling but none on the right. Petitioner had slight tenderness on the medial aspect of the left knee but significant tenderness over the lateral aspect. There was mild tenderness over the medial and lateral aspects of the right knee.

X-rays obtained by Dr. Karlson at the IME showed loss of joint space in both hips. There was also degenerative scoliosis in the lower lumbar spine with significant spur formation and narrowing of disc space. The doctor's review of left knee x-rays on June 30, 2016, December 13, 2016, and April 25, 2017 revealed the unicondylar knee replacement.

Dr. Karlson reviewed Dr. McComis's care which included cortisone injections to the left knee, the left unicondylar knee replacement with a diagnosis of osteoarthritis on June 14, 2016, postoperative follow-up supervision of physical therapy but noting continued complaints, and the surgical revision on June 6, 2017 involving a left total knee arthroplasty.

After the clinical examination and records review Dr. Karlson diagnosed status post left knee replacement for degenerative osteoarthritis. He opined that Petitioner's diagnosis was not causally related to the claimed July 15, 2015 work injury. He noted there was no evidence of fractures, dislocations, loose bodies, or other traumatic contributions to Petitioner's arthritis. He noted Petitioner had presented with objective findings of swelling and decreased range of motion consistent with a total knee arthroplasty. He also noted there were no objective findings with Petitioner's left hip. Dr. Karlson opined that Petitioner's medical treatment, particularly the knee replacement surgeries which had not responded to conservative treatment, had been reasonable and necessary but were unrelated to her July 15 2015 work injury.

Dr. Karlson further opined that Petitioner was not at MMI with regard to her left knee and that work restrictions were appropriate for her knee. He further confirmed his opinion that Petitioner had pre-existing osteoarthritic changes in her left knee, which he noted was the sole purpose for her unicondylar knee replacement and subsequent total knee arthroplasty.

Dr. Karlson testified by evidence deposition on February 12, 2018 (RX #1). He refreshed his memory from his narrative report from the October 3, 2017 IME (DepX #2). He reiterated his findings from his IME and records review, principally noting Petitioner had pre-existing osteoarthritis in her left knee which was not aggravated by her reported work accident on July 15, 2015 because there was no evidence of structural changes such as dislocation or loose bodies that could be related to the fall. Dr. Karlson further opined that the unicondylar knee replacement and the total revision arthroplasty were reasonable and necessary but that they were not related to Petitioner's fall at work.

Orthopedic surgeon Dr. Tad Gerlinger of Midwest Orthopaedics at RUSH conducted a §12 IME of Petitioner at Petitioner's request on September 19, 2018. In addition to a clinical examination, Dr. Gerlinger reviewed certain of Petitioner's medical

records, including those of Dr. McComis. Dr. Gerlinger noted that the partial knee replacement and total knee replacement for Petitioner's underlying pre-existing condition. He further opined that Dr. McComis's initial care plan of activity modification, therapy and injections should have been "more than enough to treat the acute injury." He also recommended revision of the failed total knee arthroplasty. Dr. Gerlinger finally opined that petitioner's surgeries were not related to the accident and injury of July 15, 2015, rather they were the result of underlying pre-existing osteoarthritis.

After review of additional medical records, on November 14, 2018 Dr. Gerlinger noted that Petitioner had no knee symptoms prior to her July 15, 2015 injury. He then opined that Petitioner's fall on July 15, 2015 had caused an asymptomatic osteoarthritis to become symptomatic and, further, was causally related to her subsequent surgeries. Dr. Gerlinger's notes were admitted in evidence as Exhibit #2 at his evidence deposition on February 20, 2019 (PX #10).

Utilization Reviews from Genex were admitted in evidence regarding Petitioner's first knee surgery (PX #13). Dr. Junaid Makda's Utilization Review of May 3, 2016 noted Petitioner's pre-existing osteoarthritis in the knee but was aggravated from the work injury. Dr. Makda further noted that Petitioner's failed conservative treatment and continuing complaints, that the surgery is recommended as certified.

Dr Gregory McComis testified at his evidence deposition February 15, 2019 (PX #9). Dr. McComis is a board-certified orthopedic surgeon. He refreshed his recollection with his records, which included a February 22, 2018 narrative report. On February 22, 2018, Dr. McComis issued a narrative report (PX #7).

Dr. McComis testified that he felt that Petitioner's condition was related to what she described to him as a work-related slip and fall. Dr. McComis admitted he had not seen any records of her care before she came to him. He further admitted that his causation opinion was based on Petitioner's history. He had not asked her about any of her other activities prior to seeing him or any of the details of the actual fall itself. He affirmed the treatment details in his medical records. He testified that the last time he saw her was November 16, 2017. He testified that the osteoarthritis was pre-existing. He opined the pre-existing osteoarthritis was aggravated by the work injury and that he felt she had a meniscal tear. With regards to the meniscal tear, Dr. McComis testified that he could not tell when it occurred. He admitted that they can be caused by trauma, but they can also be aggravated by trauma. Further, Dr. McComis indicated that during the first surgery, only a portion of the meniscus was there and that the remainder had either been reabsorbed or converted to a loose body – a processed he testified takes time. Dr. McComis testified that he had Petitioner off work as of her last office visit.

Dr. McComis reiterated his opinion that Petitioner's prior surgeries were necessary but that she had a failed total knee replacement due to loosening of a component. Petitioner needs a revision of the failed knee replacement.

Dr. Gerlinger testified his evidence deposition on February 20, 2019 (PX #10). Dr. Gerlinger is a board-certified orthopedic surgeon. He refreshed his memory with the IME report he authored on September 19, 2018. Dr. Gerlinger testified that he initially did not find a causal connection between her condition and her report of a slip and fall. He testified that he changed his opinion on causation in the addendum because he reviewed the entirety of the medical records. He clarified in the addendum that "the problem with arthritis is you don't know when it becomes symptomatic or if it ever does."

On cross-examination Dr. Gerlinger confirmed that he did not know whether her knee twisted or struck the ground during her alleged fall. He further could not recall where he obtained the information that her pain and problems began with the accident. On further cross, Dr. Gerlinger also admitted that his initial report was issued with an understanding that her accident was on July 15, 2015 and that was the start of her knee symptoms. He initially found Petitioner sustained a knee contusion or sprain and that the surgeries were not related to the work incident. He changed his causation opinion because of the information that she had no care prior to July 15, 2015.

CONCLUSIONS OF LAW

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

The Arbitrator finds that Petitioner proved that she sustained an accidental injury that arose out of and in the course of her employment by Respondent. The Arbitrator also finds Respondent's dispute of accident was frivolous and vexatious.

Petitioner testified credibly that she tripped and fell over floor mats that had been stacked in her work area. She testified that her fall was witnessed by co-workers. Her testimony was unrebutted. Respondent offered the testimony of Store Manager Esquio Montenegro.

Moreover, Petitioner testified that her manager, Troy Walker, told her that there was a video recording of the accident but did not permit her to view the recording.

Petitioner's testimony again was unrebutted. The Arbitrator notes that the video recording is in the exclusive control of Respondent. Respondent's failure to introduce this evidence gives rise to a negative inference against Respondent's dispute of accident.

E: *Was timely notice of the accident given to Respondent?*

The Arbitrator finds that Petitioner proved that she gave notice to Respondent of her accident and injury within the time limit provided in §6(c) of the Act. The Arbitrator also finds Respondent's dispute of notice was frivolous and vexatious.

Petitioner testified credibly that that her trip over the stacked mats was witnessed by managers Rhonda Torres and Laretha. In fact, Laretha helped her up off the floor. This alone is sufficient satisfy the requirements of §6(c) of the Act. However, Petitioner's Exhibit #1, Associate Incident Report dated July 15, 2015, was admitted in evidence without objection. PX #1 records Petitioner's report of falling and injuring her knee. PX #1 is signed by Petitioner and by Rhonda Torres. Petitioner's Personnel File was also admitted in evidence as Petitioner's Exhibit #15 and Respondent's Exhibit #5. Both contain a computerized report documenting Petitioner's July 15, 2015 report of her accident and injury. Timely notice was also confirmed by Sandra Sanders, Respondent's claims adjuster, who confirmed receipt of an accident report.

The Arbitrator also notes that Petitioner's Exhibit #1 was not contained within her personnel file, PX #15 & RX #5, which creates a negative inference against Respondent's dispute of notice.

The testimony of Respondent's witness, Esquio Montenegro, that proper reporting procedures were not followed does not stand against compelling evidence to the contrary. Even if proper reporting procedures were not followed that would not have been a credible defense if in fact notice was given in accord with §6(c). Further, the Arbitrator finds Respondent's assertion frivolous and factually untrue.

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

The Arbitrator finds that Petitioner proved that her current condition of ill-being was causally related to her work accident on July 15, 2019. In so finding, the Arbitrator weighed the reasonableness and persuasiveness of the opinions of Drs. Gregory McComis, Tad Gerlinger, and Troy Karlson. The Arbitrator found the opinions of Drs. McComis and Gerlinger more reasonable and persuasive than the opinions of Dr. Karlson.

Petitioner's treating orthopedist, Dr. McComis, began treating Petitioner for her work- related injury in December 2015. His initial note, December 9, 2015, gives a description of the work injury consistent with Petitioner's testimony. His initial diagnosis is internal derangement of the left knee. Later, Dr. McComis added another diagnosis: osteoarthritis. There is no history any previous complaints or treatment to the left knee for osteoarthritis noted in his records. Following her first surgery on June 14, 2016, an additional diagnosis of a torn meniscus was also included as well.

Dr. McComis discussed these issues further in his deposition. While noting the diagnosis of the pre-existing condition of osteoarthritis of the knee, he was clear that there was no evidence to suggest that Petitioner had been symptomatic with this condition prior to her July 15, 2015 work accident. He added that she had not received any treatment for that condition prior to her work accident.

In relation to the torn meniscus, Dr. McComis noted that his June 14, 2016 operative report stated that the meniscus had been torn and that he needed to remove what was left of it during Petitioner's first knee surgery. While acknowledging that there is a possibility that osteoarthritis and a torn meniscus can be the result of degenerative changes, Dr. McComis maintained his opinion that osteoarthritis was an asymptomatic condition and that her meniscus tear was the result of Petitioner's July 15, 2015 work accident.

Dr. Gerlinger examined Petitioner for an IME at her request. Dr. Gerlinger's initial report, dated September 18, 2018, does note Petitioner's pre-existing condition of osteoarthritis of the left knee. However, even though he opines that he believes her treatment up until that point was reasonable and necessary and confirms the need for a revision knee replacement, he did not initially attribute it to Petitioner's July 15, 2015 work accident. However, in his addendum report dated November 14, 2018, based on review of additional medical records, notes that after reviewing all the medical records, Dr. Gerlinger found a causal connection between Petitioner's July 15, 2015 work accident and her current condition and need for treatment. This "flip flop' of his opinion was discussed in great detail in his deposition:

> Q: What caused you to dictate the addendum?
> A: So, the entire story is the patient was referred to me from Dr. Verma, that's one of my sports partners. And when he referred it over, it went through scheduling, but the records were not present when it was transferred over to me, the previous. So, all I had was very, you know, vague, no previous records on the patient. (sic)

> And so, when I was presented with the entirety of her medical records, at least what was present to me as the entirety of her medical records, that what I was able to review at that point and change my opinion.

Dr. Gerlinger initially found no causal connection. However, the Arbitrator notes that the change in his causation opinion is well documented in his addendum report and his subsequent deposition, which the Arbitrator finds reasonable and persuasive.

Respondent relies on the opinions of their IME doctor, Dr. Troy Karlsson. Dr. Karlson's report, dated October 3, 2017, stated Petitioner's pre-existing condition of osteoarthritis was the cause of Petitioner's complaints and her need for any treatment, including the previous surgeries. The principal reason for that was because there was "no structural damage from that injury, there were no fractures, there was nothing that was knocked out of place, there was not a piece of bone or cartilage that had been knocked out."

In his deposition Dr. Karlsson acknowledged that while he opined that Petitioner's injuries were caused by a pre-existing condition, he had not reviewed any records or evidence that Petitioner had complained of left knee pain and/or sought treatment for osteoarthritis prior to her July 15, 2015 work accident. Further and more importantly, Dr. Karlsson admitted that he did not review all of Petitioner's medical records.

Dr. Karlsson acknowledged that his opinion on causal connection could change in Petitioner's case if there were some structural changes that were noted in the records. He stated that a meniscal tear would be considered a structural change but claimed that Dr. McComis never diagnosed Petitioner with a torn meniscus and that it was not noted in his operative report. Finally, Dr. Karlsson admitted on cross-examination that the mechanism of injury (a fall from ground height) could "cause problems."

As noted above, the Arbitrator found the opinions of Dr. McComis and Gerlinger more reasonable and persuasive than those of Dr. Karlson. The number of experts offering opinions regarding a specific issue may be more convincing than a lesser number of expert opinions, although a lesser number of expert opinions may be more convincing regarding that issue than the greater number of opinions. Here, the greater number is more persuasive.

In addition, Dr. Karlson's opinions are based on an incomplete review of the scope of Petitioner's care. He did not have access to all available medical records of Petitioner. Further, Dr. Karlson had but one clinical encounter with Petitioner whereas Dr. McComis had extensive encounters with Petitioner to which the Arbitrator defers.

Finally, key to this issue is the credibility of Petitioner's reports that her knee was asymptomatic before her July 15, 2015 work accident. The Arbitrator acknowledges that he did not witness Petitioner's testimony at trial. However, there was no evidence suggesting that Petitioner was not a credible witness. Petitioner's credibility is bolstered by her history of working full duty with restrictions.

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?*

Given the Arbitrator's finding of causal connection it follows that the medical services provided to Petitioner were reasonable and necessary. Therefore, Respondent shall pay any and all medical charges not yet paid that were reasonably necessary to cure or relieve the effects of Petitioner's injuries, adjusted in accord with the Medical Fee Schedule provided in §8.2 of the Act.

K: *Is Petitioner entitled to prospective medical care?*

Given the Arbitrator's findings of both causal connection and relying on the opinions of Drs. McComis and Gerlinger, the Arbitrator concludes that Petitioner proved she is entitled to the revision total knee replacement surgery that has been recommended by Dr. McComis, and that Respondent shall authorize and pay for the prescribed surgery at the earliest opportunity.

L: *What temporary benefits are in dispute? TTD*

Petitioner claims that she is entitled to TTD benefits from June 14, 2016 through December 13, 2016 and June 6, 2017 to the present, representing a period of 234 weeks. Respondent disputes all periods of TTD but claims a credit of $16,818.35 for TTD paid. Given that the Arbitrator has found that Petitioner proved accident and casual connection, the periods of TTD in which Petitioner was not working following her first surgery: June 14, 2016 to December 13, 2016, representing a period of 26 weeks, are related and Respondent is given credit for those date paid. The Arbitrator also finds that the TTD period starting June 6, 2017 through present, representing a period of 208 weeks is also related. The period of June 6, 2017 – October 3, 2017, which represents the time from Petitioner's second surgery to the IME of Dr. Troy Karlsson, have been paid by Respondent and they are given a credit for that time as well.

The Arbitrator's findings that TTD is due, specifically for the time period of October 4, 2017 to present, is based upon several factors. Respondent contends that the

light duty job offer they made to Petitioner in August of 2017 was rejected and Petitioner voluntarily terminated her employment with Respondent. This assertion by Respondent would potentially exclude Petitioner from being entitled to TTD benefits. The Arbitrator, having considered the testimony of the Petitioner and Respondent's witness, finds that Petitioner in fact did not reject the light duty job offer(s) made in June and August 2017 and did not voluntarily terminate her employment with Respondent.

First, the Arbitrator finds Petitioner's testimony was truthful and credible regarding this issue. The record reflects that throughout the time she was injured until her last workday with Respondent on June 5, 2017, Petitioner never rejected an offer of light duty with Respondent. In fact, Respondent's witness acknowledged that she had accepted both June and August 2017 light duty assignments. Respondent's witness Mr. Montenegro gave inconsistent testimony regarding when these job offers were made to Petitioner and if she ever received them. He first testified that the door greeter position was only offered to Petitioner in August 2017; however, he later admitted that it was first offered to her in a temporary capacity in May 2017 and at that time she accepted the temporary position. He further admitted on cross-examination that he didn't have any recollection of when that offer was made to Petitioner and had not been personally involved in sending her the offer in writing in August 2017.

Secondly, the Arbitrator notes that the situation with Petitioner's position with Respondent was unique in the summer of 2017. The testimony of both Petitioner and Mr. Montenegro confirmed that during this time, Petitioner's position had been eliminated permanently and that her entire department was being forced to either take a new position or take a severance package. This choice was presented to Petitioner on the eve of her total knee replacement surgery. The Arbitrator finds Petitioner's testimony to be credible that she felt forced to decide and was not given a legitimate time period by which to make that decision.

The Arbitrator also finds it credible that Petitioner did not want to terminate her employment with Respondent, given her testimony she was a long-term employee, was the only person working in her household and did not have access to health insurance following her termination with Respondent. It has been held that if a retirement and/or acceptance of a severance package is not voluntarily done, it does not equate to a refusal to work and consequently is not a bar from being entitled to TTD and/or maintenance benefits. As such, the Arbitrator finds that Petitioner is entitled to TTD benefits from October 4, 2017 to present.

Steven J. Fruth, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC005535
Case Name	Salvador Pacheco v. McDonalds
Consolidated Cases	19WC019605;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0197
Number of Pages of Decision	8
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Mary Pat Donohue, Gary Newland
Respondent Attorney	Daniel Ugaste

DATE FILED: 5/3/2023

/s/Marc Parker, 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 Accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Salvador Pacheco,

Petitioner,

vs. No. 13 WC 5535

McDonald's,

Respondent.

DECISION AND OPINION ON REVIEW PURSUANT TO §19(B) AND §8(A)

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, temporary total disability, vocational rehabilitation, maintenance, spoliation of evidence, and admissibility of text messages, and being advised of the facts and law, reverses the Decision of the Arbitrator. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission,* 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

Petitioner, a 22-year-old manager at McDonald's, testified that on January 1, 2013, he injured his back when he moved a fry station: a heavy, stainless-steel, grease container. He denied prior back injuries, and denied undergoing a lumbar MRI for back pain prior to that date. Petitioner reported his accident to his supervisor, Marisela Velacquez, and asked her to review the videos from the restaurant's surveillance cameras, which he believed captured his accident. However, Ms. Velacquez testified that Petitioner did not report his accident to her until January 31, 2013, then telling her it occurred 2 to 3 weeks before. She testified that by the time Petitioner first reported the accident to her on January 31, 2013, any videos which might have captured Petitioner's accident would have been recorded over.

Petitioner testified he was initially treated at the Lake County Health Department and Community Health Center for right leg and back pain. On January 23, 2013, he was referred to neurosurgery for evaluation and treatment.

On February 18, 2013, Petitioner saw Dr. Barnabas for his back pain. He denied prior back injuries, and reported injuring his back at work on December 29, 2012 when he picked up a fry station. Dr. Barnabas diagnosed Petitioner with a lumbar sprain, lumbago, and lumbar disc displacement without myelopathy. Dr. Barnabas took Petitioner off work, and ordered a lumbar MRI. That MRI revealed disc herniations at L4-5 and L5-S1.

Petitioner was examined by Respondent's Section 12 orthopedic physician, Dr. Kornblatt, on March 21, 2013. Petitioner complained to him of severe back pain into his right buttock and thigh, with paresthesias and intermittent numbness. Petitioner denied previous back injuries and similar symptoms. Dr. Kornblatt also reviewed Petitioner's February 18, 2013 MRI, and diagnosed him with an S1 radiculopathy with a herniated L5-S1 disc from his accident. Dr. Kornblatt suggested Petitioner consider a micro decompression of his S1 nerve root, but when Petitioner rejected that suggestion, Dr. Kornblatt agreed that conservative treatment would be an appropriate alternative.

Petitioner began a course of conservative treatment which included physical therapy and lumbar epidural steroid injections. On April 30, 2013, Petitioner told Dr. Zoellick that he felt better after his first injection, and believed the physical therapy he was attending was helping. By June 13, 2013, Petitioner reported his pain was decreasing, and that he was not taking any pain medication. Dr. Zoellick released Petitioner to his prior job that day, if it could be performed sitting down. On July 18, 2013, Petitioner told Dr. Zoellick that he only had pain when he walked, stood, or sat for long periods of time. Dr. Zoellick found Petitioner able to work light duty on that date, alternating sitting/standing as tolerated.

Petitioner attended work conditioning from September 18, 2013 through October 2, 2013, after which he took a break due to a family emergency. On October 31, 2013, Dr. Zoellick recommended Petitioner not resume work conditioning, as it seemed to aggravate his condition, and referred Petitioner to Dr. Regan.

On December 13, 2013, Petitioner first saw Dr. Regan and reported injuring his back after moving a fry station on January 13, 2013. Dr. Regan diagnosed Petitioner with low back pain and sciatica, and ordered a new lumbar MRI. Dr. Regan interpreted Petitioner's January 14, 2014 MRI as showing disc degeneration with bulging at L4-5. However, Dr. Regan acknowledged the MRI did not show severe pressure on Petitioner's spinal nerves, and Dr. Regan recommended against surgery. At his deposition, Dr. Regan testified that as of January 2014, Petitioner, "probably was at maximal medial improvement." Based upon the history which Petitioner provided, Dr. Regan believed Petitioner's pain was related to his 2013 work injury.

On October 21, 2016, Dr. Kornblatt reviewed Petitioner's additional medical records and authored a report. He noted that Petitioner had been admitted to Condell Hospital with low back pain on July 19, 2016. He observed that while Petitioner had been at Condell, a repeat MRI was taken which was compared to a prior MRI of Petitioner dated February 2, 2009. The Condell radiologist, Dr. Papesch, reported Petitioner's July 19, 2016 MRI showed an L4-5 disc bulge and a high intensity zone consistent with an annular tear, but otherwise showed no significant interval change from Petitioner's February 2, 2009 MRI.

After reviewing Petitioner's additional records, Dr. Kornblatt modified his opinion and reported that Petitioner's current condition was consistent with multilevel mechanical low back pain, unrelated to his January 1, 2013 work incident. Dr. Kornblatt pointed out that none of Petitioner's four evaluations by Dr. Regan in 2014 revealed neurologic abnormalities. Dr. Kornblatt opined Petitioner reached MMI as of October 2, 2013, and that only the treatment Petitioner received through that date was causally related to his work accident. Dr. Kornblatt opined Petitioner's treatment after that date was related to his lumbar degenerative disc disease and mechanical low back pain.

Dr. Kornblatt examined Petitioner a second time on November 17, 2016. Then, Petitioner reported that when he returned to work for Respondent in July 2015, he had been doing fairly well. Petitioner also told Dr. Kornblatt that a recent episode in July 2016 resulted in severe, constant low back pain, and set him back.

At the time of Dr. Kornblatt's November 17, 2016 exam, he also reviewed MRI scans, including Petitioner's February 2, 2009 MRI. Dr. Kornblatt noted that the 2009 MRI revealed disc desiccation at L4-5, L5-S1, and showed an L5-S1 herniated disc and a smaller L4-5 disc protrusion. Dr. Kornblatt compared Petitioner's February 2009 MRI to his July 19, 2016 MRI, and noted the latter showed that Petitioner's L5-S1 disc demonstrated a protrusion but no frank herniated disc, nerve root impingement, or spinal stenosis – findings which Dr. Kornblatt considered to be a significant improvement from Petitioner's February 2, 2009 MRI.

The Arbitrator found Petitioner did not prove an accident on January 1, 2013, and that his testimony, when compared to the totality of evidence adduced at trial, revealed numerous material inconsistencies which called his reliability into question. Although Petitioner's Application listed an accident date of January 1, 2013, he did not recall the exact date, testifying it occurred sometime between January 1, 2013 and January 11, 2013. The Arbitrator observed that Petitioner testified that he went to a clinic the day after his accident because he could not handle the intense pain, but Petitioner subsequently testified that his first medical treatment may not have been until January 19, 2013, when he saw Dr. Nano. The Arbitrator found that although Petitioner denied performing any work for Respondent after his work accident, his wage records showed that he was paid for 51 hours of work on his next (January 17, 2013) paycheck. Petitioner testified he was taken by ambulance to Condell Hospital on July 10, 2016, the day he alleged sustaining a second accident at work, yet no records from Condell were offered to support that claim. Instead, Condell's records

showed Petitioner was not admitted there until July 19, 2016, and during that admission, no history of any recent work accident was documented.

Accident:

The Commission agrees that Petitioner's credibility is questionable, for the reasons stated by the Arbitrator. There were discrepancies between Petitioner's testimony and many of the histories contained in his records. He told Drs. Barnabas, Zoellick, and Kornblatt that his accident occurred on December 29, 2012; but told Dr. Regan it occurred on January 13, 2013. At arbitration, Petitioner testified that his accident occurred sometime between January 1, 2013 and January 11, 2013, before finally testifying it occurred on January 1, 2013.

Notwithstanding those inconsistencies, the Commission nonetheless finds Petitioner's testimony describing of his mechanism of injury – lifting or moving a fry station or fryer – to be persuasive, as it was corroborated by other evidence in the record. Petitioner's description of injury was consistently documented in multiple medical record histories. Witness Velacquez admitted Petitioner reported a work accident to her in January 2013, and that she filled out an accident report for it. Respondent's area supervisor, Tony Mkachurik, also acknowledged that Petitioner's claimed January 1, 2013 accident was brought to his attention after it occurred. For these reasons, the Commission reverses the Arbitrator's finding that Petitioner did not prove accident, and finds Petitioner proved he sustained an accident which arose out of and in the course of his employment on January 1, 2013, from moving a fryer at work.

Causal Connection:

The Commission finds, based upon the preponderance of credible medical evidence, that Petitioner's accident caused a temporary exacerbation of his prior lumbar degenerative disc disease through October 2, 2013.

Dr. Kornblatt opined that Petitioner's work incident resulted in an acute right S1 radiculopathy, secondary to a right L5-S1 herniated disc, but that over time and with conservative management, the herniation and radiculopathy caused by his accident resolved by October 2, 2013, when Petitioner completed his work conditioning program.

Dr. Kornblatt reviewed Petitioner's 2009 lumbar MRI in 2009, and observed it showed not only disc desiccation at L4-5 and L5-S1, but also a herniation at L5-S1 and a smaller protrusion at L4-5. When Dr. Kornblatt compared that MRI to Petitioner's July 19, 2016 MRI, he found that the latter showed significant improvement at Petitioner's L5-S1 disc level.

The Commission finds Dr. Kornblatt's opinions more persuasive than those of Dr. Regan, who had an incomplete history of Petitioner's lumbar spine condition. Dr. Regan based his causation opinion on Petitioners' history to him. He assumed Petitioner's back pain never really showed significant improvement; however, treating records disprove that. Dr. Regan never

reviewed Petitioner's 2009 MRI, which showed the extent of his prior degenerative lumbar condition, including Petitioner's herniated L5-S1 disc. Dr. Regan admitted he had not reviewed any of Petitioner's medical records other than his own and the reports of Dr. Kornblatt. He acknowledged Petitioner's degenerative disc disease would be a cause of Petitioner's pain, albeit in addition to Petitioner's work injury. He interpreted Petitioner's July 2016 lumbar MRI report as showing just an aggravation at L4-5 and L5-S1.

Although Petitioner testified that since his accident, his pain always remained the same, his records show otherwise. They show his condition improved by July 17, 2013, when he reported experiencing pain only when he walked, stood, or sat for long periods of time. They show, on September 11, 2013, that he reported his symptoms were 75% better since his last epidural injection. They show, that on September 12, 2013, Petitioner told Dr. Zoellick that his numbness and cramping were going away.

Dr. Kornblatt's opinion – that Petitioner's L5-S1 disc herniation resolved with conservative treatment – was confirmed by radiologist, Dr. Briet. Dr. Briet read Petitioner's July 6, 2016 lumbar MRI as showing Petitioner's, "Previously described disc herniations are no longer evident." The Commission finds Petitioner's work accident caused a temporary exacerbation of his lumbar degenerative disc condition and radiculopathy, which resolved by October 2, 2013.

Records do show that since that time, Petitioner has experienced other "flare-ups" of his low back condition. In July 2014, Petitioner reported a flare-up of back pain to Dr. Regan, telling him he had difficulty taking care of his two-month-old baby. On July 13, 2016, Dr. Regan reported Petitioner was going through another "flare-up." Petitioner's July 2016 admission at Condell Medical Center was for severe back pain, which Petitioner reported had started one week earlier and become worse. On August 16, 2016, Dr. Diaconescu saw Petitioner in his office for a "flare-up" of low back pain and leg pain. The Commission finds Petitioner's flare-ups, lumbar spine condition, and need for lumbar spine treatment after October 2, 2013 to be unrelated to his January 1, 2013 accident.

Medical Expenses;
Prospective Medical Care:

The Commission adopts the finding of Dr. Kornblatt that Petitioner reached maximum medical improvement on October 2, 2013. Both Petitioner's objective findings, and his subjective complaints documented in his medical records, show resolution of the radiculopathy caused by his January 1, 2013 accident, and improvement in his lumbar spine condition.

When Dr. Regan saw Petitioner a few months later, on January 29, 2014, he observed that while Petitioner's January 7, 2014 lumbar MRI showed disc degeneration, there was no severe pressure on the nerves at L4-5 and L5-S1. Dr. Regan did not recommend surgery, and opined that Petitioner was then, "probably at maximal medical improvement." For these reasons, the

Commission finds Respondent responsible for the reasonable and necessary medical treatment for Petitioner's lumbar spine condition through October 2, 2013.

Temporary Total Disability; Maintenance:

Petitioner testified that, although his accident occurred on January 1, 2013, he did not begin losing time from work until January 11, 2013. The Commission finds Petitioner proved he was temporarily totally disabled for a period of 37-6/7 weeks, from January 11, 2013 through October 2, 2013. The Commission denies TTD and maintenance benefits after that date.

Vocational Rehabilitation:

Petitioner testified his past work experience has included, in addition to his managerial responsibilities while working for Respondent, working in a liquor/grocery store, where his duties included cleaning, stocking, organizing and assisting customers. At arbitration, he testified that he believed he could work as a cashier, or in customer service. Petitioner claimed he kept job logs, but offered none into evidence, claiming they were lost. At arbitration, Petitioner offered no opinions from any vocational rehabilitation expert that Petitioner needs vocational assistance. Accordingly, the Commission finds that Petitioner has not proven a need for vocational rehabilitation.

Spoliation of Evidence:

Petitioner asks the Commission to infer, from Respondent's failure to produce restaurant surveillance video depicting his accident, that any such video would have been favorable to him. With regard to this issue, the Commission does not rely upon Ms. Velacquez's testimony, which it finds incredible. However, the Commission finds Petitioner's testimony insufficient to prove that such video existed, and if it had, that Petitioner notified Respondent of the accident in time for such video to be preserved. Regardless, this issue is moot, the Commission having found that Petitioner proved an accident on January 1, 2013.

Admissibility of Text Messages:

The Arbitrator allowed Petitioner's text messages to be read into the record, but did not allow photographs of those texts to be admitted into evidence. Petitioner presented no argument to explain how the Arbitrator's denial of the text message photographs into evidence adversely affected his claim and the Commission finds none. Furthermore, given the Commission's finding that Petitioner proved accident, Petitioner's claim of error is moot.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 6, 2022, is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner proved he sustained an accident which arose out of and in the course of his employment at Respondent on January 1, 2013, which caused a temporary exacerbation of his preexisting lumbar spine condition, but which reached maximum medical improvement on October 2, 2013.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $286.00 per week for 37-6/7 weeks, for the period of January 11, 2013 through October 2, 2013, 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 Petitioner's lumbar spine condition between January 1, 2013 and October 2, 2013, pursuant to the fee schedule, as provided by §8(a) and §8.2 of the Act.

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

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $52,300.00. 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.

May 3, 2023

MP/mcp
o-03/16/23
068

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC019605
Case Name	Salvador Pacheco v. McDonalds
Consolidated Cases	13WC005535;
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	23IWCC0198
Number of Pages of Decision	13
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Mary Pat Donohue, Gary Newland
Respondent Attorney	Daniel Ugaste

DATE FILED: 5/3/2023

/s/Marc Parker, 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

Salvador Pacheco,

Petitioner,

vs. NO: 19 WC 19605

McDonalds,

Respondent.

DECISION AND OPINION ON REVIEW PURSUANT TO §19(B) and §8(A)

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, temporary total disability, vocational rehabilitation, maintenance, spoliation of evidence, and admissibility of text messages, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 6, 2022, is hereby affirmed and adopted.

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

May 3, 2023
MP:yl
o 3/16/23
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC019605
Case Name	Salvador Pacheco v. McDonalds
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Mary Pat Donohue, Gary Newland
Respondent Attorney	Daniel Ugaste

DATE FILED: 9/6/2022

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

/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(CORRECTED)
19(b)

Salvador Pacheco Case # **19** WC **019605**
Employee/Petitioner
v.
McDonalds
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 **Gerald Napleton**, Arbitrator of the Commission, in the city of **Rockford,IL on 5/19/2022 and Woodstock, IL on 6/2/2022.** 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 **Vocational rehabilitation/maintenance**

FINDINGS

On the date of accident, **7/10/2016** Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was not*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$8239.92** the average weekly wage was **$158.46.**

On the date of accident, Petitioner was **25** years of age, ***single*** with **3** dependent children.

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

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

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

ORDER

ALL BENEFITS ARE DENIED.

PETITIONER'S PETITION FOR PENALTIES IS DENIED.

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

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

SEPTEMBER 6, 2022

/s/ Gerald W. Napleton

Signature of Arbitrator

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Salvador Pacheco,	)	
Petitioner,	)	
v.	)	Nos. 13WC005535
	)	19WC019605
McDonald's,	)	
Respondent.	)	

ADDENDUM TO ARBITRATOR'S DECISION REGARDING FINDINGS OF FACT AND CONCLUSIONS OF LAW (CORRECTED)

This matter proceeded to hearing on May 19, 2022 in Rockford, Illinois before Arbitrator Napleton. It was bifurcated and proceedings reconvened on June 2, 2022 in Woodstock, Illinois.

Testimony of Petitioner

Petitioner, Salvador Pacheco, began working for Respondent, McDonald's, while in high school in 2008 or 2009. He started as a crew member and worked the kitchen, front counter, drive-through, and inventory and was moved to crew trainer where he trained employees. He was promoted to manager and worked as a manager until his alleged accident.

Petitioner testified he injured himself on January 1st, 2013 but testified that he could not recall the exact date but that it was somewhere between January 1 and January 11. Petitioner stated he would get reviews of his work from time to time. He received compliments on paper and a gift card for excellent customer service and mystery shoppers. He testified that he still has them.

Petitioner denied ever receiving medical treatment for his back prior to the incident at issue. On the date in question, Petitioner was working with a small crew as business was slow that day. Petitioner testified that he lifted a big metal tub in a fry station that weighed about 150lbs. He testified that he lifted the fry tub with grease in it and twisted badly which caused him to experience a sharp pain in his back.

Petitioner testified that he reported the incident right away to Marisela Velacquez, his supervisor. Petitioner acknowledged that he and Ms. Velacquez had a romantic relationship outside of work. He testified that he ended the romantic relationship and that Ms. Velacquez treated him differently at work as a result and would change his shifts to less-desirable times and days. Petitioner testified that Ms. Velacquez was disinterested in hearing about his injury and that he should deal with his pain.

Petitioner stated that there are video cameras around the premises, including one near the fry station. Petitioner testified that he advised Ms. Velacquez to look at the video to see his accident. Petitioner testified that Ms. Velacquez then started calling Petitioner saying his pain will go away. He went on to state that his leg went numb, and his right side and arm experienced a "really bad sharp pains like hot and like when you get a cramp feeling like ants on you on my whole right side." T37. Petitioner did not have medical insurance, so he went home, took Tylenol, and used an ice compress.

Petitioner stated that the next day he went to a medical clinic as he couldn't handle the pain. Petitioner testified that he was in bed for a whole year after his injury. TX40. He testified he worked intermittently between July 2, 2015 and July 10, 2016. He stated that Respondent was not accommodating his restrictions and did not put him on the schedule very often. TX39.

Petitioner testified that he was in a motor vehicle accident in June of 2016 and described the crash as minor. He testified the did not seek medical treatment and suffered from the same disability then that he has now. TX52.

Petitioner stated he had a second accident in July of 2017 at a McDonalds in Fox Lake but clarified it was July of 2016. Petitioner testified that he was at the back window and had to stretch out to give a customer a card or money and the card fell. Petitioner testified that he told the store manager on duty that day of his accident and was taken by ambulance. TX45. He testified that he couldn't drive and couldn't make it home or get out of his car. He drove to a friend's house down the road, his leg went numb, and an ambulance was called. TX45. He further stated his pain in July 2016 was just horrible, he couldn't feel his legs, and that his legs gave up on him. TX54.

Petitioner testified that he sought medical treatment with the Lake County Health Department after his initial injury. He treated with Lake Shore MRI and Herron Medical Center where he saw Dr. Barnabas and Dr. Malek. He then treated with Adult and Pediatric Orthopedics. Petitioner did not recall how he ended up treating with Herron Medical Center and believed it was either another doctor or a friend. TX60. He stated that a physical therapist referred him to Adult and Pediatric Orthopedics. Petitioner testified that he believed a doctor at Advocate Condell referred him to Illinois Bone and Joint though there is some confusion whether a doctor "Solly" (phonetic) at Adult and Pediatric Orthopedics sent him to Illinois Bone and Joint. TX62.

Petitioner denied prior back-related medical treatment and stated he had an MRI in 2009 to address burning while urinating and that the MRI was to check for kidney stones.

He stated that he asked to return to work but was never contacted back by Respondent. Petitioner acknowledged that Respondent began accommodating his restriction for a brief period but did not get many hours.

Petitioner complains that as of today his leg goes numb and that too much standing or walking – even short 10 or 15-minute walks – cause burning heel and toe pain. The numbness he experiences is constant. Petitioner stated he's currently restricted to sitting, standing, no twisting, no bending, and no lifting more than 10 pounds. Petitioner believes he can perform cashier work and has applied for customer service jobs at Walgreens, as well as restaurant host jobs at Mexican restaurants and pizzerias. Petitioner stated he applied for 50 jobs in years past but does not have any record of his applications as he left personal items behind when he was evicted in 2017. No job applications or job search notes from any period of time were entered into evidence. Petitioner wishes to undergo further pain management treatment. Petitioner is interested in vocational training.

On cross-examination, denied receiving a subpoena from Respondent's counsel for wage and tax records. Petitioner verified his address. The return receipt shows the parcel was delivered on 5/16/2022. RX19. The hearing took place on 5/19/2022 and June 2/2/2022. Petitioner testified he did not file tax returns after 2013 as he only worked one or two days after that. TX67.

Petitioner acknowledged that he doesn't recall the exact date of injury but that it was likely somewhere between January 1 and January 11, 2013. He confirmed that it was after New

Year's. TX72. Petitioner acknowledged signing an Application for Adjustment of Claim (RX1) but does not recall what the document stated.

Petitioner confirmed that he was not moving an entire fry machine but the tray in which fries are dumped and salted which is required to be cleaned of salt and grease. TX78. He confirmed that it weighs between 150 and 200 pounds. He acknowledged that if records show the first date of treatment was January 19, 2013, he would have no reason to disagree. TX80. He denied only complaining of leg pain at his January 19, 2013 visit. TX81. He confirmed he next treated with Dr. Barnabus. He did not recall if there were any witnesses to his accident. He confirmed that he suffered from intense pain after his accident. He claimed that he was unable to see a doctor due to visits not being approved.

Petitioner reiterated that he was taken by ambulance soon after he left Respondent after his July 10, 2016 accident. He then stated that his accident happened on whatever date he went to the emergency room at Advocate Condell. TX92.

Petitioner stated he compiled a list of jobs he has applied to and gave it to his attorney. PX95. He reiterated losing those records when he was evicted in 2017 but that subsequent logs exist. TX96. Petitioner recalled applying at a Walgreens in Hainesville but did not recall when he did. TX97. He stated that he attempted to rejoin McDonalds several times.

Petitioner testified that he attempted to get his GED but was unable to as he couldn't sit for long periods of time. TX99.

Petitioner acknowledged that he was absolutely certain that he did not work from January 11, 2013 through July 1, 2015 but could not recall the exact date he was injured. TX100-101.

On re-direct examination, Petitioner stated he confirmed his dates off by virtue of the letter from Respondent offering him work. TX104. Petitioner testified that he believed video captured his accidents because of events in the past where video was pulled when police asked for it or to handle customer disputes. TX106.

Petitioner confirmed that he went to the hospital the same day as his 2016 injury. TX110. He further stated that after his injury he walked out with difficulty, went to his car, made some calls, and attempted to drive home but could not.

Testimony of Marisela Velacquez.

Ms. Velacquez testified that she has worked for Respondent for 20 years, is currently a store manager, and has held that title for 14 years. T114. She testified that part of her job duties includes filling out accident reports and investigating accidents. She testified that she would see Petitioner outside of work at a club and has danced with him before but only one time. TX117.

Ms. Velacquez testified that Petitioner told her about his accident two or three weeks after it had happened and then filled out a report. Tx118. The report was dated January 31, 2013. TX119. She stated that Petitioner reported the accident on January 31, 2013. She testified that Petitioner worked between January 1, 2013 and January 31, 2013.

She further testified that the fry machine piece that Petitioner would have to take out to clean weighs no more than 50lbs. TX125.

On cross-examination, Ms. Velacquez denied a romantic relationship with Petitioner. She acknowledged working with Petitioner since 2008 and that Petitioner was a good employee. TX130. She further acknowledged that her office as manager had a computer with surveillance camera access but was not sure if the fry station was visible. TX131. She testified that surveillance keeps video for 48 hours. TX132.

Ms. Velacquez didn't ask Petitioner for a statement on how his injury happened. TX132-33. She stated she asked the crew about Petitioner's injury after she learned of it which the crew denied as they didn't see anything. TX135. Her checking with the crew was not referenced on her report. TX135. She stated her report does not list the date and time of the accident. TX137. She further testified that the report mentions Petitioner injuring himself with the fryer but does not list any doctors Petitioner saw. TX140. She acknowledged that she did not accurately complete the injury form. TX142. She stated that she listed four dependents of Petitioner on the form and gleaned that information from Petitioner's personnel file. TX143. She did not mark whether the Petitioner missed time because of this accident. TX144. The form states last day worked by Petitioner was January 11, 2013. TX145. She testified that she wrote Petitioner injured himself carrying the fry dispenser to the back room. TX145-46. Ms. Velacquez continued to testify that after an injury report is made it is sent to Respondent's main office. TX149

On re-direct, Ms. Velacquez stated that the form is incomplete as opposed to inaccurate. TX151. She further stated that the form shows that Petitioner did not seek treatment at an emergency room. TX151. On re-cross, she testified that she did not recall her work schedule but was not on vacation in January of 2013. She stated that the location she worked at was short-staffed at the time. TX155. She acknowledged that the facsimile date on the injury report she was viewing at hearing was faxed on March 4, 2013 with 4 other pages. TX159.

On second re-direct, Ms. Velacquez stated that an employee's personnel file is not updated in terms of dependents. TX161.

Testimony of Anthony Mkachurik

Mr. Mkachurik testified that he is employed by Respondent also known as Mcessy Investment Company, that owns McDonalds franchises and works as their area supervisor. TX166. He testified that when someone reports an injury they write an accident report that changes with insurance companies. TX167. He further stated that depending on the report they would investigate by video and get witness accounts. He stated that surveillance video was retained briefly but could be up to two weeks. TX168.

Mr. Mkachurik stated he became aware of Petitioner's accident after he was told, and that Petitioner advised Respondent "after the fact the accident occurred." TX168-69. He stated that he was unable to obtain video. TX169.

He further testified that RX4 is a letter sent to Petitioner date June 18, 2015 and signed by Petitioner on June 26, 2015. Mr. Mkachurik testified that Petitioner as a swing manager would not perform cleaning unless they volunteered. TX172. He continued that work as a swing manager is always available due to need. TX173.

On cross-examination, Mr. Mkachurik stated that he was aware of Petitioner having complained about Ms. Velacquez in that she had sexually harassed him. TX176. He stated that an investigation was performed, and Respondent concluded that there was no basis in Petitioner's accusations. TX176. He stated that he looked for video that supported Petitioner's claim of something happening at work but that since specific times and dates were not given, they didn't find video but that he later learned the actions complained of happened outside of work. TX177. Mr. Mkachurik testified that the Petitioner's store likely had 12 cameras in different locations but would have to guess as to their locations. TX178. He acknowledged that video would be saved for more than two days and potentially up to two weeks. TX179.

Mr. Mkachurik testified that he would expect Ms. Velacquez to write detailed information in an injury report and to interview other employees. TX180. He further stated that

Respondent looked for video of Petitioner's accident but had nothing and used Ms. Velacquez statement. TX182. He was unaware if Petitioner was given the chance to make a statement. TX187. It was reasonable that Petitioner as swing manager would work a drive-thru window. TX189.

Testimony of Petitioner, Continued

Petitioner confirmed that he had a romantic relationship with Ms. Velacquez and had engaged in conversation with her via text message. He testified that he met with his attorney with an older phone of his that has text messages saved on it so that screenshots can be saved and printed. He testified that he kept this old phone in a nightstand and would use this phone to communicate with Ms. Velacquez while he was employed with Respondent. The conversations were in Spanish and a Spanish translator translated them into the record at hearing.

Counsel for Respondent objected on the bases of authentication and hearsay. Petitioner testified to these being his old phone and brought the phone for viewing at hearing and further testified to their authenticity. Respondent did not rebut the text messages with further testimony from Ms. Velacquez. Petitioner testified that these texts were previously submitted to Respondent during their investigation of his sexual harassment allegations. Petitioner testified he kept these to protect himself.

The text conversation exhibits were admitted over Respondent's objections for the limited purpose of impeaching the testimony of Ms. Velacquez. Without going into detail, the text messages demonstrate that an intimate, out-of-work, romantic relationship existed between Petitioner and Ms. Velacquez. The texts discuss romantic feelings toward each other and use several terms of endearment. The texts appear to be from April through September of 2011.

On cross-examination, Petitioner acknowledged having saved these messages on his old phone from 2011. He acknowledged being married at the time but denied infidelity. TX250-51. He testified that he kept the phone in his nightstand at his mom's house with old bills and calendars and other important things. Petitioner was unable to recall exactly when he got married. TX258-59.

CONCLUSIONS OF LAW

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). It is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n,* 397 Ill.App. 3d 665, 674 (1st Dist., 2009).

The law is well settled that the Petitioner bears the burden of proving all elements of his case. *A.M.T.C. of Illinois, Inc. v Industrial Commission,* 77 Ill.2(d) 482 (1979). For an accidental injury to come within the meaning of the Act, it must be traceable to a definite time, place and cause and occur in the course of employment unexpectedly and without affirmative act or design of the employee. *International Harvester Company vs. Industrial Commission*, 56 Ill. 2d 84 (1973).An award for compensation cannot rest on speculation or conjecture and the employee has the burden of proof. *McDonald v. Industrial Commission,* 39 Ill. 2d 396, 405 (1968).

Uncorroborated testimony will support an award for benefits only if a consideration of all the facts and circumstances supports that decision. *Gallentine v. Industrial Comm'n, 201 Ill. App. 3d 880* (2nd Dist., 1990). Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972). 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 issue, the Arbitrator observed the Petitioner during the two hearings and finds his credibility to be uncertain. Petitioner appeared uneasy while testifying, though the Arbitrator notes this could be explained by physical discomfort. That said, the Petitioner's testimony when compared to the totality of evidence adduced at trial reveals numerous material inconsistencies which calls the reliability of Petitioner's testimony into question. The evidence adduced and admitted at hearing did not sufficiently corroborate Petitioner's uncertain testimony.

Petitioner testified he injured himself on January 1st, 2013 but testified that he could not recall the exact date but that it was somewhere between January 1 and January 11. Petitioner stated that the day after his accident he went to a medical clinic as he couldn't handle the intense pain. He confirmed on cross-examination that his accident was after New Year's. He further acknowledged signing an Application for Adjustment of Claim (RX1) but does not recall what the document stated. He, however, acknowledged that his first time seeking medical treatment was on January 19, 2013.

Wage records introduced by Respondent show Petitioner was paid on January 3, 2013 for 80.220 hours and again on January 17, 2013 for 51.820 hours. A prior payment date of December 18, 2012 showed Petitioner worked 50.57 hours. Prior to that on December 4, 2012 he was paid for 53.770 hours. See RX12. There is not a further breakdown of days, weeks, and hours but inferences can be drawn therefrom.

If Petitioner's accident happened on January 1, 2013, he waited 18 days to seek treatment for an injury he described as completely debilitating – one that he said required medical treatment the day after his alleged injury. If his accident happened on December 29, 2012, as he told subsequent medical providers, he waited 21 days. If it happened on January 11, 2013, he waited 8 days. A gap of eight days is not an unreasonable amount of time to wait to seek treatment if Petitioner wants to tough it out or see if things improve without medical intervention, but Petitioner's testimony is that his accident was incredibly traumatic causing him to seek medical treatment the very next day. The wage records further show Petitioner continued to work past January 1, 2013 to the point he was paid for over 51 hours of work on his next paycheck dated January 17, 2013. Petitioners may be imperfect historians, but their evidentiary burden remains.

Next, Petitioner claimed a second accident in July of 2017 but clarified it was July of 2016. July 10, 2017 is the precise date claimed. Petitioner testified he was taken by ambulance to the hospital that day. He testified that he couldn't drive and couldn't make it home or get out of his car. He drove to a friend's house down the road, his leg went numb, and an ambulance was called. He further stated his pain was horrible, he couldn't feel his legs, and that his legs gave up on him.

The records show that Petitioner sought treatment with Dr. Regan on July 13, 2017, however, the records do not mention any history of recent accident or aggravation at work. They do not mention having taken an ambulance to a hospital where he was admitted. The records

from Advocate Condell Medical Center show Petitioner was admitted on July 19, 2016, not July 10, 2016. The Condell records further reveal that Petitioner gave a history of back pain that started a week ago but was worse that day. PX15, p988.

The Arbitrator is further troubled by inconsistencies reasonably inferred from Petitioner's testimony. Petitioner testified that he lost all his pre-2017 job logs because of an eviction but also testified that he still has his paper commendations from Respondent. Petitioner testified that he kept his old phone from 2011 containing text messages from Marisela Velacquez for his own protection yet did not supply any similar evidence from his alleged date of accident in January of 2013. The Arbitrator finds that Petitioner's testimony was speculative, inconsistent with the evidence, and uncorroborated.

The Arbitrator believes it is worth mentioning that he also finds that the testimony of Respondent's witness, Marisela Velacquez, is unreliable. The missing information on the injury report completed by Ms. Velacquez on January 31, 2013 suggests an abysmal attempt at gathering requisite information. Ms. Velacquez denied a romantic relationship with Petitioner but, over Respondent's objection, several text messages between Petitioner and Ms. Velacquez suggested an obvious romantic relationship existed[1]. That said, the unreliability of the testimony of a defense witness does not absolve Petitioner of his burden of proof to prove entitlement to benefits by a preponderance of credible evidence.

Petitioner alleged Respondent violated its duty of care to preserve video evidence and that Petitioner is entitled to a presumption in his favor. When a party has deliberately destroyed evidence, the trier of fact can make all reasonable presumptions against the party that possessed the evidence yet allowed it to be destroyed. One of the presumptions that can be made is that the preservation of the evidence would have been prejudicial to the case of the party that controlled but destroyed the evidence. *R.J. Management Company v SRLB Development Co*., 346 Ill App.3d 957, 964 (2nd Dist., 2004).

Testimony has shown that there are several cameras at Respondent's premises. It has not credibly demonstrated, however, that there was a camera in the fry station area. Neither has testimony confirmed the exact amount of time that video footage is stored. Testimony varies between two days and up to two weeks. Assuming, *arguendo,* Petitioner sustained an accident on January 1, 2013 or any date between January 1st and January 11th, and that video is stored between two days and two weeks. There is no corroborating evidence that Petitioner reported his accident prior to the incident report date of January 31, 2013. Mr. Mkachurik testified that he attempted to retrieve video after a report was received but that no video existed or was retrievable. The testimony of Mr. Mkachurik was credible and unimpeached. Accordingly, the Arbitrator does not find that Respondent has breached its duty to preserve evidence and that Petitioner is not entitled to a spoliation inference in his favor.

Considering the evidence adduced at trial comprised primarily of Petitioner's testimony, his statements to his medical providers, wage records, and the medical records themselves, Petitioner has not met his burden of proof. There is a lack of credible testimony and corroboration regarding a definite time and date as to when Petitioner suffered an accident as alleged on January 1, 2013 and July 10, 2016. Accordingly, all claims for compensation and benefits are denied.

[1] The Arbitrator applauds the decorum and professionalism of the attorneys at hearing as they skillfully prevented the hearing from turning into a salacious episode of the Jerry Springer show.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC018368
Case Name	Rafiudin Hamid v. Autonation Mercedes-Benz of Westmont
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0199
Number of Pages of Decision	15
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	William A Lowry Sr

DATE FILED: 5/5/2023

/s/ Deborah Simpson, Commissioner

Signature

DISSENT: /s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RAFIUDIN HAMID,

Petitioner,

vs. NO: 21 WC 18368

AUTONATION MERCEDES BENZ OF WESTMONT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent and notice given to all parties, the Commission, after considering all issues and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, with a correction made as addressed by the Commission herein. 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).

Paragraph four on page seven of the Decision of the Arbitrator begins with the following sentence: "Respondent, faced with the difficult task of proving a negative, presented extensive testimony of service technicians who were working on the alleged date of accident, but the testimony did not negate the accident occurring." Arb. Dec. p. 7. The Commission hereby strikes the portion of this sentence that reads "faced with the difficult task of proving a negative," and finds that this phrase may create confusion as to the burden of proof in a workers' compensation claim. The Workers' Compensation Act states: "[t]o obtain compensation under this Act, an 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(d); *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013 (1st Dist. 2011).

The Commission finds that the phrase, "faced with the difficult task of proving a negative," did not undermine the Decision of the Arbitrator, which stated the correct standard of proof and conducted the proper analysis in finding the instant claim compensable. The Arbitrator properly assigned the burden of proof to Petitioner and applied the appropriate legal standards throughout the Decision, specifically reiterating the correct standard of proof in the last paragraph on page six of the Decision ("To obtain compensation under the Act, a claimant must show, by a preponderance of the evidence, that he suffered a disabling injury that arose out of and in the course

of the claimant's employment"), and in the last sentence on page seven ("Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he sustained accidental injuries arising out of and in the course of his employment with Respondent on April 24, 2021.")

The Commission incorporates this change as stated herein into the Decision of the Arbitrator, and in all other respects, affirms and adopts the Decision of the Arbitrator, as it properly assigned the burden of proof onto Petitioner.

IT IS THEREFORE ORDERED BY THE COMMISSION that the phrase "faced with the difficult task of proving a negative" is hereby stricken from paragraph four on page seven of the Decision of the Arbitrator so that the remaining sentence reads: "Respondent presented extensive testimony of service technicians who were working on the alleged date of accident, but the testimony did not negate the accident occurring." In all other respects not specifically stated herein, the Commission affirms and adopts the Decision of the Arbitrator filed on August 3, 2022.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $2,400.00. 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.

May 5, 2023

DLS/met
O- 3/8/23
46

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

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

DISSENT

I respectfully dissent from the Decision of the majority and would have instead found both that Petitioner failed to prove the necessary elements of his claim and that the Decision of the Arbitrator improperly shifted Petitioner's burden of proof onto Respondent.

Pursuant to the Illinois Workers' Compensation Act, "[t]o obtain compensation under this Act, an 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(d). The Act is clear in its assignment of the burden of proof to Petitioner. However, the Decision of the Arbitrator expressly misrepresents the proper burden of proof in workers' compensation claims by stating in paragraph four on page seven: "Respondent, *faced with the difficult task of proving a negative*, presented extensive testimony of service technicians who were working on the alleged date of accident, but the testimony did not negate the accident occurring." Arb. Dec. p. 7. (*emphasis added*). The statement that Respondent was "faced with the difficult task of proving a negative" improperly implies that some of Petitioner's burden of proof fell onto Respondent, which is contrary to the established statutory law in workers' compensation claims. Respondent has no burden to prove any element of Petitioner's claim.

Furthermore, I would have found that Petitioner failed to meet his burden of proof by establishing by a preponderance of the evidence that he sustained a compensable accident that arose out of and in the course of his employment on April 24, 2021. Petitioner testified that on the accident date, he was rushing to bring car keys back to two customers when he tripped on a vehicle hoist and fell onto his face and right hand. Petitioner testified that when this accident occurred, he was embarrassed, quickly jumped up, and saw three mechanics standing in the corner of the room laughing, although he did not know if they were laughing at him or amongst themselves. Petitioner testified that in the immediate aftermath of the fall, his glasses were shattered, there was blood coming out of his mouth, his pants were ripped, and his clothes were dusty all over with scuff marks. Petitioner testified that when the customers saw his appearance, they gasped and asked if they should call an ambulance. After this interaction with the two customers, Petitioner testified that he went back to the showroom and encountered his general manager named Eric Hoffman, a sales associate named Silvia, and another woman named Kim Avino. Petitioner testified that these three individuals also gasped at his appearance and were informed by him of what had happened.

However, none of these alleged witnesses who Petitioner identified as either being present at the time of his fall or observing his bloodied and bruised post-accident appearance were called to testify on his behalf in his disputed claim. Instead, Respondent provided the deposition testimony of seven coworkers who failed to directly corroborate Petitioner's testimony. None of the seven witnesses testified to observing Petitioner's alleged trip and fall or his condition after it, including his bloodied mouth, shattered glasses, or torn pants. Petitioner testified that his injured appearance made numerous people gasp in the aftermath of his fall, and yet, all of the witnesses who testified failed to see anything out of the usual involving Petitioner on the accident date.

Since Petitioner's testimony was not corroborated by the seven trial witnesses, Petitioner's credibility is called into question and there is doubt as to whether his alleged accident occurred as he described. Since Petitioner bears the burden to prove all elements of his claim by a preponderance of evidence and that burden of proof was improperly shifted onto Respondent in this claim, I would have reversed the Decision of the Arbitrator to find that Petitioner failed to prove that he sustained a compensable accident arising out of and in the course of his employment and that his current condition is causally related to said accident.

DLS/met
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/s/*Deborah L. Simpson*
Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC018368
Case Name	Rafiudin Hamid v. Autonation Mercedes Benz of Westmont
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	William Lowry, Jr.

DATE FILED: 8/3/2022

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

/s/Stephen Friedman, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Rafiudin Hamid
Employee/Petitioner

v.

Autonation Mercedes Benz of Westmont
Employer/Respondent

Case # **21** WC **018368**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen J. Friedman**, Arbitrator of the Commission, in the city of **Wheaton**, on **June 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, **April 24, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**6945.90**; the average weekly wage was $**600.29**.

On the date of accident, Petitioner was **65** years of age, ***married*** with **1** dependent child.

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

Respondent shall be given a credit of $**0.00** 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, pursuant to the medical fee schedule, of $2,250.00 to American Diagnostic MRI, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for additional reasonable and necessary treatment consistent the recommendations of Dr. Rathore for removal and replacement of Petitioner's #7 to #10 bridge, and the recommendations of Dr. Rhode including an arthroscopic debridement of the Petitioner's right wrist, any post operative treatment, physical therapy or other reasonable and necessary care.

Petitioner's claim for temporary 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.

AUGUST 3, 2022

/s/ Stephen J. Friedman
Signature of Arbitrator

ICArbDec19(b)

Statement of Facts

Petitioner Rafiudin Hamid testified he has worked in the automobile sales field and held various dealer management positions since 1978 or 1979. He testified he earned a bachelor's degree in commerce and a master's in business administration. He began his auto dealership career selling vehicles at Z-Frank Chevy in Chicago. He next worked for Napleton Auto Group for eight years. He also served as a sales manager, general manager, finance manager, and lease manager. Petitioner testified he relocated and worked as a vice-president for a large auto group in Oklahoma for two years before returning to Illinois. He previously worked for Respondent, Auto Nation, in 1990 and applied for re-employment when he returned to Illinois. Petitioner testified he began working as a sales associate for Respondent's Mercedes Benz location in Westmont on January 24, 2021.

Petitioner testified that he was working on Saturday, April 24, 2021. He started at 8:30 AM, at which time there was a sales meeting. He testified that during the middle of the day, around noon, he was approached by two customers, two friends, who were looking for a car. The vehicle he was showing them was located on a parking ramp, but the key was in the service department. Petitioner escorted the two customers to the ramp where the vehicle was located, and then went to get the key. Petitioner testified that he was rushing out of the service department because the customers were waiting. Before the door, there is a hoist on the ground. He testified he tripped on the hoist and hurt himself. He estimates that the injury occurred around lunchtime.

The service department consists of two large rooms. The main service department is huge with many bays, and there is a wall. Steve Link, who has the key, is right next to the door of the wall that goes to the second bay in the building. This is a second room is where they service large vehicles. It has four to six bays. Petitioner testified he came from that door to go outside because it was closer to the ramp he was supposed to go to. It was in the smaller room that Petitioner tripped on a vehicle hoist. Petitioner denied he could have tripped over his feet. Petitioner's right foot caught on the hoist, and he landed on his face and right hand. The right hand was holding the key fob. Petitioner noticed that his glasses were broken, his knee and right hand were hurting, and there was blood coming out of his mouth. Petitioner does not recall any of the hoists in the small room being in use at the time. There were some people sitting in the corner of the room. Petitioner saw three mechanics standing in the corner by that toolbox. They were laughing, He does not know who they were or if they were laughing at him. His back was to them when he fell, so he does not know if they saw him trip and fall. He testified he say he was fine.

Petitioner testified that he got up and went to the parking ramp to his waiting customers. Petitioner noted that his pants were ripped by his knee, and they were dusty. He was with the customers for a few minutes. He did not conclude a sale. Petitioner returned to the showroom and met Eric Hoffman, the general manager, Sylvia, a sales associate, and Kim Avino. He testified that they gasped and asked if he was okay. Petitioner testified that he cleaned himself up in the bathroom. He testified that he took pictures to tell his wife what happened. He noticed that his right hand was scuffed, and one of his front teeth was damaged. The tooth was artificial, part of a bridge that was implanted in 1987. Petitioner testified that he told the general manager, Eric Hoffman, what had occurred and that he was not feeling well. Petitioner and Mr. Hoffman completed a written accident report and filed it. Petitioner testified that Mr. Hoffman told him to go home. Petitioner departed the dealership at approximately 3:00 PM. His normal workday was to 5:00 PM.

Respondent offered the testimony of 7 mechanics by evidence depositions taken June 15, 2022.

Steve Link testified that he has been employed by Respondent for 28 years. On April 24, 2021, he was running the shop, team leader. He knows Petitioner as a coworker. He did not see Petitioner fall over a vehicle rack on that date. He did not recall Petitioner requesting a set of keys. He does not recall any interaction with Petitioner on that date. At noon, he was probably by his tool box in the center of the shop. He was in the shop with 30 racks. He first became aware of the incident after Petitioner filed suit. He was told by Eric Hoffman (RX 6).

Kevin Tait testified that he was working for Respondent as a technician in the service department on April 24, 2021. He knows Petitioner as a coworker. On April 24, 2021, he was working. He did not see Petitioner fall. He described the shop area. There is the main area with racks on both sides, and then the big drive area. At noon, he may have been at lunch. That is the time they usually start eating. His space is at the center on the east side. He cannot see the whole area all of the time. He did not recall interacting with Petitioner at all on the date of accident. He became aware of the injury the following week when Mr. Hoffman asked him about it (RX 7).

Nicholas Hresin testified that he was employed by Respondent as a certified technician on April 24, 2021. He knows Petitioner as a coworker. He was working at the dealership on the date of accident. He did not see Petitioner trip over a vehicle rack. At noon, he would have been either on a test drive or by his tool box in the center shop. He would have had a good view of the entire shop unless there is a vehicle obstructing his view. He does not recall what kind of vehicles were near him on April 24, 2021. He did not recall interacting with Petitioner at all that day (RX 8).

Alex Lopez testified that he was working for Respondent as an express tech on April 24, 2021. He knows Petitioner as a coworker. He did not see Petitioner fall. His work area was in the smaller room of the service area, where Petitioner alleges that he fell. He referred to it as the hourly shop. It has only 5 racks. It is divided by a wall. There are three doorways to the main shop. He did not recall seeing Petitioner that day. His knowledge of where Petitioner fell was based on what he was told by Eric Hoffman. At noon, he was either in the shop or he may have been on lunch. He was not exactly sure where he was at that time (RX 9).

Sergio Lascano testified that he was working for Respondent as a flat rate tech on April 24, 2021. He knows Petitioner as a coworker. He was working on April 24, 2021. He did not see Petitioner trip over a vehicle rack. He was probably working near his toolbox on the west side of the shop towards the left. He was in the main shop. He was informed of the alleged injury within a week (PX 10).

John Thomas testified that he was working for Respondent as a technician on April 24, 2021. He knows Petitioner as a coworker. He did not see Petitioner trip over a vehicle rack. Around noon, he would probably have been working at his stall in the middle of the main shop room, not the hourly shop. He testified that on April 24, 2021 there were about 10 employees working in the shop. He does not recall seeing or interacting with the Petitioner at all that day (RX 11).

David Kuczak testified that he worked for Respondent as an automotive mechanic. He does not know Petitioner. He was working on April 24, 2021. He was not aware of any allegation of an injury occurring on that date. He would have been working at his usual station in the main area towards the back. He could not see into the hourly area. He does not recall interacting with or seeing Petitioner on that date (RX 12).

Petitioner testified on rebuttal that all of these witnesses were in a different area from where it happened so they could not have seen him. He had no conversations with any of these witnesses.

Petitioner testified that on the date of accident, he called an immediate care office, who told him they were closing shortly, and that he could go to an emergency room, or come in to the immediate care on Monday morning. Petitioner testified he fixed the frame of his glasses and drove home. Petitioner decided to go to immediate care on Monday, staying home on Saturday evening and Sunday. Respondent reimbursed Petitioner for one set of glasses on May 18, 2021 (RX 5). Petitioner testified he did not recall receiving the check.

Petitioner was seen at Loyola Medicine on April 26, 2021 (PX 1). He gave a history that he tripped and fell at work on Saturday. He had the upper gums and inner upper lip abraded, his right hand was painful and swollen with the inability to bend the 3rd-4th fingers, and a bruise on his left leg. Physical exam noted a chipped front tooth. There was swelling, tenderness and decreased range of motion in the right hand. There was a bruise on the left knee. Facial x-rays were negative. Bilateral hand x-rays were negative for acute fracture. The impression was osteoarthritis. Petitioner was advised to follow up with his primary care doctor in 1 week if not improved (PX 1, p 4-10). Petitioner testified he returned to work for Respondent. Petitioner saw his primary care doctor, Dr. Hall, on May 12, 2021 complaining of right wrist pain. He was to see Orthopedics (PX 2, p 15-16).

Petitioner testified he saw a dentist that Respondent sent him to. Petitioner was seen by Dr. Rathore at Dental Dreams on May 20, 2021 (PX 3). Petitioner complained of a broken tooth. The exam noted Broken #8 (as part of a bridge from #7 to # 10). The bridge needs to be taken off and a new bridge needs to be fabricated. The Evaluation form states this is causally related to the Workers' Comp injury (PX 3). Illinois Rule of Evidence 803(4) provides an exception to the hearsay rule for "Statements made for purposes of medical treatment, or medical diagnosis in contemplation of treatment…or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment." Il. Sup. Ct. Rule 803(4) (emphasis added). The Arbitrator finds the opinion admissible.

Petitioner was seen at Orland Park Orthopedics on June 28, 2021 for right wrist pain (PX 2). He provided a history of a fall at work on April 24, 2021. He stated he was working full duty. He was scheduled for an MRI and allowed to continue full duty work (PX 2, p 1-3). The July 1, 2021 MRI impression was prominent heterogeneity along the ulnar aspect of the TFCC suspicious for partial tearing, cystic change along the ulnar aspect of the lunate, diffuse osteoarthritic changes (PX 2, p 5, PX 4). On July 15, 2021, Petitioner complained of continued right wrist pain. Dr. Rhode stated the MRI demonstrated a TFCC tear. Petitioner would be a candidate for arthroscopic debridement. Petitioner could continue full duty work (PX 2, p 7-9). On August 23, 2021, Petitioner reported continued ulnar-sided wrist pain, with no significant change since his last visit. Petitioner wished to proceed with the proposed surgery (PX 2, p 11-12).

Petitioner was examined at Respondent's request by Dr. Wysocki on September 29, 2021 (RX 1). Dr. Wysocki took a history and reviewed medical records including the MRI. Physical examination noted ulnar sided wrist pain. Dr. Wysocki stated the most pertinent diagnosis is right wrist pain with suspicion for symptomatic right TFCC tear. He opined that the TFCC tear should be considered causally related to the slip and fall only if it occurred as described. He agreed that Petitioner would benefit from a right wrist arthroscopy with probable TFCC debridement. He states that ulnar wrist pain from TFCC pathology does not tend to be extremely disabling. Petitioner is capable of full duty work in sales without restrictions (RX 1).

Petitioner testified he continued to work for Respondent in his full duty capacity selling cars until February 12, 2022, when he was let go. He testified he was told the reason was a management change. He testified he had

difficulty typing, writing, and coming in and out of heavy doors. Melissa Rodriquez testified by evidence deposition taken June 20, 2022 (RX 13). She testified she is employed by Respondent as market HR manager in South Florida. She is familiar with Petitioner. She became aware of his Workers' Compensation claim from the reporting she receives on a monthly basis. She testified that Petitioner was terminated due to his prolonged creation of a hostile work environment on February 12, 2022. This was not related to his workers' compensation claim (PX 13).

Petitioner returned to Dr. Rhode on March 14, 2022. He continued to complain of ulnar sided wrist pain with locking. He reported he is off duty. He is unable to mow, garden, type, or play basketball. He advised he is willing to proceed with an arthroscopic debridement (PX 2 p 13). Dr. Rhode provided an off work slip (PX 2, p 15).

Respondent offered video surveillance of Petitioner taken April 11, 2022 and April 12, 2022 (RX 3, RX 4). The video documented Petitioner driving, entering and exiting his vehicle, and checking his mailbox with his right hand. Dr. Wysocki reviewed the video and Dr. Rhode's March 14, 2022 notes, and provided an addendum report on May 18, 2022 (RX 2). Dr. Wysocki stated that these activities are not unexpected. They do not require substantial force. He confirmed his opinion that Petitioner is able to work full duty without restriction in the sales department of the auto dealership (RX 2).

Petitioner testified he has not worked since February 12, 2022. He owns an internet site, autoexecutive.com, but there is no business. That site has not done any business. Petitioner testified he is receiving unemployment compensation since March. To receive those benefits, he certifies he is ready, willing, and able to work. He testified he has looked for work, but provided no documentation of any job search.

Petitioner testified he has difficulty doing chores or doing anything with the edge of his hand. He cannot push using the palm of his hand. He has not played basketball since the accident. He cannot put force on his hand. He testified he can drive, but only uses the left hand. He then testified he does use both hands.

Conclusions of Law

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

To obtain compensation under the Act, a claimant must show, by a preponderance of the evidence, that he suffered a disabling injury that arose out of and in the course of the claimant's employment. An injury is accidental within the meaning of the Act when it is traceable to a definite time, place and cause and occurs in the course of employment unexpectedly and without affirmative act or design of the employee*. International Harvester Co. v. Industrial Comm.*, 56 Ill. 2d 84, 89 (Ill. 1973). An injury occurs "in the course of' employment when it occurs during employment and at a place where the claimant may reasonably perform employment duties, and while a claimant fulfills those duties or engages in some incidental employment duties. An injury "arises out of" one's employment if it originates from a risk connected with, or incidental to, the employment and involves a causal connection between the employment and the accidental injury. For an injury to 'arise out' of the employment its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in order in fulfilling his job duties. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848.

Petitioner testified that he was injured when he tripped on a vehicle hoist while taking car keys to customers out on the ramp. He testified he was in a hurry. If Petitioner is believed, this injury occurred during employment and at a place where the claimant may reasonably perform employment duties, and while a claimant fulfills those duties and its origin was in some risk connected with, or incidental to, the employment. Respondent has presented evidence including multiple service employees to dispute that the accident occurred. The employees all testified that they did not witness Petitioner's slip and fall in the service area.

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. 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).

Having heard the testimony and reviewed the evidence in this matter, the Arbitrator finds Petitioner's testimony as to the accident persuasive. The Arbitrator notes that Petitioner's version of the injury is plausible based upon his job duties and the requirements of his job. His testimony as to how he was hurt is repeated in his medical histories beginning on the next Monday. The Arbitrator does not find the failure to add the detail of tripping over a lift to Loyola significant. The nature of the medical findings including the chipped tooth and bruised gums, the swollen and painful right wrist, and the bruise noted on his left knee are consistent with his testimony and the mechanism of injury. Given the Covid issues at the time of injury, Petitioner's choice to wait for treatment until Monday is not unreasonable or inconsistent with a fall on Saturday.

Respondent, faced with the difficult task of proving a negative, presented extensive testimony of service technicians who were working on the alleged date of accident, but the testimony did not negate the accident occurring. The Arbitrator notes that many of the witnesses were working in a separate part of the service area, the main area rather than the smaller area where Petitioner fell. Many said they were not sure if they may have been at lunch during the midday time of the accident. The Arbitrator notes that the only testimony as to the number of service employees working that day was from Mr. Thomas who said there were 10, 4 more that the number who testified. The Arbitrator also notes that Petitioner did not testify that any service employees saw him fall or offered any assistance. It is very possible that the witnesses may have been present and did not observe the accident. There was no testimony that Petitioner screamed out or called attention to himself until afterward when he was in the sales area.

The Arbitrator also notes several other areas where Respondent did not present evidence to contradict Petitioner. While the evidence established that Eric Hoffman, the general manager at the time of the alleged accident, is no longer employed, Petitioner testified he spoke with several individuals in the sales area after the accident who observed his injuries. No sales persons testified to further contact with him in the several hours after he returned. No evidence to negate that there were other service technicians working on April 24, 2021 was offered. No evidence was offered to refute that the injury report was prepared. In fact, Ms. Rodriquez testified she became aware of the claim in reviewing her monthly report. The Arbitrator also notes that Respondent paid for replacing Petitioner's glasses and sent him to the dentist, act which would acknowledge the injury.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he sustained accidental injuries arising out of and in the course of his employment with

Respondent on April 24, 2021.

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

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

Based upon the Arbitrator's finding with respect to Accident, injuries related to the trip and fall would be causally related. Petitioner suffered injuries as a result of the accident consisting of a bruise to the left knee that required no treatment, a chipped tooth on his bridge that will require replacement, and an injury to the right wrist. The chipped tooth is related by the chain of events and the opinion of Dr. Rathore. The condition of ill-being in the wrist including the probable TFCC tear was found causally connected by Dr. Rhode. Since the Arbitrator has found the accident occurred, Dr. Wysocki's opinion is also that the condition is related.

Based upon the record as a whole and the Arbitrator's finding with respect to Accident, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that, as a result of the accident on April 24, 2021, he suffered causally connected conditions of ill-being in the right wrist and the 8th tooth in his bridge.

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

Under section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are necessary to diagnose, relieve, or cure the effects of his injury. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165, 351 Ill. Dec. 63 (2011)*. Based upon the Arbitrator's findings with respect to Accident and Causal Connection, reasonable and necessary treatment for the causally connected conditions of Petitioner's tooth and right wrist would be compensable.

Petitioner submitted one unpaid bill from American Diagnostic MRI in the amount of $2,250.00 for the right wrist MRI of July 1, 2021. This bill amount has not been adjusted for fee schedule or negotiated rate. The Arbitrator has reviewed the medical evidence and finds this treatment reasonable, necessary, and causally related.

Based upon the record as a whole, the Arbitrator finds that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $2,250.00 to American Diagnostic MRI, as provided in Sections 8(a) and 8.2 of the Act.

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

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 findings with respect to Accident and Causal Connection, reasonable and necessary prospective treatment for the causally connected conditions of Petitioner's tooth and right wrist would be compensable.

Dr. Rathore's undisputed records state Petitioner requires the removal and replacement of his bridge. The Arbitrator observed the broken tooth at trial. Dr. Rhode has recommended arthroscopic debridement of the right wrist. Dr. Wysocki has concerned that Petitioner is a candidate for this surgery.

Based upon the record as a whole and the Arbitrator's findings with respect to Accident and Causal Connection, the Arbitrator finds that Respondent shall authorize and pay for additional reasonable and necessary treatment consistent the recommendations of Dr. Rathore for removal and replacement of Petitioner's #7 to #10 bridge and the recommendations of Dr. Rhode including an arthroscopic debridement of the Petitioner's right wrist, any post operative treatment, physical therapy or other reasonable and necessary care.

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

Temporary compensation is provided for in Section 8(b) of the Workers' Compensation Act, which provides, weekly compensation shall be paid as long as the total temporary incapacity lasts, which has interpreted to mean that an employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. To be entitled to TTD benefits a claimant must prove not only that he did not work but that he was unable to work. *Freeman United Coal Min. Co. v. Indus. Comm'n*, 318 Ill. App. 3d 170, 175, 741 N.E.2d 1144, 1148 (2000).

Although, based upon the Arbitrator's finding with respect to Prospective Medical, the Petitioner is not yet at MMI, the Arbitrator finds that Petitioner has failed to establish that he is entitled to temporary total disability. Petitioner was released to return to unrestricted work duties by Loyola and Dr. Rhode for his wrist and by Dr. Rathore for his dental work. He, in fact, continued to do his regular job for Respondent for almost 10 months until he was terminated for reasons unrelated to his physical ability. Petitioner has obtained unemployment benefits certifying he is ready, willing, and able to work. While he claims to have looked for work, he presented no evidence of a job search despite a specific demand for such records. The surveillance video confirms that he is active and presents no outward appearance of disability. The Arbitrator finds that the off work slip from Dr. Rhode in March 2022 was either simply an acknowledgement of Petitioner's current out of work status, as noted in his records, or issued anticipating surgery was imminent. The Arbitrator finds it unpersuasive and adopts the opinion of Dr. Wysocki that Petitioner is able to perform his regular full time work unrestricted.

Based upon the record as a whole, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence that he is entitled to temporary compensation.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC012375
Case Name	Adam Narup v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0200
Number of Pages of Decision	13
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Kenton Owens

DATE FILED: 5/5/2023

/s/ Kathryn Doerries, Commissioner

Signature

23IWCC0200

STATE OF ILLINOIS)	☐ Affirm and adopt (no changes)
) SS.	☐ Affirm with changes
COUNTY OF)	☐ Reverse Choose reason
WILLIAMSON	☐ Modify down
	☐ 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

ADAM NARUP,

Petitioner,

vs. NO: 19 WC 012375

STATE OF ILLINOIS/MENARD CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the parties herein and notice given to all parties, the Commission, after considering the issues of benefit rates, permanent disability and whether Petitioner proved a wage-differential pursuant to §8(d)1, 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 for the award of a wage-differential pursuant to §8(d)1. The Commission finds that Petitioner failed to sustain his burden of proving what he would be earning in the full performance of his job as a correctional officer. The Commission does not find Petitioner's testimony is sufficient to prove what he would be earning in the full performance of his job as a correctional officer. The Petitioner also testified that correctional officers are entitled to step increases in salaries. (T. 27) Therefore, correctional officers doing different jobs could be earning different salaries depending upon their step, their position in that step and potentially other factors which were not established. The Petitioner testified that his brother was a correctional officer, however, Petitioner never identified his brother's name and failed to call his brother as a witness who would then be subject to cross-examination about those steps and job duty factors. When asked on cross-examination, Petitioner could not, at minimum, provide his brother's start date, therefore, there is no proof that the brothers would be earning the same amount at any point in their careers as correctional officers. (T. 27)

Petitioner could have called a human resource witness or submitted an employee handbook or collective bargaining agreement into evidence, all of which he failed to do. Therefore, the Commission finds that Petitioner's testimony regarding his brother's earning is not sufficient to establish that he is entitled to a wage-differential.

The Commission further strikes the paragraphs under the section in regard to disputed issue (L) What is the nature and extent of injury? The Commission substitutes the following paragraphs in regard to disputed issue (L):

According to Section 8.1b(b) of the Act, for injuries that occur after September 1, 2011, 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 AMA guidelines;
(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.

In considering the degree to which Petitioner is permanently partially disabled as a result of the work-related accident, the Commission weighs the five factors in Section 8.1b(b) of the Act as follows:

(i) Level of impairment: No AMA impairment rating was submitted by either party, so this factor is given no weight.

(ii) Occupation: Petitioner was employed as a correctional officer and he returned to work as a Public Aid Eligibility Assistant, a position that he accepted through the alternative employment program offered by Respondent. Petitioner is earning a monthly salary that is approximately the same as he was earning in his position as a correctional officer at the time of the accident absent overtime and comp time. (T. 22-23; RX1, PX17) Thus, this factor is assigned greater weight.

(iii) Age: Petitioner was 29 years old at the time of the accident and has many years of work life remaining until retirement. This factor is assigned greater weight.

(iv) Future Earning Capacity: Petitioner testified that he would be eligible for step increases at the Department of Human Services, however, he started at the maximum rate of pay for his position. (T. 27-28) Petitioner may or may not suffer reduced future earning capacity, thus this factor is assigned some weight.

(v) Evidence of disability corroborated by the treating medical records: Petitioner testified at Arbitration that as a result of the work-related accident of April 2, 2019, that he is unable to stand for long periods of time and unable to sit for long periods of time. Petitioner testified he is unable to dress himself completely. He further testified he is unable to reach his feet because of the lack of movement. He also

testified he is unable to keep up with his children and that he has gained weight as a result of his inactivity. When he is driving after an hour to an hour and a half he starts cramping; more than 2 hours he has to stop, get out, walk around, rest, massage his leg so he can regain feeling. He takes Advil as needed; his best estimate is once a day. (T. 24-26) The medical records show that as a result of the work-related accident of April 2, 2019, Petitioner suffered from symptomatic right knee patellofemoral plica and chondral defect that required patellofemoral plicectomy, chondroplasty, release, and injection; and right hip labral tearing that resulted in total hip replacement surgery. (PX4; PX14) Although lost time was not a disputed issue, it appears that Petitioner was off work from April 3, 2019, through April 13, 2021. He accepted his new position and began to work full duty as a Public Aid Eligibility Assistant for Respondent on or about April 14, 2021. On February 1, 2021, the last date that Dr. Bradley saw Petitioner after his right knee surgery and hip replacement surgery, Dr. Bradley noted that Petitioner was doing well. Petitioner reported that he felt "ready to return to full-time work" and denied any significant pain. (PX4, 81) Despite post-operative improvement, Petitioner required permanent restrictions of no inmate contact and no repetitive use of steps or stairs. (PX4, 82) Further, Dr. Bradley opined that Petitioner was at maximum medical improvement. *Id.* Based on the treating medical records, this factor is assigned significant weight.

Based upon the five factors under Section 8.1b(b), the Commission concludes the injuries sustained by Petitioner caused a 35% loss of use of the person as a whole pursuant to §8(d)2.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on January 31, 2022, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of permanent partial disability wage-differential benefits as provided in §8(d)1 is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $578.87 per week for a period of 175 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of use of 35% person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical and vocational services as identified in Petitioner's Exhibits 1 and 16, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

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

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

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

ILCS 305/19(f)(1) (West 2013).

May 5, 2023

KAD/bd
O030723
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/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	19WC012375
Case Name	NARUP, ADAM v. STATE OF IL/MENARD C.C.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Kenton Owens

DATE FILED: 1/31/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 25, 2022 0.38%

/s/William Gallagher, Arbitrator
Signature

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

January 31, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Adam Narup
Employee/Petitioner

v.

State of IL/Menard C.C.
Employer/Respondent

Case # 19 WC 12375

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 April 2, 2019, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $50,168.84; the average weekly wage was $964.79.

On the date of accident, Petitioner was 29 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 $0.00 for other benefits, for a total credit of $0.00. The parties stipulated TTD benefits were paid in full.

Respondent is entitled to a credit of $0.00 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 16, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

Respondent shall pay Petitioner permanent partial disability benefits commencing April 16, 2021, of $169.23 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 31, 2022

William R. Gallagher, Arbitrator
ICArbDec p. 2

Evidentiary Issue

At trial, counsel for Respondent made a hearsay objection to the admission into evidence of various reports of Tim Kaver, an employment/vocational expert (Petitioner's Exhibit 16). The Arbitrator deferred ruling on the objection and directed counsel for Petitioner and Respondent to address the issue in their proposed decisions.

The Arbitrator subsequently received e-mails from counsel for Petitioner and Respondent which advised Respondent was withdrawing his hearsay objection. Accordingly, it is not necessary for the Arbitrator to rule on the hearsay objection.

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 April 2, 2019. According to the Application, Petitioner was "Attacked by inmate" and sustained an injury to "Bilateral hands, bilateral knees, hips, BAW" (Arbitrator's Exhibit 2). There was no dispute Petitioner sustained a work-related accident on April 2, 2019, and the primary disputed issue was the nature and extent of disability. In that regard, Petitioner claimed he was entitled to a wage differential award pursuant to Section 8(d)1 of the Act. Respondent also disputed the reasonableness/necessity of some of the medical services provided to Petitioner (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a Correctional Officer. On April 2, 2019, Petitioner was attacked by one of the inmates and sustained injuries to his low back, right hip and right knee.

Following the accident, Petitioner was seen in the ER of Chester Memorial Hospital. Petitioner provided a history of the accident and complained of pain referable to his low back, right hip and right knee. Petitioner was diagnosed with strains of the low back and right hip as well as a contusion of the right knee. X-rays of the three anatomical areas were obtained which were all negative for fractures. Petitioner was given medication, discharged and directed to follow up with another physician (Petitioner's Exhibit 3).

On April 5, 2019, Petitioner was evaluated by Dr. Matthew Bradley, an orthopedic surgeon. At that time, Petitioner advised his low back pain had resolved, but he continued to complain of right hip and right knee pain as well as numbness/tingling in the right leg. Dr. Bradley opined Petitioner likely had a meniscal tear in the right knee and a possible labral tear in the right hip. He ordered MRI scans of both the right knee and right hip (Petitioner's Exhibit 4).

MRI scans of Petitioner's right knee and right hip were performed on April 25, 2019. The MRI of Petitioner's right knee revealed chondromalacia of the patella. The MRI of Petitioner's right hip revealed bone marrow edema/stress reaction at the superior lateral right acetabulum and a possible labral tear (Petitioner's Exhibit 4).

Dr. Bradley subsequently saw Petitioner on May 13, 2019, and reviewed the MRI findings with him. When seen on June 10, 2019, Petitioner advised the right knee pain was worse than the right hip pain. Dr. Bradley ordered physical therapy (Petitioner's Exhibit 4).

Dr. Bradley subsequently saw Petitioner on July 10, 2019, and Petitioner advised the physical therapy made his right knee pain worse. At that time, Dr. Bradley recommended Petitioner undergo right knee arthroscopic surgery (Petitioner's Exhibit 4).

Dr. Bradley performed arthroscopic surgery on Petitioner's right knee on August 16, 2019. The procedure consisted of a right lateral patellofemoral plicectomy, lateral patella facet chondroplasty, lateral release and injection (Petitioner's Exhibit 5).

Dr. Bradley saw Petitioner on September 26, 2019, October 30, 2019, and December 5, 2019. On those occasions, Petitioner advised his right knee condition was improving, but his right hip was getting worse. When Dr. Bradley saw Petitioner on October 30, 2019, he had Dr. Felix Ungacta, an orthopedic surgeon associated with him, evaluate Petitioner. Because Petitioner's hip pain was getting worse, Dr. Ungacta referred Petitioner to Dr. David King, an orthopedic surgeon (Petitioner's Exhibit 4).

Dr. King evaluated Petitioner on November 13, 2019. At that time, Petitioner continued to complain of right hip pain. Dr. King reviewed the MRI of Petitioner's right hip which was obtained on April 25, 2019, but opined it was of poor diagnostic quality. While he opined the MRI revealed a possible labral tear, because of its poor diagnostic quality, he ordered another MRI of Petitioner's right hip (Petitioner's Exhibit 8).

The MRI of Petitioner's right hip was obtained on November 18, 2019. According to the radiologist, the MRI revealed and intrasubstance labral tear (Petitioner's Exhibit 8).

Dr. King subsequently performed surgery on Petitioner's right hip on February 4, 2020. The procedure consisted of arthroscopic labral repair with three anchors, osteochondroplasty of the femoral head-neck junction, and acetabular rim trimming (Petitioner's Exhibit 8).

Following surgery, Dr. King continued to treat Petitioner and ordered physical therapy. When Dr. King saw Petitioner on June 15, 2020, he noted Petitioner continued to have ongoing pain and instability in his right hip. Because of the lack of progress, Dr. King ordered another MRI of Petitioner's right hip (Petitioner's Exhibit 8).

The MRI was performed on July 10, 2020. Petitioner was again seen by Dr. King on July 13, 2020. At that time, Dr. King reviewed the MRI findings with Petitioner. Dr. King opined the MRI showed no progression of degeneration, but revealed acetabular rim chondromalacia. He also opined the labrum had healed, but there was significant synovitis in the joint. Dr. King recommended Petitioner undergo an injection into the hip followed by physical therapy (Petitioner's Exhibit 8).

Dr. Bradley saw Petitioner on July 14, 2020. At that time, Petitioner complained of severe right hip pain. Dr. Bradley reviewed the three MRIs of Petitioner's right hip of November 18, 2019, February 13, 2020, and July 10, 2020. He agreed the most recent MRI revealed a significant

amount of synovitis in the hip joint and noted the labrum was irregular, but he could not identify a labrum tear. He recommended Petitioner undergo fluoroscopic guided injection into the right hip for diagnostic utility. If this relieved all or most of Petitioner's hip complaints, then he would recommend a total hip arthroplasty (Petitioner's Exhibit 4).

The fluoroscopically guided injection into Petitioner's right hip was performed on July 14, 2020. It was performed without any complications (Petitioner's Exhibit 13).

Dr. Bradley subsequently performed surgery on Petitioner's right hip on July 23, 2020. The surgical report noted Petitioner had a very large and unstable labral tear. The surgery consisted of a total hip arthroplasty and trochanteric bursectomy (Petitioner's Exhibit 14).

Following surgery, Dr. Bradley continued to treat Petitioner and ordered physical therapy. Dr. Bradley last saw Petitioner on February 1, 2021, and noted Petitioner's condition had improved to where he opined Petitioner was at MMI and released Petitioner to return to work. However, Dr. Bradley imposed permanent work restrictions of no inmate contact and no repetitive steps/stairs (Petitioner's Exhibit 4).

Following Dr. Bradley's release for Petitioner to return to work, Petitioner began looking for work which conformed to his restrictions. Petitioner was also evaluated by Tim Kaver, a vocational/employment expert, on March 18, 2021. In connection with his evaluation of Petitioner, Kaver reviewed medical records and obtained information from Petitioner regarding his education/work background (Petitioner's Exhibit 16).

On April 16, 2021, Petitioner accepted a position through the alternative employment program as a public aid eligibility assistant. At trial, Petitioner testified the work restrictions imposed by Dr. Bradley prevented him from returning to work as a Correctional Officer. Petitioner stated his new position pays $4,400.00 per month. Petitioner also testified that if he had been able to return to work as a Correctional Officer, he would be earning $5,500.00 per month.

Petitioner testified that, because of the injury, he has difficulties both standing and sitting for long periods of time. Petitioner also requires assistance dressing himself and has gained weight because of inactivity.

Respondent did not introduce into evidence any medical examination reports, but did tender into evidence utilization review reports of Dr. Steven Milos and Dr. Munkund Komanduri. Both Dr. Milos and Dr. Komanduri were orthopedic surgeons.

Dr. Komanduri's utilization report was dated May 13, 2019. The report was on Dane Street letterhead and Dr. Komanduri opined three drugs prescribed by Dr. Bradley were medically unreasonable/unnecessary basing this on the ODG guidelines (Respondent's Exhibit 4).

Dr. Milos' utilization review report was dated August 9, 2019. The report was on Dane Street letterhead and Dr. Milos opined a limb compression device and right knee wrap prescribed for Petitioner's right knee by Dr. Bradley were not reasonable and necessary basing this on ODG guidelines (Respondent's Exhibit 2).

Dr. Milos was deposed on October 25, 2019, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Milos' testimony was consistent with his medical report and he reaffirmed the opinions contained therein.

On cross-examination, Dr. Milos testified he did not select the guidelines, but that they were provided by Dane Street. Dr. Milos only authored three paragraphs of the report with the remainder being pre-done by Dane Street. He also testified he disagreed with the ODG guidelines and they did not represent the standard of care in the medical community (Respondent's Exhibit 3; pp 16-25).

In regard to the treatment provided to Petitioner by Dr. Bradley, Dr. Milos admitted he had no disagreement with the treatment provided by Dr. Bradley outside the ODG guidelines. He further conceded the treatment provided by Dr. Bradley was medically reasonable (Respondent's Exhibit 3; pp 27-29).

Conclusions of Law

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 were reasonable and necessary and Respondent is liable for payment of the medical and vocational services bills incurred therewith.

Respondent shall pay reasonable and necessary medical and vocational services as identified in Petitioner's Exhibits 1 and 16, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

In support of this conclusion the Arbitrator notes the following:

The only medical charges for which Respondent disputed liability were the ones noted in the two utilization review reports, based on the ODG guidelines.

The ODG guidelines are not contained in the Act. Further, Dr. Milos testified he did not agree with the ODG guidelines, they do not represent the standard of care in the medical community and the treatment provided by Dr. Bradley was medically reasonable.

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 $169.23 per week commencing April 16, 2021, and continuing until the 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 following:

Petitioner is presently earning $4,400.00 per month ($52,800.00 per year, $1015.38 per week). If Petitioner had been able to return to work as a Correctional Officer, he would be earning $5,500.00 a month ($66,000.00 per year, $1,269.23 per week). The difference in the two weekly wages is $253.85. Two thirds of that amount is $169.23.

William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC034893
Case Name	Edwin Gladney v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0201
Number of Pages of Decision	20
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Kenton Owens

DATE FILED: 5/5/2023

/s/ Kathryn Doerries, 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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EDWIN GLADNEY,

Petitioner,

vs. NO: 18 WC 034893

STATE OF ILLINOIS/
MENARD CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms and adopts the Arbitrator's Decision except with the following modifications as set forth below.

In the Arbitrator's Conclusions of Law, the Commission strikes the words "right shoulder" from the heading for Section (F) on page 11, so the heading reads as follows:

Issue (F): Is Petitioner's current condition of ill-being, specifically his bilateral carpal and cubital tunnel syndromes, causally related to the accident?

Further, the Commission strikes the word "agrees" from the third paragraph, second sentence on page 12, so the sentence reads as follows: "The Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 1."

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on March 7, 2022, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's Exhibit 1, as provided in §8(a) and §8.2 of the Act. Pursuant to the parties' stipulation, these shall be paid directly to the providers.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the treatment recommended by Dr. Kutnik, including but not limited to surgery.

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

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

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

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

May 5, 2023

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

KAD/bsd
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/s/*Maria E. Portela*
Maria E. Portela

/s/*Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC034893
Case Name	GLADNEY, EDWIN v. MENARD CORRECTIONAL CENTER
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Kenton Owens

DATE FILED: 3/7/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 1, 2022 0.67%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

March 7, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

EDWIN GLADNEY
Employee/Petitioner

v.

MENARD CORRECTIONAL CENTER
Employer/Respondent

Case # **18** WC **034893**

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

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **September 14, 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 $**63,089.64**; the average weekly wage was $**1,213.26**.

On the date of accident, Petitioner was **49** 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 $**-** for TTD, $**-** for TPD, $**-** for maintenance, and $**-** for other benefits, for a total credit of $**-**.

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

ORDER

Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's Exhibit 1, as provided in § 8(a) and § 8.2 of the Act. Pursuant to the parties' stipulation, these shall be paid directly to the providers.

Respondent shall authorize and pay for the treatment recommended by Dr. Kutnik, including but not limited to surgery.

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

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

MARCH 7, 2022

PROCEDURAL HISTORY

This matter proceeded to trial on October 20, 2021, pursuant to Sections 19(b) and 8(a) if the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) whether the Petitioner sustained accidental injuries on September 14, 2018, that arose out of and in the course of his employment; 2) whether the Respondent was given notice of the accident within the time limits stated in the Act; 3) the causal connection between the accident and the Petitioner's carpal and cubital tunnel conditions; 4) payment of medical bills; and 5) entitlement to prospective medical care. The parties stipulated that any medical expenses ordered to be paid will be paid directly to the providers.

FINDINGS OF FACT

The Petitioner is employed with Respondent as a correctional officer and has been for the past 12 years. (T. 14) He previously worked for 14 years at the Casino Queen as a deck hand supervisor doing painting, grinding, rigging the boat and moving heavy ropes and chains – all of which he characterized as hand-intensive jobs. (T. 15-16) He then worked as an overnight stocker at Walmart then moved on to work for the Respondent. (T. 16) Until recently, the Petitioner was a member of the Respondent's tactical team doing cell extractions, shakedowns of cells and team practice that involved the use of grip and force. (T. 16-17) The Petitioner estimated that about 50 percent of his time over the past 12 years was spent on the wing or gallery, with the other 50 percent in segregation, and that he worked a lot of overtime. (T. 17-18, 20) He said that his daily job duties included bar rapping and cuffing and uncuffing inmates. (T. 19-20) While working in segregation, all services to inmates were provided through chuckholes that were sticky, old and rusty. (T. 20-21) The Petitioner said he used Folgers Adams keys to open cell doors. (T. 21) He said the keys were heavy and did not work well – causing him to jiggle them and use a lot of

strength in turning. (Id.) The Petitioner also worked as a crank officer, turning a large crank to open and close the cells on the gallery, and for the past two or three years as a tower officer. (T. 21-22, 24) The Petitioner said that he asked to be assigned to the tower because he was experiencing pain using the keys and grabbing inmates, pulling them from fights. (T. 24-25) He said he was feeling a lot of numbness and sharp pain shooting up and down his arms. (T. 23) Moving to the tower did not improve his symptoms and that they persisted with having to grab his weapon or carry a bag of weapons (T. 25-26)

The Petitioner submitted a job analysis for the position of correctional officer that was prepared on February 8, 2011, by CorVel Corporation, a risk-management company. (PX7) The descriptions of various duties for the locations in which the Petitioner worked were consistent with the Petitioner's testimony. (Id.) Activities of pushing, pulling, reaching horizontal and wrist turning were classified as occurring frequently. (Id.) A post description submitted included general duties of cellhouse officers. (Id.) Also included in Petitioner's Exhibit 7 was a 30-minute video tour of the facility that showed demonstrations of locking and unlocking cells, rapping bars, cranking gallery deadlocks, pulling on cell doors to insure they are locked and locking and unlocking chuckholes. One portion of the video showed the correctional officer struggling with a Folgers Adams key and cell door that was not locking, unlocking or deadlocking properly. (Id.)

The Petitioner's Assignment History showed the following assignments: December 23, 2009, through October 31, 2010, various towers; November 1, 2010, through February 14, 2011, the N2 Annex; February 18, 2011, through July 31, 2012, detail/WCH crank, detail/WCH gallery and escort; December 9, 2012, through October 28, 2014, detail/ECH crank; November 1, 2014, through December 14, 2014, escort; and March 1, 2016 through November 21, 2300, (sic) various towers. (RX5) The Petitioner testified that only about 40 percent of the time, the Petitioner would

work the assignment listed because he would be moved throughout the day to cover areas that were short-staffed and needed more experienced officers. (T. 27) He said that when he first started as a correctional officer, he was working four double shifts per week. (T. 28) Lately, while being stationed in the tower, he still spent about half his time working on the gallery. (T. 40-41)

The Petitioner testified that the pain and numbness caused him to see his family physician, Dr. Joseph Molnar. (T. 23) On June 8, 2018, the Petitioner reported that for the past six months, he had been having trouble with dropping things, that his hands bothered him the most during the day and that they fell asleep while driving. (PX3, RX2) Dr. Molnar sent the Petitioner for a nerve conduction study. (Id.) On September 14, 2018, he informed the Petitioner that the test showed the Petitioner had carpal tunnel syndrome on the left side. (Id.) The Petitioner testified that was the first time he was aware that he had carpal tunnel syndrome. (T. 24)

After the visit with Dr. Molnar, the Petitioner reported to work and filled out an accident report. (T. 23) The report the Petitioner completed on September 22, 2018, stated that the date of injury was September 14, 2018, and that the Petitioner learned of having carpal tunnel at his doctor's appointment. (RX1)

Regarding other medical conditions, the Petitioner stated that he did not have gout, hypothyroidism or rheumatoid arthritis. (T. 18) He said his weight had been consistent over the past 20 years. (Id.) He stated that he had diabetes since 2007, but that was controlled by medication. (Id.) He did experience numbness or tingling in his feet, but that also was controlled by medication. (T. 30) On cross-examination, the Petitioner admitted that in June 2018, he had an A1C of 10.1, and his glucose level was 243, and that in January 2019, his A1C was 10.7, and his glucose level was 260. (T. 34-35) He said he also took medication for high blood pressure. (T. 35)

The Petitioner began treating with Dr. Molnar for diabetes on August 20, 2014. (RX2) On September 3, 2014, Dr. Molnar reported that the Petitioner's diabetes was uncontrolled. (Id.) His blood sugar levels were averaging in the 240s, and is A1C was 12.8. (Id.) On March 6, 2015, his fasting glucose level was 214. (Id.) By July 8, 2016, his A1C had improved to 9.3. (Id.) In 2017, Dr. Molnar reported that the Petitioner's A1C had increased again, but the level was not reported. (Id.) The Petitioner was seeing an endocrinologist. (Id.) No records for the endocrinologist were submitted at arbitration. From November 21, 2014, through January 5, 2018, the Petitioner's A1C ranged from 8.9 to 12.6. (Id.) From June 5, 2015, through January 5, 2018, his glucose levels ranged from 146 to 438. (Id.) On September 29, 2017, the Petitioner reported numbness in his left arm. (Id.)

On January 25, 2019, the Petitioner saw Dr. Shawn Kutnik, an orthopedic surgeon at Archway Orthopedics and Hand Surgery, and complained of progressively worsening tingling and numbness encompassing the entirety of both hands – left worse than right. (PX4) The Petitioner described his work activities to Dr. Kutnik as lifting heavy property boxes and ammunition and weapons bags, pushing pulling laundry carts and cell extractions. (Id.) Dr. Kutnik performed a physical examination and reviewed the nerve conduction, noting that it did not appear that the right side was studied, but the left-sided study showed moderately severe carpal tunnel and underlying cubital tunnel syndromes. (Id.) He remarked that a right-sided study likely would return with similar results, given the Petitioner's symmetric symptoms. (Id.) He diagnosed the Petitioner with bilateral carpal and cubital tunnel syndromes and acknowledged that the Petitioner had clear preexisting risk factors for development of nerve compression, including obesity and diabetes. (Id.) However, Dr. Kutnik stated that the work activities the Petitioner described were potentially consistent with aggravation or worsening of peripheral nerve compression. (Id.) He opined that

the Petitioner's work activities would therefore be a potential contributing factor to the development of bilateral carpal and cubital tunnel syndromes. (Id.) He recommended starting treatment with nighttime splinting and avoidance of prolonged elbow flexion and resting the elbow on hard surfaces. (Id.)

On September 9, 2019, the Petitioner underwent a Section 12 examination by Dr. Richard Howard, an orthopedic hand surgeon at Orthopedic Specialists. (RX3) The Petitioner reported having numbness and tingling in his hands for several years and that he worked on shifts where he had to perform grip-intensive activities, but had not done so for the past four years, which is when he stated he started working in the tower. (Id.) Dr. Howard reviewed Dr. Molnar's records dating back to 2014 and stated that the first note addressing complaints with the hand began June 8, 2018. (Id.) He did not mention the September 29, 2017, note in which the Petitioner reported numbness in his left arm.

Dr. Howard diagnosed the Petitioner with bilateral carpal and cubital tunnel syndromes and peripheral neuropathy but did not find a causal relationship between these conditions and the Petitioner's work. (Id.) He did not agree with Dr. Kutnik's opinion that the Petitioner's work was sufficiently grip intensive such that it would be contributing factor to the development of carpal tunnel syndrome. (Id.) He thought the Petitioner primarily had carpel tunnel syndrome because he had peripheral neuropathy and chronic insulin dependent, which placed him at high risk for the development of carpal tunnel syndrome and other compression neuropathies such as cubital tunnel syndrome. (Id.) He said the treatment rendered to date was reasonable and necessary and that he believed the Petitioner should undergo an updated nerve conduction study and cubital and carpal tunnel releases. (Id.) He believed the Petitioner could work full duty with no restrictions. (Id.)

There was a reference in Dr. Howard's report to the Petitioner having seen a Dr. Sudekum in St. Charles, Missouri, who was recommending surgery. No records for a Dr. Sudekum were submitted at arbitration.

The Petitioner returned to Dr. Kutnik on May 29, 2020, and reported that his symptoms had worsened, and he was still having ongoing numbness to the hands and near constant chronic pain. (Id.) Dr. Kutnik recommended surgical intervention. (Id.)

At a deposition on April 27, 2020, Dr. Howard testified consistently with his report. (RX4) He said that the Petitioner told him that he had to use keys and restrain prisoners, although he did not do it as much while assigned to the guard tower. (Id.) He said the Petitioner thought his conditions were primarily from turning keys. (Id.) He stated that the Petitioner appeared up front and honest, and the history provided was essentially consistent with what he provided to Dr. Kutnik. (Id.) Dr. Howard acknowledged that Dr. Kutnik noted that the Petitioner had occupational risk factors, including repetitive and forceful lifting and gripping of a heavy nature, and that these activities can be risk factors in the development of carpal and cubital tunnel syndromes. (Id.) But he said the Petitioner did not provide him a history of anything he believed to be grip-intensive. (Id.)

Dr. Howard said he reviewed a job description provided by the Respondent's insurer but that did not cover the activities the Petitioner reported to him, so he did not include it in his report. (Id.) He said he did not think turning keys in locks itself was sufficiently grip-intensive, but that it would contribute to the development of carpal and cubital tunnel syndromes if the Petitioner were doing other grip-intensive activities. (Id.) But he said it was his understanding that the Petitioner had not restrained prisoners in the past four years. (Id.) He did not know if the Petitioner had to do any heavy lifting, pushing or pulling of heavy objects or loading and unloading or

unloading property boxes or laundry. (Id.) But he next said he thought the Petitioner had done those activities but not in the past four years. (Id.) He also did not know if the Petitioner performed cell extractions of inmates or shakedowns and did not know what was required of an officer to perform these tasks, but he agreed that trying to restrain a resisting prisoner would require forceful gripping that could cause or aggravate carpal or cubital tunnel syndrome if it was of sufficient force and repetition. (Id.) He also stated that to make an opinion about whether these activities can lead to compression neuropathies, he would need more information, such as the frequency of these activities. (Id.)

Dr. Howard explained the correlation between diabetes and numbness and tingling in a patient's foot by stating that when someone develops peripheral neuropathy, as in diabetes, it tends to occur in the legs first and hands secondary. (Id.) He admitted that carpal and cubital tunnel syndromes are multifactorial and cumulative – developing over time. (Id.) But he concluded that the Petitioner's 10-year work history with the Department of Corrections had nothing to do with his conditions. (Id.)

He also stated that although he noted that Dr. Molnar's lab tests showed elevated sugars and A1C, he wasn't specifically reviewing for those as any kind of indication and had no independent recollection of those levels. (Id.)

Dr. Kutnik testified consistently with his reports at a deposition on June 16, 2020. (PX6) He explained that carpal and cubital tunnel syndromes are multifactorial, meaning that a doctor can almost never attribute the conditions to one specific factor. (Id.) He said there are a number of contributing factors – including diabetes, obesity and repetitive forceful squeezing, gripping, lifting and/or carrying. (Id.) He said carpal and cubital tunnel syndromes generally are cumulative

conditions, where certain microtrauma occurs over time, thickening tissues around the nerves. (Id.) He said symptoms can develop over months or years. (Id.) He reiterated his opinion that the Petitioner's work activities were a contributing factor to his condition. (Id.) He recommended bilateral carpal and cubital tunnel releases and said those procedures would be causally related to the Petitioner's work activity. (Id.)

Regarding Dr. Howard's opinions, Dr. Kutnik testified that he disagreed with his conclusions that the Petitioner's conditions were only related to his comorbid factors of diabetes and obesity. (Id.) He said he would not discount the work the Petitioner described as a contributing factor to both conditions. (Id.)

On cross-examination, Dr. Kutnik admitted that he did not know specific frequencies with which the Petitioner performed the various duties he described. (Id.) When confronted with specific A1C, glucose and cholesterol readings for the Respondent, Dr. Kutnik stated that those numbers were high, but maintained his opinion that the Petitioner's work activities were a contributing cause of his conditions. (Id.) He similarly maintained his opinion when informed that the Petitioner had undergone testosterone therapy, had reported foot numbness and had a history of cervical pathology. (Id.) He admitted that these can cause a patient to be more susceptible to development of compression neuropathy. (Id.)

At the time of arbitration, the Petitioner said his symptoms were worsening, and he wanted to get his hands, wrists and elbows fixed. (T. 30)

CONCLUSIONS OF LAW

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

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

The claimant in a worker's compensation proceeding has the burden of proving by a preponderance of the credible evidence that the injury arose out of and in the course of employment, and that involves as an element a causal connection between the accident and the condition of claimant. *Cassens Transp. Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 330, 633 N.E.2d 1344, 199 Ill. Dec. 353 (2nd Dist. 1994) An injury is considered "accidental" even though it develops gradually over a period of time as a result of repetitive trauma, without requiring complete dysfunction, if it is caused by the performance of claimant's job. *Id*. Compensation may be allowed where a workman's existing physical structure, whatever it may be, gives way under the stress of his usual labor. *Laclede Steel Co. v. Indus. Comm'n.*, 6 Ill.2d 296 at 300, 128 N.E.2d 718, 720 (Ill. 1955)

Further, a Petitioner's job duties need not be repetitive in the sense that the same task is done over and over again as on an assembly line to result in a compensable injury. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (4th Dist., 2009). Intensive use of hands and arms can result in cumulative injuries that are compensable. *Id*.

In reviewing all of the evidence, the Arbitrator finds that the Petitioner's credible testimony, his job description and the video supported his assertion that he performed hand-intensive activities on a frequent basis.

The claimant's injury need not be the sole factor that aggravates a preexisting condition, so long as it is a factor that contributes to the disability. *Id*. The appropriate question is whether the evidence can support an inference that the accident aggravated the condition or accelerated the processes which led to the claimant's current condition of ill-being. *Id*. The Commission may find

a causal relationship based on a medical expert's opinion that the injury "could have" or "might have" been caused by the accident. *Id*. at 332.

The Petitioner did have significant risk factors for carpal and cubital tunnel syndromes with his body mass and diabetes. Dr. Kutnik expressed his opinion that in addition to these factors, the Petitioner's work also was a factor in development of these conditions. Dr. Howard maintained his opinion that the Petitioner's diabetes and obesity – but not his work activities – were the factors that caused his conditions. But Dr. Howard conceded many of the facts that provided the basis for his causation opinion. These concessions are detailed above, the most notable of which was that he needed more information about the Petitioner's work activities – such as frequency – to make an opinion about whether these activities could lead to compression neuropathies. Also, it appears that much of the basis of Dr. Howard's opinion was that the Petitioner did not perform hand-intensive duties for the past four years because he was assigned to guard towers. However, the Petitioner's unrebutted testimony was that even during his tower assignments, he had to cover other assignments more than half of the time. The Arbitrator agrees that Dr. Howard apparently did not have enough information to be able to form a cogent opinion. Therefore, the Arbitrator gives very little weight, if any, to Dr. Howard's opinions and significant weight to Dr. Kutnik's opinions.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his injury arose out of and in the course of his employment.

Issue (D): What was the date of accident?

The date of the injury (accident) in a repetitive-trauma compensation case is the date when the injury manifests itself – the date on which both the fact of the injury and the causal relationship

of the injury to the claimant's employment would have become plainly apparent to a reasonable person. *Durand v. Indus. Comm'n*, 224 Ill. 2d 53, 67, 862 N.E.2d 918, 308 Ill. Dec. 715. (2006)

Although the Petitioner testified that he had been experiencing symptoms for years, he testified that he did not know that he suffered from carpal and cubital tunnel syndromes until he received his diagnosis and a causation opinion on September 14, 2018. Therefore, the Arbitrator finds that the manifestation date of the Petitioner's condition and, consequently, the date of accident, was September 14, 2018.

Issue (E): Was timely notice of the accident given to Respondent?

An employee is clearly prejudiced in the giving of notice to the employer if he is required to inform the employer within 45 days of a definite diagnosis of the repetitive-traumatic condition and its connection to his job since it cannot be presumed the initial condition will necessarily degenerate to a point at which it impairs the employee's ability to perform the duties to which he is assigned. Requiring notice of only a potential disability is a useless act since it is not until the employee actually becomes disabled that the employer is adversely affected in the absence of notice of the accident. *Oscar Mayer & Co.*, 176 Ill. App. 3d at 611.

As the Petitioner was diagnosed with carpal and cubital tunnel syndromes on September 14, 2018, and he completed his injury report on September 22, 2018, the Arbitrator finds that timely notice was given to the Respondent.

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

Based on the causation findings above regarding whether the injury was in the course of and arose out of employment, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his carpal and cubital tunnel conditions are causally related to the accident.

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

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

Aside from his causation opinion, Dr. Howard agreed that the medical services the Petitioner had received to date were reasonable or necessary. The Arbitrator agrees orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 1. Pursuant to the parties' stipulation, these shall be paid directly to the providers. 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).

Again, despite his causation opinion, Dr. Howard agreed that the Petitioner needed carpal and cubital tunnel releases. Therefore, the Arbitrator finds that the Petitioner is entitled to

prospective medical care as recommended by Dr. Kutnik, and the Respondent shall authorize and pay for such 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.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC002060
Case Name	Rita Stuewe v. Diocese of Springfield
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0202
Number of Pages of Decision	17
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Francis Lynch
Respondent Attorney	David Reynolds

DATE FILED: 5/8/2023

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RITA STUEWE,
Petitioner,

vs. NO: 21 WC 2060

DIOCESE OF SPRINGFIELD,
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, 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 August 9, 2022 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $39,300.00. 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.

May 8, 2023

DLS/tdm
O: 5/4/23
046

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

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

/s/*Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC002060
Case Name	Rita Stuewe v. Diocese of Springfield
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	Francis Lynch
Respondent Attorney	David Reynolds

DATE FILED: 8/9/2022

THE INTEREST RATE FOR THE WEEK OF AUGUST 9, 2022 3.04%

/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

RITA STUEWE
Employee/Petitioner

v.

DIOCESE OF SPRINGFIELD
Employer/Respondent

Case # **21** WC **002060**

Consolidated cases: _____

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

DISPUTED ISSUES

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

FINDINGS

On **November 23, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

In the year preceding the injury, Petitioner earned $**47,192.00**; the average weekly wage was $**1,179.80**.

On the date of accident, Petitioner was **65** years of age, ***married*** with **no** dependent children.

Petitioner ***has*** received 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 **all amounts paid by its group health insurer** under Section 8(j) of the Act.

ORDER

Petitioner suffered an accident on November 23, 2020, which arose out of and in the course of her employment by Respondent.

Petitioner's medical condition, a transverse oriented comminuted left patellar fracture, is causally related to the accident of November 23, 2020.

Petitioner was temporarily totally disabled as a result of the accident from November 24, 2020 to February 5, 2021, a period of 10 4/7 weeks.

The Arbitrator further finds that Respondent is entitled to credit for payment of regular wages equal to Petitioner's average weekly wage for the entire period she was temporarily totally disabled.

The medical bills introduced into evidence in Petitioner Exhibit 1 are related to Petitioner's a transverse oriented comminuted left patellar fracture, 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. Respondent is ordered to reimburse Petitioner for the $1, 145.08 she has paid on account of these bills.

Respondent is entitled to credit for any amounts it has paid towards these medical bills through its group health insurer, pursuant to Section 8(j) of the Act.

Petitioner sustained permanent partial disability to the extent of 25% loss of use of the left leg pursuant to §8(e) of the Act.

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

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

AUGUST 9, 2022

Signature of Arbitrator

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Rachel Cunningham

Ms. Cunningham was called as an adverse witness by Petitioner. She testified that she was employed as principal at St. Agnes School and had been so employed for four years, having taught at that school for the previous four years. She said she had known Petitioner for eight years. In November of 2020 Petitioner was a junior high English teacher at the school. Ms. Cunningham said that on November 23, 2020 the school was having parent-teacher conferences at the school. During an assigned period teachers were given an opportunity to eat, with the school providing the lunch, paper plates, etc. The teachers were asked to stay on the school grounds and available should something come up. This also gave the teachers an opportunity to meet together and talk to each other, which Ms. Cunningham said was a valuable part of the job. She agreed that it was important that the area where they gathered be cleaned up when they finished so it did not smell the next day and was clean for use the next day.

Ms. Cunningham said that on November 23, 2020 Petitioner was in one such meeting and had a meal with the other teachers, as was expected of her as part of her job. She said Petitioner then participated in cleaning up the room, which was expected of her as part of her employment, and then someone, in this case Petitioner, had to take the garbage that was collected after the meal and take it to the garbage can in the teachers' lounge. She said the trash was in a store plastic grocery bag that was tied up. Ms. Cunningham said that all of the things Petitioner had done were things she expected Petitioner to do during the course of doing her job.

Ms. Cunningham identified Petitioner Exhibit 4 (Exhibit page 172) as a photograph of the hallway as it appeared at the time of Petitioner's incident, though she noted the cart in the foreground was mobile, and could have been somewhere else in the hallway on the day of the incident. She said the photograph was a reasonably accurate representation of the area Petitioner would have to navigate to take the trash to the teacher's lounge. She agreed the incident occurred during the time of COVID, when people were to stay six feet apart as best they could. She said they were all being very careful not to touch each other and to stay a social distance apart.

Ms. Cunningham said that she was walking in one direction in the hallway at the same time Petitioner was walking the opposite direction, she was walking away from the area where the camera would have been while Petitioner would have been walking towards the camera. She said she did not recall having to walk around a cart, nor did she remember stepping to one side of the hallway as Petitioner stepped to the other side. She said she was walking to the end of the corridor as she was going to a classroom, out of this office area. She said she recalled seeing Petitioner falling to the ground in the area of the floor where she had placed an "X," right across the corridor from a standing shelf which was permanently in that location. She said the corridor was only about five feet wide. She agreed that it was impossible in a five foot wide hallway for people passing

each other to stay six feet apart. She agreed that Petitioner was over by the wall as she walked towards Ms. Cunningham. She said she did not remember tucking in behind the shelf to try to stay away from Petitioner.

Ms. Cunningham said that Petitioner fell down on her knee and she knew immediately that Petitioner was hurt, Petitioner told her when she could, as she was in a lot of pain. She said it occurred as they were passing down the hall, that Petitioner was wearing a pair of moccasins on her feet. Petitioner was a frequent moccasin wearer, as teachers were encouraged to wear comfortable shoes, but Ms. Cunningham had never seen this pair of moccasins before that day. She said the moccasins being worn that day were appropriate footwear. She said the shoes had a piece sewn on the front that might get in the way of something, but she had not said anything to Petitioner about them, she had not seen them in the morning.

Ms. Cunningham said that after the fall they mobilized Petitioner, got her into a wheelchair and another teacher took her to the emergency room, where they learned she had sustained a fracture. Petitioner was off work for about 11 weeks, during which time she drew her sick time. After the 11 weeks Petitioner came back to work with a noticeable limp, and she spoke of problems she was having with her knee after that. Ms. Cunningham said that as Petitioner's supervisor she observed Petitioner work after her return, and the injury had an enormous effect on what she could do, she could not move around as much, she was less mobile, and she could not perform all of her tasks with the kids, but Ms. Cunningham said she still performed her duties, including teaching, as well as she could. The tasks she had trouble with were things such as moving boxes, taping things to the wall, etc.. Petitioner told Ms. Cunningham during this period of time that it had become difficult for her to stay on her feet during the day, and standing on her feet for a good portion of the day was something a career teacher would do.

Ms. Cunningham said Petitioner eventually retired, and Petitioner told her that the injury had taken a toll, and this was happening as the school was revamping its structure, reducing to one class per grade, and Petitioner told her that was part of her thinking as well.

Ms. Cunningham said Petitioner could have taught for several more years, there was no mandatory retirement age, she could have taught there until she was 70.

On cross examination Ms. Cunningham said that the room where Petitioner and the other teachers were having lunch was on the second floor of the school, not on the floor where the incident occurred. She said during the meal the teachers discuss what had been happening. The room used for the meal was one of the classrooms on the second floor. Petitioner after the meal would have come down the steps around the corner from the end of the hallway shown in Petitioner's Exhibit 4, marking the area where she would enter the hallway with an "O."

Ms. Cunningham said she was approximately three feet from Petitioner when she fell, and she saw exactly what happened. She said there were no defects, debris, dirt, or water on the floor. She said Petitioner was carrying a grocery bag with paper plates and utensils in it, which she indicated was about 14 inches wide. She said it probably weighed less than two pounds.

Ms. Cunningham said Petitioner as she came down the hallway towards her had the bag of garbage in her hand, and as she was making a step it seemed to Ms. Cunningham, it looked to her as if Petitioner had tripped over her feet. And she slowly went down on the tile floor, landing on her knee. Nobody was standing

next to Petitioner at this point, and Ms. Cunningham was three feet away, walking towards Petitioner. She felt Petitioner had enough room to maneuver past the table.

Ms. Cunningham said it took a little while before Petitioner could talk to her after the fall because she was in so much pain. When she did, she said something did not feel right.

Ms. Cunningham said there was no school policy mandating Petitioner wear a certain type of shoe. She explained that the sack of garbage was being brought down to the teachers' lounge where there was a large trash can where everything was disposed of daily.

On redirect examination Ms. Cunningham said that the bag of garbage Petitioner was carrying was not just her lunch, she had cleaned up the room and put all of the material in the garbage bag. She said that had everything to do with the parent-teacher conferences as the teachers were eating together and she did not want dirty dishes in the room the next day.

Ms. Cunningham then placed a square on Petitioner Exhibit 4 where she was located when Petitioner fell at the "X" on the photo. She said she was up against the right wall and would have had to come out towards the center of the hallway to go around the shelf as she continued to walk down the hallway.

On recross examination Ms. Cunningham said she and Petitioner were not crossing at the time Petitioner fell, that Petitioner had plenty of room to walk down the hallway.

Petitioner

Petitioner testified that the reason she fell in the hallway was she was carrying a bag of rubbish stuffed with left over cutlery and plates. She said the bag was a little wider than it was tall. She estimated it was 14 to 16 inches wide. As she walked down the hallway she had the bag in her right hand and she was trying to avoid Ms. Cunningham, who was coming toward her. She said she was also trying to maintain 6 foot social distancing. She said the trash bag was swinging somewhat and close to her body, and brushed up against her leg and the wall, at which point it somehow got tangled up, she stumbled, and she started to fall. She agreed with Ms. Cunningham that it seemed like she was in a kind of slow motion, she almost caught herself momentarily, she met Ms. Cunningham's eyes for a short period of time, she was embarrassed that she was falling in front of her boss, but then the tip of her shoe just caught, and she went down. She did not think she would have fallen but for the bulky garbage container as that was what initiated the stumble.

Petitioner said she agreed with Ms. Cunningham that the spot marked "X" on Petitioner Exhibit 4 is about where she fell, and that right across from the location of the "X" is a shelf that was present on the day of the accident. She also agreed that Ms. Cunningham said she was about three feet from her when she fell, and that Ms. Cunningham had marked her position at that time by drawing a "box" on the photograph. Petitioner noted that each floor tile in the photograph was 12 inches by 12 inches, and that there were about eight floor tiles between the "X" and the "box" in the photograph. Petitioner felt Ms. Cunningham was closer to her than the "box" indicated, saying that she did not remember Ms. Cunningham tucking up against the wall or being against the wall on the opposite side of the hallway from her.

Petitioner said that Ms. Cunningham's testimony about the lunch in a common room was accurate, that they were to stay at the school to eat, and they probably talked about their activities, but she did not remember specifically what they spoke of while eating. They then discussed cleaning up. She said she left her classroom,

walked down the stairs, around the corner, and then entered the office hallway, with the intent of getting rid of the rubbish she was carrying.

She said she then went to the orthopedic walk-in clinic at Springfield Clinic, where she saw an orthopedic nurse practitioner. She said the recorded history of that visit says she fell and then caught the front edge of her shoe, and said what she meant by that was she started falling, tried to recover, but then the front of her shoe tapped the floor, or skidded, or something. She said she did not think the shoe itself caused her to fall. She noted that she had two pairs of shoes like these and she wore them to the school a lot.

She said that she had broken her patella and was not able to get surgery performed for eight days due to COVID, so she was just in an immobilizer for eight days with the leg broken. She then had surgery on December 1 and was off work for 11 weeks. She said Dr. Rossi did her surgery, and he was the doctor who kept her off work. She said she believed she returned to work on February 8, 2021. She said that at that point she was still on crutches except for short distances, that she used the elevator, and her knee was very sore. She said even a year and a half later it was still sore. She said she did the best she could at work, but was restricted somewhat getting around the classroom, and sit frequently. She felt it lessened her ability to do her job.

Petitioner testified that prior to her accident she had thought about retirement, but had not picked out a retirement date. After the accident she did not think she would be able to keep up with all the demands that full time teaching required. She said in March she decided to retire, she finished the school year and then did not sign a new contract, she took retirement. She believed she could substitute teach, two or three days a week, as the duties are significantly less than those of a regular teacher. She said she had not gone back to that, tough, or any other kind of work.

Petitioner said that as of the date of arbitration, she felt her knee was at about 40 percent of what it was prior to the accident, that getting down to do something like pick up a piece of paper on the floor would cause it to hurt on the way down as well as on the way up. She said the knee was sore every day and she no longer did her gardening, pulling weeds, etc. She said she could do gardening if seated, demonstrating troweling in front of her while she was seated in her chair. She said if she were to work a part-time job those things would limit what she would be able to do, though she said again that she would be capable of substitute teaching two or three days per week if she did not have to do an excessive amount of standing. She said if she were to get a job as a librarian, shelving books might be an issue.

On cross examination Petitioner said the bag she had was the size of a grocery bag, though she was not sure it was an actual grocery bag. She said it was bulky. She said she had a problem with it as it brushed the wall as it was in her right hand along her side, as the bag was between her body, her leg, and the wall. She said it was the plastic bag with spoons and things in it that caused her to fall. She said she did not trip over her own feet. She said if the Springfield Clinic history taken on November 23, 2020 said she fell after catching the right front of her shoe and landed on her knee, that would be incorrect. She said she did not say that at the time, as that is not what happened. She said she told the nurse practitioner that she stumbled and started to fall, started to recover, and caught her foot. She said that when she recovered a little bit the tip of her shoe then skidded on the floor. Petitioner said the medical note had the sequence correct, she “fell and caught” (her toe or shoe).

Petitioner said her shoes were not moccasins, but they were suede. She offered to show Respondent counsel a photograph of the shoes but he declined. She said she had not had problems with the shoes previously, which is why she bought a second pair.

Petitioner said Ms. Cunningham was not, at the time that she fell, where Ms. Cunningham had marked the photograph with a box. Petitioner marked the photograph with a triangle at the location where Ms. Cunningham was when the fall occurred. She said there were no defects on the floor when she fell, and there was no debris in the hallway that she was aware of. She said she was not carrying her lunch trash when she fell, she was carrying the trash from five teachers in the bag.

Petitioner said she was discharged by her doctor in April of 2021. She said she was paid her full salary while was off work. She said he had been thinking about retiring for a few years but had not yet made a decision, she did that in March or April.

On redirect examination Petitioner said the money she was paid was sick time. She said her decision to retire was made, in part, because of the injury she sustained.

MEDICAL EVIDENCE

Petitioner was seen by Dr. Rossi's Physician Assistant (PA) Angelia Royer, on November 23, 2020. The history recorded at that time was that "patient apparently fell and caught the front edge of her foot. She landed directly on her left knee." Petitioner arrived with ice on her knee, wrapped in an Ace bandage. Physical examination revealed localized soft tissue swelling over the front of the knee. She had pain when extending the leg. X-rays revealed a transverse oriented patellar fracture. After showing the x-rays to two surgeons it was recommended that Petitioner have surgery due to the distraction of the fragments. She was to wear an immobilizer at all times. (PX 2 p.130,131; PX 3 p.155,156)

Petitioner was seen by Dr. Rossi the following day, November 24, 2020. The history was of a fall in the hallway where she worked, landing on her knee. Petitioner was taken off work at that time and surgery was scheduled for, and performed on December 1, 2020. During that surgery Dr. Rossi performed an open reduction and internal fixation of Petitioner's left patella fracture. It was found that the comminuted bone fragment did not have enough bone stock in the area where screws could be used, so fixation was performed using FibreWire. (PX 2 p.116,117,119,125,126; PX 3 p.159-161)

Petitioner saw Dr. Rossi in follow up beginning December 15, 2020. Post-operatively Petitioner's pain was improved, she was prescribed a hinged knee brace. She began treatment with physical therapy on December 18, 2020 and her strength and range of motion gradually increased during her therapy visits.. By January 11, 2021, Petitioner was reporting to Dr. Rossi that her pain was gradually improving, though she continued to have mild to moderate pain. Her hinged brace was gradually modified to allow greater range of motion. (PX 2 p.82,83,104-107,110)

Petitioner continued being restricted from work until February 8, 2021, when she was released with restrictions of no kneeling, no squatting, no lifting over 10 pounds, no prolonged standing and sitting as needed. (PX 2 p.74,87,109)

When Petitioner saw Dr. Rossi on February 22, 2021, she reported that she had managed to wean herself from her brace and was ambulating without the use of an assistive device. She said she was only having mild pain and swelling intermittently, as a result of activity. She had returned to work full time and was overall very satisfied with her progress. She was continuing to work with physical therapy to increase her strength and endurance. Physical examination did show minor decreases in range of motion, with a 3 to 5 degree lag in extension and only 95 degrees of flexion. X-rays taken on that date showed mildly displaced and comminuted patellar fracture wit progressive healing. (PX 2 p.54,56,57.)

On March 25, 2021, Petitioner reported to physical therapy that her knee was sore and stiff most of the time, that she had been walking the stairs more often and her pain was 3/10. As she had on previous occasions, Petitioner told the therapist that she was not being compliant with her home exercise program as she was tired by the time she got home and having a difficult time walking. She had tried kneeling on the ground, but that caused increased pain. As of this date Petitioner had no further physical therapy dates remaining, and she did not know whether she wanted to continue with physical therapy. It was noted that Petitioner had met one of her eight long term goals, independence and proper technique in performing home exercise program, but was still progressing in her other six goals. It was noted that unless some further activity occurred, she was to be discharged from physical therapy. (PX 2 p.44,45)

Petitioner returned to physical therapy on April 9, 2021. This appears to have been her 17th and last physical therapy session. and on this occasion Petitioner continued to complain of being tired and fatigued, and she was encouraged to increase her walking. She did report that she was feeling better on that date, and had been feeling better for several days. She said that after a long day of work she had difficulty complying with her home exercise program. Her left knee flexion had progressed to 138 degrees supine, and her extension was to 0 degrees. Her leg muscle strengths were all graded at 4+ or 5/5. On this occasion Petitioner was found to have met five of her seven long term goals, with the only goals still judged as "progressing" being worst pain rating being down to 2/10 and her ability to climb two sets of stairs with less than a 2/10 increase in her symptoms. (PX 2 p.40,41)

Petitioner last saw Dr. Rossi on April 13, 2021, noting that her knee had been doing very well overall but had been sore lately, though she had not fallen or hurt it in any way that she was aware of. She noted she had tolerated her full time return to work, but felt a little tired and fatigued with a mild increase in pain by the end of a long day. She noted that doing a lot of stairs also cause her symptoms to worsen, with her pain increasing with increased activity to 3/10. She was not using any assistive devices at the time of this visit, and her range of motion of the left knee was full extension and 135 degrees of flexion, without pain. She had mild posterolateral joint line tenderness on examination and moderate tenderness over the distal aspect of the IT band. X-rays showed continued healing of the patella fracture. He felt the fracture had healed quite well. Dr. Rossi explained to Petitioner that she was struggling with iliotibial band tendinitis dur to overuse and due to deconditioning from quad, hamstring and leg muscles while recovering from the fracture. He told her to continue her home strengthening exercises. Petitioner told Dr. Rossi she would return if her symptoms worsened or she had new left knee concerns. (PX 2 p.35-37)

DOCUMENTARY EVIDENCE

Petitioner introduced a photograph which had been marked by Ms. Cunningham and Petitioner. (PX 4)

Respondent introduced a wage statement showing Petitioner had been paid wages during the period of time she was restricted from work, with checks issued on November 30, 2020 through January 29, 2021, consistent with Petitioner's testimony that she received her pay due to her use of sick days. (RX 1)

Respondent introduced an attendance record showing Petitioner was away from work and using sick days from November 30, 2020 through February 4, 2021, using having half a sick day used on February 5, 2021. Petitioner used 46.5 sick days during that period of time. That document notes that Petitioner had started that school year with 90 sick days carried over from the prior year and at the end of the school year had 42.5 sick days remaining and eligible for carrying over. (RX 2)

ARBITRATOR CREDIBILITY ASSESSMENT

Both Petitioner and Ms. Cunningham were cooperative witnesses who appeared to answer all questions to the best of their recollection. Even when their opinions differed, they were only different by six to eight feet, understandable considering the fact they were approaching each other at a regular pace and that distance would be closed in an extremely short period of time. There did not appear to be any attempt to exaggerate or minimize facts by either witness. The Arbitrator finds both to have been credible witnesses.

CONCLUSIONS OF LAW:

In support of the Arbitrator's decision relating to whether an accident occurred which arose out of and in the course of Petitioner's employment by Respondent on November 23, 2020, and whether Petitioner's current condition of ill-being, a transverse oriented comminuted left patellar fracture, is causally related to the accident of November 23, 2020, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

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

The analysis of the Illinois Supreme Court in the case of McAllister v. Illinois Workers' Compensation Commission is instructive. McCallister notes that the Act is to be liberally construed to effectuate its main purpose (Paragraph 31). According to the Supreme Court, "In the course of employment" refers to the time, place, and circumstances of the injury (Pg. 34). Scheffler Greenhouses, Inc. v. Industrial Commission, 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.

It is undisputed that the Petitioner's injury occurred while the Petitioner was at work performing reasonable activities in conjunction with her employment.

According to McAllister, an accident is incidental to the employment when it belongs to or is connected with what the employee has to do in sustaining his or her job duties (Paragraph 36).

A risk arises out of, or is associated with, an employee's employment if the employee might reasonably be expected to perform those acts incident to her assigned duties (Paragraph 46).

In McAllister, the Court concluded:

> The evidence establishes that the act that caused claimant's knee injury…were risks incident to his employment because these were acts his employer might reasonably expect him to perform in fulfilling his assigned job duties (Paragraph 47).

Similarly, in this case the Petitioner was at work performing tasks the employer reasonably expected her to perform. The task of carrying a full, bulky garbage bag through a limited hallway, around obstructions, and past the Petitioner's supervisor, while maintaining covid-related social distancing, caused her to stumble. With use of a photograph, the Petitioner explained how obstructions and limitations in the hallway, along with a doorway behind her, resulted in the Petitioner's stumble. She said she would not have stumbled but for the bag.

The Arbitrator has noted that in Angela Royer's initial office notes, NP Royer references the Petitioner catching her shoe. The Arbitrator notes that the Nurse Practitioner's office dictation establishes that the Petitioner told her that she "fell and caught the front of her shoe" rather than caught her shoe and **then** fell, as suggested by respondent.

The note suggests she fell first, and after that caught the front of her shoe while trying to recover. This is consistent with her testimony. The Petitioner explained that she attempted to regain her footing after the bag caused her to stumble. This is sufficient to establish that the injury arose out of the circumstances of her employment as described in the McAllister decision.

Petitioner appears to have been in good physical health prior to this fall, and no evidence was introduced indicating she had left knee problems prior to this fall. She was immediately transported by a co-worker for medical treatment where her left patella fracture was diagnosed.

The Arbitrator finds that Petitioner suffered an accident on November 23, 2020, which arose out of and in the course of her employment by Respondent.

The Arbitrator further finds that Petitioner's medical condition, a transverse oriented comminuted left patellar fracture, is causally related to the accident of November 23, 2020. These findings are based upon the testimony of Petitioner and the medical records introduced at arbitration.

In support of the Arbitrator's decision relating to what temporary benefits Petitioner is entitled to as a result of the accident of November 23, 2020, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

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

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

The Petitioner was off work from November 23, 2020 through February 8, 2021. The Petitioner took sick time while she was off-work. Petitioner was paid her regular salary during that period of time.

Section 8(j) of the Act states:

> In the event the injured employee receives benefits, including medical, surgical or hospital benefits under any group plan covering non-occupational disabilities contributed to wholly or partially by the employer, which benefits should not have been payable if any rights of recovery existed under this Act, then such amounts so paid to the employee from any such group plan as shall be consistent with, and limited to, the provisions of paragraph 2 hereof, shall be credited to or against any compensation payment for temporary total incapacity for work or any medical, surgical or hospital benefits made or to be made under this Act.
>
> * * *
>
> Nothing contained in this Act shall be construed to give the employer or the insurance carrier the right to credit for any benefits or payments received by the employee other than compensation payments provided by this Act, and where the employee receives payments other than compensation payments, whether as full or partial salary, group insurance benefits, bonuses, annuities or any other payments, the employer or insurance carrier shall receive credit for each such payment only to the extent of the compensation that would have been payable during the period covered by such payment.

No evidence was introduced indicating Petitioner was entitled to any payment for said sick time either at the end of the academic year, termination, or retirement.

The Arbitrator finds that Petitioner was temporarily totally disabled as a result of the accident from November 24, 2020 to February 5, 2021, a period of 10 4/7 weeks.

The Arbitrator further finds that Respondent is entitled to credit for payment of regular wages equal to Petitioner's average weekly wage for the entire period she was temporarily totally disabled.

These findings are based upon the testimony of Petitioner, the medical evidence introduced at arbitration, and Respondent's Exhibits 2 and 3.

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 November 23, 2020, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

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

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

The Petitioner has introduced into evidence as Exhibit 3, medical bills totaling $54,758.20. As the injury is compensable, the medical bills are awarded to Petitioner per the parties' stipulation.

The Arbitrator finds the medical bills introduced into evidence in Petitioner Exhibit 1 are related to Petitioner's a transverse oriented comminuted left patellar fracture, 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. Respondent is ordered to reimburse Petitioner for the $1, 145.08 she has paid on account of these bills.

The Arbitrator further finds that Respondent is entitled to credit for any amounts it has paid towards these bills through its group health insurer pursuant to Section 8(j) of the Act.

This finding is based upon the medical records introduced into evidence and the testimony of Petitioner.

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

The findings of fact, above, are incorporated herein.

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

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

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

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

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a junior high school English teacher at the time of the accident and that she *is* able to return to work in his prior capacity as a result of said injury. The Arbitrator notes Petitioner chose to retire at the end of the school year. She testified she had been thinking of retiring prior to the accident, but due to fatigue and discomfort she decided to retire at the end of this school year. Because of her having been released to return to full duty work by Dr. Rossi, her ability to perform her duties as a teach for over three months following her return to work and her choosing to then retire, the Arbitrator therefore gives *lesser* 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. Because of the few working years remaining prior to the accident, the Arbitrator therefore gives *lesser* weight to this factor.

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

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner testified that as of the date of arbitration, getting down to do something like pick up a piece of paper on the floor would cause her left knee to hurt on the way down as well as on the way up. She said the knee was sore every day and she no longer did her gardening, pulling weeds, etc. She said she could do gardening if seated, demonstrating troweling in front of her while she was seated in her chair. Medically, Petitioner only met five of the seven long term goals set by physical therapy by the time therapy ceased. When last seen by Dr. Rossi on April 13, 2021, Petitioner noted she had tolerated her full time return to work, but felt a little tired and fatigued with a mild increase in pain by the end of a long day. She noted that doing a lot of stairs also cause her symptoms to worsen, with her pain increasing with increased activity to 3/10. Petitioner was not using any assistive devices at the time of this visit, and Dr. Rossi found her range of motion of the left knee was full extension and 135 degrees of flexion, without pain. He noted Petitioner had mild posterolateral joint line tenderness on examination and moderate tenderness over the distal aspect of the IT band. X-rays showed continued healing of the patella fracture. He felt the fracture had healed quite well. Dr. Rossi indicated that Petitioner was struggling with iliotibial band tendinitis dur to overuse and due to deconditioning from quad, hamstring and leg muscles while recovering from the fracture. He told her to continue her home strengthening exercises. Petitioner had not returned to Dr. Rossi in the year following that office visit. Because of the medical records confirming most of Petitioner's complaints at arbitration, the Arbitrator therefore gives *greater* weight to this factor.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC034807
Case Name	Maria Martinez v. Nazarethville
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0203
Number of Pages of Decision	33
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Pankhuri Parti

DATE FILED: 5/8/2023

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARIA MARTINEZ,

Petitioner,

vs. NO: 19 WC 34807

NAZARETHVILLE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §§8(a)/19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident/occupational disease, causation, notice, temporary total disability benefits, and medical expenses both current and prospective, and being advised of the facts and law, reverses the Decision of the Arbitrator and finds that Petitioner sustained her burden of proving a compensable repetitive trauma accident which caused the condition of ill-being of bilateral carpal tunnel syndrome and awards benefits. 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).

Findings of Fact

Petitioner testified through an interpreter that she had symptoms of bilateral carpal tunnel syndrome ("CTS") which makes it unable for her to perform activities at work and at home. She already had surgery on the left wrist and surgery has been recommended for the right wrist. In October 2017 she worked as a CNA for Respondent which is a nursing home. She started working for Respondent in the summer of 2012.

She last worked for Respondent in June of 2019 which was prior to her CTS surgery. She worked between 40 and 45 hours a week. They had 30-minute breaks for lunch, but mostly they could not use all that time because they had to respond to patient requests.

When asked what repetitive gripping/grasping she had to perform, Petitioner responded it was moving patients with her hands. Sometimes she was given help and sometimes not. She also used her hands to wring towels while cleaning patients, put stockings on patients, and help them use the bathroom. She explained that she would have to twist and turn patients who were lying in bed and reposition them to eat, *etc*. The patients' impairments made it more difficult for her to move them.

The patients were never comfortable; when they were in bed they wanted to go to the chair, when they were in the chair they wanted to go to the bed. She "was using the force all the time" until the condition sapped her strength. The compression stockings she put on patients were long, narrow, and required a lot of force to put on, especially if the patient's legs were swollen or thick; "there's a lot of pulling on the socks." She also used her hands to put a transfer belt on patients and then using the belt to help patients ambulate.

Petitioner's job also involved making beds. "When the mattress is thick or very highly inflated, it's difficult to put the sheets on" with her hands. Regarding use of the bathroom, she would have to use her hands to bring patients into the bathroom, turning them, and holding them while seated on the toilet. She had to use all her strength to accomplish these tasks.

Petitioner estimated that 80% of her time was spent performing job duties involving using her hands/wrists in a repetitive fashion. Normally, she took care of eight patients, but if somebody was off work it may be up to 16 patients. She had to move from patient to patient throughout the day, it was "like a working machine." She had no pain in her hand/wrists before she began working for Respondent.

Petitioner testified on September 21, 2015 she complained to her primary care physician, Dr. Gonzalez, about tingling in her hands; "the problem was starting." He recommended an EMG, referred her to specialist, whom she saw once in 2015, and who apparently recommended braces for her hands. She continued to work and was able to perform her job. The braces made her feel better. She had no additional treatment until 2017 and continued to perform her job.

Her symptoms began to worsen because she was doing more work and on October 10, 2017 she saw Dr. Baxamusa at Illinois Bone & Joint Institute. She had to perform more work because they had less personnel. Transferring patients caused her the most pain. She was also developing pain cutting food and she couldn't open jars. The pain woke her at night and she dropped things. In 2017, Dr. Baxamusa diagnosed bilateral CTS and ordered an EMG.

Petitioner testified Dr. Baxamusa did not speak Spanish so she brought her daughter. Petitioner testified she knew "very few words" in English and writes "very, very little." She was shown PX5, which apparently was an intake form for Dr. Baxamusa's visit. It was written entirely in English. Petitioner did not fill it out, her daughter did. After the EMG, Dr. Baxamusa recommended surgery. He recommended she go to her boss to ensure that it would be covered by Workers' Compensation. She continued to work, continued to use compression braces, but continued to experience pain. She returned to Dr. Baxamusa on June 12, 2019 and reported her symptoms had worsened over the past month. Dr. Baxamusa again diagnosed CTS and recommended a repeat EMG. She returned to Dr. Baxamusa on July 9, 2019 and they again discussed surgery. That was the last time she saw Dr. Baxamusa because she had an outstanding bill and he did not want to treat her anymore. It was because insurance would not pay.

Petitioner saw Dr. Papierski on August 20, 2019. He diagnosed left CTS and performed left CTS release on September 13, 2019. She had postop physical therapy and on October 25, 2019 Dr. Papierski released her to sedentary work. At that time he also recommended right CTS surgery. She last saw Dr. Papierski on April 24, 2020. At that time he still had her on sedentary duty and still recommended right CTS release surgery. The left CTS surgery helped her a lot. She has no pain and very good movement. She still had pain in her right wrist at night which "won't let [her] sleep." She lost the ability to put on socks, button her pants, or open cans with her right hand. She had difficulty with household activities. In 2017, Petitioner reported to her boss, Nancy Torres, that she had CTS as a result of her work injuries. Petitioner had not returned to work since Dr. Papierski took her off work for her surgery because the job of CNA is not a sedentary job. She received no Workers' Compensation benefits.

On cross examination, Petitioner testified in 2015 she believed her symptoms were related to her work and she so informed Dr. Gonzalez. He referred her to a hand doctor, whom she saw on October 10, 2017. She asked her daughter to fill out the form at Dr. Baxamusa's office. She asked Petitioner for "the great majority" of the answers to the questions. She told Dr. Papierski her symptoms were related to her work, but the visit was paid by regular insurance.

She agreed that when she returned to Dr. Baxamusa he recommended surgery but released her to full duty. Petitioner told him she did not want to return to work at her job "because of the pain." She did not ask him to fill out any paperwork and looked for another doctor. When she saw Dr. Papierski she mentioned to him that she thought her conditions were work related.

Petitioner testified that she would change sheets whenever necessary and for sick patients which may be often. She did not dispense medications. She would give patients trays with their lunch and she would have to help feed two or three of them. Most of the patients would need the use of a transfer belt. Petitioner acknowledged that she could communicate very well with her patients and co-workers in English.

Selected Medical Records

On October 10, 2017, Petitioner presented to Dr. Baxamusa on referral from her primary care physician for evaluation of numbness/tingling/paresthesias in her arms, right > left, for the last few years. She had an EMG in 2015 which showed CTS and she was treated with steroids and bracing. This was being handled by private insurance, after Petitioner discussed the situation with her employer. She had her daughter to help with translation. Petitioner was 5'1" and 187 pounds. Dr. Baxamusa wanted a new EMG to rule out cervical radiculopathy. The intake form at this visit indicated that she had not had problems with this area previously, the injury did not occur at work, and the injury was not due to work injury but rather onset of "sudden pain."

Two weeks later, Petitioner presented to Dr. Retinsky for an EMG reporting a two-year history or worsening numbness/paresthesias in both hands. She was a caregiver presently caring for a heavy patient and she believed her weakness/numbness increases when she assists in lifting/transferring patients. The EMG confirmed Dr. Baxamusa's clinical impression of bilateral, right slightly worse than left, CTS which was chronic, severe, and featured both demyelination and axonal loss on both sides. He did not find cervical radiculopathy. He explained to Petitioner and her daughter that surgery was necessary to prevent additional nerve damage.

On June 12, 2019, Dr. Baxamusa noted that he diagnosed rather advanced CTS a couple of years earlier and recommended surgery. Petitioner reported that she changed job positions and was rotating around. Her symptoms were tolerable with splinting. Lately, her activities had increased and she had worsened symptoms. Again, Dr. Baxamusa wanted to obtain a new EMG prior to surgery. He would operate on the wrists in stages starting with the left, which he deemed more symptomatic.

On July 9, 2019, Petitioner reported to Dr. Baxamusa she was interested in having surgery but had concerns. She was "disinterested in her job" and was possibly not returning to her current job. She had FMLA forms because she wanted time off of work at that time. She filed a Workers' Compensation claim and asked whether his office had been in contact with the case manager. Dr. Baxamusa noted that this was the first time he learned that this involved a Workers' Compensation claim. He explained to Petitioner that he did not restrict a patient preoperatively and he would keep her working at full duty until surgery. He declined to fill out the FMLA forms and explained that she needed either approval from Workers' Compensation or a denial letter to proceed with private insurance.

On August 20, 2019, Petitioner presented to Dr. Papierski for bilateral pain and mild paresthesias of her bilateral wrists. She was evaluated in the past, was treated with physical therapy and bracing, and had an EMG that showed moderately severe CTS. He diagnosed bilateral CTS and left wrist tendinitis. He recommended left CTS release and possible tensynovectomy. Petitioner wanted to proceed with surgery.

Petitioner returned after about a month and noted she was doing OK after left CTS release surgery. She was doing range of motion exercises and sensation had improved. Dr. Papierski noted she was progressing as expected and he removed sutures. Dr. Papierski noted as an aside "patient with carpal tunnel syndrome and bilateral hands. Because of carpal tunnel syndrome can be multifactorial. Nevertheless, she indicates that she is using her hands on a frequent basis for gripping activities, This kind of activity can be contributing to the development of carpal tunnel syndrome."

On October 25, 2019, Petitioner was progressing after left CTS release and postop physical therapy. She now felt she recovered adequately to proceed with right CTS release. Dr. Papierski agreed that she was a candidate for right CTS surgery with possible tensynovectomy. On February 28, 2020, Petitioner reported he was doing OK with her left wrist but she had the sensation of weakness. She reported "fairly constant use of her hands including grip and moderate force being performed on a regular basis. She's been doing this kind of work for a number of years. At times when it's been busier, she has had increased symptoms."

Although she had natural risk factors, Dr. Papierski opined that "her carpal tunnel has contributions from her work activities" citing a Journal article. They would help her get Workers' Compensation authorization for the right-side surgery. Petitioner last saw Dr. Papierski on April 24, 2020 and reported she was doing about the same with good relief from left CTS release, but she still had significant symptoms on the right. He reiterated his recommendation for right CTS release.

Doctor Depositions

On June 19, 2020, Dr. Papierski testified by deposition that he was board-certified in both orthopedic surgery and hand surgery. He treated Petitioner for bilateral CTS. Risk of CTS increases with age, was more common among women, and more common among the obese. It can also be associated with other medical conditions or blunt trauma. It can also be caused or aggravated by "activities in particular where there is frequent to constant use of the hands for grip and manipulation activities sometimes with the wrists in what are sometimes called awkward positions." Petitioner listed her job as CNA, which he assumed meant certified nurse assistant. He did not have detailed knowledge of her work activities but he assumed it included direct patient care like cleaning/bathing the patient and cleaning the room and bed site.

In responding to questions, Dr. Papierski was to assume that Petitioner would testify her job involved repetitive grasping/gripping making beds, moving patients, dressing patients including putting on compression socks, and that she did gripping/grasping activities eight hours a day for at least seven years. In addition, he was to assume that on May 14, 2019 a patient fell in her arms/wrists exacerbating her pain. Finally, he as to assume she had some limited treatment in 2015 for bilateral CTS but worked full duty until 2019.

Dr. Papierski testified he first saw Petitioner on August 20, 2019. She had an EMG taken previously. She complained of increased pain and paresthesias in her hands/wrists. After reviewing the EMG and performing a clinical examination, Dr. Papierski diagnosed bilateral CTS and noted there may be some tendinitis in the left wrist. Dr. Papierski recommended left CTS surgery, which he performed on September 13, 2019.

Petitioner progressed postop and on October 25, 2019 he released her to work at sedentary duty and believed her left wrist had healed sufficiently that she wanted to proceed with right CTS surgery. On February 28, 2020 she reported that she was working taking care of patients which required the "fairly constant use of her hands including grip and moderate force being performed on a regular basis." She had been in that job for a number of years. He last saw Petitioner on April 24, 2020. At that time, he still had Petitioner on sedentary duty and he still recommended right CTS surgery. There were no prospective appointments with Petitioner scheduled.

Dr. Papierski opined that Petitioner's job as a CNA contributed to her development of bilateral CTS. He based that opinion on her description of her job as CNA and his understanding of the literature on causation of CTS. Her job was also a factor in her needing surgery. He would not opine on the relevance of the incident in which Petitioner reported a patient falling on her arm. While Petitioner was now on sedentary duty, if only her left wrist were involved, she would be at full duty.

On cross examination, Dr. Papierski testified he generally gives credence to a patient's history and description of their job. He agreed that in his initial treatment note he did not mention that Petitioner related her symptoms to her job activities or that he concluded that it was related to her job. Petitioner came to him on self-referral for a second opinion. Essentially, she told him that she had symptoms for two years. The EMG taken in July of 2019 showed fairly severe findings.

Dr. Papierski knew she was seen at Illinois Bone & Joint Institute but he did not have their records. He did not know what to say to the fact that Petitioner apparently did not identify work activities as a cause of her CTS in her intake form. He did not know exactly when he found out that her condition was a part of a Workers' Compensation claim, but it may have been in November 2019.

Dr. Papierski noted that there have been studies where workers in assembly lines changed places on the line to reduce repetitiveness. The shifting seemed to have some benefit. He then posited that work on an assembly line would likely be more of a risk factor for CTS than the job of CNA. However, he believed CNAs were engaged in more offensive activities as nursing jobs became more managerial. Dr. Papierski noted that Petitioner was female, of a somewhat advanced age (55), and was obese with a BMI of 39.93. He agreed "absolutely" that she had significant risk factors for developing CTS irrespective of her job as a CNA.

On October 16, 2020, Dr. Vender testified by deposition that he was board-certified orthopedic surgeon with an added certification in hand surgery. His practice is limited to disorders of the hand to the elbow. Primarily he deals with hands and wrists. He treats CTS routinely and agreed he was "extremely familiar with the condition of carpal tunnel syndrome, its causes and the treatment involved." He performed hundreds of CTS surgeries annually.

He performed a review of Petitioner's medical records and issued a report. Her history included her presentation to her primary care physician in September of 2015 complaining of tingling in both her hands consistent with CTS. He saw no indication that she attributed her complaints to her employment. She had an EMG at that time and saw an orthopedic surgeon. She saw another orthopedic surgeon and had a repeat EMG in 2017 and additional evaluations by her primary care physician. Finally, she had another EMG in July of 2019, after which she was evaluated by another orthopedic surgeon. Eventually, she had left CTS release surgery in September of 2019. All the EMGs confirmed she had CTS, which "was felt to be severe." He could not opine on whether her condition worsened between 2017 and 2019.

Dr. Vender testified he was familiar with the work activities of CNAs. He generally did not believe that the type of activities performed by CNAs would contribute to CTS and those activities would not be considered repetitive. He also noted that 50% of CTS cases are idiopathic meaning there was no discernable cause. In addition there were non-occupational risk factors for developing CTS including high body mass index ("BMI"), smoking, diabetes, and hypothyroidism. Petitioner had a "significantly increased" BMI, which "would be considered one of the major risk factors." If she developed CTS in 2015 "due to the risk factors," he would not believe her activities as CNA would have aggravated that condition because those types of activities were not conducive to developing/aggravating CTS.

Dr. Vender agreed with the recommendation of Dr. Papierski that right CTS release surgery was indicated, but the need for the surgery was not related to her work activities. She needed no prospective treatment for her left wrist and was at maximum medical improvement concerning her left CTS. He believed she could return to work without restriction. Dr. Vender explained that in determining whether work activities contributed to the development of CTS, one must consider force, exertional activities with duration on a persistent basis. In Petitioner's case, repetitiveness is not even an issue, the same activity is not being performed over-and-over again, there is a significant downtime, and it does not constitute a significant use of the hands.

Dr. Vender noted that even if some activities could be considered forceful, intermittent forceful activities would be similar to very common activities of daily livings and not contributory to CTS. He did not believe that actual examination of Petitioner would be important to determine causation. All one needed was the correct diagnosis, which was not in dispute in the instant case, and the correct assessment of her work activities.

On cross examination, Dr. Vender agreed that his causation opinion was based on his general understanding of the job activities of CNAs. It was not based on Petitioner's description of her job activities nor did he see any official description of her job duties. He agreed that he found only a single non-occupational risk factor, her elevated BMI. He agreed that in a general sense trauma can aggravate CTS. However, the trauma would have to cause an actual injury to the wrist. Even with wrist fractures it's pretty unusual to have to treat related CTS.

Dr. Vender explained that he could not opine of whether her condition progressed between 2015 and 2019 because: 1) he did not review the EMG results that closely; 2) if the EMGs were interpreted by different people the standards would be different; and 3) the condition was already severe and it was splitting hairs to identify exactly how severe it had become. Her current diagnosis was left CTS, post release surgery, and she still had active right CTS. He agreed that she still needed surgery on the right wrist. Dr. Vender agreed that she had no treatment for CTS between September 21, 2015 and October 10, 2017. He did not know whether she was working between 2015 and 2017 or of any work restrictions imposed. He estimated that he saw 80 patients a week about eight of which involved medical/legal issues. His income from the medical-legal aspect of his practice is probably higher than 10%.

Conclusions of Law

The Arbitrator found that Petitioner did not sustain her burden of proving a repetitive trauma accident causing her condition of ill-being of bilateral CTS. He held that Petitioner's testimony alone could not sustain her burden of proof. The Arbitrator relied on the "longstanding principle" that "contemporaneous medical records are more reliable than later testimony." He noted inconsistencies between her testimony and the medical records "that despite her testimony, she failed to relate her symptoms to her employment on multiple occasions."

The Arbitrator also noted that she did not initiate WC proceedings in 2015 and that she initially specified to Dr. Baxamusa that her injury was not subject to a WC claim and it was being handled through her private insurance. He was also unconvinced by Petitioner's daughter filled out the intake form. The Arbitrator cited other instances of his interpreted inconsistencies between Petitioner's testimony and the medical records. He concluded that Petitioner "was testifying in a self-serving manner rather than making an effort to be truthful." Finally, the Arbitrator found Dr. Vender persuasive and Dr. Papierski unpersuasive.

Petitioner argues the Arbitrator erred in finding she did not prove repetitive trauma which caused her bilateral CTS. She asserts that her "credible and un-rebutted testimony establishes that her repetitive trauma injuries arose out of and in the course of her employment." She noted that she did not seek medical attention from 2015 to 2017 because her braces reduced her symptoms and that no additional treatment for her condition was recommended in 2015. Petitioner also argues that Dr. Papierski had a better understanding of Petitioner's job duties and therefore was more persuasive than Dr. Vender.

The Commission concludes that Petitioner sustained her burden of proving a compensable repetitive trauma accident on October 1, 2017 which caused the condition of ill-being of her bilateral CTS. Petitioner testimony was consistent and unrebutted concerning her constant hand-intensive work activities and that her symptoms increased as her work load increased. The Commission also finds the causation opinion testimony of Dr. Papierski was more persuasive than those of Dr. Vender.

Dr. Papierski personally examined Petitioner, treated her for eight months, and performed surgery on her. On the other hand, Dr. Vender did not personally examine Petitioner and derived his opinions only from her records. In addition, Dr. Papierski discussed Petitioner's work activities with her and had a better understanding of her specific work activities. Dr. Papierski testified he based his opinions on Petitioner's recitation of her job activities. On the other hand, Dr. Vender never discussed Petitioner's job duties with her and rather based his opinions on his general sense of the job duties of a CNA. He did not even differentiate between the activities of CNAs generally and CNAs working at nursing homes which could certainly involve more strenuous use of hand/arms dealing with incapacitated patients.

The Commission does not find Petitioner's prior complaints of CTS symptoms significant. Often there are various appropriate manifestation dates. Here, even though Petitioner had CTS symptoms previously, she did not have substantial treatment and she indicated that she did not seek treatment from 2015 to 2017 because the splinting relieved her symptoms and her symptoms later increased as her job activities increased. We find October 1, 2017 as a proper manifestation date because that was the time when she began seeking definitive medical treatment for her condition.

In the "Findings" portion of the Decision of the Arbitrator, he noted that Petitioner did not give timely notice of the accident. However, in the body of the decision, the Arbitrator did not make any specific finding regarding notice specifying the issue was moot due to his holding on the issues of accident/causation. Petitioner testified that she notified boss, Nancy Torres, that she had CTS as a result of her work activities in October of 2017. That testimony was unrebutted and is sufficient to establish proper notice.

On the issue of medical expenses, the Commission concludes that all the medical treatment Petitioner received was necessary, reasonable, and incurred to treat her work-related condition of ill-being. Therefore, the Commission awards all the medical expenses submitted into evidence, pursuant to §8(a) and subject to the applicable medical fee schedule pursuant to §8.2.

In addition, the Commission notes that Dr. Papierski has recommended CTS release surgery and Dr. Vender acknowledged that such surgery is indicated. Therefore, the Commission orders Respondent to authorize and pay for prospective treatment recommended by Dr. Papierski upon his re-evaluation of Petitioner.

On the issue of temporary total disability, the Arbitrator found the issue moot due to his holding on the issues of accident/causation. However, then for the sake of argument, he noted that even if Petitioner had proved accident/causation, she would only be entitled to temporary total disability benefits from September 13, 2019, when Dr. Papierski took her off work, to April 24, 2020, when she voluntarily stopped treating (31&1/7 weeks). Petitioner argues that she is entitled to 113&5/7 weeks of temporary total disability benefits, which is to the date of arbitration. She argues that at the time of Dr. Papierski's deposition he testified Petitioner was still restricted to sedentary duty and Petitioner testified the job of CNA is not sedentary.

On this issue, the Commission agrees with Petitioner. While Petitioner has not treated since April 24, 2020, she was not at MMI. However, she did not "voluntarily" stop treating, further treatment was terminated. She was not released to return to work at the job of CNA and she was released to work at a sedentary physical demand level. That physical demand level is inconsistent with the job duties of a CNA. Therefore, the Commission awards Petitioner 113&5/7 weeks of temporary total disability benefits.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 19, 2022 is hereby reversed and the Commission finds that Petitioner sustained her burden of proving a compensable accident on October 1, 2017 which caused the condition of ill-being of bilateral carpal tunnel syndrome.

IT ISFURTHER ORDERED BY THE COMMISSION that it finds that Petitioner gave Respondent timely notice pursuant to §6(c) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner the sum of $317.33 per week for a period of 113&5/7 weeks because the work-related injury caused that period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the necessary and reasonable medical expenses submitted into evidence pursuant to §8(a), subject to the applicable medical fee schedule pursuant to §8.2 of the Act.

IT ISFURTEHER ORDERED BY THE COMMISSION that Respondent authorize and pay for prospective treatment recommended by Dr. Papierski upon his re-evaluation of Petitioner.

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

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

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

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

May 8, 2023
O-3/8/23
DLS/dw
046

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC034807
Case Name	Maria Martinez v. Nazarethville
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Pankhuri Parti

DATE FILED: 7/19/2022

/s/Charles Watts, Arbitrator
Signature

INTEREST RATE WEEK OF JULY 19, 2022 2.91%

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)

MARIA MARTINEZ,
Employee/Petitioner

Case # **19 WC 34807**

v.

NAZARETHVILLE,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **CHARLES WATTS**, Arbitrator of the Commission, in the city of **CHICAGO**, on **November 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. ☒ 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 ***October 1, 2017***, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was not*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $24,752.00; the average weekly wage was $476.00.

On the date of accident, Petitioner was **49** 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**.

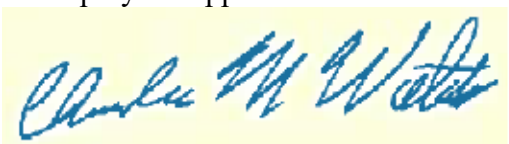
Respondent is entitled to a credit of ***$5,424.45*** under Section 8(j) of the Act.

ORDER

The Petitioner has failed to prove by a preponderance of the credible evidence that she sustained accidental injuries to her bilateral hands due to repetitive work activities that arose out of and in the course of her employment with Respondent on October 1, 2017. The Petitioner's claim for compensation is denied.

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

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



Signature of Arbitrator

July 19, 2022

ICArbDec19(b)

BEFORE THE ILLINOIS INDUSTRIAL COMMISSION

MARIA MARTINEZ,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 2019 WC 34807
	)	
NAZARETHVILLE,	)	
	)	
Respondent.	)	

FINDINGS OF FACTS AND CONCLUSION OF LAW TO MEMORANDUM OF ARBITRATOR'S DECISION

STATEMENT OF FACTS

Petitioner's Trial Testimony on November 17, 2021

This is a bilateral carpal tunnel claim. Maria Martinez ("Petitioner) testified that her carpal tunnel symptoms made it difficult to do things at work and at home. *Tr. P. 7.* She testified the symptoms were in both hands, she had already undergone surgery on the left hand, and had been recommended surgery on the right hand as well. *Id.*

In October 2017, she was employed as a CNA (certified nursing assistant) with Nazarethville Company ("Respondent") since 2012, which was a retirement home for adults who could no longer take care of themselves or their daily chores. *Tr. P. 8-9.* The last time she worked was in June of 2019, just before the surgery on the left hand. *Tr. P. 9.*

Petitioner testified she worked 5-6 days a week from 6:00 a.m. to 2:30 p.m., which was about 40-45 hours per week. *Tr. P. 9-10.* She testified that she was scheduled for a lunch break of 30 minutes but most of the time she was unable to use the entire allotted time because she had to respond to customers. *Tr. p. 10-11.* Petitioner testified her work involved moving the patients with her hands, lifting them, twisting them, turning them, sometimes with help and sometimes without. *Tr. p. 11.* She further testified that her work of wringing the towels, putting on stockings, helping the patient to go to the bathroom contributed to the development of carpal tunnel syndrome. *Tr. p. 11-12.*

Petitioner explained when patients were lying on the bed, she needed to twist and turn them over; she had to reposition them for eating so they were sitting up higher on the bed for which she needed to grab the sheets and pull them; and while cleaning patients she had to wring towels to get the liquid out. *Tr. p. 12-14.* Petitioner testified the hardest part of the job was to move the patients since they requested a change in position frequently. *Tr. p. 14.* She also testified that she needed a force to put on compression stockings on the patients and this force came from hands and wrists. *Tr. p. 14-18.*

Petitioner testified she used a transfer belt to move patients and it also required force from her hands and wrists. *Tr. p. 18.* She testified that making beds was also part of her job and when the mattresses were thick, it was difficult to put the sheets on. *Tr. p. 18-19.* Petitioner testified she also used her hands to bring the patients to the bathroom, turn them, and hold them while seating them on the toilet. *Tr. p. 20.* This again required strong force in order to grab the patient and twist them to get them to sit down. *Id.*

Petitioner testified she was also responsible for transferring patients from the bed to the wheelchair and back and the force needed depended on how much the patient could balance. *Tr. p. 21-22.* She testified 80 percent of her work involved using repetitive hand and wrist movements. *Tr. p. 22.* She was typically responsible for 8 patients but if someone called in sick, then she could be responsible for up to 16 patients. *Id.* She testified the pace of her work was quick and the work involved jumping from one patient to the other. *Tr. p. 23.* Petitioner testified it was like a working machine. *Tr. p. 24.*

Initial Symptoms in 2015

Petitioner testified she had no issues with her hands and wrists before she started working for Nazarethville. *Id.* She testified that her primary doctor was Dr. Luis Gonzalez, whom she first saw on September 21, 2015 for tingling in both her hands. *Tr. p. 24-25.* She testified the problem was just starting at the time and at the time she was referred to a specialist. *Tr. p. 25.* She testified she was also recommended an EMG at the time. *Tr. p. 26.* She testified that after the appointment she had started wearing a brace/glove on both hands, which was the extent of treatment undergone by her in 2015. *Id.*

Petitioner testified she then continued working at Nazarethville and was able to perform her duties fully since the symptoms were better as a result of the braces. *Tr. p. 26-27.* Petitioner testified she did see a specialist one time in 2015 when the pain was bad. *Tr. p. 27.* She testified to not needing treatment between 2015 and 2017 and during this time she continued to work full duty with Respondent. *Tr. p. 27-28.*

Treatment in 2017

She then saw Dr. Baxamusa at Illinois Bone & Joint on October 10, 2017 because her symptoms had worsened. *Tr. p. 28.* She testified the symptoms had worsened because of the work she was performing and due to less personnel, she had been performing more work. *Tr. p. 28-29.* She testified as a result of the increased workload, her hands and arms were in pain most of the day at work and home. *Tr. p. 29.* She also testified that before she saw Dr. Baxamusa she had also experienced pain while cooking, cutting vegetables, and had been unable to open jars. *Tr. p. 30.* Petitioner testified the pain was also waking her up at night. *Id.*

Petitioner testified Dr. Baxamusa diagnosed her with bilateral carpal tunnel syndrome and recommended an EMG. *Tr. p. 30-31.* She testified she attended the appointment with her daughter since she knows very few words of English and "writes very little." *Tr. p. 31.* She testified the intake form from October 10, 2017 was in English and it was filled out by her daughter. *Id.* She testified to undergoing an EMG on October 24, 2017 and returning to Dr. Baxamusa on November 14, 2017 at which time he recommended surgery. *Tr. p. 33.* Petitioner testified she decided not to have the surgery at the time since Dr. Baxamusa asked her to return to her work to make sure the workers' compensation would be taking over the cost of surgery. *Tr. p. 33.*

Petitioner testified she did not return to Dr. Baxamusa until June 12, 2019 since the workers' compensation was not approved at the time. *Tr. p. 33-34.* She continued to work full duty between 2017 and 2019 and continued to experience pain in the bilateral wrists for which she was using compression sleeves and gloves. *Tr. p. 34.*

Upon her return to Dr. Baxamusa on June 12, 2019 she reported her symptoms had worsened and there was an incident where a patient she was transferring to the toilet fell on top of her arms. *Tr. p. 36*. She was again recommended an EMG and she underwent the EMG on July 8, 2019. *Id.* Petitioner returned to Dr. Baxamusa on July 9, 2019 and surgery was again discussed. *Id.* Petitioner testified this was the last date she saw Dr. Baxamusa because he did not want to treat her anymore since there was a bill that had been left unpaid. *Tr. p. 37.* Petitioner testified Dr. Baxamusa stopped treating her because it was a workers' compensation injury, and the insurance was not paying. *Id.*

Treatment with Dr. Papierski & left wrist surgery

Petitioner testified she then started treating with Dr. Papierski and first saw him on August 20, 2019. *Tr. p. 38.* She testified he diagnosed her with carpal tunnel syndrome of the left wrist and performed a left carpal tunnel release on September 13, 2019. *Id.* She testified that she continued to follow up with Dr. Papierski, was given sedentary work restrictions for the left hand on October 25, 2019, and recommended carpal tunnel surgery for the right hand as well. *Tr. p. 39.*

She testified to having follow up appointments with Dr. Papierski on January 17, 2020, February 28, 2020, and April 24, 2020, which was the last date she saw Dr. Papierski. *Tr. p. 40.* She testified that he had continued to keep her on sedentary work and recommended right carpal tunnel release. *Id.* It was her understanding the next time she was to return to Dr. Papierski was to schedule the appointment for right carpal tunnel release. *Id.*

Petitioner testified the surgery on the left hand improved her pain a lot, improved her movement, and she tried to do more things with her left hand. *Tr. p. 41.* However, she was still experiencing pain in the right hand, which did not let her put on her socks, button her pants, and do other things. *Id.* She was unable to sweep the kitchen, wring the mop, cut vegetables, and open a can. *Tr. p. 42.* Petitioner then testified that it was still difficult to lift things with her left hand and the most weight she could lift was 10 lbs. *Id.*

Petitioner's Testimony re: Notice

Petitioner testified that when symptoms started in 2017 she informed her boss – Nancy Torres of the symptoms and problems she was having. *Tr. p. 43-44.* She testified that she also informed Ms. Torres that the symptoms were a result of her work duties. *Tr. p. 44.* Petitioner testified she intended to have the right carpal tunnel release surgery and she had not returned to work since Dr. Papierski took her off work at the time of the September 2019 surgery. *Id.* She had not been paid any workers' compensation benefits. *Tr. P. 45.* She had incurred bills for the treatment she received as a result of the carpal tunnel injury and had received copies of those bills. *Tr. p. 46.*

Cross-examination of Petitioner

Dr. Gonzalez's records fail to document a work injury in 2015

Upon cross-examination Petitioner testified that to the best of her knowledge her medical records contain all the information she had provided to her doctors. *Tr. p. 47.* She testified that when she saw Dr. Gonzalez in 2015, she had informed him that her symptoms were related to work but could not be sure if he noted it. *Tr. p. 47-48.* She testified to be referred to a hand surgeon at the time but could not remember the name of the doctor. *Tr. p. 48-49.*

Dr. Baxamusa's records fail to document a work injury in 2017

She testified that the October 10, 2017 intake form had been filled out by her daughter because she had difficulty speaking and writing in English. *Tr. p. 49*. Petitioner testified she had asked her daughter to fill out the form and did not check the information because she trusted her daughter. *Tr. p. 49-50.* Petitioner testified her daughter asked her for answers for most of the questions and the rest she filled out the best way possible. *Tr. p. 50.* Petitioner testified when she saw Dr. Baxamusa in October 2017 she informed him this was a workers' compensation claim and about the different work activities she was having trouble with. *Tr. p. 50-51.* Petitioner also testified she was using private group insurance for this visit. *Tr. p. 51.*

Petitioner testified that when she saw Dr. Baxamusa in 2019 he recommended surgery and let her return to full duty work. *Tr. p. 52.* She testified that in July 2019 she told him she did not want to return to the same position at work and that she did not ask him to fill out FMLA paperwork during the appointment. *Tr. p. 52-53.*

Petitioner seeks alternative medical treater – Dr. Papierski

Petitioner testified he again let her return to full duty work, but she did not return to work and looked for another doctor. *Tr. p. 53.* She testified that when she saw Dr. Papierski and she told him that all

her symptoms were related to work and admitted she had not seen a doctor since April 2020. *Tr. p. 53-54.* Petitioner testified she had not worked in any capacity since June 2019. *Tr. p. 54.*

Petitioner testified she was alone responsible for her patients at work and nobody helped her; but then testified there were activity personnel as well as nurses who also helped in providing patient care. *Tr. p. 55.* Petitioner testified the act of changing bed sheets depended on whether the sheets needed to be changed and involved changing the sheets, putting the soiled sheets in the hamper, get the new linens, and then go the next room. *Tr. p. 56.* She then had to wash her hands and then do a couple of other things. *Id.* Petitioner testified it was difficult to estimate the time it took to move from one room to the next and that it would depend on each case. *Tr. p. 57.*

Petitioner testified she was responsible for passing lunch trays and there were a few patients – about 2 or 3 – whom she had to help feed as well. *id.* Petitioner testified she used the Hoyer belt and transfer belts for most of her patients and there were 1 or 2 patients who did not need it. *Tr. p. 58.*

Petitioner testified she was able to communicate with her patients and co-workers in English very well while she was working. *Tr. p. 59.*

Deposition Testimony of Dr. Papierski on June 19, 2020

In his deposition Dr. Papierski testified he treated Petitioner for carpal tunnel syndrome of the bilateral wrists. *Pet. Ex. 1.* Dr. Papierski testified carpal tunnel syndrome was a syndrome of nerves in the wrist, in particular the medial nerve. *Id.* He testified when people had carpal tunnel, there was squeezing on the nerve leading to symptoms of numbness in the fingers and sometimes some achiness and discomfort as well. *id.* Dr. Papierski testified studies showed that carpal tunnel could exist with increasing age and was more associated with the female gender. Id. He testified it could be associated with medical conditions like diabetes, thyroid conditions, vitamin deficiencies, inflammatory diseases, and occasionally with trauma. Id. It could also be multi-factorial and be caused or aggravated by activities where there was frequent to constant use of the hand for gripping and manipulation activities with the wrist in awkward positions. *Id.*

Dr. Papierski testified that with respect to trauma carpal tunnel syndrome could be caused by a broken bone and also anything that could result in swelling in and around the carpal tunnel. *Id.* The trauma would need to be on the wrist but if there was enough injury to the hand, then there could be swelling all the way from the hand up to the wrist and even up to the distal forearm. *Id.*

Dr. Papierski testified Petitioner reported to him her occupation was a CNA and while he did not have a detailed knowledge of her activities, it was his understanding she was involved in direct patient care. *Id.* He testified Petitioner's first visit with him was on August 20, 2019 and he was aware she had been seen at IBJI in July 2019. *Id.* He was also aware she had undergone an EMG on July 8, 2019. *Id.* He testified Petitioner was complaining of little more pain than paresthesia of the

bilateral upper extremities and after performing an examination and reviewing her EMG, he diagnosed her with carpal tunnel syndrome. *Id.* He recommended left carpal tunnel release surgery, which was performed on September 13, 2020. *Id.*

Dr. Papierski testified Petitioner recovered well from the surgery and her stitches were removed on September 27, 2019. *Id.* Her next follow up was on October 25, 2019 and by that time she had undergone physical therapy for 2-3 times per week for 4-6 weeks. *Id.* Dr. Papierski then saw Petitioner on January 17, 2020, February 28, 2020, and April 24, 2020. *Id.* He testified to having placed Petitioner on sedentary work on October 25, 2019 and continued those restrictions in all the subsequent visits. *Id.* His recommendation was to proceed with right carpal tunnel release surgery. *Id.*

Dr. Papierski testified it was his opinion that the work activities as a CNA were a contributory cause for the development of carpal tunnel syndrome. *Id.* He explained that the basis of his opinion was the description of her activities as a CNA as well as his understanding of the medical literature regarding causation of carpal tunnel syndrome. *Id.* He also testified that he did not have enough information to opine if the incident of a patient falling on Petitioner's hands in May 2019 could have exacerbated the carpal tunnel syndrome. *Id.* He testified Petitioner's treatment had been reasonable and appropriate and the surgery on the left had resulted in an improved outcome. *Id.* Dr. Papierski testified he would expect Petitioner to be off work for 2-4 weeks after the right carpal tunnel release surgery but he expected her to be able to return to her work as a CNA. *Id.*

Dr. Papierski further testified the restrictions of sedentary work he had placed on Petitioner were not permanent and he expected a full duty release after Petitioner had undergone the recommended treatment. *Id.*

Upon cross-examination Dr. Papierski testified Petitioner did not relate her symptoms to her employment anywhere in the August 20, 2019 record and that neither did he include a causation opinion in that record. *Id.* He testified that he was surprised Petitioner did not report to him that her symptoms had been present since 2015 but explained it might not be unreasonable especially if the symptoms were mild back then. *Id.* However, Dr. Papierski testified it would be odd if Petitioner had not mentioned her symptoms where they had been severe enough to require an EMG study with the conclusion of moderate to severe CTS. *Id. X*

Dr. Papierski testified he never attempted to get Petitioner's records from IBJI but his opinion of causation would not be changed by the fact that on October 10, 2019 Petitioner did not relate her symptoms to be related to her employment in the intake form. *Id.* He testified it was not normal practice to take patients with carpal tunnel syndrome off work pre-operatively and he did not believe Petitioner needed to be off work after the August 2019 appointment. *Id.*

Dr. Papierski testified he was not aware exactly when he formed the opinion that Petitioner's condition was related to her employment. *Id.* He testified that based on his records Petitioner did not ever mention the incident from May 14, 2019 involving a patient falling on her hands. *Id.*

He testified that there was some variability in the job duties of a CNA but the work still involved holding on to objects like grill, broom, wash rag, towel, changing bedsheets, and grasping items. *Id.* He testified that Petitioner had three additional risk factors that increased the chances of her developing CTS – she was a female, older, and obese. *Id.* He testified based on this information Petitioner had significant risk factors to develop CTS irrespective of her employment as CNA. *Id.*

Dr. Papierski testified that while a person could aggravate CTS due to trauma, whether the effect would be temporary or permanent would depend on the period of swelling after the trauma and how fast the swelling went down. *Id.* He testified that if there was no swelling after the incident then it is likely the incident did not have any effect on the existing CTS. *Id.*

Deposition Testimony of Dr. Vender on October 16, 2020

In his deposition Dr. Vender testified he is extremely familiar with the condition of carpal tunnel syndrome, its causes, and treatment involved. *Resp. Ex. 4.* He testified that he was requested to perform a records review and had been provided Petitioner's medical records for this purpose. *Id.* In this process he had prepared a report dated July 13, 2020 that included his findings and conclusions. *Id.* Dr. Vender testified that he was provided the medical records from Chicago Hand & Orthopedic Surgery Centers, of Dr. Papierski, from Fahey Medical Center, from Dr. Luis Gonzalez-Orozco, from Illinois Bone & Joint, from Dr. Baxamusa, and the operative report from September 13, 2019. *Id.*

Dr. Vender testified Petitioner first presented to her primary care physician in September 2015 complaining of symptoms consistent with carpal tunnel syndrome – numbness and tingling. *Id.* He testified that based on his review of the medical records Petitioner had not related these symptoms to her employment. *Id.* Dr. Vender testified Petitioner underwent EMG study in 2015 and was evaluated by a hand surgeon, she then saw another upper extremity surgeon and had a repeat EMG in 2017 followed by evaluations by her primary care physician. *Id.* Dr. Vender testified Petitioner had another EMG in 2019 and then came under the care of another upper extremity surgeon. *Id.*

Dr. Vender testified his interpretation of the EMG tests from 2015, 2017, and 2019 was that Petitioner had bilateral carpal tunnel syndrome, which was severe in nature. *Id.* He testified that to his knowledge – based on the review of the medical records – at no time did Petitioner mention the incident of a patient falling on her outstretched hands. *Id.* He testified that he agreed with the diagnoses of status post carpal tunnel release on the left and ongoing carpal tunnel syndrome on the right. *Id.*

Dr. Vender testified he was familiar with the activities that were performed by a CNA on a regular and daily basis and it was his opinion such activities did not contribute to carpal tunnel syndrome. *Id.* He testified that he did not consider the type of activities performed by Petitioner to be repetitive. *Id.* Dr. Vender testified Petitioner's significantly high body mass index was a major risk factor in the development of CTS and even if the CTS was developed independent of her work, he did not believe the job duties as a CNA could have aggravated or exacerbated her condition. *Id.* He explained this was because the type of activities she performed would not be considered contributory to the development of CTS. *Id.*

He testified that while Petitioner needed the left and right carpal tunnel release surgeries, it was not due to her employment with Respondent. *Id.* He testified Petitioner did not need any further treatment with respect to her left and she could return to full duty work. *Id.* This was true with respect to the right hand as well. *Id.* Dr. Vender testified Petitioner was at maximum medical improvement with respect to the left hand but needed the release surgery on the right. *Id.*

Dr. Vender testified in forming his opinion about there being no causal connection between Petitioner's diagnosis of CTS and her work, he looked for force and exertional activities performed with duration on a permanent basis. *Id.* He testified the activities would need to be forceful with an element of repetitiveness – so the question was what is being done repetitively and for what during is something being done repetitively. *Id.* Dr. Vender testified in Petitioner's case repetitive was not even an issue since the job did not involve the same activity being performed over and over again. *Id.* Furthermore, he testified that significant time was downtime, which did not involve significant use of the hands. *Id.*

According to Dr. Vender, when Petitioner used her hands it was of routine nature and while there was some lifting, maneuvering, and transporting involved, it was no different from anyone else who needed to undertake forceful activities on an intermittent basis. *Id.*

Upon cross-examination Dr. Vender testified his opinions were based on a general understanding of what a CNA did and not on a specific description of the work Petitioner was performing. *Id.* He testified that generally trauma could exacerbate or aggravate carpal tunnel syndrome, it was unusual and in Petitioner's case it was speculative since it was unknown if the incident resulted in a significant injury. *Id.*

Dr. Vender testified he could not provide an opinion on whether there was any progression in Petitioner's condition between 2015 and 2019 since the reports already categorized the CTS as severe in all three cases. *Id.* He testified that Petitioner was status post-surgery on her left hand but still had CTS on the right. *Id.* He testified that based on his review of the records there was no treatment sought by Petitioner for her CTS issues between September 21, 2015 and October 10, 2017. *Id.* He testified that to his knowledge Petitioner was neither off work nor on any restrictions during this time. *Id.* He agreed that there was no indication in September 2015 that Petitioner had any knowledge that her symptoms were related to her work duties. *Id.*

Upon re-direct examination Dr. Vender testified the EMG in 2015 described Petitioner's CTS to be severe in nature.

CONCLUSION OF LAW

In support of the Arbitrator's decision with respect to (C) accident and (F) causal connection, the Arbitrator makes the following findings and conclusions:

A Claimant has the burden of proving, by a preponderance of credible evidence, all of the elements of her claim, including whether the injury arose out of and in the course of the employment. *Parro v. Industrial Commission*, 260 Ill.App.3d 551 (1993).

A Petitioner who alleges injury based on repetitive trauma must meet the same burden of proof as a claimant who alleges an acute injury. *Durand v. Industrial Commission,* 224 Ill. 2d 53 (2006). The claimant must identify the date on which the injury "manifested itself". The manifestation date has been defined as the date upon which both the fact of injury and the causal relationship of the injury to the employment would have become plainly apparent to a reasonable person. (*Id.* at 65). A decision by the Commission cannot be based on speculation or conjecture. *Deere & Company v. Industrial Commission,* 47 Ill.2d 144 (1970).

Petitioner failed to prove by a preponderance of credible evidence that she sustained an accidental injury that arose out of and in the course of her employment with Respondent. In reaching this decision the Arbitrator finds that Petitioner's testimony was not sufficient to carry her burden of proof, especially in light of the longstanding principle expressed in *Shell Oil v. Industrial Commission*, 2 Ill.2d 590 (1954), where the Illinois Supreme Court held that contemporaneous medical records are more reliable than later testimony because "It is presumed that a person will not falsify such statements to a physician from whom [she] expects and hopes to receive medical aid."

A review of Petitioner's medical records repeatedly show that despite her testimony, she failed to relate her symptoms to her employment on multiple occasions. Petitioner first saw her primary care physician – Dr. Gonzalez Orozco – on September 21, 2015 and reported a tingling sensation in both hands. *Resp. Ex. 1.* At no point during this visit did she or her doctor relate her symptoms to her employment with Respondent. While it can be argued that Petitioner was unaware of the causal connection between her symptoms and her employment at this time, the testimony of Petitioner directly contradicts this argument. During arbitration Petitioner unequivocally stated that she informed Dr. Gonzalez-Orozco her symptoms were a result of her employment. *Tr. p. 47-48.* If this is true, then clearly Petitioner was aware of the relation between her symptoms and her employment – however, not only did she fail to mention it to her doctor during the September 2015 appointment, she also failed to initiate workers' compensation proceedings at her place of employment.

Petitioner attempts to cure this mistake by claiming that while she informed Dr. Gonzalez-Orozco about the causal connection, she could not be sure whether he noted it in his records. *See Tr. p. 47-*

48. The Arbitrator remains unconvinced by this argument because it is implausible that a reasonable physician will fail to document such important information in the medical records.

In further support of his decision, the Arbitrator points to the deposition of Dr. Vender wherein he was asked the following question by counsel for Petitioner:

Q: "Okay. And I think that you said this, but in September of 2015, there is no indication that Mrs. Martinez had any knowledge that the tingling in her hands was related to her work duties; is that true?" *Resp. Ex. 4, p. 27.*

The most obvious conclusion that can be drawn from this is that Petitioner was unaware of a relation between her symptoms and her employment back in 2015. And yet, at the time of arbitration Petitioner testified that not only was she knowledgeable about this relationship, but that she also informed her doctor about it. This leads the arbitrator to conclude that Petitioner was testifying in a self-serving manner rather than making an effort to be truthful.

The same questions can also be raised regarding the 2017 medical records from Illinois Bone & Joint. After a gap of more than 2 years, Petitioner sought treatment with Dr. Baxamusa on October 10, 2017. *Resp. Ex. 3.* She filled out an intake form prior to this visit in which she clearly stated her symptoms were "sudden" and failed to identify work as the place where they first manifested. *Id.* Petitioner was questioned about this form by her attorney, and she testified the form was filled out by her daughter since she spoke and wrote very little English. *Tr. p. 31.* During cross-examination Petitioner testified that while her daughter had asked her for answers to most of the questions, there were some questions her daughter had filled out on her own. *Tr. p. 50.* Petitioner also testified she did not check the intake form for accuracy because she trusted her daughter. *Tr. p. 49-50.*

The medical record from the October 10, 2017 visit submitted into evidence by both parties shows Petitioner presented with numbness, tingling, and paresthesia in bilateral upper extremities. *Resp. Ex. 2.* She reported to having had a workup in 2015 and being diagnosed with carpal tunnel syndrome, which had been treated with splinting and nonsteroidals. *Id.* She was working full duty and most importantly Petitioner sated "this [was] not a Workers' Compensation claim" and she was using her private insurance for the visit. *Id.*

Thus, again, Petitioner's testimony during trial is directly contradicted by the medical records that have been entered into evidence. While the Arbitrator finds it plausible the intake form from October 10, 2017 was filled out by Petitioner's daughter, he is unconvinced that Petitioner did not provide all the answers to her daughter. Petitioner admits that her daughter asked her the answers to most of the questions and because the answer to the question where the injury occurred is inconsistent with her testimony, she wants the Commission to conclude this was one of the questions her daughter filled out on her own. However, the Arbitrator remains unconvinced and finds this to be another instance of Petitioner's testimony being self-serving rather than truthful.

A quick look at the intake form shows that the first couple of questions asked what had caused the injury and where the injury occurred. *Id.* The question asking what the injury was due to included options of car accident, work injury, sports injury, fall, and other as the options for an answer. Petitioner – through her daughter – chose to forego the answer of "work injury," and circled "other" as the answer while explaining the injury was due to "sudden pain." *See Rep. Ex. 2.* The very next question – "the injury occurred at" – also offered home, work, school, and other as the potential answers. Again, Petitioner could have easily chosen work as the option and yet she circled "other" as her answer. *Id.* Thus, at the time of seeking treatment Petitioner had at least two chances to report her symptoms were related to her work, and on both occasions, she chose to select another option.

The Arbitrator remains unconvinced by Petitioner's claims that these answers were provided by her daughter without her input. In support of this decision the Arbitrator notes that these were the first and second questions on the intake form related to the injury/symptoms and it is unreasonable to conclude Petitioner's daughter would not have asked Petitioner while answering these relatively important questions. Furthermore, Petitioner's testimony is that she was always aware her symptoms were a result of her employment, even back in 2015. Thus, it would be reasonable to conclude that not only was her family aware of these symptoms but that she had also discussed her symptoms and the reasons for the same with her family, including her daughter. On the other hand, if Petitioner had never discussed the reason for her symptoms with her daughter, then it is reasonable to expect that her daughter would have asked Petitioner for her input while filling out the intake form. The Arbitrator notes this scenario is highly unlikely since the intake form also shows Petitioner lives with her husband, three children, and one grandson. *Resp. Ex. 2.*

Petitioner's credibility is further called into question by her testimony regarding the November 14, 2017 appointment with Dr. Baxamusa. She testified that in 2017 she decided against surgery because Dr. Baxamusa asked her to return to work and make sure workers' compensation insurance would be taking over the cost of surgery. *Tr. p. 33.* However, a review of the actual records prove these claims to be patently false and again self-serving. The record from November 14, 2017 document Dr. Baxamusa recommended surgery to Petitioner for her advanced CTS but it was her decision to hold off on both surgery as well as the cortisone injection since she wanted to discuss her options with her family. *Pet. Ex. 5.* Furthermore, the Arbitrator is confused by Petitioner claiming Dr. Baxamusa was asking her to make sure workers' compensation was covering the cost of treatment because none of his records (until this point) show any indication he considered this to be a workers' compensation claim. If he had, then surely he would have documented it as such, just like he did later on July 19, 2019. Finally, a quick review of the medical bill statement submitted into evidence by Petitioner herself clearly shows that the bills for Dr. Baxamusa's visit were being paid by BCBS and Petitioner herself. *Pet. Ex. 8.* Therefore, the Arbitrator remains unconvinced that Dr. Baxamusa would have asked Petitioner to secure workers' compensation insurance when his past bills had been sent to Petitioner's private insurance.

The first documented instance of Petitioner relating her employment to her symptoms occurs in the medical record from July 9, 2019. *Pet Ex. 5.* During this visit Petitioner reported to Dr. Baxamusa

she had filed a workers' compensation claim, requested she be taken off work, and asked him to fill out FMLA paperwork. *Id.* Dr. Baxamusa also documented Petitioner was disinterested in her job and did not want to return to work. *Id.* Per the admitted records, Dr. Baxamusa refused to fill out the FMLA paperwork, allowed Petitioner to return to full duty work, and encouraged her to secure a second opinion if she did not agree with his treatment plan. *Id.* Not surprisingly, this was Petitioner's last visit with Dr. Baxamusa.

During arbitration, however, Petitioner testified this was the last date she saw Dr. Baxamusa because he did not want to treat her anymore due to an unpaid bill. *Tr. p. 37.* She then testified Dr. Baxamusa had stopped treating her because this was a workers' compensation claim, and the insurance was not paying his bills. *Id.* Again, these claims are contradicted by the medical records and the billing statements entered into evidence.

Petitioner's Exhibit 8 includes a billing statement from Illinois Bone & Joint and a quick review of the statement shows that only potential outstanding bill at the time of the July 2019 appointment could be the bill from the June 2019 appointment since it was paid on July 15, 2019. *Pet. Ex. 8.* The rest of the bills had clearly been paid by Petitioner's private insurance. The Arbitrator also notes that in his experience doctors are rarely involved with the billing process and thus he finds it hard to believe that Dr. Baxamusa would (1) have been aware of the potential outstanding bill from last month's appointment and (2) considered it important enough to refuse treatment to Petitioner thereby making himself vulnerable to a potential malpractice claim.

Thus, the Arbitrator is more inclined to believe the information contained in the medical record of July 9, 2019 rather than Petitioner's testimony about that visit. The record states that July 2019 was the first time Petitioner filed a workers' compensation claim. However, it is unlikely this referred to the filing of an Application for the Adjustment of Claim since Petitioner told Dr. Baxamusa she did not have an attorney and the claim was not filed at the Commission until November 2019. *See Pet. Ex. 7.* The only other conclusion that can be drawn is that when Petitioner told Dr. Baxamusa she had filed a claim, she meant she had started the proceeding at her place of employment. This again raises questions regarding the truthfulness of her testimony since she testified to informing her boss of the symptoms and causal connection back in 2017. *See Tr. p. 43-33.*

When Petitioner came under the care of Dr. Papierski, she <u>again failed</u> to relate her ongoing symptoms to her employment. *See. Resp. Ex. 2 and 3.* In fact none of Dr. Papierski's medical records include an opinion on causation and when asked during his deposition about when he realized this was a workers' compensation claim, Dr. Papierski was unable to provide a definitive answer. *Pet. Ex. p. 52-54.* Dr. Papierski also admitted under cross-examination that he found it odd that Petitioner did not inform him about seeking treatment for her bilateral CTS in 2015. *Pet. Ex. p. 46-47.*

Petitioner has claimed she informed all her doctors regarding her suspicion about the CTS being a result of her employment with Respondent. While it could potentially have been possible for one provider to accidentally fail to include Petitioner's suspicions regarding causal connection, it is

unlikely that all three doctors would have made the same mistake in all their records. And yet, this is exactly what Petitioner wants the Commission to believe by claiming Dr. Gonzalez-Orozco, Dr. Baxamusa, and Dr. Papierski failed to note her informing them her CTS symptoms were a result of her employment with Respondent. This led the Arbitrator to conclude that is it much more likely Petitioner made no such claims to her doctors at the time she visited them for her symptoms.

In repetitive trauma claims, the claimant generally relies on medical testimony establishing a causal connection between the work performed and the claimant's disability. Williams v. Industrial Commission, 244 Ill. App. 3rd 204 (1st Dist. 1993). The sole fact that Petitioner's symptoms manifested while working does not amount to a compensable repetitive trauma claim. The essence of any repetitive trauma claim is the *gradual* deterioration of or injury to a body part. An employee seeking benefits for gradual injury due to repetitive trauma must meet the same standard of proof as a Petitioner alleging a single identifiable accident, Williams at 209.

The Arbitrator finds that Petitioner has been unable to establish that her work activities contributed to her developing and/or aggravating/exacerbating bilateral carpal tunnel syndrome. In attempting to form a causal connection, she has relied on her own testimony regarding her work activities as well as the causation opinion from Dr. Papierski.

Case law has established that medical experts must have a detailed and accurate understanding of Petitioner's job duties and the medical opinion offered must be based upon sound knowledge of the actual job duties. Gora v. State of Illinois, Department of Transportation. (05 IWCC 901). The weight accorded to an expert's opinion must be measured by the facts supporting the opinions and the reasons given for his or her conclusions. Doser v. Savage Manufacturing and Sales Inc., 142 Ill.2d 176 (1990).

The Arbitrator finds that Petitioner does not have a credible medical opinion upon which to rely because at no point during her treatment with Dr. Papierski did she ever explain to him the work activities she performed as a nurse's aide. The only time Dr. Papierski was provided a description of the type of activities performed by Petitioner is during the evidence deposition, when he was asked to assume the activities Petitioner would testify to performing at arbitration. *Pet. Ex. p. 14-15.* This leads a reasonable person to conclude that Dr. Papierski was not provided with any description of Petitioner's job activities prior to the day the deposition was conducted – June 19, 2020. Therefore, Dr. Papierski's opinion of causation was based on his personal understanding of the work performed by a nurse's aide rather than a knowledge of the specific work performed by Petitioner.

On the other hand, Respondent's Section 12 expert – Dr. Vender – had the opportunity to understand the exact type of work performed by Petitioner when he evaluated her on August 31, 2021. In his report, Dr. Vender states clearly, he questioned Petitioner about the type of activities she performed while employed with Respondent and she explained her work involved lifting patients, re-positioning them, dressing them, feeding them, and performing hygiene activities. *Resp. Ex. 6.* This is consistent with the type of activities Petitioner testified to performing during the trial. Therefore,

the Arbitrator concludes Dr. Vender clearly had a better understanding of the work performed by Petitioner when he opined a lack of causal connection than Dr. Papierski had when he opined causation.

The Arbitrator is further convinced by the rationale provided by Dr. Vender in support of his opinion than that provided by Dr. Papierski. When asked why he considered Petitioner's bilateral CTS to be related to her employment. Dr. Papierski testified his opinion was based on his understanding of her activities as a CNA and understanding of the medical literature regarding causation of CTS. *Pet. Ex. 1 p 36-38.* However, as noted above it is clear Dr. Papierski had been provided with minimal understanding of the work performed by Petitioner when she had been employed with Respondent. Dr. Vender, on the other hand, had knowledge of the work performed by Petitioner and with this knowledge was able to opine that her work would not be considered repetitive or forceful and exertional on a regular and persistent basis. *Resp. Ex. 6.*

During his evidence deposition Dr. Vender testified that repetitive activities by themselves were not sufficient to develop or aggravate carpal tunnel syndrome; instead, one had to look for the type of activity being done repeatedly and the duration for which the activity was being performed. *Resp. Ex. 4 p 16.* Dr. Vender further explained Petitioner's job did not consist of the same activity being performed over and over again and while there were forceful activities involved like lifting, maneuvering, and transporting, they were done intermittently rather than persistently. *Id at 16-17.*

Petitioner testified her job involved lifting patients (from bed to wheelchair and back), maneuvering them (repositioning, turning, rolling them over), dressing them, feeding them, and performing hygiene activities. *Tr. p. 11-12.* The Arbitrator finds this description more consistent with Dr. Vender's understanding of the job activities of a CNA rather than Dr. Papierski's. This further supports his decision to give more weight to the opinions of Dr. Vender rather than those of Dr. Papierski.

Therefore, the only evidence in support of Petitioner's claims of causation is her own testimony regarding the manifestation of symptoms as well as the type of work performed by her.

The Arbitrator remains unconvinced Petitioner's job duties as a CNA for Respondent involved repetitive and persistent use of her hands that would cause her to develop and/or aggravate bilateral CTS. While it is true her work did involve using force to lift and maneuver patients, this was more intermittent than on a constant basis. In support of this conclusion the Arbitrator notes that during cross-examination Petitioner admitted the act of changing beds was not just moving from one bed to the other while changing sheets. Instead, it involved first gathering supplies, going to the room, changing the bed, putting the soiled sheets back in the hamper, getting new linens, washing her hands, doing a couple more things, and then going to the next room. *Tr. p. 56.* While Petitioner was unable to quantify the amount of this downtime, her answer – that it depended on a case-to-case basis – indicates there was some downtime built into the work as was indicated by Dr. Vender in his opinion denying causation.

It must also be noted that Petitioner's symptoms have continued despite her not having worked for Respondent for the last two and a half years, thereby raising further question regarding there being a causal connection between her employment with Respondent and her current condition of ill-being.

Credibility

Among the factors to be considered in determining whether the Claimant has carried her burden is her credibility. Credibility is the quality of a witness, which renders her evidence worthy of belief. The Arbitrator, whose province it is to evaluate credibility, evaluates a witness' demeanor and internal and external inconsistencies in her testimony.

The Arbitrator agrees that Petitioner gave detailed information about the various work responsibilities that could have caused her to develop bilateral carpal tunnel syndrome; however, she failed to mention those facts to any of her medical providers. This leaves an impression for the Arbitrator that Petitioner's testimony was more of an embellishment rather than an accurate recitation of the events.

The Arbitrator also places weight on many other inconsistencies in Petitioner's testimony that further diminish her credibility. The Arbitrator is unable to reconcile Petitioner's testimony that she was aware of the causal relationship between her symptoms and her employment in 2015 and yet was unaware of it as indicated during Dr. Vender's evidence deposition. Petitioner testified she was involved in a work event in May 2019 when a patient fell on her outstretched arm causing her symptoms to worsen and yet failed to mention this incident to any of her medical providers. Medical records show Petitioner was living with her children in 2017 and yet it is her testimony that her daughter, who filled out the intake form in 2017 was unaware her symptoms were caused by her employment.

At the trial Petitioner testified she spoke very little English and yet upon cross-examination she admitted that she was able to communicate with her patients and her co-workers in English very well. Medical records show Petitioner asked Dr. Baxamusa to fill out FMLA paperwork and yet she refused she ever made this request during trial. Finally, the Arbitrator is also troubled by the documented reluctance of Petitioner to return to work indicated by (1) her statement to Dr. Baxamusa in July 2019 that she did not want to return to work; (2) her decision to not return to work even though Dr. Papierski did not take her off work until September 2019; (3) while both Dr. Vender and Dr. Papierski testified she had regained full use of her left hand, Petitioner testified that she was unable to lift more than 10 lbs.

The Arbitrator notes that compensation has been denied in similar repetitive trauma cases where the Petitioner's description of job duties contradict the credible evidence in the record and where the treating physician did not have an adequate understanding of the Petitioner's job duties. *See* Trinidad Castillo v. Consolidated Container Corp., (21 IWCC 0032 compensation denied where

Petitioner's self-described job duties were not believable or credible, and where treating physician's opinions were based on an inaccurate history.) Lori Smith v Havana Amusements (16 IWCC 598, compensation denied where claimant's job duties were exaggerated and Respondent's IME physician concluded that the job duties were not forceful or repetitive enough to have caused the claimant's conditions); Andri Yanders v Bodine Services of Decatur Inc., (15 IWCC 00097, compensation denied where work history Petitioner provided to her medical providers were varied, inconsistent and contradictory to the evidence Respondent submitted regarding job duties); Gaither v. Caterpillar (14 IWCC 0490, compensation denied where Petitioner's self-described job duties were inconsistent with the credible evidence in the record which showed that Petitioner worked 21 days for Respondent, and that the frequency, duration and manner in which Petitioner worked did not constitute a repetitive activity that could have *gradually* caused deterioration or injury.).

Therefore, after having considered all of the evidence in the record, as well as Petitioner's credibility, the Arbitrator concludes that Petitioner has failed to meet her burden of proof to (1) show she was involved in an accident that arose out of and in the course of her employment with Respondent on October 1, 2017 and (2) prove that her current condition of ill-being was caused by the work accident of October 1, 2017.

In support of the Arbitrator's decision with respect to (E), whether timely notice was given to Respondent, the Arbitrator makes the following findings and conclusions

The Arbitrator finds and concludes that the issue of notice is moot as Petitioner failed to prove she sustained an accident which arose out of and in the course of employment and failed to prove a causal connection exists between her current condition of ill-being and the alleged accident and her work activities.

In support of the Arbitrator's decision with respect to (J) were the medical services that were provided to Petitioner reasonable and necessary and if Respondent has paid all appropriate charges, the Arbitrator makes the following findings and conclusions:

The Arbitrator finds and concludes that the issue of medical services is moot as Petitioner failed to prove she sustained an accident which arose out of and in the course of employment and failed to prove a causal connection exists between her current condition of ill-being and the alleged accident and her work activities.

In support of the Arbitrator's decision with respect to (K) if Petitioner is entitled to prospective medical care, the Arbitrator makes the following findings and conclusions:

The Arbitrator finds and concludes that the issue of prospective medical care is moot as Petitioner failed to prove she sustained an accident which arose out of and in the course of employment and

failed to prove a causal connection exists between her current condition of ill-being and the alleged accident and her work activities.

In support of the Arbitrator's decision with respect to (L) TTD benefits, the Arbitrator makes the following findings and conclusions:

The Arbitrator finds and concludes that the issue of TTD benefits is moot as Petitioner failed to prove she sustained an accident which arose out of and in the course of employment and failed to prove a causal connection exists between her current condition of ill-being and the alleged accident and her work activities.

Even if, for argument's sake, it is assumed Petitioner had satisfied her burden of proof with respect to accident and causal connection, medical records show Petitioner was taken off work by Dr. Papierski on September 13, 2019 and she actively treated for her condition until April 24, 2020 – after which she voluntarily stopped treating. Therefore, in the absence of ongoing medical visits and off work notes by a medical professional, the Arbitrator finds Respondent's responsibility to pay TTD benefits ended when Petitioner made the voluntary decision to stop treating. As such, if causation was found, the Arbitrator finds Respondent to be liable for TTD benefits over the period of September 13, 2019 until April 24, 2020 – 32 and 1/7 weeks.

In support of the Arbitrator's decision with respect to (N) if Respondent is due any credit, the Arbitrator makes the following findings and conclusions:

Respondent's exhibit 5 shows Petitioner was paid short term disability benefits for the period between July 1, 2019 until November 13, 2019 in the amount of $5,424.45. As such Respondent is entitled to credit for the same amount under Section 8(j) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC006122
Case Name	Rory M Litka v. Hinsdale Electric Co Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0204
Number of Pages of Decision	40
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Brian Teven
Respondent Attorney	Gregory Rode

DATE FILED: 5/8/2023

/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

RORY LITKA,

Petitioner,

vs. NO: 19 WC 6122

HINSDALE ELECTRIC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §§8(a)19(b) of the Act having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, temporary total disability benefits, and medical expenses both current and prospective, and being advised of the facts and law, changes the Decision of the Arbitrator as specified below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

Petitioner worked for Respondent as a journeyman electrician. The parties stipulated that he sustained a compensable accident on November 27, 2018 and that he suffered an injury to his right shoulder in that accident. The Arbitrator also found that the accident caused a condition of ill-being of his right knee. The Arbitrator awarded Petitioner 165&2/7 weeks of temporary total disability benefits (through the date of arbitration), medical expenses submitted into evidence, and ordered Respondent to authorize and pay for prospective treatment recommended by Dr. Chams including a right knee arthroscopy with partial meniscectomy/chondroplasty.

An MRI of the right was knee taken on December 17, 2018. It showed a complex tear involving body/posterior horn of medical meniscus, myxoid degeneration in the anterior horn of the medial meniscus in both horns of lateral meniscus, sprain of ACL, Grade I injury of the MCL, minimal synovial effusion/Baker's cyst, mild degenerative joint disease of "knee joint," Grade III chondromalacia patellae, and mild subcutaneous edema around the knee joint.

Petitioner initially treated for his right shoulder condition. On March 11, 2019, Dr. Chams performed surgery on his shoulder. Concurrently, Dr. Chams was also treating Petitioner's knee conservatively with physical therapy and injections. About six weeks after the shoulder surgery, Dr. Chams noted that it would be difficult to rehabilitate the shoulder until the knee condition was addressed surgically. On February 24, 2020, Petitioner saw Dr. Tu for a second opinion regarding the efficacy of knee surgery. He concluded that surgery was indicated and that either arthroscopy or arthroplasty were both reasonable surgical alternatives. Respondent's Section 12 medical examiner, Dr. Cherf, diagnosed Petitioner with end-stage, bone-on-bone arthritis of the right knee. Based on the extent of the arthritis, Dr. Cherf was skeptical that arthroscopic surgery would provide any real benefit for Petitioner. Dr. Chams disagreed with Dr. Cherf's assessment that Petitioner had end-stage arthritis and he believed that the surgery would address Petitioner's mechanical knee issues, but it would not resolve his arthritis. However, he also acknowledged that Petitioner would likely need a knee replacement in the future.

The Commission agrees with the Decision of the Arbitrator regarding causation, temporary total disability benefits and the award of current medical expenses. Accordingly, the Commission affirms and adopts those aspects of the Decision of the Arbitrator. However, the Commission believes the specificity of the Arbitrator's award for prospective surgery may be too confining. As noted above, the initial recommendation for surgery was in April of 2019, more than four years ago. It is not at all clear that the surgery that Dr. Chams recommended four years ago would still be indicated. Therefore, the Commission changes the award for prospective medical treatment to allow Dr. Chams to re-evaluate Petitioner and re-evaluate prospective treatment options.

The MRI showed both acute as well as chronic pathology. While Dr. Chams, acknowledged that knee replacement is primarily performed to address arthritis, the Commission concludes that the work-related accident not only caused acute injuries to Petitioner's meniscus and ligaments but also aggravated the pre-existing arthritic condition of his right knee. Therefore, any recommendation for prospective treatment Dr. Chams may make would be causally related to his work accident on November 27, 2018.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 7, 2022 is hereby changed as specified above and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner temporary total disability benefits of $1,147.06 per week for 165&2/7 weeks commencing November 28, 2018 through January 27, 2022, the date of arbitration, as provided in §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMMISSION that by stipulation of the parties, Respondent is awarded credit in the amount of $69,021.16 for temporary total disability benefits paid to Petitioner.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay all unpaid necessary and reasonable medical expenses incurred to treat Petitioner's right shoulder and right knee conditions of ill-being through the date of arbitration, pursuant to §8(a), and subject to the applicable fee schedule in §8.2, of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for prospective medical treatment recommend by Dr. Chams to address the condition of ill-being of Petitioner's right knee.

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.

May 8, 2023

O-3/8/23
DLS/dw
046

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC006122
Case Name	LITKA, RORY M v. HINSDALE ELECTRIC CO., INC.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	36
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Jennifer Kelly
Respondent Attorney	Gregory Rode

DATE FILED: 6/7/2022

/s/Ana Vazquez, Arbitrator

Signature

INTEREST RATE WEEK OF JUNE 7, 2022 1.71%

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

Rory M. Litka
Employee/Petitioner

v.

Hinsdale Electric Co.
Employer/Respondent

Case # **19** WC **006122**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, on **January 27, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **11/27/2018**, 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 $**89,470.68**; the average weekly wage was $**1,720.59**.

On the date of accident, Petitioner was **44** years of age, ***married*** with 2 dependent children.

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

Respondent shall be given a credit of $**69,021.16** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**69,021.16**.

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

ORDER

Per stipulation, Respondent is entitled to a credit in the amount of $12,208.05 for a Permanent Partial Disability advance payment made to Petitioner, at the time that the nature and extent of the injury is considered and/or addressed. See Rx 2.

Respondent shall pay Petitioner temporary total disability benefits of $1,147.06/week for 165 2/7 weeks commencing November 28, 2018 through January 27, 2022, the date of arbitration, as provided in Section 8(b) of the Act. Per stipulation, Respondent is entitled to a credit in the amount of $69,021.16 for temporary total disability benefits paid to Petitioner.

Petitioner's claim for unpaid medical bills is granted and all bills, for the necessary and reasonable treatment of Petitioner's right shoulder and right knee conditions, incurred on or prior to the date of arbitration, January 27, 2022, are awarded and Respondent is liable for payment of same, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and is liable for the prospective medical treatment plan recommended by Dr. Chams, including a right knee arthroscopy with partial meniscectomy and partial chondroplasty.

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

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

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

Ana Vazquez

_____

Signature of Arbitrator

June 7, 2022

ICArbDec19(b)

FINDINGS OF FACT

This matter proceeded to trial on January 27, 2022, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act ("the Act"). The Parties stipulated that Respondent is entitled to a credit in the amount of $69,021.16 for temporary total disability paid to Petitioner and that Respondent is entitled to a credit in the amount of $12,208.05 for a permanent partial disability advance paid to Petitioner. Arbitrator's Exhibit ("Ax") 1. The issues in dispute are: (1) the causal connection between the accident and Petitioner's current condition of ill-being, (2) Petitioner's average weekly wage, (3) Respondent's liability for unpaid medical bills, (4) Petitioner's entitlement to prospective medical care, and (5) Petitioner's entitlement to temporary total disability benefits. Ax1. All other issues have been stipulated. Ax1.

Duties

On November 27, 2018, Petitioner was 44 years old and was employed as a journeyman electrician with Respondent. Tr. at 11. He had been working at Respondent since early October 2018. Tr. at 11. Petitioner's job duties included installing electrical equipment, lighting, piping, wire, distribution panels, and anything else that he was asked to install. Tr. at 11-12. Petitioner testified that as an electrician, he needs to stand, walk, crawl, squat, kneel, work with his hands, carry materials and tools, pull wire and conduit, and use fine manipulation with his hands. Tr. at 63-64.

Accident

On November 27, 2018, Petitioner reported for work at his assigned job site, a medical facility in Schaumburg, and was feeling fine. Tr. at 12. Petitioner recalled that the weather conditions when he reported for work were cold, icy, and that it had just snowed. Tr. at 12. Petitioner testified that at approximately 5:55 a.m., he took five or six steps into the building, slipped on ice, and his knee twisted and buckled, which caused him to fall. Tr. at 12-13, 60. Petitioner testified that he tried to catch himself with his right arm, which caused his shoulder to be injured. Tr. at 13, 60. Petitioner fell onto a concrete surface and his partner, Chris Rose, was present at the time of the fall. Tr. at 13. Petitioner noticed pain in his right knee and right shoulder after the incident. Tr. at 13. An incident report was completed at the scene by the superintendent, Krusinski. Tr. at 13. Petitioner testified that Krusinski was the superintendent for the general contractor and was not an employee of Respondent. Tr. at 45. Following the fall, Petitioner was driven to Alexian Brothers Hospital by an apprentice. Tr at 14. The general foreman, AJ, came to

see Petitioner at the hospital and completed additional paperwork regarding the incident while in the waiting room of the emergency department. Tr. at 14.

Post-Accident treatment

Petitioner presented at Alexian Brothers Medical Center on November 27, 2018, complaining of persistent right shoulder pain and right knee pain after slipping and falling on ice. Petitioner's Exhibit ("Px")1 at 18. Physical examination of Petitioner revealed tenderness to palpation along the anterior right shoulder with decreased range of motion secondary to pain and tenderness to palpation over the anterior aspect of the right knee with no swelling. Px1 at 18. X-rays of the right knee and right shoulder were obtained, and demonstrated (1) no evidence for fracture, dislocation, or acute bony abnormality in the right shoulder and (2) no fracture and mild degenerative changes with some joint space narrowing in the medial compartment of the right knee. Px1 at 19, 28, 29. Petitioner's diagnoses were strain of the right shoulder and right knee sprain. Px1 at 19. Petitioner was prescribed ibuprofen 600mg and Norco 5mg, and was instructed to follow up with Dr. Paul Papierski. Px1 at 19.

On November 29, 2018, Petitioner presented to Dr. Roger Chams at Illinois Bone & Joint Institute for an initial evaluation of his right shoulder and right knee. Px2 at 48, Respondent's Exhibit ("Rx") 3 at 76. Petitioner reported that he sustained a work-related injury when he slipped on ice walking into a building and fell on an outstretched arm and onto his right knee on November 27, 2018. Px2 at 48. Petitioner also complained of low back pain, pain down to the foot, pain with certain motions and positions with the right shoulder, and lateral pain on the right knee, especially with torsional movements. Px 2 at 48. Physical examination of Petitioner's right shoulder revealed positive AC joint tenderness and positive results for Neer's, Hawkins, O'Brien, isolated jobe, and apprehension/relocation tests. Px2 at 49-50. Physical examination of Petitioner's right knee revealed tenderness over the medial and lateral joint spaces and a positive patellar grind/crepitus. Px2 at 50. Dr. Chams' diagnoses were right shoulder and right knee pain. Px2 at 51. Dr. Chams administered Kenalog injections intraarticularly into the right knee and into the right shoulder. Px2 at 51. Petitioner was given prescriptions for an MR arthrogram of the right shoulder to rule out a labral tear and rotator cuff tear, for an MRI of the right knee, and for physical therapy for both the right shoulder and knee. Px2 at 51. Petitioner was kept off work pending the MRI results. Px2 at 58, Rx3 at 88. Petitioner testified that the injections provided temporary relief. Tr at 17.

A CT scan and MR arthrogram of Petitioner's right shoulder and an MRI of Petitioner's right knee were performed on December 17, 2018. Px2 at 15. The right shoulder CT scan demonstrated (1) a small partial articular surface tear in the supraspinatus tendon with mild atrophy of infraspinatus and subscapularis muscles, (2) mild changes of osteoarthritis in the glenohumeral joint, and (3) degenerative changes in the acromioclavicular joint. Px2 at 15, Rx3 at 21. The right shoulder MR arthrogram demonstrated (1) a partial tear involving the insertion of the supraspinatus tendon, (2) tendinosis of the infraspinatus and subscapularis tendons, (3) mild fatty atrophy of the infraspinatus and subscapularis muscle, (4) mild thickening of the inferior glenohumeral ligament, (5) mild changes of osteoarthritis in the glenohumeral joint, and (6) degenerative changes in the AC joint with hypertrophic spurs impinging on the musculotendinous junction of the supraspinatus. Px2 at 21-22, Rx3 at 31. The right knee MRI showed (1) a complex tear involving the body and posterior horn of the medial meniscus, (2) myxoid degeneration in the anterior horn of the medial meniscus and in both horns of the lateral meniscus, suggestive of myxoid degeneration, (3) sprain of the ACL, (4) Grade 1 injury of the MCL, the lateral collateral ligament was intact, (5) minimal synovial effusion with a Baker's cyst, (6) mild changes of osteoarthritis in the knee joint, (7) Grade III chondromalacia patellae, and (8) mild subcutaneous edema around the knee joint. Px2 at 20, Rx3 at 29.

Petitioner next saw Dr. Chams on January 8, 2019 and the MRI results of Petitioner's right knee and shoulder were reviewed. Px2 at 44, Rx3 at 72. Dr. Chams noted that the cortisone injection significantly helped Petitioner's symptoms. Px2 at 44. A positive patellar grind/crepitus was noted on exam of Petitioner's right knee. Px2 at 46. Dr. Chams noted that the MRI of the right shoulder was consistent with a rotator cuff tear and osteoarthritis, and that the MRI of the right knee was consistent with a medial meniscus tear and osteoarthritis. Px2 at 46. Dr. Chams' diagnoses were (1) right shoulder unilateral primary osteoarthritis and rotator cuff tear and (2) right knee unilateral primary osteoarthritis and medial meniscus tear, current injury. Px2 at 46. Petitioner was provided a prescription for physical therapy. Px2 at 46. Petitioner was kept off work. Px2 at 57, Rx3 at 87. Petitioner presented for physical therapy at Illinois Bone & Joint Institute on January 16, 2019. Rx4 at 3.

Petitioner returned to Dr. Chams on February 4, 2019 for follow up of his right shoulder and right knee. Px2 at 40, Rx3 at 68. Petitioner reported minimal improvement following the cortisone injection and physical therapy. Px2 at 40. Petitioner reported that he still had shoulder

pain and knee pain with activity and rest. Px2 at 40. Petitioner continued to report instability of the right knee. Px2 at 40. Tenderness over the right medial joint space was noted on exam. Px2 at 41. An x-ray of the right shoulder demonstrated (1) no evidence of collapse of the glenohumeral joint, (2) no large arthritic spur was noted, and (3) AC arthropathy was noted. Px2 at 42, 54; Rx3 at 82. A standing x-ray of Petitioner's right knee was noted to be consistent with significant joint space narrowing in the medial compartment with well-maintained joint space in the lateral compartment. Px2 at 42, 53; Rx3 at 81. Dr. Chams' impressions were (1) right shoulder incomplete rotator cuff tear and unilateral primary osteoarthritis and (2) right knee, other tear, medial meniscus, current injury and unilateral primary osteoarthritis. Px2 at 42. Conservative and surgical treatments were discussed. Px2 at 42. Petitioner elected to proceed with surgical intervention that included a right shoulder arthroscopy, rotator cuff repair, decompression, Mumford, and possible open biceps tenodesis with a right knee Monovisc injection. Px2 at 43. Petitioner was provided with a post-surgical physical therapy prescription for his right shoulder, an UltraSling, GameReady ice, and a compression device. Px2 at 43. He was also provided a prescription for continued physical therapy for his right knee. Px2 at 43. Dr. Chams noted that with the arthritic changes in Petitioner's right knee, they would proceed with conservative care at that time. Px2 at 43. Petitioner was kept off work. Px2 at 56, 213; Rx3 at 86. Petitioner recalled having throbbing pain and lack of movement of his arm and shoulder, difficulty lifting a lot of weight, and that his knee was loose and would buckle, causing him to fall or lose his balance. Tr. at 19.

On March 6, 2019, Petitioner presented to Dr. Daniel J. Goldstein, at Northwestern, for a preoperative exam. Px4 at 9-24, Rx2 at 232. On March 11, 2019, Petitioner underwent a (1) right shoulder arthroscopy with subacromial decompression, (2) distal clavicle resection and Mumford procedure, (3) rotator cuff repair, (4) long head of the biceps CW open, (5) long head of the biceps tenodesis, (6) Bankart reconstruction, and (7) right knee Monovisc injection. Px2 at 88-92, Rx2 at 252, Rx3 at 35. Petitioner's postoperative diagnoses were (1) rotator cuff tear, (2) impingement, (3) AC joint arthropathy, (4) long head of the biceps tendon tear, and (5) Bankart tear. Px2 at 88.

Petitioner returned to Dr. Chams on March 26, 2019 for follow up of his right shoulder. Px2 at 85, Rx3 at 33. Petitioner was 15-days post right shoulder arthroscopy and right knee Monovisc injection. Px2 at 85. Dr. Chams noted that Petitioner developed a rash related to contact with the GameReady, which resolved with Benadryl. Px2 at 85. Petitioner reported that his right knee symptoms had improved after the injection. Px2 at 85. The right shoulder sutures were

removed. Px2 at 85. A physical examination of Petitioner's right knee was not performed. Px2 at 85. Dr. Chams' impressions were (1) status post right shoulder rotator cuff repair, Bankart repair, decompression, Mumford, and open biceps tenodesis and (2) right knee unilateral primary osteoarthritis and other tear, medial meniscus, current injury. Px2 at 85. Petitioner was instructed to continue therapy for the right knee and begin therapy for the right shoulder and was provided with an updated physical therapy prescription. Px2 at 86. Petitioner was kept off work. Px2 at 212, Rx3 at 85. Petitioner testified that following the Monovisc injection, he still did not have full stability and that his knee would pop out on him. Tr. at 23. Petitioner resumed therapy at Illinois Bone & Joint Institute on March 27, 2019. Rx4 at 20.

On April 23, 2019, Dr. Chams noted Petitioner's concerns with the right knee meniscus tear and the MCL sprain. Px2 at 194, Rx3 at 65. He noted that the cortisone injections improved Petitioner's symptoms, but that Petitioner continued to have feelings of instability and pain on the medial side of his knee. Px2 at 194. Petitioner had been attending physical therapy and had been progressing per protocol. Px2 at 194. Petitioner had no major concerns with his right shoulder. Px2 at 194. Physical examination of Petitioner's right knee revealed medial joint line tenderness, a positive Medial McMurray's test, and positive patellar crepitus. Px2 at 194-195. Dr. Chams' diagnoses were (1) right knee meniscus tear, (2) right knee MCL sprain, and (3) right shoulder rotator cuff and labral repair. Px2 at 195. Additional therapy was ordered and Dr. Chams discussed the possibility of a right knee arthroscopy with Petitioner. Px2 at 195. Dr. Chams noted that they felt that if Petitioner did not undergo a right knee arthroscopy prior to a work conditioning program, it would be hard for Petitioner to complete the program. Px2 at 195. Petitioner was kept off work. Px2 at 195, 223; Rx3 at 84.

On June 3, 2019, Dr. Chams noted that Petitioner's right knee had not improved and that Petitioner wanted to discuss a knee arthroscopy. Px3 at 191. Dr. Chams noted that Petitioner's right shoulder was overall doing well and that Petitioner had begun a strengthening program per protocol. Px2 at 191. Petitioner reported continued instability of the knee, and Dr. Chams noted that the latest episode of instability had occurred that past weekend at Petitioner's brother's graduation where Petitioner's knee buckled twice. Px2 at 191. Dr. Chams noted that they were concerned about the instability because it could affect the recovery of Petitioner's rotator cuff, especially if Petitioner fell and had to catch himself. Px2 at 191. Dr. Chams further noted that they would like to pursue surgical management of Petitioner's right knee, but could not until Petitioner

could use crutches. Px2 at 191. On exam of Petitioner's right knee, moderate effusion and tenderness at the medial joint line was noted, patellar crepitus was present, and the Medial McMurray's was positive. Px2 at 192. On exam of Petitioner's right shoulder, Dr. Chams noted that Petitioner had full passive range of motion, but with weakness with jobe, elevation, and internal and external rotation. Px2 at 192. Dr. Chams' diagnoses were (1) postoperative labral and rotator cuff repair of the right shoulder and (2) right knee meniscus tear and osteoarthritis. Px2 at 192. Petitioner was to continue with physical therapy and remain off work. Px2 at 192, 222.

Petitioner followed up with Dr. Chams on July 29, 2019 and reported that he was doing well and had no major concerns with his right shoulder. Px2 at 187. Petitioner complained of right knee instability and pain and was concerned about the persistent instability. Px2 at 187. On exam of Petitioner's right knee, tenderness at the medial joint space and patellar grind/crepitus were noted and Petitioner had a positive Medial McMurray's. Px2 at 189. Dr. Chams' impressions were (1) status post right shoulder rotator cuff repair and labral repair and (2) right knee unilateral primary osteoarthritis and other tear of the medial meniscus, current injury. Px2 at 189. Dr. Chams administered a Kenalog injection into Petitioner's right knee. Px2 at 189. Dr. Chams prescribed continued therapy for the right shoulder and Dr. Chams noted that Petitioner had elected to proceed with a right knee arthroscopy, partial medial meniscectomy, and partial chondroplasty. Px2 at 189. Petitioner was kept off work. Px2 at 221.

On September 9, 2019, Petitioner again saw Dr. Chams. Px2 at 183. Dr. Chams noted that Petitioner was concerned with continued pain and discomfort following the July 29, 2019 cortisone injection, which provided minimal relief. Px2 at 183. Dr. Chams further noted that Petitioner was also still concerned with instability and pain in the right knee and continued weakness in the right shoulder. Px2 at 183. Physical examination of Petitioner's right knee revealed mild swelling, positive medial joint and lateral joint tenderness, and patellar grind/crepitus. Px2 at 183. Dr. Chams' diagnoses were (1) postoperative rotator cuff and labral repair of the right shoulder and (2) right knee degenerative joint disease, meniscus tear. Px2 at 185. Dr. Chams recommended physical therapy for an additional three weeks followed by work conditioning for four weeks for the shoulder. Px2 at 185. Petitioner was restricted to light duty desk work only with no lifting, pushing, or pulling. Px2 at 185, 219. Dr. Chams continued to recommend surgical treatment of Petitioner's right knee. Px2 at 185.

Petitioner underwent a work conditioning evaluation at Illinois Bone & Joint on October 1, 2019. Px2 at 112. A chart note dated October 2, 2019, reflects that Petitioner called Dr. Chams' office and reported that while he was participating in his first session of work conditioning, his right knee buckled and felt unsteady. Px2 at 73. Petitioner's physical therapy prescription and work note were updated. Px2 at 73. Petitioner was limited to desk work only and no pushing, pulling, or lifting. Px2 at 218.

Petitioner returned to Dr. Chams on October 21, 2019 for a follow up. Px2 at 178. Dr. Chams noted that Petitioner had begun work conditioning, but had increased instability and locking in the right knee at the first session. Px2 at 178. Dr. Chams further noted that Petitioner had been dealing with locking and instability since the original injury. Px2 at 178. Dr. Chams also noted that Petitioner had returned to physical therapy for his right shoulder and had not been working on his right knee due to pain and instability. Px2 at 178. Petitioner was present with his case manager and reported no new injuries to the shoulder or the right knee. Px2 at 178. On exam of his right knee, tenderness to palpation was noted at the medial and lateral joint lines, patellar crepitus was present, and the Medial McMurray's was positive. Px2 at 180. Dr. Chams' diagnoses were (1) status post right shoulder arthroscopy, Bankart repair, rotator cuff repair, decompression, Mumford, and open biceps tenodesis, (2) right knee medial meniscus tear, (3) right knee lateral meniscus tear, and (4) right knee primary osteoarthritis. Px2 at 181. Dr. Chams further noted that Petitioner had elected to proceed with surgical intervention, which included a right knee arthroscopy, a partial medial meniscus repair versus partial medial meniscectomy, lateral meniscus repair versus partial lateral meniscectomy, and possible chondroplasty. Px2 at 181. Dr. Chams instructed Petitioner to continue with physical therapy for the right shoulder. Px2 at 181. Petitioner was restricted to desk work only and no lifting, pushing, pulling, climbing, or crawling. Px2 at 181, 216.

On November 11, 2019, Petitioner reported that his knee was feeling unstable, was locking, and had been feeling unstable and locking since the original accident. Px2 at 174. Dr. Chams noted that Petitioner was awaiting surgical approval for his right knee. Px2 at 174. Dr. Chams further noted that regarding the right shoulder, Petitioner was progressing well with therapy, but was unable to complete a work conditioning program because of his knee condition. Px2 at 174. Dr. Chams also noted that Petitioner had no new falls or injuries to the right shoulder or right knee. Px2 at 174. Physical examination of Petitioner's right knee revealed tenderness to palpation over

the medial and lateral joint spaces, a positive patellar grind/crepitus, and a positive Medial and Lateral McMurray's. Px2 at 176. Dr. Chams' impressions were (1) right shoulder pain, (2) right knee medial meniscus tear, (3) right knee lateral meniscus tear, and (4) right knee primary osteoarthritis. Px2 at 176. Dr. Chams instructed Petitioner to continue with physical therapy for the right shoulder. Px2 at 176. Dr. Chams noted that he informed Petitioner that due to his age, a knee arthroscopy would be better than a knee replacement, especially because the arthroscopy would help with his symptoms. Px2 at 176. Dr. Chams further noted that Petitioner had elected to proceed with surgical intervention, which included a right knee arthroscopy, partial meniscectomy, and partial lateral meniscectomy. Px2 at 176. Petitioner was restricted to light duty desk work only, and no bending, stooping, lunging, squatting, climbing, or crawling. Px2 at 177, 215.

Petitioner next saw Dr. Chams on December 2, 2019 and reported some discomfort and weakness in the right shoulder. Px2 at 170. Petitioner also complained of right knee pain, grinding, and increased pain from sitting to standing. Px2 at 170. Petitioner's knee continued to be sore daily, and felt unstable at times. Px2 at 170. On exam of his right knee, tenderness to palpation was noted over the medial and lateral joint spaces, patellar grind was positive, and the Medial and Lateral McMurray's and patellar compression tests were positive. Px2 at 172. Dr. Chams' impressions were (1) status post right shoulder arthroscopy with rotator cuff repair, (2) other tear of medial meniscus, right knee, and (3) other tear of lateral meniscus, right knee. Px2 at 172. Dr. Chams recommended work conditioning for Petitioner's right shoulder for four weeks and continued to recommend a right knee arthroscopy. Px2 at 172. Dr. Chams noted that due to Petitioner's age, a right knee arthroscopy would be more beneficial at that time, and that Petitioner may need a total knee arthroplasty in the future. Px2 at 172. Petitioner remained restricted to light duty desk work only. Px2 at 214. Petitioner was discharged from physical therapy on December 20, 2019, having attended 86 sessions.

On February 24, 2020, Petitioner presented to Dr. Kevin C. Tu at G & T Orthopedics and Sports Medicine for a second opinion. Px3 at 1. Petitioner testified that he sought a second opinion because he was contemplating the knee surgery. Tr. at 26. Petitioner reported that he injured his knee while at work on November 27, 2018, when he walked into a building, slipped on black ice, and twisted his knee. Px3 at 1. Petitioner did not land on his knee directly. Px3 at 1. Petitioner reported that since his injury, he had undergone two cortisone injections and a viscosupplementation injection, which did not provide significant relief of his symptoms. Px3 at

1. Dr. Tu noted that Petitioner did not report any significant right knee symptoms prior to his work injury, and that Petitioner had had increasing pain and mechanical symptoms, including locking and partial giving way episodes, after the work injury. Px3 at 1. Physical examination of Petitioner's knee revealed medial joint line tenderness and mild tenderness with circumduction maneuvers. Px3 at 1. Dr. Tu reviewed the MRI of December 17, 2018 and noted that it demonstrated significant chondromalacia in the medial compartment with evidence of meniscus tearing. Px3 at 1. Dr. Tu's impression was right knee aggravation of pre-existing medial compartment arthritis. Px3 at 1. Dr. Tu noted that Petitioner sustained a twisting injury to his right knee, which was a mechanism consistent with the development of aggravation of preexisting arthritis. Px3 at 1. He further noted that it was not a temporary exacerbation as Petitioner still had persistent symptoms in his knee that were worse than when compared to prior to the injury. Px3 at 1. Dr. Tu also noted that Petitioner's treatment options were (1) a right knee arthroscopy, which would help with the mechanical symptoms, but would lead to unpredictable results or (2) a right total knee arthroplasty. Px3 at 1. Dr. Tu noted that if Petitioner underwent a knee replacement, he would need a revision in the future due to his age. Px3 at 1.

Petitioner returned to Dr. Chams on May 4, 2020 for follow up of his right shoulder and right knee. Px2 at 167, Rx10. Dr. Chams noted that Petitioner was doing well, had progressed through physical therapy, and had been doing a home program for the past five months. Px2 at 167. Dr. Chams further noted that Petitioner's shoulder was feeling good, and that Petitioner had some occasional soreness with the biceps groove, but was otherwise improving. Px2 at 167. Dr. Chams also noted that Petitioner's right knee was persistently causing him mechanical symptoms, like locking and instability, and had pain and swelling. Px2 at 167. Dr. Chams' diagnoses were (1) status post right shoulder rotator cuff repair, decompression, Mumford, and open biceps tenodesis and (2) right knee other tear of the medial and lateral meniscus, current injury and unilateral primary osteoarthritis. Px2 at 168. Regarding the right shoulder, Dr. Chams noted that Petitioner was at maximum medical improvement ("MMI") and at full duty. Px2 at 168, 210. Regarding the right knee, Dr. Chams noted that he was awaiting approval of the right knee arthroscopy due to persistent mechanical symptoms and a high risk of reinjury if Petitioner tried to return to work as an electrician because of instability and buckling. Px2 at 168. Petitioner was given restrictions for the right knee, which included light duty desk work only, and no bending, stooping, lunging, squatting, climbing, or crawling. Px2 at 210.

Petitioner next saw Dr. Chams on June 14, 2021. Px2 at 224, Rx11. Petitioner was two years post shoulder surgery. Px2 at 224. Dr. Chams noted that Petitioner had been released to full duty in May 2020 as to his right shoulder, but had not been released to return to work as to his right knee due to ongoing pain and instability. Px2 at 224. Dr. Chams also noted that Petitioner is an electrician and does a lot of ladder climbing, which Dr. Chams was not comfortable with. Px2 at 224. Dr. Chams further noted that Petitioner had continued a home exercise program for strengthening and that Petitioner continued to have buckling episodes with his right knee. Px2 at 224. Dr. Chams also noted that Petitioner had lost 186 pounds, that he continued to be significantly symptomatic to the right knee, and that he had some discomfort with reaching overhead in regards to the right shoulder. Px2 at 224. Physical examination of the right knee revealed positive medial joint line tenderness, a positive Medial McMurray's, a small effusion, and patellar crepitus throughout range of motion. Px2 at 225. X-rays of the right knee were obtained and demonstrated medial compartment narrowing bilaterally on standing view with moderately severe patellofemoral arthritic changes, and no acute bony abnormalities or fractures were present. Px2 at 225. Dr. Chams' diagnoses were (1) status post right shoulder rotator cuff repair, Bankart repair, subacromial decompression, Mumford, and open CW biceps tenodesis, (2) other tear of the medial meniscus, right knee, current injury, subsequent encounter, and (3) unilateral primary osteoarthritis, right knee. Px2 at 225. Dr. Chams continued to recommend a right knee arthroscopy with partial meniscectomy and partial chondroplasty. Px2 at 225. Dr. Chams noted that while the procedure would not likely resolve all of Petitioner's symptoms due to the arthritic changes, he believed that the meniscus tear was contributing to Petitioner's symptoms. Px2 at 225. Dr. Chams noted that Petitioner was asymptomatic to the right knee arthritis prior to the work-related injury on November 27, 2018 and that Petitioner had exhausted all conservative measures. Px2 at 226. Petitioner was kept off work and approval of the right knee surgery would be requested. Px2 at 226.

Petitioner testified that he did not see Dr. Chams regularly between May 2020 and June 2021 because they were waiting for authorization of the right knee surgery. Tr. at 29. He also testified that between 2020 and 2021, he underwent a gastric sleeve procedure for weight reduction and has successfully lost 210 pounds. Tr. at 29-30. Petitioner testified that his weight loss did not reduce his right knee symptoms. Tr. at 30. Petitioner has private health insurance through his wife,

but he has not yet undergone the knee surgery because the out-of-pocket costs would be high since Dr. Chams is out of network. Tr. at 30.

Earnings

Petitioner testified that he came to work for Respondent when Respondent put a call out, he bid on it, and he was awarded the call. Tr. at 38. The call was for an "AJW," or journeyman wireman. Tr. at 39. Petitioner testified that information regarding wages for the specific job is provided when the call is accepted. Tr. at 40. Petitioner testified that his understanding of the weekly hour expectation on the job at Respondent was 40 hours and that it was a long call. Tr. at 40. Petitioner testified that he was guaranteed 40 hours, that the call was put in for a 40-hour workweek, and that the post on the union website said it was a 40-hour workweek. Tr. at 44. Petitioner agreed that there would be an end to the job at some time. Tr. at 44. Petitioner explained that a long call was more than 14 days. Tr. at 44. In the seven weeks that Petitioner worked at Respondent, there were weeks in which he worked less than 40 hours. Tr. at 40.

Petitioner's first date of pay from Respondent was October 8, 2018 and he received payment through November 27, 2018. Tr. at 37. The last week that Petitioner worked at Respondent was for the pay period of November 19, 2018 through November 25, 2018, and Thanksgiving was that same week. Tr. at 40. Respondent stipulated that Petitioner did not work on Thursday or Friday of that week. Tr. at 40-41. Petitioner agreed that his paystubs have an entry that says "VAC" and "ADD." Tr. at 52. He explained that "VAC" was a vacation fund that went into his union account. Tr. at 52. Petitioner testified that it was "part of my total package" when asked if that was a benefit from his union and not payment for his work that week. Tr. at 53.

Petitioner has not done side work for cash over the years. Tr. at 56. Petitioner had a job as a state licensed home inspector and operated under RMSC Services. Tr. at 56. Petitioner maintained RMSC Services in good standing through 2019. Tr. at 57. Petitioner last performed work under RMSC Services in May 2018. Tr. at 71. Petitioner did not perform any work in the capacity of an inspector through RMSC Services after November 27, 2018. Tr. at 72. Petitioner did not receive any income from RMSC Services after November 27, 2018. Tr. at 72. Petitioner testified that RMSC Services was no longer in existence at the time of arbitration. Tr. at 72.

Petitioner received temporary total disability ("TTD") benefits from the date of accident through November 26, 2019. Tr. at 35. Petitioner had not returned to work at Respondent since November 27, 2018. Tr. at 36. Petitioner had not done work for any other employer since

November 27, 2018 and had not performed any work for which he received wages since November 27, 2018. Tr. at 36-37. Petitioner explained that he has been surviving financially with the help of his father, who has been giving him twice-a-month payments with the expectation that they will be repaid at the conclusion of his case. Tr. at 36, 68. Petitioner's father provides Petitioner with the payments via Zelle to his checking account. Tr. at 37, 68. Petitioner has not done any work for his father in exchange for the money that his father has provided him, his father is retired, and his father does not have a company. Tr. at 37. Petitioner considers the payments from his father to be a loan. Tr. at 37, 68. Petitioner and his father have a verbal agreement and a "printed-up-on-the-computer document" that they signed regarding Petitioner repaying the loan. Tr. at 68. Petitioner did not have a copy of the document with him at the time of arbitration. Tr. at 68. Petitioner testified that the payments or deposits made via Zelle from November 27, 2018 through the date of arbitration did not represent wages or earnings for work that he had performed. Tr. at 73.

Current condition

Petitioner testified that prior to the work accident of November 27, 2018, he was not having any problems with his right shoulder and had never undergone treatment for his right shoulder. Tr. at 31. Regarding his right knee, Petitioner acknowledged one prior visit for his right knee in August 2008 with Dr. Patek after slipping on a dog bone while at home, however, he did not return to Dr. Patek for further care. Tr. at 32. Between 2008 and November 27, 2018, Petitioner did not see any other orthopedic specialist for right knee issues. Tr. at 32. Petitioner also acknowledged telling his primary care physician, Dr. Goldstein, on August 17, 2017, that his knees were hurting because he had been working 16-hour days on his knees, when Dr. Goldstein asked him if anything was hurting him. Tr. at 32-33. Petitioner testified that at that time, no treatment was recommended for his right knee, an MRI of his right knee was not ordered, Dr. Goldstein did not refer him to an orthopedic specialist, and no work restrictions related to his right knee were imposed. Tr. at 33-34. Petitioner testified that prior to his work injury, he had never undergone a right knee MRI, he had never undergone injections to the right knee, he had never received a surgical recommendation for his right knee, and physical therapy for his right knee had never been recommended. Tr. at 34-35. Dr. Chams is the only other specialist that Petitioner has seen, besides Dr. Patek, for his right knee. Tr. at 34. Petitioner initiated treatment with Dr. Chams for his right knee on November 29, 2018. Tr. at 34. Prior to his work injury of November 27, 2018, Petitioner had been performing

full duty work as an electrician without a problem, and he has been unable to return to work as an electrician since his work injury. Tr. at 35.

Petitioner testified that following the November 27, 2018 accident, he had a couple of slips and falls when his right knee went out. Tr. at 61. Petitioner agreed that one of those instances occurred in February 2019 when he was going to his in-law's mailbox. Tr. at 62. He felt his knee buckle at that time and he had experienced weakness and buckling of his right knee since the November 27, 2018 accident. Tr. at 62. Petitioner acknowledged that he put carpeting down over rotting wood on his deck in preparation for his daughter's graduation party in June 2019. Tr. at 62.

Petitioner testified that as of the date of arbitration, he has difficulty lifting anything heavy above his head and he hears a rubber band sound and cracking in his right shoulder. Tr. at 42. He also testified that his right knee feels loose and it always makes him feel like it is going to buckle. Tr. at 43. Petitioner wishes to proceed with the right knee surgery recommended by Dr. Chams because he thinks it will make his knee feel better and allow him to go back to work. Tr. at 43.

Medical treatment prior to November 27, 2018

On August 19, 2008, Petitioner presented to Dr. Robert Patek at Illinois Bone & Joint Institute. Px2 at 38. Petitioner reported injuring his right knee on August 16, 2008. Px2 at 38. Petitioner reported waking up in the middle of the night, and stepping out of bed and on a dog bone. Px2 at 38. Petitioner felt a popping sensation in his right knee and had pain and stiffness for the first several days. Px2 at 38. Petitioner continued to work and had been working since August 16, 2008. Px2 at 38. Petitioner described the pain as achy and moderate in severity, but worse with activity, including climbing/descending stairs, squatting, kneeling, twisting, and pivoting. Px2 at 38. Petitioner denied any prior injuries to his right knee. Px2 at 38. The past surgical history notes that Petitioner underwent a left knee ACL reconstruction nine years prior. Px2 at 38. On exam, mild tenderness of the medial patellar retinaculum was noted. Px2 at 38. Petitioner had full range of motion and had mild popping in the patellofemoral space. Px2 at 38. The Lachman, drawer, and pivot-shift exams were negative. Px2 at 38. Petitioner's right knee was stable to varus and valgus stress testing. Px2 at 38. The straight leg raise test was unremarkable. Px2 at 38. X-rays of Petitioner's right knee were obtained and were unremarkable. Px2 at 38. Dr. Patek diagnosed (1) lateral patellar subluxation, right knee, (2) patellofemoral chondrosis, right knee, and (3) status post ACL reconstruction, ACL. Px2 at 39. Dr. Patek noted that Petitioner was improving. Px2 at

39. Petitioner was given a list of exercises to perform at home and a prescription for physical therapy. Px2 at 39.

Petitioner presented to Dr. Goldstein on December 18, 2014 and July 13, 2016 for his annual physical. Px4 at 30, 34; Rx2 at 8, Rx2 at 35. Physical examinations of Petitioner's right and left knee were normal. Px4 at 32, 35. On August 14, 2017, Petitioner was admitted to Northwestern for complaints of shortness of breath and was discharged on August 15, 2017. Rx3 at 129, 140, 180. A Review of Symptoms, performed on August 14, 2017, notes that Petitioner denied joint pain or swelling, back pain, or muscle aches, and physical examination of his extremities revealed normal range of motion, no tenderness, no peripheral edema or calf tenderness, and 1+ pitting edema in the left lower extremity. Rx2 at 141, 142, 181, 182. On August 17, 2017, Petitioner presented to Dr. Goldstein for follow up with complaints of discomfort in his chest and sleep difficulties. Px4 at 26, Rx2 at 102, 140. Dr. Goldstein noted that review of Petitioner's musculoskeletal system was positive for joint pain in the knees, left greater than right. Px4 at 26. Physical examination of Petitioner's musculoskeletal system revealed normal range of motion and no edema or tenderness. Px4 at 27. Dr. Goldstein's impressions were dyspnea, obesity, insomnia, and hypertension. Px4 at 27. No diagnoses or treatment recommendations were made for Petitioner's bilateral knees. Px4 at 27.

Testimony of Steven Tagliere, Sr.

Respondent called Steven Tagliere, owner and president of Respondent, to testify on its behalf. Tr. at 75. Mr. Tagliere has been in the electrical business for 43 years. Tr. at 77. Mr. Tagliere is familiar with union policies and procedures, including those of Local 134. Tr. at 75. He is also familiar with the books and records of Respondent. Tr. at 75. Mr. Tagliere identified Rx1 as paycheck stubs. Tr. at 75-76. Mr. Tagliere testified that Petitioner was hired as a journeyman electrician and that Petitioner was not promised or guaranteed a 40-hour workweek. Tr. at 76, 77. He explained that normal working hours are Monday through Friday, but that there were a lot of variables with construction, including weather and job conditions, that determine the amount of hours worked per week. Tr. at 77. The normal expectation of hours worked per day are eight hours, and a normal workweek would be 40 hours. Tr. at 79.

Regarding the variables that impact working hours, Mr. Tagliere testified that the decision to call off workers for the day can be made by multiple people, including the general contractor, the owner, and the foreman. Tr. at 79. The individual electrician does not dictate the hours worked.

Tr. at 79-80. Mr. Tagliere testified that employees are not paid for holidays, sick days, or days off. Tr. at 82. Regarding the week of Thanksgiving, an electrician was expected to work on Monday, Tuesday, Wednesday, and Friday. Tr. at 84. Each job site determines whether they want to work on Friday, and unless there is something specific to be done on Friday, they can take Friday off. Tr. at 84. Mr. Tagliere testified that the project ended in March 2019, and that Petitioner's employment would have ended at the close of the project. Tr. at 77.

Respondent's Section 12 exam by Dr. David M. Zoellick

Petitioner presented for a Section 12 exam on October 14, 2019 with Dr. Zoellick. Rx5. Dr. Zoellick evaluated only Petitioner's right shoulder. Rx5 at 1. Dr. Zoellick's diagnoses were right shoulder rotator cuff tear with impingement syndrome, AC joint arthritis, tear of the long head of the biceps, and a Bankart tear. He opined that the accident on November 27, 2018 caused or aggravated the right shoulder problem and that the treatment Petitioner had received had been reasonable and necessary to treat the shoulder injuries sustained in the accident. He further opined that Petitioner did not require work conditioning, but agreed with and recommended an additional four weeks of physical therapy specifically dedicated to the right shoulder to work on strengthening. He also opined that Petitioner had not yet reached MMI as to the right shoulder and anticipated that Petitioner would reach MMI after completing the additional four weeks of therapy. Dr. Zoellick further opined that at that time, Petitioner could not return to his regular work as a journeyman electrician with regard to the right shoulder and that he should be able to return to work after completing four additional weeks of therapy. He additionally opined that Petitioner should not require permanent restrictions, that it was reasonable and necessary to have a surgical assistant for the surgery, and that Petitioner's shoulder had healed sufficiently to allow him to use crutches. Rx5 at 7-8.

Evidence deposition testimony of Dr. Chams

Dr. Chams testified by way of evidence deposition on September 21, 2021. Px5. Dr. Chams testified as to his education and credentials as an orthopedic surgeon. Px5 at 5-7.

Dr. Chams testified that Petitioner reported a consistent work accident on November 29, 2018. Px5 at 9. Petitioner complained of pain with certain motions of his shoulder and positional pain, and pain on the knee. Px5 at 10. Dr. Chams performed a physical exam and Petitioner had positive tests for rotator cuff tendinopathy or tear, apprehension, and weakness. Rx5 at 10. Regarding the knee, Petitioner was tender in the medial joint space, painful on the inside and

outside of his knee, and he had patellar grind and some crepitation with range of motion. Px5 at 10-11. Patellar grind and crepitation means that there is noise when the knee is put through range of motion and it can be arthritic; in this particular case, it was chondromalacia, the early signs of arthritis. Px5 at 59-60. There was no effusion, no ecchymosis, and no signs of injury to the skin. Px5 at 59. Dr. Chams reviewed the x-rays taken at Alexian Brothers on November 27, 2018. Px5 at 58. No fractures were noted on the x-ray. Px5 at 58. Dr. Chams' impression on November 29, 2018 was that Petitioner's exam was consistent with a rotator cuff tear and possible labral tear of his shoulder, and a meniscus tear in his right knee and some underlying arthritis. Px5 at 11. At that time, Dr. Chams gave Petitioner a cortisone injection to his right shoulder and right knee to try to treat Petitioner conservatively and placed him off work. Px5 at 11. Dr. Chams prescribed an MRI arthrogram of Petitioner's shoulder and an MRI of Petitioner's knee, and started Petitioner on physical therapy. Px5 at 11-12. Dr. Chams explained that the purpose of the injection was to take care of some of the inflammation and for Petitioner to feel better. Px5 at 12. Dr. Chams agreed that Petitioner's diagnosis on November 29, 2018 was pain and that there was not a diagnosis of knee instability, as he did not have the MRI at that time. Px5 at 64-65.

Dr. Chams testified that Petitioner initially reported significant improvement following the cortisone injections, "but it was short lived." Px5 at 17. Dr. Chams explained that the cortisone injection had originally offered symptomatic relief, but had worn off. Px5 at 75. Dr. Chams explained that the significance of the "short lived" improvement is that if pain returns following the injection, that is one criteria for failing conservative management, which then pushes towards surgical treatment. Px5 at 17.

Dr. Chams personally reviewed the shoulder and right knee films. Px5 at 15. The results of the right shoulder CT scan showed a rotator cuff tear. Px5 at 14. The right knee MRI demonstrated a meniscus tear and some osteoarthritic changes. Px5 at 14. The MRI findings were consistent with his physical examination findings and with Petitioner's complaints. Px5 at 14. Dr. Chams was not aware of a new injury Petitioner may have sustained to the knee between January 8, 2019 and February 4, 2019. Px5 at 75-76, 79. On February 4, 2019, Petitioner had decreased flexion in comparison to his exam of November 29, 2018, and all ligament instability exams were negative. Px5 at 77. A possible scope of Petitioner's right knee was discussed and a Monovisc injection was recommended. Px5 at 18. Dr. Chams explained that a cortisone injection is an anti-inflammatory, but is toxic if performed multiple times, while a Monovisc injection is protein based,

helps lubricate the joint, and is a pain reliever. Px5 at 19, 80. A Monovisc injection is a treatment for osteoarthritis and lasts up to six months, about 50 percent of the time. Px5 at 80. Dr. Chams testified that he noted that the decision to proceed with conservative treatment of Petitioner's right knee was based in part on arthritic changes. Px5 at 19. Dr. Chams explained that patients are not always 100 percent after a scope if they have arthritis, so the typical management is conservative, and if they fail conservative management then a scope is performed. Px5 at 19.

On March 11, 2019, Dr. Chams performed a right shoulder arthroscopy; a subacromial decompression, where he flattened the bone so that it would not rub against the repair; he cleaned some moderate arthritic changes at the AC joint; repaired the rotator cuff; and repaired the labrum and cut the biceps and reattached it under Petitioner's armpit because the biceps tendon and labrum were torn. Px5 at 21. Petitioner's postoperative diagnoses were rotator cuff tear/impingement, AC joint arthropathy, biceps tendon tear, and a Bankart tear or labral tear. Px5 at 21.

Petitioner was released to full duty and was at maximum medical improvement as to his right shoulder on May 4, 2020. Px5 at 32. Petitioner was also allowed to return to full duty as it related to his right knee. Px5 at 33. Dr. Chams testified that as of May 4, 2020, he was still awaiting authorization for the recommended right knee surgery. Px5 at 35. Dr. Chams noted that on June 14, 2021, Petitioner reported that he was unable to go back to work because of his knee pain and instability and that he continued to have buckling episodes. Px5 at 36. Petitioner also reported that he had some discomfort of his right shoulder with reaching overhead. Px5 at 36. Petitioner had lost 186 pounds. Px5 at 36. X-rays of Petitioner's right knee were taken on June 14, 2021 to see what the progression was over the last two years. Px5 at 98. The arthroscopy for the right knee continued to be recommended, and no new treatment recommendations were made on June 14, 2021. Px5 at 98. Dr. Chams last saw Petitioner on June 14, 2021. Px5 at 39. It would not be necessary for Petitioner to continue to have regular follow-up visits with Dr. Chams if his treatment recommendation has remained the same and he has been unable to move forward with the recommended surgery. Px5 at 115-117.

Dr. Chams testified that Petitioner's right shoulder condition and right shoulder surgery are causally related to Petitioner's work injury of November 27, 2018. Px5 at 39-40. Dr. Chams explained that Petitioner had a true rotator cuff tear with disability that was consistent with the MRI findings and his treatment. Px5 at 40. Dr. Chams believes that all additional treatment for the right shoulder, including physical therapy and injections, is also causally related to Petitioner's

work injury and that all medical treatment for Petitioner's right shoulder was reasonable and necessary to treat his right shoulder condition. Px5 at 40.

Dr. Chams testified that Petitioner's right knee pain following the November 27, 2018 work injury is causally related to the work accident. Px5 at 41. His opinion is based upon Petitioner reporting pain after the injury, as well as the consistent instability and locking after the injury. Px5 at 41-42. Dr. Chams believes that the findings demonstrated on the December 17, 2018 right knee MRI are causally related to Petitioner's work injury, and explained that everything besides the arthritic changes is consistent with Petitioner's knee injury. Px5 at 41. Regarding the right meniscal tear, Dr. Chams testified that if a patient just has arthritis in a degenerative meniscus tear, a cortisone injection and physical therapy will return the patient to his or her normal, everyday activities quickly. Px5 at 42. Petitioner, however, consistently had instability and locking in his right knee that he denied having prior to the work injury, which means, that at the very least, Petitioner either tore his meniscus badly or aggravated an underlying degenerative tear to the point where Petitioner now has a true unstable tear. Px5 at 42, 47. Dr. Chams testified that his opinion is based upon Petitioner's reported history, change in symptoms, and his exam findings, and he explained that instability and locking are typical for somebody who has an exacerbation or a big tear of the meniscus. Px5 at 42, 47, 104. Dr. Chams testified that there is no way to tell the exact age of a tear from looking at an MRI. Px5 at 42, 58. Dr. Chams thinks that the arthritic changes in the knee noted on the MRI preexisted the injury, but that the meniscus tear was caused or exacerbated by the work accident. Px5 at 103. Dr. Chams testified that the pain and instability had been present since his initiation of Petitioner's care. Px5 at 25. Petitioner's right knee symptoms continued to be consistent with the MRI findings. Px5 at 31.

Dr. Chams testified that the purpose of the procedure that he is recommending is to optimize Petitioner's knee and to get rid of the instability and locking. Px5 at 43. The procedure would clean up the mechanical symptoms of the meniscus tear and would not address the arthritic condition. Px5 at 43, 110. Dr. Chams testified that the results of the proposed procedure are unpredictable and have poor results for osteoarthritis, but will eliminate Petitioner's mechanical symptoms. Px5 at 102. A right knee arthroscopy would be more beneficial than a knee replacement because at the age of 45, Petitioner was not a candidate for a knee replacement, and he was not a candidate for anything more than a knee arthroscopy. Px5 at 31-32, 117-118. Dr. Chams explained that Petitioner would not be a candidate for a knee replacement at the age of 45 because the

replacement would wear out too early and he would be disabled. Px5 at 32. Dr. Chams believes that the right knee arthroscopic surgery he has recommended is causally related to Petitioner's work injury. Px5 at 43.

Dr. Chams testified that Petitioner never had ligament instability, and that the instability is from the meniscus tear. Px5 at 70, 77. Dr. Chams thinks that the mechanical symptoms are coming from the meniscus, as they are not usually caused by weight or arthritis. Px5 at 82. Dr. Chams would not operate on an ACL if it was just sprained. Px5 at 65. Dr. Chams agreed that a complex tear of the posterior horn of the medial meniscus is on the inside of the medial meniscus. Px5 at 65-66. Dr. Chams testified that Petitioner fell onto the right knee, and one does not tear a meniscus from hitting the knee on that side. Px5 at 66. Complex tears in the posterior horn and the medial meniscus can develop over time and do not require trauma if they are degenerative. Px5 at 66. Dr. Chams testified that a trauma, however, can cause or accelerate a meniscal tear, and he thinks in this case it did. Px5 at 107. Regarding the arthritis in Petitioner's right knee, Dr. Chams testified that the original arthritis seen on the original MRI has nothing to do with the work injury, however, when there is a complex or large tear, "you will degenerate your meniscus at an exponential accelerated rate. So [Petitioner's] arthritic changes now have a lot to do with his meniscus tear." Px5 at 44-45.

Dr. Chams testified that the presence of effusion and edema on MRI usually signifies an acute injury. Px5 at 14. Dr. Chams explained that effusion in the subcutaneous is usually traumatic. Px5 at 73. The mild subcutaneous edema noted around the knee joint on the MRI was consistent with a contusion or acute injury. Px5 at 72, 114, 118. The weight Petitioner put on his knee could have caused the finding of effusion, however, Petitioner's fall on November 27, 2018 was consistent with an acute injury. Px5 at 14, 59. There was also evidence of a Grade I MCL sprain and an ACL sprain on the MRI, which were also consistent with an acute traumatic injury. Px5 at 15, 69.

Dr. Chams testified that more than likely, Petitioner is going to need a knee replacement, and his knee had narrowed significantly throughout the three years of treatment. Px5 at 101. Dr. Chams further testified that Petitioner's knee had narrowing before the accident that had gotten significantly worse over the last three years. Px5 at 101, 108. The progression of the narrowing was typical, and not surprising. Px5 at 108. Dr. Chams also testified that the meniscus tear contributes to Petitioner's arthritic changes. Px5 at 107.

Dr. Chams testified that a patient's subjective complaints are an important component of his decision-making regarding treatment, and that Petitioner's right knee complaints have corresponded with the objective complaints that he has noted throughout his evaluation and the MRI findings and they have been consistent. Px5 at 111-112. Dr. Chams testified that the fact that Petitioner presented with good strength in the right knee, no instability to the kneecap, and negative ligament examinations does not have any bearing on the meniscal pathology that he is looking to treat with the surgery. Px5 at 114. Dr. Chams testified that the McMurray's tests are the most relevant or pertinent aspects that would relate to the presence of instability and locking. Px5 at 110. In his treatment of Petitioner and regarding the McMurray's test, Dr. Chams has noted that Petitioner has true instability when you twist his knee. Px5 at 110. Dr. Chams testified that the instability has been inconsistent on Petitioner's exam, which is consistent with a meniscus tear. Px5 at 11. Dr. Chams further testified that it is typical for a McMurray's test to be noted as positive on some examinations and negative on others, and this did not impact his decision regarding the presence of a meniscus tear. Px5 at 111.

Dr. Chams testified that the notation of knee pain in the August 2017 note of Dr. Goldstein did not change his opinions and explained that "we know that he has got some arthritic changes underlying," and that some occasional discomfort is typical. Px5 at 45-46. Dr. Chams had been made aware of Dr. Goldstein's August 2017 note just prior to his deposition. Px5 at 51. Dr. Chams testified that Dr. Goldstein's physical examination findings on July 13, 2016 and December 18, 2016 would not change his statements or opinions. Px5 at 46. Dr. Chams further opined that even if Petitioner would have eventually required right knee surgery, the work injury of November 27, 2018 accelerated his need for surgery. Px5 at 48. Dr. Chams testified that it was his understanding that Petitioner had been working full duty as an electrician prior to the November 27, 2018 injury, that Petitioner's ability to perform his work duties changed after the injury, and that since the accident, he has not been able to get Petitioner back to active full duty. Px5 at 46-47. Regarding restricting Petitioner from work, Dr. Chams testified that it is ladders, squatting, kneeling, and standing that would hurt Petitioner and that it would be dangerous for Petitioner to return to work as an electrician. Px5 at 101-102.

Dr. Chams testified that he considers a 6-foot tall, 415-pound person to be morbidly obese. Px5 at 58. He agreed that morbid obesity places great stress on each of the knees with each step, can cause complex tears of the meniscus over time, and places a person at a higher risk of getting

underlying degenerative arthrosis. Px5 at 47, 58, 66. Dr. Chams testified that Petitioner being obese does not impact or change his opinions as to causal connection. Px5 at 48. Dr. Chams testified that he believes that the November 27, 2018 injury accelerated Petitioner's need for surgery because the injury accelerated the arthritic changes. Px5 at 48-49. Dr. Chams testified that all the treatment rendered for Petitioner's right knee condition, including physical therapy and injections, is reasonable and necessary and causally related to the November 27, 2018 injury. Px5 at 49-50.

Evidence deposition testimony of Respondent's Section 12 Examiner, Dr. John Cherf

Dr. Cherf testified by way of evidence deposition on November 10, 2021 and December 15, 2021. Rx6, Rx7. Dr. Cherf testified as to his education and credentials as a board-certified orthopedic surgeon. Rx6 at 6-10, 12-15. Dr. Cherf acknowledged that his hospital privileges had been suspended in Richmond, Indiana, as well as a couple of times when Lincoln Park Hospital closed. Rx6 at 11. None of the suspensions have been related to Dr. Cherf's ability to practice medicine. Rx6 at 12. Dr. Cherf testified that in processing data, he relies on the patient's history the most, unless there is a discrepancy in the medical records. Rx6 at 21. He relies on his review of the medical records and his physical examination, as well. Rx6 at 21. He relies very little on the narrative. Rx6 at 21. Dr. Cherf reviewed the actual MRI imaging from December 17, 2018. Rx6 at 30, Rx7 at 30. He could not recall the radiologist's interpretation of Petitioner's December 17, 2018 MRI. Rx7 at 32.

Dr. Cherf examined Petitioner on one occasion, on August 14, 2019, and he prepared a report following his examination. Rx6 at 22, Rx7 at 25. Petitioner was not ambulating with a cane or using any aid. Rx6 at 33. Dr. Cherf took a history from Petitioner. Rx6 at 24. Petitioner reported a work-related right knee injury occurring on November 27, 2018, while walking into a building. Rx6 at 24. Petitioner reported taking two steps through the door and slipping on black ice. Rx6 at 25. He twisted his knee during this injury, but denied any true impact to his right knee. Rx6 at 25. Petitioner reported that he fell to the ground, landing on his right side, and blacked out. Rx6 at 25. Petitioner's co-worker, Chris Rose, was present and witnessed the accident. Rx6 at 25. Petitioner described, recreated, and showed Dr. Cherf how he injured himself. Rx6 at 25. Dr. Cherf agreed that Petitioner injured his right knee on November 27, 2018. Rx7 at 26.

Petitioner had an MRI of his right knee on December 17, 2018, which documented osteoarthritis, a complex degenerative medial meniscal tear, degeneration of both medial and lateral menisci, and subcutaneous edema. Rx6 at 26, 43-44. Dr. Cherf testified that Petitioner had

a second injury on February 19, 2019, when he slipped and fell while walking to the mailbox at his home. Rx6 at 26. Petitioner did not receive any active treatment for this injury other than some physical therapy routines. Rx6 at 26.

Dr. Cherf testified that Petitioner described his right knee pain as a five out of 10 and no pain in his left knee. Rx6 at 27. Petitioner pointed to the superior medial aspect of his right knee as the site of maximum discomfort. Rx6 at 27. Petitioner's chief complaint was pain and locking in his right knee. Rx6 at 34. Petitioner's symptoms were aggravated particularly by stairs and improved with icing and medication. Rx6 at 27. Petitioner denied any prior problems with his knee, however, the medical records indicated that Petitioner had a diagnosis of chronic knee joint pain, left greater than right on August 17, 2017 and Dr. Goldstein's records from March 2019 also indicate that Petitioner had positive joint pain in his right shoulder and bilateral knees. Rx6 at 27. Rx6 at 27. Dr. Cherf testified that he did not have any information regarding treatment of Petitioner's right knee between Dr. Goldstein's August 17, 2017 record and the accident of November 27, 2018, besides his primary care physician diagnosing Petitioner "with what sounds very much like osteoarthritis, a chronic condition," which was consistent with Dr. Cherf's interpretation. Rx6 at 29. Dr. Cherf did not have any information regarding Petitioner's inability to work as an electrician from the date of his hire until November 27, 2018. Rx6 at 29.

Dr. Cherf performed a physical examination of Petitioner. Rx6 at 34. Dr. Cherf testified that Petitioner was in the category of extreme obesity. Rx6 at 34. Dr. Cherf further testified that Petitioner's right knee appeared to have zero degrees mechanical axis, which is the alignment of his knee, but it was difficult to access because of obesity. Rx6 at 34. Petitioner had a non-painful and non-antalgic gait, which included heel and toe walk. Rx6 at 34. There did not appear to be any significant quadriceps atrophy, but this was also difficult to access secondary to obesity. Rx6 at 34. There was no real soft tissue swelling, redness, or bruising. Rx6 at 34. Petitioner's right knee range of motion was zero to 120 degrees. Rx6 at 35. Petitioner's Patellar/Extensor Mechanism Examination had crepitation and popping, his Ligamentous Examination was normal, and his Meniscus/Joint Line Examination demonstrated tenderness in the medial joint line, the posterior aspect, and in the medial epicondylar region. Rx6 at 35. Dr. Cherf testified that there was not any give way or buckling at the time of his exam, but that "theoretically there could have been buckling" when Petitioner was standing, walking, and squatting. Rx6 at 35. Dr. Cherf testified that

Petitioner was lying in supine for the remainder of the exam and there would be no possibility for buckling because there was no weight going across his knee. Rx6 at 35.

Regarding Petitioner's BMI, Dr. Cherf testified that "morbid obesity" was synonymous with "extreme obesity." Extreme obesity is a risk factor for arthritis, and arthritis and trauma are risk factors for meniscal tears. Rx6 at 36. Dr. Cherf explained that obesity puts Petitioner at risk of primary osteoarthritis, and advanced primary osteoarthritis "nearly always has degenerative meniscal pathology." Rx6 at 36-37. Dr. Cherf further explained that the stress of Petitioner's body habitus could cause arthritis, which results in inflammation of the knee absent injury. Rx6 at 37. Dr. Cherf testified that Petitioner was "a very, typical, classic, kind of, textbook example of someone with advanced osteoarthritis to the knee" and that there was nothing surprising to him on his exam. Rx6 at 38.

Dr. Cherf testified that he ordered x-rays which demonstrated that there was no space between the bone, which was indicative of advanced osteoarthritis that takes years to develop. Rx6 at 39. Dr. Cherf testified that "about 100 percent of patients with that x-ray have a meniscal tear – a degenerative meniscal tear." Rx6 at 39. Dr. Cherf explained that when something is bone-on-bone, there can be some collapse of the bone, some stretching of the ligaments, and loss of motion. Rx6 at 40. From an x-ray point of view, there was no articular cartilage left and Petitioner was at end-stage disease. Rx6 at 40. Petitioner's x-ray showed that Petitioner's body was making more bone in the right knee, which was demonstrated by the whiter area above and below the joint line, that was helping prevent the bone from collapse. Rx6 at 41. Dr. Cherf testified that the work injury "should not have caused a permanent impact to the natural history of the osteoarthritis to the knee," but "it is possible it caused an exacerbation," which by definition is temporary. Rx6 at 42. Dr. Cherf explained that "even small insults can cause temporary exacerbation" in someone like Petitioner, who is older and with a diseased knee. Rx6 at 42. The work injury caused a temporary exacerbation and did not cause a permanent aggravation. Rx6 at 42, Rx7 at 26. Dr. Cherf testified that the accident did not accelerate the osteoarthritic condition and that it was an insignificant contributing factor. Rx6 at 48.

Dr. Cherf testified that Petitioner probably sustained a low energy sprain or strain as a result of the November 27, 2018 work accident. Rx6 at 42-43, Rx7 at 34-35. He explained that whether Petitioner had fallen and struck his knee, rather than twist the knee, would not have made much of a difference in his opinion. Rx6 at 43. He explained that the MRI demonstrated some

subcutaneous swelling, which suggested a possible contusion as well. Rx6 at 43. Petitioner's right knee condition should have returned to its baseline state within three months after the injury, which Dr. Cherf expressed was "very, very generous on a timeline." Rx6 at 43. Dr. Cherf testified that the November 27, 2018 accident did not cause osteoarthritis, and that the osteoarthritis was preexisting and takes years to develop. Rx6 at 44. Dr. Cherf further testified that he was "nearly 100 percent confident [Petitioner] had a meniscal tear before the injury." Rx6 at 44. Dr. Cherf explained that every patient with similar x-rays has meniscal tears. Rx6 at 44. Dr. Cherf testified that icing, some anti-inflammatory medication, extra-strength Tylenol for pain, sometimes physical therapy, and cortisone injections are reasonable treatments for the injury that Petitioner sustained on November 27, 2018. Rx6 at 45. Dr. Cherf testified that he would not have done an MRI of Petitioner's right knee or the viscosupplementation injection, however, he acknowledged that the viscosupplementation injection was still being utilized in the orthopedic community. Rx7 at 30.

Dr. Cherf testified that when he saw Petitioner, he did not feel that Petitioner needed any treatment, however, Petitioner would need treatment for his osteoarthritis in the knee, and at some point in his life, he would probably need knee replacements. Rx6 at 46. The need for knee replacements would be independent of the November 27, 2018 accident. Rx6 at 48. Dr. Cherf testified that he did not believe that Petitioner needs arthroscopy. Rx6 at 46. Literature, over the past five years, has made it clear that patients, such as Petitioner, who have advanced arthritis of the knee do not benefit from arthroscopy. Rx6 at 46. Dr. Cherf also testified that it would not make a difference if Petitioner lost 186 pounds, he would not perform an arthroscopy on him and explained that anyone with bone-on-bone is not going to benefit from an arthroscopy. Rx6 at 47.

Dr. Cherf testified that Petitioner reached maximum medical improvement of the right knee three to four months after the accident. Rx6 at 49. Dr. Cherf also testified that Petitioner was capable of returning to work full-time, full duty, and with no restrictions; however, Petitioner might need restrictions for other reasons, such as the advanced arthritis of his knee or obesity. Rx6 at 50. Dr. Cherf further testified that Petitioner "probably could have returned to work fairly early with restrictions, but with no restrictions, no later than three or four months post-injury when considering his right knee." Rx6 at 50.

Dr. Cherf treats patients with cortisone injections, it is a good treatment option, and it was nice to see that a cortisone injection was initially used to treat Petitioner. Rx6 at 51. Regarding the

McMurray's test, Dr. Cherf testified that it is an examination to look for meniscal pathology, it is less reliable in diseased knees because you can get a positive mechanical symptom or pain from other things such as advanced osteoarthritis, and that it was less reliable in Petitioner's case. Rx6 at 53. On his exam of Petitioner, there were no signs of instability and the instability exam was normal. Rx6 at 54. Dr. Cherf also testified that there were not specifically signs of mechanical problems in the knee, however, patients with that amount of arthritis have mechanical symptoms. Rx6 at 54. Trauma is not required for mechanical symptoms to manifest. Rx6 at 54. Dr. Cherf testified that it was unclear why Petitioner was having instability, as Petitioner has a stable knee and his ligamentous examination was normal. Rx7 at 43.

Dr. Cherf testified that he could not say when the medial meniscal tears occurred in Petitioner's right knee, however, they are chronic. Rx7 at 6. He explained that "every one with that degree of arthritis has a degenerative meniscal tear, a hundred percent." Rx7 at 6-7. Dr. Cherf also testified that the tears "would be measured more in months or probably years before the injury in question." Rx7 at 7, 9-10, 39. Dr. Cherf agreed that trauma is not necessary to cause degenerative meniscal tears and testified that you need to have osteoarthritis. Rx7 at 10. Dr. Cherf testified that people with such advanced stage of osteoarthritis are at an increased risk for complex meniscal tears and explained that the degree of arthritis is associated with meniscal pathology, including complex degenerative meniscal tears. Rx7 at 10. Regarding a patient feeling a pop in the knee, Dr. Cherf testified that it does not indicate an acute event, and this opinion was based on Dr. Cherf's personal opinion. Rx7 at 7. Dr. Cherf explained that he gets pops in the knee, it can be a variety of things, and that the older one gets the more frequently pops in the knee occur. Rx7 at 7.

Regarding the effusion that was seen on the MRI of December 17, 2018, Dr. Cherf testified that "effusions in patients with this degree of arthritis is – very common." Rx7 at 8. Dr. Cherf further testified that "anecdotally," Petitioner's stress had an impact on the effusion. Rx7 at 8. Dr. Cherf testified that Petitioner's knee condition was such that it could experience pain without an acute injury. Rx7 at 9. Primary symptoms of osteoarthritis are pain, stiffness, swelling, sometimes mechanical symptoms, and deformity. Rx7 at 9. Regarding edema, Dr. Cherf explained that edema means there is fluid in a tissue, in a bone, or in a muscle. Rx7 at 12. Petitioner's history suggested a sprain or strain, and did not suggest impact to his knee. Rx7 at 13. Dr. Cherf explained that localized edema is usually secondary to a contusion. Rx7 at 15. Dr. Cherf agreed that the presence of edema can be indicative of an acute injury. Rx7 at 33. He also agreed that the presence of an

MCL sprain or ACL sprain on the MRI could also be consistent with an acute injury. Rx7 at 33-34. Dr. Cherf did not know if Petitioner had undergone an MRI of his right knee prior to November 27, 2018, however, he did know that Petitioner had been treated for his right knee in 2017. Rx7 at 34. Dr. Cherf testified that he was not aware of a prior right knee MRI. Rx7 at 34.

Dr. Cherf provided an AMA impairment rating. Rx7 at 15. Dr. Cherf used the AMA Guide, which he explained he was mandated to use. Rx7 at 16. He testified that the goal of the AMA Guide was "to make things very objective." Rx7 at 16-17. For his impairment rating, Dr. Cherf picked the diagnosis of "soft tissue bursitis, plica, history of contusion or other soft tissue lesion, no significant objective abnormal findings on examination or radiographic studies, at MMI." Rx7 at 18. Dr. Cherf explained that only one diagnosis can be picked, he picked the diagnosis of sprain/strain, and while Petitioner had advanced osteoarthritis, the injury did not cause osteoarthritis. Rx7 at 58. He picked the diagnosis that was consistent with what the Alexian Brothers Emergency Room Department diagnosed. Rx7 at 58. Dr. Cherf's impairment rating of Petitioner's right knee was zero percent low extremity impairment and whole person impairment. Rx7 at 18.

Dr. Cherf testified that contusions usually do not cause meniscal tears, however, twisting on ice could. Rx7 at 36. He explained that meniscal tears are seen in a closed chain, or when the foot is well-fixed to a surface, you twist it, and the twisting goes through the knee joint. Rx7 at 36. Dr. Cherf further explained that when you slip on ice, the slipping goes between your foot or your footwear and the ice. Rx7 at 36. He sees meniscal tears more in a closed chain manner than slipping on ice. Rx7 at 36. He agreed that an acute twisting injury to the knee can be a cause of an acute meniscal tear. Rx7 at 36. Dr. Cherf testified that you could possibly have an aggravation of a pre-existing meniscal tear from an acute twisting injury. Rx7 at 36. Dr. Cherf testified that pain can be a symptom associated with meniscal pathology; locking can be a symptom of certain meniscal tears, typically pocket; and instability is usually not secondary to meniscal pathology, as it is usually secondary to a ligament injury. Rx7 at 38. A positive medial McMurray's test can also be indicative of a meniscal tear, and tenderness at the medial joint space can be consistent with a meniscal tear and with osteoarthritis. Rx7 at 38.

Dr. Cherf reviewed some records by Dr. Goldstein. Rx7 at 44. Regarding Dr. Goldtein's record of August 17, 2017, Dr. Cherf testified that he was aware that in the physical examination section, Dr. Goldstein noted normal range of motion of the knees and no edema or tenderness,

which was also consistent with his exam. Rx7 at 48. Dr. Cherf testified that during his examination of Petitioner, Petitioner had good range of motion, no swelling or edema, and had joint tenderness. Rx7 at 48. Dr. Cherf was not aware that no treatment was recommended for Petitioner's knees following his visit with Dr. Goldstein on August 17, 2017. Rx7 at 48. Dr. Cherf did not know if he had Dr. Goldstein's December 18, 2014 or July 13, 2015 examination notes for his review, however, he testified that he would not disagree with what is in the medical records and that the records speak for themselves. Rx7 at 48, 50, 51. Dr. Cherf explained that patients with osteoarthritis have "good days and bad days and good weeks and good months and bad months." Rx7 at 49. When asked if based on Dr. Goldtein's records, there was no evidence of right knee instability, locking, or buckling documented prior to the November 27, 2018 accident, Dr. Cherf testified that he had no idea, he saw limited records, and did not know what other pre-accident records were out there. Rx7 at 51.

Dr. Cherf did not put a lot of weight on Dr. Chams' records, as electronic health records have numerous errors, and relied a lot on his history, his physical examination, and his objective review of the diagnostic studies. Rx7 at 53. Dr. Cherf believed that Petitioner was performing his full duty work as an electrician until the November 27, 2018 injury. Rx7 at 55. He was unaware that Petitioner had been unable to return to his work as an electrician following the November 27, 2018 accident. Rx7 at 55. Dr. Cherf did not review office visit notes by Dr. Chams from September 2019, October 2019, November 2019, December 2019, May 2020 and June 2021. Rx7 at 56-57. The last time that Dr. Cherf looked at this particular case was on August 14, 2019. Rx7 at 57. He would be surprised if Petitioner's symptoms had not progressed from July 2019. Rx7 at 57.

Dr. Cherf agreed that an acute injury can cause an underlying arthritic condition to become symptomatic on a short-term basis, which is called temporary exacerbation. Rx7 at 59. Dr. Cherf testified that when the temporary exacerbation ends is based on the mechanism of injury, and that he would call this particular injury an insignificant contributor to the advanced osteoarthritis of the knee. Rx7 at 60. Dr. Cherf agreed that Petitioner continued to report right knee right symptoms, as reflected in the records, after his injury of November 27, 2018. Rx7 at 28. Dr. Cherf agreed that it was his opinion that the condition of Petitioner's right knee is not related by cause, aggravation, or acceleration of the November 27, 2018 accident. Rx7 at 66. He explained that Petitioner has primary idiopathic osteoarthritis of his knee that has been going on for a long time. Rx7 at 66.

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission,* 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders his evidence worthy of belief. It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied if the claimant can show that a work-related injury played a role in aggravating or accelerating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). A chain of

events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient to prove a causal connection between the accident and the claimant's injury. *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 (1982).

The Arbitrator initially notes that the issue of causal connection as to Petitioner's current right shoulder condition of ill-being is not disputed. At issue is whether Petitioner's current right knee condition of ill-being is causally related to the November 27, 2018 injury. The Arbitrator finds that Petitioner's current right shoulder and right knee conditions of ill-being are causally related to the November 27, 2018 injury. The Arbitrator relies on the following in support of her findings: (1) Petitioner's credible testimony, (2) the medical records from Alexian Brothers Medical Center, (4) Dr. Tu's record of February 24, 2019, and (5) Dr. Chams' treatment records and testimony.

In his testimony, Petitioner was forthright about his visit with Dr. Patek on August 19, 2008 following a right knee injury he sustained on August 16, 2008. Regarding that visit, Petitioner credibly testified that he did not return to Dr. Patek for further right knee treatment. Petitioner was also forthright in his testimony regarding his August 17, 2017 visit with Dr. Goldstein, wherein he reported bilateral knee pain, while presenting for complaints of chest discomfort and sleep difficulties. Petitioner credibly testified that he did not seek care with an orthopedic specialist following his August 19, 2008 visit with Dr. Patek until the November 27, 2018 injury, and that he had not undergone a right knee MRI or injections to the right knee or received a surgical treatment recommendation for the right knee prior to November 27, 2018. Petitioner also credibly testified that he was working full duty as an electrician prior to the November 27, 2018 injury. Petitioner's testimony is corroborated by the medical records.

The Arbitrator notes that while Petitioner's right knee arthritic condition may have developed prior to the November 27, 2018 work injury, the record supports Dr. Chams' opinion that the right meniscus tear was caused or aggravated by the November 27, 2018 work injury. The Arbitrator has considered the opinions of Dr. Cherf and finds that they do not outweigh the opinions of Dr. Chams. Dr. Chams has provided Petitioner with continuous treatment since November 29, 2018, while Dr. Cherf saw Petitioner on only one occasion, on August 14, 2019. Dr. Chams credibly testified that his opinions were based on Petitioner's reported history, Petitioner's change in symptoms, and his exam and the MRI findings. Dr. Chams also credibly testified that the MRI findings were consistent with Petitioner's complaints and his exam findings.

Petitioner also had consistent instability and locking following the November 27, 2018 injury, which Dr. Chams convincingly explained was typical of Petitioner's right knee condition. Dr. Chams reliably testified that Petitioner's mechanical symptoms, including locking, are originating from the meniscus tear.

Petitioner has had consistent right knee symptomology, including right knee pain and locking and instability, following the November 27, 2018 injury, which is documented in the treatment records. While Petitioner saw Dr. Patek in August 2008 for a right knee injury, the Arbitrator notes that this visit occurred over 10 years prior to the work injury and it was a singular visit that resulted in no further treatment or follow up care. The Arbitrator also notes that while Petitioner saw Dr. Goldstein in August 2017, over one year prior to the November 27, 2018 injury, no diagnosis was made as to a right knee condition, no treatment was recommended for a right knee condition, and there was no follow up care for a right knee condition. Though Petitioner may have experienced knee soreness or pain prior to the November 27, 2018 injury, the evidence does not reflect that Petitioner suffered from or was diagnosed with a consistently symptomatic and/or chronic right knee condition prior to the November 27, 2018 injury. It was only after the November 27, 2018 injury that Petitioner reported consistent right knee symptoms that have persisted, and that have resulted in treatment including x-rays, an MRI, injections, extensive therapy, and a surgical recommendation. Accordingly, the Arbitrator finds that the evidence is not indicative of a chronic right knee condition.

Based on the record as a whole, including Petitioner's credible testimony, the medical records, and the medical opinions of Petitioner's treating physician over those of Dr. Cherf, the Arbitrator finds that Petitioner has met his burden in proving a causal connection between his November 27, 2018 injury and his current right shoulder and right knee conditions of ill-being.

Issue G, as to what were Petitioner's earnings, the Arbitrator finds as follows:

Regarding earnings, Petitioner testified that he began work with Respondent in early October 2018. He further testified that his first date of pay from Respondent was October 8, 2018 and that his last pay period was November 19, 2018 through November 25, 2018. Petitioner's last payment from Respondent was on November 27, 2018. Respondent introduced Petitioner's wage records, Rx1, which show that Petitioner's first pay period was October 8, 2018 through October 14, 2018 and that his last pay period was November 19, 2018 through November 25,

2018. Petitioner worked at Respondent for a total of seven weeks and his earnings totaled $12,044.16. As such, the Arbitrator finds that Petitioner's average wage weekly is $1,720.59.

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

Consistent with the Arbitrator's prior finding regarding the issue of causal connection, the Arbitrator finds that the medical services that were provided to Petitioner for treatment of his right shoulder and right knee conditions were reasonable and necessary. As such, the Petitioner's claim for unpaid medical bills is granted and all bills, for the necessary and reasonable treatment of Petitioner's right shoulder and right knee conditions, incurred on or prior to the date of arbitration, January 27, 2022, are awarded and Respondent is liable for payment of same, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

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

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to prospective medical care, as recommended by Dr. Chams. Dr. Chams has consistently recommended surgical treatment for Petitioner's right knee condition. While the recommended procedure will not address Petitioner's osteoarthritis, Dr. Chams convincingly testified that it will address the mechanical symptoms of instability and locking.

Based on the record as a whole, the Arbitrator finds that Petitioner is entitled to a right knee arthroscopy with partial meniscectomy and partial chondroplasty, which is contemplated as compensable treatment under Section 8(a) of the Act, and therefore, Respondent is responsible for authorizing and paying for same.

Issue L, whether Petitioner is entitled to temporary total disability, the Arbitrator finds as follows:

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits. Petitioner claims that he is entitled to TTD benefits from November 28, 2018 through January 27, 2022, the date of arbitration. Arbitrator's Exhibit ("Ax") 1. Respondent claims that Petitioner is entitled to TTD benefits from November 28, 2018 through November 11, 2019. Ax1.

Petitioner was found to be at MMI and was released to full duty as to his right shoulder on May 4, 2020. Petitioner, however, continues to be restricted to desk work only as to his right knee. There is no evidence that Respondent has accommodated Petitioner's restrictions.

Petitioner acknowledged and was forthright in his testimony as to receiving Zelle payments from his father and credibly testified that his father was helping him financially since his TTD benefits had been terminated and that the Zelle payments are a loan from his father that he is expected to repay. Petitioner further credibly testified that he did not receive the Zelle payments from his father in exchange for any work done. Respondent presented no evidence that rebuts Petitioner's testimony as to the nature of those payments. Petitioner also credibly testified that he did not perform any work through RMSC Services and did not receive any wages from RMSC Services after the November 27, 2018 work injury. Petitioner credibly testified that he has not returned to work since the November 27, 2018 injury, that he has not earned any wages since November 27, 2018 and no evidence to the contrary was presented.

Based on the record as a whole, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from November 28, 2018 through January 27, 2022, the date of arbitration.

Further, based on the Parties' stipulation, Respondent is entitled to a credit of $69,021.16 for TTD paid by Respondent to Petitioner. Ax1.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC037199
Case Name	Rebecca Minor v. Wexford Health Services Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0205
Number of Pages of Decision	16
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Dirk May
Respondent Attorney	R Mark Cosimini

DATE FILED: 5/8/2023

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MC LEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rebecca Minor,

Petitioner,

vs. NO: 18 WC 37199

Wexford Health Services, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, 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 notes that Respondent mistakenly included prospective medical care as an issue on its Petition for Review; no prospective medical care was awarded, and Respondent clarified at oral argument that prospective care was not at issue. 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 20, 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.

May 8, 2023
MP:yl
o 5/4/23
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC037199
Case Name	MINOR, REBECCA v. WEXFORD HEALTH SERVICES
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Dirk May
Respondent Attorney	R. Mark Cosimini

DATE FILED: 4/20/2022

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

/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
19(b)

Rebecca Minor
Employee/Petitioner

v.

Wexford Health Services
Employer/Respondent

Case # **18** WC **037199**

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 **September 30, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **August 21, 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 $**1,000.00**; the average weekly wage was $**976.92**.

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

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

Respondent shall be given a credit of $**23,446.08** for TTD.

Respondent is entitled to a credit of $**23,446.08** under Section 8(j) of the Act.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $650.62/week for 162 1/7 weeks, commencing August 22, 2018 through September 30, 2021, as provided in Section 8(b) of the Act.

Medical benefits

Respondent shall pay reasonable and necessary medical services of See P.X. 12, as provided in Section 8(a) of the Act.

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

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

Bradley D. Gillespie **APRIL 20, 2022**

Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

REBECCA MINOR,	)
Petitioner,	)
	)
v.	)**Case No.: 18WC037199**
	)
WEXFORD HEALTH SERVICES,	)
Respondent.	)

MEMORANDIUM OF 19(b) DECISION OF ARBITRATOR

FINDING OF FACTS

Rebecca Minor [hereinafter "Petitioner"] testified that she was working as a nurse for Wexford Health Services [hereinafter "Respondent"] on August 21, 2018 at the Lincoln Correctional Center. An inmate was having a seizure and was falling when Petitioner caught the inmate. The inmate weighed approximately 140 pounds. Petitioner testified that she felt immediate and intense low back pain that ran into both legs. Petitioner testified that her supervisor arranged for her to go to Abraham Lincoln Hospital Emergency Department that same day. She received x-rays and muscle relaxants.

Petitioner went to her primary care doctor at Rural Health Center for follow up that included prednisone, physical therapy and an MRI. Rural Health Center referred her to Dr. Kukkar, a surgeon who eventually referred her to Dr. Amin with SIU Medicine who performed injections. Dr. Amin performed a L 4-5 and L 5- S1 posterior lateral fusion on July 3, 2019. Dr. Amin performed a transforaminal interbody lumbar fusion at L 3-4, with removal and re-insertion of hardware at L 4-5 and L 5-S1. Petitioner testified she had a second surgery with Dr. Amin on October 19, 2020 involving a transforaminal interbody fusion at L 3-4.

Petitioner testified that after her work accident on August 21, 2018 she experienced ongoing and extreme low back pain. Petitioner testified that her low back pain now makes it hard

for her to stand more than 30-45 minutes, walk more than 2-3 blocks, lift more than 25-30 pounds, sit more than 30-45 minutes. Petitioner testifies that she uses a left leg brace and her balance has been off since her first low back fusion due to left foot drop. Petitioner testified that she had low back pain before August 21, 2018, however she passed a pre-employment physical with Respondent in May of 2018 and worked without any restrictions with Respondent as a full-time nurse in a correctional facility. Petitioner testified that she was able to perform all job duties that required her to stand and work all day and lift 30-40 pounds and push patients in wheelchairs. Petitioner testified that she had a right total hip replacement in 2013 and she was receiving pain medication for her right hip pain and low back pain from the Rural Health Center. Petitioner testified that before August 21, 2018 she was active playing and coaching volleyball as recently as the summer of 2018. Petitioner testified her work history included waitressing, bartending, home health care and nursing. Petitioner testified that before August 21, 2018 she used no assistive devices. Petitioner testified that after August 21, 2018 she used a cane until February 2021 to assist her to stand and walk and she last used a walker in October 2019 after her first surgery.

Abraham Lincoln Memorial Hospital records dated August 21, 2018 provide, 41-year-old patient here with back pain. Patient works at the prison. She was trying to catch a prisoner as prisoner was falling. She twisted her low back as she was trying to catch that person from hitting to the ground. (P.X. 1)

Rural Health Center records dated August 23, 2018 provide, Patient presents to clinic for an ER follow up. Patient states she injured her low back while at work. Patient states she was seen at Abraham Lincoln Hospital ER in Lincoln on 8-21-18. Patient states that she was working at the prison in Lincoln and an inmate started having a seizure and she went to lower them to the

ground and felt a pop in the right side of her lower back. (P.X. 9)

Dr. Amin testified that he is a Neurosurgeon who performed two surgeries on Petitioner. (P. X. 4, P.6)

The SIU Neuroscience Institute first saw Petitioner on February 19, 2019 (P.X. 4, P. 6)

Dr. Amin testified that Petitioner complained of left sided leg pain in a L5 distribution originally, but it had evolved into right sided greater than left sided L5 distribution lumbar radiculopathy or leg pain. (P.X. 4, P. 7)

Petitioner provided a history of working when an inmate went into a seizure and Petitioner caught her dead weight and while bending over to lay her on the floor she felt a pop in her low back. (P.X. 4, P. 7)

Dr. Amin performed an exam showing a positive right-sided straight leg raise in an S1 distribution. (P. 8)

Dr. Amin ordered an EMG that showed abnormal signals in the L5-S1 lumbosacral dermatomal distribution, which were chronic left sided, without any other neuropathy or other possible causes. (P.X. 4, P. 10)

Dr. Amin reviewed the images of a September 2018 MRI. It showed a progression from moderate to severe canal stenosis at L4-5 for multiple factors. Dr. Amin testified the disc protrusion exerts mass effect, but also facet hypertrophy and ligamentous thickening. Dr. Amin testified three things can essentially compress from three different directions the nerve roots and cause the symptoms of radiculopathy and claudication. (P.X. 4, P. 12, 13)

Dr. Amin recommended a two-level lumbar fusion to be performed on July 3, 2019. (P.X. 4, 17-20, 41)

Dr. Amin provided the opinion based on a reasonable degree of medical certainty that Petitioner assisting the inmate at work when she had a seizure aggravated her low back condition beyond the chronic arthritis. The disc herniation causing the mass effect could be an acute exacerbation which changed it from back pain, arthritis of the spine, to a radiculopathy, which is now a pinched nerve which is affecting the leg. (P.X. 4, P. 20-23)

Dr. Amin testified the surgery is related to her work injury because of the pinched nerve physiology. (P.X. 4, P. 23)

Dr. Amin testified the trauma of the workplace injury could dramatically change the pre-existing symptoms. (P.X. 4, P.25)

Dr. Amin, on cross examination, explained that even if Petitioner was prescribed narcotic medications and had degenerative disc disease just prior to the date of accident it would not mean she was a surgical candidate before the injury because she was fully functional at work and home without significant disability. (P.X. 4, P. 38, 39)

Dr. Amin testified that he ordered an EMG that was performed on September 18, 2019 that showed mild chronic L5 radiculopathy on the left. (P.X. 5, P. 6, 7)

As of November 5, 2019, Petitioner continued to have weakness in the left leg but it was improving. She complained of more back pain. Dr. Amin testified that we expected her to be better than she described herself to be. (P.X.5, P.10)

Dr. Amin testified that he was concerned that she seemed to be developing spinal canal stenosis at a moderate degree based on the November 22, 2019 MRI. (P.X. 5, P. 11-14)

Dr. Amin testified Petitioner complained of left foot drop weakness that comes from left

L5 radiculopathy. (P.X. 5, P.17)

Dr. Amin diagnosed Petitioner with Neurogenic Claudication. (P.X. 5, P. 18)

Dr. Amin's Colleague, Dr. Lou Graham, provided Petitioner with an injection on January 30, 2020. (P.X. 5, P. 18, 19)

Dr. Amin reviewed a July 22, 2020 CT of the lumbar spine that showed good alignment with a successful fusion. (P.X. 5, P. 21, 22)

Dr. Amin ordered another MRI dated August 21, 2020 because Petitioner was worse. Dr. Amin testified she was not able to do a full day of work. She was ambulating with a wheeled walker at this point. It showed severe spinal canal stenosis at the first normal level above the level of the operative fusion surgery. The first fusion was successful, but the level above has failed or has had advanced degenerative changes at that level, consistent with Neurogenic Claudication symptoms she is describing. (P.X. 5, P. 23, 24)

Dr. Amin performed a L3-4 transforaminal interbody lumbar fusion on October 19, 2020. (P.X. 5, P. 27, 28)

Petitioner has hardware in her body. It includes rods and screws. (P.X. 5, P. 28-29)

Dr. Amin testified that the need for the second fusion at the L3-4 level on October 19, 2020 was related to the original work accident assisting the inmate because she would not have needed the second surgery has she never had the original L4-S1 surgery. The first fusion accelerated the degeneration. (P.X. 5, P. 30-31)

Dr. Amin testified that Petitioner's spinal pathology contains air and water in the disc and when she was assisting with the inmate it pushed the air through and ruptured a layer of the posterior disc and it became a mass effect causing compression, pain and weakness. (P.X. 5, P. 33-36)

Dr. Amin testified that Petitioner could eventually return to full time employment.

(P.X. 5, P. 36)

Dr. Amin explained that there is a difference between the Radiologist's reading of the lumbar levels and the operative reports because Petitioner has a unique S1-S2 disc that is nearly fully formed. The Radiologist referenced the L2-3 with moderate spinal canal stenosis. This is referenced as L3-4 in the operative report. (P.X. 5, P. 12, 13)

Respondents IME Dr. Gleason examined Ms. Minor on April 2, 2019. (R.X. 13, P. 9)

Dr. Gleason provided the opinion that Ms. Minor's low back condition is not related to August 21, 2021 work accident because her condition resolved shortly after the injury and was pre-existing. (R.X. 13, P.27)

Dr. Singh examined Petitioner on January 13, 2021. (R.X. 14, P. 11)

Dr. Singh testified that his opinion Petitioner suffers from pre-existing spinal stenosis that is unrelated to the work injury. (R.X. 14, P. 20, 21)

Dr. Singh testified that he did not believe the mechanism of injury further increased or aggravated the underlying stenosis. (R.X. 14, P. 21)

Dr. Singh testified that he believes the need for the second surgery is causally related to the first surgery. (R.X. 14, P. 40)

Dr. Singh testified that Petitioner has significant weakness in her left lower extremity and she requires an AFO. Dr. Singh testified that he believes Petitioner is able to perform at the light to medium category of work. (R.X. 14, P. 37)

Petitioner's Rural Health Center records provide the following:

March 14, 2017: Patient states she is taking norco for her left hip pain. (R.X. 7)

July 20, 2017: Patient states her medications are doing well. She started working at prison in Jacksonville as a nurse the first of August. Patient does have significant arthritis especially of her hips. She is working at a prison in Jacksonville as her back pain has improved and she is able to cope with everything with two norco in the am and one in the pm. She is doing well. (R.X. 8)

October 17, 2017: Patient states she currently takes hydrocodone for her chronic left hip pain. (P.X. 9)

January 19, 2018: Patient states her medications are working well for her. She takes hydrocodone and meloxicam. (R.X. 10)

May 1, 2018: Patient states she currently takes hydrocodone and meloxicam for chronic hip and low back pain. (R.X. 11)

August 9, 2018: Patient states she takes hydrocodone for chronic left hip pain s/p total hip replacement. (R.X. 12)

November 7, 2019: Patient states that she is till wearing the leg brace and walking with assistance of a cane. She states Dr. Amin has advised her that it may be another 6 months before she can return to work. (P.X. 9)

October 13, 2020: Pre-surgical physical. Patient reports chronic back pain. She does walk with a cane. (P.X. 9)

December 19, 2018: Dr. Kukkar recommends surgery. Decompressions L5 laminectomy/laminotomy, foraminotomy and discectomy. (P.X. 3)

October11, 2018: Off work slip. (P.X. 3)

July 3, 2019: OPERATIVE REPORT: Lumbar instability, vacuum disk

phenomena, lumbar radiculopathy, lumbar stenosis, neurogenic claudication.

POSTOPERATIVE DIAGNOSIS: Lumbar instability, vacuum disk phenomena, lumbar radiculopathy, lumbar stenosis, neurogenic claudication.

PROCEDURE: L4-5 posterolateral interbody fusion with hardware, navigation, and microscope; L5-S1 posterolateral interbody fusion with navigation, interbody autograft, allograft, microscope. (P.X. 10)

October 19, 2020: OPERATIVE REPORT: Lumbar stenosis, neurogenic claudication, adjacent level disease, previous spinal fixation hardware, lumbar radiculopathy.

POSTOPERATIVE DIAGNOSIS: Lumbar stenosis, neurogenic claudication, adjacent level disease, previous spinal fixation hardware, lumbar radiculopathy.

PROCEDURE: Transforaminal interbody lumbar fusion, L3-L4, removal and re-insertion of hardware with inspection of fusion at L4-L5, L5-S1 with navigation and microscope, autograft and allograft. (P.X. 11)

Conclusions of Law

1. Causal Connection. Respondent stipulated to accident. Petitioner's surgeon, Dr. Amin testified that when Petitioner assisted the inmate who was having the seizure and felt immediate low back pain it made her low back condition symptomatic and led to her need for her two low back surgeries. Respondents' independent medical examiners both testified that Petitioner's preexisting condition caused her need for the surgeries. Sisbo, Inc. v. Industrial Commission 207 Ill. 2d 193 (Ill.S.Ct. 2003), provides that 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 in aggravating or accelerating the pre-existing condition. Petitioner testified that she had prior low back pain, however, she testified that she passed an employment physical 3-4 months before her August 21, 2018 accident. Petitioner testified she worked as a full-time LPN at a prison that required lifting 30-40 pounds and being on her feet all day with no restrictions before her August 21, 2018 work injury. Petitioner testified that she was able to play and coach volleyball and engage in outdoor activities in the summer of 2018 without limitations. The Arbitrator finds causal connection between Petitioner's August 21, 2018 accident and her low back condition and her need for the two surgeries because the work injury was also a causative factor in aggravating or accelerating Petitioner's pre-existing condition. Based on the medical records, Dr. Amin's testimony and Petitioner's ability to perform her work as an LPN in the prison without restrictions prior to August 21, 2018.

2. Medical Bills. Based on the testimony of Dr. Amin and the medical records the Arbitrator orders the Respondent to pay the medical bills set forth in P.X. 12 pursuant to the fee schedule.

3. Temporary Total Disability. Respondent paid Petitioner temporary total disability benefits through April 12, 2019. Respondent stopped paying benefits based on its independent medical examiner's opinion. Petitioner underwent surgery for a low back fusion on July 3, 2019. Dr. Amin's medical records document ongoing complaints of pain and lower extremity weakness that led to a second lumbar fusion on October 19, 2020. Petitioner testified that after her surgeries she was required to us a combination of wheelchair, walker and a cane. Dr. Singh, Respondent's IME, testified that Petitioner has significant weakness in her lower extremities and requires an AFO. Dr. Singh testified that Petitioner is limited to light to medium work. Petitioner testified that her work as an LPN with Respondent required 40 hours of work per week and she

was on her feet all day. It required direct patient care, carrying equipment up to 40 pounds and pushing patients in wheelchairs when necessary. Dr. Amin diagnosed Petitioner with left foot drop. The Arbitrator finds the medical records, the two lumbar fusion surgeries, and the response of Petitioner to the surgeries, and the physical nature of Petitioner's job show that Petitioner has been temporarily totally disabled from August 22, 2018 through September 30, 2021. The Arbitrator orders Respondent to pay TTD benefits for this period with appropriate credit to Respondent for payments already made.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC022225
Case Name	Chentay M. Morris v. Illinois Department of Corrections
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0206
Number of Pages of Decision	13
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	David Figlioli
Respondent Attorney	James Gale

DATE FILED: 5/8/2023

/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

Chetney M. Morris,

Petitioner,

vs. NO: 18 WC 22225

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 issue of the nature and extent of Petitioner's 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 October 28, 2022, is hereby affirmed and adopted.

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

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

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

May 8, 2023
MP:yl
o 5/4/23
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC022225
Case Name	Chentey M. Morris v. Illinois Department of Corrections
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	David Figlioli
Respondent Attorney	James Gale

DATE FILED: 10/28/2022

THE INTEREST RATE FOR THE WEEK OF OCTOBER 25, 2022 4.39%

/s/ Frank Soto, Arbitrator
Signature

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

October 28, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **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

Chentey M. Morris Case # **18** WC **022225**
Employee/Petitioner
v.
Illinois Department of Corrections
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Frank Soto**, Arbitrator of the Commission, in the city of **Geneva**, on **September 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 **Extent of credit for "other benefits paid" which may be allowed under Section 8(j).**

FINDINGS

On **July 26, 2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $52,211.64; the average weekly wage was $1,004.07.

On the date of accident, Petitioner was **56** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**31,749.16** for TTD, $**0** for TPD, $**21,803.64** for maintenance, and $**478.13** for other benefits, for a total credit of $**54,030.93**.

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

ORDER

The Respondent shall be given a credit of $31,749.16 for TTD, $21,803.64 for Maintenance benefits, and $478.13 for "other benefits paid," for a total credit of $54,030.93.

The Respondent shall pay Petitioner the sum of $602.44 per week for a further period of 175 weeks, as provided under Section 8(d)2 of the Act, because the injuries sustained caused the permanent partial loss of use of the "person as a whole" to the extent of 35%

Respondent shall pay Petitioner compensation that has accrued from July 26, 2017 through September 29, 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.

OCTOBER 28, 2022

By: */o/ Frank J. Soto*
Arbitrator

Procedural History

This case was tried on September 29, 2022. The disputed issues involve the nature and extent of Petitioner's injury and the amount of a credit Respondent is entitled under the Act. (AX1).

Findings of Fact

Chentey Morris (hereafter referred to as "Petitioner") is a 56-year-old Food Service Supervisor II who had worked for 18 months at the juvenile detention center of the Illinois Department of Corrections (hereafter referred to as "Respondent") located in St. Charles, Illinois. Her salary was determined by a collective bargaining agreement.

As a Food Service Supervisor II, Petitioner was tasked with preparing between 125 to 150 meals per day for the inmates that were housed in this facility. The various food items would come in boxes of multiple large cans that would weigh from 20 to 25 pounds. Pieces of meat or meat products would come in packaging weighing up to 50 pounds. Petitioner would have to carry these boxes or packages from the delivery area into the kitchen area daily and then from the various refrigerators or storage areas to the preparation tables in the kitchen area. She would also have to prepare the meals utilizing large mixers, slicers, large kettles and pots, and portable ovens that weighed from 75 pounds up to 200 pounds. Petitioner testified she was constantly lifting, carrying, pushing, and pulling these items throughout her workday. Also, as part of her job duties, Petitioner testified she was required to clean the kitchen area daily. This task required her to move various items and equipment around in the kitchen to clean the premises and preparation tables thoroughly. She had to constantly reach, bend and twist with her arms and hands to clean and scrub the equipment used to prepare the food and to wash the pots and pans utilized to make and serve the food to the inmates.

Petitioner testified she had no difficulties performing these job duties prior to July 26, 2017, nor had she suffered any injuries or received any treatment to her left shoulder prior to July 26, 2017.

Petitioner testified on July 26, 2017, she was assisting in preparing lunch for the inmates at the detention center and was moving bags of garbage that had been placed in the hallway near the kitchen so that safe access could be maintained into the kitchen area for other workers. As she was moving these bags of garbage, she tripped over some bindings that had been taken off packaging and was lying on the floor. As she tripped and fell forward, she struck her left

shoulder against a heavy metal door. She immediately felt pain in her left shoulder but continued to work that day and for the next few weeks she continued to experience pain and tightness in her left shoulder and weakness in her left arm.

Petitioner testified when her left shoulder symptoms continued and did not improve, she sought treatment from her family physician, Dr. Ebony Johnson. She was initially evaluated by Dr. Johnson on August 14, 2017, who performed x-rays of the left shoulder, provided medication, prescribed therapy, and placed her under a light duty work restriction. Dr. Johnson then ordered an MRI of the left shoulder and that MRI revealed a torn rotator cuff. Dr. Johnson referred Petitioner to an orthopedic shoulder specialist, Dr. Sujal Desai for further treatment. (PX. 1).

Petitioner was initially evaluated by Dr. Desai on January 22, 2018. Dr. Desai performed an examination of Petitioner's left shoulder, reviewed the MRI results and discussed further treatment with her. He then recommended a surgical procedure to Petitioner's left shoulder to repair the rotator cuff tear. Petitioner elected to undergo that surgical procedure and Dr. Desai performed that surgery on March 6, 2018, at Little Company of Mary Hospital. During that surgical procedure, Dr. Desi performed a repair of the rotator cuff, completed a subacromial decompression, and performed a biceps tenotomy. (PX. 1; p.33-35)

Petitioner followed up monthly with Dr. Desai after the surgery and participated in a course of physical therapy at ATI Physical Therapy. She also completed a work conditioning program. At the conclusion of the work conditioning program, Petitioner completed a Functional Capacity Evaluation. This FCE was performed on September 11, 2018, and the results determined Petitioner could perform at a light to medium work level, below the level required to perform her job duties of a Food Service Supervisor II. (PX. 2; p.178-184)

Dr. Desai released Petitioner to return to work for Respondent within the restrictions outlined in the FCE on October 1, 2018 which Respondent was unable to accommodate. Thereafter, Petitioner requested that Dr. Desai order additional therapy to see if her functionality would improve. Unfortunately, the additional therapy did not result in any improvement so, on December 21, 2018, Dr. Desai released Petitioner with permanent work restrictions outlined in the FCE with respect to lifting and carrying. (PX. 1; p. 125)

On November 13, 2018, Petitioner was evaluated by Dr. Shane Nho pursuant to Section 12 of the Act. Dr. Nho examined Petitioner's left shoulder, reviewed the medical records

provided to him, and subsequently opined Petitioner reached maximum medical improvement. He further opined Petitioner should be placed under permanent work restrictions consistent with the FCE. (RX. 3)

Petitioner testified Respondent was unable to accommodate her restrictions. Thereafter, Petitioner was notified to participate in the State of Illinois Reasonable Accommodation Program. Petitioner completed the necessary paperwork and began looking for employment within her permanent work restrictions. (PX. 3)

In June 2019, Petitioner was referred by the Respondent to Mr. Dean Geroulis, a certified vocational counselor, for an initial vocational assessment. Mr. Geroulis met with Petitioner on June 20, 2019, and he completed his initial assessment and provided his report dated June 25, 2019, wherein he recommended continued assistance in job placement for Petitioner. During this period, Petitioner continued looking for employment within her restrictions under the direction of Mr. Geroulis. (PX. 4)

Petitioner testified she applied for and was subsequently offered a position with the State of Illinois as a Public Aid Eligibility Assistant. This position was within her permanent work restrictions, and she advised Mr. Geroulis of this job offer. She was instructed to accept the position and she started working at this position on August 16, 2019. Her salary as a Public Aid Eligibility Assistant was $44,345.52 per year. (PX. 6) A few months later, Petitioner was also offered position with the Illinois State Police as an Accounting Tech I which paid a higher salary. Petitioner accepted this position and began working as an Accounting Tech I in early December 2019. Her salary at this position was $48,000.00 per year. (PX. 6) Petitioner continues to work in this position. Petitioner testified her current salary is $4,900.00 per month or $58,800.00 per year. (PX. 6 & RX. 2)

Petitioner testified she was able to obtain information with respect to the salary she would receive at her pre-injury position as a Food Service Supervisor II for Respondent. Given her seniority as established by the collective bargaining agreement, she would have been at Step 3 of this position, and her salary would have been $5,412.00 per month or $64,944.00 per year effective January 1, 2021. (PX. 7)

With respect to her current condition, Petitioner testified she continues to experience pain in her left shoulder daily. At times it could be a sharp pain given her activities and the pain level could be a 6 or 7 on a scale of 1 to 10. She also experiences spasms in her left shoulder muscles

frequently and has weakness in her left arm and shoulder. Petitioner stated she has difficulty lifting items and has not lifted anything over 40 pounds. She also cannot lay on her left side or shoulder when she attempts to sleep at night. To alleviate these continued symptoms, she takes over the counter medication daily and performs a home exercise program. Petitioner testified she has not suffered any other injuries to her left shoulder since July 27, 2017.

The Arbitrator finds 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 (L), the nature and extend of Petitioner's injury, the Arbitrator finds as follows:

The Arbitrator initially notes that Petitioner elected to forgo a wage differential award as provided for under Section 8(d)1 of the Act even though evidence may establish a loss of earning capacity. Instead, Petitioner seeks an award pursuant to Section 8(d)2 of the Act for this injury as allowed for under *Gallianetti v. Industrial Commission, 315 Ill.App.3d 721, 743 N.E.2d 482 (3rd Dist. 2000)*. As a result, the analysis outlined in Section 8.1(b) of the Act must be utilized to determine the extent of disability to be awarded to the petitioner in this case under Section 8(d)2.

It is undisputed Petitioner sustained a rotator cuff tear to her left shoulder when she tripped and fell striking her left shoulder against a metal door. This injury was documented on an MRI and confirmed by her treating physician, Dr. Sujal Desai. This injury necessitated a surgical procedure wherein Dr. Desai repaired the rotator cuff tear, performed a subacromial decompression, and performed a biceps tenotomy. Although Petitioner diligently participated in courses of physical therapy and work conditioning, she did not fully recover and was placed under permanent work restrictions by Dr. Desai. Respondent's Section 12 examiner, Dr. Nho, agreed the permanent work restrictions were appropriate. As a result, Petitioner was unable to return to her prior occupation as a Food Service Supervisor II but she subsequently found employment as a Public Aid Eligibility Assistant before finding her current position as an Accounting Tech I with the Illinois State Police.

With respect to her current condition, Petitioner testified she continues to experience pain in her left shoulder daily. At times it could be a sharp pain given her activities and the pain level

could be a 6 or 7 on a scale of 1 to 10. She also experiences spasms in her left shoulder muscles frequently and has weakness in her left arm and shoulder. Petitioner stated she has difficulty lifting items and has not lifted anything over 40 pounds. She also cannot lay on her left side or shoulder when she attempts to sleep at night. To alleviate these continued symptoms, she takes over the counter medication daily and performs a home exercise program

Section 8.lb of the Illinois Workers' Compensation Act ("Act") addresses the factors that must be considered in determining the extent of permanent partial disability for accidents occurring on or after September 1, 2011. 820 ILCS 305/8.1b (LEXIS 2011). Specifically, Section 8.1b states:

> (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include but are not limited to: loss of range of motion, loss of strength, measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment.
>
> (b) Also, the Commission shall base its determination on the following factors:
>
> (i) The reported level of impairment;
>
> (ii) The occupation of the injured employee;
>
> (iii) The age of the employee at the time of the injury;
>
> (iv) The employee's future earning capacity; and
>
> (v) Evidence of disability corroborated by medical records.

No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order. *Id.* Considering these factors in light of the evidence submitted at trial, the Arbitrator addresses the factors delineated in the Act for determining permanent partial disability.

With regard to (i) of Section 8.1(b) of the Act, The Arbitrator notes that no AMA Impairment Rating pursuant to the 6th Edition of the Guides to the Evaluation of Permanent Impairment was submitted by either party in this case. Therefore, this factor is given no consideration by the Arbitrator.

With regard to (ii) of Section 8.1.(b) of the Act, Petitioner was employed as a Food Service Supervisor II, however, she was not allowed to return to her occupation due to her permanent work restrictions. As such, the Arbitrator gives this factor greater weight in determining permanent partial disability.

With regard to (iii) of Section 8.1.(b) of the Act, the age of Petitioner. The Arbitrator notes that Petitioner was 56 years old at the time of her July 26, 2017. Individuals who are near the end of their work life tend to recover less rapidly than younger individuals and, therefore, those individuals are more likely to feel the effects of work injuries for longer periods of time. As such, the Arbitrator gives this factor some weight in determining permanent partial disability.

With regard to (iv) of Section 8.1(b) of the Act, Petitioner's future earning capacity. The Arbitrator notes Petitioner's earning capacity has been adversely affected by her work injury. Petitioner was issued on permanent work restrictions resulting in her loss of her job. Petitioner found subsequent employment in a less physically demanding position which resulted in Petitioner accepting a lower paying job. As such, the Arbitrator gives this factor greater weight in determining permanent partial disability.

With regard to (v) of Section 8.1.(b) of the Act, evidence of disability corroborated by the treating medical records. Petitioner demonstrated evidence of her disability which is corroborated by the medical records. Petitioner testified she continues to experience pain in her left shoulder daily. She also experiences spasms in her left shoulder muscles frequently and has weakness in her left arm and shoulder. Petitioner stated she has difficulty lifting items and has not lifted anything over 40 pounds. The medical records corroborate Petitioner's testimony with respect to her on-going symptoms and degree of disability. The chart notes from Dr. Desai note Petitioner has on-going complaints in her left shoulder. (PX. 1) The records from ATI physical therapy and the FCE report show that Petitioner was experiencing on-going pain with activity, weakness, spasms in her left arm and shoulder, and limited range of motion. (PX. 2) The Section 12 examiner, Dr. Shane Nho, noted Petitioner experienced a loss of range of motion and pain with provocative testing. (RX. 3) As such, the Arbitrator gives this factor greater weight in determining permanent partial disability.

Based upon the above, the Arbitrator finds that Petitioner has sustained a permanent partial loss of use of the "person as a whole" to the extent of 35% under Section 8(d)2 of the Act. The Arbitrator further finds Petitioner sustained a loss of trade and/or occupation as a result of her work July 26, 2017 work injury.

Regarding issue (Q), the extent of credit under Section 8(j) of the Act to be given to Respondent for other benefits paid to Petitioner, the Arbitrator finds as follows:

Respondent claims credit in the sum of $717.19 for "other benefits paid" which Respondent claims is the full salary amount paid to Petitioner under the collective bargaining agreement for the first five days she was disabled due to her work injury. Petitioner claims that Respondent should only receive credit for the amount that would have been paid up to the TTD rate, for those first five days or $478.13.

The language set forth in Section 8(j)2 of the Act controls and states as follows;

> Nothing contained in this Act shall be construed to give the employer or the insurance carrier the right to credit for any benefits or payments received by the employee other than compensation payments provided by this Act, and where the employee receives payments other than compensation payments, whether as full or partial salary…...the employer or insurance carrier shall receive credit for each such payment only to the extent of the compensation that would have been payable during the period covered by such payment.

Given the plain, unambiguous language of Section 8(j)2, Respondent is entitled to receive credit for this payment only up to the TTD rate as calculated in this case. The parties stipulated Petitioner's average weekly wage was $1,004.07 and, therefore, Petitioner's temporary total disability rate is $669.38 per week and five days of TTD benefits would total $478.13. As such, Respondent is entitled a credit for "other benefits paid" only in the amount of $478.13.

By: */o/ Frank J. Soto* October 27, 2022
Arbitrator Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC014307
Case Name	Orlando Matthews v. Choate Mental Health
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0207
Number of Pages of Decision	12
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Brittni McCann
Respondent Attorney	Nicole Werner

DATE FILED: 5/9/2023

/s/ Deborah Simpson, Commissioner

Signature

23IWCC0207

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

ORLANDO MATTHEWS,

Petitioner,

vs. NO: 21 WC 14307

STATE OF ILLINOIS,
CHOATE MENTAL HEALTH CENTER,

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 average weekly wage ("AWW") and permanent partial disability and being advised of the facts and law, modifies the Decision of the Arbitrator and corrects the scrivener's errors as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission agrees with the Arbitrator's well-reasoned analysis of Section 8.1b. The Commission, however, assigns lesser weight to subsection (v). The Petitioner sustained a left knee strain resulting in one injection and one physical therapy session. He has since returned to work full duty. The Petitioner testified to some ongoing weakness and pain that he treats daily with a cream and Tylenol approximately twice a week. Based upon the above, the Commission finds that the Petitioner sustained 7.5% loss of use of the left leg as a result of his injury.

The Commission, herein, corrects the scrivener's errors appearing in the findings section and on page 5 of the Decision. In the findings section, the Arbitrator incorrectly noted Petitioner's date of accident as April 20, 2022. Then, on page 5 of the Decision, the Arbitrator listed Petitioner's AWW as $1,927.65. The Commission corrects the Decision to reflect the correct date of accident of April 20, 2021 and further corrects page 5 of the Decision to reflect an AWW of $926.76.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed September 19, 2022, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $556.05 per week for a period of 16.125 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused 7.5% loss of use of the left leg.

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

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

May 9, 2023

DLS/tdm

O: 5/4/23

046

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

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

/s/*Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC014307
Case Name	Orlando Matthews v. Choate Mental Health
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Brittni McCann
Respondent Attorney	Nicole Werner

DATE FILED: 9/19/2022

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 13, 2022 3.46%

/s/ Jeanne AuBuchon, Arbitrator
Signature

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

September 19, 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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Orlando Matthews
Employee/Petitioner

v.

Choate Mental Health
Employer/Respondent

Case # **21** WC **014307**

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, Illinois**, on **April 19, 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. [x] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [ ] 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 **April 20, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**48,191.28**; the average weekly wage was $**926.76**.

On the date of accident, Petitioner was **47** years of age, ***single*** with **1** dependent children.

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

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services outlined in Petitioner's Exhibit 5 directly to the providers, as provided in § 8(a) and § 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **$556.05**/week for **21.5** weeks, because the injuries sustained caused the **10%** loss of the **left leg**, as provided in § 8(d)2 of the Act.

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

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

SEPTEMBER 19, 2022

Jeanne L. AuBuchon

Signature of Arbitrator

PROCEDURAL HISTORY

This matter proceeded to trial on April 19, 2022. The issues in dispute are (1) the Petitioner's average weekly wage and (2) the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

At the time of the accident, the Petitioner, who was 47 years old, was employed by the Respondent as a mental health technician. (AX1, T. 10). The Petitioner began working for the Respondent in February 2020. (Id.). From April 16, 2020, through April 20, 2021, he earned $40,196.77 in regular wages and $22,462.15 in overtime wages representing 834.4 hours of overtime worked. (PX4, RX4). He was paid hourly and earned $17.58 per hour. (Id.) His regular hours of employment were 37.5 hours per week. (Id.). The Petitioner said the majority of overtime hours he worked were mandated by the Respondent, and if mandated overtime was refused, he would be disciplined and possibly discharged. (T. 18).

Julie Clark, a public service administrator for the Respondent testified that it was her responsibility to keep track of overtime hours for employees. (T.24-25) She said the Petitioner worked the following overtime shifts: three in May 2020, all voluntary; 10 in June 2020, nine voluntary; 11 in July 2020, five voluntary; 12 in August 2020, six voluntary; eight in September 2020, none voluntary; three in October 2020, none voluntary; eight in November 2020, three voluntary; five in December 2020, two voluntary; 10 in January 2021, four voluntary; 12 in February 2021, three voluntary; and 10 in March 2021, two voluntary. (T.26-29; RX4) Ms. Clark testified that the Petitioner worked overtime every pay period the year prior except two. (T. 30) In the pay periods from April 16, 2020, through April 15, 2021, the Petitioner was paid $40,196.77 for regular wages and worked 454.75 mandatory overtime hours. (RX4)

On April 20, 2021, while the Petitioner was sitting at a desk and at arm's length away from a resident doing paperwork, the resident violently pushed the desk into the Petitioner's left knee. (T. 10). The Petitioner felt immediate pain. (T. 11-12).

The Petitioner was seen by a nurse at the Respondent's facility who advised him to go to the emergency room. (T. 12) The Petitioner left his shift and went to the emergency room at Union County Hospital complaining of left knee pain. (T. 13, PX2). An x-ray of the left knee was negative, and the Petitioner was advised to follow-up with an orthopedic specialist, Dr. Knight. (T. 14, PX2). The Petitioner saw Dr. Knight at St. Francis Medical Center Advanced Orthopedics Specialists on May 17, 2021. (T. 14, PX3). Dr. Knight ordered an MRI of the Petitioner's left knee that he underwent on June 24, 2021. (Id.). As a result of the MRI, Dr. Knight diagnosed the Petitioner with a left knee strain. (PX3). Dr. Knight then performed a steroid injection of the left knee on July 1, 2021. (T. 14-15, PX3). At a follow-up visit with Dr. Knight on July 26, 2021, the Petitioner advised the injection provided relief from the pain, but his knee still felt weak. (T. 15, PX3). Dr. Knight then prescribed one visit to physical therapy for range of motion, strengthening, and other modalities and released the Petitioner to return to work the following Monday without restrictions. (T. 15-16, PX3). The Petitioner underwent the physical therapy at Cairo Rehab Fit Fore Golf on July 28, 2021. (T16; PX1). The Petitioner testified that he still experiences symptoms of weakness and a feeling that his knee will "give in" when walking as well as pain and swelling, especially affected by changes in weather. (T. 17). He applies a cream daily to his knee and takes Tylenol approximately two times per week. (T. 22).

CONCLUSIONS OF LAW

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

Issue G: What was the Petitioner's Average Weekly Wage?

Pursuant to § 10 of the Act, average weekly wage "shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ending with the last day of the employee's last full pay period immediately preceding the date of injury, illness or disablement excluding overtime, and bonus divided by 52…" 820 ILCS 305/10.

In the seminal overtime decision, the appellate court defined overtime under the statute as: (1) compensation for any hours beyond those the claimant regularly works each week, and (2) extra hourly pay above the claimant's normal hourly wage. *Edward Hines Lumber Co. v. Industrial Com.*, 215 Ill. App. 3d 659, 666 (1st Dist. 1990) The court included hours worked in excess of 40 hours per week in the average weekly wage calculation because the claimant regularly worked an average of 67 hours per week. *Id*. at 666-667. Later, the appellate court applied this definition in declining to include compensation for hours worked beyond a regular work week by finding there was "no evidence that (the claimant) was required to work overtime as a condition of his employment or that he consistently worked a set number of overtime hours each week. *Edward Don Co. v. Indus. Comm'n*, 344 Ill. App. 3d 643, 657 (1st Dist. 2003) The court found there was "no evidence that the overtime hours the claimant worked were part of his regular hours of employment." *Id*. In 2007, the appellate court defined overtime as including "those hours in excess of an employee's regular weekly hours of employment that he or she is not required to work as a

condition of his or her employment or which are not part of a set number of hours consistently worked each week." *Airborne Express, Inc. v. Ill. Workers' Comp. Comm'n*, 372 Ill. App. 3d 549, 554 (1st Dist 2007) In 2011, the appellate court cited *Airborne Express* as holding: "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 Auto. v. Ill. Workers' Comp. Comm'n*, 407 Ill. App. 3d 427, 436 (1st Dist. 2011)

However, in what is probably the latest published opinion on overtime, the appellate court cited Airborne Express as holding: "Although overtime wages are generally excluded from the calculation of an employee's compensation, an exception exists where the overtime hours are consistent and required by the employer." *S&C Elec. Co. v. Ill. Workers' Comp. Comm'n*, 2015 IL App (1st) 141057WC, ¶43. In reviewing this case, this Arbitrator notes that the court did not address the element of consistency but affirmed the Commission's adoption and affirmation of the Arbitrator's decision finding that the record was "devoid of ample evidence to conclude that any time worked over 8 hours (was) mandatory." *Id.* at ¶44. Because the appellate court did not explain why the requirement for including overtime in an average weekly wage was that the hours are consistent **and** mandatory – as opposed to consistent **or** mandatory – this Arbitrator will follow the verbiage of *Airborne Express* and *Tower Auto* and determine whether the overtime worked by the Petitioner was consistent **or** mandatory.

Based on this case law, the Arbitrator finds that the mandatory overtime hours the Petitioner worked should be included in calculating his average weekly wage at his normal hourly rate, as he was required to work these hours as a condition of his employment or face disciplinary action. The Petitioner's regular hours of employment were 37.5 hours per week. He was required to work overtime hours as a condition of his employment, albeit some of the overtime hours were voluntary. The Petitioner testified that if he refused to work overtime, he was subject to discipline up to and including termination. The Respondent offer no evidence contradicting his testimony.

Therefore, the Arbitrator finds the Petitioner's average weekly wage was $1,927.65 based on his regular wages of $40,196.77 plus $7,994.51 for 454.75 mandatory overtime hours – totaling $48,191.28 in income for the 52 weeks preceding the accident.

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 § 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that "No single enumerated factor shall be the sole determinant of disability." *Id*.

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

(ii) **Occupation.** The Petitioner was able to return to his regular employment without restrictions. The Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 47 years old at the time of his injury. He has a significant working life remaining and must live with his disability for an extended period of time. The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity.** There was no evidence of diminished earnings as a result of the injury. The Arbitrator places no weight on this factor.

(v) **Disability.** The Petitioner testified that despite treatment, he continues to experience problems including pain, weakness, and swelling. His daily activities have been affected. The Arbitrator puts significant weight on this factor.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC027573
Case Name	Mariano Lujano Miramontes v. Landscape Creations
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0208
Number of Pages of Decision	17
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Ivan Rueda
Respondent Attorney	Jeff Goldberg

DATE FILED: 5/9/2023

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARIANO LUJANO MIRAMONTES,

Petitioner,

vs. NO: 19 WC 027573

LANDSCAPE CREATIONS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review under §19(b) having been filed by the parties herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary disability, medical expenses and prospective medical, §19(k) and §19(l) penalties and §16 fees and other issues including Petitioner's amended Petition for Review and *Ghere* objections, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission affirms and adopts the Arbitrator's Decision except to modify the temporary total disability award as follows below.

The Commission agrees with the Arbitrator that Petitioner is entitled to lost time benefits beginning October 1, 2019, the date that chiropractor Gutierrez authorized Petitioner off work. (PX2, 8) However, Petitioner was released to return to work with restrictions by Dr. Pelinkovic as of December 3, 2021. (PX3, 139) Petitioner testified that Respondent offered him light duty

work, however, he never accepted or performed light duty work for Respondent. (T. 28-29, 45) Thus, the Commission finds that Petitioner sustained his burden of proving entitlement to temporary total disability from October 1, 2019, through December 3, 2021. Therefore, the Commission, strikes the third and fourth sentences in the third paragraph on page nine under disputed issue (L), Whether Petitioner is Entitled to Any Temporary Total Disability Benefits so the third and fourth sentences now read as follows:

> Thus, the Arbitrator finds that Petitioner was temporarily totally disabled from the date his chiropractor authorized him off-work on October 1, 2019, (PX2, 8) through December 3, 2021, the date Dr. Pelinkovic opined that Petitioner was at MMI and authorized Petitioner to return to work with a 20 pound lifting restriction. (PX3, 139) Thus, the Arbitrator concludes that Respondent shall pay Petitioner TTD benefits of $438.33/week for 113-4/7 weeks, commencing October 1, 2019, through December 3, 2021, as provided in Section 8(b) of the Act.

The Commission further modifies the Arbitrator's Order as described below to conform to the above Conclusions of Law and to reflect the award of additional weeks of temporary total disability benefits.

Finally, the Commission also addresses the fact that Petitioner filed an Amended Petition for Review to preserve a *Ghere* objection not listed in the original Petition. The Commission notes that the Arbitrator's Decision was entered on July 12, 2022. Petitioner filed a timely Petition for Review on August 10, 2022. Petitioner's Amended Petition for Review was filed on December 13, 2022, exceeding the 30 day window to file a Petition for Review pursuant to §19(b) of the Illinois Workers Compensation Act and 9040.10 of the Rules Governing Practice before the Illinois Workers' Compensation Commission. *820 ILCS 305/19.* The Commission finds that the Amended Petition was not timely filed and therefore the Commission deems the issue is waived.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on July 12, 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 to the Petitioner the sum of $438.33 per week for a period of 113-4/7 weeks, commencing October 1, 2019, through December 3, 2021, 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 shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, and as outlined in PX 1, PX 3, PX 4, PX 6, and PX 8, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the surgery, recommended by Dr. McNally and Dr. Pelinkovic, as provided in Section 8(a) and 8.2 of the Act.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's Petition for 19(k) and §19(l) penalties and §16 attorney fees is denied and penalties and fees shall not be imposed on Respondent.

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 including, but not limited to, $10,100.00 representing $8,600.00 for TTD paid and $1,500.00 in permanent partial disability advance payment, and any medical benefits that have been paid, as provided in Section 8(j) of the Act.

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

May 9, 2023

KAD/bsd
O032823
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/s/*Kathryn A. Doerries*
Kathryn A. Doerries

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC027573
Case Name	Mariano Lujano Miramontes v. Landscape Creations
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	Ivan Rueda
Respondent Attorney	Jeff Goldberg

DATE FILED: 7/12/2022

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

/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)

MARIANO LUJANO MIRAMONTES
Employee/Petitioner

v.

LANDSCAPE CREATIONS
Employer/Respondent

Case # **19** WC **027573**

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 **Nath Rivera**, 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. ☒ 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, **8/27/2019**, 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 $**34,190.00**; the average weekly wage was $**657.50**.

On the date of accident, Petitioner was **48** 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 $**8,860.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**1,500.00** for other benefits, for a total credit of $**10,100.00**.

Respondent is entitled to a credit of $**10,100.00** 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, PX 3, PX 4, PX 6, and PX 8, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall approve and pay for the surgery, recommended by Dr. McNally and Dr. Pelinkovic, as provided in Section 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner TTD benefits of $438.33/week for 106 3/7 weeks, commencing October 1, 2019, through October 15, 2021, as provided in Section 8(b) of the Act.

Payment of penalties and attorney's fees shall not be imposed on Respondent.

Respondent shall be given credit in the amount of $8,600.00 for TTD paid, $1,500.00 in partial permanent disability advance payment, and any medical benefits that have been paid, as provided in Section 8(j) of the Act.

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

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

JULY 12, 2022

Signature of Arbitrator
ICArbDec19(b)

STATEMENT OF FACTS

Mariano Lujano Miramontes ("Petitioner") is a 51-year-old man who was employed by Landscape Creations ("Respondent"). (Arbitrator's Exhibit ("AX") 1, line 1) Petitioner testified that he worked for Respondent for approximately 20 years (Transcript "T." 18) Petitioner testified that his job duties entailed the following: lay concrete, build concrete walls and edges around gardens, build patios, lift barriers, break concrete, pull a wagon full of gravel weighing about 100 pounds, and remove snow. (T. 18-19) He testified that during his 20 years with Respondent he worked full time. (T. 19)

Petitioner testified that, on August 27, 2019, he lifted a cement base and moved some walls around it. (T. 21) He testified that he started to feel a pain in his back. *Id.* Petitioner testified that he immediately told his supervisor, Rick MacRoy, who told him to "[r]est a little bit and don't work so hard." *Id.*

Petitioner testified that he finished his shift that day and also worked August 28, August 29, and August 30. (T. 22) Petitioner testified that he worked those days "with pain" and did not make any adjustments to the way he worked. *Id.* He further testified that August 30 was his last day because he was in too much pain. (T. 23) Petitioner testified that after telling Mr. MacRoy about the accident and his pain on August 27, 2019, he also told him again on September 3, 2019. (T. 21-22)

On September 11, 2019, Petitioner presented to Premier Urgent Care. (Petitioner's Exhibit ("PX") 1; T. 23) Petitioner was seen by Certified Nurse Practitioner, Jennifer Kirk. (PX 1 at 3) Petitioner reported that he worked construction and was using a jack hammer and started having pain. (PX 1 at 4) Petitioner further reported that he thought it would get better, went to work the next day, and reinjured his back while shoveling. *Id.* Petitioner complained of bilateral back pain and numbness down his lower extremities. (PX 1 at 3-4) Nurse Kirk diagnosed Petitioner with lumbar strain, sciatica, and lumbar radiculopathy. (PX 1 at 5) The notes indicated that a lumbar x-ray revealed degenerative changes. (PX 1at 6) The only instructions given to Petitioner were to avoid heavy lifting and over-exertion. (PX 1 at 9) Petitioner testified that he did not go back to Premiere Urgent Care because Respondent was not going to pay for a second visit. (T. 23)

On October 1, 2019, Petitioner presented to his first-choice doctor, Dr. Victor Gutierrez, D.C. of Health and Spine Center S.C. (PX 2) Petitioner reported that he was injured at work when he lifted "patio floor bricks from a pallet that was in the floor." (PX 2 at 1) He further reported that he lifted approximately 40-50 pounds in a "bending and twisting manner when he suddenly experienced a severe sharp burning pain in his low back radiating to his right lower extremity." *Id.* Petitioner complained of pain which did not improve with medication, continuation of numbness and tingling in the right lower extremity, and inability to sleep due to the pain. (PX 2 at 2) Dr. Gutierrez diagnosed Petitioner with lumbar disc syndrome with radiculopathy and bilateral lumbar "R › L" paravertebral muscle spasms. (PX 2 at 6) Dr. Gutierrez opined that Petitioner's injuries were work related and placed Petitioner on temporary total disability ("TTD") and off work. (PX 2 at 6, 119) He recommended physical therapy and further stated that the likelihood of symptomatic relief for Petitioner was high. *Id.*

On October 11, 2019, Petitioner underwent a LB MRI at American Diagnostic MRI. (PX 2 at 116) The MRI impressions indicated the following: 1. Multilevel spondylosis as detailed above; 2. Annular bulge with superimposed posterior central herniation at L5-S1 causing moderate neural foraminal and central canal stenosis; 3. Posterior herniation at L4-5 contributing to moderate foramina and central canal stenosis; 4. Posterior herniation at L3-4 contributing to mild foraminal and central canal stenosis; and 5. Posterior

herniation at L2-3 contributing to mild foraminal and central canal stenosis. (PX 2 at 117) Based on these results, Dr. Gutierrez referred petitioner to see orthopedic surgeon Dr. Dalip Pelinkovic M.D. at Suburban Orthopedics. (PX 2 at 145)

On October 25, 2019, Petitioner presented to Dr. Pelinkovic. *Id.* Petitioner reported that he lifted bricks repeatedly and began experiencing pain in his lower back. *Id.* Dr. Pelinkovic diagnosed Petitioner with a compromise of the L5-S1 foramen secondary to disc budge and correlating exam and pain. (PX 2 at 149; PX 3 at 5) Dr. Pelinkovic indicated that Petitioner's state of ill-being was related to the work-related accident. (PX 3 at 1) Dr. Pelinkovic continued physical therapy, recommended pain management through injections, oral pain medications, and muscle relaxers.

On October 31, 2019, Petitioner presented to Dr. Neeraj Jain M.D., pain specialist, per Dr. Gutierrez's orders. (PX 2 at 150; PX4; PX8) Petitioner reported that he was injured at work when he lifted heavy objects of stones and blocks. (PX 2 at 150) Dr. Jain diagnosed Petitioner with lumbar facet syndrome, lumbar discogenic pain, and lumbosacral radiculopathy. (PX 2 at 152; PX 4 at 5) Dr. Jain administered a bilateral L4-L5 and L5-S1 transforaminal epidural steroid injection based on the MRI. (PX 2 at 152) Dr. Jain kept Petitioner off of work and opined that Petitioner's injuries were causally related to his work-related accident. (PX 2 at 153; PX 4 at 2)

On November 19, 2019, Petitioner returned to Dr. Jain and reported that 100% of the pain resolved in his lower extremities, no radiculopathy, but continues to have bilateral low-back pain which he rated as a 7 out of 10. (PX 2 at 174) Petitioner continues to be off work. *Id.*

On November 22, 2019, Petitioner returned to Dr. Pelinkovic. (PX 3 at 4-5) Dr. Pelinkovic diagnosed Petitioner with foraminal stenosis on the right at L5-S1 and presented, as a potential treatment option, surgical decompression with or without fusion. *Id.* Dr. Pelinkovic continued physical therapy and ordered repeat spine injections. (PX 3 at 9)

On December 16, 2019, Dr. Pelinkovic referred Petitioner to Knnick Medical for hardware. (PX 7) Petitioner was given an OrthoCor Cuff for his back and OrthoPods for 3 months which Petitioner obtained. (PX 7; T. 27)

On December 19, 2019, Petitioner returned to Dr. Jain. (PX 8) Dr. Jain administered bilateral L3, L4, and L5 medial branch nerve block injections based on the diagnosis of lumbosacral radiculopathy. (PX 8 at 8)

On January 10, 2020, Petitioner presented to Dr. Tibor Boca M.D., for an independent medical exam ("IME") at Respondent's request. (Respondent's Exhibit ("RX") 4) Petitioner reported that on August 27, 2019, he lifted pallets that weighed 45-50 pounds. (RX 4 at 1) Petitioner reported that after nine pallets, he developed pain in his lower back that radiated to his right buttock and numbness that extended to his right foot. *Id.* Petitioner complained of lower back pain. After examining Petitioner and reviewing the MRI, Dr. Boca diagnosed Petitioner with lumbar spondylosis with radiculopathy and lumbar strain. (RX 4 at 7) Dr. Boca placed Petitioner at maximum medical improvement ("MMI") as of November 27, 2019, based on the fact that Petitioner's lumbar strain should have resolved after utilizing conservative treatment within 6-12 weeks from August 27, 2019, the date of the accident. *Id.* Dr. Boca further opined that Petitioner is capable of returning to work at full duty with no work restrictions. (RX 4 at 9)

On November 25, 2020, Petitioner presented to Dr. Tom McNally M.D., spine surgeon, who substituted for Dr. Pelinkovic. (PX 3) Dr. McNally diagnosed Petitioner with lumbar degenerative disc disease, lumbar disc displacement, radiculopathy of the lumbar region, and spinal stenosis lumbar region. (PX 3 at 32) Dr. McNally causally related Petitioner's state of ill-being to the August 27, 2019, accident. (PX 5 at 53)

On December 8, 2020, Petitioner underwent an LS MRI. (PX 3 at 85) The MRI impressions included the following: 1. Contact and displacement of the descending bilateral S1 nerve root at L5-S1; subtle Impingement upon the descending right S1 nerve as well; 2. Moderate bilateral foraminal stenosis at L4-5 and L5-S1; and 3. Contact and minimal displacement of descending bilateral L5 nerve roots at L4-5. (PX 3 at 85)

On December 18, 2020, Petitioner underwent an LE EMG/NCV exam. (PX 3) The findings revealed "a mild radiculitis affecting L4-S1 on the left." (PX 3 at 81)

On January 29, 2021, Petitioner returned to Dr. McNally. (PX 3 at 46) Dr. McNally reviewed Petitioner's comprehensive medical history, including recent diagnostic tests, and recommended a left L4-L5 laminotomy (possible laminectomy) and L5-S1 laminectomy. *Id.* Petitioner agreed to the surgery. *Id.*

Petitioner continued to be seen at Dr. McNally's office, periodically, from May 21, 2021, through October 15, 2021. (PX 3 at 66; 115-116; 133, 127, 139) On all occasions, Dr. McNally and Dr. Pelinkovic requested authorization for the surgery, but surgery was denied by the workers' compensation carrier. *Id.*

On October 15, 2021, Dr. Pelinkovic noted that Petitioner could return to work with a 20-pound restriction. (PX 3 at 139).

Petitioner testified that after August 27, 2019, he lifted a shelving unit, measuring 3x3 feet, up a back stairwell. (T. 33-34) Petitioner testified that he, and his wife, lifted the shelves, made out of plywood, in one-foot sections. (T. 33-34, 48; RX 5) Petitioner further testified that he performed light work fixing cars. (T. 42) Petitioner testified that he took a tire out of a trunk and rolled it away. (T. 42-43) Petitioner testified that he began using a cane recently because of the pain. (T. 44)

Petitioner testified that Respondent informed him that he could work a lighter duty position if he wanted. (T. 45) He testified that that he did not work lighter duty because of the "ugly pain" in his back. *Id.* Petitioner testified that the pain is unbearable despite the medication. (T. 47) Petitioner testified that his average weekly wage was $657.50. (T. 30) Petitioner testified that prior to August 27, 2019, he was in perfect health and never suffered back pain. (T. 18, 33) Petitioner testified that since his accident, he obtained landscaping labor work from a neighbor but that he could not tolerate more than two days because of his lower back pain. (T. 30) Petitioner testified that he did not work more than these two days since August 30, 2019. (T. 28) Petitioner testified that he wants to undergo the lower back surgery proposed by his orthopedic treaters Dr. Pelinkovic and Dr. McNally. (T. 30)

Deposition of Dr. Tibor Boco

The deposition of Dr. Boco was taken on November 12, 2021. (RX 7 at 6-7) Dr. Boco, a Board-Certified neurosurgeon, performed an IME of Petitioner on January 10, 2020. *Id.* Dr. Boco testified that he is affiliated at Elmhurst Memorial Hospital, Rush Medical Center, McNeal Hospital, and AMITA hospitals. (RX 7 at 7-8) Dr. Boco testified that he performs surgery on the entire spine which includes cervical, lumbar and thoracic segments. *Id.* He also testified that he addresses degenerative disease processes, oncologic tumors, cancer,

traumatic injuries, and tumors of the spine. *Id.* He further testified that he conducts cervical surgery every week, including discectomies, fusions, laminectomies and corpectomies. (RX 7 at 8-9)

Dr. Boco testified that, during his exam of Petitioner, Petitioner complained of lower back pain and numbness or tingling in his lower extremities. (RX 7 at 12-13) Dr. Boco testified that Petitioner also reported subjective weakness symmetrically in his lower extremities secondary to his lower back pain which he stated was 6 out of 10. *Id.* Petitioner reported that his symptoms were constant, and that walking, bending, or sitting for too long exacerbated his pain. *Id.*

Dr. Boco testified that Petitioner articulated that his occupation was a palletizer for Respondent, was with the company for 20 years, and reported that his work was mostly involving heavy physical labor, laying between 50 and 100 pounds. (RX 7 at 19, 21) Dr. Boco testified that beyond 50 pounds is considered heavy. (RX 7 at 17)

Dr. Boco testified that all exams performed were normal except for the following: palpitation of the right paraspinal lumbar muscle, decrease in forward flexion, positive for right and left sided straight raise test indicating pain, tenderness in the sciatic notch, and decrease in sensory in right lateral foot. (RX 7 at 22-39)

Dr. Boco testified that the x-ray demonstrated some degenerative changes. (RX 7 at 41) He further testified that the MRI of the lumbar spine demonstrated normal curvature of the spine and a mild degree of spondylotic or arthritic disease. *Id.* There was no central or foraminal narrowing, no radiographic pressure points on the nerves, no nerve impingement based on the review of the Lumbar MRI, and no spondylolisthesis. (RX 7 at 41-42)

Dr. Boco diagnosed Petitioner with lumbar strain and axial back pain. (RX 7 at 42) Dr. Boco opined that Petitioner initially experienced lower back and right lower extremity pain, however, overtime with treatment, the lower extremity discomfort resolved. (RX 7 at 45) Dr. Boco testified that conservative treatment, for this type of injury, would have resolved the symptoms within 6-12 weeks. (RX 7 at 47) Dr. Boco testified that Petitioner experienced radicular discomfort in the setting of a lumbar spondylotic disease at the time of the injury. (RX 7 at 49) Dr. Boco testified that an event that aggravates dormant radiculopathy, in the lower back, could result in a lesser pathology of lumbar strain. (RX 7 at 71) Dr. Boco further testified that he did not have any objective evidence to tie Petitioner's complaints to the August 27, 2019, work accident. (RX 7 at 51)

Dr. Boco testified that there were inconsistencies with Petitioner's statements with respect to what he was telling Dr. Boco and what he was doing versus what somebody else was saying he was doing. (RX 7 at 46) Additionally, there was discrepancy with Petitioner's ability to return to work. (RX 7 at 45) Dr. Boco testified that Petitioner was "supposedly unable or unwilling to return to work." *Id.* Dr. Boco testified that other documents provided that while work restrictions were given, Petitioner reported that he would be unable to return to work unless he was able to do so in a fully duty capacity. *Id.*

Dr. Boco testified that the December 18, 2020, EMG NCV study, that was done approximately 11 months after he examined Petitioner, could possibly indicate an irritation of the nerve root. (RX 7 at 74) Dr. Boco testified that the L4 and S1 are separated by a significance distance and an interpretation would require further examination of the study results. *Id.*

Deposition of Dr. Thomas McNally

The deposition of Dr. McNally was taken on January 7, 2022. (PX 5) Dr. McNally testified that he is a Board-Certified orthopedic surgeon who received his M.D. from the University of Chicago. (PX 5 at 7) Dr. McNally testified that he was an orthopedic spine fellow at the University of Chicago Hospital where they performed two-level cervical /lumbar surgeries and tumors. (PX 5 at 9) Dr. McNally testified that he did a second fellowship at Rush-Presbyterian-St. Luke's Medical Center involving adult and pediatric deformity. *Id.* Dr. McNally testified that he was employed by Suburban Orthopedics but is currently employed at Weiss Hospital as the medical director of spine surgery. (PX 5 at 9, 13) Dr. McNally testified that he currently performs 220 cases a year and about 110 lumbar surgeries a year. (PX 5 at 12) He further testified that he performs decompressive, fusion, kyphoplasty surgeries. *Id.*

Dr. McNally testified that he first examined Petitioner on November 25, 2020. (PX 5 at 15) He testified that Petitioner reported that he was injured at work on August 27, 2019, lifting bricks repeatedly and experienced low back pain and was having low back pain worse than right leg pain at the time of examination. (PX 5 at 16) Petitioner reported the injury to his supervisor, was sent to a workers' compensation doctor, had some imaging done and was given restrictions for work. *Id.* Dr. McNally testified that Petitioner followed up with a chiropractor and physical therapy was ordered. (PX 5 at 16)

Dr. McNally testified that Petitioner was referred to Dr. Pelinkovic for a spine consult. *Id.* Dr. McNally testified that Dr. Pelinkovic examined Petitioner, recommended interventional pain management, and referred Petitioner to Dr. Jain for pain management and injections. *Id.* The injections helped for a week and then it wore off. *Id.*

Dr. McNally testified that when he examined Petitioner, Petitioner had a little bit of tenderness at the bottom of his low back right above his hips. (PX 5 at 17) He had decreased range of motion and a positive straight leg raise on the right. *Id.* Dr. McNally testified that x-rays demonstrated a little bit of wear and tear and a spondylolisthesis at L5-S1. *Id.*

Dr. McNally testified that he diagnosed Petitioner with degenerative disc disease, but also lumbar disc displacement, spinal stenosis, and radiculopathy which is consistent with his lower extremity complaints. (PX 5 at 18) Dr. McNally testified that he ordered an MRI and an objective EMG/Nerve Conduction Study as a result of Petitioner's diagnosis, as well as the fact that the MRI was more than a year old. *Id.* Dr. McNally testified that he observed that the disc displacement was more significant at L4-5. *Id.* The MRI and study indicated a bulge with disk herniation at L5-S1, L4-5, L3-4, and L2-3 and spondylolisthesis was at L5-S1. (PX 5 at 18-19)

Dr. McNally testified that he recommended surgery, at this point, for the following reasons: the symptoms had been around for more than a year, Petitioner exhausted chiropractic care and physical therapy, multiple medications, and lack of results from interventional pain management. (PX 5 at 19-20)

Dr. McNally testified that when he saw Petitioner on December 23, 2020, the MRI showed a disc herniation at L5-S1, bi-lateral foraminal stenosis at L4-5 and L5-S1. (PX 5 at 20) Dr. McNally testified that the findings at L4-5 and L5-S1 were associated with his symptoms. (PX 5 at 21) Dr. McNally testified that the MRI reconciled his opinions. *Id.*

Dr. McNally testified that when he saw Petitioner on January 29, 2021, the EMG dated December 18, 2020, indicated that there was a mild radiculitis affecting L4-S1 on the left. (PX 5 at 22) Dr. McNally testified that the EMG was objective evidence of Petitioner's continued complaints were consistent with his interpretation of the MRI imaging. *Id.* Dr. McNally testified that he planned on decompressing at L4-5 on the left and on both sides at L5-S1 because of Petitioner's bi-lateral complaints and because the EMG was indicating irritation higher up. (PX 5 at 23) Dr. McNally testified that he last saw Petitioner on January 29, 2021. (PX 5 at 25) Dr. McNally testified that if surgery is awarded additional x-rays and an MRI will be needed since they are good for six months for surgical planning. (PX 5 at 27) Dr. McNally further testified that recovery from surgery and return to work could be at three months or later depending on the response to work conditioning. (PX 5 at 49-50)

Dr. McNally testified that since he is no longer with Suburban Orthopedics, it would be up to Dr. Pelinkovic to decide if surgery is still needed. (PX 5 at 28) Dr. McNally testified that if Petitioner still had the same complaints, at that time, his plan would most likely be the same. *Id.*

Dr. McNally testified that he had Petitioner off work since his initial contact with him on November 25, 2020, through April 6, 2021, because of Petitioner's pain in his back and legs that was caused by his work-related injury. (PX 5 at 29-30)

Dr. McNally testified that he agreed with Dr. Boco's opinion that the work injury was a lumbar strain and lumbar spondylosis with radiculopathy. (PX 5 at 33) Dr. McNally testified that Petitioner sustained a lumbar strain caused the lumbar radiculopathy because the strain was superimposed on the patients pre-existing previously asymptomatic degenerative lumbar spinal conditions. *Id.* Dr. McNally testified that while Dr. Boco did not find radiculopathy, in contrast to the written report, he diagnosed Petitioner with radiculopathy on physical exam and on interpreting his history and imaging which was then objectified by the EMG. *Id.* Dr. McNally testified that he believed Petitioner has radiculopathy caused by the lumbar strain superimposed on a preexisting asymptomatic condition causing them to become symptomatic. (PX 5 at 33-34) Dr. McNally testified that whether Petitioner suffers herniated discs the images are open to interpretation. (PX 5 at 34) Dr. McNally testified that "[o]ne person's bulge is another person's herniation." *Id.*

Dr. McNally testified that he did not note any inconsistencies with his exam, Dr. Pelinkovic' s exam, his physician's assistants' exam, or with the MRI and EMG findings. (PX 5 at 51-52)

Dr. McNally testified that Petitioner tried going back to work with restrictions but was sent home. (PX 5 at 40) Dr. McNally testified that Petitioner may have been able to work light duty, but we were planning for surgery. (PX 5 at 48)

Dr. McNally testified that carrying a bookshelf up and down three flights of stairs is not necessarily inconsistent since Petitioner may have been in pain the whole time he was doing it. (PX 5 at 48-49) Dr. McNally testified that Petitioner was pain free before the accident is consistent with what he stated that the pre-existing conditions that were previously asymptomatic became symptomatic and still require treatment. (PX 5 at 52-53)

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 several inconsistencies associated with Petitioner's testimony as to his reporting of the accident and physical abilities to work. The Arbitrator, however, did not find that these inconsistencies deem the witness so unreliable as to defeat his claim.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Petitioner credibly testified that he notified his supervisor, Rick MacRoy, on August 27, 2019, and on September 3, 2019, when he experienced low back pain from an injury that occurred on August 27, 2019. Petitioner testified that he was referred to Premiere Urgent Care as a result of telling Mr. MacRoy. Thus, the Arbitrator finds timely notice of the accident was given Respondent.

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 August 27, 2019, work-related accident and his current condition of ill-being with respect to his lower back. In so finding, the Arbitrator relies on the opinions of Petitioner's medical professionals, Dr. Gutierrez, Dr. Pelinkovic, Dr. Jain, and Dr. McNally.

Dr. Gutierrez diagnosed Petitioner with lumbar disc syndrome with radiculopathy and bilateral lumbar R › L paravertebral muscle spasms. (PX 2 at 6) Dr. Pelinkovic diagnosed Petitioner with a compromise of the L5-S1 foramen secondary to disc budge and correlating exam and pain. (PX 2 at 149; PX 3 at 5) Dr. Jain diagnosed petitioner with lumbar facet syndrome, lumbar discogenic pain and lumbosacral radiculopathy. (PX 2 at 152; PX 4 at 5) Dr. Jain administered at least three injections which did not give Petitioner long term relief. Dr. McNally diagnosed Petitioner with lumbar degenerative disc disease, lumbar disc displacement, radiculopathy of the lumbar region, and spinal stenosis lumbar region. (PX 3 at 32) Furthermore, Dr. McNally testified that he believed Petitioner has radiculopathy caused by the lumbar strain superimposed on a preexisting asymptomatic condition causing them to become symptomatic. (PX 5 at 33-34) All of the providers opined that Petitioner's state of ill-being was casually related to the August 27, 2019, accident. (PX 5 at 53)

Dr. Boco diagnosed Petitioner with lumbar strain and axial back pain. (RX 7 at 42) Dr. Boco opined that Petitioner initially experienced lower back and right lower extremity pain, however, overtime with treatment, the lower extremity discomfort resolved. (RX 7 at 45)

Dr. McNally testified that he agreed with Dr. Boco's opinion that the work injury was a lumbar strain and lumbar spondylosis with radiculopathy. (PX 5 at 33) Additionally, Dr. McNally recommended a left L4-L5 laminotomy (possible laminectomy) and L5-S1 laminectomy. *Id.* Petitioner agreed to the surgery and testified to as such. (PX 3 at 81; T. 37) Dr. McNally testified that he recommended surgery due to the length of time Petitioner has experienced symptom, exhaustion of conservative treatment, and a lack of results from interventional pain management. (PX 5 at 19-20) Additionally, Petitioner's two MRI's and EMG/NCV exam supported Dr. McNally and Dr. Pelinkovic's opinions. (PX 2 at 117; PX 3 at 81, 85)

The Arbitrator notes that while Petitioner credibly testified to his symptoms, his statements to various medical personnel about how he was injured were inconsistent. Additionally, the Arbitrator considered the testimony of Dr. Boco and finds that it did not outweigh the opinions of Dr. Gutierrez, Dr. Pelinkovic, Dr. Jain, and Dr. McNally with respect to Petitioner's current condition of his lower back and symptomatic pain.

Thus, the Arbitrator finds that, based on the medical evidence, and the opinions of Dr. Gutierrez, Dr. Pelinkovic, Dr. Jain, and Dr. McNally, the August 27, 2019, accident is casually related to Petitioner's current condition of ill-being with respect to his lower back as well as his 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, the Arbitrator finds that Petitioner's medical treatment, and services, Petitioner received were reasonable and necessary. (PX 9; AX 1 at line 7)

At arbitration, Petitioner presented the following unpaid medical expenses: 1) Premiere Urgent Care ($366.00)(PX 1), 2) Suburban Orthopedics ($4,409.00)(PX 3), 3) Pinnacle Pain Management Specialist ($6,670.00)(PX 4), 4) American Diagnostics MRI ($1,950.00)(PX 6), and Chicago Surgery Center ($15,200.00)(PX 8). As the Arbitrator has found that Petitioner's treatment has been reasonable and necessary, the Arbitrator finds that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, and as outlined in PX 1, PX 3, PX 4, PX 6, and PX 8, 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 August 27, 2019, work-related accident, the Arbitrator finds that Respondent shall approve and pay for the surgery, recommended by Dr. McNally and Dr. Pelinkovic, as provided in Section 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (L), WHETHER PETITIONER IS ENTITLED TO ANY TEMPORARY TOTAL DISABILITY BENEFITS, THE ARBITRATOR FINDS AS FOLLOWS:

Under Illinois law, temporary total disability is awarded for the time period between when an injury incapacitates the petitioner to the date the petitioner's condition has stabilized or the petitioner has recovered to the amount the character of the injury will permit. *Whiteney Productions, Inc. v. Industrial Comm'n*, 274 Ill.App.3d 28, 30 (1995).

Based on the Arbitrator's finding that Petitioner's current condition of ill-being was causally related to the work accident, the Arbitrator finds that Petitioner is entitled to TTD benefits. At issue is the claimed TTD period. (See AX 1 at line 8) Petitioner claims to be entitled to TTD for a period of August 31, 2019, through April 28, 2022. Respondent claims it should be credited for the amount of overpaid TTD from October 4, 2019, through January 24, 2020, and the partial permanent disability advance of $1,500.00. *Id*.

While Petitioner credibly testified that he was kept off of work during his treatment, the Arbitrator notes the medical documents and off work notes presented into evidence. The Arbitrator notes that Petitioner was not taken off work after the September 11, 2019, visit with Premiere Urgent Care. Thus, the Arbitrator finds that Petitioner was temporarily totally disabled from the date of the first off work (October 1, 2019) through Petitioner's date of MMI per Dr. Pelinkovic (October 15, 2021). (PX 2 at 8; PX 3 at 139) Thus, the Arbitrator finds that Respondent shall pay Petitioner TTD benefits of $438.33/week for 106 3/7 weeks, commencing October 1, 2019, through October 15, 2021, as provided in Section 8(b) of the Act.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that the payment of penalties and attorney's fees will not be awarded. The Arbitrator finds that Respondent reasonably relied on Dr. Boco's diagnosis and assessment of Petitioner.

The Arbitrator first notes that Petitioner first made the request for penalties at the time of trial. The Arbitrator also notes several inconsistencies in Petitioner's reporting of his injuries to various medical personnel. In his first appointment on September 11, 2019, at Premiere Urgent Care, Petitioner reported that, on August 27, 2019, he worked construction and was using a jack hammer and started having pain. (PX 1 at 4) At trial, Petitioner testified that, on August 27, 2019, he lifted a cement base and moved some walls around it. (T. 21)

The Arbitrator notes inconsistencies between Petitioner's testimony that he lifted a shelving unit in one-foot sections and RX5 which depicts Petitioner carrying the entire shelving unit. (T. 33-34, 48; RX 5) The Arbitrator also notes that Petitioner testified that Respondent informed him that he could work a lighter duty position if he wanted. (T. 45) However, the Arbitrator notes that while Petitioner testified as such, he chose not to work and instead lift items for his personal benefit, albeit with pain.

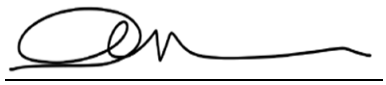
The court in *Continental Distrib. Co. v. Indus. Comm'n*, 98 Ill.2d 407, 456 N.E.2d 851 (1983), held in that a Respondent's reliance on its own physician's opinion does not establish, by itself, that its challenge to liability was made in good faith. The test is not whether there is some conflict in medical opinion. Rather, it is whether the employer's conduct in relying on the medical opinion to contest liability is reasonable under all the circumstances presented.

The Arbitrator notes that Dr. Boco's medical diagnosis of Petitioner supports Petitioner's ability to lift, and carry, the shelving unit even with the help of another. The Arbitrator notes that Dr. Boco's diagnosis of a lumber strain was affirmed by Dr. McNally.

Based on the above, the Arbitrator finds that Respondent's conduct in relying on Dr. Boco's medical opinion to contest liability was reasonable. As such, payment of penalties and attorney's fees shall not be imposed on Respondent.

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Respondent shall be given credit in the amount of $8,600.00 for TTD paid, $1,500.00 in partial permanent disability advance payment, and any medical benefits that have been paid, as provided in Section 8(j) of the Act.



Arbitrator, Antara Nath Rivera

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC006887
Case Name	Katherine Tillman v. Belleville Memorial Hospital East
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0209
Number of Pages of Decision	24
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Richard Salmi
Respondent Attorney	Deanna Litzenburg

DATE FILED: 5/9/2023

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kathryn Tillman,

Petitioner,

vs. No. 18 WC 6887

Belleville Memorial Hospital East,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Arbitrator awarded Petitioner 176 weeks of TTD, for the periods June 20, 2017 through June 26, 20/17, and January 15, 2019 through May 25, 2022. However, on the parties' Request for Hearing form, Petitioner only claimed 175-2/7 weeks of TTD, from January 15, 2019 through the date of the hearing, May 25, 2022. Petitioner is bound by that claim. *Walker v. Indus. Comm'n,* 345 Ill. App. 3d 1084; 804 N.E.2d 135; 281 Ill. Dec. 509 (4th Dist., 2004). Accordingly, the Commission modifies the TTD award to be 175-2/7 weeks, from January 15, 2019 through May 25, 2022.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 18, 2022, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner temporary total disability benefits of $1,025.68 per week for 175-2/7 weeks, for the period of January 15, 2019 through May 25, 2022, as provided by §8(b) of the Act.

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

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

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

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

May 9, 2023

MP/mcp
o-05/04/23
068

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC006887
Case Name	Katherine Tillman v. Belleville Memorial Hospital East
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Richard Salmi
Respondent Attorney	Deanna Litzenburg

DATE FILED: 10/18/2022

THE INTEREST RATE FOR THE WEEK OF OCTOBER 18, 2022 4.24%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Katherine Tillman Case # **18** WC **006887**
Employee/Petitioner

v.

Belleville Memorial Hospital East
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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **05/25/2022**. 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, **06/18/2017**, 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 accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned $**80,002.85** and the average weekly wage was $**1,538.52**.

On the date of accident, Petitioner was ***48*** 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 $**861.15** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**80,752.13** for benefits under Section 8(j), for a total credit of $**81,613.28**.

ORDER

Respondent shall pay reasonable and necessary medical services as listed in Petitioner's Exhibit 12, pursuant to Section 8.2 and in accordance with the fee schedule. Respondent shall receive credit for medical payments previously paid.

Respondent shall pay Petitioner temporary total disability benefits of **$1,025.68**/week for **176** weeks from 6/20/17 through 6/26/17 and 01/15/2019 through 05/25/2022, as provided in Section 8(b) of the Act. Respondent shall receive a credit for TTD paid in the amount of **$861.15** and a credit of **$80,752.13** pursuant to Section 8(j) for short-term and long-term disability benefits paid to Petitioner.

Respondent shall authorize and pay for diagnostic testing and treatment as recommended by Dr. Gornet, including surgery.

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.

OCTOBER 18, 2022

Jeanne L. AuBuchon

Signature of Arbitrator

ICArbDec19(b)

PROCEDURAL HISTORY

This matter proceeded to trial on May 25, 2022, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) the causal connection between the accident and the Petitioner's cervical, thoracic and lumbar spine conditions; 2) payment of medical bills incurred; 3) entitlement to TTD benefits from January 15, 2019, through May 25, 2022; and 4) entitlement to prospective medical care for the Petitioner's cervical and lumbar spine. The parties later stipulated through email that the dates for TTD were June 20, 2017, through June 26, 2017 and from January 15, 2019, through May 25, 2022, for a total of 176 weeks. The parties also agreed that if TTD were awarded, the Respondent is entitled to a Section 8(j) credit for $80,752.13 in short- and long-term disability payments and a credit for $861.15 in TTD benefits paid.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 48 years old and employed with Respondent as a registered nurse in labor and delivery. (AX1, T. 10) On June 18, 2017, she was repositioning a patient who was on her hands and knees with the Petitioner's arms around her waist for support when the patient let go and "belly flopped" onto the bed without warning, pulling the Petitioner down and across the bed. (T. 14-15) The Petitioner said she felt tightening in the lower back that gradually proceeded to the upper back and left shoulder. (T. 15) The Petitioner testified that prior to the accident, she was working full time without any restrictions and had no neck or back problems over the prior several months nor a history of significant headaches. (T. 11-12)

At the end of her shift after the accident, the Petitioner went to the Memorial Hospital emergency room with a report of back pain. (T. 16-17, PX4, PX5) Thoracic, lumbar and cervical spine X-rays showed mild degenerative disc disease. (PX4, PX5) The Petitioner was diagnosed

with back sprain, prescribed medication, taken off work for two days and instructed to follow up with her primary care physician, Dr. David Rawdon, and occupational health. (Id.) The following day, the Petitioner began treatment with the Respondent's Employee Health Services and complained of pain across her hips and radiating up her left side into her shoulder and neck, as well as occipital headache. (PX4, RX5) The Petitioner underwent physical therapy at Memorial Hospital from June 21, 2017, through August 9, 2017, for 15 visits. (Id.)

On June 23, 2017, the Petitioner informed Employee Health Services that her low back pain into her hips was better, but her left shoulder and neck were no better. (PX4, RX5) The Petitioner was diagnosed with shoulder pain and upper trapezius sprain. (Id.) At a visit on June 27, 2012, the Petitioner reported that she was still experiencing pain. (Id.) She was given work restrictions of no patient transfers or repositioning, no lifting more than 10 pounds with the left arm and avoiding more than 10 hours on her feet. (Id.) The Petitioner testified that her symptoms did not resolve with the occupational medicine treatment. (T. 18)

On July 5, 2017, the Petitioner returned to emergency room complaining of back pain and left shoulder pain and intermittent numbness in her left arm and hand. (PX4, PX5) She was diagnosed with rotator cuff injury and cervical radiculopathy, given medication and referred to Dr. Charles Lehmann, an orthopedic surgeon with Memorial Medical Group, and Dr. Rawdon. (Id.) On the same day, Employee Health Services referred the Petitioner to Dr. Angela Tripp, a physiatrist at BarnesCare PM&R Sports Medicine Clinic, who saw the Petitioner on July 18, 2017, and diagnosed her with unspecified injury of the muscle, fascia and tendon of the lower back and stiffness of the left shoulder. (PX4, RX6) Dr. Tripp administered an injection of pain medication, instructed the Petitioner to continue with physical therapy and allowed the Petitioner to return to work without restrictions. (Id.) On July 27, 2017, Dr. Tripp gave the Petitioner a topical anti-

inflammatory. (Id.) On August 10, 2017, Dr. Tripp placed the Petitioner at maximum medical improvement and discharged her from care after finding that the Petitioner's back had improved and after expressing doubts as to whether the Petitioner suffered a shoulder injury – stating that neither the history nor exam suggested any mechanism of shoulder injury. (Id.) Dr. Tripp recommended a steroid injection for the shoulder, but the Petitioner declined. (Id.) The Petitioner testified that she declined the injection from Dr. Tripp because she wanted an MRI prior to the injection to see if there was any shoulder damage. (T. 36)

The Petitioner continued to receive muscle relaxant and pain medications from Dr. Rawdon for neck and back pain and migraine medication from June 28, 2017, through August 19, 2021. (PX6)

On September 5, 2017, the Petitioner underwent an MRI of her left shoulder that revealed chondromalacia (degeneration of the cartilage cushion within the shoulder joint) and bursitis. (PX4, PX5) She saw Dr. Lehmann on October 10, 2017, for left shoulder pain, and he diagnosed her with adhesive capsulitis (frozen shoulder). (PX7) The Petitioner underwent steroid injections to her left shoulder on October 10, 2017, and October 19, 2017. (PX5, PX7) On November 14, 2017, the Petitioner reported she was "doing a little better," and Dr. Lehmann ordered physical therapy and gave light duty restrictions of no lifting, pushing or pulling greater than 20 pounds. (PX7) The Petitioner underwent physical therapy at Memorial Hospital for adhesive capsulitis from December 4, 2017, through January 2, 2018, for nine visits. (PX5) On January 3, 2018, the Petitioner again reported improvement with her shoulder but increased back pain, and Dr. Lehmann continued work restrictions. (PX7) On January 24, 2018, the Petitioner underwent a thoracic MRI that showed disc degeneration and a small, right-sided disc herniation at T11-12 with no spinal canal or foraminal stenosis. (PX5) On March 2, 2018, Dr. Lehmann ordered another

steroid injection to the Petitioner's left shoulder, which was performed on March 21, 2018, at Memorial Hospital. (PX5, PX7) The Petitioner testified that she had improvement during the treatment, but her symptoms returned. (T. 20)

Next, Dr. Rawdon referred the Petitioner to Dr. Chad Ronholm, a rheumatologist at Clayton Medical Associates, who began treating the Petitioner for widespread pain on June 7, 2018. (RX3) Dr. Ronholm diagnosed myalgia due to the Petitioner's generalized pain complaints that included the muscles and, to a lesser degree, joints, with the pain being worse in the proximal upper and lower extremities. (Id.) He ordered X-rays and blood tests and had the Petitioner continue using pain medication and a muscle relaxer. (Id.) On June 28, 2018, Dr. Ronholm noted that the blood tests were unremarkable for any inflammatory arthritis, myositis, lupus or other connective tissue disease, and he diagnosed fibromyalgia. (Id.) He prescribed medication, encouraged the Petitioner to participate in routine exercise and recommended decreasing the Petitioner's workload. (Id.) Dr. Ronholm continued treating the Petitioner with medication through August 20, 2018. (Id.)

The Petitioner testified that the medications did not provide relief, and the side effects – mood swings and constant nausea – caused her to discontinue the medications. (T. 23, 43) She disputed the characterization of her pain moving from her chest to her hips, to her feet and to her arms, stating that the pain had always been there. (T. 42) She said that when she referred to "spreading pain," she meant that the pain radiated from her neck and back into her arms and legs and around her midsection. (T. 58) She said she stopped treating with Dr. Ronholm because she did not feel his treatment plan was working, and she believed she had a back injury. (T. 52)

On September 24, 2018, the Petitioner began treating with Dr. Daniel Brunkhorst, a chiropractor at DB Health Services, for cervical, lumbar and left shoulder pain. (PX8) Dr.

Brunkhorst performed a physical examination and diagnosed: cervical and lumbar disc displacement; cervical and lumbar radiculopathy; sprain of the cervical, lumbar and thoracic ligaments; strain of the cervical and lumbar muscles, fascia and tendons; left shoulder pain; unspecified ligament disorder and muscle contracture; and myalgia. (Id.) Dr. Brunkhorst ordered cervical and lumbar MRIs. (Id.)

The lumbar MRI performed on October 19, 2018, by radiologist Dr. Matthew Ruyle at MRI Partners of Chesterfield showed an annular tear and herniation at L4-5, disc bulge and superimposed herniation at L3-4 and a small herniation at L5-S1 with displacement of the spinal cord. (PX9) He found no narrowing of the central canal but narrowing of the disc space at L3-4. (Id.) The cervical MRI performed by Dr. Ruyle on the same date showed a disc bulge with a large, superimposed herniation at C5-6 with severe narrowing of the disc space, flattening of the spinal cord and narrowing of the central spinal canal. (Id.) He also saw herniations at C7-T1 and C4-5 with spinal cord displacement but no narrowing of the disc space or spinal cord canal. (Id.)

On November 12, 2018, the Petitioner underwent a Section 12 examination by Dr. Russell Cantrell, a specialist in physical medicine and rehabilitation at Spine Orthopedics and Rehabilitation, who reviewed the Petitioner's medical records, performed a physical examination and reviewed imaging studies. (PX2, Deposition Exhibit 2) On the X-rays from June 18, 2017, Dr. Cantrell saw degenerative disc disease at C4-5 and C5-6, in the thoracic spine and at L3-4. (Id.) On the thoracic MRI from January 24, 2018, Dr. Cantrell noted degenerative disc disease and a broad-based disc protrusion, without spinal cord compression or spinal canal narrowing. (Id.) On the cervical MRI from October 19, 2018, he saw degenerative disc disease at the C4-T1 levels as evidenced by varying degrees of either broad-based disc bulges or disc protrusions without any focal disc herniations. (Id.) He said the abnormalities were greatest at C5-6, where

the broad-based disc protrusion was noted to impress on the spinal cord. (Id.) On the lumbar MRI, he saw multi-level degenerative disc and joint disease, disc bulging at L3-4 and L2-3 and disc protrusions at L4-5 and L5-S1. (Id.)

Dr. Cantrell concluded that the Petitioner's diagnoses could be best described as fibromyalgia and diffuse degenerative disc disease involving her cervical, thoracic and lumbar spine. (Id.) He said there were no objective findings to suggest cervical or lumbosacral radiculopathy and no examination findings that would support a discogenic etiology to the Petitioner's subjective pain complaints. (Id.) He opined that the Petitioner was capable of working, and restrictions were not medically necessary as a result of the work injury. (Id.) He said the medical treatment the Petitioner received had been reasonable, but diagnostic workup for rheumatologic sources of the Petitioner's pain complaints and rheumatologic treatment for fibromyalgia would not be necessitated by her work injury. (Id.) He stated that although the Petitioner did not exhibit any overt signs of symptom magnification, her reported pain level of 8/10 could not be explained by the work injury. (Id.) He said the Petitioner reached maximum medical improvement and did not require any further treatment related to the work injury. (Id.)

On December 17, 2018, the Petitioner saw Dr. Matthew Gornet, an orthopedic spine surgeon at The Orthopedic Center of St. Louis, and reported neck pain in the base of her neck with frequent headaches, in the bilateral trapezius, into both shoulders and arms with tingling (left worse than right) and pain between her shoulder blades merging with her low back. (PX2) Her low back pain was central to both sides, both buttocks and hips with tingling down both legs to her knees into her feet. (Id.) Dr. Gornet performed a physical examination, took X-rays and read the MRIs. (Id.) He reported that the thoracic MRI showed some disc degeneration and a central disc herniation/tear at T11. (Id.) He said the cervical MRI showed a large herniation at C5-6 and a

central disc protrusion at C6-7 and C7-T1. (Id.) He said the lumbar MRI showed an annular tear at L4-5, a herniation at L3-4 and some slight facet changes at L4-5, L5-S1 and L3-4. (Id.)

Dr. Gornet did not believe the Petitioner had fibromyalgia in that her objective pathology fit with her subjective complaints. (Id.) He said the Petitioner's biggest issue was neck pain and headaches that he believed emanated from disc injuries predominantly at C5-6 and to a lesser extent at C6-7 and C7-T1. (Id.) He recommended injections and consideration of disc replacement if the Petitioner did not improve. (Id.) He also recommended injections for the lumbar spine with consideration of medial branch blocks and facet rhizotomies if the injections failed. (Id.) Dr. Gornet believed the Petitioner's symptoms were causally connected to the work accident. (Id.) He said that at a minimum, the Petitioner aggravated her underlying degenerative condition but believed the herniation at C5-6 was a new disc injury. (Id.) Dr. Gornet adjusted the Petitioner's current medications and prescribed others. (Id.) He gave light-duty work restrictions with a 20-pound lifting limit. (Id.)

Dr. Brunkhorst continued treating the Petitioner on January 14, 2019, with myofascial releases to the cervical and lumbar spine, electrical stimulation to the cervical and thoracic spine and therapeutic exercise. (Id.) This treatment continued through February 20, 2019, for a total of 13 visits. (Id.) At the last visit, the Petitioner was reporting 8/10 pain in the cervical, thoracic and lumbar spine with radiating symptoms and was experiencing myospasms. (Id.) The Petitioner testified that she experienced temporary relief during treatment. (T. 24-25)

Dr. Helen Blake, a pain management physician at Pain & Rehabilitation Specialists, performed an interlaminar epidural steroid injections at C5-6 on January 15, 2019, at L4-5 on January 29, 2019, and at L3-4 on February 12, 2019. (PX10, PX11) The Petitioner testified that the injections provided relief for just hours. (T. 46)

The Petitioner had a follow-up visit with Dr. Gornet on February 25, 2019, at which time she reported that the injections gave temporary relief that was not significant. (PX2) As the Petitioner's neck seemed to be the biggest issue, Dr. Gornet put her low back treatment on hold and recommended disc replacements at C5-6 and C6-7 and a CT myelogram. (Id.) Dr. Gornet prescribed medication and continued work restrictions, adding that the Petitioner should work in postpartum only and not in labor and delivery. (Id.) He reviewed the Petitioner's emergency room records and physical therapy notes. (Id.)

At another visit on May 11, 2019, Dr. Gornet reviewed Dr. Cantrell's report and noted that Dr. Cantrell did not comment on whether the Petitioner's work injury could have aggravated her underlying degenerative condition, did not explain why his diagnosis of disc degeneration was not symptomatic before, did not discuss why the Petitioner had no previous problems of significance and offered no explanation as to why her condition would "spontaneously" become symptomatic at the time of the accident. (Id.) He continued work restrictions and his recommendation for surgery. (Id.) At a visit on September 12, 2019, he continued prescribing medication and requesting approval of surgery. (Id.)

On August 19, 2019, the Petitioner underwent another Section 12 examination by Dr. Michael Chabot, an orthopedic spine surgeon at Orthopedic Specialists. (RX1, Deposition Exhibit 2) Dr. Chabot reviewed medical records, performed a physical examination and reviewed X-rays and MRI scans. (Id.) On the cervical spine X-rays, Dr. Chabot saw evidence of disc space degeneration and spondylosis (abnormal wear on the cartilage and bones) at C5-6 and greater at C4-5, calcification involving both levels, minimal disc space narrowing at C5-6 on the left and no neural disc space narrowing on the right at any level. (Id.) On the lumbar spine X-rays, he saw evidence of a mild curvature to the right through the mid-lumbar region, increased spondylosis

through the lower thoracic levels (T11-12 greater than T10-11) with kyphosis (a forward rounding of the upper back), facet degeneration through the lumbar spine with well-preserved disc space height, mild disc space narrowing at L3-4 and L4-5 and facet degeneration from L2 to S1. (Id.)

Dr. Chabot read the thoracic spine MRI from January 24, 2018, as revealing evidence of degeneration predominantly in the T11-12 level. (Id.) On the lumbar spine MRI from October 19, 2018, he saw evidence of loss of moisture in the discs primarily at L3-4 and L4-5, reasonably well-preserved disc height through the lumbar spine, advanced degeneration at T11-12 with evidence of a disc protrusion that could have been a calcified disc, mild disc bulging at L1-2, mild disc bulging at L2-3 with mild facet degeneration, disc bulging at L3-4 with facet enlargement and minimal spinal canal narrowing and a small protrusion at L4-5. (Id.) On the cervical spine MRI from October 19, 2018, he saw loss of moisture in the discs at all levels (most pronounced at C4-5, C5-6 and C6-7), minimal disc bulging at C4-5, disc protrusion at C5-6 resulting in moderate disc space, disc bulging at C6-7 and mild kyphosis through the cervical spine. (Id.) He saw no nerve compression on the studies. (Id.)

Dr. Chabot diagnosed a history of cervical, thoracic and lumbar spine strains associated with the work accident, history of fibromyalgia and a broad-based disc herniation at C5-6. (Id.) He stated that the Petitioner's pain diagram was diffuse, non-specific and not wholly consistent with cervical radiculopathy, and her examination revealed no evidence of myelopathy (spinal cord injury). (Id.) He said a diagnosis of fibromyalgia was reasonable and would explain the majority of the Petitioner's persisting complaints and lack of response to conventional treatment. (Id.) Dr. Chabot opined that the Petitioner's cervical complaints were not related to the C5-6 disc herniation, as there were no physical/neurologic findings to support that the Petitioner had the presence of active radiculopathy. (Id.) He noted that the Petitioner had diffuse tissue tenderness with trigger

points from the post-occipital cervical region down to the lumbosacral region. (Id.) He disagreed with Dr. Gornet's opinion that the Petitioner's axial neck pain was a result of the injury. (Id.) He said the Petitioner was a poor candidate for surgery because her complaints were primarily related to fibromyalgia. (Id.) He stated that the degeneration at C5-6 was significant and advanced, and it was unlikely that the herniation was related to acute pathology but most likely represented chronic degenerative changes. (Id.) Regarding the thoracic spine, Dr. Chabot noted diffuse trigger points and tissue tension, which he associated with fibromyalgia and not her work injury. (Id.) As to the Petitioner's lumbar spine, Dr. Chabot stated that the changes seen at the L4-5 level were associated with chronic degenerative changes and not the work injury. (Id.)

Dr. Chabot stated that the Petitioner was at maximum medical improvement as of November 12, 2018, and any treatment after that time was not to address complaints associated with her work injury but to address chronic complaints associated with underlying fibromyalgia. (Id.) He said the Petitioner was not a candidate for injection therapy or disc replacement. (Id.) He said she could return to work full duty as it related to her work injury but may require permanent restrictions on her job hours due to her fibromyalgia. (Id.)

On September 5, 2019, Dr. Gonet testified consistently with his records at a deposition. (PX1) He stated that the findings in his initial examination of the Petitioner were objective findings that would tend to indicate nerve irritation at C5 and C6. (Id.) During his testimony, Dr. Gornet pointed out the disc pathology on MRI images that he described in his reports. (PX1, PX1 Deposition Exhibits 4 and 5) He said these findings correlated with the Petitioner's subjective complaints and physical examination. (PX1) He said the Petitioner did not have a lot of degeneration in her cervical spine – that the remaining discs looked fairly perfect. (Id.) He said the suggestion that the Petitioner had significant pre-existing disc degeneration was factually

incorrect. (Id.) Dr. Gornet similarly pointed out the lumbar disc herniations and annular tear on an MRI image and said the Petitioner suffered aggravation of pre-existing facet arthritis. (PX1, PX1 Deposition Exhibit 6)

At a deposition on October 3, 2019, Dr. Cantrell testified consistently with his report. (PX2) He acknowledged that he saw no evidence of prior treatment of the Petitioner for neck or back complaints. (Id.) He agreed it was possible that trauma such as that suffered by the Petitioner could render degenerative changes symptomatic if the symptoms correlated with abnormalities seen on imaging studies. (Id.) As to the fibromyalgia diagnosis, Dr. Cantrell acknowledged that based on the Petitioner's reports, she did not have the condition before the work accident. (Id.) He explained that fibromyalgia is a syndrome diagnosed when other diagnoses are ruled out, but for which there is not a clear cause. (Id.)

The Petitioner had another visit with Dr. Gornet on January 13, 2020, at which time Dr. Gornet reviewed Dr. Chabot's report and rendered the same criticisms as he did with Dr. Cantrell's report. (PX2) He also noted that while Dr. Chabot diagnosed strain injuries, he did not elaborate on what these injuries were and what muscles were affected. (Id.) He stated that he shared Dr. Chabot's concerns that a portion of the Petitioner's symptoms may relate to an underlying condition but said there was no evidence that this condition played any significant role in the Petitioner's life prior to the work injury. (Id.)

Dr. Chabot testified consistently with his report at a deposition on March 6, 2020. (RX1) He explained that fibromyalgia is a chronic condition of chronic pain that often involves a multitude of locations in the body. (Id.) He said the pain diagram the Petitioner prepared was a classic diagram of a person with fibromyalgia, and excessive sensitivity to pain or pain response is associated with fibromyalgia. (Id.)

On cross-examination, Dr. Chabot agreed with the findings of Dr. Ruyle on the MRIs. (Id.) He acknowledged that cervical spinal cord displacement and flattening can result in a large variety of symptoms – including pain, numbness, cramping or weakness. (Id.) He said that in the majority of situations in his practice, he only offers surgical intervention to patients with radiculopathy or myelopathy related to cervical pathology. (Id.) He also acknowledged that it is possible that advanced degenerative conditions of the spine can be aggravated and rendered symptomatic. (Id.)

On January 21, 2021, the Petitioner underwent an independent medical evaluation by Dr. Brett Taylor, an orthopedic spine surgeon at Town & Country Crossing Orthopedics. (PX3, Deposition Exhibit B) Dr. Taylor took a history, performed an examination and reviewed the Petitioner's medical records, X-rays and MRIs. (Id.) He diagnosed: pre-existing fibromyalgia, cervical and lumbar stenosis and cervical and lumbar degenerative disc disease; cervical radiculopathy at C5-6 and C6-7; thoracic radiculopathy at T11-12; lumbar discogenic back pain; and lumbar radiculopathy at L3-4 and L4-5. (Id.) He opined that the work accident caused a permanent aggravation of the Petitioner's pre-existing spinal pathology. (Id.) He recommended additional diagnostic testing – EMG studies of the upper and lower extremities, dynamic radiographs and diagnostic injections to confirm and determine pain generators. (Id.) He stated that if the spinal facets are not pain generators, then arthroplasty surgery would be the least morbid procedure that would offer the best return to work function. (Id.) He said lumbar disc arthroplasty may not be an option due to facet effusions in the lumbar spine. (Id.) He stated that the treatment rendered to date had been reasonable and necessary due to the work accident and that the Petitioner could not return to work due to her symptomology. (Id.)

Dr. Taylor testified consistently with his report at a deposition on July 7, 2021. (PX3) He explained that his review of the cervical MRI showed decreased space for the spinal cord, which

predisposes an individual to injury with relatively minor trauma that causes a permanent aggravation of this condition. (Id.) He said these findings were consistent with his physical examination and the Petitioner's reported symptoms. (Id.) He said the thoracic and lumbar imaging showing degenerative disease and lumbar imaging showing degeneration and disc bulging also were consistent with the examination and reported symptoms. (Id.) He stated that in a person with previously asymptomatic spinal canal narrowing, even minor trauma can cause neurologic damage that is "the straw that broke the camel's back." (Id.) Dr. Taylor said he did not see signs of symptom magnification. (Id.) He said the Petitioner "was struggling with real symptoms and it's just been a long path for her." (Id.)

Regarding the diagnosis of fibromyalgia, Dr. Taylor said he did not disagree with the diagnosis but acknowledged he was not a specialist in that diagnosis and that was the diagnosis that was assigned to her. (Id.) He said fibromyalgia can cause a lot of symptoms but does not cause radiculopathy in the way the Petitioner had radiculopathy. (Id.) He stated that fibromyalgia and spine disease are not related. (Id.) He said it is harder for patients with fibromyalgia to get the right diagnosis because everything that bothers them is not necessarily assigned to one pathology. (Id.) He said that some symptoms that were related to fibromyalgia would not be improved with spine surgery, which would only address certain specific symptoms that were clearly related to the spinal condition. (Id.) Dr. Taylor did not agree that the Petitioner's symptoms were diffuse, stating that she had symptoms in multiple parts of her person. (Id.)

The Petitioner continued to see Dr. Gornet on April 5, 2021, October 7, 2021, and April 11, 2022, and he continued to recommend surgery. (PX2) On October 7, 2021, Dr. Gornet placed the Petitioner off work completely, noting that her pain was getting worse and that he did not want her performing CPR because it may aggravate her condition. (Id.)

The Petitioner testified that the Respondent accommodated her light duty restrictions "to an extent." (T. 27) She said she was moved to postpartum care, and "(s)ome days they were more generous than others, some days it was a heavier workload." (Id.) She said that initially coworkers helped but as time progressed, they stopped. (Id.) She said that while working light duty, she continued to have problems with her back and neck. (Id.) She acknowledged refusing to work with patients in labor and delivery who were taking medication to induce labor because of her treating physician's restrictions. (T. 49-50)

The Petitioner testified that she received short-term and long-term disability benefits from the Respondent. (T. 54-55) She said she has not attempted to find other work within her restrictions and has applied for Social Security disability benefits. (T. 51) The Petitioner wished to proceed with the treatment recommended by Dr. Gornet. (T. 28) She said she had pain every day that causes difficulty with tasks of daily living. (T. 31-32) She takes a muscle relaxant and pain and migraine medications. (T. 32)

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. 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); *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 doctors agreed that the Petitioner had a degenerative condition and saw cervical, thoracic and lumbar disc bulging, protrusions and/or herniations. Dr. Cantrell attributed the Petitioner's current condition to fibromyalgia and diffuse degenerative disc disease. Dr. Chabot believed her condition was related to fibromyalgia due to what he considered diffuse pain complaints and a lack of radiculopathy or myelopathy. They both conceded that degenerative disc disease could be aggravated by trauma. Drs. Gornet and Taylor did not agree that the Petitioner's pain complaints were diffuse and said there was evidence of radiculopathy. Dr. Gornet believed that at a minimum, the Petitioner's degenerative condition was aggravated by the work accident

but also believed there was a new disc injury. Dr. Taylor believed the work accident caused a permanent aggravation of the Petitioner's degenerative condition. Both found objective corroboration of the Petitioner's complaints, which they fully explained in their depositions. The circumstantial evidence also backs up Drs. Gornet and Taylor's opinions. The Petitioner had no back or neck symptoms prior to the accident. She was able to perform her duties before the accident but that ability decreased immediately after accident – a fact that neither Dr. Cantrell nor Dr. Chabot addressed. For these reasons, the Arbitrator gives more weight to the opinions of Drs. Gornet and Taylor than those of Drs. Cantrell and Chabot. In addition, Dr. Gornet's opinions deserve more weight in that, as the Petitioner's treating physician, he had more opportunities to become familiar with the Petitioner and her condition.

As to the impact of the fibromyalgia diagnosis on this inquiry, the Arbitrator notes that this was a diagnosis from a rheumatologist, rather than a spine specialist, and is a diagnosis of exclusion. The Arbitrator notes that this was not a pre-existing condition and coincidentally was diagnosed after the accident. Also, at the time of this diagnosis, the Petitioner had not yet undergone MRIs of her spine that apparently revealed the source of the Petitioner's symptoms. Therefore, the Arbitrator does not find this diagnosis significant in determining the cause of the Petitioner's current condition.

For all these reasons, the Arbitrator finds that the Petitioner has met her burden of proof establishing causal connection between the accident and her cervical, thoracic and 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).

The Arbitrator notes that the Petitioner's treatment took a circuitous route, but this is a common occurrence when symptoms are present in multiple locations of the body. As noted above, it was not until spinal MRIs were performed more than a year after the accident that the true nature of the Petitioner's injuries was determined. During that time, the Petitioner continued undergoing testing and treatment recommended by the doctors to diagnose and treat her continuing symptoms. Based on this and the findings above regarding causation, the Arbitrator finds that the medical expenses incurred were reasonable and necessary to diagnose and treat the Petitioner's injuries.

The Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 12. 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).

For the reasons stated above regarding causation, the Arbitrator gives greater weight to the opinions of Drs. Gornet and Taylor that further treatment is necessary for the Petitioner's cervical,

thoracic and lumbar spine to diagnose, relieve or cure the effects of her injuries. Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care as recommended by Dr. Gornet, including surgery, and the Respondent shall authorize and pay for such care.

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

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

Following the arbitration hearing, the parties stipulated that the dates for TTD were June 20, 2017, through June 26, 2017, and from January 15, 2019, through May 25, 2022, for a total of 176 weeks. As the Petitioner's conditions were causally connected to the work accident and her doctors gave work restrictions and eventually took her off work entirely, the Arbitrator finds that the Petitioner is entitled to TTD for those periods. Per the parties' stipulation, the Respondent is entitled to a credit of $861.15 in TTD benefits paid and a Section 8(j) credit for $80,752.13 in short- and long-term disability payments.

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	21WC025755
Case Name	Darren Barbee v. Estes Express Lines
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0210
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	John Winterscheidt
Respondent Attorney	James Telthorst

DATE FILED: 5/10/2023

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DARREN BARBEE,

Petitioner,

vs. NO: 21 WC 25755

ESTES EXPRESS LINES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, 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 November 1, 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 $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.

May 10, 2023
O: 05/04/23
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025755
Case Name	Darren Barbee v. Estes Express Lines
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	John Winterscheidt
Respondent Attorney	James Telthorst

DATE FILED: 11/1/2022

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 1, 2022 4.44%

/s/Edward Lee, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Darren Barbee
Employee/Petitioner

v.

Estes Express Lines
Employer/Respondent

Case # **21** WC **025755**

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 **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **September 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, **08/05/20**, 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 $**60,590.40**; the average weekly wage was $**1,165.20**.

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 $**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 $**0.00** under Section 8(j) of the Act.

ORDER

Medical benefits

Respondent shall pay Petitioner, amounts pursuant to Sections 8(a) and 8.2 of the Act, for reasonable and necessary medical services referenced herein. Respondent is entitled to a credit for amounts it has previously paid to the providers referenced herein.

Prospective Medical Treatment

Respondent shall authorize and pay for Dr. Corey Solman's recommended treatment of Petitioner's right hip and authorize and pay for all diagnostic testing and treatment attendant thereto, until Petitioner reaches maximum medical improvement from his 08/05/20 accident.

Temporary Total Disability

The parties stipulated that all temporary disability benefits owed through the date of hearing have been 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.

NOVEMBER 1, 2022

Edward Lee
Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
19 (b) ARBITRATION DECISION

DARREN BARBEE,
Employee/Petitioner,

v. Case # 21 WC 025755

ESTES EXPRESS LINES,
Employer/Respondent.

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner filed an Application for Adjustment of Claim which alleged he injured his head, right hip and body as a whole, arising out of and in the course of his employment with Respondent, after falling off a semi, tractor trailer on 08/05/20. (Arbitrator's Exhibit 2, hereinafter, "AX 2"). The parties stipulated that Petitioner sustained a head injury in the accident, for which he remains under active medical treatment and is under temporary restrictions that are being accommodated through alternative employment secured by Petitioner following his accident. Medical treatment and temporary partial disability benefits are being paid by Respondent for the head injury.

The issue to be resolved by this Hearing pursuant to Sections 19(b) and 8(a) of the Act, is whether Petitioner's need for additional medical treatment for his right hip, specifically whether Petitioner's need for total hip replacement surgery, is causally related to the accident in question. (AX 1). Under these circumstances, references to Petitioner's head injury and treatment therefor will be referenced below only when relevant to disputed issues herein.

Petitioner is fifty-two years old and began his employment with Respondent as a tractor trailer driver in August 2019. Before he was allowed to drive for Respondent, he was required to

undergo a Department of Transportation and a pre-employment physical examination, both of which he passed. Respondent's Physical Requirements Form, listing the prerequisites of Petitioner's job, was entered in evidence. (Petitioner's Exhibit 1, hereinafter, "PX 1"). Among others, the form lists the following responsibilities or duties necessary for performance of Petitioner's job:

-Drive up to 11 hours per shift;
-Sit for up to 5 hours at a time;
-Stand up to 2 hours;
-Ambulate well;
-Push or pull loaded pallet jacks and/or hand carts;
-Lift and move up to 70 pounds, and;
-Ascend and descend latter steps approximately 21 inches in height from floor level.

In addition to those required duties, Petitioner testified that he would climb in and out of the truck cab 15 to 20 times daily and on and off the trailer about 10 to 15 times daily. Prior to August 5, 2020, Petitioner was under no medical restrictions from any physician for any reason and was able to perform all the duties required of him.

On August 5, 2020, while making a delivery, an overhead, "internet wire" became lodged between his tractor and trailer. Petitioner retrieved a tool from the trailer to lift the wire back over the truck cab so he could continue his route. While exiting the trailer with the tool, Petitioner missed a step and fell about 5 feet, striking his head and his left hip on concrete.

Petitioner reported the accident by phone to his manager and sought medical treatment that day at St. Anthony's Hospital emergency room in Effingham, where a history of the accident was recorded. In addition to a CT scan of the head, x-rays of Petitioner's right hip were taken that revealed degenerative joint space narrowing and marginal osteophyte spurring. (Respondent's Exhibit 1, hereinafter, "RX 1"; PX 2).

As referenced above, Petitioner remains under active medical treatment for his head injury.

Regarding his right hip, Petitioner saw his primary care provider, Physician's Assistant, Kris Schnepper at Springfield Clinic on August 21, 2020. P.A. Schnepper prescribed medication

and referred Petitioner for physical therapy. (RX 3; PX 3). Petitioner continues to take the medication prescribed by P.A. Schnepper through the date of this hearing.

The therapy continued into 2021, and Petitioner testified that it somewhat improved his condition (St. Anthony's Hospital's April 13, 2021, therapy note recorded 10% to 15% improvement). The hospital's February 12, 2021, therapy note recorded that Petitioner had been diagnosed with hip problems two to three years prior, that he had undergone an MRI of the hip and that, "They wanted to do a hip replacement back then but he refused and wanted to wait." After reciting a history of Petitioner's work accident, the 02/12/21 note continued, "Since then, his hip has been irritated and he is having problems climbing into his vehicle…Prolonged walking increases pain…" (RX 1; PX 2).

Petitioner readily admits his history of right hip problems. He testified that his hip problems began nearly two years before his work accident in the fall of 2018, and the records from Springfield Clinic reflect that he first saw P.A. Schnepper for that condition on 04/26/19. At that time, Petitioner felt pain in the joint radiating into his groin. "He can get up and down from Semi's, but the slight movement with the right leg to go from gas pedal to brake causes pain. He has trouble finding a comfortable spot to lay and get sleep. He notes his gait is becoming more of a waddle." The record further notes Petitioner's limitations in his ability to put on shoes and socks, get into and out of his car, walk for prolonged distances and general activity. Deficits in strength, flexibility, muscle tension, pain, gait, posture, and joint mobility were demonstrated. X-rays were taken that revealed advanced degenerative disease in the hip. P.A. Schnepper diagnosed right hip pain and osteoarthritis, prescribed medication, and recommended an orthopedic consultation.

Thereafter, Petitioner was seen at the Bonutti Clinic by Advanced Practice Nurse, Jennifer Hess on 05/20/19. A.P.N. Hess recorded that Petitioner's right hip pain began in November and that putting on socks and shoes is painful as is rising from a sitting position, but that medication prescribed by P.A. Schnepper was helpful. Osteoarthritis was diagnosed, Petitioner was advised that his symptoms could be related to a labral tear, and an MRI of the hip was ordered.

The MRI occurred on 06/05/19, which was interpreted as revealing moderate osteoarthritis; diffuse lateral degeneration with small, partial-thickness articular surface tears along the superior labrum as well as a posterior labral cyst, surrounding degenerative micro tearing, and; no evidence of avascular necrosis of the femoral head. (RX 2).

After the MRI, Petitioner followed-up with A.P.N. Hess on 06/17/19 with minimal change in symptoms. After reviewing the MRI findings, A.P.N. Hess "discussed nonoperative and operative management of the findings, including: Intra-articular steroid injection, continued oral anti-inflammatories, physical therapy, and surgical management. The patient would like to proceed with oral anti-inflammatories and natural measures including turmeric and concentrated cherry juice." Petitioner was released PRN. (RX 2).

Petitioner returned to see A.P.N. Hess with increased pain on 08/07/19. A.P.N. Hess administered an injection in the left [Sic] hip on that date. (RX 2). The injection helped "somewhat" and Petitioner never returned to the Bonutti Clinic.

Petitioner testified that he was not interested in hip surgery, as he was able to perform the duties of his job and was able to enjoy the normal activities of his life.

Prior to 08/05/20, Petitioner had never seen a physician for his hip, nor had any work restrictions ever been issued due to his hip.

After his work accident, physicians treating Petitioner's head injury did impose work restrictions that prevented him from returning to his occupation as a truck driver. In approximately 10/21, Petitioner secured part-time, temporary employment, within these restrictions at the Clay County Courthouse, where he continued to work through the date of this Hearing as a bailiff (with security and maintenance duties) and as a chaplain for the staff. He drives himself the three miles to and from his home to the Courthouse, and the Sheriff's department accommodates his physical limitations due to his hip condition. Specifically, a co-employee performs the basement work so Petitioner does not have to navigate the stairs, does outdoor lawn maintenance, and performs ladder work when required. The department also accommodates Petitioner's sitting and standing difficulties by allowing him to man the front door security station rather than undergo prolonged standing required of a bailiff. As referenced above, Petitioner is being paid temporary partial disability benefits.

While treating for his head injury, Petitioner continued to see his primary care giver, P.A. Schnepper who recorded his ongoing hip complaints.

On 04/28/21, Respondent had Petitioner evaluated pursuant to Section 12 by Dr. Christopher Wolf. Although Dr. Wolf's testimony was never offered by Respondent, his report of that date was entered in evidence.

Dr. Wolf recorded a history of Petitioner's 08/05/20 work accident and that Petitioner "readily knowledge [sic] that he did have a history of having some right hip pain before that he felt was somewhat different. He did willingly provide us with records from [Bonutti] clinic and met to no annoyed [Sic?]." Dr. Wolf concluded, "With regard to [Petitioner's] hip pain I do believe that his current hip pain has more to do with his osteoarthritis which I see being grade 4 and rather severe today on x-ray evaluation with a decreased range of motion. I do believe that he is likely a candidate for a total hip replacement and based on records he was a candidate for this even prior to this work injury. I do not believe that the work injury is the *prevailing factor* in [Sic] for his current right-sided hip pain." (*emphasis added*).. (RX 5).

Petitioner's hip condition did not return to baseline with physical therapy, so on 08/08/21, Petitioner asked P.A. Schnepper to refer him to Dr. Corey Solman in St. Louis. After approval by Respondent, Dr. Solman saw Petitioner on 02/09/22. Dr. Solman recorded a history of Petitioner's work accident and prior treatment. Osteoarthritis and degenerative labral tears in the hip were diagnosed and total hip replacement surgery was recommended. Dr. Solman imposed work restrictions pending surgery. (PX 6). Respondent denied further hip treatment.

Respondent had Petitioner evaluated a second time pursuant to Section 12, this time by Dr. David King, on 04/22/22.

Board certified orthopedic surgeon, Dr. Solman testified on behalf of Petitioner. Dr. Solman's practice includes extensive treatment of hip conditions, and he performs approximately 100 hip surgeries per year, of which about 80 are total hip replacements.

After reviewing Petitioner's pre-accident treatment records and diagnostic films, as well as post-accident films, Dr. Solman opined that Petitioner's hip was starting to deteriorate with the diagnosed osteoarthritis and the 08/05/20 fall onto concrete caused the arthritis to advance

and become more dysfunctional. Therefore, in Dr. Solman's opinion, the work accident "accelerated" the need for the total hip replacement surgery he recommends. Dr. Solman explained that Petitioner started developing hip pain in 11/18, was seen at the Bonutti Clinic for the condition, but his hip was functional at that point and he was able to work full, unrestricted duties as a truck driver and to enjoy his recreational activities. He can no longer work as a truck driver, he no longer obtains any relief from his increased pain by taking medication and is experiencing functional deficits with activities of daily life, including simple tasks such as stair ambulation and prolonged sitting. It is clear to Dr. Solman that the 08/05/20 accident worsened Petitioner's condition and accelerated the time-period in which he would require total hip arthroplasty.

Dr. Solman testified that the work accident did not cause the osteoarthritis and degenerative labral tear he diagnosed and that those diagnoses were present before the accident. However, Dr. Solman explained that the decision whether to recommend total hip replacement surgery is multifactored. If a patient has diagnostic evidence of osteoarthritis to the degree where such surgery would be beneficial, that factor alone is not determinative. The most important factor is whether the patient's pain and limitations are adversely affecting their ability to work and their quality of life. When that occurs, the patient is counseled of the risks, benefits and rehabilitation time associated with hip replacement surgery. Petitioner has reached that point, due to his 08/05/20 accident, in Dr. Solman's opinion. Finally, Dr. Solman testified that, Petitioner's traumatic brain injury aside, he expects his patient to be able to return to his former occupation as a truck driver if he undergoes the recommended surgery. (PX 6).

Board certified orthopedic surgeon, Dr. King testified on behalf of Respondent. Other than finding Petitioner "to be grumpy and a man who has pain in his hip and [is] living with chronic pain," he testified that Petitioner was "absolutely" cooperative, forthright about his prior hip complaints, not deceptive in any way, and exhibited no signs of symptom magnification. (RX 4).

Although he no longer performs total hip replacement surgeries, Dr. King agrees with Dr. Solman's recommended total hip arthroplasty. Dr. King differs with Dr. Solman in his opinion that the surgery was indicated before the work accident. However, Dr. King admits that a patient is not a candidate for total hip replacement surgery, even if that patient's clinical

examination and diagnostic studies confirm degenerative conditions correctable by arthroplasty, if they are able to perform their job duties and enjoy the everyday activities of life.

Finally, Dr. King further testified that Petitioner could presently work unrestricted duty as a truck driver with respect to his hip condition, but he would be "very miserable" and would "struggle" doing so. (RX 4).

Secondary to the medical care Petitioner received for her injuries, medical bills in the amount of $10,219.50 were generated by the providers referenced above. Of that amount, a balance of $317.00 remains unpaid. (PX 5).

Petitioner testified that the 08/05/20 fall made his condition worse. Specifically, Petitioner testified that he is now in constant pain, whereas before the accident, his hip pain would "come and go." Petitioner explained, "At that time, it felt like a pulled muscle. I could take some over the counter medication and it would ease up and then I could go about my day."

As a result of his hip pain since the accident, Petitioner testified that he can no longer drive up to 11 hours per shift, sit up to five hours at a time, stand up to two hours at time, ambulate well (Petitioner was witnessed walking with a limp during the course of this Hearing), push or pull a pallet jack or hand cart, lift and move up to 70 pounds, or ascend and descend ladder steps approximately 12 inches in height from floor level; all of which are requirements of his job as a truck driver for Respondent, as reflected by the company's Physical Requirements Form. Additionally, Petitioner testified that he can no longer climb into and out of a truck cab or trailer.

While he had trouble finding a comfortable sleep position before his work accident, he no longer sleeps well at all due to his hip pain and does not get adequate rest as a result. Likewise, he had difficulty putting on socks and shoes before his accident but can no longer dress himself since then. He cannot stand on one leg to put on underwear and pants, and now uses a "sock aid", which he described as a pipe with two ropes and a handle to dress himself.

Petitioner's hip symptoms have adversely affected his activities of daily life. He now walks up and down stairs one step at-a-time. He can no longer garden and even cutting the law

is very difficult. He can no longer use a weed trimmer. The lawn and garden duties are now performed by his wife and son-in-law.

Before his accident, Petitioner enjoyed hunting, fishing and hiking in woods. He can longer hike, hunt or fish due to the walking required, particularly up and down inclines. Petitioner attributes his 45-pound weight gain since his accident to his lack of physical activity.

Petitioner testified that he would like to undergo the surgery recommended by Dr. Solman so he can regain his "normal life."

CONCLUSIONS OF LAW

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

There is no question whether Petitioner's diagnosed osteoarthritis and degenerative labral tears were present in his hip prior to his 08/05/20 accident. The question is whether the work accident necessitated or accelerated the need for total hip replacement surgery to address those diagnoses. Both medical experts who testified, Drs. Solman and King, agree that diagnostic studies reflecting those diagnoses are not alone sufficient to justify joint replacement surgery. If the patient's pain level is tolerable and they can perform their job duties and enjoy the everyday activities of their life, they are not surgical candidates. The record clearly reflects that Petitioner was in this category before his accident.

Prior to his accident, he worked unrestricted duty as a truck driver, but can no longer do so, without being "very miserable," according to Dr. King. Prior to his accident, Petitioner was able to engage in normal activities of daily life, such as home and yard work, but can no longer do so because of his hip pain. Prior to his accident, Petitioner enjoyed recreational activities such as hiking, fishing, and hunting, but can no longer do so.

The Commission recently decided a strikingly similar case in *Fred Price v. Northern Pipeline Construction*, 20 WC 019887, 22 IWCC 0223. Price, a longtime union laborer was digging with a shovel when the shovel hit a root, injuring his right knee on 08/13/20. Price's knee problems dated to at least April 2004 when he underwent knee surgery. After he bumped

the knee in July 2004, an MRI revealed a tear of the proximal portion of the anterior cruciate ligament, moderate effusion, and moderate chondromalacia of the medical joint compartment. Less than one year before his work accident, Price had the knee aspirated and received an injection in December 2019. At that point, he was advised that he needed knee replacement surgery. "He responded by saying he wanted to defer this surgery until he had retired." Following a layoff, Price worked for Northern Pipeline from 03/20 through the date of his 08/13/20 accident. Like the case at bar, *Price* was tried pursuant to Sections 19(b) and 8(a) to determine whether total joint replacement surgery was causally related to the work accident at issue, or whether that accident was merely a temporarily aggravation of Price's underlying osteoarthritic condition, as opined by Northern Pipeline's Section 12 examiner. 20 WC 019887, 22 IWCC 0223.

The Commission found that Price established causation as to his need for total joint replacement surgery because while the need for that surgery was anticipated, months before the work accident, no such surgery was prescribed, and no work restrictions were imposed. Instead, conservative measures were taken which allowed Mr. Price to continue working. "But for the accident, Petitioner presumably would have been able to continue working and stick to his plan of having his knee replaced once he retired." 20 WC 019887, 22 IWCC 0223.

As was the case with *Price*, it is impossible to say when, if ever, Petitioner's condition would have reached to point when his symptoms necessitated total joint replacement surgery. As was also the case with *Price*, it is readily apparent that Petitioner's work accident caused his symptoms to dramatically worsen, thereby accelerating his need for, and making him a candidate for, total hip replacement surgery in the opinions of both Drs. Solman and King.

Considering all the evidence, I find that Petitioner's present condition of ill-being with respect to his right hip, is causally related to his work injury of 08/05/20.

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?

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 Center*, 388 Ill. App. 3d 390, 902 N.E. 2d 1269 (5th Dist. 2009). The purpose of the Act is to place on industry the burdens of caring for the casualties of industry instead of placing this burden on the public or on the individuals whose misfortunes arise out of the industry. *Shell Oil v. Industrial Commission*, 2 Ill. 2d 590, 119 N.E. 2d 224 (1954).

There is no evidence of unreasonable or unnecessary medical treatment in the record. I therefore find that the medical treatment received by Petitioner has been reasonable and necessary to diagnose, cure and relieve the effects of his 08/05/20 work injury.

Respondent shall pay Petitioner, amounts pursuant to Sections 8(a) and 8.2 of the Act, for reasonable and necessary medical services referenced herein. Respondent shall be given a credit for amounts it has previously paid to the providers referenced herein.

K. Is Petitioner entitled to any prospective medical care?

Both Drs. Solman and King agree that Petitioner needs total hip replacement surgery. Having previously found that a causal connection exists between the need for this surgery and Petitioner's 08/05/20 accident, I also find that Petitioner has not reached maximum medical improvement and has proven his need for Dr. Solman's proposed surgery. Respondent is therefore ordered to authorize and pay for the surgery and all diagnostic testing and treatment attendant thereto, until Petitioner reaches maximum medical improvement.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC029608
Case Name	Monty Sullivan v. Continental Tire The Americas, LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0211
Number of Pages of Decision	9
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	James Ruppert
Respondent Attorney	James Keefe Jr

DATE FILED: 5/10/2023

/s/Carolyn Doherty, 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

MONTY SULLIVAN,
Petitioner,

vs. NO: 21 WC 29608

CONTINENTAL TIRE THE AMERICAS, LLC,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the 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 October 28, 2022 is hereby affirmed and adopted.

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

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

Bond for 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 Circuit Court.

May 10, 2023
O: 05/04/23
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC029608
Case Name	Monty Sullivan v. Continental Tire The Americas, LLC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	James Ruppert
Respondent Attorney	James Keefe, Jr.

DATE FILED: 10/28/2022

THE INTEREST RATE FOR THE WEEK OF OCTOBER 25, 2022 4.39%

/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
NATURE AND EXTENT ONLY

MONTY SULLIVAN
Employee/Petitioner

v.

CONTINENTAL TIRE THE AMERICAS, LLC
Employer/Respondent

Case # **21** WC **029608**

Consolidated cases: **N/A**

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **8/22/22**. By stipulation, the parties agree:

On the date of accident, **6/10/20**, 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 $**49,264.47**, and the average weekly wage was $**1,119.65**.

At the time of injury, Petitioner was **52** years of age, ***married*** with **0** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of $**12,582.60** for TTD, $**0** for TPD, $**0** for maintenance, and $**24,856.23** for a PPD advance paid, for a total credit of $**37,438.83**.

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 $**671.79**/week for a period of **75** weeks, as provided in Section **8(d)(2)** of the Act, because the injuries sustained caused permanent partial disability to the extent of **15% body as a whole related to Petitioner's right shoulder**. Respondent shall receive credit for a PPD advance in the amount of $24,856.23, pursuant to the stipulation of the parties.

Respondent shall pay Petitioner compensation that has accrued from **6/15/21** through **8/22/22**, 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.

OCTOBER 28, 2022

_____

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

MONTY SULLIVAN,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 21-WC-029608**
	)	
CONTINENTAL TIRE THE AMERICAS, LLC,	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on August 22, 2022. The parties stipulate that on June 10, 2020 Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent and that his current condition of ill-being is causally connected to the injury. The parties stipulate that Respondent is entitled to a credit for TTD benefits paid in the amount of $12,582.60 and credit for a PPD advance of $24,856.23. The parties stipulate that Respondent is entitled to a credit for any medical bills paid through its group medical plan under Section 8(j) of the Act. The sole issue in dispute is the nature and extent of Petitioner's injuries.

TESTIMONY

Petitioner was 52 years old, married, with no dependent children at the time of accident. Petitioner testified he has worked for Respondent for 30.5 years. On 6/10/20, Petitioner was working as a tandem mixer operator when he sustained injuries to his right shoulder while pulling on stuck tire treads. He felt an immediate pulling and burning sensation in his shoulder. Petitioner testified he had no injuries or treatment with respect to his right shoulder prior to 6/10/20.

Petitioner underwent right shoulder surgery on 12/8/20 by Dr. Davis. He was released to return to work without restrictions on 5/17/21. He has not treated with any providers since he last treated with Dr. Davis on 6/15/21. Petitioner testified he voluntarily switched job positions to a trucker service utility person about three months after returning to full duty work. He testified that the job duties of a tandem mixer operator were causing too much pain in his shoulder. He was earning $1.50 per hour less in the utility position.

Petitioner testified he cannot reach behind his back as far as he could prior to the accident due to pain. He has increased pain in his shoulder after playing golf. Petitioner testified he raises

dogs, and he can no longer hold leads with his right arm due to the jerking motion. Petitioner is unable to sleep on his right shoulder and he performs overhead activities slower than he did prior to his injury. Petitioner testified he asks his co-workers for assistance in performing some of his job duties. His shoulder aches with cold, rainy weather. He takes Ibuprofen for his residual symptoms. Petitioner is right hand dominant. He has cramping in his biceps when he lifts heavy objects or strains his arm. He stated he has a Popeye deformity.

On cross-examination, Petitioner testified he was released by Dr. Davis to return to work as a tandem mixer operator, and no physician has restricted him from working in that position. Petitioner testified that he primarily drives a forklift as a trucker service utility operator and does not perform much overhead work. He works overtime in his current position, and he does not intend to retire anytime soon.

MEDICAL HISTORY

Petitioner reported to the nurse's station immediately following the accident and ultimately received treatment from Respondent's inhouse medical providers. He underwent physical therapy and an MRI on his right shoulder. The MRI was performed on 7/17/20 and revealed a partial tear of the supraspinatus tendon, tendinosis of the infraspinatus and subscapularis tendon, degenerative thinning/blunting of the glenoid labrum, a suggestion of tear of the superior labrum, mild thickening of the inferior glenohumeral ligament, mild fluid in the subacromial, subdeltoid, subcoracoid, and subscapularis bursae, mild fluid along the biceps tendon, mild osteoarthritis in the glenohumeral joint, minimal synovial effusion, degenerative changes in the acromioclavicular joint, and mild lateral down-sloping of the acromion. (PX1)

On 8/7/20, Petitioner reported to Mr. Jeremy D. Palmer, PA-C at the Orthopedic Institute of Southern Illinois. (PX2) PA Palmer noted ongoing subjective complaints of right shoulder pain that worsened with activity. Physical examination showed a positive Neer's and Hawkins test, diminished supraspinatus strength, a positive O'Brien's test, tenderness over the bicipital groove and equivocal Speed's and Yergason's testing. PA Palmer reviewed the MRI and opined it showed partial thickness tearing of the supraspinatus and irregularity of the superior labrum and long head of the biceps tendinopathy. PA Palmer diagnosed a traumatic incomplete tear of the right rotator cuff, tendinopathy of the right biceps tendon, and right superior glenoid labrum lesion. PA Palmer recommended therapy and performed a subacromial injection. Petitioner was placed on work restrictions.

On 9/11/20, Petitioner returned to PA Palmer and advised the injection provided temporary relief and his symptoms returned. PA Palmer recommended surgical intervention.

On 12/8/20, Dr. J.T. Davis performed a right shoulder extensive debridement of a type 2 SLAP tear, debridement of residual biceps tendon stump, debridement of partial articular-sided traumatic rotator cuff tear, debridement of subacromial and subdeltoid adhesions, biceps tenotomy, and subacromial decompression and distal clavicle resection. Dr. Davis' post-operative diagnoses were right shoulder partial traumatic rotator cuff tear, traumatic SLAP tear, traumatic and degenerative biceps tear, AC joint arthritis, and subacromial outlet impingement. Dr. Davis noted 40% of the supraspinatus was torn and he resected 2-6 mm of the acromion and 4-5 mm of the distal clavicle. (PX2)

Petitioner returned to OISI for post-operative follow-ups on 12/22/20, 2/25/21, 4/1/21, and 5/12/21. Petitioner's sutures were removed, and he was referred to physical therapy and work hardening. It was noted Petitioner had some limitations when reaching behind his back, weakness and achiness in his shoulder, supraspinatus weakness, reduced strength with activity at or above shoulder level, and tightness with cross arm adduction and internal rotation. Dr. Davis released Petitioner to return to work without restrictions on 5/17/21. Petitioner last saw PA Palmer on 6/15/21 at which time it was noted he was doing well. Petitioner was placed at MMI with no work restrictions. (PX2)

On 3/15/22, Petitioner was examined by Dr. George Paletta pursuant to Section 12 of the Act. (RX1) Dr. Paletta noted Petitioner had some residual cramping in his biceps if he used it often and biceps cramping at night. Physical examination revealed Popeye deformity of the right biceps. Dr. Paletta diagnosed residual Popeye deformity and biceps cramping post biceps tenotomy. He opined that the cramping would resolve in time and Petitioner did not require further care. Dr. Paletta also completed an impairment evaluation using the AMA Guides 6th Edition and determined Petitioner sustained a 14% impairment of the upper extremity.

CONCLUSIONS OF LAW

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

(i) **Level of Impairment**: Dr. Paletta provided an impairment rating of 14% of the right upper extremity. The Arbitrator places some weight on this factor.

(ii) **Occupation**: Petitioner returned to work without restrictions. Petitioner testified that a few months after returning to work, he voluntarily took a different job position because his pre-accident job duties caused increased pain in his shoulder. The Arbitrator places some weight on this factor.

(iii) **Age**: Petitioner was 52 years old at the time of the accident. He must live and work with his condition for a number of years. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity**: There is no evidence of reduced earning capacity contained in the record. Petitioner was released to full duty work and returned to his pre-accident position for three months before voluntarily transferring to a different position earning less pay. The Arbitrator places some weight on this factor.

(v) **Disability**: As a result of the undisputed accident, Petitioner underwent a right shoulder extensive debridement of a type 2 SLAP tear, debridement of residual

biceps tendon stump, debridement of partial articular-sided traumatic rotator cuff tear, debridement of subacromial and subdeltoid adhesions, biceps tenotomy, and subacromial decompression and distal clavicle resection. Petitioner underwent physical therapy and work hardening and returned to full duty work without restrictions on 5/17/21.

Petitioner testified he cannot reach behind his back as far as he could prior to the accident due to pain. His hobbies of playing golf and raising dogs has been adversely affected. He has pain with sleeping on his shoulder and difficulty with overhead activity. His shoulder aches with cold, rainy weather. He takes Ibuprofen for his residual symptoms. Petitioner is right hand dominant. He has cramping in his biceps when he lifts heavy objects or strains his arm and has a Popeye deformity. The Arbitrator places greater weight on this factor.

Based upon the aforementioned factors, the Arbitrator finds Petitioner sustained permanent partial disability to the extent of 15% loss of his body as a whole related to his right shoulder, as provided in Section 8(d)2 of the Act. Respondent shall receive credit for a PPD advance in the amount of $24,856.23, pursuant to the stipulation of the parties.

Respondent shall pay Petitioner compensation that has accrued from 6/15/21 through 8/22/22, and shall pay the remainder of the award, if any, in weekly payments.

Arbitrator Linda J. Cantrell

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC011336
Case Name	Robert H Walker v. Jerseyville Police Department
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0212
Number of Pages of Decision	20
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Steven Selby
Respondent Attorney	Matthew Kelly

DATE FILED: 5/10/2023

/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

ROBERT WALKER,

Petitioner,

vs. NO: 19 WC 11336

JERSEYVILLE POLICE DEPARTMENT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, and current condition, 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 Ocotber 6, 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.

May 10, 2023
O: 05/04/23
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC011336
Case Name	Robert H Walker v. Jerseyville Police Department
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Steven Selby
Respondent Attorney	Matthew Kelly

DATE FILED: 10/6/2022

THE INTEREST RATE FOR THE WEEK OF OCTOBER 4, 2022 3.85%

/s/Jeanne AuBuchon, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

ROBERT WALKER
Employee/Petitioner

v.

JERSEYVILLE POLICE DEPARTMENT
Employer/Respondent

Case # **19**WC **11336**

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 **5/24/2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **8/18/18**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**61,574.69**; the average weekly wage was $**1,184.12.**

On the date of accident, Petitioner was **39** years of age, **single** with **0** dependent children.

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

Respondent shall be given a credit of $**7,894.10** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**7,894.10**.

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

ORDER

Pursuant to agreement of the parties, Respondent shall pay Petitioner temporary total disability benefits of $781.51/week for 10 weeks, commencing 8/19/2018 through 10/27/2018, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $7894.10 for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services as listed in Petitioner's Exhibit 10, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act.

The Respondent shall authorize and pay for a CT discogram, cervical surgery and follow-up treatment resulting therefrom and for diagnostics and treatment for the Petitioner's lumbar spine by either Dr. Gornet or Dr. Rutz, as provided to Section 8(a) of the Act and pursuant to the medical fee schedule.

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

October 6, 2022

PROCEDURAL HISTORY

This matter proceeded to trial on May 24, 2022, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) the causal connection between the accident and the Petitioner's cervical and lumbar spine conditions; 2) payment of medical bills incurred; and 3) entitlement to prospective medical care for the Petitioner's cervical and lumbar spine.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 38 years old and employed with Respondent as a police officer. (AX1, T. 10) On August 18, 2018, he was involved in a physical altercation with a resident of a group home for mentally handicapped individuals, during which the Petitioner used an arm bar to subdue the individual, who was two inches taller and 100 pounds heavier than him. (T. 11-13) After the incident, the Petitioner noticed that his left hand was not right, so he went to the emergency room at Jerseyville Community Hospital and was treated for a broken metacarpal in his hand. (T. 13-14, PX7)

The Petitioner said that 24 hours after the incident, he started having pain in his back and returned to the Jerseyville Community Hospital emergency room on August 20, 2018. (T. 14, PX7) He complained of sharp, moderate pain in the area of the mid lumbar spine with no radiation. (PX7) According to the emergency room report, CT scans of the thoracic and lumbar spine showed no acute findings. (Id.) According to radiologist Dr. Larry Reed, the lumbar CT showed a calcified disc fragment centrally and to the right at L5-S1 that was impinging on the right L5 and S1 nerve rootlets. (Id.) There were degenerative changes at levels L3-S1. (Id.) The Petitioner was instructed to follow up with orthopedics. (Id.)

The Petitioner testified that he previously experienced pain and muscle stiffness in his back before and sought chiropractic treatment. (T. 15) Between 2011 and 2014, the Petitioner underwent what appears to be two rounds of treatment with Dr. Lisa Hart, a chiropractor at All Hart Chiropractic & Acupuncture. (RX2) He had nine visits in the fall of 2011 and 21 visits from November 9, 2012, through March 13, 2014. (Id.) According to his initial evaluation on August 29, 2011, the Petitioner had neck and back pain that began a few years prior that seemed to come and go and occurred a few days per week. (Id.) He was diagnosed with sprains of the sacroiliac and thoracic regions and other unspecified parts of the back and neck. (Id.) He underwent spinal adjustments/manipulations. (Id.) On November 10, 2011, Dr. Hart also performed acupuncture. (Id.) When the Petitioner returned to Dr. Hart on November 9, 2012, she again began performing spinal adjustments. (Id.) At his last visit on March 13, 2014, the Petitioner complained of pain – more in the lower back – with stiffness and pain in the morning, easing with loosening up, and tightening and aching as the day progressed. (Id.)

On September 7, 2016, the Petitioner began treating with chiropractor Dr. Michael Williams at Williams Chiropractic. (RX3) He complained of neck pain that started a few years before and was getting worse over the past couple months – describing the pain as a constant, moderate dull ache rated at a 4. (Id.) He also complained of low back and mid back pain he said was frequent and rated at a 4. (Id.) Dr. Williams diagnosed segmental and somatic dysfunction of the lumbar, cervical and thoracic regions and myalgia and treated the Petitioner with chiropractic manipulation. (Id.) Dr. Williams later added electrical stimulation and mechanical traction to the Petitioner's treatment. (Id.) The Petitioner had 21 visits with Dr. Williams until December 20, 2018, with gaps in at least monthly treatment from November 1, 2016, until January 9, 2017, from April 26, 2017, until July 5, 2017, and from July 11, 2017, until December 20, 2017.

(Id.) At the last visit, the Petitioner described his symptoms in all three areas as dull ache, frequent and rated at a 4. (Id.)

The Petitioner initiated treatment with Dr. Timothy Lyons, a family medicine specialist affiliated with Jersey Community Hospital, on February 2, 2018, and complained of upper back and neck pain. (RX5) Dr. Lyons diagnosed cervicalgia and prescribed physical therapy, which the Petitioner underwent at ApexNetwork Physical Therapy for two visits on April 3, 2018, and May 25, 2018. (RX5, RX6) At his initial evaluation, the Petitioner reported tightness in his neck, moving into his upper back and getting progressively worse as the day went on. (RX6) He rated his pain at 4/10. (Id.) He denied radicular symptoms or paresthesia. (Id.) On May 25, 2018, the Petitioner reported that he was unable to continue with therapy because of being busy with work and taking care of his house, pouring concrete, digging and laying sod. (Id.) He said he did not keep up with his home exercise program because of working. (Id.) He rated his pain at 4/10. (Id.) The Petitioner acknowledged that he was undergoing physical therapy until August 1, 2018, for soreness in his neck and back. (T. 25) However, the only physical therapy records produced were from the two dates noted above. The Petitioner testified that sometimes his prior complaints arose with his use of duty gear and other times with no precipitating incidents. (T. 26)

On August 20, 2018, the Petitioner saw Dr. Jonathan Blake, an orthopedic surgeon at the Orthopedic Center, for his broken hand. (PX8) Dr. Blake performed surgery the following day consisting of an open reduction and internal fixation of the left ring finger metacarpal shaft. (Id.)

The Petitioner sought treatment from Dr. Matthew Gornet, an orthopedic spine surgeon at The Orthopedic Center of St. Louis, on November 30, 2018. (PX 1, Deposition Exhibit 2 He complained of neck pain to the base of his neck to the right side, right trapezius, right shoulder and between his shoulder blades. (Id.) He also complained of low back pain to the right buttock and

hip. (Id.) Dr. Gornet ordered X-rays that he said showed some mild loss of disc height at L5-S1 and well-preserved disc height at all cervical levels with no evidence of foraminal stenosis. (Id.) Both his lumbar and cervical spines were stable on flexion and extension. (Id.) Dr. Gornet reviewed a lumbar MRI scans from November 13, 2018, that was ordered by Dr. Lyons and found an obvious central/right-sided herniation at L5-S1 with an annular tear and possible subtle central disc pathology at L4-5. (Id.) A cervical MRI was performed on November 30, 2018, by Dr. Matthew Ruyle, a radiologist at MRI Partners of Chesterfield, who found right greater than left C3-4 and small bilateral C4-5 disc protrusions resulting in mild to moderate foraminal stenosis at both levels but no central canal stenosis. (Id.) Dr. Gornet interpreted the cervical MRI as showing what appeared to be a foraminal herniation on the right side at C3-4, an annular tear at C4-5 and a possible central disc protrusion also slightly to the right side at C5-6. (Id.)

Dr. Gornet believed the work accident aggravated the Petitioner's underlying degenerative condition and caused new disc injuries at C3-4 and C4-5. (PX1, Deposition Exhibit 1) He also believed the Petitioner injured or aggravated the L5-S1 level and potentially L4-5. (Id.) He said the Petitioner seemed to be slowly improving and was working full duty. (Id.) He prescribed medications and referred the Petitioner to Dr. Hart for chiropractic care and acupuncture. (Id.)

The Petitioner resumed treatment with Dr. Hart on December 3, 2018, and complained of pain in his neck and upper back that began August 19, 2018. (PX2) He said he had been undergoing physical therapy before the work accident, was improving with therapy and had not had any therapy since his last session. (Id.) He reported that he had gotten worse since the accident, and at that time, his neck and upper to mid back pain was of moderate intensity and continuous, while his low back pain was mild to moderate and occasional. (Id.) He was treated with spinal adjustments and acupuncture for nine visits through December 31, 2018. (Id.) Dr.

Hart performed another evaluation on January 3, 2019, and stated that the Petitioner had shown some improvement, but the treatment did not give the Petitioner as much relief as he expected it would and the effects were not as long-lasting as he hoped they would be. (Id.) Dr. Hart released him from care. (Id.) At that time, the Petitioner reported that the pain in his neck, upper back was mild until the day before and then began to hurt more with a dull aching in his mid back, neck and upper back on the right that he rated at 5/10. (Id.)

On January 28, 2019, Dr. Gornet put any low back treatment on hold and proceeded with cervical injections. (PX1, Deposition Exhibit 2) On February 19, 2019, Dr. Helen Blake, a pain management specialist at Pain and Rehabilitation Specialists, performed an interlaminar epidural steroid injection at C3-4. (PX5) On March 5, 2019, she performed one at C4-5. (Id.) On March 18, 2019, the Petitioner reported to Dr. Gornet that the first injection helped substantially, but the second did not help as much. (PX1, Deposition Exhibit 2) Dr. Gornet remarked that the Petitioner was still fairly symptomatic despite the transient pain relief from the injections. (Id.) He ordered a thoracic MRI to rule out any issues there and stated that if the Petitioner continued to have pain that affects the Petitioner's quality of life, he would recommend disc replacements at C3-4, C4-5 and C5-6. (Id.) Dr. Gornet reported on April 15, 2019, that the thoracic MRI showed a small protrusion at T7-8, which he said may account for some mid-back pain. (Id.) At that time, Gornet recommended the surgery. (Id.)

On June 7, 2019, the Petitioner underwent a Section 12 examination by Dr. R. Peter Mirkin, an orthopedic spine surgeon at Tesson Ferry Spine & Orthopedic Center. (RX1, Deposition Exhibit 2) The Petitioner's chief complaint was pain in his neck and shoulder blade on the right. (Id.) He denied any pain radiating below his shoulder or numbness or tingling. (Id.) He had no symptoms of back pain and no radicular symptomology in his lower extremities. (Id.) Dr. Mirkin

reviewed: medical records from the emergency room, Dr. Jonathan Blake, Dr. Gornet, Dr. Helen Blake and Dr. Lyons; the lumbar MRI from November 13, 2019, that he said showed a degenerative bulge at L5-S1 with a retrolisthesis (backward slippage of the vertebra); the cervical MRI from November 30, 2018, that he said showed very minimal bulging at C3-4 and C4-5; the thoracic MRI from April 15, 2019, that he said showed slight bulging at T7-8; the lumbar CT scan from August 20, 2018, that he said showed signs of a laminectomy at L5 and a calcified disc fragment on the right at L5-S1 impinging the right L5 and S1 nerve root; and a thoracic CT scan that he said showed mild degenerative changes. (Id.) Dr. Mirkin took X-rays and performed a physical examination. (Id.) He concluded that the Petitioner may have had cervical and lumbar strains. (Id.) He said he did not see any significant post-traumatic pathology in the Petitioner's cervical spine but had a degenerative disc bulging at the lowest open level of his lumbar spine with a slight retrolisthesis and a transitional lumbosacral junction. (Id.)

Regarding treatment, Dr. Mirkin stated a short course of physical therapy would be appropriate for the Petitioner's neck. (Id.) He said there was no indication whatsoever for surgical intervention – no significant indication of pathology on the MRI, nerve roots and central spinal cord clear of compression and very minimal, if any, degenerative changes. (Id.) He noted that there was no cervical device approved for a three-level disc replacement. (Id.)

The Petitioner followed up with Dr. Gornet on July 15, 2019, and Dr. Gornet reported that the Petitioner's symptoms were progressing – creeping down his right shoulder and right arm. (PX1, Deposition Exhibit 2) Dr. Gornet prescribed medications and warned that he may need to take the Petitioner off work soon. (Id.) The Petitioner had another visit with Dr. Gornet on October 24, 2019, at which time Dr. Gornet stated that the Petitioner's quality of life continued to be intermittently affected by his injuries. (Id.) Dr. Gornet stated that he believed the Petitioner may

require treatment in the future. (Id.) He noted that the Petitioner had an opportunity to get a different job that may be more effective for him long term and that if the job did help, the Petitioner may be able to avoid more significant treatment. (Id.)

Dr. Gornet testified consistently with his records at depositions on May 4, 2020, and June 29, 2020. (PX1, PX2) As to the Petitioner not reporting neck complaints until a month after the accident, Dr. Gornet said that was within a reasonable window, especially with being given narcotic medication after hand surgery. (PX1) He said he believed the Petitioner's neck issues came to the forefront after he went back to work full duty and those issues had not calmed down. (PX2) Regarding his causation opinion, Dr. Gornet said he relied on: 1) the Petitioner's verbal history that his pain increased after the accident and had not gone back to normal; 2) the MRI findings correlating to the Petitioner's right-sided complaints: 3) substantial improvement from the injection that indicated the injury was not a muscle strain; 4) his own experience in treating similar patients involved in similar incidents; and 6) journal articles that supported his theories. (PX1)

Dr. Gornet disagreed with Dr. Mirkin's opinion that physical therapy would be the appropriate treatment for the Petitioner's neck, stating that medical literature has shown that chiropractic treatment, which the Petitioner received, is equally effective in early neck and back pain as physical therapy. (Id.) He also disagreed with Dr. Mirkin's assessment of the MRI that there was no significant indication of pathology, stating that objective pathology was present on the scan and was seen by himself and Dr. Ruyle. (Id.) He added that Dr. Mirkin's diagnosis of muscle strain was pure speculation, as Dr. Mirkin did not define what the strain was and neither himself nor Dr. Ruyle saw a muscle strain. (Id.) He did agree with Dr. Mirkin in that there was not significant spinal cord compression, but stressed that he was treating the Petitioner for a

structural injury to the disc. (Id.) He explained that treating patients exclusively for neurologic issues is an older thought process and now, with high-resolution MRI scans, doctors are able to identify structural pathology that correlates with pain. (Id.) He compared it with small tears in the meniscus of the knee or the rotator cuff that may be associated with a painful condition, stating that although neither of those conditions cause neurologic compression, both are considered acceptable surgical options if they fail conservative measures. (Id.) He also disagreed with Dr. Mirkin's statement that there is no cervical device approved for three-level disc replacement, stating that such "off-label" use is common, has been approved by courts throughout the United States and has been the subject of peer-reviewed, published reports. (Id.)

Dr. Gornet said the notes from Dr. Lyon's treatment six months before the work accident did not change his opinions, as the Petitioner readily admitted having previous problems that he felt were tolerable with mild treatment. (Id.) He said that the Petitioner continued to have pain at a different level than anything he had in the past and had not returned to baseline compared to what it was before the work accident. (Id.) After reviewing the chiropractic and physical therapy records that were produced at arbitration, Dr. Gornet said those records did not change his opinions, and he relied on the Petitioner being truthful that his overall condition was worse after the accident. (PX2)

On July 23, 2020, Dr. Mirkin issued a supplemental report after reviewing the Petitioner's prior chiropractic records, reports from Dr. Lyons and Apex Physical Therapy and updated records from Dr. Gornet. (RX1, Deposition Exhibit 2) He said it became conclusively obvious that the Petitioner's neck and low back pain and degenerative disc disease pre-existed the work incident. (Id.) He said any medical care the Petitioner wished to pursue was a result of his chronic condition that predated and was symptomatic for years prior to the incident. (Id.)

Dr. Mirkin testified consistently with his reports at a deposition on September 4, 2020. (RX1) He explained that his diagnosis of muscle strains was a diagnosis of exclusion when someone says they are hurt and there is no evidence of a nerve compression or fractured bone. (Id.) He said the pain diagram the Petitioner filled out was a classic diagram from someone who strained his back or shoulders and neck. (Id.) Due to the Petitioner having the complaints in the past, Dr. Mirkin said he suspected the Petitioner re-aggravated his condition. (Id.) Dr. Mirkin disagreed with Dr. Ruyle's reading of the cervical MRI – saying he did not see problems at three levels. (Id.) He acknowledged that in his analysis of the MRI, he did not make specific notations about specific slide numbers but made opinions summarily. (Id.)

Dr. Mirkin did not recommend treatment for the Petitioner's lumbar spine because he had no complaints and a normal exam. (Id.) As to cervical disc replacement, Dr. Mirkin said he saw no indication for removing three discs in the Petitioner's neck and replacing them with metal and plastic because there were no significant abnormality or radicular symptoms and the Petitioner was functioning at a very high level. (Id.) In describing his disagreements with Dr. Gornet, Dr. Mirkin said recommending surgery for people who don't need it is "immoral" and a breach of the standard of care. (Id.)

The Petitioner had follow-up visits with Dr. Gornet on December 21, 2020; March 25, 2021; July 22, 2021; December 9, 2021; and March 21, 2022. (PX4) Dr. Gornet noted that the Petitioner's issues were getting worse and continued to recommend disc replacement and treated the Petitioner with medications. (Id.) The Petitioner underwent an additional cervical MRI on December 21, 2020. (PX6)

On June 15, 2021, the Petitioner sought a second opinion from Dr. Kevin Rutz, an orthopedic spine surgeon at Orthopedic Specialists. (PX3, Deposition Exhibit 2) Dr. Rutz took

X-rays, reviewed the cervical MRI from December 21, 2021, and examined the Petitioner. (Id.) He agreed with Dr. Gornet that the Petitioner aggravated his neck and back in the work accident. (Id.) He saw disc protrusions at C3-6 and bilateral foraminal narrowing at C5-6. (Id.) He agreed that surgery is appropriate for patients with structural disc pathology. (Id.) However, he recommended that instead of proceeding directly to a three-level disc replacement, cervical discography should be performed to help rule out performing surgery on disc levels that may not be part of the problem. (Id.)

Dr. Rutz testified consistently with his report at a deposition on January 14, 2022. (PX3) He explained that discogenic neck pain doesn't have good objective findings on a physical exam because it is not a nerve-compression problem but a structural damage problem leading to neck pain. (Id.) He said that if he were treating the Petitioner, he would perform a disc replacement on the Petitioner's C5-6 disc because it looked like the dominant problem. (Id.) He could not say "100 percent" that other levels might be contributing, thus his recommendation for a discogram to make that determination. (Id.) He said Dr. Gornet's recommendations made sense and went with Dr. Gornet's philosophy of treating axial neck pain by not leaving any level untreated that could be a pain generator. (Id.) Dr. Rutz did not give a causation opinion because he did not review prior medical records. (Id.) He also did not address the Petitioner's low back complaints.

The Petitioner testified that at the time of arbitration, his neck was extremely painful – like he had a metal rod running through the right side of his neck. (T. 20) He said he also had a shooting pain down the right side of his back and that his lower back was bad. (Id.) He said he was unable to do things he did before the accident and that he chose to work full duty during this time. (T. 20-21) He stated that his low back had not been as severe until the past year. (T. 28)

He said he wants to move forward with treatment as recommended by Dr. Gornet or with Dr. Rutz if Dr. Gornet were unavailable. (T. 30)

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. 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.

The Petitioner had prior neck and low back complaints for which he treated off and on from 2011 through May 2018. He testified and told the doctors that the intensity and nature of his pain were different after the accident and his pain did not resolve. The Arbitrator finds the

Petitioner to be credible, and there is no evidence that he is not truthful. The medical records also reflect that throughout his prior episodic chiropractic and physical therapy treatments, his pain was consistent, while after the accident, it appears there was a change. In addition, at the time of his last physical therapy visit, the Petitioner was performing heavy labor – such as pouring concrete, digging and laying sod – apparently without an increase in symptoms.

As to the Petitioner's cervical condition, Dr. Mirkin stated that the Petitioner suffered only a muscle strain from the work accident, and he did not see any objective evidence of any other condition. Drs. Gornet and Ruyle saw disc pathology that Dr. Gornet testified was aggravated by the work accident. Although Dr. Rutz did not offer a causation opinion, he – like Drs. Ruyle and Gornet – saw disc injuries and believed they were causing discogenic pain. Drs. Gornet and Rutz's opinions that the Petitioner's cervical pain was discogenic were persuasive and fully explained. In addition, the injections performed by Dr. Helen Blake served a diagnostic purpose in that they provided temporary relief, which Dr. Gornet saw as significant in diagnosing the Petitioner. As to the Petitioner not reporting neck pain until a month after the accident, the Arbitrator finds Dr. Gornet's explanation was sound and reasonable. In addition, as the Petitioner's treating physician, Dr. Gornet had more opportunities to become familiar with the Petitioner and his condition. For these reasons, the Arbitrator gives more weight to the opinions of Dr. Gornet than to those of Dr. Mirkin. In looking at the evidence as a whole, the Arbitrator finds that the Petitioner proved by a preponderance of the evidence that the work accident aggravated his pre-existing cervical condition to the extent that he has been unable to return to his pre-accident condition.

As to the Petitioner's low back condition, the Petitioner did not make any low back complaints to Dr. Mirkin or Dr. Rutz. However, the focus of treatment and this litigation has focused on the Petitioner's cervical condition. The Arbitrator finds that because this treatment was

put on hold, a full diagnosis and treatment plan have not been made. Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that the work accident aggravated his pre-existing lumbar condition to an extent that is yet to be determined.

Therefore, the Arbitrator finds that the Petitioner has met his burden of proof establishing a causal connection between the accident and the Petitioner's current cervical and lumbar conditions.

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

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

Based on the findings above regarding causation, the Arbitrator finds that the medical expenses incurred were reasonable and necessary to diagnose and treat the Petitioner's cervical and lumbar spine conditions. Therefore, the Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 10. 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).

As stated above, Dr. Mirkin believed the Petitioner suffered muscle strains as a result of the accident and recommended physical therapy for his neck. For all of the reasons stated above regarding causation, the Arbitrator gives greater weight to the opinions of Drs. Gornet and Rutz as to continuing treatment. Although the Arbitrator understands and is familiar with Dr. Gornet's approach of replacing all discs that show pathology, Dr. Rutz's conservative approach of performing a CT discogram first is more appropriate to address the cervical levels are actively causing symptoms. Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care in the form of a CT discogram as recommended by Dr. Rutz and any surgical treatment deemed necessary by whichever doctor the Petitioner choses, and the Respondent shall authorize and pay for such care.

As to the Petitioner's lumbar spine, because treatment was put on hold, the Arbitrator finds that further diagnostics and a treatment plan are reasonable and necessary, and the Respondent shall authorize and pay for such 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.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC025212
Case Name	Karen Mauser v. Empire Comfort Systems
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0213
Number of Pages of Decision	13
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	James Keefe, Jr.

DATE FILED: 5/10/2023

/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

KAREN MAUSER,
Petitioner,

vs. NO: 20 WC 25212

EMPIRE COMFORT SYSTEMS,
Respondent.

DECISION AND OPINION ON REVIEW

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

The Arbitrator correctly found Respondent is entitled to a credit for amounts paid under Section 8(j) of the Act. The Commission writes additionally to order that Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent receives a credit under Section 8(j) of the Act.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 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.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall hold Petitioner harmless from any claims by providers of the services for which Respondent receives a credit under Section 8(j) of the Act.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $55,300.00. 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.

May 10, 2023

O: 05/04/23
CMD/jm
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC025212
Case Name	Karen Mauser v. Empire Comfort Systems
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	Eric Kirkpatrick
Respondent Attorney	James Keefe, Jr.

DATE FILED: 11/28/2022

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 22, 2022 4.52%

/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

Karen Mauser
Employee/Petitioner

v.

Empire Comfort Systems
Employer/Respondent

Case # 20 WC 25212

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 September 29, 2022. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On August 10, 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 $33,687.71; the average weekly wage was $647.84.

On the date of accident, Petitioner was 59 years of age, married 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 amounts paid under Section 8(j) of the Act.

ORDER

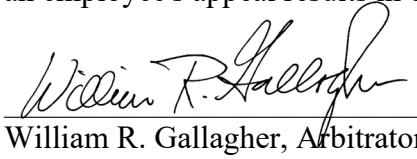
Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 8, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid and Respondent shall hold Petitioner 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 $431.89 per week, for 22 4/7 weeks, commencing August 11, 2020, through September 30, 2020, October 10, 2020, through November 30, 2020, and February 14, 2021, through April 9, 2021, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $388.70 per week, for 125 weeks, because the injury sustained caused the 25% 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.



NOVEMBER 28, 2022

William R. Gallagher, Arbitrator
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 August 10, 2020. According to the Application, Petitioner "passed out and fell at work" and sustained an injury to her "whole body-low back" (Arbitrator's Exhibit 2). Petitioner sought an order for payment of medical bills and temporary total disability benefits as well as permanent partial disability benefits. In regard to temporary total disability benefits, Petitioner claimed she was entitled to temporary total disability benefits of 66 3/7 weeks, commencing August 11, 2020, through September 30, 2020, October 10, 2020, through November 30, 2020, and February 14, 2021, through February 14, 2022. Respondent disputed liability on the basis of accident and causal relationship (Arbitrator's Exhibit 1).

Petitioner worked for Respondent for approximately 22 years. Petitioner's job duties consisted primarily of working on an assembly line of gas fireplaces. Petitioner testified that August 10, 2020, was a very hot day because it was 98° outside. The factory where Petitioner worked was not air conditioned and, because of Covid, Petitioner was wearing a mask. At approximately 1:00 PM, Petitioner felt dizzy and then had no recollection of exactly what happened afterward, but when she woke up, she was laying on the floor.

Dennis Jaimet testified on the half of Petitioner. Jaimet has been employed by Respondent for approximately 30 years and was working on the assembly line at the time Petitioner sustained the accident. He confirmed it was a very hot day, masks were required and there was no fan blowing directly on the assembly line.

Jaimet stated he was standing approximately six feet from Petitioner and was looking in her direction when she fell. He observed Petitioner close her eyes and fall to the concrete floor before he could do anything. Jaimet said it looked as though Petitioner's legs had been knocked out from under her. He stated that when Petitioner fell, she landed on her left hip and left elbow.

In a written statement was prepared by Jaimet on October 7, 2020. In the statement, Jaimet noted Petitioner had already started to fall, her eyes were closed and she did not extend her hands outward to stop the fall. He observed Petitioner fall on her left knee followed by her shoulder and Petitioner "twitched" one or two times on the floor (Respondent's Exhibit 2).

Jennifer Zamarron testified on the half of Respondent. Zamarron was a coworker of the Petitioner and said she was approximately six feet from her at the time of the occurrence. Zamarron testified that she and Petitioner were talking about how hot/miserable it was, she turned and observed Petitioner looking like she was going to sit on the floor. When she turned completely around, Petitioner was sitting up. Zamarron did not observe Petitioner fall to the ground. She testified it appeared to her that Petitioner had just sat down.

Zamarron prepared a written statement dated August 12, 2020, which was received into evidence. In the statement, Zamarron noted Petitioner slowly sat down on the ground and when she went to provide assistance to her, Petitioner advised she felt dizzy. Petitioner also informed Zamarron she had undergone and MRI a couple of weeks prior because her back hurt. In the statement, Zamarron

also noted that she had previously tripped over a floor mat, but Respondent had taken the position that her accident did not happen there (Respondent's Exhibit 3).

On cross-examination, Zamarron admitted she did not actually see Petitioner sit down, but this belief of hers was based upon her discussion with Petitioner when Petitioner was on the floor. Zamarron was interrogated about the statement she made regarding her injury and she testified she included it because she was aggravated about the way Respondent had handled her claim.

Petitioner initially sought medical treatment at MedExpress on August 10, 2020. At that time, Petitioner advised she was at work in a hot factory that was not air conditioned, felt hot and experienced a room spinning sensation with an episode of syncope which lasted several seconds. When Petitioner fell, she injured her low back and left elbow. X-rays of the lumbosacral spine and left elbow were obtained. The x-ray of the lumbosacral spine revealed multilevel degenerative changes and the x-ray of the left elbow was normal. Petitioner was directed to seek further treatment at an ER (Petitioner's Exhibit 2).

Petitioner was transported from MedExpress to the ER of St. Elizabeth's Hospital via ambulance. According to the record of the ambulance service, Petitioner was at work on a hot assembly line, felt weak and woke up on the floor (Petitioner's Exhibit 1).

When Petitioner was seen in the ER at St. Elizabeth's Hospital, Petitioner advised she worked on an assembly line which was out in the heat, she felt dizzy, said the name of a coworker and the next thing she remembered was being on the floor. Petitioner's primary complaint was low back pain. Petitioner was prescribed medication and discharged (Petitioner's Exhibit 3).

Petitioner subsequently sought treatment from Dr. Michael McCleary, her family physician, who initially evaluated her on August 31, 2020. At that time, Petitioner complained of low back and left hip pain following a fall at work. Dr. McCleary diagnosed Petitioner with acute bilateral low back pain with sciatica and left hip pain. He prescribed medication and ordered physical therapy (Petitioner's Exhibit 4).

Dr. McCleary treated Petitioner from September, 2020, through November, 2020. When he saw Petitioner on November 30, 2020, he noted Petitioner continued to complain of low back and left hip pain. He also noted Petitioner had received physical therapy for several months, but had experienced no significant improvement. He opined Petitioner had failed conservative treatment and continued to authorize Petitioner remain on light duty work restrictions. Dr. McCleary ordered MRI scans of Petitioner's lumbar spine and left hip (Petitioner's Exhibit 4).

The MRI scans of Petitioner's lumbar spine and left hip were performed on December 9, 2020. In regard to the MRI of Petitioner's lumbar spine, the radiologist opined it revealed a foraminal disc protrusion superimposed on a small disc bulge at L5-S1, and small disc extrusions at L1-L2 and L2-L3. In regard to the MRI of Petitioner's left hip, the radiologist opined it revealed partial tears of the bilateral hamstring origins (Petitioner's Exhibit 6).

Dr. McLeary referred Petitioner to Dr. Kristina Naseer, a pain management specialist. Marianne Guthrie, a Nurse Practitioner associated with Dr. Naseer, evaluated Petitioner on December 22,

2020. At that time, Petitioner informed NP Guthrie that in August, 2020, while doing assembly line work in a hot factory, Petitioner became dizzy and passed out. Petitioner also advised that she had been subject to light duty restrictions of no standing, no excessive bending and no lifting greater than 10 pounds. Petitioner complained of low back pain which radiated into both the left and right gluteal regions with numbness of the left and right lower extremities (Petitioner's Exhibit 5).

Dr. Naseer examined Petitioner on December 22, 2020, and reviewed the diagnostic studies. She opined Petitioner had lumbar radiculopathy and recommended Petitioner undergo a bilateral epidural steroid injection at L5-S1. When Dr. Naseer saw Petitioner on January 6, 2021, she administered a bilateral epidural steroid injection at L5-S1 (Petitioner's Exhibit 5).

Dr. Naseer saw Petitioner on January 29, 2021. At that time, Petitioner advised she experienced no improvement of her symptoms following the epidural injection. Dr. Naseer administered a bilateral epidural steroid injection at L4-L5 (Petitioner's Exhibit 5).

On February 5, 2021, Petitioner was evaluated by Dr. Richard Derby, in regard to her left hip symptoms. At that time, Petitioner advised Dr. Derby she had left posterior buttock/hip pain symptoms which had been present since last August when she passed out and fell at work. Dr. Derby opined Petitioner's left buttock/hip symptoms were related to the accident. He noted the MRI revealed a partial hamstring origin tear. Dr. Derby recommended Petitioner receive additional physical therapy and take anti-inflammatory medication as needed (Petitioner's Exhibit 7).

Petitioner was again seen by Dr. McLeary on February 10, 2021. Dr. McLeary noted Petitioner continued to have left hip and low back symptoms. He opined there was no surgical options and the likelihood of Petitioner getting back to a normal function was low (Petitioner's Exhibit 4).

Dr. Naseer continued to treat Petitioner in March/April, 2021. When Dr. Naseer saw Petitioner on April 9, 2021, she administered a bilateral sacroiliac joint injection (Petitioner's Exhibit 5).

Petitioner was last seen by Dr. McCleary on February 14, 2022. At that time, Petitioner advised she felt well overall, but the pain was debilitating. Petitioner said she was still unable to work. Dr. McCleary's diagnosis remained the same, lumbar radiculopathy with tear of the left hamstring. He recommended Petitioner receive further physical therapy; however, Petitioner did not receive any further treatment.

At the direction of Respondent, Petitioner was examined by Dr. Russell Cantrell, a physical medicine/rehabilitation specialist, on June 7, 2022. In connection with his examination of Petitioner, Dr. Cantrell reviewed medical records and diagnostic studies provided to him by Respondent. When seen by Dr. Cantrell, Petitioner advised that she was working on the assembly line of a factory, it was very hot with temperatures outside at 98°, and inside close to 110°. Because of the preceding, Petitioner advised that she passed out and sustained an injury to her low back and left hip (Respondent's Exhibit 1; Deposition Exhibit 2).

On examination, Dr. Cantrell noted Petitioner complained of pain referable to both the right and left hips, as well as the low back and left buttocks/hip. Dr. Cantrell opined Petitioner had sustained a lumbar strain and left hip contusion. He noted Petitioner's subjective complaints of

numbness/tingling in the left lower extremity were not explained by his findings on examination. Dr. Cantrell also noted that straight leg raising was negative bilaterally and there was no lumbosacral radiculopathy. He also opined Petitioner's antalgic gait and use of a cane was not explained by her injury. However, Dr. Cantrell also opined Petitioner had an AMA impairment rating referable to the whole person because of the lumbar strain (Respondent's Exhibit 1; Deposition Exhibit 2).

Dr. Cantrell was deposed on August 31, 2022, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Cantrell's testimony was consistent with his medical reports and he reaffirmed the opinions contained therein. In particular, Dr. Cantrell testified the MRI of December 9, 2020, revealed degenerative changes, but they were not related to the accident of August 10, 2020 (Respondent's Exhibit 1; pp 14-15).

Petitioner testified she had sustained no injuries to either her low back or left hip prior to the accident of August 10, 2020. Petitioner stated she had attempted to return to work in both October and December, 2020, but was only able to work for a very brief period of time because of her ongoing symptoms. Petitioner testified she continues to experience pain in both the low back and left hip. Petitioner testified she would not be able to return to work for Respondent because of her ongoing symptoms. She also limits her activities at home. Petitioner testified she was able to return to work, but not until February, 2022. At that time, she returned to work on a part time basis making tacos one night a week for $70.00 in cash.

Conclusions of Law

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

The Arbitrator concludes Petitioner sustained an accidental injury arising out of and in the course of her employment by Respondent on August 10, 2020.

In support of this conclusion the Arbitrator notes the following:

There was no dispute that on August 10, 2020, Petitioner was working on an assembly line in a factory which was not air conditioned and it was an extremely hot environment, with the temperature being approximately 98°.

In addition to the preceding, Petitioner testified that while working on the assembly line, she was wearing a mask because of Covid.

Petitioner testified that, because of the preceding, she felt dizzy and then had no recollection as to exactly what happened thereafter, but when she woke up, she was laying on the floor.

Dennis Jaimet, a coworker, testified on behalf of Petitioner and was working on the assembly line approximately six feet from the Petitioner when she sustained the accident. Jaimet stated he was looking in Petitioner's direction and observed her close her eyes and fall to the ground.

As noted herein and in the various medical records/reports, Petitioner consistently reported the circumstances of the accident to all of the medical providers who treated/examined her.

Based on the preceding, the Arbitrator finds the testimony of Petitioner regarding the circumstances of the August 10, 2020 accident to be credible and consistent with the testimony of Dennis Jaimet.

Jennifer Zamarron testified on behalf of Respondent. Zamarron claimed Petitioner sat down and did not fall to the ground; however, she admitted on cross-examination she did not actually observe Petitioner sitting down, but this was her opinion.

In the written statement prepared by Zamarron, she claimed Petitioner had informed her prior to sustaining the fall of having undergone an MRI a couple of weeks prior because of lower back pain, but Petitioner denied any prior low back pain and there was no evidence tendered of Petitioner having undergone an MRI of the low back any time prior to the accident of August 10, 2020.

In the written statement prepared by Zamarron, she noted she had previously sustained a trip over a floor mat while at work, but Respondent had disputed the claim. There was no real explanation as to exactly why Zamarron chose to include such a statement in report purportedly dealing with Petitioner's accident.

Based on the preceding, the Arbitrator finds the testimony of Zamarron to be totally lacking of any credibility whatsoever.

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

The Arbitrator concludes Petitioner's current condition of ill-being this causally related to the accident of August 10, 2020.

In support of this conclusion the Arbitrator notes following:

Petitioner worked for Respondent for 22 years prior to the accident of August 10, 2020, and was able to perform all of her job duties.

Subsequent to the accident, Petitioner had complaints of low back and left hip pain which have continued up to and including the present.

Petitioner was diagnosed with disc pathology at L5-S1 and partial tears of the bilateral hamstring origins for which Petitioner has received medical treatment including medication, physical therapy and injections.

Given the preceding, the Arbitrator is not persuaded by the opinion of Respondent's Section 12 examiner, Dr. Cantrell, regarding 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 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 medical expenses incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 8, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall receive 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 22 4/7 weeks, commencing August 11, 2020, through September 30, 2020, October 10, 2020, through November 30, 2020, and February 14, 2021, through April 9, 2021.

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

Petitioner was under medical treatment and authorized to be off work during aforestated periods of time. The Arbitrator concludes Petitioner was at MMI as of April 9, 2021, when she was last seen by Dr. Naseer and received an injection into the sacroiliac joint. This was the last medical treatment Petitioner received. When Petitioner was subsequently seen by Dr. McCleary on February 14, 2022, it was an examination, but Petitioner received no further medical treatment thereafter.

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

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 25% loss of use of the person as a whole.

In support of this conclusion the Arbitrator notes following:

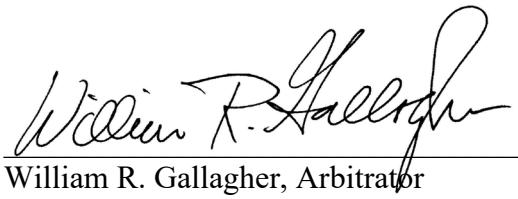
Dr. Cantrell opined Petitioner has an AMA impairment rating of two percent (2%) impairment to the whole person in regard to the lumbar strain. The Arbitrator gives this factor minimal weight.

Petitioner worked as an assembly line worker for Respondent at the time of the accident. Because of her low back and left hip injury, Petitioner is unable to perform that job. The Arbitrator gives this factor significant weight.

Petitioner was 59 years old at the time she sustained the accident. The Arbitrator gives this factor moderate weight.

Petitioner has a diminished future earning capacity and presently is making only $70.00 per week on a part time basis. The Arbitrator gives this factor significant weight.

Petitioner has continued to have complaints of pain referable to the low back and left hip consistent with the medical treatment she received. The Arbitrator gives this factor significant weight.



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC000073
Case Name	Nick Stein v. Schneider Electric
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0214
Number of Pages of Decision	11
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Mark Dinos
Respondent Attorney	Miles Cahill

DATE FILED: 5/10/2023

/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

NICK STEIN,

Petitioner,

vs. NO: 20 WC 000073

SCHNEIDER ELECTRIC,

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, permanent disability, and credit, and being advised of the facts and law, and affirms with correction the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Arbitrator's Decision contains a scrivener's error in the first paragraph of the order on page 2. It references Petitioner's "back conditions" and should refer to Petitioner's dental condition, as provided in Sections 8(a) and 8.2 of the Act. The Commission finds that the clear intent of the Arbitrator was to award medical expenses based upon injuries to Petitioner's teeth.

For the foregoing reason the Decision is hereby corrected. All else is affirmed and adopted with correction.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 8, 2022, is hereby affirmed with correction, as stated above.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $30,000.00. 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.

May 10, 2023

SJM/msb
o-03/8/2023
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC000073
Case Name	Nick Stein v. Schneider Electric
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Frank Kress
Respondent Attorney	Miles Cahill

DATE FILED: 7/8/2022

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

/s/ Roma Dalal, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Nick Stein
Employee/Petitioner
v.
Schneider Electric
Employer/Respondent

Case # **20** WC **000073**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Roma Dalal**, Arbitrator of the Commission, in the city of **Joliet**, on **May 16, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **12/19/2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

On these dates, 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 $**76,918.40**; the average weekly wage was $1,479.26.

On the first date of accident, Petitioner was **56** 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 $**0.00** for TTD, $**0** for TPD, $0.00 for maintenance, and $**0** for other benefits, for a total credit of $0.00**.**

Respondent is entitled to a credit of $**0.** under Section 8(j) of the Act. It is stipulated by the parties that Respondent shall receive credit for all benefits paid for group health or group disability.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule regarding Petitioner's back conditions as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for amounts paid.

Based on the record taken as a whole, the Arbitrator finds Petitioner sustained permanent partial disability to the extent of 7% 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 8, 2022

Signature of Arbitrator

ICArbDec19(b)

State of Illinois)
)
County of WILL)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Nick Stein,)
)
v.) Case: 20 WC 000073
)
Schneider Electric,)

STATEMENT OF FACTS

This matter proceeded to hearing on May 16, 2022 in Joliet, Illinois before Arbitrator Roma Dalal on Petitioner's Request for Hearing. Issues in dispute include accident, causal connection, medical bills and nature and extent. (Arb. Ex. 1).

Nick Stein (referred herein as the "Petitioner") was a 56-year-old single male with zero dependents. He was employed by Schneider Electric (hereinafter referred to as the "Respondent") as a field service representative. (T.7). Petitioner testified his job duties are to perform preventative maintenance of electrical systems for commercial entities. (T.8). Petitioner testified large-profile customers of the Respondent include Exelon and Walmart. (T.8).

Petitioner explained that, as a field service representative of Respondent, he helped to service data centers in what he called "critical installations." (T.9). Petitioner testified he serviced the air conditioning system at Exelon so the server equipment stays at a reasonably cool temperature. *Id.*

In order to service the air conditioning system, Petitioner is tasked with two main areas of focus. Petitioner explained one part is the indoor unit, with the second being rooftop equipment. The rooftop equipment consists of chillers and air cool condensers which requires multiple tools. *Id.*

Petitioner testified in order to access the rooftops, he needed to utilize either a barrel type ladder, straight ladder, or a walk-out stairway to the roof, the mezzanine penthouse set up or elevator. (T.10). Petitioner explained that at the Exelon location, access to the rooftop is by a ladder only. *Id.* In order for him to get his equipment to the rooftop, he usually throws a rope down until it hits the ground and then he goes back down the ladder, ties it off to his backpack with his tools, and lifts it all the way up to the roof. *Id.* He clarified that he usually carries about 50 pounds [in tools]. Once he gets his equipment on top of the roof, he proceeds to do his work. *Id.*

On December 19, 2019, Petitioner was at the aforementioned Exelon jobsite in Joliet, Illinois. (T.11). Petitioner testified he had arrived at the job around 3:30 and noticed patches of ice and slush on the roof. *Id.* Petitioner testified he could not push the off job any longer because he was out at this site a couple days prior and the conditions were actually icier, and he had told the customer it was not safe. *Id.* at 11-12.

Petitioner testified he decided it was appropriate to attempt the repair. (T.12). After he finished his work, he began carrying a large motor that weighed about 50 pounds on his shoulder. *Id.* He was also carrying his backpack that weighed about 50 pounds. As he was walking toward the roof access hatch, he slipped and fell on ice, causing the fan motor with a fan blade attached to hit him in the face. *Id.* Petitioner testified he went down right on his back and the motor not only struck his face, it contacted his [left] shoulder as he hit the ground. *Id.* at 12-13.

Petitioner testified the motor hit him in the face near his upper lip. (T.13). Petitioner felt very sharp pain in his face and lower job. He also felt a burning sensation and felt blood from his lip and his teeth. (T.14). After his fall, the facilities manager, Joe Harrington from Exelon, ran up to the roof and called an ambulance. *Id.*

Petitioner was taken by a Joliet Fire Department ambulance to Silver Cross Hospital. (PX1, p.4). Petitioner presented to Silver Cross Hospital on December 19, 2019 with a laceration of his lip. (PX2, p.18) Petitioner was walking on a roof and slipped on ice. It was noted that two of Petitioner's teeth were loose. (PX2, p. 21). At the ER, Petitioner's 2.5cm laceration was sutured together. In addition, the teeth were splinted together. (PX2, p.22). Petitioner was discharged and referred to a dentist for further evaluation. (PX2, p. 24). Petitioner testified he complained of pain below his neck towards his left arm as well. (T.17).

On December 20, 2019, Petitioner followed up with a dentist named Allison Mele of Park Place Dental. (PX3, p.2). Petitioner presented as an emergency patient who complained of an accident at work. Petitioner had a temporary splint placed in his mouth in the ER. *Id*. Dr. Mele's records note she was evaluating Petitioner with regard to teeth 8 through 12; however, tooth 6 had a resorptive lesion and would need to be removed, but that was unrelated to the accident. *Id.* at 4. Petitioner testified Dr. Mele did not have a panoramic X-ray equipment, so she referred him to Dr. Babcic. (T.17).

Dr. Mele referred Petitioner to Cameo Dental for further care as she was unable to render care that the Petitioner needed to address his traumatic injury. On the same day, December, 20, 2019, Dr. Vladana Babcic, of Cameo Dental, evaluated Petitioner. (PX4, p.12). Dr. Babcic diagnosed symptomatic irreversible pulpitis and symptomatic apical periodontitis. On the initial date of service, Dr. Babcic placed a Ribbond splint on the Petitioner's teeth. *Id.*

On January 21, 2020, Dr. Babcic noted she performed root canals on teeth 9 and 10. (PX4, p.15-16). In her records, Dr. Mele noted a phone conversation of February 18, 2020 that she had with Dr. Babcic in which teeth 7, 8, 9 and 10 all had "endo" [or root canals] performed. (PX3, p.4).

Petitioner was able to provide a description of the procedures that were performed. Petitioner testified that when he presented to Dr. Babcic, he splinted his teeth together. (T.18). He further explained on January 21, 2020, she had to perform a root canal. (T.19). He testified Dr. Babcic put a numbing agent in his upper jaw and drilled into each tooth down to the root. *Id.* Petitioner explained Dr. Babcic had to kill the root tips because the root tips of the teeth were broken. *Id.* Petitioner testified Dr. Babcic told him that this was why he had to undergo these canals. After this procedure was done, he would need restoration. She advised someone else would have to do that. (T.20).

Petitioner followed up on February 12, 2020. (T.20). As of today, Petitioner still felt pain in his upper face around where the root canals were performed. He feels a numb, burning sensation and also pain in the lower lip. Most of the time, it is numb, when it is really cold his lip feels like it's on fire. *Id.*

Petitioner noted he now has more anxiety everyday when eating, especially when biting into an apple or corn on the cob. (T.21). He also is more careful with his job and will not do any jobs with unsafe conditions. *Id.*

On Cross-Examination, Petitioner noted he had some periodontitis, mild gingivitis prior. (T.24). He further noted he had not returned to a doctor regarding his numbness of his lip or anxiety. (T.27).

Petitioner noted he had not experienced any type of wage reduction or wage loss. (T.27).

CONCLUSIONS OF LAW

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

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

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

In this case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. Petitioner was well mannered. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

With regard to issue "C", whether an accident occurred that arose out of and in the course of Petitioner's employment, the Arbitrator finds as follows:

For accidental injuries to be compensable under the Workers' Compensation Act, a claimant must show such injuries arose out of and in the course of his or her employment. Navistar Intern. Transp. Corp. v. Industrial Com'n, 315 Ill.App.3d 1197 (2000).

After a careful review of the record, including Petitioner's testimony and the medical evidence available in this case, the Arbitrator finds Petitioner did sustain an "accident" as defined by the Act. Petitioner testified on December 19, 2019 he slipped and fell on ice on the roof sustaining a compensable work injury. The Arbitrator finds the earliest medical records, which indicated Petitioner had sustained an injury at home, were in error based upon Petitioner's clear and unequivocal testimony. Accordingly, the Arbitrator finds Petitioner sustained accidental injuries arising out of and in the course of his employment.

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

The Arbitrator adopts the Statement of Facts in support of the Conclusions of Law. To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his 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).

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting

degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

Petitioner credibly testified and the totality of the medical evidence supports that his current condition of ill-being is causally related to the injury of December 19, 2019. There is no evidence suggesting Petitioner had difficulty performing his job duties or underwent any prior tooth injury. The Arbitrator finds after a thorough review of Petitioner's dental records the injuries sustained to teeth 7, 8, 9 and 10 are all causally related to the trauma Petitioner sustained when a 50-pound motor struck him in the face. There is no indication in the record that the damage sustained to these four teeth is due to anything other than the trauma sustained. In fact, the Arbitrator notes that Dr. Mele specifically noted that an issue with tooth 6 was unrelated to the trauma. Presumably if the same was true for teeth 7, 8, 9, and 10, Dr Mele would have noted it. For these reasons, the Arbitrator finds that the Petitioner's current state of ill-being with regard to teeth 7, 8, 9 and 10 is causally related to the work accident of December 19, 2019.

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

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

The Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds Respondent has not paid for said treatment. Petitioner submitted the bills of Silver Cross Emergency Care Center, Park Place Dental, and Cameo Dental. Having found Petitioner's current state of ill-being is causally related to his work accident of December 19, 2019, the Arbitrator also finds the medical bills incurred were both reasonable and necessary to treat the Petitioner's condition. Accordingly, the Arbitrator orders the Respondent to satisfy the charges of Silver Cross Emergency Care Center, Park Place Dental, and Cameo Dental pursuant to the Illinois Workers' Compensation fee schedule. The Arbitrator further notes that in the event that the Respondent has satisfied those bills already, no further payment shall be made.

As such, the Arbitrator orders Respondent to pay Petitioner the reasonable and necessary medical expenses incurred in connection with the care and treatment of his causally related condition pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid.

Issue L, what is the Nature and Extent of the Injury, the Arbitrator finds as follows?

Consistent with the Illinois Workers' Compensation Act, the Arbitrator is to base the permanency determination on the following factors:

i. The reported level of impairment pursuant to subsection (a) (e.g., the AMA rating)
ii. The occupation of the injured employee

iii. The age of the employee at the time of the injury
iv. The employee's future earning capacity
v. Evidence of disability corroborated by the treating medical records.

With regard to subsection (i) of § 8.1b(b), the Arbitrator notes no party introduced an impairment rating at trial and as such, no weight is given to this factor.

With regard to subsection (ii) of § 8.1b(b), the Arbitrator notes Petitioner was released to work by his treating physician. Petitioner is working the same job but is more conscious on the risks he takes during the job. The Arbitrator therefore gives moderate weight to this factor.

With regard to subsection (iii) of § 8.1b(b), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 56 years old at the time of the accident. Given the length of his estimated work life, The Arbitrator gives some weight to this factor.

With regard to subsection (iv) of § 8.1b(b), the Arbitrator concludes Petitioner is capable of working with no restrictions and as such, is capable of making the same amount in wages as Petitioner was previous to his injury. As Petitioner's injury did not affect his earning capacity, the Arbitrator assigns significant weight to the lack of effect Petitioner's injury had on Petitioner's wages.

With regard to subsection (v) of § 8.1b(b), the Arbitrator notes the dental procedures performed involved killing the roots of Petitioner's teeth. Petitioner testified, two years later, he still has pain in his upper face right around where the root canals were performed. (T.20). He further described it feels like he has a numb, burning sensation with pain in his lower lip. He explained that most of the time it's numb, but when it's really cold outside it feels like it is on fire. *Id.*

Petitioner further noted that he has apprehension whenever he has to do rooftop work, has to get into confined spaces, or work alone from others. (T.21). If anything is remotely unsafe, he will not complete the jobs. *Id.*

Petitioner further testified he has anxiety outside of work. He further noted he cannot bite into an apple or corn on the cob and mainly chews everything on the side of his mouth. (T.21).

The objective evidence of significant damage to the Petitioner's teeth, coupled with his testimony regarding his current condition, the Arbitrator therefore gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 7% loss of use of the person as a whole pursuant to §8(d)2 of the Illinois Workers' Compensation Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC017078
Case Name	Keith Lampe v. Illinois American Water
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0215
Number of Pages of Decision	15
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Keith Short
Respondent Attorney	Bruce Magnuson

DATE FILED: 5/10/2023

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KEITH LAMPE,

Petitioner,

vs. NO: 19 WC 17078

ILLINOIS AMERICAN WATER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability (TTD) benefits and permanent partial disability (PPD) benefits, and being advised of the facts and law, 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 that Petitioner sustained a repetitive trauma injury to his right hand as a result of his work activities for Respondent, but reverses the Arbitrator's Decision as to Petitioner's alleged left shoulder injury. The Commission finds instead that Petitioner proved that the original work injury to the right hand, and which manifested on April 16, 2019, was a causative factor in Petitioner's subsequent condition to the left shoulder.

Petitioner did not sustain any specific injury to the left shoulder on April 16, 2019 and the evidence demonstrates that Petitioner did not have any issues with nor sought treatment for his shoulder prior to his carpal tunnel syndrome claim. Petitioner had been off work for his right hand from March 6, 2019 until January 14, 2020. He testified that he started using his left arm for everything while he awaited treatment for his right hand and that his left shoulder became problematic during this period. Petitioner also testified that even though he was not working for Respondent from March 2019 through January 2020, he was still performing acts of daily living which included maintaining a ranch, cutting an acre of grass with a riding mower, and feeding sheep, chickens and horses. Petitioner added that he fed the animals seven days a week, twice a day and it would take about an hour. He carried 10 to 12 five-gallon buckets with each bucket of water weighing about 41 pounds and buckets of feed weighing less. Petitioner also used his left arm to dump the bag of grass from the lawnmower, carry groceries and do laundry.

Petitioner first reported left shoulder complaints on December 3, 2019 – about nine months after being off work for his right hand and a little over a month after his right carpal tunnel release on October 22, 2019. On January 3, 2020, Petitioner was evaluated by Dr. Rivera for left shoulder pain. The office visit note stated that since March 2019, Petitioner had not been using his right arm/shoulder as much because this worsened the symptoms in his right hand. "[T]he patient was using his left arm/shoulder for almost all of his day-to-day functioning. He reports that over time his left shoulder has become more sore and decreased in range of motion." (Pet. Ex. 3). Dr. Rivera's examination of the left shoulder revealed tenderness to palpation over the subacromial fossa, decreased range of motion due to pain, positive empty can sign and strength was 5/5. There was no subluxation or pain with palpation over the AC joint. Dr. Rivera referred Petitioner to physical therapy and kept him off work.

Petitioner underwent physical therapy through January 22, 2020 and then began treating with Dr. Solman on January 29, 2020. Dr. Solman's understanding of the onset of and explanation for Petitioner's left shoulder complaints was consistent with Petitioner's testimony and the medical records. Dr. Solman's examination of Petitioner revealed positive impingement sign with forward flexion, posterior superior shoulder pain with external rotation, positive O'Brien's sign indicative of posterior superior labral abnormalities and pain with crossing his arm across the body. Petitioner was otherwise neurovascularly intact and had good muscle strength throughout the extremity. Petitioner completed x-rays at Dr. Solman's office which revealed minimal degenerative changes in the AC joint. Dr. Solman also found no evidence of muscular atrophy.

Dr. Solman believed that Petitioner had some type of posterior labral tear and testified that an acute event was not necessary for a posterior labral tear to occur. "It's something that can either be present preexisting or can develop over time but then become - - and if it's preexisting and asymptomatic can become symptomatic with overuse of the arm." (Pet. Ex. 1, pgs. 15-16). Dr. Solman testified that labral tears can be more related to activity than degeneration. He opined that Petitioner's left shoulder condition was related to overcompensation and use of his left arm/shoulder because of Petitioner's right carpal tunnel syndrome.

Respondent's Section 12 examiner, Dr. Paletta, examined Petitioner on May 5, 2020. The timeline noted of Petitioner's left shoulder complaints and his treatment to date was consistent with the arbitration record. His physical examination of Petitioner and x-ray findings were also similar to Dr. Solman's. Dr. Paletta diagnosed Petitioner with chronic left shoulder pain but testified that the cause remained uncertain.

Dr. Paletta testified that Petitioner's left shoulder pain was not related to overuse because he was not working when his left shoulder problem started. He also stated that Petitioner was only using his arm for normal day-to-day activities. "He just attributed it to general overuse as a result of his right carpal tunnel surgery." (Resp. Ex. 3, pg. 21). Dr. Paletta agreed that a labral tear could be a degenerative condition or the result of a traumatic event. He further believed it was unlikely that a labral tear could be caused by general overuse, but that the condition could develop as a result of repetitive activities. Dr. Paletta testified during cross-examination that Petitioner had stated he was using the left hand more than normal for his regular activities.

The Commission finds that Petitioner credibly testified with respect to the onset of his left shoulder complaints and the specific acts of daily living he was performing while awaiting surgery for his right hand which included maintaining his one acre property and his regular household duties. His left shoulder complaints reached the "breaking point" about a month after his right carpal tunnel release. The Commission notes that this history was consistent throughout the medical evidence – including that which was noted by Drs. Solman and Paletta. The Commission also finds that Dr. Solman and Dr. Paletta both acknowledged that Petitioner informed them that he was using his left arm more than he normally would for his regular activities and both physicians agreed that labral tears could be caused by activity [Dr. Solman] and/or repetitive activities [Dr. Paletta]. An acute event was not necessary.

Based on the preponderance of the evidence, including the physician opinions, Petitioner's credible testimony, the consistent timeline of left shoulder complaints and medical evidence and chain of events which included no prior left shoulder issues, the Commission finds that a causal relationship exists between the accidental injury Petitioner sustained to the right hand and his subsequent left shoulder condition. The Commission therefore reverses the Arbitrator's Decision with respect to the alleged left shoulder injury.

With respect to workers' compensation benefits, Respondent only disputed liability for benefits related to the left shoulder based on its dispute regarding accident and causal connection. As the Commission has resolved these issues as discussed above, the Commission modifies the Arbitrator's Decision and awards Petitioner all the necessary and reasonable medical bills related to the right hand and left shoulder as detailed in Petitioner's Exhibits 9 through 18.

The Commission further modifies the Arbitrator's award of TTD benefits to include additional benefits for the left shoulder. The Arbitrator had awarded TTD benefits from March 16, 2019 through January 20, 2020 based on the Arbitrator's findings related to accident and causal connection for the right hand as well as the parties' stipulation. Petitioner claims additional TTD benefits for the left shoulder. The evidence demonstrates that Dr. Rivera kept Petitioner off work on January 3, 2020 because "[t]he patient's job is very physical and entails significant manual labor and heavy lifting. The patient's employer would like him to be medically cleared with regards to his left shoulder before returning to work." (Pet. Ex. 3). Petitioner then began treating with Dr. Solman on January 29, 2020 and was given light duty restrictions. Petitioner's unrebutted testimony was that Respondent could not accommodate light duty work. Following surgery and post-operative care, Dr. Solman released Petitioner from treatment on March 18, 2021. Petitioner testified that he returned to work full duty with Respondent on March 19, 2021. Accordingly, the Commission modifies the TTD award to include benefits for both the right hand and left shoulder from March 16, 2019 through March 18, 2021.

The Commission next affirms the Arbitrator's PPD award of 10% loss of use of the right hand and makes a further PPD award of 10% loss of use of the person as a whole for Petitioner's left shoulder injury. The Commission modifies the five factors under Section 8.1b of the Act 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 had been released to work without restrictions for his right hand in January 2020 and he further confirmed that he returned to his regular duties with Respondent in March 2021 following his surgery and post-operative care for the left shoulder. Petitioner testified that he was doing pretty well, he could perform all the regular functions of his job and he did not notice anything about his left shoulder at the end of a particularly heavy day. The Commission gives this factor moderate weight.

(iii) Petitioner's Age: Petitioner was 50 years old on the accident date; neither party submitted evidence into the record which would indicate the impact of the Petitioner's age on any permanent disability resulting from the April 16, 2019 accident. Nonetheless, the Commission finds that Petitioner must still live with his disability and gives moderate 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. The Commission affirms the Arbitrator's findings as it relates to Petitioner's right carpal tunnel syndrome. With respect to Petitioner's left shoulder injury, he underwent treatment by way of prescription medication, physical therapy, an injection and surgery. On September 24, 2020, Dr. Solman performed a left shoulder arthroscopic subacromial decompression, distal clavicle resection, labral repair and biceps tenodesis in the bicipital groove. Petitioner's post-operative diagnoses were left shoulder subacromial impingement syndrome, AC joint arthrosis and type 2 superior labrum anterior-posterior lesion with posterior extension.

Dr. Solman's March 18, 2021 office visit note indicated that Petitioner was doing well and he was happy with his progress. Dr. Solman examined Petitioner and noted no erythema or signs of infection. Petitioner had full range of motion and good cross-arm adduction. Strength was 5/5 with no signs of instability and no scapular winging. Petitioner was neurovascularly intact throughout the left upper extremity. Dr. Solman released Petitioner from treatment and he returned to work full duty. The Commission gives this factor significant weight.

In light of the foregoing, with no single enumerated factor being the sole determinant of disability, the Commission finds that Petitioner is entitled to PPD benefits of 10% loss of use of the right hand and 10% loss of use of the person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 26, 2022 is hereby modified as stated and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable, necessary, and related medical bills as evidenced in Petitioner's Exhibits 9 through 18 pursuant to Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $925.67 per week for 104 6/7 weeks, from March 16, 2019 through March 18, 2021, 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 permanent partial disability benefits of $813.87 per week for 69 weeks because the injuries sustained caused ten-percent (10%) loss of use of the right hand pursuant to Section 8(e) of the Act and ten-percent (10%) 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.

May 10, 2023

DLS/pm
O: 5/4/23
046

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC017078
Case Name	Keith Lampe v. Illinois American Water
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Keith Short
Respondent Attorney	Jennifer Barbieri

DATE FILED: 7/26/2022

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

/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

Keith Lampe
Employee/Petitioner

v.

Illinois American Water
Employer/Respondent

Case # 19 WC 17078

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 April 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 $72,202.00; the average weekly wage was $1,388.50.

On the date of accident, Petitioner was 51 years of age, married with 1 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 $41,522.91 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $41,522.91.

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 for treatment of Petitioner's right hand condition, as identified in Petitioner's Exhibits 9, 10, 12, 13 and 18, 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 $925.67 per week for 44 6/7 weeks, commencing March 16, 2019, through January 20, 2020, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $813.87 per week for 19 weeks because the injury sustained caused the 10% loss of use of the right hand, as provided in Section 8(e) of the Act.

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

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

JULY 26, 2022

William R. Gallagher, Arbitrator
ICArbDec p. 2

Findings of Fact

Petitioner filed an Amended Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment by Respondent. The Amended Application alleged a date of accident (manifestation) of April 16, 2019, and that Petitioner sustained "Repetitive trauma" which caused an injury to "Bilateral hands, left shoulder" (Arbitrator's Exhibit 2). Respondent stipulated to accident and causal relationship in regard to Petitioner's right hand condition, but disputed accident and causal relationship in regard to Petitioner's left shoulder condition. Respondent also disputed liability for the medical expenses incurred in connection with Petitioner's left shoulder condition. In regard to temporary total disability benefits, Petitioner claimed he was entitled to temporary total disability benefits of 51 2/7 weeks, commencing March 16, 2019, through January 20, 2020, and January 29, 2020, through March 19, 2020. Respondent agreed Petitioner was entitled to temporary total disability benefits of 44 6/7 weeks, commencing March 16, 2019, through January 20, 2020, but disputed liability for the remaining seven and one-seventh (7 1/7) weeks, commencing January 29, 2020, through March 19, 2020 (Arbitrator's Exhibit 1).

Petitioner began working for Respondent as a laborer in July, 2017. Petitioner's job duties were physically demanding and included shoveling, operating a chipping hammer, cutting, grinding, installing water mains and hydrants and operating/repairing water meters. Petitioner also used grinders and plate compactors which were vibrating tools. Petitioner would also operate a backhoe.

Prior to Petitioner becoming employed by Respondent, he operated his own business, Lampe Backhoe and Trenching Services. Petitioner ran this business from 1990 to 2017, when he became employed by Respondent. Petitioner would backfill houses, dig sewer lines, install aeration systems and dig out driveways. Petitioner was the sole operator of this business.

While working for Respondent, Petitioner began to experience symptoms of numbness in his right hand. When seen for a DOT physical on March 6, 2019, Petitioner complained of numbness in his right hand, especially when holding a steering wheel (Petitioner's Exhibit 2).

Petitioner was subsequently treated by Dr. Lisa Sasso, an orthopedic surgeon. Dr. Sasso initially evaluated Petitioner on September 17, 2019, and she described the condition as being a "classic right carpal tunnel syndrome." On October 19, 2019, Dr. Sasso performed a right endoscopic carpal tunnel release surgery (Petitioner's Exhibits 5 and 6).

Petitioner continued to be treated by Dr. Sasso following surgery. When seen by her on December 3, 2019, Petitioner's primary complaints were in regard to his left shoulder. Petitioner advised that he had been on light duty because of his right hand surgery and he had been experiencing pain in his left side. Dr. Sasso noted she was going to refer Petitioner to a shoulder specialist (Petitioner's Exhibit 6).

Petitioner returned to work on December 13, 2019, but was only able to work for approximately five hours and he had to stop because of his left shoulder symptoms. However, when Petitioner

returned to work at that time, he was not performing any physically demanding tasks. On that day, Petitioner's job duties consisted of safety training on a computer.

Wendi Boulware, Respondent's Service Health and Safety Specialist, testified that, on December 13, 2019, Petitioner completed several safety classes on the computer. She stated Petitioner did not perform any physical job activities and the work he performed that day was with him sitting at a desk before a computer. Petitioner's time records and training data for December 13, 2019, were tendered into evidence at trial (Respondent's Exhibit 4 and 5).

Petitioner testified he was off work because of his right carpal tunnel syndrome condition for approximately eight months, from March 6, 2019, until January 14, 2020. Petitioner stated there was a delay in getting his treatment authorized for the right hand. During that time, Petitioner did not use his right hand and began to experience problems in his left shoulder. Petitioner maintained his yard as well as two others, cared and fed for animals on his property including sheep, chickens and a horse. Petitioner performed these tasks with his left arm without assistance from anyone else other than his wife. Petitioner carried water buckets, operated a lawn mower without using his right hand, carried groceries and did laundry. Petitioner is right hand dominant.

On January 3, 2020, Petitioner was evaluated by Dr. Christopher Rivera. At that time, Petitioner complained of left shoulder pain which he attributed to his not using his right hand and using his left arm/shoulder for all daily activities. Dr. Rivera diagnosed Petitioner with acute pain in the left shoulder and ordered physical therapy (Petitioner's Exhibit 3).

On January 20, 2020, Petitioner was evaluated by Dr. Cory Solman, an orthopedic surgeon. He informed Dr. Solman he had been treated for right carpal tunnel syndrome and that he had been unable to use his right arm for a significant period of time and had to use his left arm. Petitioner advised Dr. Solman he had no prior left shoulder issues even though he previously ran his own equipment operating business. Dr. Solman examined Petitioner's left shoulder and opined he had a possible labral tear. In regard to causality, Dr. Solman opined that Petitioner's limiting the use of his right arm both prior and after the surgery caused overuse of the left arm and that the left shoulder problems were related to overcompensation of the right upper extremity. He recommended Petitioner undergo an MRI/arthrogram of the left shoulder (Petitioner's Exhibit 7).

At the direction of Respondent, Petitioner was examined by Dr. George Paletta, an orthopedic surgeon, on May 5, 2020. In connection with his examination of Petitioner, Dr. Paletta reviewed medical records provided to him by Respondent. When seen by Dr. Paletta, Petitioner attributed his left shoulder pain to excessive use caused by his right hand injury. Petitioner did not describe a specific incident/trauma (Respondent's Exhibit 1).

Dr. Paletta's findings on examination were consistent with those of Dr. Solman and he opined Petitioner had chronic left shoulder pain. He agreed Petitioner should undergo an MRI/arthrogram, but opined Petitioner's left shoulder condition was not related to Petitioner's work activities or a work injury. He noted Petitioner was not working at the time he experienced the onset of shoulder symptoms and denied any trauma/injury. Dr. Paletta also opined Petitioner's developing left shoulder pain as a result of compensation his carpal tunnel syndrome condition was not reasonable (Respondent's Exhibit 1).

At the request of Respondent, Dr. Paletta prepared a supplemental report dated June 19, 2020. He reaffirmed his opinion Petitioner should undergo an MRI arthrogram to determine what further treatment was appropriate; however, any such treatment would not be work-related. He also noted Dr. Solman had opined Petitioner's prior work in his own business from 1990 to 2017 was not a substantial factor in the developing of Petitioner's left shoulder pain. Dr. Paletta opined it was ridiculous to exclude such prior repetitive activities from one job which occurred over a period of 27 years while trying to relate Petitioner's current onset of symptoms to Petitioner's overuse of the left arm because of the right carpal tunnel syndrome condition. At best, any such symptoms would be short-term and minimal (Respondent's Exhibit 2).

Petitioner was again seen by Dr. Solman on July 29, 2020. At that time, Petitioner continued to complain of left shoulder pain. Dr. Solman reaffirmed his opinion Petitioner had a possible labral tear and ordered an MRI/arthrogram (Petitioner's Exhibit 7).

The MRI/arthrogram of Petitioner's left shoulder was performed on August 19, 2020. According to the radiologist, it revealed rotator cuff tendinosis with a tiny partial thickness tear of the infraspinatus, nondisplaced SLAP tear, glenohumeral cartilage loss, acromioclavicular osteoarthrosis and possible adhesive capsulitis (Petitioner's Exhibit 5).

Dr. Solman performed arthroscopic surgery on Petitioner's left shoulder on September 24, 2020. The procedure consisted of a subacromial decompression, distal clavicle resection, labral repair and biceps tenodesis (Petitioner's Exhibit 7).

Following surgery, Petitioner continued to be treated by Dr. Solman who ordered physical therapy. When Petitioner was seen by Dr. Solman on March 18, 2021, Petitioner was doing well. On examination, Dr. Solman noted Petitioner had good strength, a full range of motion and was neurovascularly intact. He authorized Petitioner to return to work (Petitioner's Exhibit 7).

Dr. Solman was deposed on May 26, 2020, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Solman's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. In regard to causality, Dr. Solman testified that, because of Petitioner's right carpal tunnel syndrome condition, he overused his left arm and this caused the pathology that he diagnosed and treated (Petitioner's Exhibit 1; pp 16-17).

On cross-examination, Dr. Solman agreed that a labral tear can be degenerative and an individual can have such a labral tear and not experience symptoms. When questioned about Petitioner's activities while he was recovering from carpal tunnel surgery, Dr. Solman only knew Petitioner informed him that he engaged in household activities and driving. In respect to Petitioner's business which he ran from 1990 to 2017, Dr. Solman had no knowledge of what specific job activities Petitioner had engaged in while operating his own business. He likewise had no information as to the tools or equipment that Petitioner used (Petitioner's Exhibit 1; pp 21-30).

Dr. Paletta was deposed on September 30, 2020, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Paletta's testimony was consistent with his medical reports and he reaffirmed the opinions contained therein. Specifically, in regard to causality, Dr.

Paletta testified Petitioner's left shoulder condition was not related to overuse. He testified Petitioner was not working at the time the left shoulder symptoms had occurred and, if Petitioner had been working using the left arm in a repetitive overhead position, Petitioner's pain could have resulted from that type of repetitive activity. However, Petitioner only informed Dr. Paletta he was using his left arm for day to day activities (Respondent's Exhibit 3; pp 18-20).

Dr. Paletta further testified that Dr. Solman had opined that some of Petitioner's work activities could have contributed to the condition, but Petitioner's prior work activities while running his own business did not. Dr. Paletta stated it was not reasonable to conclude that just the activities from the primary job were causative, but those from the equipment operating company were not (Respondent's Exhibit 3; pp 21-22).

In regard to the right hand, Petitioner testified he made a good recovery and was not limited in respect to his use of his right hand. Petitioner still experiences some mild weakness and occasional numbness. Petitioner testified he is right hand dominant.

In regard to his left shoulder, Petitioner was able to return to work having been released by Dr. Solman on March 18, 2021. Petitioner was able to perform all this job functions and did not experience any symptoms in respect to his left shoulder even at the end of a hectic workday. Petitioner subsequently sustained another accident involving his left shoulder in June, 2021, and has left shoulder symptoms which he attributes to same.

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 his right hand arising out of and in the course of his employment by Respondent and Petitioner's current condition of ill-being in regard to the right hand is causally related to his work activities.

The Arbitrator concludes Petitioner did not sustain a repetitive trauma injury to his left shoulder arising out of and in the course of his employment by Respondent and his current condition of ill-being in regard to the left shoulder is not causally related to his work activities.

In support of these conclusions the Arbitrator notes following:

Petitioner and Respondent stipulated Petitioner's right hand condition was work-related.

Petitioner began to experience left shoulder symptoms while he was disabled from working because of his right hand condition.

Petitioner did not sustain a specific injury/trauma to his left shoulder, but has alleged his left shoulder condition is related to overuse of his left arm because of his right hand condition. Petitioner's testimony regarding his use of his left arm because of his right hand condition was credible and unrebutted. Accordingly, the Arbitrator is basing his decision regarding causality on his evaluation of the testimony of the two medical experts, Dr. Solman and Dr. Paletta.

Dr. Solman opined Petitioner's left shoulder condition was related to overcompensation and use of his left arm/shoulder because of Petitioner's right hand condition. However, Dr. Solman had minimal information as to exactly what Petitioner engaged in which caused the overuse of his left arm/shoulder.

Dr. Solman also opined Petitioner's repetitive work activities could have contributed to the development of Petitioner's left shoulder condition, but that Petitioner's prior work activities while running his own business did not contribute to the development of Petitioner's left shoulder condition.

Dr. Solman lacked specific information as to what repetitive activities Petitioner engaged in both while working for Respondent and while running his own business.

Respondent's Section 12 examiner, Dr. Paletta, opined Petitioner's left shoulder condition was not work-related and noted Petitioner developed left shoulder symptoms while he was not working and there was no specific trauma/injury. He also opined Petitioner's left shoulder condition was not related to overuse because of the right carpal tunnel syndrome condition.

Dr. Paletta also noted Petitioner's use of his left arm was for day-to-day activities and he also questioned the logic of Dr. Solman opining Petitioner's left shoulder symptoms could be related to Petitioner's repetitive work activities while employed by Respondent, but not while Petitioner was operating his own business.

The Arbitrator also notes the surgical report of September 24, 2020, describes extensive pathology in the left shoulder which was not limited to the labrum.

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

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 his right hand condition was reasonable and necessary and Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services for treatment for Petitioner's right hand condition as identified in Petitioner's Exhibits 9, 10, 12, 13 and 18, as provided in Section 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 stipulation of Petitioner and Respondent, the Arbitrator concludes Petitioner is entitled to temporary total disability benefits of 44 6/7 weeks, commencing March 16, 2019, through January 20, 2020.

In regard to disputed issue (L) the Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 10% loss of use of the right hand.

In support of this conclusion the Arbitrator notes following:

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

Petitioner was employed as a laborer at the time he sustained the injury. This is a job which requires the active and repetitive use of his right hand; however, Petitioner was able to return to work to that job and is able to perform all of his job duties. The Arbitrator gives this factor significant weight.

Petitioner was 51 years of age at the time he sustained the injury and almost 54 years of age at the time of trial. Petitioner presently has approximately 13 years before he will reach normal retirement age. The Arbitrator gives this factor moderate weight.

There was no evidence Petitioner has a reduced earning capacity because of the injury. As aforestated, Petitioner was able to return to work to his regular job as a laborer. The Arbitrator gives this factor moderate weight.

Petitioner was diagnosed with right carpal tunnel syndrome and endoscopic surgery was performed on October 22, 2019. Petitioner made a good recovery, but still has some complaints in respect to his right hand consistent with the injury he sustained. Petitioner is right hand dominant. The Arbitrator gives this factor significant weight.

William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC021822
Case Name	Jeremy Shannon v. State of IL- Dept of Agriculture
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0216
Number of Pages of Decision	11
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Jon Rosenstengel
Respondent Attorney	Aaron Wright

DATE FILED: 5/10/2023

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jeremy Shannon,

Petitioner,

vs. No. 17 WC 21822

State of Illinois, Department of Agriculture,

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 benefit rates, temporary disability, permanent partial disability and wage differential award, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Arbitrator awarded Petitioner temporary total disability benefits from July 18, 2017 through July 15, 2020 – the period to which both parties stipulated on the Request for hearing form. However, that period represents 156-2/7 weeks, not 155-4/7 weeks as stated in the Arbitration Decision.

The Arbitrator also awarded Petitioner maintenance benefits from July 16, 2020 through September 28, 2020; a period of 10-5/7 weeks; not the 9-1/7 weeks stated in the Arbitration Decision.

The Commission now corrects those clerical errors. All else in the Arbitrator's decision is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 9, 2022, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $880.92 per week for 156-2/7 weeks, for the period of July 18, 2017 through July 15, 2020, as provided by §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner maintenance benefits of $880.92 per week for 10-5/7 weeks, for the period of July 16, 2020 through September 28, 2020, as provided by §8(a) of the Act.

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

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

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.

May 10, 2023

MP/mcp
o-05/04/23
068

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC021822
Case Name	Jeremy Shannon v. State of IL- Dept of Agriculture
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Jon Rosenstengel
Respondent Attorney	Aaron Wright

DATE FILED: 11/9/2022

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 9, 2022 4.49%

/s/ William Gallagher, Arbitrator
Signature

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

November 9, 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

Jeremy Shannon
Employee/Petitioner

v.

State of IL-Dept of Agriculture
Employer/Respondent

Case # 17 WC 21822

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 September 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 July 17, 2017, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $68,712.00; the average weekly wage was $1,321.38.

On the date of accident, Petitioner was 36 years of age, married with 1 dependent child(ren).

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 $112,290.25 for TTD, $0.00 for TPD, $8,346.65 for maintenance, and $0.00 for other benefits, for a total credit of $120,636.90.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $880.92 per week for 155 4/7 weeks, commencing July 18, 2017, through July 15, 2020, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner maintenance benefits of $880.92 per week 491/7 weeks, commencing July 16, 2020, through September 28, 2020, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $427.59 per week, commencing September 29, 2020, and continuing until Petitioner reaches age 67, or five years from the date of entry of the final award, whichever is later, because the injury sustained cause 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.

NOVEMBER 9, 2022

William R. Gallagher, Arbitrator

ICArbDec p. 2

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment by Respondent on July 17, 2017. According to the Application, Petitioner was "Stretching & reaching to remove lymph node" and sustained an injury to his "Right. Elbow/wrist" (Arbitrator's Exhibit 2). Petitioner and Respondent stipulated Petitioner sustained a work-related injury and the primary dispute was the nature and extent of disability. Petitioner alleged he was entitled to a wage differential award pursuant to Section 8(d)1 of the Act (Arbitrator's Exhibit 1).

In regard to temporary total disability and maintenance benefits, Petitioner alleged he was entitled to temporary total disability benefits of 155 4/7 weeks, commencing July 18, 2017, through July 15, 2020. In regard to maintenance benefits, Petitioner claimed he was entitled to maintenance benefits of 9 1/7 weeks, commencing July 16, 2020, through September 28, 2020. Respondent stipulated Petitioner was entitled to temporary total disability/maintenance benefits for the aforestated periods of time; however, Petitioner alleged temporary total disability/maintenance benefits had been underpaid (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a meat/poultry inspector. Petitioner's job duties included removing lymph nodes from the carcasses of slaughtered animals. The purpose of doing this was to determine the health of the animal to make certain it was fit for consumption. When Petitioner removed the lymph nodes of a cow, he would use a knife and would have to reach over the animal's carcass to access the lymph nodes. On July 17, 2017, Petitioner was in the process of removing the lymph nodes from a cow which he described as being "old." Petitioner explained that the older a cow is, the tougher the meat is to cut through. As Petitioner was in the process of removing the lymph nodes, from the "old" cow, he experienced pain in his right elbow. According to the First Report of Injury, Petitioner felt a "pop" and experienced tingling/numbness in the right elbow at the time of the accident (Petitioner's Exhibit 1).

Petitioner initially sought medical treatment at the ER of Red Bud Regional Hospital on July 17, 2017. At that time, Petitioner complained of pain in the right elbow, wrist and hand. Petitioner was diagnosed as having sustained a tendon strain, medication was prescribed and Petitioner was discharged (Petitioner's Exhibit 5).

Petitioner was subsequently seen by Dr. Ryan Pitts, an orthopedic surgeon, on July 20, 2017. At that time, Petitioner informed Dr. Pitts of the accident of July 17, 2017, and he complained of right elbow/forearm pain. Dr. Pitts opined Petitioner's symptoms were consistent with medial epicondylitis/medial flexor strain which he related to the accident of July 17, 2017. Dr. Pitts ordered an MRI scan of Petitioner's right elbow as well as EMG/nerve conduction studies (Petitioner's Exhibit 6; Deposition Exhibit 2).

The MRI was performed on August 1, 2017. According to the radiologist, there were no abnormalities (Petitioner's Exhibit 3).

The EMG/nerve conduction studies were performed on August 2, 2017, by Dr. Boris Khariton. He opined the studies were normal (Petitioner's Exhibit 6; Deposition Exhibit 2).

Dr. Pitts saw Petitioner on August 27, 2017, and reviewed the diagnostic studies. Dr. Pitts still suspected Petitioner had epicondylitis and authorized Petitioner to return to work, but with work restrictions. He also referred Petitioner to Dr. Robert Bell, an orthopedic surgeon in his practice (Petitioner's Exhibit 6; Deposition Exhibit 2).

Dr. Bell evaluated Petitioner on September 11, 2017. At that time, Petitioner continued to complain of pain, primarily in the medial aspect of the right elbow as well as numbness/tingling in the right hand. Dr. Bell reviewed the MRI and EMG/nerve conduction studies and noted they were negative. He diagnosed Petitioner with medial epicondylitis with pronator syndrome. He administered an injection into the medial epicondylar area and ordered physical therapy (Petitioner's Exhibit 6; Deposition Exhibit 2).

Dr. Bell continued to treat Petitioner and when he saw him on October 2, and October 30, 2017, Petitioner continued to have right elbow symptoms. Dr. Bell diagnosed Petitioner with right elbow tendinitis as well as medial and lateral epicondylitis. On October 30, 2017, he administered an injection into the lateral epicondylar area. Dr. Bell subsequently ordered another MRI scan of Petitioner's right elbow (Petitioner's Exhibit 6; Deposition Exhibit 2).

The MRI was performed on December 11, 2017. According to the radiologist, the MRI revealed peritendinitis and a small tear at the medial aspect of the origin at the common flexors (Petitioner's Exhibit 4).

Dr. Bell saw Petitioner on December 18, 2017. At that time, he reviewed the MRI scan of December 11, 2017. He reaffirmed his prior diagnosis of medial and lateral epicondylitis and recommended Petitioner undergo surgery consisting of debridement of the flexor pronator insertion and ECRV insertion at the right elbow (Petitioner's Exhibit 6; Deposition Exhibit 2).

Dr. Bell continued to treat Petitioner conservatively, but Petitioner's condition did not improve. Dr. Bell performed right elbow surgery on October 8, 2018. The procedure consisted of debridement/repair of various tendons in the medial/lateral right elbow (Petitioner's Exhibit 7).

Dr. Bell saw Petitioner following surgery and ordered physical therapy. When he saw Petitioner on November 12, 2018, he authorized Petitioner to return to work with restrictions of no heavy lifting, no repetitive lifting and no pushing/pulling with the right arm (Petitioner's Exhibit 7).

Dr. Bell last saw Petitioner on March 11, 2019. He opined Petitioner was 80% better and at MMI. In regard to work restrictions, Dr. Bell put Petitioner on a permanent 80% speed quota for his position and noted Petitioner would have to work at a slower pace because of his injury (Petitioner's Exhibit 7).

At the direction of Respondent, Petitioner was examined by Dr. James Emanuel, an orthopedic surgeon, on December 2, 2019. In connection with his examination of Petitioner, Dr. Emanuel reviewed medical records and diagnostic studies provided to him by Respondent. Dr. Emanuel opined the accident of July 17, 2017, contributed to and aggravated Petitioner's right elbow condition. However, he opined Petitioner was not at MMI, and recommended Petitioner undergo ulnar nerve transposition surgery (Petitioner's Exhibit 8).

Petitioner testified he asked his supervisor, Larry Brink, if the State was going to accommodate his work restrictions. Brink informed him the State could not accommodate his restrictions. Petitioner tendered into evidence text messages and e-mails between Petitioner and Larry Brink. In a text from Larry Brink to Petitioner, he stated "I am not allowed to make a special schedule for an inspector with restrictions." In another text from Larry Brink to Petitioner, he stated "This job does not allow for employees to work with restrictions." (Petitioner's Exhibit 12).

In an e-mail dated May 28, 2019, from Larry Brink to Petitioner, he stated "This job does not allow for employees to work with restrictions." On May 29, 2019, Petitioner sent an e-mail to Larry Brink which stated "Will you allow me to perform my job with my restrictions?" Larry Brink responded on May 29, 2019, stating "I do have to do what HR tells me to do." (Petitioner's Exhibit 13).

At the direction of Respondent, Petitioner was evaluated by Jana Range, a vocational rehabilitation/employment expert. Petitioner testified he met with Range in August, 2020. Range interviewed Petitioner and provided him with assistance in creating a resume, scheduling interviews, etc. None of Range's reports were tendered into evidence at trial.

With the assistance of Range, Petitioner was able to secure employment at Stubborn German Brewery in Waterloo, Illinois. Stubborn German Brewery is a small Brewery and Petitioner's job is that of a brewer. Petitioner testified the job is much less physically demanding than the job he had while employed by Respondent. At trial, Petitioner testified he presently makes $17.00 per hour and works 30 hours per week. He anticipated he will be able to also work as a bartender at the facility for another 10 hours per week, also at $17.00 per hour.

Dr. John O'Keefe testified for Respondent. Dr. O'Keefe is a veterinarian and is the Bureau Chief for the Department of Agriculture-Meat Inspectors. Dr. O'Keefe testified there were aspects of Petitioner's job with Respondent which Petitioner could perform. Specifically, he stated that in Randolph County, the inspections were far less intense and not as physically demanding. He testified Petitioner could perform the job duties of an inspector there within his restrictions. However, he admitted no such job offer was ever tendered to Petitioner.

Petitioner testified in rebuttal and stated the position in Randolph County is exactly what his prior job was. He reaffirmed that Respondent had not permitted him to return to work to his normal position because of his permanent restrictions.

The issue regarding the underpayment of Petitioner's temporary total disability and maintenance benefits is based on Governor Rauner's freezing of pay of various state employees which included Petitioner. Petitioner tendered into evidence an Order of the Illinois Labor Relations

Board which ruled in favor of the state employees affected by Governor Rauner's freezing of pay. This order was entered while Petitioner was drawing temporary total disability benefits. At trial, Petitioner and Respondent stipulated to an average weekly wage of $1,321.38.

Conclusions of Law

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 155 4/7 weeks, commencing July 18, 2017, through July 15, 2020, and maintenance benefits of 9 1/7 weeks, commencing July 16, 2020, through September 28, 2020, both at the weekly rate of $880.92.

In support of this conclusion the Arbitrator notes the following:

Petitioner and Respondent stipulated to the Petitioner's entitlement to temporary total disability and maintenance benefits for the aforestated periods of time.

Petitioner and Respondent stipulated to an average weekly wage of $1,321.38 which entitles Petitioner to a rate of $880.92 for both temporary total disability and maintenance benefits.

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

The Arbitrator concludes Petitioner is entitled to permanent partial disability benefits of $427.59 per week, commencing September 29, 2020, and continuing until Petitioner reaches age 67, or five years from the date of the final award, whichever is later.

In support of this conclusion the Arbitrator notes the following:

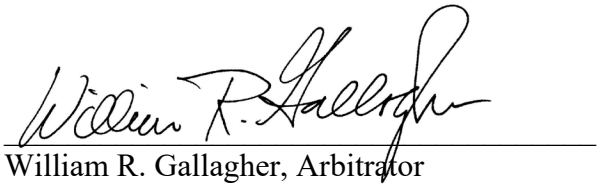
Petitioner's primary treating physician, Dr. Bell, opined Petitioner had permanent work restrictions of 80% of Petitioner's speed quota. This opinion was unrebutted.

Petitioner asked his supervisor, Larry Brink, if Respondent could accommodate his work restrictions and Brink responded, both by text and e-mail, Petitioner could not return to work to his job with any restrictions.

The Arbitrator was not persuaded by the testimony of Dr. O'Keefe. Dr. O'Keefe testified Respondent could, in fact, accommodate Petitioner's work restrictions, specifically, in Randolph County; however, this is contrary to what Petitioner's immediate supervisor, Larry Brink, informed him.

With the assistance of Jana Range, a vocational rehabilitation/employment expert hired by Respondent, Petitioner was able to secure employment at Stubborn German Brewery.

Petitioner is presently employed at Stubborn German Brewery and anticipates working 40 hours per week, $17.00 an hour, for a total of $680.00 per week. The stipulated average weekly wage was $1,321.38, a difference of $641.38. Two-thirds of $641.38 is $427.59.



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC030159
Case Name	Chad Fiers v. City of Peoria
Consolidated Cases	22WC000348;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0217
Number of Pages of Decision	13
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Kevin Day

DATE FILED: 5/11/2023

/s/ Deborah Baker, 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

CHAD FIERS,

Petitioner,

vs. NO: 20 WC 30159

CITY OF PEORIA,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, entitlement to medical expenses, temporary total disability and the nature and extent of Petitioner's permanent disability, 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. This case was consolidated for hearing with case number 20 WC 00348.

FINDINGS OF FACT

The Commission adopts the Findings of Fact set forth in the Decision of the Arbitrator. The Commission notes however that Petitioner's claimed exposure to COVID-19 was brought pursuant to an Application for Adjustment of Claim under the Illinois Workers' Occupational Diseases Act (ODA). The Commission views the evidence differently than does the Arbitrator, and thus writes separately to clarify its reasoning.

CONCLUSIONS OF LAW

I. Accident

The Arbitrator found Petitioner failed to meet his burden of proof of establishing that he sustained a work accident that arose out of and in the course of his employment with Respondent.

However, the Commission finds it is unnecessary to analyze the elements of "arising out of" and "in the course of" employment as Petitioner failed to prove he had contracted COVID-19 as required by the Act.

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); see also *United Electric Coal Co. v. Industrial Com.*, 74 Ill. 2d 198, 202 (1978). 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).

The Occupational Diseases Act states, in relevant part:

> ***In order for the presumption created in this subsection to apply at trial, for COVID-19 diagnoses occurring on or before June 15, 2020, an employee must provide a confirmed medical diagnosis by a licensed medical practitioner or a positive laboratory test for COVID-19 or for COVID-19 antibodies***; for COVID-19 diagnoses occurring after June 15, 2020, an employee must provide a positive laboratory test for COVID-19 or for COVID-19 antibodies. (Emphasis added). 820 ILCS 310/1(g)(6).

Petitioner, a fireman and paramedic, alleges he contracted COVID-19 on March 19, 2020 from a "COVID-19 exposure at work." Based on the alleged date of exposure, the rebuttable presumption would only apply in the instant case if Petitioner had either: (1) a confirmed medical diagnosis by a licensed medical practitioner; or (2) a positive laboratory test for COVID-19 or for COVID-19 antibodies. The Commission concludes that Petitioner has failed to provide either one.

Looking at the second option first, the Commission finds the only medical record in evidence is the March 21, 2020 record from OSF Medical Group, which only contains diagnoses for Influenza and fever of an unspecified cause. The record is devoid of any positive laboratory test for COVID-19 or COVID-19 antibodies dated March 19, 2020 or any date around March 19, 2020.

With respect to the first option, Petitioner testified he was contacted by Chief Tenley, the EMS chief, over the phone who after being apprised of Petitioner's symptoms, informed him that he had contracted COVID-19. Chief Tenley placed Petitioner in the "COVID protocol," which required Petitioner to quarantine in his home. Tr. 16-17. Petitioner was off work from March 19, 2020 to approximately March 27, 2020 during which time he used his personal sick time. Tr. 17.

As this is a case of first impression, the Commission is tasked with analyzing whether Petitioner provided "*a confirmed medical diagnosis by a licensed medical practitioner*." The Commission finds that the record lacks the requisite information needed to make this determination and relies on case law it finds instructive to help define the relevant terms. Illinois courts have defined "diagnosis" as "the art or act of identifying a disease from its signs and symptoms," and as an "investigation or analysis of the cause or nature of a condition" or disease. *Antonacci v. City of Chicago*, 335 Ill. App. 3d 22, 29 (1st Dist. 2002), citing *Michigan Avenue National Bank v.*

County of Cook, 191 Ill. 2d 493, 511-512 (2000). Black's Law Dictionary defines "diagnosis" as "[t]he determination of a medical condition (such as disease) by physical examination or by study of its symptoms." *Black's Law Dictionary 464* (7th ed. 1999). Courts have defined the term "medical practitioner" as "one who has complied with the requirements and who is engaged in the practice of medicine." *W.B. Olson Inc. v. Illinois Workers' Compensation Commission*, 2012 IL App (1st) 113129WC, P.45, citing *Dorland's Illustrated Medical Dictionary* 1597 (25th ed 1974).

The Commission finds the record lacks the necessary information to determine whether Chief Tenley is a medical practitioner as defined in *W.B. Olson*. No discussion or offer of proof regarding his training and qualifications was made on the record and Chief Tenley was not called as a witness. Moreover, the Commission finds that Petitioner failed to prove that when Chief Tenley told Petitioner he had COVID, that this constituted a "diagnosis" of COVID-19 in line with the definitions found in *Antonacci* and *Michigan Avenue*. The record is void of any investigation or analysis performed by Chief Tenley leading him to identify the nature of Petitioner's symptoms. See *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 510 (2000). The Commission further notes a lack of evidence supporting a finding that Chief Tenley determined Petitioner's medical condition after a physical examination of Petitioner or by a study of Petitioner's symptoms, pursuant to the definition of "diagnosis" in Black's Law Dictionary. Finally, the Commission finds no guidance as to what would make a medical diagnosis "confirmed" but notes that it might require that the diagnosis be in writing or that a medical practitioner testify as to the diagnosis.

Based on the above, the Commission finds Petitioner failed to prove he contracted COVID-19 on or around March 19, 2020, and thus, has failed to prove that the statutory rebuttable presumption should apply in the instant case. With no rebuttable presumption in place, the Commission finds Petitioner faces similar hurdles with respect to proving his claim. Petitioner offered no written diagnosis of COVID-19 into evidence and testified that Chief Tenley diagnosed Petitioner with COVID-19 over the phone, however, Chief Tenley did not testify at the hearing or at a deposition and no statement was taken from him to establish the diagnosis. Based on the fact that there is no medical evidence that Petitioner contracted COVID-19 on or around March 19, 2020, the Commission affirms the Decision of the Arbitrator.

II. Causation/Medical expenses/Temporary Total Disability/Nature & Extent

Having denied Petitioner's claim as stated above, the Commission finds all remaining issues to be moot and thus strikes the analysis of all other issues in the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 25, 2022, as changed above, is hereby affirmed and adopted.

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

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.

May 11, 2023

DJB/wde

O: 3/22/23

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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	20WC030159
Case Name	Chad Fiers v. City of Peoria
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Ryan W. Kitzhaber

DATE FILED: 7/25/2022

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

/s/Kurt Carlson, 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

CHAD FIERS
Employee/Petitioner
v.
CITY OF PEORIA
Employer/Respondent

Case # **20** WC **030159**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Peoria**, on **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. ☒ 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 19, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did 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 injuries, Petitioner earned $**84,452.26**; the average weekly wage was $**1,624.08**.

On the dates of accident, Petitioner was **39** years of age, *married* with **2** dependent children.

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0** for other benefits, for a total credit of $**0.00**.

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

ORDER

- Petitioner did not sustain an accident that arose out of and in the course of his employment with Respondent on March 19, 2020.
- Petitioner's condition of ill-being is not causally related to the March 19, 2020 alleged exposure.
- Respondent is not responsible for Petitioner's medical bills.
- Respondent shall pay Petitioner the sum of **$0.00**/week for a further period of **0 weeks**, totaling $0.00, because the injuries alleged by Petitioner were not causally related to Petitioner's employment with Respondent and the alleged exposures resulted in 0% loss of use of the person-as-a-whole pursuant to §8(d)(2) of the Act.
- Petitioner is not entitled to temporary total disability benefits, because the injuries alleged by Petitioner are not causally related to Petitioner's employment with Respondent.

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

JULY 25, 2022

BEFORE THE WORKERS' COMPENSATION COMMISSION OF THE STATE OF ILLINOIS

CHAD FIERS, Petitioner, v. CITY OF PEORIA, Respondent.	)))))))))	Case No: 20 WC 030159

DECISION OF THE ARBITRATOR

FINDINGS OF FACT

I. Alleged Accidents and Claims for Compensation

On December 9, 2020, Chad Fiers (hereinafter "Petitioner") filed an Application for Adjustment of Claim alleging a COVID-19 exposure, "while in the course of employment" for the City of Peoria Fire Department (hereinafter "Respondent") on March 19, 2020. (Pet. Ex. 1).

This claim proceeded to hearing on June 21, 2022 in Peoria, Illinois. (Arb. Ex. 1). The following issues were in dispute at arbitration:

- Accident;
- Causal Connection;
- Medical Expenses;
- Temporary Total Disability Benefits; and
- Nature and Extent.

II. Petitioner's Medical Treatment

On March 21, 2020, Petitioner was seen at the OSF URGO clinic for evaluation of fever, scratchy throat, body aches, mild cough, and nasal congestion with some drainage. Petitioner reported symptoms started the day prior and reported a fever of 103 taken at home. On exam, Petitioner had a 99.9-degree temperature and was positive for chills, congestion, sore throat, and cough. The diagnoses for this visit was influenza and fever, unspecified cause and Petitioner was to follow-up with ER or his PCP if symptoms worsened or failed to improve. (Pet. Ex. 3).

III. Petitioner's Testimony at Arbitration

At arbitration, Petitioner testified he was hired by Respondent in August of 2011. From 2011 to 2019, Petitioner first worked as a fireman, then a basic EMT, and is now a fireman/paramedic for Respondent. (Arb. Tr. p. 8). Petitioner's general job duties for Respondent include responding to medical calls to provide medical services, provide fire suppression services to extinguish fires, and to provide basic first responder life support. (Arb. Tr. p. 9). As part of Petitioner's duties as a firefighter, he is required to encounter the general public in

emergency situations and is also required to be exposed to members in the firehouse that he lives with during the day on shift. (Arb. Tr. p. 9-10).

Petitioner is married with two children, ages nine (9) and fifteen (15). (Arb. Tr. p. 32). Petitioner testified that as of March 19, 2020, none of his family members had any symptoms of COVID and he hadn't been to any public events. (Arb. Tr. p. 13-14). Petitioner further testified leading up to March 19, 2020, he did not attend any parties, was not part of any group gatherings, he didn't go to the grocery store, he did not interact with the general public outside of his employment, and he did not attend any activities with his children. (Arb. Tr. p. 31-32).

Petitioner testified he worked approximately four (4) to five (5) shifts leading up to his alleged exposure date of March 19, 2020. (Arb. Tr. p. 10). Petitioner testified he worked on March 15, 2020 and also worked on March 18, 2020 prior to feeling unwell on March 19, 2020. (Arb. Tr. p. 11). Petitioner further testified his shifts with Respondent are twenty-four (24) hours on, forty-eight (48) hours off, meaning Petitioner is at the fire station for twenty-four (24) consecutive hours and then home for forty-eight (48) hours consecutive hours. (Arb. Tr. p. 30).

On March 19, 2020, Petitioner started to feel fatigued and a fever he couldn't get to break with Tylenol. Petitioner testified he started to have diarrhea, vomiting, and shortness of breath so he went to Prompt Care to see if it was COVID. (Arb. Tr. p. 11). While at Prompt Care in Washington, Petitioner was tested for Influenza A and B. (Arb. Tr. p. 12). They were negative. (Arb. Tr. p. 13). Petitioner asked for a COVID test but there was none at this facility as the only place testing at that time was the hospital. *Id*.

Petitioner called in sick and notified the battalion chief who he believed to be Chief Carr. (Arb. Tr. p. 14). Petitioner then talked to Chief Tenley who was the EMS chief for the department who told Petitioner he had COVID based on his symptoms (Arb. Tr. p. 16). Petitioner was then put on COVID protocol and quarantined himself to a bedroom in the basement of his family home. *Id*. Petitioner was off work from March 19, 2020, to approximately March 27, 2020 and was told to use his personal sick time. (Arb. Tr. p. 17). Petitioner missed two shift days of work between March 19, 2020 and March 27, 2020. (Arb. Tr. p. 33). Petitioner testified his symptoms eventually got better before returning back to work. (Arb. Tr. p. 19-20).

Chief Tenley told Petitioner he was not able to get tested through the department and was working on getting him tested through the hospital. (Arb. Tr. p. 19). OSF denied Petitioner testing because he was not sick enough to be on a ventilator. *Id*.

Petitioner testified they now have safety glasses, gowns, and N95 masks which were not implemented by Respondent on March 18 or 19 of 2020. (Arb. Tr. p. 20). Petitioner had exposure to the general public without those protections on March 18 or 19, 2020. (Arb. Tr. p. 20-21).

When Petitioner went back to work on March 26 or 27, 2020, he would get fatigued quicker and seemed to get short of breath quicker than previously. (Arb. Tr. p. 21). Petitioner testified he did not receive any medical care or treatment for COVID following his return to work on March 27, 2020. (Arb. Tr. p. 21 and 33). Petitioner would have reported to his supervisor if he didn't feel he could safely perform his job duties. (Arb. Tr. p. 34). Petitioner would have sought further treatment if he felt it was necessary and he was able to perform his full firefighting duties through December 28, 2021. (Arb. Tr. p. 33-34). Petitioner further testified he had a fitness-for-duty examination in 2021 and passed and was not hospitalized at any time as a result of his alleged exposure. (Arb. Tr. p. 36).

Petitioner testified since his two (2) exposures to COVID, he gets fatigued quicker when exercising and seems to be more tired. (Arb. Tr. p. 29). Petitioner also stated he has concerns regarding his exposures and not

having a spleen due to symptoms and possible pneumonias and lung infections. *Id*. When Petitioner returned to work, he was required to wear protective masks, which he did. (Arb. Tr. p. 28). Since Petitioner's return to firefighting in early January 2022, he has continued to work as a firefighter and has not missed any time from work because of COVID. (Arb. Tr. p. 28-29). Petitioner has not sought any medical care or treatment since his release back to work for COVID. (Arb. Tr. p. 29). Petitioner would have sought treatment if he felt it was necessary. (Arb. Tr. p. 35). Petitioner also testified he would report to his supervisor if he didn't feel he could safely perform his job duties. (Arb. Tr. p. 35-36). Petitioner had a fitness-for-duty examination in 2022, which he passed. (Arb. Tr. p. 36). Petitioner testified he was not hospitalized at any time as a result of his alleged exposures and has been able to perform his full unrestricted job duties since his return to work following both alleged exposures. *Id*.

Petitioner is aware of an ongoing grievance regarding Petitioner's reinstatement of sick time and his demand for TTD. (Arb. Tr. p. 37).

FINDINGS OF LAW

I. Accident

On December 9, 2020, Petitioner filed an Application for Adjustment of Claim alleging a COVID-19 exposure, "while in the course of employment" for Respondent on March 19, 2020.

Pursuant to 820 ILCS 310/1, the rebuttable presumption created in this subsection applies to all cases tried after June 5, 2020 (the effective date of Public Act 101-633) and in which the diagnosis of COVID-19 was made on or after March 9, 2020 and on or before June 30, 2021 (including the period between December 31, 2020 and the effective date of this amendatory Act of the 101st General Assembly). 820 ILCS 310/1. In order for the presumption created in this subsection to apply at trial, for COVID-19 diagnoses occurring on or before June 15, 2020, an employee must provide a confirmed medical diagnosis by a licensed medical practitioner or a positive laboratory test for COVID-19 or for COVID-19 antibodies. 820 ILCS 310/1.

The Arbitrator notes Petitioner's alleged exposure date is March 19, 2020, and thus, for the rebuttable presumption to apply, Petitioner must provide a confirmed medical diagnosis by a licensed medical practitioner or a positive laboratory test for COVID-19 or for COVID-19 antibodies. On March 21, 2020, Petitioner was seen at the OSF URGO clinic for evaluation of fever, scratchy throat, body aches, mild cough, and nasal congestion with some drainage. Petitioner reported symptoms started the day prior and reported a fever of 103 taken at home. On exam, Petitioner had a 99.9-degree temperature and was positive for chills, congestion, sore throat, and cough. The diagnoses for this visit were influenza and fever, unspecified cause and Petitioner was to follow-up with ER or his PCP if symptoms worsened or failed to improve. This was the only medical record entered into evidence.

Petitioner did not provide a confirmed medical diagnosis by a licensed medical practitioner, a positive laboratory test for COVID-19 or for COVID-19 antibodies, and as such, is not afforded the rebuttable presumption. A COVID-19 exposure would be purely speculative as there is no positive lab test or confirmed medical diagnosis of Petitioner ever contracting COVID-19. The Arbitrator finds Petitioner has not met his burden of proof that his alleged exposure arose out of and in the course of employment for Respondent. Petitioner has two dependent children ages 15 and 9.

II. Causal Connection

While the Arbitrator found Petitioner did not establish his burden of proof that a COVID-19 exposure occurred on March 19, 2020, even assuming *arguendo*, Petitioner did not provide a confirmed medical

diagnosis by a licensed medical practitioner, a positive laboratory test for COVID-19 or for COVID-19 antibodies. There is no medical opinion in the record that Petitioner ever tested positive for COVID-19. Petitioner testified he worked approximately four (4) to five (5) shifts leading up to his alleged exposure date of March 19, 2020. Petitioner testified he worked on March 15, 2020 and also worked on March 18, 2020 prior to feeling unwell on March 19, 2020. Petitioner offered no evidence establishing he worked with any firefighter or coworker who tested positive for COVID-19 leading up to March 19, 2020. Petitioner offered no evidence establishing any work-related incident was the cause of his alleged exposure. As such, the Arbitrator finds the Petitioner's alleged current condition of ill-being is not causally related to his employment with Respondent. It bears repeating that Petitioner has two dependent children, ages 15 and 9.

III. Medical Expenses

Petitioner's Exhibit 3 contained one medical bill from OSF Healthcare with a service date of March 21, 2020. The description of services rendered list influenza and office visit totaling $331.00. As the Arbitrator has found Petitioner did not meet his burden of proof establishing his alleged COVID-19 exposure arose out of and in the course of employment with Respondent, the Arbitrator finds Petitioner is not entitled to payment of his medical expenses.

IV. Temporary Total Disability Benefits

The evidence establishes Petitioner was off work from March 19, 2020, to approximately March 27, 2020 and was told to use his paid personal sick time. Petitioner missed two shift days of work between March 19, 2020 and March 27, 2020. The Arbitrator also notes Petitioner is involved in an ongoing grievance regarding Petitioner's reinstatement of sick time and his demand for TTD. As the Arbitrator has found Petitioner did not meet his burden of proof establishing his alleged COVID-19 exposure arose out of and in the course of employment with Respondent, the Arbitrator finds Petitioner is not entitled to payment of temporary benefits.

V. Nature and Extent

As the Arbitrator finds Petitioner did not establish, by a preponderance of the evidence, a compensable accident on March 19, 2020 and did not sustain a causally related injury on the alleged date, Petitioner is not entitled to a permanent partial disability award under the Act.

In the alternative, assuming *arguendo,* the Arbitrator finds Petitioner met his burden of proof with regard to the claimed accident, Respondent asserts the following with regard to Petitioner's entitlement to a permanency award under Section 8.1b of the Act:

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 firefighter for the City of Peoria at the time of the March 19, 2020 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 thirty-nine (39) years old at the time of the March 19, 2020 exposure. The Arbitrator places some weight on this factor, as the duration of Petitioner's occupational and nonoccupational life at the time of exposures was moderate.

(iv) Fourth, with regard to Petitioner's future earning capacity, the Arbitrator notes that there was no evidence of loss of future earning capacity, thus this factor will be given no weight.

(v) Lastly, with regard to evidence of disability corroborated by the treating medical records, the Arbitrator notes the medical records in evidence establish Petitioner sought medical attention at OSF URGO on March 21, 2020, for evaluation of fever, scratchy throat, body aches, mild cough, and nasal congestion with some drainage. On exam, Petitioner had a 99.9-degree temperature and was positive for chills, congestion, sore throat, and cough. The diagnoses for this visit was influenza and fever, unspecified cause and Petitioner was to follow-up with ER or his PCP if symptoms worsened or failed to improve. This was the only medical record and opinion entered into evidence at trial.

Petitioner was off work from March 19, 2020, to approximately March 27, 2020 and missed two shifts during that time. Petitioner testified his symptoms eventually got better before returning back to work. Petitioner further testified he did not receive any medical care or treatment for COVID-19 following his return to work on March 27, 2020. Petitioner would have reported to his supervisor if he didn't feel he could safely perform his job duties and would have sought further treatment if he felt it was necessary. Additionally, Petitioner had a fitness-for-duty examination in 2021 and passed and was not hospitalized at any time as a result of his alleged exposure. The Arbitrator finds Petitioner did not sustain a permanent disability in accordance with the Section 8.1b factors.

Based on the above factors, and the record taken as a whole, the Arbitrator finds Petitioner sustained permanent partial disability to the extent of 0.00% loss of use of the person-as-a-whole, totaling 0 weeks, or $0.00 pursuant to §8(d)(2) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC000348
Case Name	Chad Fiers v. City of Peoria
Consolidated Cases	20WC030159;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0218
Number of Pages of Decision	11
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Kevin Day

DATE FILED: 5/11/2023

/s/ Deborah Baker, 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

CHAD FIERS,

Petitioner,

vs. NO: 22 WC 00348

CITY OF PEORIA,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, entitlement to medical expenses, temporary total disability and the nature and extent of Petitioner's permanent disability, 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. This case was consolidated for hearing with case number 20 WC 30159.

FINDINGS OF FACT

The Commission adopts the Findings of Fact set forth in the Decision of the Arbitrator. The Commission notes however that Petitioner's claimed exposure to COVID-19 was brought pursuant to an Application for Adjustment of Claim under the Illinois Workers' Occupational Diseases Act (ODA). The Commission views the evidence differently than does the Arbitrator, and thus writes separately to clarify its reasoning.

CONCLUSIONS OF LAW

I. Accident

The Arbitrator found Petitioner failed to meet his burden of proof of establishing that he sustained a work accident that arose out of and in the course of his employment with Respondent.

However, the Commission finds it is unnecessary to analyze the elements of "arising out of" and "in the course of" employment as Petitioner failed to prove he had contracted COVID-19 as required by the Act.

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); see also *United Electric Coal Co. v. Industrial Com.*, 74 Ill. 2d 198, 202 (1978). 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).

The Occupational Diseases Act states, in relevant part:

> ***In order for the presumption created in this subsection to apply at trial,*** for COVID-19 diagnoses occurring on or before June 15, 2020, an employee must provide a confirmed medical diagnosis by a licensed medical practitioner or a positive laboratory test for COVID-19 or for COVID-19 antibodies; ***for COVID-19 diagnoses occurring after June 15, 2020, an employee must provide a positive laboratory test for COVID-19 or for COVID-19 antibodies***. (Emphasis added). 820 ILCS 310/1(g)(6).

Whether Petitioner, a fireman and paramedic, contracted COVID-19 on December 25, 2021, is in dispute. Petitioner testified that a co-worker tested positive for COVID-19 on December 24, 2021, and that Petitioner himself tested positive shortly thereafter. However, Petitioner did not offer into evidence "a positive laboratory test for COVID-19 or for COVID-19 antibodies" as required under the ODA. The only evidence of a test was a home COVID-19 test, which did not provide proof that it was Petitioner's test and did not show the date of the test. Pet.'s Ex. 2. Petitioner testified that he performed the test on himself at home and was familiar with the results. Tr. 22-23. The Commission notes that based on the copy of the test in evidence, the results of the test are unclear. Accordingly, the Commission finds that Petitioner failed to meet his burden of proving that he indeed contracted COVID-19 on December 25, 2021. There is no need to analyze whether or how the statutory rebuttable presumption should be applied as Petitioner must first prove that he contracted COVID-19 during the alleged time period. However, we agree that Petitioner's alleged COVID-19 diagnosis date of December 25, 2021 is after the rebuttable presumption sunset date set forth in the ODA, thus Petitioner cannot be afforded the rebuttable presumption in the instant case. 820 ILCS 310/1(g)(4). The Commission finds that although the statutory rebuttable presumption does not apply, Petitioner faces the same hurdles and has failed to prove that he contracted COVID-19 on December 25, 2021 as there is no medical evidence in the record showing that Petitioner contracted COVID-19 on or around December 25, 2021.

II. Causation/Medical expenses/Temporary Total Disability/Nature & Extent

Having denied Petitioner's claim as stated above, the Commission finds all remaining issues to be moot and thus strikes the analysis of all other issues in the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 25, 2022, as changed above, is hereby affirmed and adopted.

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

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.

May 11, 2023

DJB/wde

O: 3/22/23

43

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

/s/ *Stephen Mathis*
Stephen Mathis

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC000348
Case Name	Chad Fiers v. City of Peoria
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Ryan W. Kitzhaber

DATE FILED: 7/25/2022

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

/s/Kurt Carlson, 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

CHAD FIERS
Employee/Petitioner
v.
CITY OF PEORIA
Employer/Respondent

Case # **22** WC **000348**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Peoria**, on **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. ☒ 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 25, 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 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 injuries, Petitioner earned $**84,452.26**; the average weekly wage was $**1,624.08**.

On the dates of accident, Petitioner was **41** years of age, *married* with **2** dependent children.

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0** for other benefits, for a total credit of $**0.00**.

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

ORDER

- Petitioner did not sustain an accident that arose out of and in the course of his employment with Respondent on December 25, 2021.
- Petitioner's condition of ill-being is not causally related to the December 25, 2021 alleged exposure.
- Respondent is not responsible for Petitioner's medical bills.
- Respondent shall pay Petitioner the sum of **$0.00**/week for a further period of **0 weeks**, totaling $0.00, because the injuries alleged by Petitioner were not causally related to Petitioner's employment with Respondent and the alleged exposures resulted in 0% loss of use of the person-as-a-whole pursuant to §8(d)(2) of the Act.
- Petitioner is not entitled to temporary total disability benefits, because the injuries alleged by Petitioner are not causally related to Petitioner's employment with Respondent.

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 25, 2022

Kurt A. Carlson

Signature of Arbitrator

BEFORE THE WORKERS' COMPENSATION COMMISSION OF THE STATE OF ILLINOIS

CHAD FIERS, Petitioner, v. CITY OF PEORIA, Respondent.	))))))))))	22 WC 000348

DECISION OF THE ARBITRATOR

FINDINGS OF FACT

I. Alleged Accidents and Claims for Compensation

On January 5, 2022, Petitioner filed an Application for Adjustment of Claim alleging a COVID-19 exposure, "while in the course of employment" for Respondent on December 25, 2021. (Pet. Ex. 1).

This claim was consolidated with Case Number 20 WC 030159 and was also arbitrated on June 21, 2022 in Peoria, Illinois. (Arb. Ex. 2). The following issues were in dispute at arbitration:

- Accident;
- Causal Connection;
- Medical Expenses;
- Temporary Total Disability Benefits; and
- Nature and Extent.

II. Petitioner's Medical Treatment

Petitioner sought no medical treatment for his alleged December 25, 2021 COVID-19 exposure.

III. Petitioner's Testimony at Arbitration

At arbitration, Petitioner testified he was hired by Respondent in August of 2011. From 2011 to 2019, Petitioner first worked as a fireman, then a basic EMT, and is now a fireman/paramedic for Respondent. (Arb. Tr. p. 8). Petitioner's general job duties for Respondent include responding to medical calls to provide medical services, provide fire suppression services to extinguish fires, and to provide basic first responder life support. (Arb. Tr. p. 9). As part of Petitioner's duties as a firefighter, he is required to encounter the general public in emergency situations and is also required to be exposed to members in the firehouse that he lives with during the day on shift. (Arb. Tr. p. 9-10).

On December 25, 2021, Petitioner was employed by Respondent as a firefighter. (Arb. Tr. p. 21). Petitioner was performing the same job duties identified to the Arbitrator in December of 2021 that he was doing in March of 2020. (Arb. Tr. p. 21-22). During the time around December 25, 2021, Respondent was testing firefighters on

a weekly basis. (Arb. Tr. p. 22). These tests were performed by AMT, Respondent's transporting EMS service. *Id.*

Petitioner's Exhibit 2 was a home COVID test Petitioner used after testing positive through AMT. (Arb. Tr. p. 22-23). Petitioner performed the test on himself at home and was familiar with the results. (Arb. Tr. p. 23). The Arbitrator notes the results of Petitioner's Exhibit 2 appears to be a negative test result. The Arbitrator further notes that no positive COVID-19 test was ever placed into evidence.

Leading up to December 25, 2021, Petitioner had Christmas Eve with his family. (Arb. Tr. p. 24). There was approximately ten (10) people at the Christmas Eve event. (Arb. Tr. p. 25). Petitioner testified everybody had masks on and they had dinner together. *Id*. Petitioner stated they work masks for protocol purposes per the CDC. *Id*. Following that event, no other family members tested positive for COVID or had obtained COVID symptoms. *Id*. Petitioner did not attend any other public gatherings prior to December 25, 2021. *Id*. Petitioner further testified he did no activities with his children outside of Christmas Eve, did not travel anywhere, did not attend any other parties, and did not attend or perform any recreational or nonoccupational activities leading up to December 25, 2021. (Arb. Tr. p. 34-35).

Petitioner worked his regular shifts leading up to December 25, 2021, performing firefighting duties and being exposed to the public. (Arb. Tr. p. 25-26). The shift day prior, a gentleman came in to the bay area by the fire engines to be tested. (Arb. Tr. p. 26). This was a fellow firefighter who tested positive and then went home. *Id*. This is the only exposure to COVID Petitioner was aware of. (Arb. Tr. p. 27). Petitioner tested positive and was sent home and taken off work on or about December 28, 2021. *Id*. Respondent kept Petitioner off work until January 6, 2022. *Id*. During this time frame, Petitioner used his paid sick and personal time. (Arb. Tr. p. 27-28). Petitioner returned to work on or about January 7, 2022 after being off work for five (5) days. (Arb. Tr. p. 28). Petitioner was able to return after five days because the CDC came out on the 29th and said if you had no symptoms, you could go back to work after being off five (5) days. *Id*.

Petitioner testified since his two (2) exposures to COVID, he gets fatigued quicker when exercising and seems to be more tired. (Arb. Tr. p. 29). Petitioner also stated he has concerns regarding his exposures and not having a spleen due to symptoms and possible pneumonias and lung infections. *Id*. When Petitioner returned to work, he was required to wear protective masks, which he did. (Arb. Tr. p. 28). Petitioner did not seek any medical care or treatment after testing positive on or about December 25, 2021. *Id*. Since Petitioner's return to firefighting in early January 2022, he has continued to work as a firefighter and has not missed any time from work because of COVID. (Arb. Tr. p. 28-29). Petitioner has not sought any medical care or treatment since his release back to work for COVID. (Arb. Tr. p. 29). Petitioner would have sought treatment if he felt it was necessary. (Arb. Tr. p. 35). Petitioner also testified he would report to his supervisor if he didn't feel he could safely perform his job duties. (Arb. Tr. p. 35-36). Petitioner had a fitness-for-duty examination in 2022, which he passed. (Arb. Tr. p. 36). Petitioner testified he was not hospitalized at any time as a result of his alleged exposures and has been able to perform his full unrestricted job duties since his return to work following both alleged exposures. *Id*.

Petitioner is aware of an ongoing grievance regarding Petitioner's reinstatement of sick time and his demand for TTD. (Arb. Tr. p. 37).

FINDINGS OF LAW

I. Accident

On January 5, 2022, Petitioner filed an Application for Adjustment of Claim alleging a COVID-19 exposure, "while in the course of employment" for Respondent on December 25, 2021.

Pursuant to 820 ILCS 310/1, the rebuttable presumption created in this subsection applies to all cases tried after June 5, 2020 (the effective date of Public Act 101-633) and in which the diagnosis of COVID-19 was made on or after March 9, 2020 and on or before June 30, 2021 (including the period between December 31, 2020 and the effective date of this amendatory Act of the 101st General Assembly). 820 ILCS 310/1.

The Arbitrator notes Petitioner's alleged exposure date is December 25, 2021, and thus, Petitioner is not entitled to the rebuttable presumption as his alleged diagnosis of COVID-19 occurred after June 30, 2021. Petitioner worked his regular shifts leading up to December 25, 2021, including a twenty-four (24) hour shift the day prior to, or the morning of, the alleged date of accident. Petitioner testified, on or about December 24, 2021, a fellow firefighter came into the bay area by the fire engines to be tested. This individual tested positive and then went home. This is the only exposure to COVID Petitioner was aware of while working for Respondent. Petitioner did not offer testimony or evidence addressing how long the COVID-19 positive coworker was in the bay area or how close he was in proximity to the alleged COVID-19 positive firefighter. Petitioner did not perform the test and offered no evidence he was required to be near or be in close proximity to the firefighter.

On or about December 28, 2021, Petitioner testified he tested positive and was sent home by Respondent. Petitioner offered no evidence establishing he worked with any firefighter or coworker who tested positive for COVID-19 leading up to December 25, 2021. Petitioner did testify his shifts with Respondent are twenty-four (24) hours on, forty-eight (48) hours off, meaning Petitioner is at the fire station for twenty-four (24) consecutive hours and then home for forty-eight (48) hours consecutive hours. Petitioner offered no other evidence or witness testimony regarding any alleged exposures in the firehouse or on call. Further, Petitioner placed no positive COVID-19 test into evidence. Based on the above, the Arbitrator finds Petitioner did not meet his burden of proof establishing his alleged COVID-19 exposure arose out of and in the course of employment with Respondent.

II. Causal Connection

While the Arbitrator found Petitioner did not establish his burden of proof that a COVID-19 exposure occurred on December 25, 2021, even assuming *arguendo*, Petitioner testified he attended a Christmas Eve gathering with his family of approximately ten (10) people on December 24, 2022. Petitioner testified no other family members tested positive for COVID or had obtained COVID symptoms. The Petitioner offered no evidence or witness testimony regarding when or where his family members tested positive for COVID-19. The Arbitrator does note medical professionals have recognized that COVID-19 has been spreading not only by symptomatic individuals but by individuals with latent (e.g., asymptomatic) infections.

Petitioner worked his regular shifts leading up to December 25, 2021, including a twenty-four (24) hour shift the day prior to, or the morning of, the alleged date of accident. Petitioner testified, on or about December 24, 2021, a fellow firefighter came into the bay area by the fire engines to be tested. This individual tested positive and then went home. This is the only exposure to COVID Petitioner was aware of while working for Respondent. Petitioner did not offer testimony or evidence addressing how long the COVID-19 positive coworker was in the bay area or how close he was in proximity to the alleged COVID-19 positive firefighter. Petitioner did not perform the test and offered no evidence he was required to be near the firefighter. Petitioner did not offer testimony or evidence regarding any other alleged exposures. Petitioner also never entered evidence of a positive COVID-19 test. While it is speculative that Petitioner contracted COVID-19 while attending the Christmas Eve gathering with ten (10) people, it is also speculative Petitioner contracted COVID-19 from the one (1) alleged exposure in the firehouse, with no further information provided. As such, the Arbitrator finds the Petitioner's alleged current condition of ill-being is not causally related to his employment with Respondent.

III. Medical Expenses

Petitioner's Exhibit 3 contained one medical bill from OSF Healthcare with a service date of March 21, 2020. The description of services rendered list influenza and office visit totaling $331.00. As the Arbitrator has found Petitioner did not meet his burden of proof establishing his alleged COVID-19 exposure arose out of and in the course of employment with Respondent, the Arbitrator finds Petitioner is not entitled to payment of his medical expenses.

IV. Temporary Total Disability Benefits

The evidence establishes Petitioner was taken off work on or about December 28, 2021 until January 6, 2022. During this time frame, Petitioner used his paid sick and personal time. As the Arbitrator has found Petitioner did not meet his burden of proof establishing his alleged COVID-19 exposure arose out of and in the course of employment with Respondent, the Arbitrator finds Petitioner is not entitled to payment of temporary benefits.

V. Nature and Extent

As the Arbitrator finds Petitioner did not establish, by a preponderance of the evidence, a compensable accident on December 25, 2021 and did not sustain a causally related injury on the alleged date, Petitioner is not entitled to a permanent partial disability award under the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC041732
Case Name	Marilyn Johnson v. State of Illinois - Secretary of State
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0219
Number of Pages of Decision	12
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	James Babcock
Respondent Attorney	Dan Kallio

DATE FILED: 5/12/2023

/s/ Kathryn Doerries, Commissioner

Signature

23IWCC0219

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARILYN JOHNSON,

Petitioner,

vs. NO: 13 WC 041732

STATE OF ILLINOIS-SECRETARY OF STATE,

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 disability, causal connection, medical expenses 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.

In the Conclusions of Law section, after the section entitled, "C. *Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent on August 20, 2013 and August 22, 2013?"* The Commission adds a section entitled, "F. *Is Petitioner's current condition of ill-being causally related to the injury*?" Following heading "F' the Commission adds the following paragraph:

The Commission finds that Petitioner sustained her burden of proving causal connection to the accident on August 20, 2013. The Centegra medical records, Hands That Heal Chiropractic records and the Mercy Health System records are consistent with the Petitioner's accident history and pain complaints from injuries that she sustained to her back, neck, right shoulder and left knee following a fall off a rolling chair at work on August 20, 2013. (PX1, PX2) Dr. Marko Krpan noted that Petitioner's left knee and right shoulder injuries were sustained in the work accident on August 20, 2013. (PX3) On December 19, 2013, Dr. Krpan documented that he had discussed with Petitioner that "although the arthritic changes within the knee as well as the shoulder were

present prior to the injury, I do believe that there has been an exacerbation of her conditions caused by the injuries sustained on August 20 and 22." *Id.* On February 5, 2014, Dr. Krpan opined, "[w]ith respect to the left knee I do feel there was an exacerbation of her symptoms with the fall but the arthritic changes which are present were present long before the injury." *Id.* Petitioner credibly testified that prior to the accident she had stiffness in her back but no shoulder or arm pain. (T. 34-35) Petitioner further testified that the medical treatment she undertook since the date of accident on August 20, 2013, is because of falling off the rolling chair and not getting hit in the back by the door. (T. 37-38)

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $314.37 per week for a period of 25-1/7 weeks, commencing August 23, 2013, through February 15, 2014 that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $282.93 per week for a period of 31.45 weeks, because the injuries sustained caused 3% loss of use of the left leg as provided in §8(e) of the Act and 2.5% loss of a person as whole attributable to the low back injury and 2.5% man as a whole attributable to the right shoulder injury as provided in Section 8(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessarily related medical expenses, pursuant to medical fee schedule, of $1,960.00 to Hands That Heal Chiropractic, $2,094.00 to Centegra Physician Care LLC and Majercik Physical Therapy as provided in Sections 8(a) and 8.2 of the Act but subject to credits for payments made as itemized in Respondent's Exhibit #1 attached hereto and incorporated herein.

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

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

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

May 12, 2023

KAD/bsd
O032823
42

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC041732
Case Name	Marilyn Johnson v. State of Illinois - Secretary of State
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	James Babcock
Respondent Attorney	Dan Kallio

DATE FILED: 7/11/2022

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

/s/Michael Glaub, Arbitrator
Signature

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

July 11, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF McHenry)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MARILYN JOHNSON
Employee/Petitioner

v.

STATE OF ILLINOIS-SECRETARY OF STATE
Employer/Respondent

Case # **13** WC **041732**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Glaub**, Arbitrator of the Commission, in the city of **Woodstock**, on **05/04/2022**. 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 **08/20/2013**, 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 $**24,520.60**; the average weekly wage was $**471.55**.

On the date of accident, Petitioner was **60** years of age, ***married*** with **0** dependent children.

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

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

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

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

ORDER

Respondent to pay reasonable and necessarily related medical expenses, pursuant to medical fee schedule, of **$1,960.00 to Hands That Heal Chiropractic, $2,094.00 to Centegra Physician Care LLC and Majercik Physical Therapy** as provided in Sections 8(a) and 8.2 of the Act but subject to credits for payments made as itemized in Respondent's Exhibit #1 attached hereto and incorporated herein.

Respondent shall pay temporary total disability benefits of $314.37 per week for 25 1/7 weeks, commencing August 23, 2013 through 02/15/2014 as provided in Section 8(b) of the Act.

Respondent shall pay petitioner permanent partial disability benefits of $282.93 per week for 31.45 weeks, because the injuries sustained caused 3% loss of use of the left leg, 2.5% loss of a person as whole attributable to the low back injury and 2.5% man as a whole attributable to the right shoulder injury as provided in Section 8(d)2 and 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.

Michael Glaub JULY 11, 2022
Signature of Arbitrator

Run Date: 04/29/2022
Run Time: 14:46:39

Payment Listing

Johnson, Marilyn 13517714

From	Through	Check #	Check Date	Method	Vendor	Discount	Amount
Medical							
ATTENDING PHYSICIAN							
10/04/2013	10/04/2013	754351	12/08/2015	Check	Centegra Primary Care LLC	-81.06	81.06
08/23/2013	08/23/2013	754352	12/08/2015	Check	Centegra Primary Care LLC	-81.06	81.06
09/24/2013	09/24/2013	754353	12/08/2015	Check	Centegra Primary Care LLC	-81.06	81.06
08/26/2013	08/26/2013	738436	10/22/2015	Check	Centegra Primary Care LLC	-81.06	81.06
05/21/2014	05/21/2014	680716	04/10/2015	Check	MHS Physician Services	-59.54	59.54
			Totals for ATTENDING PHYSICIAN			-383.78	383.78
RADIOLOGY & X-RAY							
10/25/2013	10/25/2013	620298	04/30/2014	Check	Northern Illinois Medical Center	3,625.45	2,897.05
08/23/2013	08/23/2013	610440	03/28/2014	Check	Northern Illinois Medical Center	743.57	769.93
			Totals for RADIOLOGY & X-RAY			4,369.02	3,666.98
PHYSICAL THERAPY							
09/25/2013	09/25/2013	618859	04/28/2014	Check	Majercik Physical Therapy	263.41	190.59
			Totals for PHYSICAL THERAPY			263.41	190.59
CHIROPRACTOR							
08/24/2013	10/04/2013	612315	03/28/2014	Check	Hands that Heal Chiropractic, LLC	577.24	471.76
			Totals for CHIROPRACTOR			577.24	471.76
			Totals for Medical			4,825.89	4,713.11
			Recovery				0.00
			Totals for Claim				4,713.11
			Recovery				0.00

Respondent Ex 1.

FINDING OF FACT

On August 20, 2013, the Petitioner was a 60-year-old cashier for the Secretary of State assigned to a desk at standard height to serve motorists with disabilities. Respondent provided a wheeled adjustable height desk chair. From the front of the desk to a wall behind Petitioner was approximately 8 feet. Four feet behind her seated area was a wall phone. The floor immediately under the desk was tile but transitioned to carpeting immediately behind the desk with a raised transition edge rising approximately one quarter of an inch above the tile under the desk.

As Petitioner was servicing a customer, the phone on the wall rang and she rose from her seated position without incident to answer the call. When she returned to her chair to be seated, the chair wheels hung up on the raised transition and then the chair moved suddenly backwards causing Petitioner to fall. Petitioner described twisting her torso to the right to brace her fall, which she did with her right arm and hand. In the process of twisting to the right, the back of her left knee entangled with the moving chair as she struck the ground.

Petitioner testified to pain in her right shoulder, lower back, neck and left knee. She made an appointment with her primary care physician. She testified that it would usually take two days to see her physician, but she did not recall the specific date she made the appointment.

On August 22, 2013, Petitioner was standing near the rear employee-only exit/entrance when a co-employee suddenly and without warning opened the steel door into Petitioner. Petitioner testified that there was no discernable difference between her condition upon falling on August 20, 2013, and this incident other than the initial insult.

Petitioner sought medical attention at her primary care physician Centegra Health (Pet. Ex. 1) on August 23, 2013. The history of both events are documented with the fall from the chair described as hard. X-rays of the neck and right shoulder were performed. The exam

findings included dizziness, gait disturbance, muscle spasms, tenderness and right arm pain. Flexeril and Norco were prescribed. Follow up was on August 26, 2013. The assessment was made of lumbago with right sided sciatica and right shoulder pain. Continued chiropractic was recommended, and Petitioner was to remain off work an additional two weeks. An MRI was contemplated in the chart. On 09/10/13, Centegra noted a history of low back pain into the right leg and right thigh as persistent, shooting and stabbing with the trauma occurring due to a fall at work. Right shoulder pain, knee pain and L rib pain were recorded. The exam indicated gait disturbance, tingling in the legs, back pain, limping, spasms and weakness. The right shoulder demonstrated tenderness on exam. Petitioner was to remain off work per her physician and again an MRI was suggested as a possibility. On 09/24/2013, the back pain radiating into the right leg was reported to increase with sitting, twisting and walking. Follow up visits recorded are 10/03/2013, 10/22/2013, 11/05/2013 and 11/11/2013. MRI's of 10/25/2013 reported degenerative changes of the lumbar region and right shoulder acromioclavicular osteoarthritis.

`On 12/11/13 exam findings included reduced side bending, moderate muscle tightness in the lower thoracic, tender SI joint, tenderness of the right bicep tendon and tender medical joint line of the left knee. Referral to a specialist, Marko Krpan, DO of Mercy Health System was made. (Pet. Ex.3)

On 12/19/2013, Dr. Krpan diagnosed cervical myositis, lumbar myositis, right shoulder impingement with a partial thickness tear and an exacerbation of left knee arthritis.
He recommended additional PT and to remain off work an additional 6 weeks. Dr. Krpan released Petitioner to work effective February 15, 2014 with restrictions that were within her job functions. His impression was of a right shoulder impingement syndrome/adhesive capsulitis secondary to contusion and an exacerbation of the left knee degenerative arthritis.

In addition to chiropractic with Hands that Heal Chiropractic, (Pet. Ex. #2) Petitioner undertook water aerobics and physical therapy with Majercik Physical Therapy (Pet. Ex #4)

CONCLUSIONS OF LAW

Arbitrator's Credibility Assessment

Petitioner was the only witness at hearing. Having considered all evidence, the Arbitrator finds Petitioner's testimony credible, forthright and otherwise unrebutted.

C. ***Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent on August 20, 2013 and August 22, 2013? The Arbitrator finds as follows:***

The Arbitrator finds that the conditions of the workplace, the rolling chair, the flooring transition from tile under the desk to carpet immediate behind the desk separated by a raised transition strip contributed to Petitioner' fall. Petitioner was in the course of her employment assisting a customer when she answered the phone and returned to her chair. The condition of the flooring combined with the rolling chair created risk incidental to the employment satisfying the arising out of requirement in keeping with our Supreme Court's decision in *McCallister v. IWCC, 2020 IL 124848.*

Petitioner testified she was struck by a steel door to the employee-only entrance on August 22, 2013, by a co-employee. This testimony was unrebutted. Petitioner had apparently just completed her workday. She was in the process of leaving the respondent's premises arises out of and in the course of employment. Petitioner testified that someone had stopped in front of her after she walked out the door and was asking the petitioner a question. Petitioner testified

that this was the moment the door from the building opened and struck her. The Arbitrator finds that this incident constituted an accident that arose out of and in the course of her employment.

J. ***Were the medical services that were provided to the petitioner reasonable and necessary? And has respondent paid all appropriate charges for all reasonable and necessary related medical expenses? The Arbitrator finds as follows:***

Petitioner treated at Centegra Physicians Care LLC, Hands that Heal Chiropractic and Majercik Physical Therapy from 08/23/13 through 12/11/13. The Arbitrator finds the bills supported by the accompanying medical records of Petitioner's Exhibits 1, 2 and 4 both reasonable and necessary and awards these expenses. Although not reflected on the stipulation sheet, Respondent offered into evidence without objection Exhibit 1, a payment log of medical expenses. Respondent shall have credit for any payments made prior to hearing as itemized in Exhibit 1.

K. ***What temporary total disability benefits are in dispute? The Arbitrator finds as follows:***

Petitioner claimed to be entitled to TTD benefits from 08/23/13 through 02/15/14. The Arbitrator notes the medical treatment records from the various providers, Centegra, Hands that Heal and Dr. Krpan for time loss benefits support the claim.

L. ***What is the nature and extent of the injury? The Arbitrator finds as follows:***

In applying the five factors in Section 8.1b of the Act, the Arbitrator finds as follows:

- No AMA impairment ratings were presented by either party. The Arbitrator finds that this factor weighs neither in favor of increased nor decreased permanence.

- As to occupation, the Petitioner performs clerical work. The work requires being seated and reaching behind Petitioner's desk with her right arm. The petitioner's job duties do not require any significant lifting of weight or other strenuous activities. The Arbitrator finds that this factor weighs in favor of decreased permanence.

- As to the Petitioner's age, 60, at the time of injury. The petitioner is nearing the end of her natural work life expectancy. The petitioner will have to work with any residuals of this injury for a shorter period than a younger worker. The Arbitrator finds that this factor weighs in favor of decreased permanence.

- As to future earning capacity, there was no evidence introduced petitioner's earnings were diminished. The Arbitrator finds that this factor weighs in favor of decreased permanence.

- As to the injury sustained because of the 08/20/2013 and 8/23/13 accidents, the medical records and testimony support an injury to the left knee, right shoulder and lower back. Petitioner had numerous diagnostic testing which revealed degenerative changes in the spine, right shoulder and left knee. The Arbitrator notes that while Dr. Krpan diagnosed a partial tear of the rotator cuff, this finding is rebutted by the right shoulder MRI of October 25, 2013. Specifically, Dr. Brebach interpreted the MRI on that date to reveal Acromioclavicular arthritis but was otherwise normal. Dr. Brebach found no evidence of a partial tear of rotator cuff (Px 1). Petitioner did not undergo any surgery. Petitioner did receive conservative medical care including physical therapy and chiropractic treatment. The Arbitrator notes also notes that the petitioner's pre-existing degenerative conditions were not asymptomatic prior to her 2013 work injuries. Specifically, respondent introduced medical records dating from Centegra dating from 2010-2102 regarding treatment to petitioner's left knee, cervical and lumber spines as well as shoulder pain. The Arbitrator believes the petitioner sustained soft tissue exacerbations superimposed on her various pre-existing degenerative conditions. The Arbitrator finds that this factor weighs in favor of decreased permanence.

- Based on all of the above, the Arbitrator finds the Petitioner's injuries to result in the loss of 3% of the left leg under Section 8(e) 12 or 6.45 weeks and 5% loss of use of a person as a whole as to the shoulder and low back injury under Section 8 (d) 2 or 25 weeks at the PPD rate of $282.93.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC041733
Case Name	Marilyn Johnson v. State of Illinois - Secretary of State
Consolidated Cases	13WC041732;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0220
Number of Pages of Decision	11
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	James Babcock
Respondent Attorney	Dan Kallio

DATE FILED: 5/12/2023

/s/ Kathryn Doerries, Commissioner

Signature

23IWCC0220

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARILYN JOHNSON,

Petitioner,

vs. NO: 13 WC 041733

STATE OF ILLINOIS-SECRETARY OF STATE,

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 disability, causal connection, medical expenses 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.

In the Conclusions of Law section, after the section entitled, "C. *Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent on August 20, 2013 and August 22, 2013?"* The Commission adds a section entitled, "F. *Is Petitioner's current condition of ill-being causally related to the injury*?" Following heading "F' the Commission adds the following paragraph:

The Commission finds that Petitioner has not sustained her burden of proving her condition of ill-being is causally connected to the accident on August 22, 2013. Petitioner testified that the medical treatment that she undertook is because of the chair incident as opposed to getting hit in the back. (T. 37-38) The Commission notes that the chiropractic medical records and the Mercy Health Systems records support Petitioner's testimony. (PX2, PX3)

Therefore, the Commission modifies the Arbitrator's Findings on page 2 of the Arbitrator's Decision by adding the word, "not" so the fifth sentence under the Findings reads as follows,

"Petitioner's current condition of ill-being *is not* causally related to the accident."

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

IT IS FURTHER ORDERED BY THE COMMISSION that no sums are awarded for this loss. See consolidated case 13 WC 41732.

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

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

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

May 12, 2023
KAD/bsd
O032823
42

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC041733
Case Name	Marilyn Johnson v. State of Illinois - Secretary of State
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Muriel Collison
Respondent Attorney	Dan Kallio

DATE FILED: 7/11/2022

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

/s/Michael Glaub, Arbitrator
Signature

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

July 11, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF McHenry)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MARILYN JOHNSON
Employee/Petitioner

v.

STATE OF ILLINOIS-SECRETARY OF STATE
Employer/Respondent

Case # **13** WC **041733**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Glaub**, Arbitrator of the Commission, in the city of **Woodstock**, on **05/04/2022**. 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 **08/22/2013**, 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 $**24,520.60**; the average weekly wage was $**471.55**.

On the date of accident, Petitioner was **60** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**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 sums are awarded for this loss. See consolidated case **13 WC 41732.**

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

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

Michael Glaub **JULY 11, 2022**
Signature of Arbitrator

FINDING OF FACT

On August 20, 2013, the Petitioner was a 60-year-old cashier for the Secretary of State assigned to a desk at standard height to serve motorists with disabilities. Respondent provided a wheeled adjustable height desk chair. From the front of the desk to a wall behind Petitioner was approximately 8 feet. Four feet behind her seated area was a wall phone. The floor immediately under the desk was tile but transitioned to carpeting immediately behind the desk with a raised transition edge rising approximately one quarter of an inch above the tile under the desk.

As Petitioner was servicing a customer, the phone on the wall rang and she rose from her seated position without incident to answer the call. When she returned to her chair to be seated, the chair wheels hung up on the raised transition and then the chair moved suddenly backwards causing Petitioner to fall. Petitioner described twisting her torso to the right to brace her fall, which she did with her right arm and hand. In the process of twisting to the right, the back of her left knee entangled with the moving chair as she struck the ground.

Petitioner testified to pain in her right shoulder, lower back, neck and left knee. She made an appointment with her primary care physician. She testified that it would usually take two days to see her physician, but she did not recall the specific date she made the appointment.

On August 22, 2013, Petitioner was standing near the rear employee-only exit/entrance when a co-employee suddenly and without warning opened the steel door into Petitioner. Petitioner testified that there was no discernable difference between her condition upon falling on August 20, 2013, and this incident other than the initial insult.

Petitioner sought medical attention at her primary care physician Centegra Health (Pet. Ex. 1) on August 23, 2013. The history of both events are documented with the fall from the chair described as hard. X-rays of the neck and right shoulder were performed. The exam

findings included dizziness, gait disturbance, muscle spasms, tenderness and right arm pain. Flexeril and Norco were prescribed. Follow up was on August 26, 2013. The assessment was made of lumbago with right sided sciatica and right shoulder pain. Continued chiropractic was recommended, and Petitioner was to remain off work an additional two weeks. An MRI was contemplated in the chart. On 09/10/13, Centegra noted a history of low back pain into the right leg and right thigh as persistent, shooting and stabbing with the trauma occurring due to a fall at work. Right shoulder pain, knee pain and L rib pain were recorded. The exam indicated gait disturbance, tingling in the legs, back pain, limping, spasms and weakness. The right shoulder demonstrated tenderness on exam. Petitioner was to remain off work per her physician and again an MRI was suggested as a possibility. On 09/24/2013, the back pain radiating into the right leg was reported to increase with sitting, twisting and walking. Follow up visits recorded are 10/03/2013, 10/22/2013, 11/05/2013 and 11/11/2013. MRI's of 10/25/2013 reported degenerative changes of the lumbar region and right shoulder acromioclavicular osteoarthritis.

`On 12/11/13 exam findings included reduced side bending, moderate muscle tightness in the lower thoracic, tender SI joint, tenderness of the right bicep tendon and tender medical joint line of the left knee. Referral to a specialist, Marko Krpan, DO of Mercy Health System was made. (Pet. Ex.3)

On 12/19/2013, Dr. Krpan diagnosed cervical myositis, lumbar myositis, right shoulder impingement with a partial thickness tear and an exacerbation of left knee arthritis.
He recommended additional PT and to remain off work an additional 6 weeks. Dr. Krpan released Petitioner to work effective February 15, 2014 with restrictions that were within her job functions. His impression was of a right shoulder impingement syndrome/adhesive capsulitis secondary to contusion and an exacerbation of the left knee degenerative arthritis.

In addition to chiropractic with Hands that Heal Chiropractic, (Pet. Ex. #2) Petitioner undertook water aerobics and physical therapy with Majercik Physical Therapy (Pet. Ex #4)

CONCLUSIONS OF LAW

Arbitrator's Credibility Assessment

Petitioner was the only witness at hearing. Having considered all evidence, the Arbitrator finds Petitioner's testimony credible, forthright and otherwise unrebutted.

C. ***Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent on August 20, 2013 and August 22, 2013? The Arbitrator finds as follows:***

The Arbitrator finds that the conditions of the workplace, the rolling chair, the flooring transition from tile under the desk to carpet immediate behind the desk separated by a raised transition strip contributed to Petitioner' fall. Petitioner was in the course of her employment assisting a customer when she answered the phone and returned to her chair. The condition of the flooring combined with the rolling chair created risk incidental to the employment satisfying the arising out of requirement in keeping with our Supreme Court's decision in *McCallister v. IWCC, 2020 IL 124848.*

Petitioner testified she was struck by a steel door to the employee-only entrance on August 22, 2013, by a co-employee. This testimony was unrebutted. Petitioner had apparently just completed her workday. She was in the process of leaving the respondent's premises arises out of and in the course of employment. Petitioner testified that someone had stopped in front of her after she walked out the door and was asking the petitioner a question. Petitioner testified

that this was the moment the door from the building opened and struck her. The Arbitrator finds that this incident constituted an accident that arose out of and in the course of her employment.

J. ***Were the medical services that were provided to the petitioner reasonable and necessary? And has respondent paid all appropriate charges for all reasonable and necessary related medical expenses? The Arbitrator finds as follows:***

Petitioner treated at Centegra Physicians Care LLC, Hands that Heal Chiropractic and Majercik Physical Therapy from 08/23/13 through 12/11/13. The Arbitrator finds the bills supported by the accompanying medical records of Petitioner's Exhibits 1, 2 and 4 both reasonable and necessary and awards these expenses. Although not reflected on the stipulation sheet, Respondent offered into evidence without objection Exhibit 1, a payment log of medical expenses. Respondent shall have credit for any payments made prior to hearing as itemized in Exhibit 1.

K. ***What temporary total disability benefits are in dispute? The Arbitrator finds as follows:***

Petitioner claimed to be entitled to TTD benefits from 08/23/13 through 02/15/14. The Arbitrator notes the medical treatment records from the various providers, Centegra, Hands that Heal and Dr. Krpan for time loss benefits support the claim.

L. ***What is the nature and extent of the injury? The Arbitrator finds as follows:***

In applying the five factors in Section 8.1b of the Act, the Arbitrator finds as follows:

- No AMA impairment ratings were presented by either party. The Arbitrator finds that this factor weighs neither in favor of increased nor decreased permanence.

- As to occupation, the Petitioner performs clerical work. The work requires being seated and reaching behind Petitioner's desk with her right arm. The petitioner's job duties do not require any significant lifting of weight or other strenuous activities. The Arbitrator finds that this factor weighs in favor of decreased permanence.

- As to the Petitioner's age, 60, at the time of injury. The petitioner is nearing the end of her natural work life expectancy. The petitioner will have to work with any residuals of this injury for a shorter period than a younger worker. The Arbitrator finds that this factor weighs in favor of decreased permanence.

- As to future earning capacity, there was no evidence introduced petitioner's earnings were diminished. The Arbitrator finds that this factor weighs in favor of decreased permanence.

- As to the injury sustained because of the 08/20/2013 and 8/23/13 accidents, the medical records and testimony support an injury to the left knee, right shoulder and lower back. Petitioner had numerous diagnostic testing which revealed degenerative changes in the spine, right shoulder and left knee. The Arbitrator notes that while Dr. Krpan diagnosed a partial tear of the rotator cuff, this finding is rebutted by the right shoulder MRI of October 25, 2013. Specifically, Dr. Brebach interpreted the MRI on that date to reveal Acromioclavicular arthritis but was otherwise normal. Dr. Brebach found no evidence of a partial tear of rotator cuff (Px 1). Petitioner did not undergo any surgery. Petitioner did receive conservative medical care including physical therapy and chiropractic treatment. The Arbitrator notes also notes that the petitioner's pre-existing degenerative conditions were not asymptomatic prior to her 2013 work injuries. Specifically, respondent introduced medical records dating from Centegra dating from 2010-2102 regarding treatment to petitioner's left knee, cervical and lumber spines as well as shoulder pain. The Arbitrator believes the petitioner sustained soft tissue exacerbations superimposed on her various pre-existing degenerative conditions. The Arbitrator finds that this factor weighs in favor of decreased permanence.

- Based on all of the above, the Arbitrator finds the Petitioner's injuries to result in the loss of 3% of the left leg under Section 8(e) 12 or 6.45 weeks and 5% loss of use of a person as a whole as to the shoulder and low back injury under Section 8 (d) 2 or 25 weeks at the PPD rate of $282.93.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC016479
Case Name	Erika Ray Aboytes v. Smithfield Farmland Corp
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0221
Number of Pages of Decision	13
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Thomas Cady
Respondent Attorney	Michael Brandow

DATE FILED: 5/15/2023

/s/ Kathryn Doerries, 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 Choose reason	☐ Second Injury Fund (§8(e)18)
X Orals waived	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ERIKA RAY ABOYTES,

Petitioner,

vs. NO: 17 WC 16479

SMITHFIELD FARMLAND CORP.,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 17, 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.

May 15, 2023
d-5/9/23
KAD/jsf

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

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

/s/*Amylee H. Simonovich*
Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC016479
Case Name	ABOYTES, ERIKA RAYA v. SMITHFIELD FARMLAND CORP.
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	Thomas Cady
Respondent Attorney	Michael Brandow

DATE FILED: 2/17/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 15, 2022

/s/Adam Hinrichs, 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

Aboytes, Erika Raya
Employee/Petitioner

v.

Smithfield Farmland Corp.
Employer/Respondent

Case # **17** WC **016479**

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 **Rock Island**, on **December 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 **5/29/15**, 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 $**33,176.00**; the average weekly wage was $**638.00**.

On the date of accident, Petitioner was **34** years of age, ***married*** with **2** dependent children.

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

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

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

Respondent is entitled to a credit of $**3,318.16** under Section 8(j) of the Act.

ORDER

The Respondent shall pay all outstanding medical bills for Petitioner's reasonable and necessary medical treatment for her right shoulder, pursuant to 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 be given a full credit for $3,318.16 in payments made by its group health insurance carrier, and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, pursuant to Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits for 106 4/7ths weeks, from February 27, 2017 through March 15, 2019, at her TTD rate of $425.33, pursuant to Section 8(b) of the Act.

Respondent shall pay Petitioner 75 weeks of PPD benefits at Petitioner's weekly PPD rate of $382.20, representing a 15% loss of use to Petitioner's person as a whole pursuant to Section 8(d)2 of the Act.

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

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

Signature of Arbitrator

FEBRUARY 17, 2022

FINDINGS OF FACT

On the date of hearing Petitioner was 40 years old. Petitioner testified that the highest level of education she completed was 6th grade in Mexico. Petitioner attempted to obtain her GED but was unsuccessful. Petitioner has taken English classes, and testified in English. Her first job in the United States was at Tyson Foods, in a beef processing plant. She described her job at Tyson as an operator who would alternate pouring chemicals, water and steam in order to process beef. Petitioner testified that she worked at Tyson for approximately 4 years. She stated that prior to beginning work at Tyson she had to take a physical that consisted of checking her shoulders and hands. She testified that Tyson checked her for carpal tunnel syndrome by applying needles to her hands and arms. Petitioner passed the physical and was hired by Tyson. Petitioner later left Tyson to care for her newborn baby.

Upon returning to the workforce Petitioner went to work at Palmer Hills, a residential retirement facility. She performed the jobs of server/housekeeping there and made $11-$12 an hour. The job was not strenuous and she left their employ when she had her second baby.

Upon returning to the workforce after the birth of her second child, Petitioner was hired by Respondent in 2010. Respondent performed a pre-employment physical that Petitioner testified consisted of checking her hand, arms and shoulders, as well as shocking her arms.

Petitioner's initial job for Respondent was trimming ribs. Petitioner testified that prior to beginning work at Respondent she had no symptoms or problems in her right shoulder or in either hand. After five years in this job Petitioner was transferred to a job called "fat pack." Fat pack was a more difficult job than trimming ribs. Petitioner testified that she had no problems in her right shoulder or hands prior to beginning in fat pack.

In fat pack, Petitioner worked with another person, each on an opposite side of a conveyor belt. The two employees would rotate/switch sides of the conveyor belt on a schedule so that they used their hands and arms on their left and right equally throughout the shift. Petitioner would grab product from a conveyor belt that was slightly below her waist and put the product in a box and slide it on to a lower conveyor belt. The boxes would range in weight from 28 to 75 pounds. Petitioner testified that the job was fast paced. The boxes would then go to a station where people would load the boxes onto a pallet. If the conveyor was broke Petitioner would have to help palletize the boxes by hand.

Petitioner was working in her fat pack position when she developed pain in her right shoulder on May 29, 2015. She reported it to her supervisor. Respondent directed her to treat with the in-house medical department. Petitioner did so for approximately three weeks. Petitioner's right shoulder did not improve and she began treating with Dr. Steven Potaczek at OSF Galesburg.

On June 22, 2015, at Petitioner's first visit to Dr. Potaczek, he noted "she has been on the cold side, moving and packaging boxes, doing some repetitive work" and reported right shoulder pain. Dr. Potaczek's physical exam revealed full range of motion, and he diagnosed a strain. (PX 1, p. 1)

On June 29, 2015 and July 6, 2015, Dr. Potaczek performed Kenalog injections in Petitioner's right shoulder. Petitioner reported little, if any, improvement. (PX. 1, pp. 9, 15)

On June 29, 2015, Petitioner sought care with her family doctor, Dr. Bringas, for migraines and hyperthyroidism. At this visit, Petitioner also gave a consistent history of right shoulder pain with work activities. Dr. Bringas ordered an MRI of the right shoulder. (Px. 3, p. 1)

On August 10, 2015 Dr. Potaczek noted a normal physical exam, but Petitioner complained of ongoing pain without relief. Dr. Potaczek ordered an MRI to rule out a tear.

On August 19, 2015, an MRI of Petitioner's right shoulder was performed at OSF Holy Family Medical Center. The MRI was normal. (PX. 2, pp. 120-121).

On August 21, 2015, Petitioner was discharged from occupational therapy after 12 sessions with no improvement in her symptoms. (PX. 2, p. 112).

On August 24, 2015, Dr. Potaczek reviewed the MRI with the Petitioner and advised Petitioner that "she should probably rethink her employment. She should be on waist level for now. I think the prognosis for her to tolerate this type of activity is low." (PX. 1, pp. 17-23)

On October 5, 2015, Dr. Potaczek noted that Petitioner did not respond to any treatment he provided. MRIs of the right shoulder and cervical spine were both normal. Dr. Potaczek noted a full ROM in Petitioner's right arm, no atrophy, no crepitation, no redness or warmth, and that she was neurovascularly intact. Dr. Potaczek noted Petitioner complained of pain with her arm overhead, but that he had no objective findings. Dr. Potaczek did not have any further recommendations for care as he "did not think there is anything really structurally going on" and she should "look for different work." Petitioner did not return to Dr. Potaczek. (PX 1, pp. 26-27).

On November 19, 2015, on referral from Dr. Bringas, Petitioner saw Dr. Waqas Hussain at ORA. Petitioner gave a consistent history of right shoulder pain beginning on May 29, 2015. Petitioner indicated her problem was worsening and her pain was 9/10. Dr. Hussain reviewed the objective tests to date, prescribed an EMG, and diagnosed Petitioner with right shoulder pain, compression neuropathy, and possible neurogenic claudication, and acromioclavicular instability. (PX. 4, pp. 2-3)

On January 5, 2016 a second MRI of the cervical spine was performed, it was also normal. An EMG was also performed that day, it was normal. (PX. 5, p. 2, 5)

On January 20, 2016, an MRI Arthrogram of the right shoulder was done at Genesis Medical Center. It was normal. (PX 5, p. 13)

On April 8, 2016, Dr. Bringas diagnosed chronic right shoulder pain with possible CRPS and noted that Petitioner needed a pain clinic. Petitioner's reports of right shoulder pain were noted to be consistent from the May 29, 2015 injury date. (PX. 3, pp. 24-26)

Petitioner testified that throughout the above referenced treatment for her right shoulder, Respondent placed her in numerous light duty positions. One job that she described as particularly challenging was packing bacon. This job was repetitive in nature and required her to fold boxes, as well as use a hook and grab 8x10 inch pieces of meat out of a barrel and put the meat in packaging. Petitioner testified that this job bothered her hands.

On November 12, 2016 Petitioner testified that her hands became so painful she reported an injury to Respondent. Petitioner described the symptoms in her hands as being painful with numbness in her fingers, the right being worse than the left. Petitioner is right-handed. Respondent sent her to treat with plant medical. Petitioner treated with plant medical for approximately three weeks. Respondent then directed her to treat with Dr. Ayers at OSF St. Mary's Occupational Health.

On December 6, 2016, Petitioner presented to Dr. Ayers complaining of bi-lateral hand pain and right shoulder pain. (PX 6, p. 4). Dr. Ayers' typed note of the same date indicates left shoulder pain, however, the history related corresponds to Petitioner's treatment for her right shoulder with Dr. Potaczek, and the handwritten notes and work status note indicate Petitioner complained of pain in her right shoulder. Dr. Ayers' noted that Petitioner was off work for four months prior to returning in late April 2016, during which time "she had been improved (sic)." (PX 6, pp. 3-6).

Dr. Ayers' notes document Petitioner's bilateral hand and right shoulder complaints from December 2016 through February 2017. Dr Ayers placed Petitioner on restricted duty, but he ultimately released her as he could not find anything objectively wrong with her. (PX 6, pp. 3-23)

On February 15, 2017, Petitioner sought care with Dr. Charles Carrol for her right shoulder and bilateral hand complaints that she related to her job duties with Respondent. Dr. Carrol noted that Petitioner had less than full range of motion of the right shoulder, significant impingement in the right shoulder and positive Phalen and Tinel sign in the wrists. Dr. Carrol prescribed another right shoulder injection, and an EMG. (PX 7, pp. 8-9)

Petitioner testified that her last day of work for the Respondent was February 24, 2017. Petitioner testified that after her shift ended that Friday, she was in a great deal of pain in her right shoulder and went to emergency room where she was given pain medication and referred back to her primary care physician. Petitioner testified that she was taken off work by Dr. Bringas and she brought this note to Respondent. (T. 44-46).

On February 27, 2017, Petitioner presented to Dr. Bringas with complaints of severe right and left shoulder pain that she related to her work activities, and that her four-month period off work in 2016 alleviated her pain complaints. (PX 3, p. 36). Petitioner was diagnosed with chronic pain in her right shoulder, CRPS, and was taken off work until March 11, 2017. (Id, pp. 38-39). Petitioner continued to treat with Dr. Bringas throughout 2017, was given an injection, and continued off work. (PX 3).

Petitioner testified that she was in contact with Respondent regarding her work status per Dr. Bringas. Petitioner testified that she received a letter from Respondent indicating a specific date that she must return to work. Petitioner testified that by the time she received this letter, she was scheduled for shoulder surgery. (T. 44-46).

On December 21, 2017, Petitioner underwent an MRI of her right shoulder without contrast and it was compared to her MR Arthrogram on January 20, 2016. The impression was a thickened coracoacromial ligament which mildly indents the superior surface of the supraspinatus muscle-tendon junction, and otherwise unremarkable. (PX 5, p. 64).

On March 30, 2018, Petitioner returned to Dr. Hussain for a second visit, approximately two and half years after her initial visit. On the intake form at ORA, Petitioner again noted that the onset of pain in the right shoulder was May 2015. Dr. Hussain indicates that reviewed an MRI performed December 21, 2017 which demonstrated subacromial impingement and rotator cuff tendinopathy. He recommended another MRI, and diagnosed thickening of the coracoacromial ligament and possible subacromial impingement. On April 16, 2018, another MRI was performed. This MRI showed a labral tear. (PX. 4, pp. 7-11)

On May 30, 2018, Dr. Hussain performed a right shoulder arthroscopy, rotator cuff debridement (supraspinatus), and biceps tenotomy with tenolysis, conversion to open subpectoral biceps tenodesis, superior and posterior labral debridement, subacromial bursectomy, and subacromial decompression noting that "at first glance, the superior labrum appeared to be intact. However, along the superior posterior aspect of the labrum there was obvious evidence of tearing, which extended posteriorly as well…and that the biceps was drawn into the wound." (PX 5, pp. 65-67)

Petitioner testified that her job at Respondent ended prior to her seeking care with Dr. Hussain. Petitioner testified that she was off work following the right shoulder surgery from May 30, 2018 through March 15, 2019. (T. 47). Dr. Hussain released Petitioner to return to work without restrictions on March 15, 2019.

On January 31, 2019, Respondent had Petitioner examined by Dr. Lawrence Li pursuant to Section 12. In his report, Dr. Li opined that Petitioner's SLAP tear in the right shoulder was not related to the work accident as there was no tear noted on the initial MRI and MRI Arthrogram, and Petitioner stopped working for Respondent 15 months prior to the diagnosis of superior labral tear. (RX 1, Dep Ex. 2)

On October 1, 2020, the parties deposed Dr. Li. Dr. Li testified that Petitioner related her complaints in her right shoulder to her work duties. (RX 1, p. 8). Dr. Li testified consistent with his report, that Petitioner's injuries were not caused, aggravated, accelerated or precipitated by her work activities with the Respondent. Dr. Li testified that Petitioner had no objective findings on physical exam or on MRI prior to her employment ending with Respondent, and that the first findings in Petitioner's right shoulder were 15 months after she stopped working for the Respondent. (RX 1, pp. 12-13).

On cross-examination, Dr. Li testified that no test is 100% accurate, including an MRI. (RX 1, p. 16). He indicated that an MRI would be more accurate diagnosing a full thickness tear of the supraspinatus in general but that it would depend on the specific tear. (RX 1, p. 17). Dr. Li further testified that a physician would order an MRI of the shoulder to confirm a diagnosis. Dr. Li testified that in his practice he has found SLAP tears during surgery that did not appear on MRI. (RX 1, p. 19).

On November 13, 2019, at Petitioner's attorney's request, Petitioner saw Dr. Richard Kreiter pursuant to Section 12. Dr. Kreiter found that Petitioner's pain generator was an inflamed proximal biceps tendon in the bicipital groove of the shoulder. Dr. Kreiter opined that this right shoulder pathology was related to Petitioner's work accident of May 29, 2015, and that all of the medical treatment rendered was reasonable, necessary and related to that injury. (PX 9)

In his deposition, Dr. Kreiter testified consistent with his report, and opined that Petitioner's work activities were the cause of her bicep and shoulder problems. (PX 17, pp. 14-15). Dr. Kreiter agreed with Dr. Li that an MRI does not show 100% of tears, and that an MRI is used to confirm a diagnosis. (PX. 17, pp. 18)

Petitioner testified that the right shoulder surgery helped her, but that she still has problems lifting more than 25 pounds and has to do daily chores, such a mopping, differently. Petitioner testified that she continues to have pain in the right shoulder and takes 6 ibuprofen per day.

Following her release to return to return to work full duty by Dr. Hussain, Petitioner began working at Group O on April 19, 2019 as a sales representative, a less physically demanding job than her work with Respondent. Petitioner was making $16-$16.75 an hour in her sales job.

Petitioner left her job at Group O in September 2021 for better pay at John Deere. Petitioner testified at hearing that she had worked 5 weeks total at John Deere with the first few weeks being an orientation which was followed by a strike. Petitioner started at John Deere putting nuts and bolts on parts with a mechanical gun. She testified that she was able to do that job despite her ongoing complaints with her right shoulder and hands. Petitioner testified that she now earns $21.77/hour at John Deere.

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? & Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

In 2010 Petitioner was hired by Respondent to trim ribs. Prior to Petitioner's start date with Respondent, she had no symptoms or problems in her right shoulder. After five years trimming ribs, Petitioner was transferred to a job called fat pack. Petitioner testified that she had no problems in her right shoulder prior to beginning the fat pack job.

In fat pack Petitioner worked with another person, each on a different side of a conveyor belt. They would switch sides of the conveyor belt on a schedule so that they used their hands and arms on their left and right sides equally throughout a shift. In fat pack, Petitioner would grab product from the conveyor belt (which was slightly below her waist), put the product in a box, and slide it on to a lower conveyor belt. The boxes would range in weight from 28 to 75 pounds. Petitioner testified that the job was fast paced. The boxes would then go to a station where people would load the boxes onto a pallet. If the conveyor was broke Petitioner would have to help put the boxes on the pallet by hand.

On May 29, 2015, Petitioner was working in her fat pack job when she developed pain in her right shoulder. Petitioner reported the same to Respondent. Over the next two years, throughout the medical records of Dr. Potaczek, Dr. Bringas, Dr. Hussain, Dr. Carrol, and Dr. Ayers, Petitioner's subjective complaints were not confirmed by objective testing, as multiple MRIs failed to show any issues with Petitioner's right shoulder, though there were findings on physical exam. (PX. 2, p. 120, PX 5, p. 13, PX 7, pp. 8-9)

Despite these normal MRIs, Petitioner consistently complained of pain in her right shoulder only with her work activities. Prior to surgery in 2018, the only period in the medical records that Petitioner's right shoulder appears to have improved was following a four month off-work period in early 2016. (PX 6, pp. 3-6, PX 3, p. 36).

Dr. Potaczek, after reviewing the first normal MRI, advised Petitioner that "she should probably rethink her employment." (PX. 1, pp. 17-23). Later, when Dr. Potaczek released Petitioner from his care, following two normal MRIs, he noted that while he "did not think there is anything really structurally going on," Petitioner should "look for different work." (PX 1, pp. 26-27).

Prior to her last day working for Respondent, on February 15, 2017, Petitioner sought care with Dr. Charles Carrol who noted that Petitioner had less than full range of motion of the right shoulder, and significant impingement in the right shoulder. (PX 7, pp. 8-9)

On February 27, 2017, Petitioner presented to Dr. Bringas, again complaining of severe right pain in her right shoulder that she continued to relate to her work activities. (PX 3, p. 36). Petitioner never returned to work for Respondent following this visit to Dr. Bringas, who took her off work. At multiple follow ups in 2017, Dr. Bringas continued Petitioner off work due to her ongoing right shoulder complaints.

On March 30, 2018, Petitioner returned to her surgeon, Dr. Hussain, where she consistently reported the onset of pain in her right shoulder was from May 2015. On April 16, 2018, another MRI was performed, revealing a labral tear. (PX. 4, pp. 7-11). When Dr. Hussain subsequently performed right shoulder surgery, he noted that "at first glance, the superior labrum appeared to be intact. However, along the superior posterior aspect of the labrum there was obvious evidence of tearing, which extended posteriorly as well…and that the biceps was drawn into the wound.". (PX 5, pp. 65-67).

Petitioner credibly testified that she had not suffered any injuries to her right shoulder prior to or following the incident she reported on May 29, 2015. Petitioner's testimony is supported by the medical record.

Respondent's examiner, Dr. Li, testified that Petitioner's injuries were not caused, aggravated, accelerated or precipitated by her work activities with the Respondent. Dr. Li testified that Petitioner had no objective findings on physical exam or on MRI prior to her employment ending with Respondent, and that the first findings in Petitioner's right shoulder were 15 months after she stopped working for the Respondent. (RX 1, pp. 12-13). Dr. Li, testified that no test is 100% accurate, including an MRI. (RX 1, p. 16). Dr. Li further testified that in his practice he has found SLAP tears during surgery that did not appear on MRI. (RX 1, p. 19).

Petitioner's examiner, Dr. Kreiter testified that Petitioner's work activities were the cause of her bicep and shoulder problems, and that all of the medical treatment rendered was reasonable, necessary and related to that injury. (PX 17, pp. 14-15).

Respondent's examiner, Dr. Li, concedes that objective tests are not always reliable, and that he has found tears in his own surgical practice that did not appear on MRI. Moreover, Dr. Li ignores Dr. Carrol's finding of right shoulder impingement on physical exam prior to Petitioner leaving Respondent's employ; the multiple notes indicating that Petitioner's right shoulder complaints only abated with a four month off-work period in 2016; and that Petitioner put forth a good faith effort to return to work for Respondent, working until Dr. Bringas took her off work in late February 2017, approximately 16 months after Dr. Potaczek stated that she should find a new occupation. For these reasons, the Arbitrator is not persuaded by the opinion of Dr. Li.

The record is clear, Petitioner's right shoulder problems began with her repetitive work duties in fat pack. While Petitioner's initial objective tests failed to confirm any issues in her right shoulder, her complaints persisted with her performance of her work activities, and were only relieved by being taken off work, and eventually by right shoulder surgery.

The Arbitrator finds that Petitioner has proven by a preponderance of the evidence that on or about May 29, 2015, she sustained a repetitive trauma accident to her right shoulder arising out of and in the course of her employment for the Respondent.

Further, given the sequence of events, the totality of the evidence, and the opinion of Dr. Kreiter, the Arbitrator finds that Petitioner's current condition of ill-being in her right shoulder is causally related to her repetitive trauma work injury manifesting on or about May 29, 2015.

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 medical services provided to Petitioner for the treatment of her right shoulder 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 right shoulder, as outlined in Petitioner's Exhibits 10 through 16, pursuant to 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.

The Respondent shall be given a full credit for payments made by its group health insurance carrier pursuant to Section 8(j).

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

Incorporating the above, the record indicates that Petitioner was taken off work by her treating physicians, or given restrictions that were not accommodated by Respondent, from February 27, 2017, until her full duty release on March 15, 2019.

The Arbitrator finds that Petitioner is entitled TTD benefits from February 27, 2017, through March 15, 2019, at her TTD rate of $425.33.

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

In determining the nature and extent of Petitioner's injury, an analysis applying the five statutory factors set forth in ILCS 305/8.1(b)(b) is as follows:

1. The reported level of impairment pursuant to an AMA assessment:

    No AMA assessment was included in the record. The Arbitrator gives no weight to this factor.

2. The occupation of the injured employee:

    The Arbitrator notes that Petitioner was a line worker for the Respondent on the date of accident. Prior to her surgery, Dr. Potaczek stated that Petitioner should not return to work in this occupation. Dr. Hussain released Petitioner to return to work full duty following her right shoulder surgery. Petitioner did not return to work for Respondent after February 24, 2017. Petitioner currently works for John Deere putting nuts and bolts on parts with a mechanical gun. The Arbitrator gives greater weight to this factor.

3. The age of the employee at the time of the injury:

    Petitioner was 34 years old on the date of accident. The Arbitrator gives some weight this factor as Petitioner has many years remaining in the labor force.

4. The employee's future earning capacity.

    The Arbitrator notes that no evidence was presented to reflect that Petitioner sustained a loss of earning capacity. In fact, Petitioner's current position at John Deere pays her more than she earned working for Respondent. The Arbitrator gives little weight to this factor.

5. Evidence of disability corroborated with the treating physicians' medical records:

    Petitioner underwent an open surgery of her right shoulder and biceps and testified credibly at hearing as to her current limitations. She takes six ibuprofen per day for right shoulder pain and has trouble lifting a 25-pound weight. Petitioner testified that she did not think she could do her old job with Respondent. Petitioner's treating surgeon, Dr. Hussain, however, returned Petitioner to full duty work. Petitioner testified that she does jobs around the house differently such as mopping due to the pain and limitations in her right shoulder. Petitioner currently works for John Deere in a labor-intensive job. The Arbitrator gives significant weight to this factor.

Considering the above, the Arbitrator finds that the Petitioner has sustained a 15% loss of use to her person as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000684
Case Name	Rhonda Steele v. Metro Link
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0222
Number of Pages of Decision	22
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Giambattista Patti
Respondent Attorney	Michelle Symank

DATE FILED: 5/15/2023

/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

RHONDA STEELE,

Petitioner,

vs. NO: 21 WC 00684

METRO LINK,

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 December 22, 2020 work injury, whether *res judicata* is applicable, entitlement to incurred medical expenses, and entitlement to prospective medical care, and being advised of the facts and law, 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. 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

Causal Connection

The Arbitrator concluded Petitioner's current condition of ill-being is not causally related to her December 22, 2020 work injury, and instead Petitioner sustained a temporary aggravation of her pre-existing neck condition, and that aggravation resolved as of May 12, 2021. Our review of the evidence yields the same result. We write separately to address Petitioner's *res judicata* argument regarding the Commission's Decision in Petitioner's most recent prior claim – 19 WC 14162.

In claim 19 WC 14162, Petitioner alleged she sustained a neck injury on April 16, 2019. The matter was brought to hearing pursuant to §19(b) on October 28, 2020, with Petitioner

seeking, *inter alia*, prospective medical care with Dr. Thomas Lee. In its March 7, 2022 Decision and Opinion on Review, the Commission found Petitioner failed to prove ongoing causal connection. Noting Petitioner "had a significant pre-existing condition," the Commission concluded the April 16, 2019 accident resulted in a temporary aggravation of her pre-existing condition and reached maximum medical improvement on July 29, 2019. Pet.'s Ex. 8. The Decision was not appealed and it became final.

On Review in the present matter, Petitioner argues the Commission's Decision in 19 WC 14162 precludes a finding that Petitioner's current condition of ill-being is related solely to her pre-existing neck condition because "[a]s a matter of law, Petitioner's prior condition had reached MMI." Petitioner's Statement of Exceptions, p. 11. The Commission finds Petitioner's *res judicata* argument confuses the adjudication of the April 16, 2019 aggravation with a finding that Petitioner's underlying neck condition had reached maximum medical improvement.

Under the doctrine of *res judicata*, "a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand, or cause of action." *City of Chicago v. Illinois Workers' Compensation Commission*, 2013 IL App (1st) 121507WC, ¶ 48, quoting *J & R Carrozza Plumbing Co. v. Industrial Commission*, 307 Ill. App. 3d 220, 223 (1st Dist. 1999). At issue in 19 WC 14162 was whether or not Petitioner sustained an accidental injury arising out of and occurring in the course of her employment on April 16, 2019, and if so, did that accident permanently aggravate her pre-existing neck condition. In its Decision, the Commission concluded Petitioner sustained only a temporary aggravation of her pre-existing condition and she had returned to baseline as of July 29, 2019. To be clear, the Commission did not find Petitioner's pre-existing neck condition had reached maximum medical improvement; rather, the Commission found the temporary aggravation had resolved, *i.e.,* Petitioner had reached maximum medical improvement with respect to the temporary aggravation related to the April 16, 2019 accident, and Petitioner's then-current complaints were causally related to her pre-existing condition. We conclude *res judicata* does not preclude our finding that the December 22, 2020 accident resulted in a temporary aggravation, which has since resolved, and Petitioner's current complaints are solely related to her pre-existing neck condition. We further observe our decision herein is limited to adjudication of the effects of the December 22, 2020 accident and as such, has no impact on any future permanency finding with respect to the April 16, 2019 accident.

All else is affirmed.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical expenses incurred for treatment at Multicare Specialists from December 23, 2020 through May 12, 2021, as well as for the May 12, 2021 evaluation by Dr. Matthew Gornet, as provided in §8(a), subject to §8.2 of the Act. Respondent shall be given a credit of $14,934.24 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 §8(j) 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.

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

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

May 15, 2023

DJB/mck
O: 3/22/23
43

/s/ *Deborah J. Baker*

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000684
Case Name	Rhonda Steele v. Metro Link
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Giambattista Patti
Respondent Attorney	David Reynolds

DATE FILED: 8/11/2022

/s/ Linda Cantrell, Arbitrator

Signature

INTEREST RATE WEEK OF AUGUST 9, 2022 3.04%

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)

Rhonda Steele
Employee/Petitioner

v.

Metro Link
Employer/Respondent

Case # **21** WC **000684**

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 **5/12/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **12/22/20**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**54,003.04**; the average weekly wage was $**1,038.29**.

On the date of accident, Petitioner was **57** 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 $**23,763.12** for TTD, $**0** for TPD, $**0** for maintenance, and $**14,934.24** for medical benefits, for a total credit of $**38,697.36**.

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

ORDER

Respondent shall pay medical expenses to Multicare Specialists for the period 12/23/20 through 5/12/21, and to Dr. Gornet for date of service 5/12/21. Respondent shall pay said expenses directly to the medical providers pursuant to the Illinois medical fee schedule, as provided in Section 8(a) and Section 8.2 of the Act. Respondent shall be given credit for any amounts previously paid under Section 8(a) of the Act for medical benefits.

Based on the Arbitrator's findings as to causal connection, Petitioner is not entitled to prospective medical care.

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

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

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

Arbitrator Linda J. Cantrell

August 11, 2022

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

RHONDA STEELE,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 21-WC-000684
	)	
METRO LINK,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on May 12, 2022, pursuant to Section 19(b) of the Act. On January 11, 2021, Petitioner filed an Application for Adjustment of Claim alleging injuries to her left shoulder as a result of latching a window closed on 12/22/20. The parties stipulate that Petitioner sustained injuries that arose out of and in the course of her employment with Respondent on 12/22/20. The parties stipulate that Respondent is entitled to a credit for medical expenses paid in the amount of $14,934.24 and credit for all medical bills paid through its group medical plan pursuant to Section 8(j) of the Act. The parties further stipulate that Respondent is entitled to a credit for temporary total disability benefits paid in the amount of $23,763.12. The issues in dispute are causal connection, medical bills, and prospective medical treatment.

TESTIMONY

Petitioner was 57 years old, single, with no dependent children at the time of accident. Petitioner currently resides with her mother and began working for Barnes West County Hospital in July 2021. Petitioner testified she sustained injuries to her left shoulder on 12/22/20 while operating a train for Respondent. She stated the side mirrors move and she has to adjust them frequently. Petitioner lowered the window to adjust the outside mirror and had difficulty sliding the window up to close it. She struggled and used a clipboard but was unsuccessful. Petitioner called her manager who also could not raise the window. Petitioner reported to Respondent's yard where a mechanic got the window closed. Petitioner testified the train has a lot of faulty windows and she has had trouble with them in the past.

Petitioner testified she felt pain in her left neck that radiated down her arm into her hand following her attempts to close the window. She thought her symptoms would resolve and continued to operate the train. Petitioner was unable to finish her shift and requested Respondent

to relieve her to seek medical attention. She went to Barnes Care on the day of the accident and physical therapy was recommended. Petitioner began physical therapy at Multicare Specialist on 12/23/20 with Dr. Brooks. She testified she told Dr. Brooks she had pain shooting down her arm into her hand. Petitioner has treated with Dr. Brooks in the past for another work-related injury.

Petitioner testified that Dr. Brooks ruled out a left shoulder injury and referred her to Dr. Gornet whom she also treated with in the past for a work-related injury. She testified that she told Dr. Gornet on 5/12/21 that it felt painful and was shooting down her arm. She underwent an MRI and discussed the results with Dr. Gornet who compared the study to her prior MRI. She understood Dr. Gornet's opinion was that her prior MRI showed a disc bulge, and her current MRI showed a herniation. Petitioner testified that she could feel the difference and she did not have pain radiating down into her hand prior to 12/22/20. She admitted she had pain in the left side of her neck with no radiation into her arm prior to 12/22/20. Dr. Gornet ordered injections at C5-6 and C6-7 following her 12/22/20 accident that provided approximately one week of relief. She agreed she had a prior cervical injection at C6-7 on 10/18/19 ordered by Dr. Lee. Dr. Gornet placed Petitioner on light duty restrictions in May 2021 which Respondent did not accommodate. Petitioner received TTD benefits through Dr. Farley's Section 12 examination on 6/1/21.

Petitioner was also examined by Dr. Mirkin on 7/30/21 pursuant to Section 12 of the Act. Petitioner testified she described to Dr. Mirkin how her symptoms had changed following her 12/22/20 accident. She stated she met with Dr. Mirkin for 5 to 10 minutes and reported pain down her arm that felt like a wrench was twisting in the left side of the base of her neck.

On 8/9/21, Dr. Gornet recommended surgery. Petitioner testified she sustained a work-related injury to her cervical spine in 2019 and Dr. Gornet did not recommend surgery. She stated she had never received a surgical recommendation for her neck prior to 12/22/20. She agreed that the Commission issued a decision in her 2019 workers' compensation claim and found she had reached MMI on 7/29/19. Petitioner testified that her symptoms are more severe since her 12/22/20 accident and the pain is in a different place and feels different. She currently experiences a wrenching pain in her neck and occasionally feels shooting pain down her left arm into her hand. She has numbness in her hand in the mornings. She cannot play tennis and driving long distances increases her symptoms. She is able to perform her job duties as a phlebotomist within the light duty restrictions prescribed by Dr. Gornet.

On cross-examination, Petitioner agreed she had a work-related injury in 2012 while working for Respondent. She stated a person walked in front of her train causing her to break hard. She was diagnosed with whiplash. Petitioner sustained another work-related injury in 2014 when she slipped on ice getting in the train. She injured her back, left shoulder, and other body parts. Petitioner testified she did not recall injuring her neck in that incident. Petitioner treated with Dr. Raskas in 2015 for her low back and received injections by Dr. Hurford in 2015.

Petitioner testified she injured her low back in 2016 when she fell on an uneven sidewalk and landed on her left side. She sustained a left rotator cuff tear and injured her low back. She treated with Dr. Raskas for that injury. Petitioner testified she did not recall injuring her neck in that accident and was told her symptoms originated from her shoulder injury. Petitioner agreed

that from 2014 through 2016 she had not returned to "normal" but clarified that her neck and left arm symptoms following her 12/22/20 incident are completely different and fells like nerve pain.

Petitioner did not recall telling Dr. Raskas on 8/22/16 that her neck pain radiated into her left shoulder and occasionally down her left arm into her hand. Petitioner agreed she had a cervical MRI in September 2016 that showed bulging discs. She does not believe Dr. Raskas released her from his care. Petitioner testified she did not think Dr. Raskas diagnosed her with cervical radiculopathy because she had never heard that term before. She agreed she had a work injury in 2017 when the train jostled and practically threw her out of the seat. She stated she had already injured her low back prior to that accident. Petitioner sustained a work-related injury in 2019 when she had to stop the train suddenly because a truck was on the tracks. She testified she injured her neck in that accident and agreed the Commission determined she reached MMI on 7/29/19 and prospective medical care with regard to her cervical spine was denied.

Petitioner agreed she testified at arbitration on 10/28/20 related to her 2019 case. She testified that her symptoms in 2019 felt like someone had a wrench and was twisting her neck and shoulders. She agreed she experienced the same symptoms following the 12/22/20 accident but described her symptoms as being more severe, with headaches, nerve pain, and a pulling sensation in her neck. Petitioner's arbitration testimony in her 2019 case was two months prior to the 12/22/20 accident and she stated her symptoms never went away.

Petitioner testified that Dr. Raskas diagnosed spondylolisthesis. He diagnosed a neck strain and recommended injections. The only surgical recommendation Petitioner received prior to 12/22/20 was a lumbar laminectomy and posterior lumbar fusion. She treated with Dr. Lee for her lumbar spine related to the 2019 accident and he diagnosed bulging discs. She requested Dr. Lee to release her to return to work because her TTD benefits stopped.

MEDICAL HISTORY

Pre-accident medical records dating back to 2012 were admitted into evidence. On 4/13/12, Petitioner presented to BarnesCare and reported a work accident. (RX3) She complained of neck and shoulder pain and was diagnosed with a cervical sprain. Petitioner underwent physical therapy at ProRehab, and on 4/25/12 she complained of bilateral neck and thoracic pain radiating into her bilateral shoulders and down her left arm. On 5/7/12, Petitioner was released from care without restrictions. She complained of ongoing aching pain rated 6/10, with tenderness in the left trapezius.

On 11/25/14, Petitioner presented to BarnesCare and reported a work accident that occurred on 11/17/14 when she slipped and fell. (RX3) She reported pain in her left shoulder, left arm, and back that she rated 7/10. It was noted that Petitioner had pain in the left side of her neck. Petitioner was diagnosed with a shoulder sprain and referred to physical therapy for her neck and shoulder. A ProRehab note dated 12/9/14 states Petitioner reported pain in her left-sided neck, trapezius, and shoulder. On 12/12/14, the therapist noted Petitioner had pain in her neck and shoulder and she complained of axial neck pain, right worse than left, and shoulder pain radiating to her elbow.

On 11/21/14, a cervical x-ray showed degenerative changes present throughout the cervical spine, with chronic findings. (RX6) Petitioner treated with Dr. Bashir for shoulder, neck, and back pain. (RX6) On 12/12/14, she reported the 2012 and 2014 incidents and stated the pain in her neck and back had worsened since the 2014 fall, with an onset of shoulder pain. Petitioner rated her neck pain 7/10. A cervical trigger point injection was performed. On 1/2/15, it was noted cervical x-rays showed facet arthropathy. A second trigger point injection was administered. Dr. Bashir noted an MRI showed facet arthropathy and a disc protrusion at T3-4. The radiology report dated 1/13/15 showed mild cervical spondylosis with a mild annular bulge at C5-6 and small focal disc protrusion at T3-4. Dr. Bashir returned Petitioner to work without restrictions.

On 3/16/15, Petitioner presented to Dr. Raskas complaining of neck pain and headaches. (RX5) Petitioner reported pain into her neck and shoulders since the 4/11/12 injury. She stated she missed work off and on over the past few years due to increasing complaints of neck and shoulder pain. She stated that the 11/17/14 injury made her neck condition much worse. X-rays of the cervical spine revealed very slight but measurable spondylolisthesis at C3-4, considered to be mild. Lumbar spine x-rays revealed slight anterior translation of L4 on transitional vertebra. Dr. Raskas diagnosed slight spondylolisthesis at C3-4 and recommended an MRI and possible injections. He attributed the need for treatment to both the 2012 and 2014 incidents.

On 4/6/15, Dr. Raskas reviewed an MRI dated 1/13/15 and did not see any significant cord compression or neural foraminal narrowing. (RX5) He felt Petitioner's problem may be related to instability at C3-4 and recommended a facet block injection that was performed on 4/16/15.

On 4/28/15, Petitioner returned to Dr. Raskas and reported ongoing significant pain in her neck and across her shoulders, with recent right arm numbness. Dr. Raskas did not see any compression on MRI that would explain her symptoms. He recommended a cervical CT scan. On 6/1/15, Dr. Raskas opined Petitioner did not require surgery. He felt Petitioner had a cervical strain with some chronic pain, as well as a lumbar strain. He diagnosed lumbar spondylolisthesis with associated chronic pain and referred Petitioner to Dr. Hurford.

A noted dated 6/2/15 at BarnesCare indicated Petitioner was able to return to work without restrictions after being off work due to back and neck pain since 4/25/15. (RX3) The note references Dr. Raskas' return to work recommendation.

On 9/28/15, Dr. Hurford took a history of neck and back symptoms from the 2012 incident, noting a diagnosis of whiplash and ongoing symptoms. (RX5) Dr. Hurford took a history of the 2014 incident, noting an increase in neck and back symptoms. Petitioner rated her pain 8/10. Cervical x-rays showed no spondylolisthesis. Dr. Hurford diagnosed cervical and lumbar strains related to the 2012 and 2014 accidents. She felt Petitioner had no functional or neurological deficits and kept Petitioner on full duty work.

On 8/22/16, Petitioner returned to Dr. Raskas and reported a third injury occurring in February 2016. She stated she fell onto her left shoulder and left side and has had increased low back pain, with occasional radiating symptoms in the right thigh. She felt her cervical spine and

low back were definitely worse since the fall. She reported difficulty using her left arm since the fall. She had neck pain radiating into her left shoulder and sometimes down to her hand. Cervical x-rays were normal for Petitioner's age, with some minor disc space degeneration at C5-6, with no foraminal stenosis. Dr. Raskas diagnosed lumbar back pain, lumbar spondylolisthesis, cervical radiculopathy, and left shoulder impingement syndrome. He felt Petitioner suffered an aggravation of her underlying cervical and lumbar conditions, as well as a new shoulder injury. He felt the need for this treatment was due to a combination of the prior work injuries and the 2016 injury.

On 9/14/16, Petitioner underwent MRIs of her cervical spine and left shoulder. (PX3) The cervical MRI revealed mild disc bulges without stenosis. The left shoulder MRI revealed a small partial thickness tear of the supraspinatus tendon in a background of tendinopathy, as well as osteoarthritis and hypertrophy resulting in myotendinous impingement and stenosis, with suggestion of bursitis. On 10/18/16, Dr. Raskas noted Petitioner's low back pain radiating down her left leg. He noted the shoulder MRI findings accounted for her left arm pain. He did not find any foraminal stenosis in the neck to explain her upper extremity symptoms. Dr. Raskas diagnosed lumbar spondylolisthesis, lumbar radiculopathy, and shoulder impingement.

On 11/28/16, Petitioner was examined by Dr. Peter Mirkin for her cervical and lumbar conditions pursuant to Section 12 of the Act. (RX2-F) Dr. Mirkin noted Petitioner's complaints of left arm pain radiating from her shoulder into the left hand occasionally, as well as low back pain without radiculopathy. Petitioner reported the three prior injuries, stating she injured her neck, low back, and left shoulder in 2012, re-aggravated her low back in 2014, and injured her left arm and low back in 2016 causing occasional neck pain. Dr. Mirkin noted cervical x-rays revealed minimal spondylosis and the MRI dated 1/13/15 revealed degenerative disc bulging. Dr. Mirkin felt Petitioner had severe symptom magnification behavior. He noted Petitioner reported back pain since 2012 with no radicular symptoms, and there was no indication for surgery. He felt her examination was essentially normal, with normal cervical radiographic studies. Dr. Mirkin felt Petitioner could return to work without restrictions.

In a 5/5/17 work slip, Dr. Raskas allowed Petitioner to return to work without restrictions at Petitioner's request, noting she had not been seen or treated in conjunction with this request. (RX4)

On 7/18/17, Petitioner returned to BarnesCare and reported a fourth injury on 7/15/17. (RX4) Petitioner reported exacerbation of her left upper extremity and mid and lower back pain on the left. She was diagnosed with low back pain and a left shoulder sprain. Petitioner was referred to physical therapy and kept on full duty work. On the intake form, Petitioner reported the injury did not happen from a single accident and explained the "last incident occurred [on] 2/20/16." She indicated she treated for this injury previously in 2016.

On 4/18/19, Petitioner presented to Multicare Specialists and reported another work accident that occurred on 4/16/19. Petitioner stated she was treating with chiropractor, Dr. Brooks. (RX8) Her chief complaint was neck pain, headaches, mid back pain, and low back pain radiating into her legs with numbness. She reported a prior surgical recommendation from Dr. Raskas, stating these had not been performed. X-rays showed reversed cervical curve, mild

degenerative changes in the left shoulder, and significant narrowing of the AC joint space in the right shoulder. Dr. Brooks diagnosed a cervical disc protrusion, thoracic strain, lumbar disc protrusion, and right and left shoulder rotator cuff strains. He took Petitioner off work.

On 4/22/19, Petitioner returned to Dr. Brooks complaining of neck, mid back, low back, and bilateral shoulder pain. (RX8) On 4/24/19, Petitioner reported ongoing pain in the neck, mid and low back, and soreness through both shoulders, right worse than left. She stated the window operation on the train was difficult and may be the cause of her shoulder pain.

On 4/23/19, Petitioner underwent a cervical MRI that revealed a small central-right protrusion at C2-3, central-right foraminal protrusions at C3-4 and C4-5, and a central-left foraminal protrusion at C5-6. (PX3) Mild foraminal stenosis was present on the right at C3-4 and C4-5 and on the left at C5-6, with no central canal stenosis at any level. There was a bulge noted at C6-7. On 5/9/19, Dr. Brooks noted Petitioner's spine was more problematic than her shoulders.

On 5/14/19, Petitioner presented to Dr. Lee and reported she felt an immediate sensation like her head was going to explode after the 4/16/19 incident. (RX10) She stated that shortly thereafter she had pain in the right pre-aural region into the mandibular region and down the right neck towards the scapula. She had increased low back pain and a new onset of symptoms, including numbness and tingling in the right upper extremity and hands. She reported a new onset of burning pain into the left and right lateral brachium and the left lateral thighs and gluteus medius tendon regions. Petitioner reported a significant increase in pain operating a train for eight hours. She reported ongoing activity-related neck symptoms after her 2012 accident that she rated 4/10, which increased to 7-10/10 in severity and was constant after her 2019. Petitioner reported low back pain from her 2015 injury (presumably referring to the 2014 incident). She stated her low back pain resolved prior to the 2016 incident. She stated she had an onset of right shoulder pain within the previous year, attributing it to difficulty opening windows on the train. She reported new symptoms including increased pain in the base of her neck into the shoulder blade area and a new onset of right shoulder pain, increased left shoulder symptoms, increased lumbosacral pain, and new left lower thoracic and flank pain. Dr. Lee reviewed MRIs dated 4/23/19 and 9/14/16. He felt the 2019 study showed significantly increased disc protrusions on the right. He felt the 2016 left shoulder MRI showed a small focal partial-thickness bursal-sided tear. Cervical x-rays showed no instability, patent neural foramina, and mild spondylosis at C6-7. Dr. Lee diagnosed herniations at C3-4, C4-5, and C5-6, and a protrusion at C6-7. He recommended continued therapy and kept Petitioner off work.

Petitioner followed up with Dr. Lee on 7/2/19 and reported ongoing neck and back pain with burning and stabbing symptoms. (RX10) She stated the neck pain went across her shoulders and rated her pain 8.5/10. Dr. Lee reviewed the MRI studies again and felt the 4/23/19 study showed protrusions at C3-4, C4-5, C5-6, and C6-7, as well as possible annular tearing. He diagnosed disc protrusions at all four levels and recommended injections at C4-5 and possibly C5-6. He kept Petitioner at full duty work but noted if vibration and side-to-side motion became too problematic, she would be placed on light duty.

On 7/18/19, Petitioner returned to Dr. Brooks for additional chiropractic care and physical therapy. (RX8) She reported significantly worsened pain since not coming in for treatment over the previous few months. She denied any numbness, tingling, or pain to the upper or lower extremities. Dr. Brooks assessed cervical and lumbar disc protrusions. On 8/29/19, Petitioner reported ongoing neck and back pain after walking more than 20 minutes. On 9/12/19, Petitioner reported she was working a lot and was quite miserable. She stated that operating the train for an hour straight caused increased pain in her neck and back. Dr. Brooks ordered more frequent treatment and filled out paperwork to allow Petitioner to miss work intermittently.

Dr. Brooks completed an application for sick leave on behalf of Petitioner on 9/26/19 for neck and back pain with radiating symptoms and bilateral rotator cuff tears. (RX8) Dr. Brooks recommended Petitioner be given the option for multiple breaks during the day.

Petitioner attended physical therapy at Multicare Specialists from 4/18/19 through 9/26/19. (RX8) She reported right-sided neck pain into her jaw at the 5/9/19 visit, which she stated had been present since the 4/16/19 accident. She reported continued neck and back issues. On 5/15/19, Petitioner reported low back pain, neck pain shooting into her right shoulder, and pain in her right jaw. On 9/26/19, Petitioner reported increased neck and back pain from working.

On 7/29/19, Dr. Mirkin performed a second evaluation pursuant to Section 12 of the Act. (RX2-G) Petitioner reported the 4/16/19 accident and stated she developed pain in her neck, back, and shoulders. She stated she was told she had torn discs and would need injections and possibly surgery. She denied radicular symptoms in her arms or legs but reported neck pain and bilateral shoulder pain. Dr. Mirkin noted Petitioner had had very similar complaints in the past. He reviewed her medical records and performed an examination. He noted cervical x-rays revealed minimal spondylosis, while shoulder x-rays revealed mild AC joint hypertrophy. Dr. Mirkin felt Petitioner had a history of prior shoulder, neck, and back symptomatology. He noted she had degenerative changes present and spondylolisthesis at L4-5. He felt Petitioner may have had a transient aggravation of her preexisting condition but noted surgery or epidural injections were not indicated in the absence of radicular symptoms. He felt Petitioner's persistent symptomatology was secondary to her preexisting condition. He opined Petitioner could work without restrictions.

On 10/8/19, Petitioner underwent an injection at C6-7 with a post-procedure pain score of 6-7/10.

Dr. Mirkin authored a supplemental report dated 4/15/20. (RX2, Ex. I) He reviewed MRI films dated 4/23/19 and 9/14/16. He felt the 4/23/19 cervical MRI revealed very minimal degenerative disease with no evidence of ruptured discs or nerve compression. He felt the 9/14/16 cervical MRI revealed minimal degenerative disease at multiple levels without nerve compression. Dr. Mirkin opined that the films substantiated Petitioner's condition as noted in his previous reports and the length of time it had been present.

On 12/22/20, Petitioner sought treatment at BarnesCare and reported she was attempting to close a window in the operator's cab when she injured her left shoulder. (PX1, p. 1) She stated

she had to call a mechanic who also had a hard time closing the window. She described dull, aching, and constant pain in her left shoulder. Petitioner reported a prior history of a left rotator cuff tear that was never repaired. Physical examination revealed tenderness with palpation of the supraspinatus muscle, decreased flexion and abduction at 100 which was guarded and painful, decreased internal and external rotation with pain, decreased strength, with positive Drop Arm test, Hawkins Kennedy test, and Empty Soup Can testing. Petitioner was diagnosed with "unspecified sprain of the left shoulder joint". NP-C Felicia Butler opined that Petitioner's accident was the prevailing factor in causing her condition and need for treatment. Petitioner was instructed not to use her left arm and was referred to physical therapy.

On 12/23/20, Petitioner began physical therapy with Dr. Brooks at MultiCare Specialists. (PX2, p. 87) Petitioner provided a consistent history of accident. She complained of left cervical and shoulder pain, with occasional radiculopathy in her left hand. Physical examination revealed tenderness to palpation to her cervical paraspinals and positive compression and distraction tests. Dr. Brooks suspected a left rotator cuff tear and cervical disc protrusion with radiculitis. He placed Petitioner off work and ordered MRIs of the cervical spine and left shoulder.

On 1/19/21, Petitioner followed up with BarnesCare. On examination, drop arm test was negative, but empty can testing remained positive. Petitioner reported unchanged symptoms.

On 2/9/21, Petitioner underwent MRIs of her left shoulder and cervical spine. (PX3) Radiologist Dr. Ruyle interpreted posterior rotator cuff tendinopathy with a glenohumeral sided partial tear with epicenter at the posterior rotator interval at the junction of the supraspinatus and infraspinatus tendon, with full-thickness tendinopathy. Dr. Ruyle interpreted central protrusions at C4-5, C5-6, and C6-7 with central annular tears/fissures at all three levels, as well as dural displacement at all three levels but no central canal or foraminal stenosis.

On 2/11/21, Dr. Brooks reviewed the MRI films and noted new annular tears not previously seen on the 4/23/19 cervical MRI. Petitioner was referred to Dr. Gornet. (PX2, p. 59-67)

Petitioner continued to treat with Multicare Specialists through 5/12/21. (RX8) At the 1/21/21 visit, Petitioner's left shoulder exhibited positive Hawkins test and rotator cuff weakness. On 2/11/21, Petitioner reported increased pain, and on examination, there was hypertonicity of both trapezius muscles and positive Valsalva test along with positive cervical compression and distraction, and positive empty can and full can tests for the shoulder along with positive impingement and Hawkins and rotator cuff weakness in all planes. Dr. Brooks assessed no significant change in her condition and referred her for a shoulder injection by Dr. Priebe and for cervical evaluation by Dr. Gornet. (PX3, p. 59-67) Petitioner received the left shoulder therapeutic injection and was assessed with left shoulder pain and rotator cuff tendonitis. (RX8). At the 2/25/21 visit, Dr. Brooks recommended an EMG/NCV of the upper extremities. At the 3/8/21 visit, Petitioner reported pain into her left shoulder and into both hands. She reported doing much better on 3/11/21, with some ongoing soreness in her neck and shoulder. She told the therapist she was slowly improving with ongoing pain and weakness. The therapist noted functional weakness in the left shoulder. At the 4/20/21 visit, on examination, Petitioner's left shoulder and neck had near full range of motion. Hawkins, cervical compression

and distraction were all negative. Mild shoulder weakness and nerve impingement was noted. At the 4/26/21 visit, negative impingement was noted. By the 5/12/21 visit, Petitioner reported ongoing left shoulder weakness and continued neck improvement. Dr. Brooks reiterated his desire for Petitioner to see Dr. Gornet for her neck, noting she has been dealing with the neck pain for so long.

On 5/12/21, Petitioner presented to Dr. Gornet and complained of neck and low back pain. (PX5) She described pain at the base of her neck with frequent headaches to both trapezius and shoulders, greater on the left, radiating to her hand with numbness and tingling. She reported improvement with therapy but felt she had plateaued. Petitioner reported a history of neck injury citing the 4/16/19 incident. She reported the 10/8/19 injection helped, and she had been working full duty until the 12/22/20 accident. Petitioner reported her symptoms were much worse in her left arm than anything she had had in the past. She also reported the 2016 incident that caused a left shoulder injury. On examination, motor function was mildly decreased in the left biceps and wrist, and sensation was decreased in a fingertip distribution to light touch. X-rays taken that date showed well-preserved disc height at all levels except slight change at C5-6. Dr. Gornet stated the 2/9/21 MRI revealed a small central protrusion at C4-5 and more significant protrusions at C5-6 and C6-7, as well as a left-sided protrusion and small extruded fragment at C5-6. Dr. Gornet compared the films to the 4/23/19 MRI and found increasing size of disc at C6-7 that was now extruding cephalad from the disc space. He also found that C5-6 appeared slightly larger but very similar. Dr. Gornet opined the 12/22/20 accident aggravated Petitioner's underlying condition and felt there was objective evidence to support increased herniation at C6-7. He recommended steroid injections at C6-7 and C5-6. He opined that Petitioner's neck symptoms, at least in their level of severity, were causally related to the 12/22/20 accident. He did not believe Petitioner's lumbar complaints were causally related to her 12/22/20 work accident. He imposed light duty restrictions of no lifting greater than 10 pounds and no overhead work. Dr. Gornet ordered steroid injections at C5-6 and C6-7 and instructed Petitioner to wean off of physical therapy over 3 to 4 weeks. (PX4, p. 10)

On 6/1/21, Petitioner was examined by Dr. Timothy Farley pursuant to Section 12 of the Act. (RX1) Dr. Farley examined Petitioner's left shoulder and noted her prior accidents of 2012, 2014, 2016, and 2017. He noted Petitioner's claimed injuries to her neck, back, left shoulder, left arm, left leg, and body as a whole in 2016, as well as claimed injury to her neck and left shoulder in 2014. He took a history that Petitioner did not really have any shoulder complaints since 2017 and she was in her normal state of health up until 12/22/20. Examination revealed positive Neer, Hawkins, Speed, and O'Brien testing, but negative in terms of where the pain was noted. Petitioner's pain was uniformly around the root of her neck and across her shoulder blades, and she had pain radiating down her arm to the hand. Dr. Farley reviewed the 2/9/21 shoulder MRI and found no symptomatic pathology, with findings being incidental and age appropriate. Dr. Farley opined Petitioner did not sustain injury to her left shoulder that was causally related to her 12/22/20 work accident. He felt treatment through evaluation of the 2/9/21 MRI was appropriate but felt any subsequent treatment was not required.

Petitioner underwent a left C6-7 ILESI on 6/8/21. (PX7) Post-procedure pain score was 0/10. She underwent a left C5-6 ILESI on 7/20/21 with a post-procedure pain score 0/10.

On 7/30/21, Petitioner was examined by Dr. R. Peter Mirkin pursuant to Section 12 of the Act. (RX2, Ex. B) Petitioner reported the mechanism of injury and the onset of pain in her left shoulder. She stated she did not know she hurt her neck. Petitioner reported current complaints of neck pain, numbness in her toes and fingers, headaches, left shoulder pain down her arm, and pain in her upper back and shoulders. Petitioner denied previous neck injury. Petitioner reported the injections offered no significant relief. Dr. Mirkin reviewed medical records from Multicare Specialists, the 2/9/21 MRI reports, Dr. Gornet's initial report, Dr. Farley's report, as well as Dr. Lee's deposition transcript in relation to his treatment. Physical examination revealed cervical motion was 90% normal, negative Spurling's test, full motion of the shoulders, elbows, and wrists, negative Hoffmann's test, and no signs of myelopathy. X-rays taken that day showed mild degenerative changes. Dr. Mirkin opined that the 2/9/21 cervical MRI was very similar to the previous report, but he did not have the films. Dr. Mirkin opined Petitioner had a relatively normal cervical examination with no significant radicular findings. He noted that Petitioner did not recall prior claimed neck injuries. He opined that Petitioner may have tangentially aggravated her pre-existing cervical condition as a result of the 12/22/20 incident but felt her examination was normal. He opined there was no indication of permanent or partial disability, and she could return to work without restrictions. He felt the proper treatment would have been an evaluation and a short course of physical therapy.

On 8/9/21, Petitioner reported to Dr. Gornet she had improvement in symptoms following the injections, but she continued to have significant neck and shoulder pain and headaches. (PX5, p. 6) Due to the increased size of the herniation at C6-7, the extruded fragment not seen on prior films, and the increase in size of the herniation at C5-6, Dr. Gornet recommended a two-level disc replacement at C5-6 and C6-7. (PX5, p. 6)

Petitioner returned to Dr. Gornet on 11/4/21 and reported ongoing pain and radicular symptoms. Dr. Gornet reviewed Dr. Mirkin's report and agreed that Petitioner had pre-existing changes in her cervical spine. Dr. Gornet reiterated his opinion the MRI studies showed a structural change as compared to the films dated 4/23/19 and continued to opine that Petitioner's condition was causally related to her work accident on 12/22/20.

On 8/26/21, Dr. Mirkin authored a report upon review of the 9/14/16, 4/23/19, and 2/9/21 cervical MRIs. (RX2, Ex. C) Dr. Mirkin noted he previously reviewed the 2016 and 2019 films. Regarding the 2/9/21 MRI, Dr. Mirkin interpreted multiple minimal spondylytic changes with no evidence of a herniated disc or significant neuroforaminal encroachment. He compared the 2021 study to the two prior studies and did not see any significant difference. He noted that radiologist Dr. Ruyle recorded "multiple disc protrusions" and felt the previous MRI interpreted by Dr. Ruyle indicated similar, if not identical findings. Dr. Mirkin did not appreciate any significant change on the MRI scans, nor signs of structural changes as a result of the 12/22/20 accident. He noted Dr. Ruyle found "no central canal or foraminal stenosis" and stated his agreement with that finding.

Dr. Mirkin authored another report dated 10/26/21 upon review of Dr. Gornet's records dated 5/12/21 and 8/9/21. (RX2, Ex. D) Dr. Mirkin that his own examination and Dr. Gornet's exam failed to reveal any significant neurologic abnormality. He noted Dr. Ruyle's interpretation of the 2/9/21 MRI as showing fissures and tears at C4-5, C5-6, and C6-7 but "no central

foraminal stenosis" and stated he was in complete agreement with Dr. Ruyle. Dr. Mirkin found no evidence of neural compression. He stated Dr. Gornet's records did not change his opinion and he did not see the supposed extruded fragment at C6-7 found by Dr. Gornet, stating further that Dr. Ruyle also did not describe anything as "an extruded fragment."

Dr. Matthew Gornet testified by way of deposition on 10/28/21. (PX6) Dr. Gornet is a board-certified orthopedic surgeon. Dr. Gornet noted Petitioner's complaints of neck pain at the base of her neck, frequent headaches, bilateral trapezius and shoulder pain, left shoulder pain radiating into her hand, and numbness and pain between her shoulder blades. Petitioner reported prior cervical issues, but stated her current problem began on 12/22/20. Dr. Gornet took a detailed history of accident where Petitioner described adjusting a mirror outside on the train. She made several attempts to push the window back up, but it was stuck, and felt a sudden shooting pain down her left arm into her hand.

Dr. Gornet compared the 2/9/21 and 4/23/19 cervical MRIs and noted changes at C5-6 and C6-7. Dr. Gornet testified that the 2019 MRI shows low-level protrusions, and the 2021 MRI shows an integral change which includes an extruded fragment at C6-7 and an increase in size of the herniation at C5-6. He opined these findings represented a new injury within the pre-existing pathology. The objective MRI findings were consistent with the mechanism of injury because the sudden mechanical load described by Petitioner was consistent with a cervical disc injury. Dr. Gornet explained that the temporary relief Petitioner received from the injections confirmed that her subjective complaints correlate with a disc injury at C5-6 and C6-7.

Dr. Gornet opined there was a qualitative difference in the characterization of Petitioner's symptoms and her current symptoms are more localized to the left side. He stated the films show an objective change in pathology which correlates with the physical examination and Petitioner's response to treatment. He opined that Petitioner is not expected to improve without surgery and absent surgery her current restrictions would become permanent.

Dr. Gornet testified he reviewed Dr. Lee's treatment notes and stated, while Petitioner clearly had neck pain in the past, her current symptoms following the 12/22/20 incident resulted in more left-sided symptoms whereas before it was straight neck pain and right-sided symptoms. Dr. Gornet testified he reviewed Dr. Mirkin's report and stated it did not change his opinions, stating the MRI films show a clear objective difference correlating with Petitioner's physical exam and change in work status and her response to treatment. Dr. Gornet testified that an MRI does not date a finding and that when comparing the 2/9/21 and 4/23/19 MRIs, he felt the changes were related to the 12/22/20 accident because that was the only history of intervening trauma. Dr. Gornet agreed Petitioner absolutely has pre-existing degeneration in her neck, though he felt it was not a lot of degeneration. When asked whether the changes he observed on the 2/9/21 MRI might be the result of progression of the degenerative condition, Dr. Gornet testified that Petitioner's history indicated an onset of complaints beginning on 12/22/20 with a clear mechanism of injury and a change in symptoms and work status, such that from a clinical standpoint there was no other plausible explanation than to associate the diagnostic changes with the "acute" event of 12/22/20. Dr. Gornet testified it would be pure speculation to say the supposed changes on MRI could have occurred without some event, stating there is no question Petitioner had pre-existing structural pathology at those levels. Dr. Gornet admitted he did not

review prior records from Multicare Specialists, Dr. Raskas, BarnesCare, Dr. Bashir, or Dr. Hurford. He stated that prior records from Dr. Raskas would not be relevant because he had the 4/23/19 MRI. Dr. Gornet testified he had the 2016, 2019, and 2020 MRI films and felt he did not need additional information and was very confident in his opinions.

Dr. Timothy Farley testified by way of deposition on 7/27/21. (RX1) Dr. Farley is a board-certified orthopedic surgeon. He testified he found no acute changes within Petitioner's shoulder on the 2/9/21 MRI. He was unsure at the time of his deposition whether he had reviewed prior MRI films of Petitioner's left shoulder. Dr. Farley testified that Petitioner had no specific symptomatic abnormalities within her left shoulder and felt all MRI findings were asymptomatic and incidental age-related changes and not work related. Dr. Farley opined that Petitioner's condition could be cervical in nature and stated he could not rule that out.

Dr. R. Peter Mirkin testified by way of deposition on 11/8/21. (RX2) Dr. Mirkin is a board-certified orthopedic surgeon. He testified that Petitioner described the 12/22/20 accident and stated she did not know if she hurt her neck in the event. Dr. Mirkin testified that Petitioner reported she never had a neck injury prior to 12/22/20. Dr. Mirkin testified he was aware Petitioner had five prior claims and felt she had a history of reporting injuries with minimal to no trauma. His examination revealed negative Spurling's, Hoffmann's, and hyperreflexia testing evidencing no nerve or spinal cord compression. He opined Petitioner had a relatively normal cervical and neurological examination with no evidence of radicular findings. Dr. Mirkin testified he reviewed the 2016, 2019, and 2021 cervical MRI films and did not see any significant abnormalities, other than mild degenerative bulges with no nerve compression. He testified that, while he would use different terminology than Dr. Ruyle in characterizing the pathology, he did agree with Dr. Ruyle there was no dural displacement or central or foraminal stenosis, meaning no nerve compression. Dr. Mirkin found no acute changes on MRI and stated Dr. Ruyle found a miniscule protrusion at C6-7 with no nerve compression. Dr. Mirkin testified the MRIs appeared identical upon comparison. He acknowledged that Dr. Ruyle's 2021 report listed a protrusion at C6-7 which was not listed on the 2019 report, and he acknowledged that the 2021 report showed a 2.5 mm protrusion at C5-6, while the 2019 report showed a 2-2.5 mm protrusion, but he also noted that the 2016 report by Dr. Wu listed mild bulges at both levels and stated that is how he would characterize the findings. He stated Dr. Wu did not record measurements of the bulges found in 2016. Dr. Mirkin stated Dr. Wu is Dr. Ruyle's partner. Dr. Mirkin testified that Dr. Ruyle did not mention any extruded fragment, and he stated he did not find anything close to an extruded fragment in his own review of the films. Dr. Mirkin testified he agreed with Dr. Ruyle there was no evidence of neural compression on MRI.

Dr. Mirkin testified that disc replacement surgery is not appropriate as Petitioner does not exhibit symptoms of nerve compression or irritation based on his examination or MRI. Dr. Mirkin testified that Petitioner's left shoulder pain radiating to her hand as recorded by Dr. Gornet could be radicular symptoms if substantiated by physical exam and radiographic findings. He stated the symptoms reported by Petitioner to him on 7/30/21 of symptoms in the left shoulder, arm, and hand, including stabbing and numbness, could be consistent with disc protrusions if they were compressing the nerve. Dr. Mirkin testified that disc replacement surgery is indicated for one or two level herniations where there is no significant facet arthritis, but he stated Petitioner did not have herniated discs and did have some degree of arthritis. He

testified that a disc replacement is directly contraindicated by facet degeneration and stated Petitioner did have some facet degeneration. He disagreed with the recommendation for disc replacements at C5-6 and C6-7, stating if Petitioner had a herniation or stenosis, the appropriate procedure would be an anterior fusion. Dr. Mirkin opined that Petitioner's shoulder symptoms were caused or aggravated by the 12/22/20 accident and that Petitioner may have tangentially aggravated her cervical condition as a result of the accident. He testified that a patient with shoulder symptoms could have neck pathology but stated the patient would have an abnormality pushing on the nerve. Dr. Mirkin testified that Petitioner exhibited a Waddell's sign when she complained of pain upon light touching of her head on examination.

CONCLUSIONS OF LAW

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

The Arbitrator finds that Petitioner has failed to prove her current condition of ill-being is causally related to the 12/22/20 accident. There is no dispute among the medical experts that Petitioner has a pre-existing cervical condition. The history of Petitioner's prior treatment and conditions related to her cervical spine are fully set forth in the Decision and Opinion on Review filed on March 7, 2022, wherein the Commission reversed the Arbitrator's conclusion that Petitioner's current condition of ill-being in her cervical spine was causally related to a work accident of 4/16/19. See Petitioner's Exhibit 8, *Rhonda Steele v. Metro Link*, Case No. 19-WC-014162. The Commission found that Petitioner had a significant preexisting condition of neck pain with radiating numbness and tingling into her hand in 2015 and 2016. The Commission found the opinions of Dr. Mirkin more persuasive than those of Dr. Lee, including Dr. Mirkin's opinion that Petitioner suffered a transient aggravation of her preexisting condition as a result of the April 2019 incident. The Commission found that Petitioner reached maximum medical improvement on 7/29/19, in relation to the 4/16/19 accident.

The Arbitrator notes that Petitioner testified at arbitration on 10/28/20 in Case No. 19-WC-014162, just two months prior to the subject accident of 12/22/20. At that hearing, Petitioner sought prospective medical treatment with Dr. Lee for her cervical spine. In the instant case, Petitioner testified that her neck pain never went away following her arbitration testimony on 10/28/20.

The evidence shows that Petitioner's alleged new onset of symptoms following the 12/22/20 accident was a transient aggravation of her preexisting condition. Although Petitioner testified that her post-accident pain was "totally different" from all her prior injuries, the records do not reflect new symptomology. Petitioner testified that after 12/2/20 she had frequent headaches and a pulling sensation in the back of her head she felt may be related to herniated discs. However, a Multicare Specialists note dated 4/18/19 shows reported headaches, and Dr. Lee's note of 5/14/19 reports an onset of a sensation like her head would "explode." Petitioner further testified that the radiating symptoms into her hand were new; however, as the Commission found and the medical records support, Petitioner had a history of neck pain radiating into her arm and hand, with numbness and tingling, in 2015 and 2016. Petitioner repeatedly described her current pain as a "wrench" and "twisting", using the exact same words to describe her cervical symptoms in her 2019 case. Petitioner's testimony that her current symptoms are different and more severe is not persuasive.

Although Dr. Gornet felt Petitioner's current symptoms were more left-sided compared to pre-accident symptoms which he felt were more right-sided, this is contrary to the medical evidence. There is a long history of radiating numbness and tingling down Petitioner's left arm to her hand dating back to 2012.

The MRI films support Dr. Mirkin's opinion that Petitioner suffered a transient aggravation of her preexisting cervical condition as a result of the 12/22/20 incident. Petitioner underwent cervical MRIs in 2016, 2019, and 2021. Dr. Mirkin reviewed all three films and found no evidence of a herniated disc or nerve compression. He believed there were no significant changes when comparing the films and he did not appreciate any structural changes as a result of the 12/22/20 accident. Dr. Mirkin explained that the findings of the radiologists, Dr. Ruyle and Dr. Wu, supported his own in that Dr. Ruyle did not find any nerve compression or extruding fragments and Dr. Wu found mild disc bulges. Dr. Mirkin acknowledged Dr. Ruyle's findings of fissures and tears at C4-5, C5-6, and C6-7, a protrusion at C6-7 on the 2021 report that was absent from the 2019 report, and a 2.5 mm protrusion at C5-6 on the 2021 report versus a 2-2.5 mm protrusion on the 2019 report, Dr. Mirkin opined the 2019 and 2021 MRIs were very similar if not identical. Dr. Mirkin pointed out Dr. Wu's findings in 2016 of mild bulges at both levels. Dr. Gornet's finding of increasing pathology at C6-7 and C5-6, including an "extruded fragment", simply does not correlate with the radiologists' reports as explained by Dr. Mirkin. Although Dr. Gornet testified that his MRI findings correlated with Petitioner's physical exam, change in work status, and response to treatment, and although Dr. Mirkin stated Petitioner's complaints of numbness could be consistent with disc protrusions if they were compressing the nerve, Dr. Mirkin's examination was relatively normal with no objective evidence of radicular findings or nerve compression. Moreover, while Dr. Brooks found positive compression and distraction testing follow the accident, this testing was later negative. Dr. Mirkin also found negative Spurling's, Hoffmann's, and hyperreflexia testing, which was consistent with MRI findings of no nerve compression or acute structural changes following the 12/22/20 accident.

The Arbitrator finds the opinions of Dr. Mirkin more persuasive than those of Dr. Gornet. Unlike Dr. Gornet, Dr. Mirkin had the advantage of evaluating Petitioner multiple times over several years, affording him unparalleled insight into Petitioner's preexisting condition and history. Furthermore, Dr. Gornet admitted he did not review Petitioner's prior treatment records, including those of Multicare Specialists, Dr. Raskas, BarnesCare, Dr. Bashir, and Dr. Hurford. Dr. Gornet attempted to defray the significance of these records by stating he only needed to review the pre- and post-accident MRI films to render an opinion as to causal connection. Petitioner's prior medical records show an unresolved preexisting cervical condition leading up to the 12/22/20 accident. Petitioner testified that her symptoms continued up through and after her testimony in the 2019 case on 10/28/20, for which she sought prospective medical treatment.

Based on the testimony and medical evidence, the Arbitrator finds that Petitioner's current condition of ill-being is not causally connected to the work accident of 12/22/20.

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?

Petitioner claims entitlement to outstanding medical expenses of $392.34 to Multicare Specialists, and $2,631.60 to Dr. Gornet. The Arbitrator notes that Petitioner reported to BarnesCare on the date of accident and alleged injury to her left shoulder. Physical therapy was recommended which she began on 12/23/20 at Multicare Specialists. Dr. Timothy Farley testified that although Petitioner's left shoulder condition was not causally related to her work accident of 12/22/20, he opined that the medical treatment through evaluation of the 2/9/21 left shoulder MRI was appropriate. On 2/11/21, Dr. Brooks reviewed the MRIs and referred Petitioner to Dr. Gornet for cervical evaluation. Therefore, pursuant to Dr. Farley's opinion, medical expense incurred at Multicare Specialists from 12/23/20 through 2/11/21 were reasonable and necessary.

Petitioner continued to undergo physical therapy through 7/30/21, at which time she was examined by Dr. R. Peter Mirkin. Dr. Mirkin opined that Petitioner may have tangentially aggravated her pre-existing cervical condition as a result of the 12/22/20 incident. He felt the proper treatment would have been an evaluation and a short course of physical therapy. Petitioner was not evaluated by Dr. Gornet until 5/12/21 who instructed her to wean off of physical therapy over a 3 to 4-week period. The records reflect that Petitioner immediately stopped physical therapy as the last medical bill is dated 5/12/21.

Therefore, Respondent shall pay medical expenses to Multicare Specialists for the period 12/23/20 through 5/12/21, and to Dr. Gornet for date of service 5/12/21. Respondent shall pay said expenses directly to the medical providers pursuant to the Illinois medical fee schedule, as provided in Section 8(a) and Section 8.2 of the Act. Respondent shall be given credit for any amounts previously paid under Section 8(a) of the Act for medical benefits.

Based on the Arbitrator's findings as to causal connection, Petitioner is not entitled to prospective medical care.

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

Arbitrator Linda J. Cantrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC003643
Case Name	INSURANCE COMPLIANCE v ACS CLEANING SERVICE
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0223
Number of Pages of Decision	11
Decision Issued By	Maria Portela, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	David Christensen
Respondent Attorney	Pro Se

DATE FILED: 5/15/2023

/s/Maria Portela, Commissioner

Signature

DISSENT

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
)
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS
DEPARTMENT OF INSURANCE
INSURANCE COMPLIANCE DEPARTMENT, Case # **21 WC 003643**

Petitioner

v. **Chicago, IL**

ANTONI WASILEWSKI, INDIVIDUALLY AND
D/B/A ACS CLEANING SERVICE,

Employers/Respondents

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner, the Illinois Department of Insurance, Insurance Compliance Department, brings this action, by and through the Office of the Illinois Attorney General, against the above captioned Respondent alleging violation of Section 4(a) of the Illinois Workers' Compensation Act for failure to procure mandatory workers' compensation insurance. Petitioner alleges that Respondent knowingly and willfully lacked workers' compensation insurance for 1,096 days. A hearing was held before Commissioner Maria Portela in Chicago, Illinois on February 22, 2023. Proper and timely notice was provided to Respondent. [Px01, Px02]. Petitioner was represented by the Office of the Attorney General. Respondent did not appear in person or through counsel. A record was made.

Petitioner seeks the maximum fine allowed under the Act, $500.00 per day for each of the 1,096 days, from January 1, 2010 to December 31, 2012, during which Respondent did business and failed to provide coverage for its employees, resulting in a total fine of $548,000.00. In addition, Petitioner seeks reimbursement for the liability incurred by the Injured Workers' Benefit Fund in claim 13WC017812 in the amount of $19,737.88. Petitioner seeks a total award of $567,737.88.

The Commission, after considering the record in its entirely and being advised of the applicable law, finds that Respondent knowingly and willfully violated Section 4(a) of the Act and Section 9100.100 of the Rules Governing Practice before the Illinois Workers' Compensation Commission (Rules) during the period in question. As a result, Respondent shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with Section 4(d) of the Act. For the following reasons, the Commission assesses a civil penalty against the Respondent under

Section 4 of the Act in the sum of $548,000.00 and orders Respondent to reimburse the Injured Workers' Benefit Fund in the amount of $19,737.88, for a total of $567,737.88.

I. Findings of Fact

Investigator Sidney T. Pennix personally served Respondent Antoni Wasilewski with a Notice of Non-Compliance Hearing on November 28, 2022 at 8015 O'Conner Dr., Apt 5D, River Grove, Illinois 60171 via substitute service on Jania Wasilewski, Respondent's wife. [Px02].

A Notice of Insurance Compliance Hearing was sent via certified mail [Px1]. The mailed Notice was sent to Respondent on January 12, 2023 via certified mail to 8015 O'Conner Drive, Apt 5D, River Grove, Illinois 60171[1]. Certified mail receipt shows the Notice was signed for by Jania Wasilewski on January 18, 2023. [Px1].

George Sweeney ("Sweeney"), Assistant Deputy Director of Workers' Compensation Compliance for the Illinois Department of Insurance, Insurance Compliance Department, testified at the hearing.

Sweeney identified Petitioner's Exhibit 3 as a Notice of Non-Compliance mailed to Respondent at 3818 Ruby St., #2w, Schiller Park, Illinois 60176[2] on December 17, 2016. The Notice states that the Commission's records indicated that Respondent was not in compliance with the requirements of the Section 4 of the Workers' Compensation Act for the period from July 20, 2005 to December 27, 2016. [Px03].

Sweeney identified Petitioner's Exhibit 4 as a Notice to Employer of Insurance Informal Conference mailed to Respondent at 3818 Ruby St., #2w, Schiller Park, Illinois 60176[3] on December 27, 2016. The Notice states that the Commission's records indicated that Respondent was not in compliance with the requirements of the Section 4 of the Act for the periods from July 20, 2005 to December 27, 2016. The informal hearing was set for January 31, 2017 and no one for Respondent appeared at that time. [Px04].

Sweeney testified that an investigation was performed to determine whether a corporate entity related to this matter existed. While an ACS Cleaning Service, Inc. was incorporated with the State of Illinois, the investigation determined that that entity had no relationship to the Respondent in this matter or the Petitioner in 13WC017812.

Sweeney also identified Petitioner's Exhibit 5, and the Commissioner takes judicial notice of, the Commission's Arbitration Decision in 13WC017812, Barbara Pastusiak v. Wasilewski, Anton "Tony" D/B/A ACS Cleaning Service and State Treasurer and Ex-Officio-Custodian of the Injured Workers Benefit Fund. A hearing was held on June 23, 2017 and Respondent did not appear. The Arbitrator issued a Decision on June 26, 2017. The Arbitrator concluded that the parties were operating under the Act as employee and employer. The Arbitrator also concluded that the petitioner described work bringing the respondent within the automatic coverage of Section 3 of

[1] The address at which personal service was previously obtained. [Px02]
[2] The address used by the Petitioner in 13WC017812. [Px05]
[3] The address used by the Petitioner in 13WC017812. [Px05]

the Act. The Arbitrator further concluded that respondent was uninsured on the accident date. The Arbitrator awarded the petitioner medical expenses, temporary total disability benefits, and permanent partial disability benefits. [Px05].

Sweeney further identified Petitioner's Exhibit 6 as the Commission's Case Docket report showing the IWBF disbursement related to 13WC017812. These documents state that the IWBF issued payment to petitioner in the amount of $19,737.88 [Px06].

Sweeney further testified that Petitioner requested insurance information regarding the Respondent from the National Council of Compliance Insurance (NCCI) in Boca Raton, Florida. [Px07, 08]. Petitioner's Exhibits 7 and 8 were true and accurate copies of the certified findings from the NCCI, the agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers, that the Respondent, either under his individual name or under the doing business as name, were not insured from July 20, 2005 to December 27, 2016. [Px07, 08].

Sweeney further testified that Petitioner requested insurance information regarding the Respondent from the Department of Self-Insurance. Petitioner's Exhibits 09 and 10, were true and accurate copies of the certified findings from the Department of Self-Insurance showing that Respondent, under his individual or doing business as name, was not certified as self-insured with the State of Illinois from July 20, 2005 to December 27, 2016 and that it was the type of document requested in the ordinary course of Petitioner's investigations. [Px09, 10].

Sweeney testified that based upon his investigation, Petitioner determined that Respondent was required to obtain workers' compensation insurance, had employees, did not have workers' compensation insurance and was not self-insured for the period for which it requests relief, from January 1, 2010 to December 31, 2012, the dates during which petitioner in 13WC017812, testified that she worked for Respondent. [Px05pgs 5-6].

II. Conclusions of Law

The Commission first considers whether Respondent was subject to the Act. Pursuant to Section 3 of the Act, certain employers and their employees are automatically subject to the provisions of the Act if they engage in specific businesses. The Respondent in this matter was engaged in a traveling cleaning services business and as such falls under Section 3(15): a business that made use of electric or gasoline powered equipment. 820 ILCS 305/3(15), [Px05 p5]. The Commission finds that Respondent's business falls within the automatic coverage sections of the Act pursuant to Section 3(15). The Commission takes judicial notice of the findings by the Arbitrator in this regard as contained in the Decision rendered in 13WC017812. [Px05]. Petitioner's testimony therein established that they were employed by Respondent and made use of gasoline powered vehicles. [Px05 pgs 5-6]. Accordingly, the Commission finds that the work Respondent engaged in automatically subjected them to the provisions of the Illinois Workers' Compensation Act.

Pursuant to Section 4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance. See 820 ILCS 305/4(a). Section

9100.90(a) of our Rules similarly provides that any employer subject to Section 3 of the Act shall ensure payment of compensation required by Section 4(a) of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code 9100.90(a). Section 9100.90(d)(3)(E) of our Rules similarly provides that a certification from a Commission employee "that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D). Section 9100.90(d)(3)(D) of our Rules provides that "[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D).

This Commission analyzes here the culpability of Respondent and the applicability of Section 4(a). Section 4 of the Act requires that all employers of at least one employee who come within the provisions of Section 3 of the Act, and any other employer who shall elect coverage under Section 2 of the Act, provide workers' compensation insurance for the protection of their employees. 820 ILCS 305/4.

In this case, Petitioner submitted a certified finding from the Department of Self-Insurance that no certificate of approval to self-insure was issued to Respondent for the period of July 20, 2005 to December 27, 2016. [Px09-10]. Petitioner also submitted the NCCI certification that Respondent did not file policy information showing proof of workers' compensation insurance for July 20, 2005 to December 27, 2016. [Px07, 08]. Sweeney testified that based upon his investigation, Petitioner determined that Respondent was subject to the Act, had employees and did not provide workers' compensation insurance for the period for which it requested relief, from January 1, 2010 to December 31, 2012. Respondent did not attend the hearing and thus presented no evidence indicating that they provided workers' compensation insurance of any kind during this period. Accordingly, the Commission concludes that Petitioner proved that Respondent failed to comply with the legal obligations imposed by section 4(a) of the Act from January 1, 2010 to December 31, 2012.

Regarding the issue of penalties for failure to maintain workers' compensation insurance coverage, Section 4(d) of the Act states:

> "Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section ***, the Commission may assess a civil penalty of up to $500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of $10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against

> the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty." 820 ILCS 305/4(d).

Section 9100.90(b) of the Rules similarly provides that penalties may be assessed for non-compliance after a reasonable notice and hearing. 50 Ill. Adm. Code 9100.90(b). Section 9100.90(c) of the Rules describes the proper notice of non-compliance to be served upon the employer and provides that the employer may request an informal conference to resolve the matter. 50 Ill. Adm. Code 9100.90(c). Section 9100.90(d) of the Rules describes the manner of notice and service for an insurance compliance hearing and the procedure for conducting the hearing. 50 Ill. Adm. Code 9100.90(d).

In this case, Petitioner submitted into evidence the Notices of Non-Compliance and Notices of Informal Conference mailed to Respondent in the form prescribed by our Rules. Petitioner also submitted the notices for the February 22, 2023, insurance compliance hearing, in the form prescribed by our Rules and sent to Respondent at 8015 O'Conner Dr., Apt 5D, River Grove, Illinois 60171, and an affidavit of personal service that Respondent was personally served on November 28, 2022 via substitute service on Jania Wasilewski, Respondent's wife, at 8015 O'Conner Dr., Apt 5D, River Grove, Illinois 60171. The insurance compliance hearing allowed the Commission to introduce evidence and testimony, and afforded Respondent the opportunity to do the same, had they chosen to attend personally or through counsel. Accordingly, the Commission concludes that reasonable and proper notice of hearing was provided to Respondent.

On the merits, the Commission has considered the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3) whether the employer had been made aware of his conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6)whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay the assessed amount. See, *e.g.*, *State of Illinois v. Murphy Container Service*, Ill. Workers' Comp. Comm'n, No. 03 INC 00155, 7 IWCC 1037 (Aug. 2, 2007).

The Commission finds that the period of time during which the Respondent violated the Act by failing to obtain workers' compensation insurance was significant. The Respondent failed to have insurance for over the 1,096 days, from at least January 1, 2010 to December 31, 2012. In the Arbitration Decision from 13WC017812, the claimant's unrebutted testimony and the Arbitrator's Findings established that Respondent had employees. In fact, one of Respondent's employees sustained a work injury. As Respondent failed to have workers' compensation insurance, the Injured Workers' Benefit Fund paid benefits to that petitioner as a result of the injury. Respondent were notified of their non-compliance under the Act by Petitioner and elected to not obtain workers' compensation insurance or to self-insure. Having reviewed the record, the

Commission finds no evidence as to Respondent's inability to secure and pay for workers' compensation coverage and no evidence of mitigating circumstances.

The Commission concludes that Respondent knowingly and willfully failed to comply with the Act. Based on the significant period of time that Respondent failed to comply with the Act, the Commission assesses a penalty of $548,000.00 against Respondent Antoni Wasilewski d/b/a ACS Cleaning Service. Pursuant to Section 9100.85(a)(1) of the Rules, the Commission is also entitled to obtain reimbursement from Respondent in the amount of $19,737.88, representing the compensation obligations paid by the Injured Workers' Benefit Fund in 13WC017812.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Antoni Wasilewski d/b/a ACS Cleaning Service, pay to the Illinois Workers' Compensation Commission the sum of $567,737.88 pursuant to Section 4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission; and (2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Department of Insurance
Attn: Insurance Compliance
122 South Michigan Avenue, 19th floor
Chicago, Illinois 60603

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

May 15, 2023

/s/ *Maria E. Portela*

/s/ *Amylee H. Simonovich*

SE/
R: 2/22/23
49

Concurring In Part, Dissenting In Part

I concur with my colleagues that the Commission is entitled to obtain reimbursement from Respondent in the amount of $19,737.88, representing the compensation obligations paid by the Injured Workers' Benefit Fund in 13WC017812.

I respectfully dissent from the majority opinion and Order issued by my colleagues in regard to the penalty imposed upon Respondent for non-compliance. While I agree that employers must be held accountable for failing to carry Workers' Compensation insurance required by law, I believe that the imposed maximum fine of $500.00 per day, for a total of $548,000.00, is

excessive. I contend that lower fines would be more appropriate, and my position is supported by Commission case law, public policy arguments and equitable grounds.

The majority opinion notes consideration of seven factors in assessing penalties against the uninsured employer, including: 1) the length of time in which the employer had been violating the Act; 2) the number of settled/pending workers' compensation claims against the employer; 3) whether the employer had been made aware of his conduct in the past; 4) the number of employees working for the employer; 5) the employer's ability to secure and pay for future (or recently obtained) workers' compensation insurance premiums; 6) whether the employer has shown any mitigating circumstances, such as a willingness to cooperate, comply and settle; and 7) the ability of the company to pay the assessed penalty. *State of Illinois v. Murphy Container Service, et a/.,* 2007 Ill. Wrk. Comp. LEXIS 1216, 7 IWCC 1037 (Ill. Workers' Comp. Bd. August 2, 2007).

In *Murphy,* the Commission determined that Respondents were involved in work which was extra hazardous under Section 3 of the Act, due to carriage by land and loading or unloading in connection therewith (where Respondent had at least two employees)(Section 3(3)), the operation of any warehouse or general or terminal storehouse (Section 3(4)), the involvement in handling junk and/or salvage (Section 3(8)) and the use of gasoline or other [*9] power driven equipment (Section 3(15)). *State of Illinois v. Murphy Container Service, et a/.,* 2007 Ill. Wrk. Comp. LEXIS 1216, *8-9.

Further, the employer had eight workers' compensation claims filed against them and as such, the Commission determined that Respondent was on notice of the fact it had no workers' compensation coverage for years. Although the Commission noted there was reference to a bankruptcy claim it was unclear whether the bankruptcy involved the Respondent company and/or the individuals named in the caption. Respondents failed to appear the hearing and the Commission imposed the maximum fine.

In the subject case, the Respondents also did not appear for the hearing. However, by not appearing an employer does not concede that they have the ability to secure and pay for future workers' compensation insurance and/or the ability to stay in business and/or the ability of the company to pay the assessed penalty. The majority finds no evidence as to Respondent's inability to secure and pay for workers' compensation coverage and no evidence of mitigating circumstances. I disagree. There is no information established as to the number of years that Respondent was in business or even the size of the business. The only thing established at the arbitration hearing was that there were four employees at the time of the Petitioner's injury without clarifying whether or not that included the Respondent and/or his wife. (PX05)

I take issue with the fact that the transcript and the exhibits that were admitted into evidence in case number 13 WC 017812 did not accompany the Arbitrator's Decision entered as an exhibit in the subject Non-Compliance hearing. (PX5) Absent from our record is the Arbitration Hearing Petitioner's Exhibit 11, the Notice of Arbitration Hearing in case number 13 WC 017812 which would confirm where the Notice was served to Respondent. (PX05, 4) However, the Arbitrator's Decision was sent to "Anton Wasilewski d/b/a ACS Cleaning Service, 3818 Ruby St. Suite 2 W, Schiller Park, IL 60176" as evidenced by the Notice of Arbitrator Decision (PX05, 1) I would, therefore, infer that the Notice of Hearing was also sent to that address. The Arbitrator's Decision

notes that the "Petitioner gave notice of the hearing to ACS Cleaning Service by U.S. certified mail. (Pet. Ex. 11) (PX05, 4) The workers' compensation Arbitration Hearing was held on June 23, 2017, for a November 19, 2012, accident date. (PX05, 2,3) (Note that the Arbitrator's Decision has conflicting dates of hearing, however, based upon the date the Decision was issued, I find the correct hearing date is June 23, 2017. (Px05 p2)) The Schiller Park address was also used in the December 27, 2016, Notice of Non-Compliance Informal Conference. (PX04)

The November 30, 2022, Attorney General Investigative Report confirms Respondent's then-current address was in River Grove. (PX02, 1) The majority notes that the recent Notice of Non-Compliance Hearing was personally served upon Respondent Antoni Wasilewski on November 28, 2022 at the River Grove address via substitute service on his wife, Jania Wasilewski. Further a Notice of Insurance Compliance Hearing was also sent to Respondent on January 12, 2023, via certified mail to the River Grove address. The River Grove address is different than the Schiller Park address used for notices at the time of the informal conference in 2016 and the arbitration hearing in 2017 and it is impossible to tell when Respondent moved. The only evidence of the move is the office of the Attorney General November 30, 2022, Investigative Report confirming the Respondent lives at a new address in River Grove. (PX02, 1) Thus, the Respondent may not have received notice of the informal conference or the Arbitration Hearing, even if he had notice of the accident by Petitioner, as the hearing was more than 4-1/2 years after the accident.

However, the Respondent did not appear for the subject Non-Compliance Hearing after Notice was served upon his wife on November 28, 2022, and after a second notice was sent by certified mail on January 18, 2023. Although the subject hearing occurred more than 10 years after Petitioner Pastusiak's accident, the Notice of Hearing states specifically that "failure to appear results in a finding that there has been a knowing and willful failure to insure your liability to pay compensation in accordance with Section 4(a) of the Workers' Compensation Act and an assessment of civil penalties under Section 4(d) of the Act." (Px01, 5)

The majority considered the period of time which the Respondent violated the Act and noted it was significant in the amount of 1,096 days from January 1, 2010, to December 31, 2012, during which Respondent did business and failed to provide coverage for its employees, which is a little over three years. That length of time compared to similar cases is relative, yet the majority characterized it as "significant." Further, there was no specific date identified in the Arbitration Decision of when Petitioner Pastusiak began working in 2010, thus the amount of days of non-compliance was essentially not established. Nonetheless, because the Respondent failed to appear at the hearing, the Petitioner seeks the maximum number of days without rebuttal.

Next, the majority considered the fact that there "were employees" when the Respondent did not have workers' compensation insurance. The Petitioner in case 13WC017812 established that there was two other females and one male driver working with her. There is nothing in the record confirming whether or not the male driver was, in fact, Respondent Wasilewski and whether or not his wife was one of the other female employees. Petitioner did not allege there were any other employees so even if the driver was not Wasilewski and there were two other unidentified female employees and an unknown driver, there is no evidence the business had any more than those four employees.

However, the majority further notes in arriving at their penalty amount, they gave consideration to Petitioner Pastusiak's workers' compensation claim that was ultimately paid by the Injured Workers' Benefit Fund, in part. (PX05, PX06) I agree that the accident and the amount paid by the Injured Workers' Benefit Fund is Respondent's liability. I disagree with the majority assigning the maximum $500 per day penalty, however, without more information, specifically without considering all of the *Murphy* factors. In this case, the majority gives little or no consideration to two of the *Murphy* factors, i.e. the employer's ability to secure and pay for future (or recently obtained) workers' compensation insurance premiums and the ability of the company to pay the assessed penalty. If Respondent was operating a small business, there is no evidence that after the accident that Respondent continued to operate any business, yet the majority assesses the maximum penalty of $500 per day, for a total penalty against Respondent Wasilewski individually and as a d/b/a without consideration of his economic status. If, after the accident, the Respondent stopped operating the business in 2010, this could be a mitigating circumstance. The majority conflates a no-show appearance and default judgement with the ability to secure and pay for workers' compensation coverage.

Although there was evidence of past non-compliance in this case, the unknown size of the business, the unknown financials of the individual or his d/b/a, and most importantly, whether or not the Respondent business is still operating more than ten years after the workers' compensation case was filed, are mitigating factors. Clearly the Commission has discretion in determining the amount of fines and penalties assessed and, as such, the penalty should be based on the specific circumstances of each case. In another insurance non-compliance case, where an injured worker was awarded benefits against the Respondent and the Injured Workers' Benefit Fund paid on the claim, and despite Petitioner requesting the maximum fine, the Commission ordered the Respondents to pay $100/per day for every day of noncompliance with the Act, $29,900.00 plus the amount of the premium saved by Respondent's non-compliance, $2.79 per day for 299 days, or $834.21; plus the amount paid out to the injured worker by the Injured Workers' Benefit Fund, $4,803.73, for a total fine of $35,537.94. (See *Illinois Workers' Compensation Commission, Insurance Compliance Division, v. David L. Greer, Individually & President, and JW Berry, Individually & Secretary, D/B/A Big D Enterprises, Inc., D/B/A Desperado's Lounge*, 2014 Ill. Wrk. Comp. LEXIS 294, 14 IWCC 295 (Ill. Workers' Comp. Bd. April 24, 2014)). This well-reasoned realistic fine seems more likely to be collected and without forcing the individual owners of small businesses to pay for their mistakes for a lifetime.

Thus, the Commission should apply a more equitable penalty in a default judgment where no Respondent is present to provide the requisite information to establish whether or not the Respondent is a small business and data about their financial situation unless there is independent proof of those matters. Since the Respondent in *Greer* had initially entered into a voluntary agreement to pay a fine but defaulted, clearly the Commission had additional information about his business. When that information is not available, the Commission should consider all of the *Murphy* factors when assessing the penalty, including 1) the length of time in which the employer had been violating the Act; 2) the number of settled/pending workers' compensation claims against the employer; 3) whether the employer had been made aware of his conduct in the past; 4) the number of employees working for the employer; 5) the employer's ability to secure and pay for future (or recently obtained) workers' compensation insurance premiums; 6) whether the employer

has shown any mitigating circumstances, such as a willingness to cooperate, comply and settle; and 7) the ability of the company to pay the assessed penalty.

Because the amount of the punitive fine imposed here is so excessively high, the fine imposed by the Commission upon this individual will likely prove to be uncollectible and an unpayable debt. Such an unpayable debt can often hang like an albatross around the neck of an individual driving him and/or his small business into insolvency and bankruptcy. This will have the deleterious effect of hamstringing his ability to provide food for his family or if he is still in business, jobs for his employees, services for his customers, and becoming a multiplier effect for the economy, and a burden upon taxpayers. While I am in no way advocating for insurance non-compliance and I agree whole-heartedly Respondent should be penalized for violation of the Act, the Commission should also be cautious assuming facts not in evidence while imposing excessively high punitive fines.

Thus, I dissent from the majority's imposition of a fine of $500.00 per day and I would assess a fine of $100.00 per day because the length of time of non-compliance was approximately three years and could be less; there was a single workers' compensation claim filed during the non-compliance period and Respondent was made aware that Petitioner sustained a work-related injury; there is evidence of only four employees employed by Respondent at the time Petitioner was injured; there is no evidence of employer's ability to pay for and secure coverage; there is some evidence of mitigating circumstances, i.e. a question as to the service of notice address at the time of the arbitration hearing, no evidence Respondent operated a business after Petitioner Pastusiak's accident, and no evidence of the employer's ability to pay the assessed amount. Considering the foregoing factors in light of the evidence presented in this case, I would assess a penalty in the amount of $100.00 per day, for 1,096 days, for a total penalty of $109,600.00 against Respondent Antoni Wasilewski, individually and d/b/a ACS Cleaning Service pursuant to Section 4(d) of the Act. Further, I agree with the majority that pursuant to Section 9100.85(a)(1) of the Rules, the Commission is also entitled to obtain reimbursement from Respondent in the amount of $19,737.88 representing the compensation obligations paid by the Injured Workers' Benefit Fund in 13 WC 017812.

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC003502
Case Name	Christopher Mix v. Clinton Community School District
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0224
Number of Pages of Decision	16
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Todd Strong
Respondent Attorney	Francis O'Byrne

DATE FILED: 5/15/2023

/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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify: Down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTOPHER MIX,

Petitioner,

vs. NO: 17 WC 3502

CLINTON CONSOLIDATED SCHOOL 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 accident, causation, temporary total disability benefits, medical expenses, and the nature and extent of Petitioner's permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Petitioner alleged an injury on November 11, 2016, when he was pulling out a scoreboard in a gym before a ball game. An MRI showed mild degenerative disc disease at L5-S1 with a tiny central disc herniation and annular tears slightly encroaching on the S1 nerve root sleeves. Neurosurgery determined that surgery was not indicated and physical therapy was recommended. Petitioner did not respond adequately to physical therapy and injections.

On May 22, 2017, Dr. Kube performed transforaminal lumbar interbody fusion L5-S1, placement of biochemical interbody device, spinal instrumentation, iliac crest bone marrow aspirate, use of allograft, and laminectomy/facetectomy/foraminotomy of the traversing and exiting roots on the left at L5-S1 for painful disc with annular tear and radiculopathy and spondylosis at L5-S1.

Dr. Kube noted that Petitioner was doing very well five weeks post compression/fusion. He had good strength, substantial pain reduction, had no focal motor or sensory deficits, and was ambulating well. X-rays showed implants were in good position. Dr. Kube released him to light duty and noted he was off narcotics. By November 28, 2017, Dr. Kube noted that Petitioner had done very nicely with activity as tolerated with occasional soreness with "bigger lifting from the floor." Dr. Kube thought he was at maximum medical improvement and did not need any restrictions. He would monitor his implants over time.

Petitioner testified that the surgery helped his back and his ability to return to work as a custodian but he still had tightness in his back when he tried to get up in the morning. After he got moving, it loosened up a little.

The Arbitrator found that Petitioner sustained his burden of proving he sustained a compensable work-related accident which caused the current condition of ill-being of his lumbar spine. He awarded Petitioner 54&3/7 weeks of temporary total disability benefits, medical expenses submitted into evidence, and awarded Petitioner 112.5 weeks of permanent partial disability benefits representing loss of 22.5% of the person-as-a-whole.

The Commission agrees with the Arbitrator's findings on the issues of accident, causation, medical expenses, and temporary total disability. Accordingly, the Commission affirms and adopts those aspects of the Decision of the Arbitrator.

On the issue of permanent partial disability, the Arbitrator awarded Petitioner 112 weeks of permanent partial disability benefits representing loss of 22.5% of the person-as-a-whole. In so doing, he gave moderate weight to the AMA impairment rating, he gave some weight to his return to work at his prior job, he gave significant weight to his age (30) as he "has many years remaining in the labor force," and he gave no weight to potential loss of earning potential. Finally, the Arbitrator gave significant weight to evidence of disability corroborated by the medical records noting that although Petitioner had a "great surgical result," he reported tightness in his lower back, especially in the morning."

The Commission finds the Arbitrator permanency award to be a little excessive. We note that the MRI showed rather limited pathology and the record establishes the results of Petitioner's surgery were excellent. While the Arbitrator gave no weight to the lack of any evidence of reduction in future earning potential, the Commission believes that that factor should work to somewhat reduce the permanency award. In addition, the Arbitrator gave significant weight to evidence of disability corroborated by the medical record. Petitioner testified about his current condition that the surgery helped his back and his ability to return to work as a custodian but he still had tightness in his back when he tried to get up in the morning. After he got moving, it loosened up a little. That appears to be relatively minor ongoing impairment. Therefore, the Commission reduces the permanency award from loss of 112.5 weeks (22.5% of the person-as-a-whole) to 100 weeks (20% of the person as a whole).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated March 18, 2022 is hereby modified as specified above and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $333.50 per week for a period of 54&3/7 weeks, that being the period of temporary total incapacity for work under §8(b).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the necessary and reasonable medical expenses submitted into evidence for medical expenses under §8(a), subject to the applicable medical fee schedule in §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner $300.00 per week for 100 weeks, because the injuries sustained caused the 20% loss of use to Petitioner's person-as-a-whole.

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

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

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.

MAY 15, 2023

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

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

DLS/dw
O-3/22/23
46

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

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

Christopher Mix
Employee/Petitioner

v.

Clinton CU School District 15
Employer/Respondent

Case # **17** WC **003502**

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 **Bloomington**, on **January 27, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [x] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [x] 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] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [x] TTD
L. [x] What is the nature and extent of the injury?
M. [x] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On **11/8/2016**, 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 $**26,000.00**; the average weekly wage was $**500.00**.

On the date of accident, Petitioner was **30** years of age, ***married*** with **0** dependent children.

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

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

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

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $333.50/week for a total of 54 3/7 weeks commencing November 8, 2016 through November 28, 2017, less the three days of attempted work on 11/28/2016, 11/29/2016 and 12/8/2016, as provided in Section 8(b) of the Act.

Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's Exhibit 13, pursuant to the medical fee schedule, as provided in Section 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 pay Petitioner permanent partial disability benefits of $300.00/week for 112.5 weeks, because the injuries sustained caused the 22.5% loss of use to 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.

Signature of Arbitrator

MARCH 18, 2022

FINDINGS OF FACT

Petitioner testified that he began working for the Respondent on April 20, 2015. He was hired as a janitorial custodian. (TX 15). He testified that he was hired by Drew Goebel, the principal of Respondent, and Rhonda Campbell, the supervisor of janitors. Rhonda Campbell is Petitioner's mother. (TX 16).

Prior to November 8, 2016, Petitioner had no injuries to his low back, and had received no medical treatment for his low back. Petitioner did have prior medical treatment for his left leg, following a left calf compression syndrome injury approximately 9 years before the work injury in question. (Tx 16, 17).

Petitioner testified that on November 8, 2016, he was setting up for a game and was pulling out a scoreboard that was stored in a closet, just off the gym. As he was pulling the scoreboard out of the closet, the scoreboard got caught on the threshold of the door. He jerked the scoreboard and heard a pop in his low back. He testified that this occurred at approximately 3:30 p.m. He continued to work the rest of his shift which ended at 10:30 p.m. Petitioner testified that after the incident he kept working, but his back got stiffer and stiffer. (TX 19-23)

Petitioner testified that he was in pain but completed his shift, then went home and told his wife about the incident, and then went to bed. When he woke up the next morning, he could hardly move. (TX 24-26)

Petitioner's wife, Shannon Mix, testified that her husband came home from work on November 8, 2016, and reported to her that he hurt his back setting up for the game. Ms. Mix testified that when Petitioner woke up the next morning, he asked her to take him to an urgent care in Decatur. (TX 119-120)

On November 9, 2016, Petitioner called his mother and direct supervisor, Rhonda Campbell. Petitioner told his mother that he was setting up for the basketball game and did something to his back, and that he was going to have it checked out at prompt care.

Rhonda Campbell gave Petitioner an accident report to fill out. (TX 51-54) He filled out the "Injured Worker's Report of Injury" stating that he injured his back while "pulling scoreboard out setting up for game and twisted wrong." (PX 2, p. 5)

On November 21, 2016 Rhonda Campbell filled out a "Supervisor's Report" indicating that Petitioner called in on "11-9-16" and was injured on November 8, 2016 between 3:30-4 p.m. when he was "setting up for basketball game. When pulling out score table lifted to turn + twisted wrong." Ms. Campbell indicated that Petitioner had back pain and numbness in leg when sitting or standing too long. (PX 2, p. 4). Ms. Campbell indicated that Petitioner turned in his accident report on "11-18."

On November 9, 2016, Petitioner received medical Treatment at the Decatur Memorial Group Prompt Care. The note from Decatur Medical Group (DMG) indicates that Petitioner had complaints of back pain. He works as a janitor, often times, bending over to do mopping or sweeping. He started having symptoms gradually two days ago, and denies "fall, injury, or direct blunt force." Petitioner was taken off work, prescribed medication, and referred for follow up with his primary care physician at OSF Medical Group in Clinton, Illinois. (PX 3)

Petitioner testified that he reported to DMG that he injured himself while pulling a scoreboard at work. Petitioner's wife, Shannon Mix, testified that she was present when Petitioner was examined by the nurse at DMG. She testified that Petitioner told the nurse that he was injured at work. (TX 120)

On November 14, 2016, Petitioner presented to Dr. Christopher Howse at OSF Medical Group. Dr. Howse performed a physical exam noting paraspinal muscle tenderness at L3/4, limited range of motion, and a positive

straight leg raise bi-laterally. The chart note indicates that Petitioner "could not recall any specific injuries." Dr. Howse prescribed an MRI and physical therapy (PT). (PX 4)

Petitioner testified that he disagrees with the history in the November 14, 2016, note that he "could not recall a specific injury." (TX 33-34)

On November 30, 2016, Petitioner reported for PT, and underwent an initial evaluation. In the initial evaluation note the "mechanism/history of injury" states "yanked on a caught machine – twisted – pain – [continued] to work – next day [significant] pain → prompt care → family MD Howse → MRI → Tsung (did not actually see MD) → PT." Under "Assessment" it notes that Petitioner presented secondary to a work injury. (PX 8)

On December 12, 2016, Petitioner followed up with Dr. Howse who noted that PT was minimally beneficial, and that Petitioner was being referred to a neurosurgeon based on the MRI findings. The MRI of Petitioner's lumbar spine revealed a tiny central disk herniation and an associated annular tear slightly encroaching upon the lateral recess of S1 nerve root sleeves. Dr. Howse noted that this was a workers compensation case "although it is unclear whether there was any specific injury that created these issues" and referred Petitioner to OSF occupational medicine. (PX 4).

On December 16, 2016, Petitioner presented to Dr. Mary Yee Chow and gave a history that he injured his back when pulling out a scoreboard across a threshold of a door in the gym at Clinton Jr. High School on November 8, 2016 and felt a pop in his lumbar/sacrum area. Dr. Yee Chow noted that Petitioner started feeling pain in both legs, as well as numbness, 2-3 hours after the incident. (PX 6) Petitioner was referred for an orthopedic consultation with Dr. Lawrence Li.

On January 31, 2017, Petitioner presented to Dr. Li. Petitioner provided a history that he injured his back at work on November 8, 2016. The note indicates he was pulling out a scoreboard, pulled wrong and heard a pop. Dr. Li notes that Petitioner had no prior history of back pain or other issues before this incident. (PX 7). Dr. Li later referred Petitioner to Dr. Kube. (TX 35-37)

On February 7, 2017, Petitioner presented to Dr. Richard Kube. The chart note indicates Petitioner reported a low back injury after pulling a scoreboard out at work when it got caught on a door locking strip. Dr. Kube prescribed a motion analysis scan and bi-lateral SI joint injections. The SI joint injections did not provide Petitioner with any relief. Dr. Kube prescribed a lumbar ESI at L5/S1. The lumbar ESI provided minor temporary relief. Dr. Kube prescribed a provocative discogram. The discogram provoked concordant pain at L5/S1, and Dr. Kube prescribed surgery. (PX 9)

On May 27, 2017, Dr. Kube performed a laminectomy, facetectomy, foraminotomy and lumbar interbody fusion at L5/S1. (PX 9)

On November 28, 2017, Dr. Kube placed Petitioner at MMI full duty, no restrictions. (PX 9)

Petitioner was off work, or on unaccommodated restrictions, per Dr. Kube, through November 28, 2017 with the exception of three dates that he attempted to return to work, November 26th, November 29th, and December 8th, of 2016.

Petitioner returned to work for Respondent, and is currently working as a custodian. Petitioner testified that he had a great surgical result. Although, he still has tightness in his back when he wakes up in the morning. Petitioner testified it is harder to get moving in the morning, and the low back injury makes him slower. (TX 39-41)

On cross-exam, Petitioner testified that he suffered prior injuries while participating in bull riding at rodeos. Petitioner rode bulls for about 10 years. He testified that he injured himself three times while riding bulls. The first injury occurred to his left leg, left calf. He suffered a crush injury to his leg. This happened back in 2007. In 2009 or 2010, he injured his left shoulder. At that time, he was kicked by a bull to the back side of his left shoulder. The third injury he suffered a tear to his meniscus of the right knee. On all three occasions, Petitioner required surgery. (TX 101-111)

On redirect examination, Petitioner testified he was not married at the time of his accident, on November 8, 2016. On re-cross and re-redirect examination of the Petitioner, he corrected his testimony that he was married at the time of his accident, even though his initial medical records incorrectly indicate that he was single. (TX 113-116)

Testimony of Rhonda Campbell

Rhonda Campbell, Petitioner's mother, and supervisor of janitors/custodians for Respondent testified that her son was hired on April 20, 2015. Petitioner was hired by Respondent's principal, Drew Goebel, and herself as supervisor of custodians. (TX 132-135) Ms. Campbell testified that on November 9, 2016, she received a phone call from her son, and he told her that he had hurt his back at work. She recalls that her son stated that he hurt his back pulling out the scoreboard. She testified the scoreboard is used for school sports games. She testified that there is a metal threshold plate in between the bottom of the door and the scoreboard. She has had problems with the threshold herself. When pulling out the scoreboard, you have to jerk it and push it over the threshold. (TX 132-139)

Ms. Campbell testified that she was Petitioner's immediate supervisor. She testified that received an off-work slip for her son from DMG Prompt Care following Petitioner's visit there on November 9, 2016. She notified Jeanette on November 21, 2016, that her son was injured at work. (TX 151-160) She provided Jeanette with a copy of the Injured Worker's Report of Injury on November 21, 2016. (PX 2, TX 139-143) Ms. Campbell testified that she initially completed the wrong incident form, and was notified by Jeanette that she needed to fill out a different form, which is the form that she submitted on November 21, 2016. (TX 169-170)

She testified that she was not aware of any other injuries that Petitioner suffered to his back. (TX 145-150)

Testimony of Drew Goebel

Drew Goebel testified that he was the principal at Respondent on the date of accident. His current title with the district is assistant superintendent. He has worked for the Clinton School District for 11 years. He was principal for five years. Mr. Goebbel never spoke to Petitioner regarding the incident and had no direct knowledge of the accident.

Mr. Goebel testified Rhonda Campbell is currently the supervisor of custodians at the Clinton School District, kindergarten through 8th grade. Mr. Goebel testified that he did not have any discussions with Rhonda Campbell regarding her son's injury, knew very little about the incident, and that this was typical as his only concern was that people were there to keep the school running so that children could learn. (TX 189)

Mr. Goebbel heard the testimony of Rhonda Campbell, and testified that he had no reason not to believe her. He testified that Rhonda Campbell was Petitioner's direct supervisor. (TX 226-230). Mr. Goebel testified that the

testimony at hearing was consistent with what his understanding of the accident was at the time it occurred based on the reports. (TX pp. 187-188, 193)

Evidence Deposition Testimony of Dr. Richard Kube

The parties deposed Petitioner's treating surgeon, Dr. Richard Kube, on September 6, 2018. (PX 11) Dr. Kube is a board-certified orthopedic surgeon and spine surgeon. (PX 11, p. 5) Dr. Kube testified that Petitioner provided him with a history of accident occurring in November 2016 when Petitioner was injured pulling out a scoreboard at work. The scoreboard got caught on a door locking strip. Later in the evening is when he started noticing pain, more towards the end of his shift. (PX 11, pp. 6,7)

Dr. Kube reviewed Petitioner's MRI and found a grade three L5/S1 disk without significant disk extrusion or herniation. (PX 11 p.10) The L5-S1 disc was positive for abnormalities. After Petitioner had failed a conservative course of care, including injections, Dr. Kube recommended a fusion surgery to take away pressure from the S1 nerve roots. Dr. Kube performed surgery on May 22, 2017, consisting of a transforaminal lumbar interbody fusion. (PX 11 pp.18-26)

Dr. Kube testified that the fusion surgery went well and confirmed his pre-operative diagnosis. (PX 11, p. 28)

Dr. Kube saw Petitioner on November 28, 2017, placed Petitioner at maximum medical improvement, and testified that he could return to work full duty. (PX 11 pp. 31-32)

Dr. Kube opined that Petitioner's accident was a competent mechanism of injury aggravating Petitioner's spondylolysis and the disc degeneration, causing the need for the treatment, including surgery, that he provided. (PX 11 pp. 35-38) In forming his opinions, Dr. Kube was aware Petitioner's rodeo history, was personally familiar with rodeo in his practice, and had no knowledge of any other injuries or prior treatment to Petitioner's lumbar spine. (PX 11 pp. 43-45)

Dr. Stephen Weiss reports dated May 3, 2017 & August 22, 2019

On May 3, 2017, at Respondent's request, Dr. Stephen Weiss examined the Petitioner pursuant to Section 12. Dr. Weiss is a board-certified orthopedic surgeon. Petitioner provided Dr. Weiss with a history of accident of pulling a heavy scoreboard and jerking from his right side and immediately feeling low back pain. Dr. Weiss reviewed the Petitioner's post-accident medical records and performed a physical exam. (RX 1)

Dr. Weiss noted the 11/14/16 chart note of Dr. Howse indicating that Petitioner did not recall a specific injury. On exam, Dr. Weiss found that Petitioner had limited range of motion in his lumbar spine, and noted that Petitioner had inconsistent straight leg raises when sitting and when supine, a positive Waddell sign. Dr. Weiss found Petitioner to be magnifying his pain complaints based on his Waddell sign findings. (RX 1)

Dr. Weiss noted that if the incident Petitioner described occurred, then he feels Petitioner suffered a lumbar strain, as Petitioner's radicular symptoms only occur when his back pain is very severe. Dr. Weiss noted that Petitioner reported his pain is made worse by bending, lifting, twisting, prolonged sitting, and prolonged car rides. (RX 1)

Given the 11/14/16 note indicating Petitioner did not recall a specific injury, Dr. Weiss found that Petitioner did not sustain a work injury, and that his complaints and need for treatment were related to an underlying degenerative condition. Dr. Weiss did not agree that surgery was necessary and opined that Petitioner required no treatment subsequent to December 12, 2016, and could return to work full duty as of that date. (RX 1)

On August 22, 2019, Dr. Weiss authored a second report, which included an AMA impairment rating. This report was based on a re-exam of the Petitioner on August 19, 2019. At that time, Petitioner reported that he was "significantly improved by the fusion (at least 95 percent). He is currently back to performing full work. He no longer takes any medication for his back. He states that he has back pain 'very rarely' and only if he tries to lift in the neighborhood of 100 pounds. He also states that he no longer has any pain running down either lower extremity." Based on his exam, interview and questionnaire, Dr. Weiss found Petitioner to have a 6% whole person impairment secondary to his L5/S1 fusion surgery. (RX 2)

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 November 8, 2016, he was setting up for a game and was pulling out a scoreboard that was stored in the closet, off the gym. As he was pulling the scoreboard out of a closet, the scoreboard got caught on the threshold of the door. He jerked the scoreboard and heard a pop in his low back. After the incident, Petitioner testified that he kept working until his shift ended, noticing that his back was getting stiffer throughout the rest of his shift, and then went home. When he awoke the next day, he could not move. (TX 19-26)

Petitioner testified that he called his mother and direct supervisor, Rhonda Campbell. Ms. Campbell was the supervisor of janitors for Respondent. Petitioner told his mother that he was setting up for the basketball game and did something to his back, and that he was going to an urgent care facility.

Petitioner promptly completed the "Injured Worker's Report of Injury" providing a history consistent with his testimony, that he injured his back while "pulling scoreboard out setting up for game and twisted wrong." (PX 2, p. 5) This is consistent with Petitioner's testimony.

Rhonda Campbell filled out a "Supervisor's Report" indicating that Petitioner called in on "11-9-16" and was injured at work on November 8, 2016, when he was "setting up for basketball game. When pulling out score table lifted to turn + twisted wrong." (PX 2, p. 4). At hearing, Rhonda Campbell testified that Christopher Mix hurt his back pulling the scoreboard. (TX p. 137). Rhonda Campbell testified that there was a metal thresh plate at the bottom of the door to get the scoreboard over and have had difficulties it. (TR.138). This is consistent with Petitioner's testimony.

On November 9, 2016, Petitioner received medical treatment at the DMG. The chart note indicates that Petitioner had complaints of back pain, was a janitor, and had to bend over to mop or sweep. The note indicated that he started having symptoms gradually two days ago, and denied a "fall, injury, or direct blunt force." (PX 3) While this note mentions Petitioner's work as a janitor, it denies a specific incident. This history is partially inconsistent with Petitioner's testimony, as it mentions some work duties, but denies a specific incident. However, Petitioner testified that he reported to DMG that he injured himself while pulling a scoreboard at work. Moreover, the Petitioner's wife, Shannon Mix, testified that the Petitioner told the nurse practitioner at DMG that he was injured at work. Ms. Mix's testimony corroborates the Petitioner's testimony. (TX 120).

On November 14, 2016, Petitioner presented to Dr. Christopher Howse at OSF Medical Group. The chart note indicates that Petitioner "could not recall any specific injuries." This history is inconsistent with Petitioner's testimony. However, Petitioner testified that he disagrees with the history in this note. (TX 33-34)

On November 30, 2016, Petitioner reported for an initial PT evaluation. In the initial evaluation note the "mechanism/history of injury" states "yanked on a caught machine – twisted – pain – [continued] to work – next day [significant] pain → prompt care → family MD Howse → MRI → Tsung (did not actually see MD) → PT." Under "Assessment" it notes that Petitioner presented secondary to a work injury. (PX 8). This history is consistent with Petitioner's testimony.

On December 12, 2016, Petitioner followed up with Dr. Howse who noted that this was now a workers compensation case "although it is unclear whether there was any specific injury that created these issues" and referred Petitioner to OSF occupational medicine. (PX 4). This history is inconsistent with Petitioner's testimony. However, Dr. Howse's note is after the initial PT evaluation which he prescribed. In this note, Dr. Howse indicates that PT was unhelpful, however, it appears Dr. Howse did not review the actual initial PT evaluation note by December 12, 2016, or he would have had the history of a specific incident as conveyed in the initial PT note.

On December 16, 2016, Petitioner presented to Dr. Mary Yee Chow and gave a history that he injured his back when pulling out a scoreboard across a threshold of a door in the gym at Clinton Jr. High School on November 8, 2016 and felt a pop in his lumbar/sacrum area. (PX 6). This history is consistent with Petitioner's testimony.

On January 31, 2017, Petitioner presented to Dr. Li. Petitioner provided a history that he injured his back at work on November 8, 2016. The note indicates he was pulling out a scoreboard, pulled wrong and heard a pop. Dr. Li notes that Petitioner had no prior history of back pain or other issues before this incident. (PX 7). This history is consistent with Petitioner's testimony.

On February 7, 2017, Petitioner presented to Dr. Richard Kube. The chart note indicates Petitioner reported a low back injury after pulling a scoreboard out at work when it got caught on a door locking strip. (PX 9) This history is consistent with Petitioner's testimony. Dr. Kube testified that Petitioner's accident as described to him was a competent mechanism of injury. (PX 11 pp. 35-38)

On May 3, 2017, Dr. Stephen Weiss examined the Petitioner, at Respondent's request, pursuant to Section 12. Petitioner provided Dr. Weiss with a history of accident of pulling a heavy scoreboard and jerking from his right side and immediately feeling low back pain. (RX 1) This history is consistent with Petitioner's testimony.

Respondent's witness, Drew Goebel had no direct contact with the Petitioner regarding the accident, however, he testified that he did not have any reason to not believe the testimony of Rhonda Campbell, Petitioner's supervisor. (TR.229). Mr. Goebel confirmed that Christopher Mix should have reported the accident to his direct supervisor, Rhonda Campbell, his mother. (TX 230).

While there are records from two initial medical providers that do not match the Petitioner's testimony, there are also two initial records from November 2016, the accident report and the physical therapy note, that are contemporaneous with those notes and are consistent with Petitioner's testimony. Moreover, Petitioner's wife provided credible and unrebutted testimony that Petitioner did provide a history of a work accident at his initial visit to DMG. Critically, all of the testimony at hearing supported the Petitioner's testimony. Finally, every medical history from December 16, 2016 on provides an accident history consistent with Petitioner's testimony.

The Arbitrator observed the Petitioner and found him to be sincere and credible. It is clear throughout the record that the Petitioner suffered a traumatic work injury on November 8, 2016. Crucially, the initial accident report completed by the Petitioner, the accident report completed by his supervisor Rhonda Campbell, the supporting testimony of Shannon Mix and Rhonda Campbell, the history provided to Petitioner's physical therapist in November 2016, and the mechanism of injury described to Dr. Kube which he relied upon in reaching his conclusions, all support the Petitioner's testimony that while he was pulling a scoreboard out of a closet to set up for a game, the scoreboard got caught, and when Petitioner jerked the scoreboard, he heard a pop in his low back, experiencing increasing pain that led to him seeking medical attention.

The Arbitrator finds that the Petitioner has proven by a preponderance of the evidence that on November 8, 2016, he sustained an accident that arose out of and in the course of his employment for Respondent.

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

Incorporating the above, the Arbitrator finds that the Petitioner's current condition of ill-being in his low back is causally related to his work accident on November 8, 2016.

There is no evidence in the record that Petitioner had any problems or medical care related to his low back prior to November 8, 2016. After November 8, 2016, Petitioner was taken off work by his treating providers due to the pain in his low back, failed a course of conservative care, and required an L5/S1 fusion in order to return to work full duty.

Respondent's examiner, Dr. Weiss noted that if the work accident Petitioner described occurred, then Petitioner suffered a lumbar strain, as Petitioner's radicular symptoms only occurred when his back pain is very severe, and he could return to work full duty December 12, 2016. In his first report Dr. Weiss noted that Petitioner reported his pain is made worse by bending, lifting, and twisting. The Arbitrator notes that these are movements that Petitioner must make in order to fulfill his job duties as a janitor, and none of Petitioner's treating providers released him to return to work while he was undergoing conservative care, as it failed to relieve his pain complaints.

While Dr. Weiss initially opined that Dr. Kube's surgical recommendation was unnecessary, when Petitioner was re-examined by him following surgery, Dr. Weiss was silent on the issue of medical necessity. However, Dr. Weiss noted in his second report that Petitioner was "significantly improved by the fusion (at least 95 percent). He is currently back to performing full work. He no longer takes any medication for his back. He states that he has back pain 'very rarely' and only if he tries to lift in the neighborhood of 100 pounds. He also states that he no longer has any pain running down either lower extremity."

Petitioner's treating surgeon, Dr. Kube, relied on a history of accident consistent with Petitioner's testimony, and testified that Petitioner's accident was a competent mechanism of injury that aggravated Petitioner's spondylolysis and disc degeneration, causing the need for all the treatment, including surgery, that he provided. (PX 11 pp. 35-38). Dr. Kube's diagnosis and recommended course of care was confirmed by Petitioner's excellent surgical result, as noted above in Dr. Weiss' second report.

The Arbitrator finds the opinions of Dr. Kube persuasive on the issue of causation. Dr. Kube's opinions are supported by the record and the successful surgical outcome. Petitioner had no issues or medical treatment related to his low back prior to November 8, 2016. As a consequence of his work accident, Petitioner was taken off work, or placed on restrictions, by his treating physicians. Dr. Kube's course of care, including the L5/S1

fusion surgery, cured and relieved Petitioner's pain complaints following his work accident, and Petitioner was then able to return to work full duty without the need for ongoing medication.

The Arbitrator finds that Petitioner's current condition of ill-being in his low back is causally related to his work accident on November 8, 2016.

Issue (E): Was timely notice of the accident given to the Respondent?

Incorporating the above, the Arbitrator notes 825 ILCS 305/6(c) which states in pertinent part "notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident."

Petitioner's Exhibit 2, which includes the Supervisor's Report completed and signed by the Petitioner's supervisor, Rhonda Campbell on November 21, 2016 reporting Petitioner's work-related accident to the Sandner Group. The Petitioner credibly testified that he notified his immediate supervisor, Rhonda Campbell via a phone call on November 9, 2016. Petitioner's testimony is supported by the Supervisor's Report and the testimony of Rhonda Campbell where she acknowledged that the Petitioner notified her of his alleged work-related injury on November 9, 2016.

Respondent's witness, Drew Goebel, who was the principal of the Respondent on the date of accident, testified that Petitioner should have reported the accident to his immediate supervisor, Rhonda Campbell, as he properly did, and that he had no reason to dispute the date of the accident report contained in Petitioner's Exhibit 2.

All the evidence in the record indicates that the Respondent received notice of the alleged accidental injury well within the 45-day requirement of the Act. The Arbitrator finds that the Petitioner gave proper notice of his accident occurring on November 8, 2016.

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

Incorporating the above, the record indicates that Petitioner was taken off work by his treating physicians, or given restrictions that were not accommodated by Respondent, from November 8, 2016, until his MMI/full duty release on November 28, 2017. The Petitioner testified that he made return to work efforts for three days during this period as follows: November 28, 2016, November 29, 2016 and December 8, 2016. The parties stipulated that the Petitioner would not be entitled to temporary total disability benefits for those three days.

The Arbitrator finds that Petitioner is entitled TTD benefits from November 8, 2016, until his MMI/full duty release on November 28, 2017, minus the three stipulated dates, at his TTD rate of $333.50.

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 Petitioner has submitted itemized medical billing statements and a medical bill summary sheet as part of Petitioner's Exhibit 13. The medical bills submitted by the Petitioner are as follows:

NAME OF PROVIDER	ACCOUNT NUMBER	DATE OF SERVICE	AMOUNT OF BILL
Airway Anesthesia	AIR.2036	4/3/17	$1,000.00
Airway Anesthesia	AIR.2036	5/22/17	$3,400.00
Fort Jesse Imaging	26888	11/14/16	$2,067.00
Decatur Memorial Hospital	31470629	11/9/16	$166.00
Decatur Memorial Hospital	31470626	11/9/16	$50.00
Live Bold, LLC	2017005KU	5/22/17	$33,839.00
Orthopedic & Shoulder Center	67279	1/31/17-10/24/17	$8,640.76
OSF Medical Group	PB1772737	9/8/16	$222.00
OSF Medical Group	1772737	11/14/17	$192.00
OSF Medical Group	1772737	12/12/16	$142.00
OSF Medical Group	400047086	12/29/16	$281.00
OSF Medical Group	1772737	2/15/17	$227.00
OSF Medical Group	1772737	3/28/17	$227.00
OSF Medical Group	1772737	5/5/17	$227.00
OSF St. Joseph Occupational Health	WC-39358	12/16/16-1/24/17	$385.04
Prairie Spine & Pain Institute	7586	2/7/17-5/26/19	$62,848.01
Prairie Suricare	7586	2/27/17-5/22/17	$169,489.42
Prescription Partners		1/31/17-4/5/17	$3,083.97
Warner Hospital & Health Services	HS00841999	11/30/16	$420.15
Warner Hospital & Health Services	HS00841999	12/2/16-12/23/16	$2,270.00
		TOTALS	**$289,177.35**

These medical bills total $289,177.35. The Arbitrator finds that all the above medical expenses were reasonable and necessary, and for medical care causally related to the Petitioner's work injury of November 8, 2016. The Respondent has not paid all appropriate charges for the above reasonable and necessary medical services.

Respondent shall pay the above-referenced medical expenses in the amount of $289,177.35 at the rate prescribed by the Illinois Workers' Compensation Commission fee schedule. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

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

In determining the nature and extent of Petitioner's injury, an analysis applying the five statutory factors set forth in ILCS 305/8.1(b)(b) is as follows:

1. The reported level of impairment pursuant to an AMA assessment:

Respondent submitted an AMA impairment report prepared by Dr. Stephen Weiss. Dr. Weiss found that Petitioner sustained a 6% whole body impairment secondary to his L5/S1 fusion. The Arbitrator gives moderate weight to this factor.

2. The occupation of the injured employee:

The Arbitrator notes that Petitioner is a janitor for the Respondent. Petitioner returned to his full duty occupation for the Respondent. The Arbitrator gives some weight to this factor.

3. The age of the employee at the time of the injury:

Petitioner was 30 years old on the date of accident. The Arbitrator gives significant weight this factor as Petitioner has many years remaining in the labor force.

4. The employee's future earning capacity.

The Arbitrator notes that no evidence was presented to reflect that Petitioner sustained a loss of earning capacity. The Arbitrator gives no weight to this factor.

5. Evidence of disability corroborated with the treating physicians' medical records:

Petitioner underwent an L5/S1 a laminectomy, facetectomy, foraminotomy and lumbar interbody fusion. Petitioner testified that he had a great surgical result. However, Petitioner reports tightness in his low back, especially in the morning. The Arbitrator gives significant weight to this factor.

Considering the above, the Arbitrator finds that the Petitioner has sustained a 22.5% loss of use to his person as a whole.

Issue (M): Should penalties and/or fees be imposed upon Respondent?

The Respondent relied on the chart notes of Dr. Howse, which initially indicated that no specific incident occurred, and opinions of Dr. Stephen Weiss who found that Petitioner did not sustain a work-related accident based on the initial notes of Dr. Howse.

The Arbitrator declines to impose penalties or fees.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC008015
Case Name	Esperanza Montenegro v. McDonald's Corporation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0225
Number of Pages of Decision	19
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Jack R Epstein
Respondent Attorney	Timothy Furman

DATE FILED: 5/17/2023

/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

Esperanza Montenegro,
Petitioner,

vs. NO: 16 WC 8015

McDonald's 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, medical, permanent disability, temporary disability and any and all issues raised at trial 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 25, 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 $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.

MAY 17, 2023
o5/10/23
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	16WC008015
Case Name	Esperanza Montenegro v. McDonald's Corporation
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Jack Epstein
Respondent Attorney	Timothy Furman

DATE FILED: 10/25/2022

THE INTEREST RATE FOR THE WEEK OF OCTOBER 25, 2022 4.39%

/s/ Ana Vazquez, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Esperanza Montenegro
Employee/Petitioner

v.

McDonald's Corporation
Employer/Respondent

Case # **16** WC **008015**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, on **June 22, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **February 4, 2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**18,988.84**; the average weekly wage was $**365.17**.

On the date of accident, Petitioner was **46** 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** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **$286.00/week** for **108 3/7 weeks**, commencing **February 5, 2016 through March 4, 2018**, as provided in Section 8(b) of the Act.

Respondent shall pay to Petitioner the reasonable and necessary medical services, as provided in Petitioner's Exhibits 2 and 4 through 11, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

Respondent shall pay Petitioner permanent partial disability benefits of **$286.00/week** for **25 weeks**, because the injuries sustained caused **5% loss of the person-as-a-whole**, as provided in Section 8(d)2 of the Act.

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

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

OCTOBER 25, 2022

Ana Vazquez

Signature of Arbitrator

PROCEDURAL HISTORY

This matter proceeded to arbitration on June 22, 2022 by agreement of the Parties. The issues in dispute are (1) accident, (2) causal connection, (3) unpaid medical bills, (4) temporary total disability benefits ("TTD"), and (5) the nature and extent of the injury. Arbitrator's Exhibit ("Ax") 1. All other issues have been stipulated.

FINDINGS OF FACT

Petitioner testified through an interpreter. Transcript of Evidence at Arbitration ("Tr.") at 12. Petitioner testified that she began working at Respondent in January 2013. Tr. at 12.

Duties

Petitioner's job duties included cooking in the kitchen, sweeping the parking lot, mopping and sweeping the lobby, and preparation. Tr. at 12. Petitioner also stocked the coolers with the meat and chicken that would come in. Tr. at 12. Petitioner testified that the boxes she would stock in the coolers were heavy and weighed between 40 and 60 pounds. Tr. at 13. Petitioner would move the heavy boxes of product from the restaurant floor, where they were unloaded, and put them in the coolers. Tr. at 14. Petitioner testified that it was difficult for one person to move the heavy boxes, and the boxes were moved by two people. Tr. at 14. Petitioner would lift the heavy meat boxes and put them in a cooler on a daily basis. Tr. at 15. Petitioner performed these job duties through February 4, 2016. Tr. at 14.

Petitioner's pre-accident condition

Petitioner testified that she never had any pain in her groin, back, or hip prior to February 4, 2016. Tr. at 15, 32. Petitioner testified that she never felt any pain until the day that she was hurt. Tr. at 16. Petitioner did not ever seek treatment for her groin, hip, or back prior to February 4, 2016. Tr. at 16.

Accident

Petitioner testified that she was hurt in the morning. Tr. at 16. She was preparing and she bent down to pull out a lettuce tray from the rear lower bottom of the cooler, and "that's where I felt a large pain in my groin." Tr. at 16, 34, 35. Petitioner testified that "[a]t the moment I bent down is when I felt the pain." Tr. at 35. Petitioner bent down, grabbed the lettuce tray, and felt the pain. Tr. at 36. The pain traveled from the groin to the lower back, to the hip, and down the leg. Tr. at 16. Petitioner testified that after her shift ended, she went home and took painkillers because she could not sit down from the pain that she was feeling. Tr. at 17-18. Petitioner testified that the pain was coming from the right side of the groin and in the back of the right hip and right lower back, down the right leg, to the knee, and all of the way down. Tr. at 18. Petitioner returned to work the next day, February 5, 2016, and she was able to report the accident to her manager, Ausra Kubiliute. Tr. at 18-19. The manager made a phone call to Concentra and Petitioner went to Concentra. Tr. at 19.

Medical treatment summary

Petitioner presented at Occupational Health Centers of Illinois on February 5, 2016. Px1 at 8. Petitioner presented with pain on the right side of her groin. Px1 at 8. Petitioner reported that she injured herself the day prior when she bent down to take out a tray of lettuce from the refrigerator. Px1 at 8. Petitioner also reported having pain when she walked, that she could not walk at a fast pace, and that she had pain while sitting and standing. Px1 at 8. The pain was noted to radiate into Petitioner's right thigh. Px1 at 8. Petitioner described the pain as sharp and stinging, and moderate in severity. Px1 at 8. On exam, forward flexion, internal rotation, and external rotation were noted as painful. Px1 at 9. Hip flexion, extension, and hip adduction were noted to be 4/5 on the right side. Px1 at 9. The FABER test and straight leg raise test were equivocal. Px1 at 9. Petitioner was assessed with a groin strain. Px1 at 10. Petitioner was prescribed cyclobenzaprine, naproxen, and physical therapy. Px1 at 10. Petitioner was allowed to return to work with restrictions, including lifting up to five pounds occasionally, pushing/pulling up to five pounds occasionally, changing positions periodically to relieve discomfort, weightbearing as tolerated, sitting work only, no walking on uneven terrain, no climbing ladders, and ground level work only. Px1 at 11.

Petitioner returned to Occupational Health Centers of Illinois on February 8, 2016. Px1 at 12. Petitioner's symptoms had not improved, and she still had pain and difficulty walking. Px1 at 12. Petitioner reported that the pain medication prescribed was not helping. Px1 at 12. The pain was noted to be located in Petitioner's right groin and radiating to the right thigh. Px1 at 12. Petitioner described the pain as sharp, burning, and stinging, and also described the symptoms as severe and worsening. Px1 at 12. On exam, Petitioner's right hip range of motion was noted to be limited and painful in all planes, and right hip flexion, extension, abduction, and adduction were all noted to be 2/5. Px1 at 13. Petitioner had positive FABER, impingement, and straight leg results, and a negative Thomas result. Px1 at 13. Petitioner's gait was noted to be wide-based and ataxic. Px1 at 14. Petitioner's assessment was unchanged. Px1 at 14. Petitioner was prescribed hydrocodone-acetaminophen, and an MRI of Petitioner's pelvis was ordered. Px1 at 14. Petitioner was placed off work. Px1 at 15. Petitioner followed up at Occupational Health Centers of Illinois on February 15, 2016. Px1 at 16. Petitioner's symptoms continued. Px1 at 16. On this date, it was noted that the MRI of Petitioner's pelvis demonstrated fibroid tumors without any other abnormality. Px1 at 18. Petitioner was referred to an orthopedic specialist, and physical therapy was prescribed. Px1 at 18.

On February 17, 2016, Petitioner presented at US MedGroup of Illinois, P.C. Px1 at 20. Petitioner was seen for a right hip consultation. Px1 at 20. It was noted that Petitioner had an injury on February 4, 2016, when she slipped on some sugar at work and felt a pop in her right hip. Px1 at 20. On exam, it was noted that Petitioner's right hip revealed a substantial amount of tenderness over the hip flexors and abductors and that Petitioner had pain with resisted hip flexion and adduction. Px1 at 20. There was no significant crepitation with internal or external rotation of Petitioner's hip and the straight leg raise test elicited a negative result. Px1 at 20. Petitioner's MRI was reviewed, and Dr. Christos Giannoulias noted that Petitioner did not have any evidence of intraarticular hip pathology, that there was no evidence of rupture of any tendon, and that Petitioner had multiple fibroid cysts unrelated to the work injury. Px1 at 20. Dr. Giannoulias's assessment was right hip and groin strain. Px1 at 20. He noted that such strains

could take a couple of months to recover from. Px1 at 20. He recommended anti-inflammatories and prescribed a Medrol Dosepak. Px1 at 20. Petitioner returned to Dr. Giannoulias on March 2, 2016. Px1 at 21. He noted that Petitioner seemed "a bit of a mess," and that Petitioner reported feeling significant stiffness in her right hip. Px1 at 21. Petitioner's physical examination revealed limitations in all ranges of motion, and pain with internal and external rotation. Px1 at 21. Dr. Giannoulias recommended a course of physical therapy, and he noted that Petitioner's MRI was clean, without any fracture or arthrosis. Px1 at 21.

Petitioner presented to Dr. Sajjad Murtaza at Physical Medicine and Rehabilitation on March 11, 2016. Px2 at 25. Petitioner reported that on February 4, 2016, while at work, she bent over to pick up a casserole filled with lettuce that was on the floor, and that she felt a pull, a pop, and pain in the low back when she stood up. Px2 at 25. Dr. Murtaza noted that Petitioner had pain in the anterior portion of the right lower extremity with radiation down the front of the thigh, and that she had significant weakness and difficulty walking. Px2 at 25. Petitioner was unable to tolerate therapy. Px2 at 25. On exam, Petitioner was unable to do a heel raise or toe raise on the right lower extremity due to weakness and had pain along the anterior portion of the right thigh. Px2 at 25. Weakness with hip flexion and knee extension, with decreased sensation to light touch was noted on the right side. Px2 at 25. Dr. Murtaza's assessment was low back pain, right lower extremity pain, and weakness secondary to a lifting accident. Px2 at 25. Dr. Murtaza recommended an MRI of the lumbar spine, and Petitioner was kept off work. Px2 at 25. Petitioner returned to Dr. Murtaza on March 18, 2016. Px2 at 28. On this date, Dr. Murtaza noted that Petitioner had been experiencing excruciating pain in the low back with radiation down the lower extremity since the February 4, 2016 accident, and that she also had a significant amount of pain in the right hip flexor and inguinal area. Px2 at 28. Dr. Murtaza noted that Petitioner's lumbar spine MRI was normal and remarkable. Px2 at 28. Dr. Murtaza ordered an MRI of Petitioner's right hip and an EMG of Petitioner's bilateral lower extremities. Px2 at 28.

Petitioner next saw Dr. Murtaza on April 8, 2016. Px2 at 32. Dr. Murtaza noted that the MRI of Petitioner's right hip was normal and remarkable and that the EMG showed an active right L5 and S1 radiculopathy. Px2 at 32. On exam, Dr. Murtaza noted that Petitioner had multiple spasms and tenderness with pain along the right iliopsoas and hip flexor. Px2 at 32. Petitioner had a positive FABER test. Px2 at 32. Strength and range of motion were noted to be intact, however, movement was resisted and was noted to have elicited a significant amount of pain. Px2 at 32. Dr. Murtaza's assessment was ongoing L5-S1 radiculitis. Px2 at 32. He recommended a diagnostic right L5 and S1 nerve block, and prescribed Topamax. Px2 at 32. Petitioner underwent a right-sided L5-S1 selective nerve root block on April 21, 2016. Px2 at 36. Petitioner followed up with Dr. Murtaza on April 28, 2016. Px2 at 37. Petitioner reported having difficulty sitting for a prolonged period and crossing her legs. Px2 at 37. On exam, Petitioner had muscle spasms along the spine, a positive FABER test, and pain along the SI joint. Px2 at 37. Dr. Murtaza's assessment was ongoing right hip and low back pain. Px2 at 37. He noted that the nerve block did not provide any relief. Px2 at 37. He further noted that based on the MRI and EMG results, he did not believe that any further treatment for the back was warranted at that time. Px2 at 37. He noted that Petitioner continued to have right hip pain, and that it was possibly the source of her pain. Px2 at 37. He noted that Petitioner continued to be off work. Px2 at 37, 38. Petitioner was discharged from pain management care and was referred to orthopedics for further evaluation. Px2 at 37.

On May 24, 2016, Petitioner saw Dr. Chandrasekhar Sompalli for right groin pain, as referred by Dr. Murtaza. Px2 at 42. Dr. Sompalli noted that Petitioner had an accident when she was picking up a tray from the bottom of the refrigeration, and while trying to stand up, she was not able to and had immediate pain. Px2 at 42. Dr. Sompalli further noted that Petitioner presented with right groin pain radiating down to the thigh and low back pain at the buttock radiating down the posterior thigh. Px2 at 42. Petitioner reported pain when bending to put her socks on. Px2at 42. Dr. Sompalli noted that the MRI of the right hip was unremarkable and that besides multiple fibroids throughout her uterus, the x-rays of the hip joints were unremarkable. Px2 at 42. Dr. Sompalli's assessment was unknown etiology of right groin and thigh pain. Px2 at 42. Dr. Sompalli noted that he told Petitioner that she needed to see a gynecologist for the fibroids[1], and that there was nothing that he could do for her since there was nothing orthopedically in her hip noted on MRI or x-ray. Px2 at 42. Petitioner was referred to a spine specialist. Px2 at 42.

On November 21, 2016, Petitioner saw Dr. Geoffrey Dixon, as referred by Dr. Sompalli. Dr. Dixon noted that Petitioner bent down to pick up a full tray of lettuce and on the way back up she noted pain in her right buttock, hip, groin, and thigh. Px2 at 46. Dr. Dixon also noted that Petitioner had been discharged by pain management and orthopedic surgery. Px2 at 46. On examination, Dr. Dixon noted normal strength in both lower extremities and that Petitioner did not have a positive straight leg raise. Px2 at 46. Dr. Dixon reviewed the MRI of the lumbar spine and noted that it did not demonstrate any significant pathology at any level. Px2 at 46. Dr. Dixon also reviewed the EMG of the lower extremities which was suggestive of some support for a mild acute radiculopathy at L4 and/or S1. Px2 at 46. Dr. Dixon recommended that Petitioner be evaluated by a general surgeon for the possibility of an inguinal hernia, as he did not see any surgical amenable pathology in her lumbar spine. Px2 at 46. Dr. Dixon made no changes to Petitioner's work restrictions. Px2 at 46.

On December 15, 2016, Petitioner saw Dr. Irvin Wiesman, as referred by Dr. Dixon. Px2 at 49. Dr. Wiesman examined Petitioner and assessed a muscular strain. Px2 at 49. There was no evidence of any hernia or bulge. Px2 at 49. He recommended Petitioner continue therapy and using NSAIDs, and he referred Petitioner back to Dr. Dixon. Px2 at 49. Petitioner was kept off work. Px2 at 50. Petitioner returned to Dr. Murtaza on January 9, 2017. Px2 at 52. Dr. Murtaza noted that Petitioner continued to complain of pain, and that Petitioner requested additional therapy. Px2 at 52. On physical exam, lateral hip pain was noted. Px2 at 52. Petitioner had a positive FABER test, had difficulty with heel and toe walking, and demonstrated weakness with pain with forward flexion to 45 degrees. Px2 at 52. Pain was also noted with extension and bilateral rotation of the lumbar spine. Px2 at 52. Dr. Murtaza prescribed one month of physical therapy, and placed Petitioner on light duty status with a sedentary work only restriction. Px2 at 52, 53. Petitioner next saw Dr. Murtaza on February 6, 2017. Px2 at 56. Petitioner complained of right buttock pain and difficulty sitting. Px2 at 56. Dr. Murtaza recommended a right ischial bursa injection. Px2 at 56. Petitioner's work restrictions were maintained. Px2 at 56. Petitioner underwent a right ischial bursa injection on February 16, 2017, and she was kept off work following the procedure. Px2 at 60, 61. Petitioner followed up with Dr. Murtaza on March 2,

[1] The Arbitrator notes that records within Px3 from Mercy Medical on Pulaski reflect treatment for the fibroids imaged on MRI, and also document that Petitioner's right hip condition is not related to the fibroids. Px3 at 185, 232, 104.

2017. Px2 at 62. She reported minimal relief following the right ischial bursa injection. Px2 at 62. Dr. Murtaza did not recommend any further interventional treatment, and he recommended that Petitioner continue with physical therapy. Px2 at 62. Petitioner was kept off work. Px2 at 63.

On March 30, 2017, Petitioner again saw Dr. Murtaza. Px2 at 67. An MRI with contrast was recommended to rule out a labral tear of the hip. Px2 at 67. Dr. Murtaza noted that he did not believe that the pain was spinally mediated. Px2 at 67. Dr. Murtaza recommended that Petitioner continue with physical therapy, and her cyclobenzaprine prescription was refilled. Px2 at 67. Petitioner was again referred to orthopedics. Px2 at 67. Petitioner was kept off work. Px2 at 67, 68. Petitioner returned to Dr. Murtaza on April 26, 2017 for follow up. Px2 at 70. Dr. Murtaza noted that the MRI with contrast revealed mild diffuse capsulitis with a very small joint effusion and diffuse chondral thinning of the right hip, with no evidence of a labral tear. Px2 at 70. Petitioner was referred to an orthopedist for further evaluation and noted that Petitioner may benefit from a right hip injection. Px2 70. Dr. Murtaza again noted that no further treatment was recommended for Petitioner's lumbar spine, as he did not believe that Petitioner's pain was coming from the lumbar region. Px2 at 70. Physical therapy was continued, and Petitioner's cyclobenzaprine was refilled. Px2 at 70. Petitioner was kept off work. Px2 at 70, 71.

Petitioner saw Dr. Thomas Poepping on May 2, 2017, as referred by Dr Murtaza. Px2 at 72. Dr. Poepping noted that Petitioner injured her right hip and back on February 4, 2016, while bending over to pick up a crate of lettuce and felt immediate right hip pain. Px2 at 72. Dr. Poepping also noted that Petitioner's pain was "somewhat" in her buttocks and in her right groin going down the right thigh. Px2 at 72. Dr. Poepping noted that the MRI of the right hip showed evidence of some capsulitis and diffuse chondromalacia of the right hip joint. Px2 at 72. Dr. Poepping's assessment was right hip capsulitis, right hip degenerative joint disease, and low back pain. Px2 at 72. Dr. Poepping noted that he felt that a significant amount of Petitioner's pain was coming from her hip. Px2 at 72. Dr. Poepping recommended a trial of a steroid injection in the right hip and referred Petitioner to Dr. Murtaza for this procedure. Px2 at 72. Dr. Poepping also noted that he did not think there was any surgical indication, and that if Petitioner failed to respond to the steroid injection, her only remaining option would be an FCE. Px2 at 72. Petitioner was kept off work. Px2 at 74. On May 25, 2017, Dr. Murtaza recommended that Petitioner proceed with a right hip intraarticular steroid injection under fluoroscopic guidance. Px2 at 75. Petitioner's cyclobenzaprine was refilled, and Petitioner was kept off work. Px2 at 75, 76. Dr. Murtaza noted that if Petitioner did not respond to the hip injection, an FCE would be ordered. Px2 at 75. Petitioner returned to Dr. Murtaza on June 22, 2017, after having undergone a right hip intraarticular injection on June 8, 2017. Px2 at 78. Petitioner reported increased pain for two days following the injection, then the pain returned to baseline. Px2 at 78. Dr. Murtaza did not recommend any further treatment. Px2 at 78. Petitioner was prescribed Robaxin 500 mg to take at night, and he recommended an FCE. Px2 at 78. Petitioner was kept off work. Px2 at 78, 79. Petitioner participated in approximately 74 sessions of physical therapy at Mid-City Rehabilitation from March 21, 2016 through June 23, 2017. Px5.

Petitioner underwent an FCE on July 11, 2017 at ATI Physical Therapy. [2] Px5 at 426. The FCE was noted to be conditionally valid, and as a result, the evaluator was unable to comment on Petitioner's capabilities. Px2 at 426. The evaluator was also unable to comment on Petitioner's demonstrated physical demand level, due to the conditionally valid nature of the assessment. Px2 at 426. It was noted that Petitioner had subjective pain reports in her right anterior/posterior hip and right quadriceps, as well as weakness in the right leg as pain increased in her right hip during the assessment. Px2 at 426. It was also noted that at the end of the assessment, Petitioner also reported that she had low back pain throughout the assessment. Px2 at 426. Petitioner reported that she was unable to complete the Chair to Floor task because she felt like her right hip would get stuck. Px2 at 426. On July 20, 2017, Dr. Murtaza discharged Petitioner from treatment per the FCE restrictions, and he noted that Petitioner was at MMI. Px2 at 80.

On December 22, 2017, Petitioner saw Dr. John Miller for evaluation of her right hip. Px13 at 577. Petitioner was referred to Dr. Miller by her insurance company. Tr. at 36-37. Petitioner reported that she injured her right hip while at work on January 4, 2016. Px13 at 577. Petitioner was bending down when she felt a pull in her groin and radicular pain shooting down her legs to the foot. Px13 at 577. Dr. Miller noted that he reviewed the MRI of the lumbar spine and right hip. Px13 at 578. He noted that the MRI of the lumbar spine demonstrated no degenerative disc disease or evidence of nerve compression. Px13 at 577. He noted that the MRI of the right hip demonstrated very mild signs of CAM impingement with a small area of cystic change in the femoral head neck junction. Px13 at 578. There was no discernable labral tear. Px13 at 578. There was mild thinning of the femoral head cartilage. Px13 at 578. X-rays of the lumbosacral spine obtained on December 22, 2017 demonstrated no malalignment or degenerative changes. Px13 at 578. X-rays of the pelvis and hip obtained on December 22, 2017 demonstrated very mild CAM impingement with no other osseous abnormalities. Dr. Miller's impressions were right sacral iliac pain, adductor tendinitis, and iliopsoas bursitis. Px13 at 578. Dr. Miller noted that he did not believe that the majority of Petitioner's pain was coming from within her femoral acetabular joint and that Petitioner's history and exam correlates with pain localized to the right SI joint. Px13 at 579. He noted that Petitioner did not demonstrate consistent pain that correlates with femoral acetabular impingement or intraarticular type of pathology. Px13 at 579. Dr. Miller recommended physical therapy focusing on the pelvis and hip musculature and referred Petitioner to Dr. Elbaridi for localized injections to the right SI joint and/or iliopsoas bursa. Px13 at 579.

Petitioner returned to Dr. Miller on February 19, 2018 and July 18, 2018. Px13 at 580, 581. On February 19, 2018, Dr. Miller noted that Petitioner continued with radicular type pain that ran from her low back and buttock down to below her knee. Px13 at 580. Petitioner reported that she had undergone an SI joint injection, which provided relief for only a few weeks. Px13 at 580. Dr. Miller again noted that he believed Petitioner's pain was not coming from inside the hip joint, but rather from her lumbosacral spine and pelvis. Px13 at 580. He recommended that Petitioner follow up with Dr. Eribaldi for further evaluation. Px13 at 580. Dr. Miller prescribed additional physical therapy. Px13 at 580. On July 18, 2018, Dr. Miller noted that Petitioner's

[2] The Arbitrator notes that records within Px5 from ATI Physical Therapy reflect treatment for an April 15, 2008 injury that is unrelated to the instant claim.

pain was unchanged from the February 19, 2018 visit. Px13 at 581. He also noted that Petitioner was working a different job that did not require frequent bending or lifting. Px13 at 581. Dr. Miller noted that Petitioner's pain correlated with SI joint pain on exam. Px13 at 581. He noted that he did not believe that a hip arthroplasty or hip replacement would benefit Petitioner. Px13 at 581. He recommended further evaluation by a pain specialist for possible SI joint treatment. Px13 at 581. At arbitration, Petitioner testified that she has not sought treatment since July 18, 2018. Tr. at 42.

TTD

Petitioner testified that Respondent would not accommodate her restrictions following the functional capacity assessment. Tr. at 26. Petitioner left work restriction related documents with a manager. Tr. at 26. Petitioner did not receive a call from Respondent after she left the documents. Tr. at 27. Petitioner returned one week later and that is when she was told "that they could not give me a job like that." Tr. at 27. Petitioner did not return to Respondent. Tr. at 27. Petitioner did not receive a call or message from Respondent indicating that it had work that accommodated Petitioner's restrictions. Tr. at 27-28. Petitioner looked for another job and was working at Cord Specialty Company, a cable company, at the time of arbitration. Tr. at 28-29, 32. Petitioner began working at Cord Specialty Company on March 5, 2018. Tr. at 32. Petitioner testified that her duties at Cord Specialty Company include testing, assembling, and checking cables. Tr. at 29. Petitioner is not required to lift heavy stuff. Tr. at 30. Petitioner can perform her job duties sitting or standing. Tr. at 30. Petitioner works at Cord Specialty Company full time, 40 hours per week and earns $14.25 per hour. Tr. at 42, 43. Petitioner earned $11.50 per hour while working at Respondent. Tr. at 43. Petitioner testified that she did not receive any TTD benefits from Respondent from February 4, 2016 through the date of arbitration. Tr. at 32.

Current condition

Petitioner testified that she still had pain in her right hip at the time of arbitration. Tr. at 30. Petitioner testified that she felt the same pain that she felt the day of the accident. Tr. at 31. Petitioner testified that the pain is in the inside of the right groin area, goes down the lower back, and down the exterior portion of her right leg and past her right knee and down towards the ankle. Tr. at 37-38-40. Petitioner testified that she participated in physical therapy and underwent four injections, "but nothing took the pain away." Tr. at 41-42. Petitioner testified that she is taking prescription pain medication for the work injury that is prescribed by her primary care physician. Tr. at 43.

Evidence Deposition Testimony of Dr. John Robert Miller

Dr. John Robert Miller testified by way of evidence deposition on November 29, 2018. Px12. Dr. Miller testified as to his education and credentials. Px12 at 500-505. At the time of his deposition, Dr. Miller was board eligible. Px12 at 505. His specialty is orthopedic surgery. Px12 at 505. Dr. Miller saw Petitioner on three occasions. Px12 at 513.

Dr. Miller testified that his first contact with Petitioner was on December 22, 2017. Px12 at 506. Dr. Miller testified that the relevant points of Petitioner's history was that she developed

hip pain after a bending event at work on January 4, 2016. Px12 at 508. Dr. Miller's differential diagnosis was right sacroiliac joint pain, adductor tendinitis, and iliopsoas bursitis. Px12 at 510. Dr. Miller testified that it is his opinion that it was more likely than not that Petitioner's pain was related to her injury at work. Px12 at 511. Dr. Miller referred Petitioner for physical therapy and requested that she see a pain specialist. Px12 at 512. Dr. Miller next saw Petitioner on February 19, 2018. Px12 at 512. Dr. Miller testified that Petitioner reported more of a radicular-type pain in her buttock and right leg at that time. Px12 at 513. Dr. Miller testified that he could not say that Petitioner's symptoms had worsened. Px12 at 513. Dr. Miller testified that it was his opinion that it is more likely than not that Petitioner was having changes in the type of pain that she was having. Px12 at 513. Dr. Miller continued with his treatment plan from the previous visit. Px12 at 514. Dr. Miller next saw Petitioner on July 18, 2018. Px12 at 515. He encouraged Petitioner to have continued follow up with the pain specialist for the radicular pain and the pain in her sacroiliac joint. Px12 at 516. Dr. Miller testified that Petitioner did not return for treatment after July 18, 2018. Px12 at 516. Dr. Miller testified that Petitioner's diagnosis, as of July 18, 2018, was right sacroiliac arthropathy and radiculopathy. Px12 at 517. Dr. Miller testified that it is his opinion that it is more likely than not that the injury either caused or aggravated the pain that Petitioner reported. Px12 at 517. Dr. Miller testified that it is his opinion that the treatment that he sent Petitioner for or suggested was reasonable, necessary, and related to the injury that Petitioner presented with. Px12 at 517-518. Dr. Miller testified that he wrote a letter, which he read into the record. Px12 at 519.

On cross examination, Dr. Miller testified that he was not provided with Petitioner's prior medical records. Px12 at 522. Dr. Miller reviewed the MRI images of the lumbar spine and the right hip. Px12 at 524. Dr. Miller, however, was not certain whether the MRI he reviewed was of the pelvis or the hip. Px12 at 524. He did not recall reviewing an EMG. Px12 at 524. Dr. Miller testified that it is his opinion that Petitioner's pain was not coming from inside her hip joint specifically, but rather it was extra-articular. Px12 at 529. He explained that it was coming from outside the hip joint, and in his opinion, it was coming from the sacroiliac joint. Px12 at 529, 534. Dr. Miller testified that the findings of mild CAM deformity with no discernable labral tears, referenced in his letter, were nonacute findings, meaning that they developed over a prolonged period of time. Px12 at 531. He could not say that they were particularly degenerative. Px12 at 531. Dr. Miller testified that these findings are commonly seen in Petitioner's age range. Px12 at 532. Dr. Miller testified that he would not believe that the bending incident caused Petitioner's CAM deformity. Px12 at 533. Dr. Miller testified that a sacroiliac joint problem can persist for multiple years. Px12 at 536. Dr. Miller did not review Dr. Karlsson's IME reports. Px12 at 537. Dr. Miller did not review records indicating that Petitioner had a history of shingles. Px12 at 537. Dr. Miller testified that it was possible that a history of shingles could contribute. Px12 at 537.

Evidence Deposition Testimony of Respondent's Section 12 Examiner, Dr. Troy Robert Karlsson

Dr. Troy Robert Karlsson testified by way of evidence deposition on January 28, 2019. Respondent's Exhibit ("Rx") 1. Dr. Miller testified as to his education and credentials as a board-certified orthopedic surgeon. Rx1 at 5-7. Dr. Karlsson examined Petitioner on July 26, 2016 and August 7, 2017. Rx1 at 8, 21.

Regarding his exam of July 26, 2016, Dr. Karlsson testified that Petitioner's history was taken with the assistance of an interpreter. Rx1 at 9. Dr. Karlsson testified that Petitioner reported that she was 47 years old and that she injured her right leg and buttock area while at work on February 4, 2016. Rx1 at 9. She reported that she was bending over to grab something from a refrigerator, and she felt a stretch and a hard pain in her leg. Rx1 at 9. Petitioner pointed to the groin area and said the pain was in her joint. Rx1 at 9. Dr. Karlsson testified that at the time of his exam, Petitioner reported that she had pain that radiated down the leg. Rx1 at 10. Petitioner pointed to the upper buttock below the iliac crest on the right, below the beltline, and then she rubbed her hand down the outer side of her thigh and said it went down to her shin between the knee and ankle. Rx1 at 10.

Dr. Karlsson performed a physical exam of Petitioner. Rx1 at 11. Dr. Karlsson testified that when walking, Petitioner had a shortened stance phase on the right leg and a limp, which was consistent with an antalgic limp. Rx1 at 12. Petitioner was nontender over the thoracic and lumbar spine. Rx1 at 12. Petitioner was nontender over the buttock area, except for an area of pain in the upper buttock approximately two inches below the iliac crest. Rx1 at 12. Petitioner experienced a pulling sensation in the buttock when bending forward to touch her knees. Rx1 at 12. While testing Petitioner's hip motion while on her back, he had difficulty getting Petitioner's hip up to 90 degrees and could only get Petitioner to about 45 degrees of flexion. Rx1 at 13. Petitioner reported that she was experiencing pain and was not able to tolerate any attempts at rotation of the hip or the leg. Rx1 at 13. Petitioner was mildly tender over the greater trochanter or outer aspect of both hips. Rx1 at 13. Petitioner had decreased strength to all muscle groups in the right lower extremity. Rx1 at 13.

Dr. Karlsson reviewed three cd discs with radiographic studies, as well as the reports of those studies. Rx1 at 13. The MRI of the lumbar spine and the MRIs of the pelvis and bilateral hips were normal. Rx1 at 14-17. Dr. Karlsson reviewed Petitioner's medical records, but did not review the EMG report. Rx1 at 17. Based on his exam and review of Petitioner's records, Dr. Karlsson's diagnosis was that Petitioner had pain without any physiologic explanation for both the hip and the spine. Rx1 at 17, 20. Dr. Karlsson testified that he felt that there was no causal connection between Petitioner's current complaints and her February 4, 2016 work injury. Rx1 at 18. Dr. Karlsson explained that his basis for his opinion was Petitioner's history of a low-energy injury where she was just bending down, and the physical exam which did not find any objective findings, the subjective complaints which did not fit with any known diagnosis, and the complete normalcy of the MRIs of the lumbar spine and hip. Rx1 at 19, 20. Dr. Karlsson testified that he felt that Petitioner's subjective complaints were not supported by objective findings. Rx1 at 19. Dr. Karlsson testified that he felt that it was reasonable for Petitioner to have undergone the MRIs to ensure that there was no pathology in her hips and back, but did not feel that any further treatment would be related to the work injury. Rx1 at 19. Dr. Karlsson did not feel that Petitioner needed any future treatment and that Petitioner had had fairly extensive treatment. Rx1 at 19-20. Dr. Karlsson testified that Petitioner needed no work restrictions, that she could be at full work duty, and that she was at MMI. Rx1 at 20. Dr. Karlsson agreed that if there was an L5-S1 radiculopathy, it would not result in Petitioner's exact pain complaints. Rx1 at 21. He explained that it would be more likely to give pain down into the foot and ankle where Petitioner was not reporting any problems. Rx1 at 20-21.

Regarding his exam of August 7, 2017, Dr. Karlsson testified that Petitioner reported no new injury and that she had undergone injections and physical therapy since her July 26, 2016 exam. Rx1 at 22-23. Dr. Karlsson again performed a physical exam, which showed an antalgic gait, non-tenderness over the thoracic and lumbar spine, and tenderness over the entire buttock on the right as well as the entire anterior groin and circumferentially on the right thigh down to just below the knee. Rx1 at 24. He reviewed the MRI of the right hip of April 6, 2017, in addition to the MRIs he had previously reviewed. Rx1 at 26. It showed some minimal bone spurs at both femoral heads to a symmetric degree. Rx1 at 26. There were no fractures, dislocations, or loose bodies, no signs of avascular necrosis or abnormal bone edema, and no tears in the labrum on either side. Rx1 at 26-27. The MRI was consistent with very mild symmetric arthritis to both hips. Rx1 at 27. Dr. Karlsson also reviewed additional medical records. Rx1 at 27. Dr. Karlsson testified that based on his August 7, 2017 exam and review of records and imaging, his diagnosis was unchanged. Rx1 at 27. Petitioner had subjective complaints of pain without any physiologic explanation for her complaints. Rx1 at 28. His causation opinion was unchanged. Rx1 at 28. Dr. Karlsson testified that there was no support between Petitioner's subjective complaints and objective findings, and that there were essentially no objective findings on exam. Rx1 at 28. Dr. Karlsson testified that Petitioner's pain presented in a non-radicular pattern, which was a sleeve that involved the entire circumference of her leg going from the buttock and groin area to below the knee. Rx1 at 28-29. Dr. Karlsson testified that he felt that Petitioner did not need any further treatment of any kind based on Petitioner having normal radiographic studies and Petitioner having been discharged from several specialists who had seen her. Rx1 at 29. Dr. Karlsson felt that Petitioner could work full duty without restrictions and that Petitioner needed no limitations. Rx1 at 29. Dr. Karlsson felt that Petitioner was at MMI the first time he had seen her and that she remained at MMI at his August 7, 2017 exam. Rx1 at 30.

Dr. Karlsson provided an AMA impairment rating as part of his August 7, 2017 exam. Rx1 at 31. Petitioner had a zero percent impairment of the lower extremity, which converted to a zero percent impairment of the whole person. Rx1 at 32.

Dr. Karlsson performed a records review and rendered a third report dated December 28, 2018. Rx1 at 33. Dr. Karlsson reviewed an ATI Physical Therapy functional capacity assessment from July 11, 2018, additional records from Dr. Murtaza and Dr. Miller, and Dr. Miller's evidence deposition. Rx1 at 34. Dr. Karlsson testified that as of December 28, 2018 none of his opinions rendered in his earlier reports had changed. Rx1 at 34-36, 37. Dr. Karlsson testified that he considered the functional capability assessment report in his assessment of Petitioner's ability to work. Rx1 at 36. He testified that within the report, some limitations in Petitioner's activities were listed, but the report stated that it was not a fully valid test and was shown as conditionally valid. Rx1 at 36. Dr. Karlsson testified that "it was not a test where you could say that any limitations they found would be necessarily appropriate." Rx1 at 36. Dr. Karlsson testified that he would not fully agree with Dr. Miller's recommendation for further treatment of the SI joint because the SI joint would not explain the constellation of symptoms that Petitioner had and her problem was not localized to the SI joint. Rx1 at 37. Dr. Karlsson testified that there were no objective findings throughout his history or review of Petitioner's records and imaging that there is an issue with Petitioner's SI joint. Rx1 at 37. Dr. Karlsson testified that his opinions would not change if Petitioner indicated that her pain started as she began to lift an item or that she was in the process of standing back up. Rx1 at 38.

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements of 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. *Board of Trustees v. Industrial Commission,* 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders her evidence worthy of belief. It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill. 2d 249, 253 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Where a claimant's testimony is inconsistent with 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).

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.

Issue C, whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

In order for a claimant to be entitled to benefits under the Act, a claimant must prove by a preponderance of the evidence that she suffered an injury that arose out of and in the course of her employment. *McAllister v. Ill. Workers' Comp. Comm'n, 2020 IL 124848*, ¶32 (2020) citing *Sisbro, Inc. v. Industrial Comm'n.*, 207 Ill. 2d 193, 203 (2003). The "in the course of" element, refers to the time, place, and circumstances under which the injury occurred. *Id.* at ¶34 citing *Scheffer Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366-67 (1977). An injury "arises out of" a claimant's employment if it has its origin in some risk connected with or incidental to the employment so as to create a causal connection between the employment and injury. *Id*. at ¶36 citing *Sisbro*, 207 Ill. 2d at 203.

Having considered all the evidence, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that she did sustain an accident that arose out of and in the course of her employment by Respondent on February 4, 2016. In support of her findings, the Arbitrator relies on Petitioner's credible testimony that (1) her duties included preparation, (2) on February 4, 2016, as she bent down to pull out a lettuce tray from the rear lower bottom of the cooler, she felt immediate pain, and (3) she had not experienced this pain prior to February 4, 2016. The

Arbitrator also relies on the treatment records in evidence, which document consistent treatment beginning the following day.

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 her employment was a causative factor in her 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). "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 accident of February 4, 2016 and her current groin and right hip conditions of ill-being. In so finding, the Arbitrator relies on the following: (1) treatment records of Occupational Health Centers of Illinois, (2) treatment records of Dr. Christos Giannoulias, (3) treatment records of Dr. Sajjad Murtaza, (4) treatment records of Dr. Chandrasekhar Sompalli, (5) treatment records of Dr. Geoffrey Dixon, (6) treatment records of Dr. Irvin Wiesman, (7) treatment records of Dr. Thomas Poepping, (8) treatment records and testimony of Dr. John Miller, (9) Petitioner's credible denial of any pre-accident physical issues with her groin or right hip, and (10) the fact that none of the records in evidence reflect any groin or right hip issues or treatment prior to February 4, 2016. The Arbitrator notes that the evidence demonstrates consistent complaints and continuous symptomology of the groin and right hip following the work accident and that Petitioner was able to work full duty and without restrictions immediately prior to the work accident.

The Arbitrator notes that while Petitioner underwent an extensive workup of her lumbar spine and right hip, the possibility that the source of Petitioner's pain was the SI joint was not addressed until her treatment with Dr. Miller. The Arbitrator notes that while Respondent's Section 12 examiner, Dr. Karlsson, opined that the SI joint would not explain all of Petitioner's reported symptoms, Petitioner reported that the SI injection provided her some relief for a few weeks. Accordingly, in resolving the issue of causation, the Arbitrator also finds a causal relationship between the work accident and the treatment Petitioner underwent with Dr. Miller and that Petitioner reached MMI on July 18, 2018, the last date she sought treatment.

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

Consistent with the Arbitrator's prior findings, the Arbitrator finds that the medical services that were provided to Petitioner were reasonable and necessary, and that Respondent has

not paid all appropriate charges. At arbitration, Petitioner offered medical bills in its Exhibits 2, 4, 5, 6, 7, 8, 9, 10, and 11. As the Arbitrator has found that Petitioner's treatment was reasonable and necessary, the Arbitrator further finds that all bills for treatment, as provided in Px2 and Px4 through Px11, are awarded and that Respondent is liable for payment of these bills, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

Issue K, whether Petitioner is entitled to TTD, the Arbitrator finds as follows:

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to TTD benefits. Petitioner claims that she is entitled to TTD benefits from February 4, 2016 through March 5, 2018. See Ax1, No. 8.

The evidence demonstrates that Petitioner worked her full shift on February 4, 2016 and returned to work on February 5, 2016. The evidence also demonstrates that Petitioner was sent to Occupational Health Centers of Illinois on February 5, 2016, where she was placed on restrictions, including sitting work only. Petitioner was then subsequently taken off work or placed on work restrictions throughout treatment. Petitioner credibly testified that Respondent did not accommodate her restrictions and that she did not return to work at Respondent. Petitioner, instead, looked for work elsewhere and began working at Cord Specialty Company on March 5, 2018. Respondent did not offer any evidence in rebuttal of Petitioner's testimony as to Respondent's failure to accommodate Petitioner's restrictions or her start date at Cord Specialty Company. Accordingly, the Arbitrator finds that Petitioner is entitled to TTD benefits from February 5, 2016 through March 4, 2018.

Issue L, as to the nature and extent of the injury, the Arbitrator finds as follows:

The Arbitrator notes that pursuant to Section 8.1(b) of the Act, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered includes: (i) the reported level of impairment pursuant to AMA; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records.

With regard to criterion (i), the Arbitrator notes that an AMA Impairment Rating of 0% lower extremity impairment, which converts to 0% impairment of the whole person was rendered by Dr, Karlsson, Respondent's Section 12 examiner. The Arbitrator gives this factor its appropriate weight.

With regard to criterion (ii) and criterion (iii), the Arbitrator notes that at the time of the accident, Petitioner was 46 years of age and was employed at Respondent, where her job duties included cooking, food preparation, sweeping and mopping the lobby and parking lot, and storing product in coolers after delivery. Following the February 4, 2016 accident, Respondent

did not accommodate Petitioner's restrictions and Petitioner did not return to work at Respondent. Petitioner subsequently began working at Cord Specialty Company on March 5, 2018. Petitioner's duties at Cord Specialty Company include testing, assembling, and checking cables. Petitioner can perform her job duties either sitting or standing. Petitioner was working full time at Cord Specialty Company at the time of arbitration. The Arbitrator gives these factors some weight.

With regard to criterion (iv), Petitioner testified that she earns $14.50 per hour at Cord Specialty Company and works 40 hours per week. Petitioner also testified that she earned $11.50 per hour while at Respondent. Petitioner has not demonstrated that her future earning capacity has been affected by the accident and there is no evidence of reduced earning capacity in the record. The Arbitrator gives less weight to this factor.

With regard to criterion (v), the medical records reflect that following the February 4, 2016 accident, Petitioner's groin and right hip symptoms were consistent and persistent. Petitioner participated in extensive physical therapy and underwent four injections. Petitioner credibly testified that she continued to experience the same pain on the date of arbitration, that she did at the time of the accident. The Arbitrator gives this factor its appropriate weight.

Upon consideration of the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 5% loss of the person as a whole, or 25 weeks, pursuant to Section 8(d)2 of the Act.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC002150
Case Name	Drew Flinn v. City of Peoria
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0226
Number of Pages of Decision	7
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Taylor Cascia

DATE FILED: 5/17/2023

/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

Drew Flinn,
Petitioner,

vs. NO: 22 WC 2150

City of Peoria,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of 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 November 2, 2022, is hereby affirmed and adopted.

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

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

There is no bond for the removal of this cause to the Circuit Court by Respondent pursuant to §19(f)(2) of the Act. 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.

MAY 17, 2023
o5/10/23
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	22WC002150
Case Name	Drew Flinn v. City of Peoria
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	5
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Kenneth M. Snodgrass, Jr.

DATE FILED: 11/2/2022

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 1, 2022 4.44%

/s/Kurt Carlson, 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
NATURE AND EXTENT ONLY

Drew Flinn
Employee/Petitioner

v.

City of Peoria
Employer/Respondent

Case # **22** WC **002150**

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 **Peoria**, on **September 28, 2022**. By stipulation, the parties agree:

On the date of accident, **06-02-20**, 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 $**75,712.00**, and the average weekly wage was $**1,456.00**.

At the time of injury, Petitioner was **33** years of age, ***married*** with **1** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

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**.

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 $**836.69**/week (max. rate) for a period of **1.52** weeks, as provided in Section **8(d) (2)** of the Act, because the injuries sustained caused **2% loss of use of the left thumb.**

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.

NOVEMBER 2, 2022

Kurt A. Carlson

Signature of Arbitrator

FINDINGS OF FACT

Testimony of Drew Flinn

The Petitioner testified that he began his employment with the City of Peoria as a police officer seven years ago. The Petitioner testified that on June 2, 2020 he was involved in a motor vehicle accident while working for the Respondent.

The Petitioner testified that he was responding to an emergency call when a car pulled out in front of him traveling roughly 30-35 mph. The Petitioner testified that he braced himself for the collision by grabbing the steering wheel and his airbags were deployed.

Medical Treatment

The Petitioner presented to OSF St. Francis Medical Center on June 2, 2020 with pain in his left hand. After a thorough exam, the Petitioner was diagnosed with a contusion to the left hand and a left thumb strain (Pet. Exh. 2).

The Petitioner presented to OSF Occupational Health on June 3, 2020. The Petitioner described the motor vehicle accident and presented with pain to his left hand, thumb and mid left back. The Petitioner was diagnosed with a left thumb sprain and an MRI was ordered. The Petitioner was placed on light duty work restrictions (Pet. Exh. 3).

The Petitioner presented to OSF St. Francis Medical Center on June 15, 2020 for an MRI. The MRI findings revealed negative for acute osseous or soft tissue abnormality (Pet. Exh. 2).

The Petitioner followed up at OSF Occupational Health on June 17, 2020 with a left hand splint. The Petitioner reported no pain and was released from care with a diagnosis of a sprain to the left metacarpal joint (Pet. Exh. 3).

NATURE AND EXTENT OF THE INJURY

With regard to the issue of nature and extent, the Arbitrator notes that pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent 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 treating medical records. Applying this standard to this claim, the Arbitrator makes the following findings listed below.

With regard to Sec. 8.1(b) (i); the Arbitrator notes that there was no impairment rating performed on the Petitioner in this case. This factor will not be considered.

With regard to Sec. 8.1(b) (ii); the occupation of the Petitioner, the Arbitrator notes that the Petitioner was employed by the Respondent as a police officer.

With regard to Sec. 8.1(b) (iii); the Arbitrator notes that the Petitioner was 33 years old at the time of the injury and has over 30+ years left of his work life.

With regard to Sec. 8.1(b) (iv); the Petitioner did not lose earnings as a result of the work injury.

With regard to Sec 8.1(b) (v); the Arbitrator notes that the Petitioner was diagnosed with a contusion to the left hand and a sprain to the metacarpal joint.

Based on the foregoing, the Arbitrator awards the Petitioner 2% loss of use of the left thumb.

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.

Kurt A. Carlson

Signature of Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC020248
Case Name	Insurance Compliance v. Rudy Sanchez
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0227
Number of Pages of Decision	11
Decision Issued By	Maria Portela, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	David Christensen
Respondent Attorney	

DATE FILED: 5/17/2023

/s/Maria Portela, Commissioner

Signature

DISSENT

/s/Kathryn Doerries, Commissioner

Signature

23IWCC0227

STATE OF ILLINOIS)
)
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS
DEPARTMENT OF INSURANCE
INSURANCE COMPLIANCE DEPARTMENT, Case # **19 WC 020248**

Petitioner

v. **Chicago, IL**

SANCHEZ TREE CARE INC. AND
RUDY SANCHEZ, INDIVIDUALLY AND AS OWNER

Employers/Respondents

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner, the Illinois Department of Insurance, Insurance Compliance Department, brings this action, by and through the Office of the Illinois Attorney General, against the above captioned Respondents alleging violation of Section 4(a) of the Illinois Workers' Compensation Act for failure to procure mandatory workers' compensation insurance. Petitioner alleges that Respondents knowingly and willfully lacked workers' compensation insurance for 1,214 days. A hearing was held before Commissioner Maria Portela in Chicago, Illinois on February 22, 2023. Proper and timely notice was provided to Respondents. [Px01, Px02]. Petitioner was represented by the Office of the Attorney General. Respondent did not appear in person or through counsel. A record was made.

Petitioner seeks the maximum fine allowed under the Act, $500.00 per day for each of the 1,214 days, from 7/20/05[1] to 11/14/08[2], during which Respondents did business and failed to provide coverage for its employees, resulting in a total fine of $607,000.00.

The Commission, after considering the record in its entirely and being advised of the applicable law, finds that Respondents knowingly and willfully violated Section 4(a) of the Act and Section 9100.100 of the Rules Governing Practice before the Illinois Workers' Compensation Commission (Rules) during the period in question. As a result, Respondent shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with Section 4(d) of the Act. For the following reasons, the Commission assesses a civil penalty against the Respondents under Section 4 of the Act in the sum of $607,000.00.

I. Findings of Fact

[1] The first date shown on the NCCI and Self Insurance Certification [Px07, 08]
[2] The date the corporation dissolved [Px04]

Investigator Thomas Symenski personally served Respondent Sanchez Tree Care, Inc. via service on its owner with a Notice of Non-Compliance Hearing on February 24, 2017 at 950 Hartwood Drive, Streamwood, Illinois 60107. [Px02p2].

Investigator Thomas Symenski personally served Respondent Rudy Sanchez with a Notice of Non-Compliance Hearing on February 24, 2017 at 950 Hartwood Drive, Streamwood, Illinois 60107. [Px02p1].

Notices of Insurance Compliance Hearing were sent via certified mail [Px1]. The mailed Notice was sent to Respondents on January 18, 2023 via certified mail to 950 Hartwood Drive, Streamwood, Illinois 60107[3]. The mailing was returned to sender as "unclaimed" after it was unclaimed on January 18, 2023 and February 4, 2023. [Px1].

George Sweeney ("Sweeney"), Assistant Deputy Director of Workers' Compensation Compliance for the Illinois Department of Insurance, Insurance Compliance Department, testified at the hearing.

Sweeney identified page 1 of Petitioner's Exhibit 3 as a Notice of Non-Compliance mailed to Respondents at 209 N. Oakwood, West Chicago, Illinois 60185[4] on May 22, 2015. The Notice states that the Commission's records indicated that Respondents were not in compliance with the requirements of Section 4(a) for the period of July 20, 2005 to May 22, 2015. [Px03].

Sweeney identified page 2 of Petitioner's Exhibit 3 as a Notice to Employer of Insurance Informal Conference mailed to Respondents at 209 N. Oakwood, West Chicago, Illinois 60185 on May 22, 2015. The Notice states that the Commission's records indicated that Respondents were not in compliance with the requirements of Section 4(a) for the periods from July 20, 2005 to May 22, 2015. [Px03].

Sweeney identified Petitioner's Exhibit 4 as the Secretary of State's File Detail Report for Respondents. The report states that Sanchez Tree Care Inc. was formed on June 21, 2002 and was dissolved on November 14, 2008[5]. The report states that Rudy Sanchez was the president and was located at 209 Oakwood Ave., West Chicago, Illinois 60185. The report states that Maria Guadalupe Delacruz was the registered agent and was located at 16 S. Locust St., Ste. 202, Aurora, Illinois 60506. [Px04]. In the regular course of his investigation, Petitioner also obtained the Articles of Incorporation, the Annual Reports and the Certificate of Dissolution related to Sanchez Tree Care, Inc. The records state that Rudy Sanchez was the president for the corporation and was located was located at 418 Kammes Court, West Chicago, Illinois 60186 and 209 N. Oakwood, West Chicago, Illinois 60185. The records state that Maria Guadalupe Delacruz was the registered agent for the corporation and was located at 16 S. Locust St., Ste. 202, Aurora, Illinois 60506. [Px5p1,3].

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[3] The address at which personal service was previously obtained. [Px02]
[4] The address provided by Respondent to the Secretary of State. [Px04 and Px05]
[5] This covers the period for which penalties are sought, from 7/20/05 to 11/14/08.

Sweeney also identified Petitioner's Exhibit 6 as the Commission's Arbitration Decision in 09WC048293, Daniel Mejia v. Sanchez Tree Care and the IWBF, which the Commissioner takes judicial notice of. In 09WC048293, the Arbitrator concluded that the parties were operating under the Act as employee and employer. The Arbitrator also concluded that the petitioner described work bringing the respondent within the automatic coverage of Section 3 of the Act. The Arbitrator further concluded that respondent was uninsured on the accident date of November 3, 2009. The Arbitrator awarded the petitioner medical expenses, temporary total disability benefits, and permanent partial disability benefits. [Px06].

Sweeney further testified that Petitioner requested insurance information regarding the Respondents from the National Council of Compliance Insurance (NCCI) in Boca Raton, Florida. [Px08]. The NCCI certified that it is the agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers and that Respondents were not insured from July 20, 2005 to May 22, 2015. [Px7].

Sweeney further testified that Petitioner's Exhibit 8, was a certified finding from the Department of Self-Insurance that Respondents were not certified as self-insured with the State of Illinois from July 20, 2005 to May 22, 2015[6] and that it was the type of document requested in the ordinary course of Petitioner's investigations. [Px08].

Sweeney testified that based upon his investigation, Petitioner determined that Respondents were required to obtain workers' compensation insurance, had employees, did not have workers' compensation insurance and were not self-insured for the period for which it requests relief, from July 20, 2005 to November 14, 2008.

II. Conclusions of Law

The Commission first considers whether Respondents are subject to the Act. Pursuant to Section 3 of the Act, certain employers and their employees are automatically subject to the provisions of the Act if they engage in specific businesses (820 ILCS 305/3). The Commission finds that Respondents' business falls within the automatic coverage sections of the Act pursuant to Section 3(8), a business which makes use of sharp-edged cutting tools. The Commission takes judicial notice of the findings by the Arbitrator in this regard as contained in the decision rendered in 09WC048293 and the stated business purpose set forth in the filings with the Secretary of State. [Px04 and 5]. Petitioner's testimony therein established that they were employed by Respondents as a landscaper and made use of cutting tools. [Px06p8]. Accordingly, the Commission finds that the work Respondents engaged in automatically subjected them to the provisions of the Illinois Workers' Compensation Act.

Pursuant to Section 4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance. See 820 ILCS 305/4(a). Section 9100.90(a) of our Rules similarly provides that any employer subject to Section 3 of the Act shall ensure payment of compensation required by Section 4(a) of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code

[6] This covers the period for which penalties are sought, from 7/20/05 to 11/14/08.

9100.90(a). Section 9100.90(d)(3)(E) of our Rules similarly provides that a certification from a Commission employee "that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D). Section 9100.90(d)(3)(D) of our Rules provides that "[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D).

This Commission analyzes here the culpability of Respondents and the applicability of Section 4(a). Section 4 of the Act requires that all employers of at least one employee who come within the provisions of Section 3 of the Act, and any other employer who shall elect coverage under Section 2 of the Act, provide workers' compensation insurance for the protection of their employees. 820 ILCS 305/4.

In this case, Petitioner submitted a certified finding from the Department of Self-Insurance that no certificate of approval to self-insure was issued to Respondents for the period of July 20, 2005 to May 22, 2015. [Px08]. Petitioner also submitted the NCCI certification that neither Respondent filed policy information showing proof of workers' compensation insurance from July 20, 2005 to May 22, 2015. [Px07]. Sweeney testified that based upon his investigation, Petitioner determined that Respondents were subject to the Act, had employees and did not provide workers' compensation insurance for the period for which it requested relief, from July 20, 2005 to November 14, 2008. Respondents did not attend the hearing and thus presented no evidence indicating that they provided workers' compensation insurance of any kind during this period. Accordingly, the Commission concludes that Petitioner proved that Respondents failed to comply with the legal obligations imposed by section 4(a) of the Act from July 20, 2005 to November 14, 2008.

Regarding the issue of penalties for failure to maintain workers' compensation insurance coverage, Section 4(d) of the Act states:

> "Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section ***, the Commission may assess a civil penalty of up to $500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of $10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty." 820 ILCS 305/4(d) (West 2004).

Section 9100.90(b) of the Rules similarly provides that penalties may be assessed for non-compliance after a reasonable notice and hearing. 50 Ill. Adm. Code 9100.90(b). Section 9100.90(c) of the Rules describes the proper notice of non-compliance to be served upon the employer and provides that the employer may request an informal conference to resolve the matter. 50 Ill. Adm. Code 9100.90(c). Section 9100.90(d) of the Rules describes the manner of notice and service for an insurance compliance hearing and the procedure for conducting the hearing. 50 Ill. Adm. Code 9100.90(d).

In this case, Petitioner submitted into evidence the Notice of Non-Compliance and Notice of Informal Conference mailed to Respondents in the form prescribed by our Rules. Petitioner also submitted the notices for the February 22, 2023 insurance compliance hearing, in the form prescribed by our Rules and sent to Respondents at 950 Hartwood Drive, Streamwood, Illinois 60185 and an affidavit of personal service signed by Thomas Symenski that Respondents were personally served on February 24, 2017 at 950 Hartwood Drive, Streamwood, Illinois 60185. The insurance compliance hearing allowed the Commission to introduce evidence and testimony, and afforded Respondents the opportunity to do the same, had any of them chosen to attend personally or through counsel. Accordingly, the Commission concludes that reasonable and proper notice and hearing was provided to Respondents.

On the merits, the Commission has considered the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3) whether the employer had been made aware of his conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6)whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay the assessed amount. See, *e.g.*, *State of Illinois v. Murphy Container Service*, Ill. Workers' Comp. Comm'n, No. 03 INC 00155, 7 IWCC 1037 (Aug. 2, 2007).

The Commission finds that the period of time during which the Respondents violated the Act by failing to obtain workers' compensation insurance was significant. The Respondents failed to have insurance for over the 1,214 days, from July 20, 2005 to November 14, 2008. In the Arbitration Decision from 09WC048293, the claimant's unrebutted testimony and the Arbitrator's Findings established that Respondents had employees. In fact, one of Respondents' employees sustained a work injury. As Respondents failed to have workers' compensation insurance, the Injured Workers' Benefit Fund disbursed benefits to that petitioner as a result of the injury. Respondents were notified of their non-compliance under the Act by Petitioner and elected to not obtain workers' compensation insurance. Having reviewed the record, the Commission finds no evidence as to Respondents' inability to secure and pay for workers' compensation coverage and no evidence of mitigating circumstances.

The Commission concludes that Respondents knowingly and willfully failed to comply with the Act. Based on the significant period of time that Respondents failed to comply with the Act, the Commission assesses a penalty of $607,000.00 against Respondents, Sanchez Tree Care Inc., and Rudy Sanchez, individually and as owner. Pursuant to Section 9100.85(a)(1) of the Rules, the Commission is also entitled to obtain reimbursement from Respondents in the amount of $607,000.00.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents, Sanchez Tree Care Inc., and Rudy Sanchez, individually and as owner, pay to the Illinois Workers' Compensation Commission the sum of $607,000.00 pursuant to Section 4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission; and (2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Department of Insurance
Attn: Insurance Compliance
122 South Michigan Avenue, 19th floor
Chicago, Illinois 60603

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

MAY 17, 2023 /s/ *Maria E. Portela*

SE/ /s/ *Amylee H. Simonovich*
R: 2/22/23
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Concurring In Part, Dissenting In Part

I concur with the majority opinion and Order issued by my colleagues in regard to assessing a penalty upon Respondent for insurance non-compliance; however, I dissent from the majority's determination on the amount of that penalty. The majority imposes a civil penalty of $500 per day, for a total of $607,000 in fines imposed on Respondent. That penalty far exceeds the standard $10,000 maximum penalty that can be imposed by a Department of Insurance investigator for non-compliance, pursuant to the Illinois Workers' Compensation Act (the "Act"). *ILCS 305/4(d).*

The Act does allow the Illinois Workers' Compensation Commission (the "Commission") discretion to impose higher fines under certain circumstances, but only if the employer is provided reasonable notice and a hearing, during which the Commission finds that the employer's non-compliance was both "knowing" *and* "willful."

Importantly, the Act does not require such higher fines; i.e., the Act does not say that the Commission "must" or "shall" impose higher fines. Rather, the Act provides only that the Commission "may" assess a civil penalty of up to $500 per day upon such a finding. See *ILCS 305/4(d).*

Here, the record fails to establish (a) that Respondent actually received any notice of the 2023 non-compliance hearing, and (b) that the non-compliance was "knowing and willful." For that reason,

at this time and on the basis of the facts in the record, I would not yet impose an additional penalty greater than the Department of Insurance's standard $10,000 maximum permitted by the Act. Even if the record had established the necessary preconditions to permit the Commission to exercise its discretion to impose a higher penalty, I find that the application of the proper legal factors to the facts here weigh in favor of exercising that discretion to impose a much lower fine in this case.

Does the Commission Have Statutory Authority to Impose the Maximum Fine in this Case?

The Illinois Workers' Compensation Act (the "Act") provides dramatically different penalties for failure to procure mandatory workers' compensation insurance, depending on the intention and/or motive of the employer causing such failure, subject to the employer's due process rights to reasonable notice and hearing. *820 ILCS 305/4(d*). The standard fine for non-compliance is between a minimum of $500 and a maximum of $10,000, and can be imposed by a Department of Insurance investigator. *Id.* However, if the Commission, *after reasonable notice and hearing*, finds that an employer's non-compliance was a "*knowing and willful* failure or refusal", then the Commission *may* choose to impose a "civil penalty of *up to* $500 *per day*," with a minimum penalty of $10,000. *Id. (emphases added).* Thus, whether the Commission has the legal authority to impose a $607,000 fine that is more than 60 times greater than the standard statutory maximum turns upon whether two necessary preconditions were satisfied: (1) the employer must be provided reasonable notice and hearing; and (2) the employer's non-compliance must be a "knowing and willful" failure or refusal. *Id.* Neither precondition has been satisfied here. Additionally, even if those two preconditions had been satisfied, the Commission would have the discretion to impose a penalty anywhere between a minimum of $10,000 total and a maximum of $500 per day. In those circumstances, precedent provides additional factors that guide the Commission's discretion in imposing such a penalty, as further explained below.

Regarding the first precondition—reasonable notice and hearing—there is no evidence in the record that Respondent received any notice of the Commission's February 22, 2023, insurance non-compliance hearing (the "2023 Hearing"). According to the record before us, the only purported notice to Respondent of the Commission's 2023 Hearing is a single letter sent by certified mail to Respondent: the Notice of Insurance Compliance Hearing dated January 12, 2023. (Px01). The majority opinion, Petitioner's exhibits, and the 2023 Hearing transcript do not support the conclusion that Respondent actually received any notice of the 2023 Hearing. In fact, that letter was returned to sender, with the following notations by the US Postal Service: "return to sender; unclaimed; unable to forward." (Px01). No personal service was made, and there is no evidence in the record that any written notice was received by Respondent. Nor is there any evidence in the record that anyone sought to contact Respondent by any other means to inform him of the scheduled 2023 Hearing. Therefore, the evidence suggests that Respondent received no notice and was not aware of the 2023 Hearing. Thus, I find that the first precondition—reasonable notice and hearing—was not satisfied. On that basis, given the record before us today, the Commission lacks the legal authority to issue a heightened fine. See *820 ILCS 305/4(d)* (noting that the Commission may impose such elevated penalties only "after reasonable notice and hearing").

The second necessary precondition to imposing heightened fines is that at the non-compliance hearing, the Commission must first make a finding that the employer committed a "knowing and willful" failure or refusal to comply with the insurance requirements set forth in the Act. *820 ILCS*

305/4(d). Neither Petitioner nor the majority cites any precedent or any specific provision of the Act or the Rules Governing Practice before the Illinois Workers' Compensation Commission (the "Rules") for the proposition that simple failure to appear—in and of itself—is sufficient for the Commission to find a "knowing and willful" refusal by Respondent to comply with the Act. While Petitioner and the majority both plainly state their conclusion that the "knowing and willful" element was satisfied, neither Petitioner nor the majority have explained the basis for that conclusion—i.e., how or why the failure was both "knowing" and "willful."

Pursuant to the plain text of the Act, the failure of either of those two preconditions is sufficient to deprive the Commission of the authority to impose heightened fines. See *820 ILCS 305/4(d)*. Here, I find that neither precondition was satisfied, and thus the Commission lacks the statutory authority to impose fines above the standard $10,000 statutory maximum; the amount that can be levied by a Department of Insurance investigator.

Factual Context; Equitable Considerations

The record here contains evidence of only a single workplace accident and workers' compensation claim against Respondent.

According to the Arbitrator's Findings of Fact, Respondent operated a landscaping and tree care service out of his house, with approximately nine workers, including Petitioner. Petitioner testified that he never received a check, filed taxes, or received benefits from the landscaping service; he was paid $10 per hour in cash for approximately 25-30 hours of work each week ($300 per week at the high end). Petitioner testified that to begin each day of work, he would punch in with punch cards at Respondent's house, and Respondent would take Petitioner and eight other workers to the job sites. According to the transcript of the non-compliance hearing before the Commission, Respondent had a business called Sanchez Tree Care Inc. that was incorporated in 2002 and involuntarily dissolved in 2008, with the same address as Respondent's home. The accident happened the following year, in November 2009.

The record does not establish that Respondent is operating a large-scale, high-margin business with significant administrative support and competent legal representation, which despite such advantages, *knowingly and willfully* refused to carry workers' compensation insurance. The record suggests entirely the opposite—that Respondent had a very small lawn-and-tree-care service with fewer than ten outdoor workers, operating out of Respondent's home.

In terms of scale and context, and for the sake of argument, assuming a seasonal landscaping business operating nine months per year in the Midwest, Petitioner would have been paid $10,800 per year for his work for Respondent, and the total salary for nine workers at the same pay scale would be $97,200 per year. Applying those basic but not unreasonable assumptions, the $607,000 fine imposed by the majority represents six years' worth of wages for Respondent's entire crew. Nothing in the record indicates that Respondent, either personally or through his business, could pay such a hefty fine, which would likely be overwhelming for an individual with a small, informal landscaping service of this scale. Imposing an unpayable, uncollectible, overly punitive fine on a proprietor of a small business like this is unlikely to yield any benefits to anyone.

To the contrary, such an unpayable debt can drive an individual with a small business into insolvency and bankruptcy, effectively denying him future access to credit or loans. This could have the deleterious effects of hamstringing his ability to provide food for his family, jobs for his employees, and services for his customers. Rather than a small business providing self-sufficiency and contributing as a multiplier effect for the economy, imposing an unpayable debt runs the risk of turning Respondent and his dependents into burdens for taxpayers.

While I am in no way advocating for insurance non-compliance and I agree whole-heartedly Respondent should be penalized for violation of the Act, the Commission should apply punitive fines judiciously, reserving the statutory maximum for the most egregious cases. This is not such a case.

Application of the *Murphy* Factors

In cases where the two preconditions are satisfied to allow the Commission the ability to impose heightened fines, the Commission's discretion in choosing whether or not to impose such fines, and if so, in what amount, is guided by the seven *Murphy* factors. See *State of Illinois v. Murphy Container Service, et al.,* 2007 Ill. Wrk. Comp. LEXIS 1216, 7 IWCC 1037 (Ill. Workers' Comp. Bd. August 2, 2007). The *Murphy* factors include 1) the length of time in which the employer had been violating the Act; 2) the number of settled/pending workers' compensation claims against the employer; 3) whether the employer had been made aware of his conduct in the past; 4) the number of employees working for the employer; 5) the employer's ability to secure and pay for future (or recently obtained) workers' compensation insurance premiums; 6) whether the employer has shown any mitigating circumstances, such as a willingness to cooperate, comply and settle; and 7) the ability of the company to pay the assessed penalty. *Id.* These factors also do not weigh in favor of the statutory maximum in this case, as explained below:

1) *The length of time in which the employer had been violating the Act.* The majority cites the length of the violation as 3 years, 4 months, which the majority deems "significant," without being relative to any scale or definition. I can agree any amount of non-compliance is unacceptable, but the length of time in which the employer violates the Act is relative to the length of time he has been in business. I do not agree in this instance "significant" applies considering the scant information in the record about the business.

2) *The number of settled/pending workers' compensation claims against the employer.* In this case, the record contains evidence of a single workers' compensation claim against this employer. (PX06)

3) *Whether the employer had been made aware of his conduct in the past.* The record contains evidence that Respondent knew of the underlying accident and did receive notices of non-compliance in 2015 and 2017. However, the record does not establish whether Respondent continued to operate his business following the 2009 workplace accident, and if so, for how long thereafter. Additionally, the record does not establish that Respondent understood his statutory requirement to carry workers' compensation insurance during any time period prior to the 2009 accident. Thus, the record does not sufficiently prove a knowing and willful refusal to carry the required insurance.

4) *The number of employees working for the employer.* The evidence confirms that around the time of the 2009 accident, Respondent employed nine workers. There is no evidence in the record of the number of Respondent's employees during any other time period.

5) *The employer's ability to secure and pay for future (or recently obtained) workers' compensation insurance premiums.* The small size and nature of this home-based landscaping service, together with Petitioner's low wage rate, imply that Respondent could have limited ability to afford workers' compensation insurance. Further, nothing in the record establishes that Respondent did, in fact, have sufficient means to afford the premiums.

6) *Whether the employer has shown any mitigating circumstances, such as a willingness to cooperate, comply and settle.* The record is unclear on this point, including because Respondent did not receive any notice of the 2023 Hearing. Respondent failed to appear at any proceeding or submit any information in this case, and thus there are many unknown facts about Respondent or his business. This factor weighs against Respondent, although there may be mitigating circumstances. Worth noting on this factor, according to the record, the Injured Workers' Benefit Fund (IWBF) is not seeking reimbursement from Respondent for the amount of money the IWBF paid on claim 09WC048293. (T. 23) The record is silent as to why the IWBF has not sought such reimbursement. It would be a mitigating circumstance in favor of Respondent, if, in fact, Respondent reimbursed the IWBF or settled with the IBWF prior to this non-compliance hearing. The record is not sufficiently developed on that point.

7) *The ability of the company to pay the assessed penalty.* It seems unlikely that Respondent, with a landscaping service of the size and type indicated in the record, would be able to pay the $607,000 penalty imposed by the majority.

Taking into account the *Murphy* factors above, I contend that significantly lower fines would be more appropriate in this case, after considering the facts established in the record as well as equitable considerations. While I agree that employers must be held accountable for failing to carry the Workers' Compensation insurance required by law, I believe that the imposed maximum fine of $607,000 is excessive, overly punitive, and as a practical matter, more likely to yield negative consequences than positive outcomes in this particular case.

Considering the foregoing factors in light of the evidence presented in this case, I would assess a penalty in the amount of $10,000 against Respondents Sanchez Tree Care Inc., and Rudy Sanchez, Individually and as owner, pursuant to Section 4(d) of the Act.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC034018
Case Name	Karen Wesley v. Imperial Manufacturing Group
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	23IWCC0228
Number of Pages of Decision	21
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Justin Leskera, John Leskera
Respondent Attorney	Michael Karr

DATE FILED: 5/22/2023

/s/ Deborah Baker, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KAREN WESLEY,

Petitioner,

vs. NO: 18 WC 34018

IMPERIAL MANUFACTURING GROUP,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's current condition of ill-being is causally related to the work injury, whether medical treatment was reasonably necessary, and entitlement to prospective medical care, 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. 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).

I. FINDINGS OF FACT

The Commission adopts the Findings of Fact in the Decision of the Arbitrator and incorporates such facts herein but changes the ensuing analysis with respect to causal connection.

II. CONCLUSIONS OF LAW

A. Causal Connection

With respect to causal connection, while the Commission agrees with the Arbitrator's ultimate conclusion finding causal connection between the October 17, 2018 work injury and Petitioner's current condition of ill-being, the Commission writes separately to clarify its reasoning.

Determinative of this issue is whether Petitioner's stipulated October 17, 2018 work accident aggravated her pre-existing cervical spine 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 Commission*, 207 Ill. 2d 193, 205 (2003). Furthermore, an employer takes its employees as it finds them (*St. Elizabeth's Hospital v. Illinois Workers' Compensation Commission*, 371 Ill. App. 3d 882, 888 (5th Dist. 2007)), and a claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d 30, 36 (1982). As the Appellate Court held in *Schroeder v. Illinois Workers' Compensation Commission*, 2017 IL App (4th) 160192WC, the inquiry focuses on whether there has been a deterioration in the claimant's condition:

> That is, if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been. *Schroeder* at ¶ 26.

Here, Petitioner had a preexisting degenerative cervical condition prior to the October 17, 2018 stipulated accident. Petitioner treated with a chiropractor monthly for a neck adjustment just to "keep everything aligned," and treated for two days in April 2017 after her involvement in a motor vehicle accident. She was released to full duty work two days later. No further treatment related to this incident is in evidence. Nothing in the record suggests Petitioner did not work full duty subsequently until the instant date of accident when she fell eight feet off a plywood platform while exiting a large oven, and landed on the concrete floor face first, injuring her face, neck and elbow. After the accident, Petitioner was diagnosed with a closed nondisplaced fracture of the head of the left radius. She testified that this was hurting so much at the time that she was not even thinking about her neck pain. Only 12 days after the accident, Petitioner complained of neck pain, stiffness, and impaired and painful range of motion. Subsequently, Petitioner continued complaining of neck pain to varying degrees until October 14, 2020, when Dr. Taylor recommended surgery. Petitioner's testimony and medical records support a finding that her condition never returned to baseline after the accident. Moreover, Dr. Taylor testified that Petitioner's condition will not improve, and will continue to progress until she undergoes surgery.

Petitioner's ongoing treatment and complaints post-accident coupled with the eventual surgical recommendation by Dr. Taylor reflects the significant deterioration in Petitioner's condition following her work accident. Further, while Dr. Taylor acknowledged that the January 26, 2020 unrelated slip and fall could possibly have further exacerbated the myelopathy that was caused by the underlying accident, we find that this aggravation does not rise to the level of an intervening cause breaking the chain of causation established during the stipulated accident. Courts have consistently held that for an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition. *See Vogel v. Industrial Commission*, 354 Ill. App. 3d 780, 787 (2d. Dist. 2005). An aggravation injury does not break the causal connection between the original work injury and the present condition when: (a) the original injury has not resolved, and (b) "but for" the work injury, the aggravation injury would have been tolerated. *Vogel*, 354 Ill. App. 3d at 788 (2d. Dist. 2005). Here, we find the evidence supports a finding that Petitioner's neck condition after the instant accident was ongoing and had not resolved (and would not have resolved per Dr. Taylor) at the time of the January 26, 2020 slip and fall. Further, the January 26, 2020 slip and fall did not completely break the causal

chain between the original work-related injury and the ensuing condition, as it did not increase Petitioner's reported neck pain, nor did it alter her ongoing diagnoses. Additionally, the Commission finds that the slip and fall injury would have been tolerated but for the work injury, as the work injury further decreased the space in Petitioner's spinal column per Dr. Taylor, thereby further predisposing Petitioner to additional aggravation. Accordingly, we find that while the January 26, 2020 slip and fall did aggravate Petitioner's condition, it did not break the causal chain between the work accident and Petitioner's current cervical condition.

Lastly, while we acknowledge minor inconsistencies in Petitioner's records and testimony regarding whether or not she lost consciousness during the instant accident, and her heightened pain complaints offered to Dr. Kitchens, they do not override the consistent and objectively supported new symptomatology Petitioner exhibited after the work accident. As the evidence shows Petitioner had critical stenosis as well as corroborating symptomatology, it supports a finding that Petitioner's unresolved post-accident complaints and diagnoses are causally related to the instant accident. We find that the work accident aggravated and accelerated Petitioner's condition, and her condition has deteriorated so much since the date of accident that she now requires surgery. The work accident is a factor in Petitioner's current cervical condition.

B. Medical Expenses

The Commission clarifies the award for medical expenses, specifically noting that all medical expenses paid by Respondent shall be paid subject to the medical fee schedule, pursuant to §8(a) and §8.2 of the Act.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 29, 2022, as changed above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay all medical expenses subject to the medical fee schedule, pursuant to §8(a) and subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for treatment recommended by Dr. Taylor, including surgical intervention.

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.

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $30,000.00. 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.

MAY 22, 2023

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

DJB/wde

O: 3/22/23

/s/*Stephen Mathis*
Stephen Mathis

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC034018
Case Name	WESLEY, KAREN v. IMPERIAL MANUFACTURING GROUP
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	John Leskera
Respondent Attorney	Michael Karr

DATE FILED: 6/29/2022

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

/s/ Jeanne AuBuchon, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Karen Wesley
Employee/Petitioner
v.
Imperial Manufacturing Group
Employer/Respondent

Case # **18** WC **034018**

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**, **IL** on **02/28/2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **10/17/18**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**33,824.44**; the average weekly wage was $**650.47**.

On the date of accident, Petitioner was **62** 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 $**7,409.21** for TTD, $**1,446.30** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**8,855.51**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act. Respondent has paid $**31,495.28** in medical bills for which credit shall be given.

ORDER

Respondent shall authorize and pay for treatment recommended by Dr. Taylor, including surgical intervention.

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

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

JUNE 29, 2022

ICArbDec19(b)

PROCEDURAL HISTORY

This matter proceeded to trial on February 28, 2022, pursuant to Sections 19(b) and 8(a) if the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) the causal connection between the accident and the Petitioner's cervical spine condition and 2) entitlement to prospective medical care to the Petitioner's cervical spine. The Respondent accepted facial and elbow injuries from the accident.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 62 years old, employed with Respondent in production. (AX1, T. 9-10) On October 17, 2018, she was exiting walk-in oven when her foot got caught and she fell on her face onto concrete from about eight feet. (T. 10-11) She stated that everything hurt, and she was dealing with multiple injuries in the weeks and months following the accident. (T. 17-18) She suffered injuries to her face and elbow, for which she completed treatment that was provided by the Respondent. (T. 22-23)

On that day, the Petitioner went to the emergency room at St. Anthony's Health Center, where she was diagnosed with a broken nose, facial contusion and a broken left orbital floor. (PX1) She denied neck pain and admitted some shoulder discomfort. (Id.) The Petitioner testified that she denied neck pain because she hurt someplace else so badly that she couldn't think about her neck. (T. 30) At the emergency room, the Petitioner was prescribed medication for pain and muscle spasms. (PX1)

The Petitioner testified that during the year before the accident, she did not have any major issues with her neck, was able to do her job and there was nothing about her neck that interfered with her activities of daily living. (T. 21-22) The Petitioner was involved in a motor vehicle accident on April 21, 2017, and was treated in the emergency room at HSHS St. Francis Hospital,

where she was diagnosed with cervicalgia, unspecified head injury, thorax contusion, sprain of the joints and ligaments of the neck and unspecified neck injury. (RX3) The Petitioner testified that she was t-boned by a semi-truck, and her neck hurt a little bit but her primary complaint was her chest. (T. 28-29) This was consistent with her reports to emergency room personnel after the accident. (RX3) A cervical CT scan taken at the time of the motor vehicle accident showed no evidence of acute fracture or malalignment, likely degenerative anterolisthesis of C3 on C4 measuring 3 millimeters, ankylosis at C2-3, multilevel degenerative disease and facet osteoarthropathy and right foraminal stenosis at C3-4. (Id.) The Petitioner was prescribed medications. (Id.) There were no records submitted for any further treatment from this event.

On October 22, 2018, the Petitioner saw family nurse practitioner Emma Dragovich at Litchfield Family Practice Center and reported that she had left arm pain worse around the elbow but did not have elbow pain when she was at the emergency room. (PX2) The Petitioner did not report neck pain or stiffness to FNP Dragovich. (Id.) After X-rays, the Petitioner was referred to an orthopedic surgeon after being diagnosed with a nondisplaced fracture of the head of the left radius. (Id.) She was treated for her elbow at St. Francis Orthopedic Center. (Id.)

At a follow-up visit with FNP Dragovich on October 29, 2018, the Petitioner reported neck pain and stiffness in addition to concussion symptoms. (PX2) On November 7, 2018, her primary complaint was neck pain, stiffness, tenderness, impaired range of motion and shoulder pain, and she denied neck pain before the accident but having it off and on since. (Id.) She was seeking a referral to a chiropractor and noted that she was seeing a chiropractor since she was 16 years. (Id.) The Petitioner testified that she had been seeing a chiropractor since she was 16 years old more for her knee and other areas, such as her back, and later for a monthly adjustment to keep everything aligned. (T. 26-27) An examination by FNP Dragovich revealed: restricted rotation;

painful flexion and rotation; no pain on extension; negative Spurling tests on the right and left; tenderness over the thoracic, lumbar and sacral vertebra; and no tenderness over the sacroiliac region. (PX2) Straight leg raise test was not performed because the Petitioner was unable to tolerate lying flat. (Id.) FNP Dragovich diagnosed neck, low back and upper back pain and ordered a cervical spine CT scan. (Id.)

The Petitioner underwent the CT scan on November 21, 2018, at St. Francis Hospital that showed multilevel degenerative changes similar to a scan performed on April 21, 2017, after the automobile accident and no acute traumatic abnormality. (Id.) Radiologist Dr. Daniel Wujek noted: minimal grade 1 anterolisthesis C3 on C4 that was stable from the prior study; ankylosis of the right posterior elements at C2-3; advanced degenerative disc disease on the right at C3-4; multilevel bilateral foraminal narrowing to varying degrees similar to the prior exam most severe on the right at C3-4; and mild spinal canal stenosis at C5-6. (Id.)

At various visits to Litchfield Family Practice Center in 2018, 2019 and 2020, the Petitioner complained of headaches. (Id.) She also was treated for her headaches with medication by neurologist Dr. Jigar Mankad at HSHS Medical Group from February 18, 2019, through April 16, 2019. (Id.) Dr. Mankad treated the Petitioner's headaches with medication. (Id.)

The Petitioner began treating with Dr. Michael Williams at Williams Chiropractic on November 5, 2018, for neck, mid-back and low-back pain. (PX3) She described the accident, stating that she fell from a height of 4-5 feet. (Id.) She reported that since the accident, she was stiff and sore everywhere, but at that time she was noticing other spots of pain. (Id.) Dr. Williams found decreased cervical and lumbar range of motion and tenderness in the left at C2-6, L2-5 and S1, in the right at C3-4 and L3-4 and bilaterally at T1-6 and T11-12. (Id.) He diagnosed segmental and somatic dysfunction of the cervical, thoracic and lumbar regions and myalgia. (Id.) He

performed manipulations to the left C2, T1, T10 and L5 and to the right at C7, T2, T12, L3 and S1. (Id.) The Petitioner continued to receive adjustments through June 1, 2020, for a total of 93 visits. (Id.) The Petitioner's symptoms appeared to improve following adjustments and worsened again. (Id.) The majority of her complaints were in her neck and between her shoulders. (Id.) The Petitioner admitted to reporting to Dr. Williams on January 27, 2020, that she slid down a hill and hit her head and explained that her feet came out from under her, and she slid and landed on her rear end then went back. (T. 31)

On August 19, 2020, the Petitioner sought treatment from Dr. Bret Taylor, an orthopedic surgeon at Town & Country Crossing Orthopedics. (PX4) She testified that she went to Dr. Taylor because Dr. Williams' treatment was enough to get her to go back and forth to work, but the relief did not last, and she needed a little more to get herself to where she could have a normal life. (T. 24) She complained of symptoms in her neck and arms. (Id.) She reported a history of neck pain in the region of her bra strap for approximately 30 years after "flipping out of a back door due to ice." (Id.) The Petitioner testified that she did not remember telling this to Dr. Taylor but said she could have. (T. 27) She said that pain was nothing like it was now. (T. 27) Dr. Taylor reported that the prior pain was in a different location and was of a different quality and character than her present complaints. (PX4) In her testimony, the Petitioner acknowledged that she slid out a back door but said she hurt her back and not her neck. (T. 28) She told Dr. Taylor about the motor vehicle accident in April 2017. (Id.) The Petitioner reported to Dr. Taylor that her current pain was 90 percent in the neck and 10 percent in her arm, with the arm pain being in the left shoulder. (PX4) Raising her arm did not affect her pain, but moving her neck did. (Id.)

A physical examination showed: mild left paravertebral muscle spasm; no midline tenderness to palpation, step-off or deformity; full range of motion; decreased motor function on

the left at C5 and C6; numbness in the left hand; positive Spurling's test to the left and negative to the right; and slow rapid grip and alternating movements tests. (Id.) Dr. Taylor read the November 21, 2018, CT scan as showing: significant degenerative change most notable at C5-6 and C6-; marked facet arthropathy at C3-4; retro-vertebral ossification of the posterior longitudinal ligament at C6; evidence of congenital stenosis; and anterior osteophytes at C4-C7. (Id.) Dr. Taylor took flexion and extension X-rays and found: multilevel end-stage degenerative disc disease with anterior osteophytes and loss of disc height at C5-6 and C6-7; facet arthrosis at C2-3; cervical instability at C4-5; and congenital stenosis. (Id.) Dr. Taylor also reviewed the Petitioner's medical records. (Id.)

Dr. Taylor diagnosed the Petitioner with cervical segmental instability at C4-5, cervical degenerative disc disease and left peripheral nerve compression neuropathy. (Id.) He opined that the Petitioner's work exposure was causally connected to her persistent symptoms – specifically that the fall caused a permanent aggravation of her pre-existing static stenosis and resulted in increased neural compression and neurologic injury. (Id.) He recommended an MRI and EMG studies. (Id.)

The Petitioner returned to Dr. Taylor on October 14, 2020, at which time a physical examination was unchanged. (Id.) Dr. Taylor reported that the MRI showed: multilevel critical contrast stenosis secondary to disc herniations, uncovertebral hypertrophy and facet arthropathy. (Id.) He noted right and left foraminal stenosis at C3-4, severe right foraminal stenosis at C4-5, severe right greater than left foraminal stenosis at C5-6 and left greater than right foraminal stenosis at C6-7. (Id.) He noted decreasing spinal cord space down each cervical level – starting at C3-4 at 8.9 millimeters and going to 7 millimeters at C6-7. (Id.) The EMGs showed bilateral wrist medial neuropathy right greater than left but no evidence of cervical radiculopathy nor ulnar

or radial neuropathy. (Id.) He added multilevel critical cervical stenosis at C3-7 to his prior diagnoses. (Id.) He recommended anterior surgery at C3-7 to allow restoration of the anterior column height as well as multilevel discectomy/corpectomies for decompression of the neural elements followed by a posterior cervical laminectomy and instrumental fusion. (Id.)

The Petitioner was not interested in pursuing surgery and requested to work with a non-operative specialist in Illinois. (Id.) Dr. Taylor stated that, given the severity of the Petitioner's critical central stenosis, she should avoid epidural injections and cervical manipulation. (Id.) The Petitioner testified that she declined surgery at first because it scared her. (T. 25)

Dr. Taylor testified consistently with his records at a deposition on October 20, 2021. (PX5) He explained that his diagnosis of critical stenosis was due to the Petitioner having less than 10 millimeters of space available for the spinal cord. (Id.) He said individuals with this condition are predisposed to permanent aggravation (neurologic dysfunction and injury) with a mechanism of injury such as a fall on the face that results in hyperextension of the neck. (Id.) He said hyperextension triggers a cascade that can lead to cervical myelopathy or cervical myeloradiculopathy. (Id.) Dr. Taylor also pointed to various physical examination findings that were symptoms of radiculopathy and others that were symptoms of myelopathy. (Id.) During his testimony, Dr. Taylor illustrated his findings on the MRI and X-ray images. (Id.)

As to natural progression of the Petitioner's pre-existing stenosis, Dr. Taylor characterized typical progress as being "very, very" slow and not causing acute onset of a more catastrophic neurologic condition. (Id.) He said the structures impinging on the spinal cord cause a constant pressure than can be tolerated surprisingly well because it's not an acute change in pressure. (Id.)

Regarding his surgical recommendation, Dr. Taylor testified that the surgery he proposed was causally related to the accident and would halt the progression of nerve damage as well as

address the cervical instability at C4-5. (Id.) He said the Petitioner's symptoms or condition of her cervical spine would only improve with surgery. (Id.)

On cross-examination, Dr. Taylor acknowledged that the Petitioner's slip and fall on January 26, 2020, could have further exacerbated the myelopathy that was caused by the work accident. (Id.) He also said he did not have the CT scan from April 21, 2017, to compare to the November 21, 2018, scan and, thus, could not make a statement as to the impressions of Dr. Wujek that the later scan was similar to the earlier scan. (Id.)

The Petitioner underwent a Section 12 examination on December 20, 2021, by Dr. Daniel Kitchens, a neurosurgeon at Cardinal Neurosurgery and Spine. (RX1, Deposition Exhibit B) The Petitioner described the accident and reported that she had onset of pain at the time of the accident that travelled up into her left shoulder and neck. (Id.) She denied a prior history of neck or arm pain. (Id.) She reported more pain while working that tended to build at the end of the day. (Id.) She described the pain as sharp and reported cracking and popping in her neck. (Id.) She said her neck pain has stayed about the same since the accident and that she had more discomfort when looking down a lot at work. (Id.) She reported that her pain was at a level of 12/10. (Id.) A physical examination revealed normal strength and sensory test results; slight reflexes; no clonus; negative Babinski and Spurling tests; and discomfort with range of motion of her neck. (Id.)

Dr. Kitchens reviewed the Petitioner's medical records, the CT scan from November 21, 2018, and the MRI from October 14, 2020. (Id.) The Williams Chiropractic records were not listed in Dr. Kitchens' report. (Id.) He diagnosed cervical spondylosis and cervical degenerative disc disease that he said was a chronic disorder not related in any way to the work accident. (Id.) He said there was no medical record evidence of cervical radiculopathy or cervical myelopathy at the time of or shortly after the work incident. (Id.) He said the medical records he reviewed were

inconsistent with the Petitioner's current symptoms. (Id.) He opined that the work accident did not cause or contribute to the Petitioner's current complaints, that the Petitioner reached maximum medical improvement and that she did not require work restriction for her cervical spine as a result of the work accident. (Id.)

Dr. Kitchens testified consistently with his report at a deposition on February 23, 2022. (PX1) He said that when he examined the Petitioner, she did not appear to be in 12/10 pain – a level that would have required narcotic pain medication and would have made her almost unresponsive. (Id.) He said he based his causation opinion on there being no cervical radiculopathy or cervical myelopathy at the time of or shortly after the accident, as well as no evidence of acute injury on the CT scan. (Id.) In addition to his opinion that the accident did not cause or contribute to the Petitioner's current complaints, he also said the work accident could not have aggravated or accelerated her complaints – pointing out that there was no evidence of an acute exacerbation or structural change that occurred from the accident. (Id.) Regarding the surgery proposed by Dr. Taylor, Dr. Kitchens said it would be for the aging degenerative condition of the Petitioner's cervical spine and not for an acute injury because there was none. (Id.)

On cross-examination, Dr. Kitchens said he did not know whether the Petitioner had cervical instability at C4-5 and did not know whether Dr. Taylor performed flexion/extension films that he acknowledged was an adequate and legitimate way to diagnose cervical instability. (Id.) He also said the Petitioner did not have congenital stenosis because he did not see it on the CT scan or MRI. (Id.) He said the Petitioner did not have critical stenosis because she did not have cervical myelopathy or radiculopathy. (Id.) He could not recall whether Dr. Taylor performed a Spurling's test, made triceps reflex findings, found any sensation pathology at C6 or weakness in the C5 and C6 nerve distribution. (Id.) Dr. Kitchens did answer the question as to whether such

findings were consistent with cervical stenosis – instead stating that those finding were not present on his examination, that he could not comment on another examiner's interpretation of an examination of the same patient, that those symptoms could be consistent with a variety of conditions and that such a determination would depend on the details of the examination and the stenosis. (Id.) He said that the range of normal for the size of the cervical canal would be 12-16 millimeters but would not say whether a measurement under 10 millimeters would be classified as critical stenosis – maintaining that the Petitioner did not have critical stenosis because she did not have myelopathy. (Id.) Dr. Kitchens did agree that the force of the Petitioner's fall onto her face on concrete would have at a minimum caused a traumatic sprain/strain to her neck. (Id.)

Regarding the Petitioner's treatment history, he said there was no evidence of any treatment to the Petitioner's cervical spine or reports of neck problems from her visit to the Litchfield Family Practice on November 7, 2018, until she saw Dr. Taylor on August 19, 2020. (Id.) When asked if his opinion was based on this assumption, he said that was part of the conclusion and diagnosis – adding that there was no change reported from the April 2017 CT scan compared to the scan after the accident. (Id.) He acknowledged that he did not see the records from Dr. Williams and that those records would be something he would want to review in forming his opinions. (Id.)

The Petitioner testified that her neck condition has gotten worse since the accident in that the positions in which she stands and moves exacerbate her symptoms – anywhere from being sick to her stomach to migraines that feel like being hit in the face with a baseball bat. (T. 18-19) She said she does not have enough range of motion in her neck because it hurts so badly, and she has to move and turn slower because it hurts. (T. 19, 32) She stated that she does not have any difficulty walking but does have pain her left arm. (T. 33) She acknowledged having recent carpal tunnel surgery that fixed the symptoms in her hands but not her arm. (Id.) She said she wants to

undergo surgery to make the pain go away and feel a little more human. (T. 20) She has been able to work and deals with the pain. (T. 21)

CONCLUSIONS OF LAW

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

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

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

The Petitioner had degenerative conditions of her cervical spine and had previous neck problems. Dr. Taylor's records reflected that her prior symptoms were in a different location and of a different nature than her current complaints. He explained how the Petitioner's fall caused a hyperextension of her neck that in turn caused a permanent aggravation of her conditions that resulted in radiculopathy and myelopathy that he said were apparent in the various tests he performed during his examination. He also relied upon his findings on the MRI and X-rays that he explained during his testimony.

Dr. Kitchens found no such symptoms nor radiculopathy or myelopathy in his examination of the Petitioner, which led to his opinion that the Petitioner's current condition was related only

to her degenerative conditions and not the accident. He also relied on the report by radiologist Dr. Wujek stating that the results of the November 21, 2018, CT scan were similar to those in a scan from April 21, 2017. However, it appears that the earlier CT scan was not available for either Dr. Kitchens or Dr. Taylor to review first-hand. Dr. Wujek did not testify. Without testimony from Dr. Wujek or a direct comparison of the scans by the doctors who did testify, the Arbitrator finds it impossible to determine the relevancy of the prior CT scan. The Arbitrator also notes that CT scans are used primarily to detect bone abnormalities, while MRIs are used to more to diagnose soft tissue, disc and spinal cord injuries.

There are several reasons why Dr. Kitchens' opinions deserve little weight. First, he did not see the X-rays taken by Dr. Taylor that showed cervical instability. Second, he did not recall the examination results by Dr. Taylor that pointed to Dr. Taylor's diagnosis, and he refused to acknowledge that such examination results would support a diagnosis of critical stenosis. He maintained that because the Petitioner had no myelopathy, she had no critical stenosis. Dr. Kitchens also believed that the Petitioner reported no neck problems and had no cervical treatment from her visit to the Litchfield Family Practice on November 7, 2018, until she saw Dr. Taylor on August 19, 2020. He did not see Dr. Williams's records. Thus, the Arbitrator gives Dr. Taylor's opinions greater weight.

Lastly, although the Petitioner exaggerated her pain reports to Dr. Kitchens and denied prior neck injuries, the Arbitrator finds her testimony and the reports to her treating physicians to be consistent and credible.

Therefore, the Arbitrator finds that the Petitioner has met her burden of proof establishing causal connection between the accident and the Petitioner's cervical 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 incurred to date. 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. Kitchens's opinion on the reasonableness and necessity of surgery was directly tied to his opinion that the Petitioner suffered no acute injury. As stated above, the Arbitrator has given Dr. Kitchens' opinions little weight. The Arbitrator relies on the opinions of Dr. Taylor, who believed surgery was necessary to stop further progression of the Petitioner's condition.

Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care as recommended by Dr. Taylor, and the Respondent shall authorize and pay for such 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.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC022970
Case Name	Jullyana Garcia v. Homestead Covenant Living
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	23IWCC0229
Number of Pages of Decision	9
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Raymond Asher

DATE FILED: 5/22/2023

/s/Kathryn Doerries, Commissioner

Signature

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

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JULLYANA GARCIA,

Petitioner,

vs. NO: 21 WC 22970

HOMESTEAD COVENANT LIVING,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, benefit rates, medical expenses and prospective medical care, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator which is attached hereto and made a part hereof. The Commission 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 first modifies the Petitioner's average weekly wage to conform with the testimony and evidence in the record. Petitioner testified that she worked approximately 48 weeks in the year preceding the work accident and that she was not required to work overtime. The wage records contained in Respondent's Exhibit 2 demonstrate that Petitioner earned $31,886.75 in this period and this amount excluded overtime. The Commission therefore finds that Petitioner earned an average weekly wage of $664.31 in the year preceding her injury and modifies the Arbitrator's Decision accordingly.

The Commission next modifies the Arbitrator's Decision, specifically paragraph five (5) under the Conclusions of Law, to change the word "back" condition to "bilateral carpal tunnel syndrome." In other words, Respondent shall pay any and all outstanding medical expenses related to Petitioner's work-related bilateral carpal tunnel syndrome as set forth in the Petitioner's exhibits subject to the Fee Schedule.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 19, 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 $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.

MAY 22, 2023

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

KAD/pm
O: 5/18/23
042

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC022970
Case Name	Jullyana Garcia v. Homestead Covenant Living
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Raymond Asher

DATE FILED: 10/19/2022

THE INTEREST RATE FOR THE WEEK OF OCTOBER 18, 2022 4.24%

/s/Gerald Granada, Arbitrator

Signature

23IWCC0229

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jullyana Garcia
Employee/Petitioner

v.

Homestead Covenant Living
Employer/Respondent

Case # **21** WC **22970**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Wheaton**, on **8/23/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **11/7/20**, 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 $**30,005.50**; the average weekly wage was $**666.78**.

On the date of accident, Petitioner was **34** years of age, ***married*** with **0** dependent children.

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

ORDER

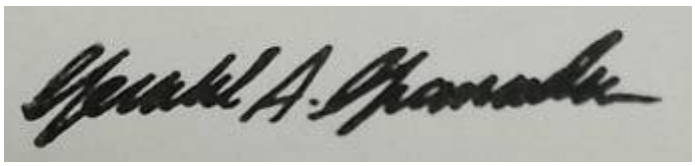
Respondent shall pay all reasonable and necessary medical services related to Petitioner's carpal tunnel syndrome condition as set forth in Petitioner's exhibits, pursuant to the medical fee schedule as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive a credit for any medical it has already paid.

Respondent shall authorize and pay pursuant to the Fee Schedule for the prospective medical care recommended by Petitioner's treating physicians, including the carpal tunnel surgery prescribed by Dr. Suchy.

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

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

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



Signature of Arbitrator **Gerald Granada**

October 19, 2022

FINDINGS OF FACT

This case involves Petitioner Jullyana Garcia, who alleges she sustained injuries while working for Respondent Homestead Covenant Living on November 7, 2020. Respondent disputes Petitioner's claim, with the issues being: 1) accident; 2) notice; 3) causation; 4) average weekly wage; 5) medical expenses; and 6) prospective medical care.

Petitioner worked for seven years with respondent, most recently as a life enrichment coordinator. She also filled in as a CNA when the facility was short-staffed. On November 7, 2020 petitioner went to assist a resident who was falling. The resident weighed around 250 lbs. Facing the resident, she reached around the resident in a bear hug fashion, grabbing the resident's pants in the back. The resident collapsed onto a recliner, pulling petitioner with her and squeezing petitioner's bent wrists between the patient and the recliner. Petitioner could not get her hands out from under the patient until the patient moved forward. Petitioner developed immediate numbness and tingling in the right wrist followed by weakness in the wrist later in her shift. Those symptoms had not resolved since the accident, although a cortisone injection provided some relief for a few weeks. The left wrist was also caught behind the resident during the fall. Petitioner also began experiencing left hand numbness and tingling within days of the accident and the complaints had not abated since the accident. No cortisone injection was performed on the left side because the right sided injection had not worked. Petitioner had never experienced pain, numbness or tingling in either hand before this accident. She also experienced pain in the right elbow and sometimes into the right shoulder from the accident.

Petitioner immediately reported the accident to her supervisor, and she was eventually sent to Tyler Medical Clinic for treatment. Petitioner saw Dr. Pappas at Tyler Medical Clinic on November 18, 2020. (PX2 p.9) Therapy did not resolve the symptoms and a January 7, 2021 EMG/NCV confirmed bilateral carpal tunnel syndrome, so Dr. Pappas referred her to Dr. Suchy for an orthopedic evaluation. (PX2 p.3-5, 24) Dr. Suchy diagnosed her with symptomatic bilateral carpal tunnel syndrome at the January 12, 2021 visit. (PX1 p.6-8) He injected the right wrist with cortisone, and he eventually restricted her work activities. (PX1 p.8-9, 14-15) Petitioner's employer did not honor the work restrictions but she kept working. The symptoms persisted and Suchy recommended carpal tunnel releases to address the continuing problems. (PX1 p.9) Petitioner seeks approval for the carpal tunnel releases recommended by Dr. Suchy. Dr. Suchy testified via evidence deposition on March 22, 2022. (PX 1) He testified that Petitioner's bilateral carpal tunnel syndrome and her need for carpal tunnel surgery are related to her November 7, 2020 work incident.

On February 7, 2022, Petitioner saw Dr. Michael Vender for an independent medical evaluation. Dr. Vender testified via evidence deposition on June 17, 2022. (RX1) Dr. Vender agreed Petitioner had carpal tunnel syndrome and that she could have surgical releases. (RX1 p.15) Dr. Vender did not believe the Petitioner's carpal tunnel syndrome was related to her work activities, which he characterized as office-based and sedentary. (RX1 p.16) Dr. Vender testified that a distinct trauma to the wrist could cause carpal tunnel syndrome, although he did not see that often. (RX1 p.20) He did not think Petitioner would have developed the carpal tunnel diagnoses by grabbing a patient by the pants and he was unaware if Petitioner's wrists were forcibly flexed during her alleged work incident. (RX1 p.29)

CONCLUSIONS OF LAW

1. Regarding the issue of accident, the Arbitrator finds that the Petitioner has met her 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 injured both hands on November 7, 2020 when she was holding a resident with both arms around the resident, who then fell backward into a recliner, trapping Petitioner's flexed wrists against that recliner. Petitioner experienced an immediate onset of numbness and tingling in the right hand which did not go away. Her left hand developed similar symptoms within days of the incident. There was no evidence offered to rebut Petitioner on this issue. Accordingly, the Arbitrator concludes that the Petitioner sustained an accident arising out of an in the course of her employment on November 7, 2020.

2. Regarding the issue of notice, the Arbitrator finds that the Petitioner has met her burden of proof. This finding is supported by the Petitioner's unrebutted testimony that she reported her November 7, 2020 incident to her supervisor on the same day it occurred. There was no evidence offered to rebut Petitioner on this issue. Therefore, the Arbitrator concludes that the Petitioner provided proper notice to Respondent of her November 7, 2020 accident.

3. Regarding the issue of causation, the Arbitrator finds that the Petitioner has met her burden of proof. In support of this finding, the Arbitrator relies on the Petitioner's unrebutted testimony and the preponderance of the medical evidence. The Arbitrator finds persuasive the opinions and testimony of Petitioner's treating physician, Dr. Suchy, who opined that the incident described by Petitioner caused her bilateral carpal tunnel syndrome. Although Respondent's IME, Dr. Vender did not believe Petitioner's condition was caused by her employment, his testimony and opinions appeared to be focused on whether Petitioner's job activities were sufficiently repetitive, and he did not have a clear understanding as to what happened to Petitioner's wrists at the time of her accident. Dr. Vender admitted that direct trauma to the wrists could cause carpal tunnel. There was no evidence presented that Petitioner had any carpal tunnel complaints or treatment prior to her accident, or any subsequent, intervening incidents that could break the chain of causation. As such, the Arbitrator concludes that the Petitioner's bilateral carpal tunnel syndrome is causally connected to her November 7, 2020 work accident.

4. Regarding the issue of average weekly wage the Arbitrator finds that the Petitioner's average weekly wage is $666.78. In support of this finding, the Arbitrator relies on the Petitioner's unrebutted testimony and the documentary evidence presented. RX2 shows Petitioner's earnings over the 52 weeks prior to her accident. The pay period ending January 9, 2020 was not a full period as she missed 4 days during that period. The pay period ending June 11, 2020 is missing 9 days for vacation. And the pay period ending September 3, 20/20 is missing a week of work for COVID. This leaves 48 weeks of work totaling $32,005.50 and calculates to an average weekly wage of $666.78 (32,005.50 divided by 48 equals 666.78).

5. Consistent with the Arbitrator's findings above, the Arbitrator further finds that the Petitioner's medical treatment has been reasonable and necessary in addressing her work-related condition. As such, Respondent shall pay any and all outstanding medical expenses related to Petitioner's work-related back condition as set forth in the Petitioner's exhibits subject to the Fee Schedule. Respondent shall receive a credit for any medical expenses it has already paid.

6. Consistent with the Arbitrator's findings above, the Arbitrator finds that the Petitioner's request for prospective medical treatment is both reasonable and necessary in addressing her work-related carpal tunnel syndrome stemming from her November 7, 2020 work accident. Accordingly, Respondent shall authorize and pay for the surgery and any related treatment, as recommended by Petitioner's treating physicians, subject to the Fee Schedule and in accordance with the provisions of Section 8 and 8.2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC015794
Case Name	Rosalinda Trejo v. Moldtronics, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0230
Number of Pages of Decision	12
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Christopher Bassmaji
Respondent Attorney	Robert Maciorowski

DATE FILED: 5/22/2023

/s/Kathryn Doerries, 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

ROSALINDA TREJO,

Petitioner,

vs. NO: 18 WC 15794

MOLDTRONICS, 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 accident, 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 September 7, 2022 is hereby affirmed and adopted.

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

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

MAY 22, 2023

KAD/tdm
O: 5/18/23
042

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC015794
Case Name	Rosalinda Trejo v. Moldtronics Inc
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Christopher Bassmaji
Respondent Attorney	Robert Maciorowski

DATE FILED: 9/7/2022

/s/Gerald Granada, Arbitrator

Signature

INTEREST RATE WEEK OF SEPTEMBER 7, 2022 3.32%

23IWCC0230

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

Rosalinda Trejo
Employee/Petitioner

v.

Moldtronics, Inc.
Employer/Respondent

Case # **18** WC **15794**

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 **July 22, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **May 7, 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 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 $**23,920.00**; the average weekly wage was $**460.00**.

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

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

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

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

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

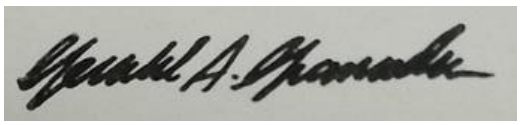
ORDER

The Arbitrator finds that the Petitioner did not prove that she had sustained an accidental injury arising out of and in the course of the employment.

Therefore all claims for benefits are denied.

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

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



Signature of Arbitrator **Gerald Granada** **September 7, 2022**

FINDINGS OF FACT

This case involves Petitioner Rosalinda Trejo, who alleges to have sustained injuries on May 7, 2018 while working for Respondent Moldtronics, Inc. Respondent disputes Petitioner's claim, with the issues being: 1) accident; 2) notice; 3) causation; 4) medical expenses; 5) TTD; and 6) nature and extent. Petitioner testified via a Spanish translator.

Testimony of Rosalinda Trejo

The Petitioner testified that she was employed by Moldtronics as a machine operator. She was initially employed by a staffing agency from September 18, 2017, until she was hired full time by Moldtronics on December 17, 2017. She testified that she stopped working at Moldtronics in May of 2018. She testified that she would place parts in a machine, and when the parts were ready, she took them out of the machine and measured them. She would perform this task every seven minutes.

The Petitioner testified that on May 7, 2018, she was working her normal positon as a machine operator. She testified that she had to place parts in the back of a machine with one hand, and hit the part with a hammer in her other hand. She testified that while performing that activity on May 7, 2018, she felt a very strong pain in her back down her spine. The Petitioner testified that she was performing a specific task when she felt pain. She testified that she had to place the part in the way back of the machine and her entire back was folded over. The Petitioner testified that she had to perform this task every 7 minutes. At the time of the accident, the Petitioner had been employed approximately 8 months.

The Petitioner testified that the accident occurred in the morning and that she finished the rest of the day. She testified that she did not seek any medical attention on May 7, 2018. She reported to work the following day and the following week. The Petitioner testified that she kept returning to work until she was fired. She testified that between when she was injured and when she was fired, she was unable to complete her usual work activities.

The Petitioner testified that she reported the injury to her supervisor, Mr. Molina. She testified that she also told Patrick from Quality Control about her accident. She testified that she could not recall when she told Patrick of her injury, but indicated that it was within a week. The Petitioner testified that she did not sit down with anyone to fill out any paperwork. The Petitioner testified that she requested to go to the "doctor of the factory" but the Respondent did not take her to a doctor.

The Petitioner testified that she was fired on May 18, 2018. She testified that she was upset after she was fired because she was hurt physically and emotionally. She denied filing a case with the Equal Employment

Opportunity Commission.

The Petitioner testified that she first sought treatment with a chiropractor at H&M Medical on May 22, 2018. The Petitioner testified that her lawyer instructed her to go to H&M Medical, whose records include a handwritten note that states in part: "Pt was working for 9 months at Moldtronic, Inc. and had to lean into a machine to put a part in the line. This was a Repetitive Injury! Attorney "Schlack", Jonathan Med Legal." (PX 1, p.00007) The medical records were entered into evidence as Petitioner's exhibits 1, 2, 3, 4, and 7. When the Petitioner was first evaluated on May 22, 2018, she testified that she attributed her pain to repetitive bending. Subsequently the Petitioner underwent MRI's of the neck and lumbar spine at Lakeshore Open MRI. The Petitioner then treated with Grandview Health Partners and Chicago Pain and Orthopedic. The Petitioner testified that she chose Chicago Pain and Orthopedic with the help of her lawyer. The records show that Petitioner underwent mostly chiropractic care for cervical and lumbar strains for which she was taken completely off work..

The medical records in Petitioner's Exhibit 7 reflect that the last date of treatment was with Dr. Patel, a pain management physician, on October 23, 2018. The Petitioner testified that the records were incorrect and she treated until 2019. The October 23, 2018 record from Dr. Patel indicates that the Petitioner was not in need of any interventional therapy and the Petitioner did not want same. The Petitioner testified that this was a "lie." The Petitioner testified that she never had injections for her back or neck. She also testified that she never had surgery on her neck or back. Her treatment was limited to physical therapy and medications.

The Petitioner denied any back or neck pain prior to her accident on May 7, 2018. She testified that she continues to have neck and back pain. She testified that she was now unable to do things she was able to do in the past, such as dancing, moving her hands, and running.

The Petitioner testified that she had not worked since May 2018 because her doctors were keeping her off from work. The Petitioner testified that she attempted to work at a temporary agency but stopped because of pain.

Testimony of Andrea Weibler

Andrea Weibler testified on behalf of Respondent. Ms. Weibler works for Respondent in Human Resources and has held that position since 2006, where the workers' compensation process is part of her usual job duties. If there is a work injury, she receives a report from the supervisor and she then starts the documentation. The workers' compensation process is part of the employee handbook. If a worker iss injured, Ms. Weibler would send them to Concentra for medical attention.

Ms. Weibler testified that she knew Rosalinda Trejo, who she knew was a tool room operator and was employed from August of 2017 until May 18, 2018. She further testified that the Petitioner did not tell her that she hurt herself at work at any time between May 7, 2018 and May 17, 2018, nor did any other of Respondent's employees tell her that the Petitioner injured herself. Between May 7, 2018 and May 17, 2018, the Petitioner continued to work in her usual job and did not request any time off. Petitioner did not request to be examined by a doctor, but if she did, she would have been sent to Concentra.

Ms. Weibler testified that the Petitioner was terminated from her employment on May 18, 2018 and that after her termination, the Respondent received a threatening phone call. Ms. Weibler first became aware of a possible workplace injury when she received an Application for Adjustment of Claim around May 25, 2018. Petitioner also filed an Equal Employment Opportunity Commission case against Respondent. Petitioner had Ms. Weibler's personal cell phone number and would often text her about problems that she was having at work. Ms. Weibler received a text message from the Petitioner on May 18, 2017 and it did not mention anything about a workplace injury.

Testimony of Patrick Bishop

Patrick Bishop also testified on behalf of the Respondent. He was the Director of Quality and Engineering at Moldtronics, and was employed in that position on May 7, 2018 to oversee production and quality. He he worked directly with the molding secondaries, tool room departments, managers, and employees. His office was just outside the molding production floor and he would constantly walk around the production floor. Prior to obtaining the position of Director of Quality and Engineering, he worked for many years in the tool room.

Mr. Bishop testified that he knew the Petitioner. In his position as the Director of Quality and Engineering, he would come into contact with the Petitioner throughout the day and actively observe her performing her job. As Director of Quality and Engineering, employees have reported work injuries to him and if someone reported a work injury to him, he would report the injury to the HR director who would then file a report. Mr. Bishop testified that Willy Molina never told him that the Petitioner suffered a workplace injury. Mr. Bishop further testified that between May 7, 2018 and May 18, 2018, the Petitioner never told him that she hurt herself at work. Between May 7, 2018 and May 18, 2018, he observed the Petitioner performing her usual job without any difficulty and during that period of time, the Petitioner never requested help, modification, or to be examined by a doctor.

Mr. Bishop had knowledge of the job the Petitioner was performing on May 7, 2018. He testified that her primary job was to perform part finishing, in which she would take some light sandpaper and smooth out the finish on aluminum pieces. On May 7, 2018, the company had completed machining down all of the billet

aluminum pieces and the Petitioner would not have to place and remove a parts into a machine every seven minutes because those parts were already done machining. Mr. Bishop explained that if the Petitioner had been running a machine, the cycle times would range from 30 minutes to 180 minutes and that there was no job in the tool room that required the Petitioner to remove and replace a part every seven minutes.

Mr. Bishop testified that he was familiar with the job that the Petitioner was describing when her claimed injury occurred. He testified that the raw billet that the Petitioner would place in the machine weighed two and a quarter pounds. Once machined, it would weigh a quarter of a pound, which would be the heaviest part the Petitioner would have to lift. Mr. Bishop demonstrated the job the Petitioner was claiming to have performed on May 7, 2018. He described that in front of the two machine doors, there was a table that was 38 inches high. The table was able to move around so that parts could be loaded into the machine. The billet would then be placed into the vice and the vice would be tightened with the torque wrench. Then the part would be tapped into place with a dead-blow hammer. The Petitioner would not have to bend deep into the machine to place and retrieve parts. Mr. Bishop testified that the cycle time for this machine would have been 30 to 180 minutes, depending on the part.

Rebuttal Testimony of Rosalinda Trejo

After the Respondent rested, the Petitioner was called as a rebuttal witness. The Petitioner testified that Patrick Bishop "was lying about the pieces." She testified that on May 7, 2018 she was performing a new job that had required her to bend more. She testified that she had been performing that new task for one day when she had her accident.

Testimony of Dr. Morris Marc Soriano

Dr. Soriano testified by way of evidence deposition on January 11, 2022. Dr. Soriano is a board-certified in neurological surgery. He examined the Petitioner on September 25, 2018. The Petitioner provided the doctor a history of injuring herself on May 17, 2018 while at work. She complained of back pain and neck stiffness. Petitioner claimed that her job required repetitive motion. She had been employed for nine months prior to being terminated. The Petitioner stated that she would need to reach into a machine about 25 degrees to retrieve material and she would have to tend to a machine every seven minutes. Dr. Soriano testified that the Petitioner was not able to recall any specific injury. Dr. Soriano performed a physical examination and she demonstrated a normal exam. Dr. Soriano testified that light palpation to the skin on the back of her neck and her low back caused her to complain of pain. Petitioner demonstrated three positive Waddell signs. Petitioner's MRI reports showed some bulging discs in the cervical and lumbar spine that were not traumatic in nature, but were

consistent with the normal genetic aging process. He diagnosed exaggerated symptomology with no evidence of an acute injury or physiological damage. Dr. Soriano testified that if any injury occurred, it would have been limited to a lumbar strain, but he had serious questions as to whether an injury even occurred. Dr. Soriano testified that the Petitioner needed no further treatment and was capable of returning to her job full duty. Dr. Soriano testified that her job was not repetitive in the sense that it could not have caused an injury.

CONCLUSIONS OF LAW

1. With regard to the issue of accident, the Arbitrator finds that the Petitioner has failed to meet her burden of proof. In support of this finding, the Arbitrator relies on the preponderance of the witness testimony and evidence presented. The Petitioner alleges that she sustained a repetitive injury on May 7, 2018 while reaching into machines every seven minutes. In support of her claim, Petitioner relies on her own testimony and medical records. When viewing the evidence as a whole, the facts do not support Petitioner's claim. The Arbitrator first notes the Petitioner's demeanor during the hearing, in which she kept her head down and did not look at either attorney while being questioned. Petitioner's answers were combative and dismissive. The Arbitrator also notes that the Petitioner did not appear to be in any pain or discomfort while sitting on the witness stand. Furthermore, the Petitioner's testimony lacked credibility when compared to the testimony of the other witnesses. Petitioner claims to have provided notice of her accident to Mr. Patrick Bishop. Mr. Bishop denied the Petitioner told him about her accident. The Petitioner alleges that she sustained an injury to her back and neck through repetitive motions in which she had to bend into a deep machine every seven minutes and "fold" her body over. However, this testimony was also directly rebutted by Mr. Bishop – who testified that the job that Petitioner claimed to be performing at the time of the accident required minimal bending, did not require Petitioner to contort her body and that Petitioner would not have been using machines to make parts. Instead, Petitioner would have been polishing and assembling parts at a bench.

The Arbitrator also notes that the Petitioner's theory of how she injured herself was inconsistent. After being directed to physicians by her attorney, Petitioner told the physicians that her injury was caused by repetitive motion and the medical records do not identify any specific accident. At the time of trial, Petitioner's theory of accident morphed into a specific trauma claim. She stated that she was performing a new job on May 7, 2018, it was the first time she had ever performed that specific job, and she injured herself while performing that job. This is in direct contradiction to the medical records entered into evidence showing a history of repetitive trauma as the source of Petitioner's claimed injuries.

The Arbitrator finds that the Petitioner's testimony as to reporting of the accident lacks credibility. The Petitioner testified that on May 7, 2018 she told Willy Molina of her injury. She also testified that she told Mr. Pat Bishop of her injury. Mr. Bishop testified that he never received any indication from Petitioner of any work injury. Furthermore, Andrea Weibler of Respondent's Human Resources department testified that she was never informed by Mr. Bishop, or Willy Molina, that the Petitioner injured herself at work. Ms. Weibler testified that between May 7, 2018 and May 18, 2018, the Petitioner never told her that she was injured despite the fact that Ms.Weibler had provided Petitioner with her personal cell phone number, through which the two had communicated in the past. Ms. Weibler testified that she and the Petitioner exchanged text messages on the day of Petitioner's termination and there was no mention of a workplace injury. Ms. Weibler testified that between May 7, 2018 and May 18, 2018, the Petitioner continued to work full duty and did not request any time off or accommodation. Ms. Weibler testified that she first became aware of any potential workplace injury when she received a filed Application for Adjustment of Claim. After Petitioner was terminated from her employment by the Respondent, Respondent received a threatening phone call. Petitioner subsequently filled an Equal Employment Opportunity Commission Case, which she denied. Andrea Weibler testified the Petitioner did file an EEOC case.

The medical records entered into evidence show that the Petitioner did not seek any medical attention until May 22, 2018. This is 15 days after the claimed injury and 4 days after her termination from employment. The Arbitrator notes that before seeking medical attention, she retained an attorney and the attorney directed her to a medical provider. The initial medical records also appear to show the medical treatment was legally directed as they include a hand-written note indicating "This was a Repetitive Injury! Attorney "Schlack", Jonathan." (PX 1, p. 000007) The medical records presented into evidence reveal that the Petitioner was last examined by Dr. Patel October 13, 2018. At that visit, Dr. Patel stated that the Petitioner did not require any interventional therapies and that the Petitioner did not want to proceed with same. When questioned about Dr. Patel's statement, the Petitioner indicated that it was a "lie." The Petitioner claimed to have treated for a year after being examined by Dr. Patel on October 13, 2018, but presented no medical records to support that claim.

When viewing the evidence as whole, the Arbitrator finds that the Petitioner failed to prove that she sustained an accident on May 7, 2018. The Arbitrator notes that the Petitioner continued to work full duty from May 7, 2018 through her termination on May 18, 2018. She only sought medical attention after her termination, at the direction of her attorney. The Arbitrator finds that the Petitioner's testimony lacks credibility given the preponderance of the evidence. Accordingly, all other issues are moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC004371
Case Name	Glenda Chappell v. State of Illinois – Illinois Department of Human Services
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0231
Number of Pages of Decision	9
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Patrick Shifley
Respondent Attorney	Alyssa Silvestri

DATE FILED: 5/23/2023

/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

Glenda Chappell,

Petitioner,

vs. NO: 15 WC 4371

State of Illinois Department of
Human 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 causal connection, temporary total disability, 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 17, 2022, is hereby affirmed and adopted.

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

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

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

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

May 23, 2023
MP:yl
o 5/18/23
43

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC004371
Case Name	Glenda Chapell v. State of Illinois - Illinois Department of Human Services
Consolidated Cases	
Proceeding Type	19(b)(8a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Patrick Shifley
Respondent Attorney	Alyssa Silvestri

DATE FILED: 8/17/2022

/s/ Elaine Llerena, Arbitrator
Signature

INTEREST RATE WEEK OF AUGUST 16, 2022 3.02%

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

August 17, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

Glenda Chapell
Employee/Petitioner

v.

Illinois Department of Human Services
Employer/Respondent

Case # **15** WC **004371**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **March 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 **Evidentiary Issues**

FINDINGS

On the date of accident, **August 25, 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 $**46,001.28**; the average weekly wage was $**884.64**.

On the date of accident, Petitioner was **46** years of age, ***married*** with **0** dependent children.

Respondent shall be given a credit of $**18,830.62** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**18,830.62**.

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 $589.76 per week for 395-2/7 weeks, commencing August 25, 2014, through March 23, 2022, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services provided by Franciscan WorkingWell-Chicago Heights, Specialty Physicians of Illinois, Center for Athletic Medicine, Chicago Orthopedic and Sports Medicine, and Athletico, as outlined in PX8, and as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for right knee surgery as recommended by Dr. Ellis Nam.

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

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

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

Elaine Llerena

Signature of Arbitrator

August 17, 2022

ICArbDec19(b)

STATEMENT OF FACTS:

Petitioner worked for Respondent helping patients with activities of daily living. On August 25, 2014, Petitioner was kicked by a patient. According to Petitioner, the patient kicked up under the patella of her right knee. Petitioner felt immediate pain following the kick.

Petitioner was taken by a co-worker to Franciscan WorkingWell-Chicago Heights. (PX1) Petitioner was seen by Dr. Clifton Ward who noted that Petitioner had been kicked in the knee at work, was limping noticeably and complained of right knee pain. *Id.* Dr. Ward diagnosed Petitioner as having a right knee contusion, prescribed ibuprofen and told Petitioner to keep her right leg elevated. *Id.* Dr. Ward ordered Petitioner to wear a splint and restricted her to a sitting job with minimal walking. *Id.*

Petitioner followed up at WorkingWell-Chicago Heights on August 28, 2014, where she complained of ongoing right knee pain with no improvement. *Id.* Petitioner was taken off work. *Id.* On September 9, 2014, Petitioner was referred to physical therapy, which Petitioner underwent. *Id.* On September 22, 2014, a right knee MRI was ordered, which Petitioner underwent on September 29, 2014, the results of which showed a partial tear of the ACL near its insertion on the tibia. *Id.* On October 2, 2014, Petitioner was referred to an orthopedic surgeon. *Id.*

Petitioner saw Dr. William Payne from October 7, 2014, through February 24, 2015. (PX2) Dr. Payne ordered physical therapy, which Petitioner underwent, and prescribed Petitioner Tramadol. *Id.* Petitioner continued to report pain and instability in the right knee throughout. *Id.*

On January 21, 2015, Petitioner underwent in independent medical examination (IME) with Dr. Steven Mash as requested by Respondent and pursuant to Section 12 of the Illinois Workers' Compensation Act (Act). (RX3) Dr. Mash examined Petitioner and reviewed her medical records from WorkingWell and Dr. Payne, as well as her physical therapy records, and diagnostic exams and diagnosed Petitioner as having a right knee contusion that had resolved. *Id.* Dr. Mash found a lack of objective findings and that Petitioner's subjective complaints were in excess of her objective findings. *Id.* Dr. Mash opined that Petitioner did not agree with the recommendation by Dr. Payne for surgery and felt Petitioner was exaggerating her symptoms to a significant degree. *Id.* Dr. Mash opined that surgery was not appropriate, necessary or causally related to the work accident. *Id.* Dr. Mash determined that Petitioner could return to work without restrictions and found Petitioner to be at maximum medical improvement (MMI). *Id.*

Petitioner started treating with Dr. Preston Wolin January 23, 2015. (PX3) Petitioner reported that she was kicked in the right knee at work and continued to have pain and problems with the right knee. *Id.* Dr. Wolin reviewed the MRI and noted that is showed no edema in the proximal tibia, no meniscus tear and some intermediate signal changes in the ACL. *Id.* Dr. Wolin diagnosed Petitioner as having medial knee pain, kept Petitioner off work and ordered physical therapy. *Id.*

On February 27, 2015, Dr. Wolin noted that Petitioner reported no longer having pain down into her right leg, but continued to have episodes of instability and buckling. *Id.* Petitioner expressed interest in undergoing surgery to repair her ACL and felt that the procedure was necessary in order to return to work. *Id.* After discussing surgical options with Petitioner, Dr. Wolin ordered an ACL reconstruction with allograft, continued physical therapy until the surgery and kept Petitioner off work. *Id.*

Petitioner saw Dr. Ellis Nam on April 6, 2015. (PX4) Dr. Nam noted that Petitioner reported being kicked in the right knee at work and having problems with the knee ever since. *Id.* Petitioner explained that she

had seen Dr. Wolin, who had recommended right knee surgery but, for unknown reasons, could not perform the surgery and referred Petitioner to Dr. Nam. *Id.* On April 13, 2015, Dr. Nam indicated he wanted to review the MRI of Petitioner's right knee and released Petitioner to return to work with no lifting and using a crutch as needed. *Id.* On June 8, 2015, Dr. Nam noted that he had spoken treatment options with Petitioner, and they had elected to proceed with surgery. *Id.* Petitioner continued to follow up with Dr. Nam while waiting for approval for surgery. *Id.* Petitioner continued to complain of right knee pain and instability throughout. *Id.*

On November 8, 2015, Dr. Nam issued a narrative report regarding Petitioner. (PX6) Dr. Nam outlined Petitioner's treatment with him to that point and diagnosed Petitioner as having right knee partial ACL tear. *Id.* Dr. Nam opined that Petitioner's right knee partial ACL tear was causally related to the August 25, 2014, work accident. *Id.* Dr. Nam explained that he had recommended that Petitioner undergo a right knee diagnostic arthroscopy with a possible ACT reconstruction. *Id.*

Dr. Nam testified via evidence deposition on February 24, 2017. (PX7) Dr. Nam's testimony was consistent with his medical records and narrative report.

Petitioner last saw Dr. Nam on February 14, 2019. (PX4) Dr. Nam noted that Petitioner was having instability episodes daily and that she had to use a brace and crutches. *Id.* Petitioner and Dr. Nam discussed non-operative and operative treatment options and they decided to proceed with surgery. *Id.* Dr. Nam released Petitioner to return to work with no lifting and the use of a crutch for assistance. *Id.*

Dr. Mash testified via evidence deposition on October 26, 2021. (RX2) Dr. Mash's testimony was consistent with his IME report.

At hearing, Petitioner testified she fell maybe a year after the work accident. Petitioner explained that her knee went out and she fell down the stairs. Petitioner testified that the fall down the stairs did not change her right knee condition. Petitioner further testified that a nurse at Respondent, Debra Hassell, told her surgery was not approved and that Petitioner had to return to work. According to Petitioner, she did not return to work because she could not walk, her leg was swollen and painful, and she was on two crutches. Petitioner testified she wanted treatment and if approved she would get it.

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

A "chain of events" is established when a Petitioner establishes a previous condition of good health, an accident, and subsequent injury resulting in disability. *International Harvester v. Industrial Com.*, 93 Ill.2d 59, 63-64 (1982). The Arbitrator notes that in the case at bar there is no evidence, whether by way of testimony or medical opinions, indicating Petitioner had any right knee pain or problems prior to the work accident on August 25, 2014. Therefore, Petitioner was in condition of good health before the accident. Further, the medical reports consistently indicate that Petitioner sustained a right knee injury on August 25, 2014, and continued to have problems with the right knee as a result. No other incident was provided as the reason for Petitioner's ongoing right knee problems.

The Arbitrator also notes that Dr. Nam, Petitioner's treating physician, opined that Petitioner's right knee partial ACL tear was causally related to the August 25, 2014, work accident.

Based on the above, the Arbitrator finds Petitioner's right knee condition is causally related to the August 25, 2014, work accident.

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

The Arbitrator notes that Dr. Mash, Respondent's Section 12 examiner, opined that he found a lack of objective findings and that Petitioner had reached MMI. However, the Arbitrator also notes that both Dr. Wolin and Dr. Nam found continued episodes of buckling and instability in Petitioner's right knee and ordered continued treatment. The Arbitrator further notes that the September 29, 2014, MRI of the right knee showed a partial tear of the ACL near its insertion on the tibia.

Based on the diagnostic reports and the findings of Dr. Wolin and Dr. Nam, the Arbitrator finds that Petitioner's treatment was reasonable and necessary. Therefore, Respondent is liable for the unpaid medical expenses as outlined in PX8, pursuant to Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that both Dr. Wolin and Dr. Nam ordered surgery as treatment for Petitioner's ongoing right knee problems. The Arbitrator acknowledges that Dr. Mash disagrees with the recommendation for surgery, but notes that Dr. Mash also found a lack of objective findings despite the right knee MRI showing a partial tear in Petitioner's ACL. As such, the Arbitrator finds the opinions and recommendations of Dr. Wolin and Dr. Nam more persuasive than those of Dr. Mash.

Based on the above, Respondent shall authorize and pay for right knee surgery as recommended by Dr. Nam.

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

The Arbitrator notes Dr. Nam has not released Petitioner to return to work without restrictions. There is nothing in the record to indicate that Respondent has agreed to accommodate Petitioner's work restrictions. As such, Petitioner has not been able to return to work.

Based on the above, Petitioner is entitled to temporary total disability benefits from August 25, 2014, through March 23, 2022.

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

Respondent provided a payment list (RX1) as evidence. Based on this payment list, Respondent has paid $18,830.62 in extended benefits.

Based on the above, Respondent is entitled to a credit of $18,830.62 for benefits paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC022708
Case Name	Peter Wade v. Access Information Systems
Consolidated Cases	21WC004132
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0232
Number of Pages of Decision	19
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	James Burke
Respondent Attorney	Lilia Picazo

DATE FILED: 5/23/2023

/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

Peter Wade,

Petitioner,

vs. No. 20 WC 22708

Access Information Systems,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary disability, prospective medical care, penalties and fees, credits, permanent disability, and rejected exhibit, and being advised of the facts and law, modifies the Corrected 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).

Findings of Fact:

Petitioner, a 40-year-old warehouse worker, alleged two work-related accidents while working at Respondent. On August 18, 2020 Petitioner injured his low back when he attempted to right a cart of boxes which had tipped (this claim, 20 WC 22708). He felt an immediate sharp pain in his back, and after finishing his delivery, went home due to the pain. When he could not get out of bed the next day due to his pain, he scheduled a virtual visit with Dr. Reyes, who prescribed steroid and pain medications. After taking those medications for six days without significant relief, Petitioner sought treatment at the emergency room of South Shore Hospital,

where he was x-rayed and authorized to remain off work. Thereafter, he treated with Dr. Chandler, who diagnosed him with herniated discs. Dr. Chandler ordered physical therapy and referred him to Dr. Payne. Dr. Payne provided work restrictions which Respondent was unable to accommodate.

On November 24, 2021, Petitioner saw Respondent's expert, Dr. Gleason, for a Section 12 exam. Dr. Gleason agreed that Petitioner's MRI showed moderate lumbar degenerative disc disease and bulges at multiple levels. He acknowledged that Petitioner's mechanism of injury could be consistent with a strain or exacerbation of his preexisting condition, but he opined that any strain or exacerbation would have resolved six to eight weeks after Petitioner's accident.

Even though Dr. Payne had not lifted his restrictions, Petitioner returned to work on December 22, 2020 because Dr. Gleason found him able to work full, unrestricted duty. Petitioner testified he worked until January 6, 2021, when he lifted a garbage can and experienced the same pain in his back (companion claim, 21 WC 4132). He testified that following that accident, he was unable to stand up straight, and remained in a bent over position until he was able to grab and hold onto something. Petitioner sat at a work bench the rest of that day; made an appointment to see Dr. Payne, and reported this to Victor, his supervisor.

When Petitioner saw Dr. Payne on January 12, 2021, Dr. Payne took him off work, recommended more therapy, and referred him to Dr. Patel. Dr. Patel ordered lumbar injections, which Petitioner underwent in March and May 2021. Those injections provided only limited pain relief.

On February 1, 2021, Petitioner saw neurosurgeon, Dr. Salehi, for a second opinion. Dr. Salehi diagnosed degenerative lumbar disc disease; herniations or bulges, and annular tears at L3-4, L4-5, and L5-S1. At Dr. Salehi's May 25, 2021 deposition, he opined that Petitioner's August 18, 2020 accident caused his prior asymptomatic back condition to become symptomatic. Dr. Salehi opined that Petitioner was not capable of working full time without restrictions, and required further treatment for his condition.

Dr. Gleason conducted a second Section 12 exam of Petitioner, on March 23, 2021. Then, Petitioner told him he had reinjured his back at work on January 6, 2021. At Dr. Gleason's June 29, 2021 deposition, he acknowledged that Petitioner sustained an exacerbation or aggravation on January 6, 2021. However, he disagreed that Petitioner was unable to work without restrictions, or that any restrictions he might require would be permanent. Dr. Gleason opined that to whatever degree Petitioner may have sustained a lumbar strain or exacerbation on January 6, 2021, those would have resolved within two months.

Dr. Payne was deposed on January 24, 2022. He testified that when he last saw Petitioner on November 11, 2021, Petitioner had chronic low back pain with right-sided radiculopathy. Dr. Payne gave his opinion that Petitioner's herniated disc and foraminal stenosis were caused by his

August 2020 accident. Dr. Payne further opined that Petitioner required restrictions; and because his symptoms had persisted for over a year, his injury was more likely than not permanent.

At arbitration, Petitioner testified that he experiences tingling in his legs and has trouble standing for long periods of time. He has difficulty putting on his shoes and socks, and cannot bend forward without experiencing back pain.

Conclusions of Law:

It is undisputed that Petitioner sustained an accident which arose out of and in the course of his employment with Respondent on August 18, 2020. The Arbitrator found the medical bills listed in Petitioner's Exhibit 15 to be causally related to his injuries on that date, and ordered Respondent to pay them. Respondent objected to those bills on multiple grounds, including that they were duplicates, were outside of Petitioner's chain of physician referrals, lacked sufficient foundation, or were incurred after the October 5, 2020 date on which Dr. Gleason found Petitioner to have reached MMI.

The Commission has considered Respondent's objections to Petitioner's bills. It finds, regarding Petitioner's January 27, 2021, $323.53 bill from Crandon Emergency Physicians, that Petitioner offered no testimony or records showing a causal relationship of any treatment from that provider on that date. Accordingly, the Commission vacates the award of that bill. The Commission finds all other bills in Petitioner's Exhibit 15 to be reasonable, necessary, and causally related to Petitioner's August 18, 2020 work accident.

While Dr. Gleason opined Petitioner reached maximum medical improvement following his August 18, 2020 work accident, Dr. Salehi found Petitioner was still in need of work restrictions and treatment for his back injuries. The Commission finds Dr. Salehi's opinion that Petitioner has not reached MMI to be more persuasive than Dr. Gleason's opinion that he had. Because Petitioner is still in need of further treatment, the Commission finds it premature to award Petitioner a functional capacity evaluation and vocational rehabilitation, and vacates those awards. Instead, the Commission modifies the award of prospective medical care to include an evaluation by Dr. Salehi to determine what causally related treatment would be reasonable and necessary.

Regarding the issue of temporary total disability for Petitioner's August 18, 2020 accident, the Commission finds Petitioner entitled to 17-6/7 weeks of TTD, from August 19, 2020 through December 21, 2020. During that period, he was either authorized completely off work, or unable to perform his usual job without restrictions. Petitioner testified he returned to work at Respondent on December 22, 2020, and worked until his second accident on January 6, 2021.

The Arbitrator found that after Respondent obtained Dr. Gleason's opinions, it had an opportunity to send Petitioner to a different doctor to validate his opinions – but declined to do so. The Arbitrator considered this "action" by Respondent to be vexatious, and warranting of penalties under §19(k) and §19(l), and attorney's fees under §16.

The Commission views the evidence relating to the issue of penalties and fees differently than the Arbitrator. The Act imposes no duty upon Respondents to seek "validation" of their expert's opinions when they are contrary to those of treating physicians – as is often the case. Dr. Gleason is a board-certified orthopedic surgeon. Although we find Dr. Gleason's opinions less persuasive than those of Petitioner's treating doctors, we do not find Respondent's reliance on them to be vexatious, or sufficient justification to award penalties or attorney's fees. The Commission therefore vacates the Arbitrator's award of penalties and attorney's fees in this claim.

The Arbitrator ordered Respondent receive a credit for a temporary partial disability (TPD) advance in the amount of $3,474.38. However, on the parties' Request for Hearing sheet, they stipulated that Respondent's $3,474.38 payment was for permanent partial disability (PPD), not TPD. The Commission now corrects that error.

Petitioner testified that while he was unable to perform his usual job in 2021, he received six months of unemployment benefits. He also received de minimis earnings from Progress Printing for performing a few days of work, delivering pamphlets and empty ballot boxes. The Arbitrator awarded Respondent a credit of $10,568.00 for the unemployment benefits he received from I.D.E.S., and a credit of $2,500.00 for his earnings from Progress Printing.

However, the Act does not provide for credits to Respondents for employees who receive earnings from another employer or unemployment benefits. The Appellate Court has held that employees who are able to do some light duty work are not ineligible to receive temporary total disability benefits; also, their receipt of unemployment compensation does not preclude or diminish their eligibility to receive TTD benefits. *Schafer v. Ill. Workers' Comp. Comm'n,* 2011 IL App (4th) 100505WC ; 976 N.E.2d 1; 2011 Ill. App. LEXIS 1126; 364 Ill. Dec. 1. The Commission therefore vacates the $10,568.00 unemployment benefit credit, and the $2,500.00 Progress Printing earnings credit, given to Respondent. With regard to the stipulated $6,555.99 credit which the Arbitrator gave to Respondent for TTD it paid, the Commission affirms that credit.

Respondent also claimed the Arbitrator erred by allowing Petitioner's job search logs, (Petitioner's Exhibit 14) into evidence, because Petitioner failed to lay a foundation and did not provide any other specific testimony regarding his other job searches. In fact, Petitioner testified that he had sought employment through job board posts made at an unemployment agency. He also testified he made a resume, which he utilized in searching online for jobs on Indeed, Monster, ZipRecruiter, and a former employer, Millennial Enterprise. While Petitioner did not expressly refer to his Exhibit 14 at the arbitration hearing, the Commission finds his testimony regarding his attempts to obtain jobs at various online sites, to be a sufficient foundation for the admission of Petitioner's Exhibit 14 into evidence.

Respondent also claims the Arbitrator erred by rejecting Respondent's Exhibit 7 – documents showing that in 2021, Petitioner applied for and received two Paycheck Protection Program ("PPP") loans for a small business he was starting. Respondent offered that exhibit "to

support Petitioner's testimony" that he applied for and received a PPP loan. The Commission finds that exhibit to have no relevance, given that Petitioner admitted he applied for and received a PPP loan.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Corrected Decision of the Arbitrator filed October 20, 2022, is hereby modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that as a result of Petitioner's August 18, 2020 accident, Respondent pay Petitioner temporary total disability benefits of $380.60 per week, for 17-6/7 weeks, for the period of August 19, 2020 through December 21, 2020, as provided by §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that, with the exception of the $323.53 bill from Crandon Emergency Physicians from January 27, 2021, Respondent shall pay the outstanding reasonable and necessary medical expenses incurred in treating Petitioner's lumbar spine condition which are listed in Petitioner's Exhibit 15, pursuant to the fee schedule, as provided by §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of prospective medical care, including an FCE and vocational rehabilitation, is vacated. Respondent shall, however, authorize and pay for an evaluation by Dr. Salehi for his recommendations for further causally related treatment, pursuant to §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the following credits given by the Arbitrator to Respondent are vacated: $3,474.38 for temporary partial disability; $10,030.37 for unemployment compensation benefits received; and $2,500.00 for part time earnings from Progress Printing.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is given a $3,474.38 credit for permanent partial disability, as stipulated by the parties; and the $6,555.99 credit to Respondent for temporary total disability it paid to Petitioner, is affirmed.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of penalties and attorney's fees in this matter is vacated.

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

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $5,400.00. 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.

May 23, 2023

MP/mcp
o-04/06/23
068

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC022708
Case Name	Pete Wade v. Access
Consolidated Cases	21WC004132;
Proceeding Type	19(b) Petition
Decision Type	Corrected Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	James Burke
Respondent Attorney	Lilia Picazo

DATE FILED: 10/20/2022

THE INTEREST RATE FOR THE WEEK OF OCTOBER 18, 2022 4.24%

/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)
X None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION - 19(b)

PETER WADE, Case # **20 WC 022708**
Employee/Petitioner

v.

ACCESS INFORMATION 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 **RAYCHEL WESLEY**, Arbitrator of the Commission, in the city of **CHICAGO**, on **08/25/22**. 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. ☒ 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 18, 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 $**29,691.48**; the average weekly wage was $**570.90**.

On the date of accident, Petitioner was **40** years of age, ***single*** with **2** dependent children.

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

Respondent shall be given a credit of $**6,555.99** for TTD, $**3,474.38** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**10,030.37 The Respondent is also entitled to credit of $10,568.. for unemployment benefits from IDES and $2500.00 for money earned from his delivery job with Progress Printing**.

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

ORDER

- Respondent shall pay Petitioner compensation that has accrued from 08/19/20 thru 12/21/20 ($6,796.43).

- Respondent shall pay the related unpaid medical providers listed in Petitioner's Exhibit 15, pursuant to the appropriate Workers Compensation med fees.

- Respondent shall receive a credit of $6,5556.99 for TTD paid, $3,474.38 for TPD paid, $10, 568.00 for unemployment benefits paid to the Petitioner by IDES and $2,500 for cash renumerations made to the petitioner while in the employ of Progress Printing.

- Respondent shall provide payment for reasonable and necessary prospective medical care for the Petitioner, and if necessary, an FCE and Vocational Rehabilitation.

/s/ Raychel A. Wesley

Signature of Arbitrator

October 20, 2022

ICArbDec19(b)

Peter Wade v Access Information Systems
20 WC 22708

FACTS:

The Petitioner was hired by the Respondent in April of 2018 to work at their record storage facility in Chicago. The facility stores records from all types of companies that include boxes that are one-three square feet, to boxes that are four feet long and two-three feet wide. These boxes were anywhere from 5-75 lbs. The physical requirements of the job would be routine lifting of 20-60 lbs., 100-500 containers a day or more. (Tr p 20-22, Pet. Ex. 11). The Petitioner would pick up boxes from customers to deliver to the warehouse and also pull boxes from the warehouse to deliver to customers. Some orders would require up to 200 boxes to be delivered to customers. The boxes are stacked seven levels high, with room for three large boxes high and three boxes deep at each level running through the facility. If a box needed to be picked or replaced that was in the back and at the bottom of the nine box grouping, then all the other boxes in the location would have to be removed. The removal of boxes involved bending, stooping and reaching in order to remove the boxes or replace the boxes in their specified location. The boxes were placed on pallets for each customer, with a 40-box pallet limit. The pallets are picked up and delivered on a box truck and loaded by the use of a forklift or an electric pallet jack. (Tr. p.23-30)

The Petitioner injured himself on August 18, 2020 when he attempted to right a 4'x4' cart loaded with four boxes of blueprints that had tipped over. He felt a sharp pain go across his back during that attempt. The Petitioner was unable to resume a fully erect position and had to remain in the bent over position for approximately one minute with his upper torso parallel to the ground. The Petitioner testified that he could not finish the workday and that he had never experienced that type of pain before. His co-worker, Manny, called the supervisor, Victor, informing him of the accident. (Tr. p.30-36) The Petitioner was never asked to fill out an accident form, nor was he ever given one to fill out. (Tr. p. 49-50) The Petitioner gave a telephone recorded statement to a Respondent adjustor on September 1, 2020. (Pet. Ex. 10)

The Petitioner took over-the-counter pain medication, but his pain worsened over the course of the evening and morning. He called work to let them know that he was having difficulty getting out of bed and standing, and unable to work. He scheduled a virtual medical visit due to the Pandemic with Dr. Angelo Reyes who prescribed a six day steroid and pain killer regimen that did not improve his condition. He still was in no condition to return to work so he went to the South Shore Hospital emergency room on August 24, 2020. His lumbar x-ray showed some loss of lumbar lordosis, but was otherwise normal, and he was given more meds and given time off work. (Pet Ex. 1) He called to make an appointment with an orthopedic surgeon, Dr. Steven Chandler, but the first available appointment date was September 15, 2020. (Tr. p. 37-40, Pet. Ex. 2)

Dr. Chandler took a history and examined the Petitioner on that date. He diagnosed a lumbar strain, an aggravation of lumbar degenerative disc, and prescribed a Lumbar MRI to rule out disc herniation. He prescribed a Medrol pack, physical therapy and the MRI. The MRI was taken on September 24, 2020 at Preferred Open MRI in Chicago. (Pet. Ex. 3) The MRI showed a

L3-4 disc herniation, with underlying bulge causing foraminal stenosis and L4-5 & L5-S1disk bulge causing foraminal stenosis. The Petitioner also underwent physical therapy at ATI Physical Therapy in Chicago on September 21, 2020 through November 25, 2020. (Pet. Ex. #4) The Petitioner followed up with Dr. Chandler on October 6, 2020, and Dr. Chandler referred him to a Neurosurgeon, Dr William Payne, to determine if he was a surgical candidate or if he could continue with conservative treatment. (Pet. Ex. 2)

The Petitioner had a virtual visit with Dr. Payne due to the Pandemic on November 12, 2020. (Pet Ex. 5) Dr. Payne directed the Petitioner to continue physical therapy of the low back three times a week for four weeks, stay off work for an additional four weeks, schedule an epidural steroid injection of the lumbar spine and follow up in four weeks. (Pet. Ex. 5, p. 20)

The Petitioner underwent a Section 12 examination with Dr. Thomas Gleason on November 24, 2020. (Resp. Ex. 1) Dr. Gleason opined that the injury of August 18, 2020 was a lumbar strain that resolved within six-eight weeks, and that the Petitioner could return to work with no restrictions. Based on Dr. Gleason's IME report, the Respondent terminated benefits as of December 21, 2020.

The Petitioner returned to full duty work on December 22, 2020. He was doing his job as well as possible. Part of Petitioner's duties were cleaning the warehouse and disposing of all the resultant garbage. The Petitioner was taking a garbage can out on January 6, 2021 and had pushed it down on the dock so that the garbage can would empty into the dumpster positioned below against the dock. He picked up the rear of the garbage can to tilt the mouth of the can downward when he felt the same pain that he felt from the August 18, 2020 accident. He was again unable to immediately raise himself from the position of his back being parallel to the ground. He informed his supervisor, Victor Zemeckis, who was present at the work bench when the Petitioner called Dr. Payne to make an appointment. He was not offered an accident report, nor was he told to fill one out. The Petitioner continued to work due to having exhausted all his days off and vacation from the original injury. Petitioner worked from January 7th through the 11th (Tr. p. 50-56)

He saw Dr. Payne on the doctor's first available appointment date, January 12, 2021. He testified that he told Dr. Payne of the January 6, 2022 incident or reaggravation of the injury, but it was not noted in Dr. Payne's records. (Tr. p. 57) The Petitioner reported that he had returned to work full duty lifting heavy objects, and that certain movements and bending over aggravated his pain. The Petitioner noted pain, numbness and tingling radiating down his right leg along with most of the pain in his low back feeling like a pinching sensation. He was taking naproxen for pain. (Pet. Ex. 5, p. 41) Dr. Payne's examination revealed a positive straight leg raising test on both legs. The diagnosis was foraminal stenosis of the lumbar region, spinal stenosis of the lumbar region, degenerative lumbar spinal stenosis, bulging lumbar disc and lumbar disc herniation. (Pet. Ex. 5, p. 39) Following the examination, Dr. Payne ordered facet injections to the lumbar spine, physical therapy three times a week for four weeks and follow up thereafter on February 9, 2021. (Pet. Ex 5, p 43) The Petitioner was told not to return to work. (Tr. p. 58)

The petitioner saw Dr. Sean Salehi, a board certified neurological surgeon, on February 1, 2021, for a second opinion. The doctor took a history and examined the Petitioner. Dr. Salehi

noted in his examination that sitting straight leg raising caused pain bilaterally. The doctor also reviewed the MRI film. Dr. Salehi concluded that that the Petitioner's back pain was present as a result of the August 18, 2020 accident. This was secondary to disc herniations at L3-4 through L5-S1, as well as aggravation of preexisting but asymptomatic disc disease at three levels. He recommended continuation of physical therapy two-three times a week for six weeks. He was also referred to pain management for one -two caudal epidural spine injections and a follow up visit in six weeks. He was instructed that he was capable of working a light duty job with restrictions of lifting no more than 20 lbs., no pushing or pulling over 35 pounds, no bending or twisting more than three times an hour, and ability to alternate sitting/standing every 30-35 minutes. (Pet. Ex. 6)

The Petitioner attended physical therapy at Athletico from February 5, 2021 to March 2, 2021, pursuant to Dr. Salehi's referral. The Petitioner was only able to attend four therapy sessions February 5, 2021 through March 2, 2021. (Pet. Ex. 18)

The Petitioner saw Dr. Sheel Patel on February 24, 2021 pursuant to Dr. Payne's referral to a pain doctor. Dr. Patel's history from Mr. Wade, which again noted the Petitioner's complaints, including adamant denial of any acute or chronic pain over the areas of the low back or lower extremities prior to August 18, 2020. The Petitioner presented with low back and leg pain with pain to both sides of the lumbar spine and pain radiating to the right posterior thigh, the right lateral foot and the right foot. It was described as numbness, a burning sensation and intermittent. The doctor noted the pain caused pain that moderately limited activities and were incapacitating at times. The complaints were alleviated by lumbar extension, standing or walking, changing position, ice, rest, physical therapy and stretching. The symptoms were exacerbated by lumbar flexion, lifting, twisting coughing and sneezing. The doctor rendered an opinion, within a reasonable degree of medical probability, that his current symptoms could be attributed to that event. The doctor also noted that his present condition and persistent pain symptoms interfered with his ability to perform daily job duties and perform activities of daily living. Dr. Patel reviewed the MRI and noted lumbosacral disc disease at L5-S1, L4-5, and L3-4 with moderate sized central herniated discs L5-S1 and L3-4 and mild central herniated disc at L4-5. Dr. Patel recommended discontinuing Naprosyn due to the lack of efficacy, start Tizanidine 4 mg, start Gabapentin 300 mg, continue physical therapy two-three times a week for six weeks and follow up in three weeks to reevaluate medication regime and consider percutaneous intervention if he is not making adequate progress in physical therapy. (Pet. Ex. 7)

The petitioner first saw Dr. Krishna Chunduri on February 24, 2021 pursuant to Dr. Salehi's referral. Dr. Chunduri took a history and examined the patient and MRI. He had a positive straight leg raise. The doctor's reading of the MRI showed some diffuse spondylitic changes with disc bulges a t L3-4, L4-5 and a L5-S1 moderate size disc herniation with foraminal stenosis. He also diagnosed right radiculitis. Dr. Chunduri opined that the patient was injured at work resulting in his current symptoms. The plan was to perform a right L5 and S1 transforaminal epidural steroid injection, continue therapy start Lyrica 75 mg. and diclofenac gel for topical pain relief. The first injection occurred on March 15, 2021. The follow up visit on March 24, 2021 revealed the Petitioner had some pain relief for the injection and a 2nd injection was scheduled for April 19, 2021, but the Petitioner had to cancel it due to a family emergency. The 2nd epidural steroid injection took place on May 3, 2021 at Metro North Surgery Center in

Chicago. The Petitioner's next and last visit with Dr. Chunduri took place on August 15, 2021. Petitioner told the doctor that the back pain and numbness and tingling in his right leg was still constant. Dr. Chunduri then told him to follow up with Dr. Salehi for reevaluation. (Pet. Ex. 8) March 23, 2021. His opinions remained the same as the first IME. (Resp. Ex. 2)

The client had already returned to see Dr. Salehi on April 12, 2021. He informed Dr. Salehi of his same continuing symptoms. Dr. Salehi informed the Petitioner that he had three options: 1) Do nothing and tolerate the pain and get an FCE; 2) Undergo a trial of a spinal cord stimulator and if successful, get permanent implementation, or; 3) Undergo a three level lumbar fusion, although Dr. Salehi was hesitant to recommend this option. The Petitioner stated that he was not interested in a lumbar fusion surgery. The doctor awaits the Petitioner's decision of FCE v SCS and released him to return to work at a desk work capacity of no lifting/pulling/pushing over 10 lbs., no bending /twisting more than three times an hour and alternate sitting/standing every 30-45 minutes as needed. The Petitioner has not had any medical care since that date, other than the medication he is taking for pain.

In support of the Arbitrator's decision relating to "C," did an accident occur on January 6, 2021 which arose out of and in the course of the Petitioner's employment with Respondent, the Arbitrator makes the following conclusions:

The Respondent is only contesting the January 6, 2021 accident. The Petitioner testified that he was still in pain and was restricted in his activities due to the first accident. No doctor had returned Petitioner to work without restrictions besides the Section 12 doctor, Dr. Gleason. He testified as to the accident involving lifting the garbage can to empty it on January 6, 2021 after his return to work on December 22, 2020. He reported it to his supervisor Victor, who was present when he called to make a medical appointment with Dr. Payne. No accident report was made, but neither was an accident report made for the August 18, 2020 accident. The Petitioner testified that his immediate supervisor, Victor Zemeckis, and Victor's boss, Rudy Vanderbiest, did not offer an accident report and didn't want him to call Worker's Compensation. (Tr. p. 49-50) The Petitioner testified that he informed Dr. Payne and Dr. Salehi of the January 6, 2021 accident, but they failed to note it in their records.

The accident on January 6, 2021 aggravated his already existing pain and disability which was making his work activities difficult. He testified that the pain and symptomology suffered at the moment of the January accident was the same as that felt as a result of the August accident.

Based on the foregoing, the Arbitrator finds that an accident arising out of the Petitioner's employment did occur on January 6, 2021.

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:

Five doctors have causally related the Petitioner's present condition of ill-being to the August 18, 2020 accident, i.e. Dr. Chandler, Dr. Payne, Dr. Patel, Dr. Chunduri and Dr. Salehi. The only dissenting opinion comes from the Section 12 doctor, Dr. Thomas Gleason.

The Petitioner sought care with Dr. Chandler on September 15, 2022. He kept him off work and referred him to physical therapy at ATI and an MRI. The MRI showed disc herniation and bulging at two levels, all causing foraminal stenosis. Based on the MRI results, Dr. Chandler referred him to Dr. Payne to discern if he could continue with the conservative care or whether he was a surgical candidate. (Pet. Ex. 2)

Due to the pandemic, he had a virtual visit with Dr. Payne on November 12, 2020. He was told to remain off work, continue the physical therapy, stay off work for four weeks, schedule an epidural steroid injection and return in four weeks. (Pet. Ex. 5, p.20) Before his return date, Dr. Gleason saw him for an IME on November 24, 2020. Dr. Gleason rendered an opinion that the injury was soft tissue and fully resolved and that he could to return to work full duty and Worker's Compensation benefits were terminated. He returned to work full duty on December 22, 2020 and worked as well as possible due to the pain. (Tr. p, 50-54) He re-injured himself on January 6, 2021. He worked as best as possible through January 11, 2021, and had an appointment with Dr. Payne on January 12, 2021. The history detailed that he was unable to complete physical therapy since it was not being covered by workers compensation and that he was back to full duty which required him to lift heavy objects. The patient complained that certain movements and bending over aggravated his pain. There were also complaints of pain, numbness and tingling down his right leg with most of the pain being in his low back and feeling a pinching sensation there. He was taking naproxen for pain. (Pet. Ex. 5, p.41) He was examined and the MRI film was seen, and Dr. Payne's diagnosis was foraminal stenosis of the lumbar region, foraminal stenosis of the lumbar region with radiculopathy, degenerative lumbar spinal stenosis, bulging lumbar disc, and lumbar disc herniation. ((Pet, Ex. 5, p. 39) The doctor testified that it was his opinion that Mr. Wade's condition of ill-being was caused by the August 18, 2020 accident. He further opined that the accident caused the herniated disc and bulging discs which were causing the foraminal stenosis. The doctor ordered more physical therapy and spinal epidural spinal injections and a follow up with the doctor. (Pet. Ex. 17, p. 16-17) He last saw Dr. Payne on December 11, 2021. He was examined and the history stated that he was given epidural spinal injections in March and April of 2021, and that he got about four weeks of relief, but his baseline level of pain returned. He also stated that that he had some significant relief from physical therapy but it had plateaued after a change in his therapy provider. (Pet. Ex, 17, p. 18-19) When questioned, Dr. Payne testified that he thought the Petitioner's injuries were permanent, and that the Petitioner would be unable to perform the full time individual job duties listed by the Respondent in Pet. Ex. 11, including lifting, pushing, pulling, reaching, carrying, bending, stretching, climbing and standing, amongst other limitations. (Tr. p.24-27)

The Petitioner presented to Dr. Patel on February 24, 2021 per Dr. Payne's referral, with low back and leg pain with pain to both sides of the lumbar spine and pain radiating to the right posterior thigh, the right lateral foot and the right foot. It was described as numbness, a burning sensation and intermittent. The doctor noted the pain moderately limited activities and was incapacitating at times. The complaints were alleviated by lumbar extension, standing or walking, changing position, ice, rest, physical therapy and stretching. The symptoms were

exacerbated by lumbar flexion, lifting twisting coughing and sneezing. The doctor rendered an opinion, within a reasonable degree of medical probability, that his current symptoms can be attributed to the August 18, 2020 accident. The doctor also noted that his present condition and persistent pain symptoms interfered with his ability to perform daily job duties and perform activities of daily living. Dr. Patel reviewed the MRI and noted lumbosacral disc disease at L5-S1, L4-5, and L3-4 with moderate sized central herniated discs L5-S1 and L3-4 and mild central herniated disc at L4-5. Dr. Patel recommended discontinuing Naprosyn due to the lack of efficacy, start Tizanidine 4 mg, start Gabapentin 300 mg, continue physical therapy two-three times a week for six weeks and follow up in three weeks to reevaluate medication regime and consider percutaneous intervention if he is not making adequate progress in physical therapy. (Pet. Ex. 7)

Dr. Sean Salehi diagnosed the Petitioner's injuries as disc degeneration in his lumbosacral spine disc herniation and disc bulges in his lumbosacral spine (Pet. Ex. 9, p. 10-11) He testified that that the reason for his pain was as a result of an annular tear and disc disease at three levels in the lower back, l3-4down to L5-S1discs. The annulus was torn at all three levels resulting in this mechanical lower back pain. (Pet. Ex. 9, p. 11) Lifting heavy objects, bending and twisting are responsible for 90% of why someone's annulus would get disrupted and this pain would be extenuated with activities involving lifting, bending and twisting. The history given to Dr. Salehi by the Petitioner was that he felt a tearing pain in his lower back when he tried to lift a cart carrying four boxes. (Pet. Ex. 9, p. 7) It would prevent him from standing or sitting in one position for too long. (Pet. Ex. 9, 12) Dr. Salehi opined that the Petitioner's injury and resulting pain were causally related to the August 18, 2020 accident. (Pet. Ex. 9, p. 14) The doctor testified that there was lumbar canal stenosis with lumbar radiculopathy present. (Pet. Ex. 9, p. 22) Dr. Salehi testified that it was his opinion that that the degenerative condition in the Petitioner's back was asymptomatic, and that the specific description given by the Petitioner of what he was doing at the time of injury turned the condition symptomatic. Further, a degenerative condition makes one more susceptible to injury. (Pet. Ex. 9, p. 23-24) Dr Salehi also testified that the symptoms of a sprain/strain aggravation of a pre-existing condition only last four to six weeks, and that "once the symptoms go beyond that time frame, then you have to entertain other ideas and diagnoses as to why patients are symptomatic". (Pet. Ex. 9. P. 24-25) The doctor did nor believe that the Petitioner was not able to return to full time work without restrictions and that the Petitioner was not at maximum medical improvement. (Pet. Ex. 9, p. 25-26)

Dr. Gleason's IME report dated November 24, 2020 details his examination, the records reviewed and the MRI film seen by the doctor. Resp. Ex. 1) Although noting the extremely physical job requirements of the Petitioner's job as detailed in Petitioner's Exhibit 11, and also noting some of the Petitioner's complaints, Dr. Gleason returned him to full duty, opining that "The reported mechanism of the alleged incident could be consistent with an injury as diagnosed, that being back pain likely related to a strain or a temporary exacerbation of his pre-existing condition, improved and resolved within approximately six to eight weeks of time". He further opined that "the Patient has no current symptoms causally related to the August 18, 2020. To the degree that he may have intermittent low back pain, this would related to his pre-existing chronic condition as reflected in the MRI scan". The doctor testified that the MRI did not show any acute injury and that there was no numbness present on November 6, 2020. He further testified that he

didn't know when the herniation occurred. (Tr. p.62) Dr Gleason performed a 2nd IME on March 23, 2021, his opinions were the same as his November24, 2020. (Resp. Ex. 2) Nowhere in these IME's is the pain, numbness and tingling into his right lower extremity noted or addressed. The doctor states that the mechanism of the injury "could" be consistent with the diagnosis. If it "could" be consistent, then it also means that it might not be consistent with the injury as diagnosed. Dr. Gleason would not testify that someone who has a degenerative back condition is not more susceptible to injury than one who doesn't. (Tr. p. 79) He rendered the only doctors' opinion that the MRI didn't show an acute injury, as opposed to the other five treating physicians. The doctor rendered his opinion based on the supposition that this Petitioner's symptomology ended after four-six weeks, even though the Petitioner was complaining of constant pain from the time of the accident. His opinion was also rendered despite the MRI results of November 24, 2020. 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, 85 Ill. 2d 117, 51 Ill Dec.685, 421 N.E. 2d193 (1981*). (It is a well-settled rule that where an employee, in the performance of his duties and as a result thereof, is suddenly disabled, an accidental injury is sustained even though the result would not have obtained had the employee been in normal health.) Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Rock Road Construction Co. v. Industrial Comm'n. 37 Ill 2d 123,127, 227 N.F. 2d 65 (1967); Sisbro, Inc. v Industrial Comm'n., 207 Ill.2d 193 @ 205.(20030.*

The Arbitrator finds that the treating doctors are more credible than Dr. Gleason and further finds that his analysis and reasoning does not appear to be consistent with the Petitioner's condition.

Based on the foregoing, the Arbitrator finds that the Petitioner's present condition of ill-being is causally related to the accidents of August 18, 2020 and of January 6, 2021.

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. Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

The Petitioner has attended all the medical services proposed by Dr. Chandler, who referred him to Dr. Payne, and also Dr. Salehi, from whom he sought a 2nd opinion. He was referred for an MRI, physical therapy, pain doctors and epidural spine injections. The unpaid amounts from this treatment are listed in Petitioner's Exhibit 15. The Respondent solely relies on the opinions of Dr. Thomas Gleason, who opined that the Petitioner reached MMI on October 5, 2020, and no further medical treatment was reasonable and necessary. (Resp. Ex. 1 and 2)

The Arbitrator relies on the opinions of the treaters and therefore finds that the medical services provided to the Petitioner were reasonable and necessary, and that the providers listed in Petitioner's Exhibit 15 be paid pursuant to the fee schedule.

In support of the Arbitrator's decision relating to K. Is Petitioner entitled to any prospective medical care, the Arbitrator finds as follows:

The Petitioner has responded well to physical therapy in the past. Dr. Salehi stated that he was not at MMI. Dr. Salehi also gave the Petitioner three future options consisting of a three level fusion operation, a temporary spinal implant to test its efficacy and need for a permanent implant, or an FCE. The Petitioner is still having constant pain and is unable to work full duty without restrictions. The Petitioner is entitled to another consultation with Dr. Salehi to decide his course of treatment, since he hasn't seen him or received any medical treatment since April of 2021.

The respondent has only entered Dr. Gleason's IME's and evidence deposition as their rebuttal to future medical care.

Based on the foregoing, the Arbitrator finds that the Petitioner is entitled to reasonable and necessary future medical care.

In support of the Arbitrator's decision relating to L. What temporary benefits are in dispute, the Arbitrator finds as follows:

The Petitioner has never been returned to work by any physician besides the Section 12 doctor. The Respondent has never accommodated any restrictions placed on the Petitioner by his treating doctors.

The petitioner was off from August 19, 2020 through December 21, 2020, and from January 12, 2021 through August 25, 2022. The Petitioner was paid TTD for the period of August 19, 2020 through December 21, 2020. He was advanced a TPD payment of $3,474.38.

He was never authorized to return to his full-time position by any of the treating physicians. The Respondent terminated the Petitioner's benefits based solely on the opinion of the Section 12 physician, whose medical opinions have not been adopted by the Arbitrator. The Respondent has offered no other evidence supporting their claim that the Petitioner was not entitled to TTD.

Wherefore, the Arbitrator awards the Petitioner TTD from August 19, 2020 through December 21, 2020 and January 12, 2021 through August 25, 2022.

In support of the Arbitrator's decision relating to (L) what is the Nature and Extent of the Injury, the Arbitrator finds as follows:

Not one of the treating doctors has released the Petitioner to full-duty work, especially at the physical level job detailed at Respondent's facility. (Pet. Ex. 11) The Petitioner has not reached MMI according to Dr. Salehi, is in constant pain and any permanence decision would be premature before any prospective treatment, an FCE and possible vocational rehabilitation be performed.

The Respondent entered a surveillance video and report which was seen by the parties and Arbitrator. (Resp. Ex. 6) The video purported to show Petitioner engaging in activities which were among other things, beyond the restrictions imposed by his treaters. The Arbitrator saw no evidence of this and gives no evidentiary value to the video.

Because the Petitioner is in need of additional care and evaluation, and has not been released by his doctors nor reached MMI, the Arbitrator finds that it would be premature to make a nature and extent award.

In support of the Arbitrator's decision relating to (M) Should Penalties or Fees Be Imposed on the Respondent?

The Petitioner had a positive MRI, was receiving treatment and had not been returned to work at the time of Dr. Gleason's first IME. The Section 12 doctor, fully aware of the extremely physical nature of Petitioner's job, ignored the Petitioner's complaints of pain and symptomology, disregarded the radiologists MRI impressions, and returned the Petitioner to full duty. That action led to what could reasonably be characterized as his entirely foreseeable re-injury on January 6, 2021. The second IME of Dr. Gleason was the same as the first one.

The Respondent had the opportunity, after five differing medical opinions, to send the Petitioner for another opinion with a different doctor, to validate their position, but declined. The Arbitrator views this action as vexatious and awards penalties under Section 19(k) and (1) and Section 16 fees.

In support of the Arbitrator's decision relating to (N) Is Respondent Due Any Credit, the Arbitrator finds as follows:

The Respondent is entitled to credit in the amount of $6,555.99 paid for TTD and $3,474.38 paid for TPD. They are also entitled to credit for $10, 568.00 paid in unemployment benefits by IDES and $2,500 earned in cash payments for work performed by the Petitioner.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC004132
Case Name	Peter Wade v. Access Information Systems
Consolidated Cases	20WC022708;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0233
Number of Pages of Decision	20
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	James Burke
Respondent Attorney	Lilia Picazo

DATE FILED: 5/23/2023

/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

Peter Wade,

Petitioner,

vs. No. 21 WC 4132

Access Information Systems,

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, notice, jurisdiction, causal connection, medical expenses, temporary disability, prospective medical care, penalties and fees, credits, permanent disability, rejected exhibit, and "Arbitrator's 11/2/2022 Verbal Motion to Correct Clerical Error," and being advised of the facts and law, modifies the 2nd Corrected Decision of the Arbitrator, as stated below, and otherwise affirms and adopts the 2nd Corrected 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).

Findings of Fact:

Petitioner, a 40-year-old warehouse worker, alleged two work-related accidents while working at Respondent. On August 18, 2020, Petitioner injured his low back when he attempted to right a cart of boxes which had tipped (companion claim, 20 WC 22708). He felt an immediate sharp pain in his back, and after finishing his delivery, went home due to the pain. When he could not get out of bed the next day due to his pain, he scheduled a virtual visit with Dr. Reyes, who

prescribed steroid and pain medications. After taking those medications for six days without significant relief, Petitioner sought treatment at the emergency room of South Shore Hospital, where he was x-rayed and authorized to remain off work. Thereafter, he treated with Dr. Chandler, who diagnosed him with herniated discs. Dr. Chandler ordered physical therapy and referred him to Dr. Payne. Dr. Payne provided work restrictions which Respondent was unable to accommodate.

On November 24, 2021, Petitioner saw Respondent's expert, Dr. Gleason, for a Section 12 exam. Dr. Gleason agreed that Petitioner's MRI showed moderate lumbar degenerative disc disease and bulges at multiple levels. He acknowledged that Petitioner's mechanism of injury could be consistent with a strain or exacerbation of his preexisting condition, but he opined that any strain or exacerbation would have resolved six to eight weeks after Petitioner's accident.

Even though Dr. Payne had not lifted his restrictions, Petitioner returned to work on December 22, 2020 because Dr. Gleason found him able to work full, unrestricted duty. Petitioner testified he worked until January 6, 2021, when he lifted a garbage can and experienced the same pain in his back (this claim, 21 WC 4132). He testified that following that accident, he was unable to stand up straight, and remained in a bent over position until he was able to grab and hold onto something. Petitioner sat at a work bench the rest of that day; made an appointment to see Dr. Payne, and reported this to Victor, his supervisor.

When Petitioner saw Dr. Payne on January 12, 2021, Dr. Payne took him off work, recommended more therapy, and referred him to Dr. Patel. Dr. Patel ordered lumbar injections, which Petitioner underwent in March and May 2021. Those injections provided only limited pain relief.

On February 1, 2021, Petitioner saw neurosurgeon, Dr. Salehi, for a second opinion. Dr. Salehi diagnosed degenerative lumbar disc disease; herniations or bulges, and annular tears at L3-4, L4-5, and L5-S1. At Dr. Salehi's May 25, 2021 deposition, he opined that Petitioner's August 18, 2020 accident caused his prior asymptomatic back condition to become symptomatic. Dr. Salehi opined that Petitioner was not capable of working full time without restrictions, and required further treatment for his condition.

Dr. Gleason conducted a second Section 12 exam of Petitioner, on March 23, 2021. Then, Petitioner told him he had reinjured his back at work on January 6, 2021. At Dr. Gleason's June 29, 2021 deposition, he acknowledged that Petitioner sustained an exacerbation or aggravation on January 6, 2021. However, he disagreed that Petitioner was unable to work without restrictions, or that any restrictions he might require would be permanent. Dr. Gleason opined that to whatever degree Petitioner may have sustained a lumbar strain or exacerbation on January 6, 2021, those would have resolved within two months.

Dr. Payne was deposed on January 24, 2022. He testified that when he last saw Petitioner, on November 11, 2021, his diagnosis was chronic low back pain with right-sided radiculopathy.

Dr. Payne opined that Petitioner's herniated disc and foraminal stenosis were caused by his August 2020 accident. Dr. Payne further opined that Petitioner required restrictions; and because his symptoms had persisted for over a year, his injury was more likely than not permanent.

At arbitration, Petitioner testified that he experiences tingling in his legs and has trouble standing for long periods of time. He has difficulty putting on his shoes and socks, and cannot bend forward without experiencing back pain.

Conclusions of Law:

It is undisputed that Petitioner sustained an accident which arose out of and in the course of his employment with Respondent on August 18, 2020. Based upon Petitioner's testimony that he had an accident at work on January 6, 2021, which was corroborated by Dr. Gleason, the Commission also finds Petitioner sustained an aggravation of his back condition on that date which arose out of and in the course of his employment with Respondent. Petitioner's testimony that he reported that occurrence to his supervisor was unrebutted, and the Commission finds that timely notice of that accident was given to Respondent.

The Arbitrator found the bills listed in Petitioner's Exhibit 15 to be causally related to his January 6, 2021 work accident, and ordered Respondent to pay them. Respondent objected to those bills on multiple grounds, including that they were duplicates, were outside of Petitioner's chain of physician referrals, lacked sufficient foundation, or were incurred after the October 5, 2020 date on which Dr. Gleason found Petitioner to have reached MMI.

The Commission has considered Respondent's objections. It finds the August 24, 2020 bill from Crandon Emergency Physicians, in the amount of $448.00, to be unrelated to Petitioner's January 6, 2021 accident, as it was for treatment prior to that date. The Commission also finds that Petitioner offered no testimony or records showing a causal relationship of the $323.53 bill for treatment from Crandon Emergency Physicians on January 27, 2021. Accordingly, the Commission vacates the award of Crandon Emergency Physicians' bills for service dated August 24, 2020 and January 27, 2021. The Commission finds all other bills in Petitioner's Exhibit 15 to be reasonable, necessary, and causally related to Petitioner's January 6, 2021 work accident.

While Dr. Gleason opined Petitioner reached maximum medical improvement following his work accidents, Dr. Salehi found Petitioner was still in need of work restrictions and treatment for his back injuries. The Commission finds Dr. Salehi's opinion that Petitioner has not reached MMI to be more persuasive than Dr. Gleason's opinion that he had. Because Petitioner is still in need of further treatment, the Commission finds it premature to award Petitioner a functional capacity evaluation and vocational rehabilitation, and vacates those awards. Instead, the Commission modifies the award of prospective medical care to include an evaluation by Dr. Salehi to determine what causally related treatment would be reasonable and necessary.

In the 2nd Corrected Arbitration Decision for this (21 WC 4132) claim, issued on November 3, 2022, the Arbitrator awarded Petitioner 84-3/7 weeks of temporary total disability, for the period of January 12, 2021 through August 25, 2022. In that decision, the Arbitrator made clear that it was issued in order to correct errors – in the TTD calculation and the TTD end date – which were present in the prior Arbitration decisions. The Commission finds the TTD award of 84-3/7 weeks for the period January 12, 2021 through August 25, 2022 appropriate, and affirms that award.

In this claim, the Arbitrator awarded Petitioner: §19(k) penalties in the amount of $16,066.25; §19(l) penalties of an uncalculated amount, and "attorney fees in penalties calculated pursuant to §16 of the Act." The Arbitrator found that after Respondent obtained Dr. Gleason's opinions, it had an opportunity to send Petitioner to a different doctor to validate his opinions – but declined to do so. The Arbitrator considered this "action" by Respondent to be vexatious.

The Commission views the evidence relating to the issue of penalties and fees differently than the Arbitrator. The Act imposes no duty upon Respondents to seek "validation" of their expert's opinions when they are contrary to those of treating physicians – as is often the case. Dr. Gleason is a board-certified orthopedic surgeon. A review of his testimony shows he neither ignored Petitioner's complaints, nor disregarded the radiologist's impressions. He documented Petitioner's complaints, and acknowledged the radiologist's reading of the MRI, in addition to reading it himself. Dr. Gleason further noted that some of Petitioner's subjective complaints were not confirmed by objective findings.

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)."

In this case, Petitioner offered no evidence that he made any written demand for benefits.

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 this case, while we find Dr. Gleason's opinions less persuasive than those of Petitioner's treating doctors, we do not find Respondent's reliance on them to be vexatious, or sufficient justification to award penalties or attorney's fees. The Commission therefore vacates the Arbitrator's award of penalties and attorney's fees.

The Arbitrator ordered Respondent receive a credit for a temporary partial disability (TPD) advance in the amount of $3,474.38. However, on the parties' Request for Hearing sheet, they stipulated that Respondent's $3,474.38 payment was for permanent partial disability (PPD), not TPD. The Commission now corrects that error.

Petitioner testified that while he was unable to perform his usual job in 2021, he received six months of unemployment benefits. He also received de minimis earnings from Progress Printing for performing a few days of work, delivering pamphlets and empty ballot boxes. The Arbitrator awarded Respondent a credit of $10,568.00 for the unemployment benefits he received from I.D.E.S., and a credit of $2,500.00 for his earnings from Progress Printing.

However, the Act does not provide for credits to Respondents for employees who receive earnings from another employer or unemployment benefits. The Appellate Court has held that employees who are able to do some light duty work are not ineligible to receive temporary total disability benefits; also, their receipt of unemployment compensation does not preclude or

diminish their eligibility to receive TTD benefits. *Schafer v. Ill. Workers' Comp. Comm'n,* 2011 IL App (4th) 100505WC ; 976 N.E.2d 1; 2011 Ill. App. LEXIS 1126; 364 Ill. Dec. 1. The Commission therefore vacates the $10,568.00 unemployment benefit credit, and the $2,500.00 Progress Printing earnings credit, given to Respondent. With regard to the stipulated $6,555.99 credit which the Arbitrator gave to Respondent for TTD it paid, the Commission affirms that credit.

Respondent also claimed the Arbitrator erred by allowing Petitioner's job search logs, (Petitioner's Exhibit 14) into evidence, because Petitioner failed to lay a foundation and did not provide any other specific testimony regarding his other job searches. In fact, Petitioner testified that he had sought employment through job board posts made at an unemployment agency. He also testified he made a resume, which he utilized in searching online for jobs on Indeed, Monster, ZipRecruiter, and a former employer, Millennial Enterprise. While Petitioner did not expressly refer to his Exhibit 14 at the arbitration hearing, the Commission finds his testimony regarding his attempts to obtain jobs at various online sites, to be a sufficient foundation for the admission of Petitioner's Exhibit 14 into evidence.

Respondent also claims the Arbitrator erred by rejecting Respondent's Exhibit 7 – documents showing that in 2021, Petitioner applied for and received two Paycheck Protection Program ("PPP") loans for a small business he was starting. Respondent offered that exhibit "to support Petitioner's testimony" that he applied for and received a PPP loan. The Commission finds that exhibit to have no relevance, given that Petitioner admitted he applied for and received a PPP loan.

IT IS THEREFORE ORDERED BY THE COMMISSION that the 2nd Corrected Decision of the Arbitrator filed November 3, 2022, is hereby modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $380.60 per week, for 84-3/7 weeks, for the period of January 12, 2021 through August 25, 2022, as provided by §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that, with the exception of the $448.00 bill from Crandon Emergency Physicians on August 24, 2020, and the $323.53 bill from Crandon Emergency Physicians on January 27, 2021, Respondent shall pay the outstanding reasonable and necessary medical expenses incurred in treating Petitioner's lumbar spine condition which are listed in Petitioner's Exhibit 15, pursuant to the fee schedule, as provided by §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of prospective medical care, including an FCE and vocational rehabilitation, is vacated. Respondent

shall, however, authorize and pay for an evaluation by Dr. Salehi for his recommendations for further causally related treatment, pursuant to §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the following credits given by the Arbitrator to Respondent are vacated: $3,474.38 for temporary partial disability; $10,030.37 for unemployment compensation benefits received; and $2,500.00 for part time earnings from Progress Printing.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is given a $3,474.38 credit for permanent partial disability, as stipulated by the parties; and the $6,555.99 credit to Respondent for temporary total disability it paid to Petitioner, is affirmed.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of §19(k) and §19(l) penalties, and §16 attorney's fees, is vacated.

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

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

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

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

May 23, 2023

MP/mcp
o-04/06/23
068

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC004132
Case Name	Peter Wade v. Access Information Systems
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	2ND Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	James Burke
Respondent Attorney	Lilia Picazo

DATE FILED: 11/3/2022

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 1, 2022 4.44%

/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)
X None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
2ND CORRECTED ARBITRATION DECISION - 19(b)

PETER WADE, Case # **21 WC 004132**
Employee/Petitioner

v.

ACCESS INFORMATION 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 **RAYCHEL WESLEY**, Arbitrator of the Commission, in the city of **CHICAGO**, on August 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, January 6, 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 $**29,691.48**; the average weekly wage was $**570.90**.

On the date of accident, Petitioner was **40** years of age, ***single*** with **2** dependent children.

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

Respondent shall be given a credit of $**6,555.99** for TTD, $**3,474.38** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**10,030.37 The Respondent is also entitled to credit of $10,568.. for unemployment benefits from IDES and $2500.00 for money earned from his delivery job with Progress Printing**.

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

ORDER

Introduction: This is the 2nd corrected decision in this case. On the Arbitrator's own motion, the TTD period is corrected from the original decision and the first corrected decision to reflect the correct TTD period awarded of January 12, 2021 through August 25, 2022 – representing a substantial difference in both the originally issued decision and the first corrected decision, both of which contained errors in the calculation based on the Arbitrator using an incorrect end date. The correct end date is contained in the original decision rider and the first corrected decision rider.

1. It is ordered that Respondent shall pay Petitioner compensation that has accrued from January 12, 2021 through August 25, 2022, (84 3/7 weeks) at a rate of $380.60 weeks - $32,133.51;

2. Respondent shall pay Petitioner penalties for the unpaid TTD period of January 12, 2021 through August 25, 2022 (84 3/7 weeks) in the amount of $16,066.25 pursuant to Section 19(k) of the Act;

3. Respondent shall pay Petitioner penalties calculated pursuant to Section 19(l) of the Act;

4. Respondent shall pay Petitioner's attorney fees in penalties calculated pursuant to Section 16 of the Act;

5. Respondent shall pay the related unpaid medical providers listed in Petitioner's Exhibit 15, pursuant to the appropriate Workers Compensation med fees;

6. Respondent shall receive a credit of $6,5556.99 for TTD paid, $3,474.38 for TPD paid, $10, 568.00 for unemployment benefits paid to the Petitioner by IDES and $2,500 for cash renumerations made to the petitioner while in the employ of Progress Printing;

7. Respondent shall provide payment for reasonable and necessary prospective medical care for the Petitioner, and if necessary, an FCE and Vocational Rehabilitation;

NOVEMBER 3, 2022

/s/ Raychel A. Wesley

Signature of Arbitrator
ICArbDec19(b)

Peter Wade v Access Information Systems
21 WC 004132

FACTS:

The Petitioner was hired by the Respondent in April of 2018 to work at their record storage facility in Chicago. The facility stores records from all types of companies that include boxes that are one-three square feet, to boxes that are four feet long and two-three feet wide. These boxes were anywhere from 5-75 lbs. The physical requirements of the job would be routine lifting of 20-60 lbs., 100-500 containers a day or more. (Tr p 20-22, Pet. Ex. 11). The Petitioner would pick up boxes from customers to deliver to the warehouse and also pull boxes from the warehouse to deliver to customers. Some orders would require up to 200 boxes to be delivered to customers. The boxes are stacked seven levels high, with room for three large boxes high and three boxes deep at each level running through the facility. If a box needed to be picked or replaced that was in the back and at the bottom of the nine box grouping, then all the other boxes in the location would have to be removed. The removal of boxes involved bending, stooping and reaching in order to remove the boxes or replace the boxes in their specified location. The boxes were placed on pallets for each customer, with a 40-box pallet limit. The pallets are picked up and delivered on a box truck and loaded by the use of a forklift or an electric pallet jack. (Tr. p.23-30)

The Petitioner injured himself on August 18, 2020 when he attempted to right a 4'x4' cart loaded with four boxes of blueprints that had tipped over. He felt a sharp pain go across his back during that attempt. The Petitioner was unable to resume a fully erect position and had to remain in the bent over position for approximately one minute with his upper torso parallel to the ground. The Petitioner testified that he could not finish the workday and that he had never experienced that type of pain before. His co-worker, Manny, called the supervisor, Victor, informing him of the accident. (Tr. p.30-36) The Petitioner was never asked to fill out an accident form, nor was he ever given one to fill out. (Tr. p. 49-50) The Petitioner gave a telephone recorded statement to a Respondent adjustor on September 1, 2020. (Pet. Ex. 10)

The Petitioner took over-the-counter pain medication, but his pain worsened over the course of the evening and morning. He called work to let them know that he was having difficulty getting out of bed and standing, and unable to work. He scheduled a virtual medical visit due to the Pandemic with Dr. Angelo Reyes who prescribed a six day steroid and pain killer regimen that did not improve his condition. He still was in no condition to return to work so he went to the South Shore Hospital emergency room on August 24, 2020. His lumbar x-ray showed some loss of lumbar lordosis, but was otherwise normal, and he was given more meds and given time off work. (Pet Ex. 1) He called to make an appointment with an orthopedic surgeon, Dr. Steven Chandler, but the first available appointment date was September 15, 2020. (Tr. p. 37-40, Pet. Ex. 2)

Dr. Chandler took a history and examined the Petitioner on that date. He diagnosed a lumbar strain, an aggravation of lumbar degenerative disc, and prescribed a Lumbar MRI to rule out disc herniation. He prescribed a Medrol pack, physical therapy and the MRI. The MRI was taken on September 24, 2020 at Preferred Open MRI in Chicago. (Pet. Ex. 3) The MRI showed a L3-4 disc herniation, with underlying bulge causing foraminal stenosis and L4-5 & L5-S1disk bulge causing foraminal stenosis. The Petitioner also underwent physical therapy at ATI Physical Therapy in Chicago on September 21, 2020 through November 25, 2020. (Pet. Ex. #4)

The Petitioner followed up with Dr. Chandler on October 6, 2020, and Dr. Chandler referred him to a Neurosurgeon, Dr William Payne, to determine if he was a surgical candidate or if he could continue with conservative treatment. (Pet. Ex. 2)

The Petitioner had a virtual visit with Dr. Payne due to the Pandemic on November 12, 2020. (Pet Ex. 5) Dr. Payne directed the Petitioner to continue physical therapy of the low back three times a week for four weeks, stay off work for an additional four weeks, schedule an epidural steroid injection of the lumbar spine and follow up in four weeks. (Pet. Ex. 5, p. 20)

The Petitioner underwent a Section 12 examination with Dr. Thomas Gleason on November 24, 2020. (Resp. Ex. 1) Dr. Gleason opined that the injury of August 18, 2020 was a lumbar strain that resolved within six-eight weeks, and that the Petitioner could return to work with no restrictions. Based on Dr. Gleason's IME report, the Respondent terminated benefits as of December 21, 2020.

The Petitioner returned to full duty work on December 22, 2020. He was doing his job as well as possible. Part of Petitioner's duties were cleaning the warehouse and disposing of all the resultant garbage. The Petitioner was taking a garbage can out on January 6, 2021 and had pushed it down on the dock so that the garbage can would empty into the dumpster positioned below against the dock. He picked up the rear of the garbage can to tilt the mouth of the can downward when he felt the same pain that he felt from the August 18, 2020 accident. He was again unable to immediately raise himself from the position of his back being parallel to the ground. He informed his supervisor, Victor Zemeckis, who was present at the work bench when the Petitioner called Dr. Payne to make an appointment. He was not offered an accident report, nor was he told to fill one out. The Petitioner continued to work due to having exhausted all his days off and vacation from the original injury. Petitioner worked from January 7th through the 11th (Tr. p. 50-56)

He saw Dr. Payne on the doctor's first available appointment date, January 12, 2021. He testified that he told Dr. Payne of the January 6, 2022 incident or reaggravation of the injury, but it was not noted in Dr. Payne's records. (Tr. p. 57) The Petitioner reported that he had returned to work full duty lifting heavy objects, and that certain movements and bending over aggravated his pain. The Petitioner noted pain, numbness and tingling radiating down his right leg along with most of the pain in his low back feeling like a pinching sensation. He was taking naproxen for pain. (Pet. Ex. 5, p. 41) Dr. Payne's examination revealed a positive straight leg raising test on both legs. The diagnosis was foraminal stenosis of the lumbar region, spinal stenosis of the lumbar region, degenerative lumbar spinal stenosis, bulging lumbar disc and lumbar disc herniation. (Pet. Ex. 5, p. 39) Following the examination, Dr. Payne ordered facet injections to the lumbar spine, physical therapy three times a week for four weeks and follow up thereafter on February 9, 2021. (Pet. Ex 5, p 43) The Petitioner was told not to return to work. (Tr. p. 58)

The petitioner saw Dr. Sean Salehi, a board certified neurological surgeon, on February 1, 2021, for a second opinion. The doctor took a history and examined the Petitioner. Dr. Salehi noted in his examination that sitting straight leg raising caused pain bilaterally. The doctor also reviewed the MRI film. Dr. Salehi concluded that that the Petitioner's back pain was present as a result of the August 18, 2020 accident. This was secondary to disc herniations at L3-4 through L5-S1, as well as aggravation of preexisting but asymptomatic disc disease at three levels. He recommended continuation of physical therapy two-three times a week for six weeks. He was also referred to pain management for one -two caudal epidural spine injections and a follow up visit in six weeks. He was instructed that he was capable of working a light duty job with

restrictions of lifting no more than 20 lbs., no pushing or pulling over 35 pounds, no bending or twisting more than three times an hour, and ability to alternate sitting/standing every 30-35 minutes. (Pet. Ex. 6)

The Petitioner attended physical therapy at Athletico from February 5, 2021 to March 2, 2021, pursuant to Dr. Salehi's referral. The Petitioner was only able to attend four therapy sessions February 5, 2021 through March 2, 2021. (Pet. Ex. 18)

The Petitioner saw Dr. Sheel Patel on February 24, 2021 pursuant to Dr. Payne's referral to a pain doctor. Dr. Patel's history from Mr. Wade, which again noted the Petitioner's complaints, including adamant denial of any acute or chronic pain over the areas of the low back or lower extremities prior to August 18, 2020. The Petitioner presented with low back and leg pain with pain to both sides of the lumbar spine and pain radiating to the right posterior thigh, the right lateral foot and the right foot. It was described as numbness, a burning sensation and intermittent. The doctor noted the pain caused pain that moderately limited activities and were incapacitating at times. The complaints were alleviated by lumbar extension, standing or walking, changing position, ice, rest, physical therapy and stretching. The symptoms were exacerbated by lumbar flexion, lifting, twisting coughing and sneezing. The doctor rendered an opinion, within a reasonable degree of medical probability, that his current symptoms could be attributed to that event. The doctor also noted that his present condition and persistent pain symptoms interfered with his ability to perform daily job duties and perform activities of daily living. Dr. Patel reviewed the MRI and noted lumbosacral disc disease at L5-S1, L4-5, and L3-4 with moderate sized central herniated discs L5-S1 and L3-4 and mild central herniated disc at L4-5. Dr. Patel recommended discontinuing Naprosyn due to the lack of efficacy, start Tizanidine 4 mg, start Gabapentin 300 mg, continue physical therapy two-three times a week for six weeks and follow up in three weeks to reevaluate medication regime and consider percutaneous intervention if he is not making adequate progress in physical therapy. (Pet. Ex. 7)

The Petitioner first saw Dr. Krishna Chunduri on February 24, 2021 pursuant to Dr. Salehi's referral. Dr. Chunduri took a history and examined the patient and MRI. He had a positive straight leg raise. The doctor's reading of the MRI showed some diffuse spondylitic changes with disc bulges a t L3-4, L4-5 and a L5-S1 moderate size disc herniation with foraminal stenosis. He also diagnosed right radiculitis. Dr. Chunduri opined that the patient was injured at work resulting in his current symptoms. The plan was to perform a right L5 and S1 transforaminal epidural steroid injection, continue therapy start Lyrica 75 mg. and diclofenac gel for topical pain relief. The first injection occurred on March 15, 2021. The follow up visit on March 24, 2021 revealed the Petitioner had some pain relief for the injection and a 2nd injection was scheduled for April 19, 2021, but the Petitioner had to cancel it due to a family emergency. The 2nd epidural steroid injection took place on May 3, 2021 at Metro North Surgery Center in Chicago. The Petitioner's next and last visit with Dr. Chunduri took place on August 15, 2021. Petitioner told the doctor that the back pain and numbness and tingling in his right leg was still constant. Dr. Chunduri then told him to follow up with Dr. Salehi for reevaluation. (Pet. Ex. 8) March 23, 2021. His opinions remained the same as the first IME. (Resp. Ex. 2)

The client had already returned to see Dr. Salehi on April 12, 2021. He informed Dr. Salehi of his same continuing symptoms. Dr. Salehi informed the Petitioner that he had three options: 1) Do nothing and tolerate the pain and get an FCE; 2) Undergo a trial of a spinal cord stimulator and if successful, get permanent implementation, or; 3) Undergo a three level lumbar fusion, although Dr. Salehi was hesitant to recommend this option. The Petitioner stated that he was not interested in a lumbar fusion surgery. The doctor awaits the Petitioner's decision of FCE

v SCS and released him to return to work at a desk work capacity of no lifting/pulling/pushing over 10 lbs., no bending /twisting more than three times an hour and alternate sitting/standing every 30-45 minutes as needed. The Petitioner has not had any medical care since that date, other than the medication he is taking for pain.

In support of the Arbitrator's decision relating to "C," did an accident occur on January 6, 2021 which arose out of and in the course of the Petitioner's employment with Respondent, the Arbitrator makes the following conclusions:

The Respondent is only contesting the January 6, 2021 accident. The Petitioner testified that he was still in pain and was restricted in his activities due to the first accident. No doctor had returned Petitioner to work without restrictions besides the Section 12 doctor, Dr. Gleason. He testified as to the accident involving lifting the garbage can to empty it on January 6, 2021 after his return to work on December 22, 2020. He reported it to his supervisor Victor, who was present when he called to make a medical appointment with Dr. Payne. No accident report was made, but neither was an accident report made for the August 18, 2020 accident. The Petitioner testified that his immediate supervisor, Victor Zemeckis, and Victor's boss, Rudy Vanderbiest, did not offer an accident report and didn't want him to call Worker's Compensation. (Tr. p. 49-50) The Petitioner testified that he informed Dr. Payne and Dr. Salehi of the January 6, 2021 accident, but they failed to note it in their records.

The accident on January 6, 2021 aggravated his already existing pain and disability which was making his work activities difficult. He testified that the pain and symptomology suffered at the moment of the January accident was the same as that felt as a result of the August accident.

Based on the foregoing, the Arbitrator finds that an accident arising out of the Petitioner's employment did occur on January 6, 2021.

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:

Five doctors have causally related the Petitioner's present condition of ill-being to the August 18, 2020 accident, i.e. Dr. Chandler, Dr. Payne, Dr. Patel, Dr. Chunduri and Dr. Salehi. The only dissenting opinion comes from the Section 12 doctor, Dr. Thomas Gleason.

The Petitioner sought care with Dr. Chandler on September 15, 2022. He kept him off work and referred him to physical therapy at ATI and an MRI. The MRI showed disc herniation and bulging at two levels, all causing foraminal stenosis. Based on the MRI results, Dr. Chandler referred him to Dr. Payne to discern if he could continue with the conservative care or whether he was a surgical candidate. (Pet. Ex. 2)

Due to the pandemic, he had a virtual visit with Dr. Payne on November 12, 2020. He was told to remain off work, continue the physical therapy, stay off work for four weeks, schedule an epidural steroid injection and return in four weeks. (Pet. Ex. 5, p.20) Before his return date, Dr. Gleason saw him for an IME on November 24, 2020. Dr. Gleason rendered an opinion that the injury was soft tissue and fully resolved and that he could to return to work full duty and Worker's Compensation benefits were terminated. He returned to work full duty on December

22, 2020 and worked as well as possible due to the pain. (Tr. p, 50-54) He re-injured himself on January 6, 2021. He worked as best as possible through January 11, 2021, and had an appointment with Dr. Payne on January 12, 2021. The history detailed that he was unable to complete physical therapy since it was not being covered by workers compensation and that he was back to full duty which required him to lift heavy objects. The patient complained that certain movements and bending over aggravated his pain. There were also complaints of pain, numbness and tingling down his right leg with most of the pain being in his low back and feeling a pinching sensation there. He was taking naproxen for pain. (Pet. Ex. 5, p.41) He was examined and the MRI film was seen, and Dr. Payne's diagnosis was foraminal stenosis of the lumbar region, foraminal stenosis of the lumbar region with radiculopathy, degenerative lumbar spinal stenosis, bulging lumbar disc, and lumbar disc herniation. ((Pet, Ex. 5, p. 39) The doctor testified that it was his opinion that Mr. Wade's condition of ill-being was caused by the August 18, 2020 accident. He further opined that the accident caused the herniated disc and bulging discs which were causing the foraminal stenosis. The doctor ordered more physical therapy and spinal epidural spinal injections and a follow up with the doctor. (Pet. Ex. 17, p. 16-17) He last saw Dr. Payne on December 11, 2021. He was examined and the history stated that he was given epidural spinal injections in March and April of 2021, and that he got about four weeks of relief, but his baseline level of pain returned. He also stated that that he had some significant relief from physical therapy but it had plateaued after a change in his therapy provider. (Pet. Ex, 17, p. 18-19) When questioned, Dr. Payne testified that he thought the Petitioner's injuries were permanent, and that the Petitioner would be unable to perform the full time individual job duties listed by the Respondent in Pet. Ex. 11, including lifting, pushing, pulling, reaching, carrying, bending, stretching, climbing and standing, amongst other limitations. (Tr. p.24-27)

The Petitioner presented to Dr. Patel on February 24, 2021 per Dr. Payne's referral, with low back and leg pain with pain to both sides of the lumbar spine and pain radiating to the right posterior thigh, the right lateral foot and the right foot. It was described as numbness, a burning sensation and intermittent. The doctor noted the pain moderately limited activities and was incapacitating at times. The complaints were alleviated by lumbar extension, standing or walking, changing position, ice, rest, physical therapy and stretching. The symptoms were exacerbated by lumbar flexion, lifting twisting coughing and sneezing. The doctor rendered an opinion, within a reasonable degree of medical probability, that his current symptoms can be attributed to the August 18, 2020 accident. The doctor also noted that his present condition and persistent pain symptoms interfered with his ability to perform daily job duties and perform activities of daily living. Dr. Patel reviewed the MRI and noted lumbosacral disc disease at L5-S1, L4-5, and L3-4 with moderate sized central herniated discs L5-S1 and L3-4 and mild central herniated disc at L4-5. Dr. Patel recommended discontinuing Naprosyn due to the lack of efficacy, start Tizanidine 4 mg, start Gabapentin 300 mg, continue physical therapy two-three times a week for six weeks and follow up in three weeks to reevaluate medication regime and consider percutaneous intervention if he is not making adequate progress in physical therapy. (Pet. Ex. 7)

Dr. Sean Salehi diagnosed the Petitioner's injuries as disc degeneration in his lumbosacral spine disc herniation and disc bulges in his lumbosacral spine (Pet. Ex. 9, p. 10-11) He testified that that the reason for his pain was as a result of an annular tear and disc disease at three levels in the lower back, l3-4down to L5-S1discs. The annulus was torn at all three levels resulting in this mechanical lower back pain. (Pet. Ex. 9, p. 11) Lifting heavy objects, bending and twisting are responsible for 90% of why someone's annulus would get disrupted and this pain would be extenuated with activities involving lifting, bending and twisting. The history given to Dr. Salehi by the Petitioner was that he felt a tearing pain in his lower back when he tried to lift a cart carrying four boxes. (Pet. Ex. 9, p. 7) It would prevent him from standing or sitting in one

position for too long. (Pet. Ex. 9, 12) Dr. Salehi opined that the Petitioner's injury and resulting pain were causally related to the August 18, 2020 accident. (Pet. Ex. 9, p. 14) The doctor testified that there was lumbar canal stenosis with lumbar radiculopathy present. (Pet. Ex. 9, p. 22) Dr. Salehi testified that it was his opinion that that the degenerative condition in the Petitioner's back was asymptomatic, and that the specific description given by the Petitioner of what he was doing at the time of injury turned the condition symptomatic. Further, a degenerative condition makes one more susceptible to injury. (Pet. Ex. 9, p. 23-24) Dr Salehi also testified that the symptoms of a sprain/strain aggravation of a pre-existing condition only last four to six weeks, and that "once the symptoms go beyond that time frame, then you have to entertain other ideas and diagnoses as to why patients are symptomatic". (Pet. Ex. 9. P. 24-25) The doctor did not believe that the Petitioner was not able to return to full time work without restrictions and that the Petitioner was not at maximum medical improvement. (Pet. Ex. 9, p. 25-26).

Dr. Gleason's IME report dated November 24, 2020 details his examination, the records reviewed and the MRI film seen by the doctor. Resp. Ex. 1) Although noting the extremely physical job requirements of the Petitioner's job as detailed in Petitioner's Exhibit 11, and also noting some of the Petitioner's complaints, Dr. Gleason returned him to full duty, opining that "The reported mechanism of the alleged incident could be consistent with an injury as diagnosed, that being back pain likely related to a strain or a temporary exacerbation of his pre-existing condition, improved and resolved within approximately six to eight weeks of time". He further opined that "the Patient has no current symptoms causally related to the August 18, 2020. To the degree that he may have intermittent low back pain, this would related to his pre-existing chronic condition as reflected in the MRI scan". The doctor testified that the MRI did not show any acute injury and that there was no numbness present on November 6, 2020. He further testified that he didn't know when the herniation occurred. (Tr. p.62) Dr Gleason performed a 2nd IME on March 23, 2021, his opinions were the same as his November24, 2020. (Resp. Ex. 2) Nowhere in these IME's is the pain, numbness and tingling into his right lower extremity noted or addressed. The doctor states that the mechanism of the injury "could" be consistent with the diagnosis. If it "could" be consistent, then it also means that it might not be consistent with the injury as diagnosed. Dr. Gleason would not testify that someone who has a degenerative back condition is not more susceptible to injury than one who doesn't. (Tr. p. 79) He rendered the only doctors' opinion that the MRI didn't show an acute injury, as opposed to the other five treating physicians. The doctor rendered his opinion based on the supposition that this Petitioner's symptomology ended after four-six weeks, even though the Petitioner was complaining of constant pain from the time of the accident. His opinion was also rendered despite the MRI results of November 24, 2020. 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, 85 Ill. 2d 117, 51 Ill Dec.685, 421 N.E. 2d193 (1981*). (It is a well-settled rule that where an employee, in the performance of his duties and as a result thereof, is suddenly disabled, an accidental injury is sustained even though the result would not have obtained had the employee been in normal health.) Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Rock Road Construction Co. v. Industrial Comm'n. 37 Ill 2d 123,127, 227 N.F. 2d 65 (1967); Sisbro, Inc. v Industrial Comm'n., 207 Ill.2d 193 @ 205.(20030.*

The Arbitrator finds that the treating doctors are more credible than Dr. Gleason and further finds that his analysis and reasoning does not appear to be consistent with the Petitioner's condition.

Based on the foregoing, the Arbitrator finds that the Petitioner's present condition of ill-being is causally related to the accidents of August 18, 2020 and of January 6, 2021.

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. Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

The Petitioner has attended all the medical services proposed by Dr. Chandler, who referred him to Dr. Payne, and also Dr. Salehi, from whom he sought a 2nd opinion. He was referred for an MRI, physical therapy, pain doctors and epidural spine injections. The unpaid amounts from this treatment are listed in Petitioner's Exhibit 15. The Respondent solely relies on the opinions of Dr. Thomas Gleason, who opined that the Petitioner reached MMI on October 5, 2020, and no further medical treatment was reasonable and necessary. (Resp. Ex. 1 and 2)

The Arbitrator relies on the opinions of the treaters and therefore finds that the medical services provided to the Petitioner were reasonable and necessary, and that the providers listed in Petitioner's Exhibit 15 be paid pursuant to the fee schedule.

In support of the Arbitrator's decision relating to K. Is Petitioner entitled to any prospective medical care, the Arbitrator finds as follows:

The Petitioner has responded well to physical therapy in the past. Dr. Salehi stated that he was not at MMI. Dr. Salehi also gave the Petitioner three future options consisting of a three level fusion operation, a temporary spinal implant to test its efficacy and need for a permanent implant, or an FCE. The Petitioner is still having constant pain and is unable to work full duty without restrictions. The Petitioner is entitled to another consultation with Dr. Salehi to decide his course of treatment, since he hasn't seen him or received any medical treatment since April of 2021.

The respondent has only entered Dr. Gleason's IME's and evidence deposition as their rebuttal to future medical care.

Based on the foregoing, the Arbitrator finds that the Petitioner is entitled to reasonable and necessary future medical care.

In support of the Arbitrator's decision relating to L. What temporary benefits are in dispute, the Arbitrator finds as follows:

The Petitioner has never been returned to work by any physician besides the Section 12 doctor. The Respondent has never accommodated any restrictions placed on the Petitioner by his treating doctors.

The petitioner was off from August 19, 2020 through December 21, 2020, and from January 12, 2021 through August 25, 2022. The Petitioner was paid TTD for the period of August 19, 2020 through December 21, 2020. He was advanced a TPD payment of $3,474.38.

He was never authorized to return to his full-time position by any of the treating physicians. The Respondent terminated the Petitioner's benefits based solely on the opinion of the Section 12 physician, whose medical opinions have not been adopted by the Arbitrator. The Respondent has offered no other evidence supporting their claim that the Petitioner was not entitled to TTD.

Wherefore, the Arbitrator awards the Petitioner TTD from August 19, 2020 through December 21, 2020 and January 12, 2021 through August 25, 2022.

In support of the Arbitrator's decision relating to (L) what is the nature and extent of the injury, the Arbitrator finds as follows:

Not one of the treating doctors has released the Petitioner to full-duty work, especially at the physical level job detailed at Respondent's facility. (Pet. Ex. 11) The Petitioner has not reached MMI according to Dr. Salehi, is in constant pain and any permanence decision would be premature before any prospective treatment, an FCE and possible vocational rehabilitation be performed.

The Respondent entered a surveillance video and report which was seen by the parties and Arbitrator. (Resp. Ex. 6) The video purported to show Petitioner engaging in activities which were among other things, beyond the restrictions imposed by his treaters. The Arbitrator saw no evidence of this and gives no evidentiary value to the video.

Because the Petitioner is in need of additional care and evaluation, and has not been released by his doctors nor reached MMI, the Arbitrator finds that it would be premature to make a nature and extent award.

In support of the Arbitrator's decision relating to (M) should penalties or fees be imposed on the Respondent?

The Petitioner had a positive MRI, was receiving treatment and had not been returned to work at the time of Dr. Gleason's first IME. The Section 12 doctor, fully aware of the extremely physical nature of Petitioner's job, ignored the Petitioner's complaints of pain and symptomology, disregarded the radiologists MRI impressions, and returned the Petitioner to full duty. That action led to what could reasonably be characterized as his entirely foreseeable re-injury on January 6, 2021. The second IME of Dr. Gleason was the same as the first one.

The Respondent had the opportunity, after five differing medical opinions, to send the Petitioner for another opinion with a different doctor, to validate their position, but declined. The Arbitrator views this action as vexatious and awards penalties under Section 19(k) and (1) and Section 16 fees.

In support of the Arbitrator's decision relating to (N) Is Respondent due any credit, the Arbitrator finds as follows:

The Respondent is entitled to credit in the amount of $6,555.99 paid for TTD and $3,474.38 paid for TPD. They are also entitled to credit for $10,568.00 paid in unemployment benefits by IDES and $2,500 earned in cash payments for work performed by the Petitioner.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC003021
Case Name	Mark Sullivan v. ABF Freight, Inc
Consolidated Cases	20WC012248; 21WC000982;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0234
Number of Pages of Decision	25
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Edward Czapla
Respondent Attorney	Lindsay Vanderford

DATE FILED: 5/24/2023

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARK SULLIVAN,

Petitioner,

vs. NO: 18 WC 3021

ABF FREIGHT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causation, medical expenses including prospective treatment, temporary total disability and "finding of fraud perpetrated by Dr. Forman," 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).

We agree with the Arbitrator that Dr. Neal's opinion is not persuasive in this case. However, the Arbitrator's Decision does not address Dr. Neal's testimony that there were two pre-injury records (September 7, 2013 and March 20, 2015) that specifically state Petitioner had diffuse joint aches including in his "shoulders" plural. *Rx1 at 47-52, 62*. There is also a third such reference on August 14, 2015. We agree that diffuse pain in the "shoulders" would by definition include the right shoulder. Nevertheless, we do not believe that three remote mentions of bilateral shoulder pain in 2013 and 2015 negate a finding that Petitioner's right shoulder arthritic condition was aggravated by his 2018 work injury. Even Dr. Neal admitted the records do not indicate that, prior to the January 5, 2018 work injury, Petitioner had ever received any treatment specifically for the right shoulder, had ever been diagnosed with right shoulder osteoarthritis or had ever been prescribed work restrictions for the right shoulder. *Rx1 at 65-66*. Despite these references to

diffuse shoulder pain, we agree with the Arbitrator and find the chain-of-events along with the opinions of Dr. Tonino and Dr. Garbis to be more persuasive than the opinion of Dr. Neal.

Prospective Medical Treatment

Regarding prospective medical treatment, we reverse the Arbitrator on this issue and find that Petitioner has proven that he is entitled to the right shoulder total arthroplasty prescribed by Dr. Garbis. The Arbitrator found:

> Petitioner proffered evidence that two different surgical procedures had been recommended [and] the most current surgical recommendation was from Dr. Garbis on March 29, 2019. After receiving the surgical recommendation, Petitioner was able to return to work and has been able to continue working with some work accommodations. As such, the Arbitrator finds that Petitioner failed to prove which surgical procedure was more appropriate, reasonable or necessary given that Petitioner was capable [of] returning to work and has not undergone any right shoulder medical treatment since March…29, 2019. *Dec. at 13*.

We point out that Petitioner's Dr. Forman had prescribed an *arthroscopic* procedure for impingement syndrome on April 24, 2018, shortly after Petitioner's injury. *Px4, Rx5 at 21-26.* However, Petitioner stopped treating with Dr. Forman and instead began treating with Dr. Tonino who referred Petitioner to Dr. Garbis. On December 21, 2018, Dr. Garbis recommended a right *total shoulder arthroplasty* due to an aggravation of his prior preexisting condition. *Px6.* Dr. Garbis noted that Petitioner's pain had not returned to its baseline and "he is still having a fair amount of pain." Dr. Garbis wrote that Petitioner was going to consider the risks and think about his options but was able to continue working. *Id*. On March 29, 2019, Dr. Garbis again wrote that Petitioner "is really quite symptomatic" and the best course of action would be the arthroplasty. *Px7*. He also wrote, "I do think this sounds like it is causally related to the incident he had at work." *Id*.

At the hearing, Petitioner testified that he is ready for the surgery with Dr. Garbis and, if it is authorized by the workers' compensation insurance carrier, he would have it done. *T.40*.

Based on the above, we believe the Arbitrator erred in denying the arthroplasty prescribed by Dr. Garbis. The only other surgical recommendation was a year earlier, in April 2018, by Dr. Forman with whom Petitioner no longer treats. We also do not believe the fact that Petitioner returned to full-duty work with Respondent after the §12 examination with Dr. Neal is a sufficient reason to deny the surgery. Since Petitioner's January 5, 2018 work accident was *a* contributing factor in causing his pre-existing arthritis to become symptomatic or just made the symptoms worse, he is entitled to the arthroplasty to treat that condition. In other words, Petitioner is not at maximum medical improvement from a medical treatment standpoint even though he has been able to work through pain and has not treated since March 29, 2019 due to Respondent's denial of this claim. Therefore, we hereby award the prospective right shoulder total arthroplasty recommended by Dr. Garbis along with reasonable and necessary follow-up care pursuant to §8(a) of the Act subject to the fee schedule in §8.2 of the Act.

Applicability of §25.5 of the Act

We next address Respondent's allegation that Dr. Forman committed fraud pursuant to §25.5 of the Act. This was an issue at trial (see *T.5* and *Request for Hearing form at #13*), but the Arbitrator did not address it in his decision. Section 25.5 of the Act states:

> (a) It is unlawful for any person, company, corporation, insurance carrier, healthcare provider, or other entity to:
>
> (1) Intentionally present or cause to be presented any false or fraudulent claim for the payment of any workers' compensation benefit.
>
> (2) Intentionally make or cause to be made any false or fraudulent material statement or material representation for the purpose of obtaining or denying any workers' compensation benefit.
>
> …
>
> For the purposes of paragraphs (2), (3), (5), (6), (7), and (9), the term "statement" includes any writing, notice, proof of injury, bill for services, hospital or doctor records and reports, or X-ray and test results.

820 ILCS 305/25.5

Respondent argues that Dr. Forman fraudulently submitted two different sets of medical records to Respondent. One set was sent in compliance with Respondent's subpoena and the other was sent later along with a "Notice of Physician Lien" letter. *Respondent's Brief at 16*. Respondent argues that Dr. Forman "based his amendment of the records on an intake form which was not produced either prior to or during his deposition and which Petitioner readily testified contained another person's handwriting." *Id.* Respondent also argues, based on the opinion of its §12 examiner Dr. Neal, that "the ethical canons of medical practice would not allow for amendment in this manner" and that it would not be "acceptable not to produce that form in response to a subpoena." *Id. at 17*. Respondent contends that Dr. Forman improperly amended the records and submitted the second set of records "on the very date Dr. Forman decided he would seek collection from the workers' compensation carrier," and asks the Commission to find that "Dr. Forman made an attempt to defraud Respondent of workers' compensation benefits." *Id. at 17*.

We first consider whether §25.5 of the Act gives the Commission jurisdiction to find that Dr. Forman committed fraud. Respondent argues that *Hollywood Trucking, Inc. v. Watters*, 385 Ill. App. 3d 237 (5th Dist., 2008) and *Country Insurance and Financial Services v. Roberts*, 2011 IL App (1st) 103402 (2011) both support its position that the Commission has jurisdiction. We disagree.

Hollywood Trucking involved an employer who sued, in circuit court, an injured employee, James Atkinson, along with a physician, Dr. Watters, who had "certified Atkinson's physical fitness to operate a commercial motor vehicle." *Hollywood Trucking, Inc. v. Watters*, 385 Ill. App. 3d 237, 238 (5th Dist. 2008). Count I alleged that Dr. Watters *negligently* certified that Atkinson was physically fit, count II alleged that Dr. Watters Atkinson *fraudulently* certified that Atkinson was

physically fit, and count III alleged that Atkinson *fraudulently* misrepresented his medical history and failed to disclose prior back surgeries. *Id*. The circuit court had dismissed counts I and III with prejudice but let count II stand pending the disposition of the appeal. *Id. at 240 n.2*.

The appellate court found that the circuit court did not err in dismissing count I (against Dr. Watters) with prejudice. *Id. at 244*. Count II (also against Dr. Watters) was not at issue in the appeal. *Id. at 240*. Regarding count III, the appellate court found:

> According to the factual allegations set forth in count III of the complaint, Hollywood is seeking to recoup the benefits it has paid to Atkinson under the Act, on the **theory that Atkinson fraudulently misrepresented** his physical condition at the time of his hiring. **The allegations in count III involve factual issues regarding accident, causal connection, the nature and extent of the injury, and the employer's potential defenses, and these are proper subjects for the Commission in the first instance**. In cases involving a determination of an employee's entitlement to workers' compensation benefits and the employer's defenses to the claim, the circuit court's role is appellate only. [Citation omitted.] Accordingly, we find that the circuit court did not err in dismissing count III for a lack of jurisdiction.

Hollywood Trucking at 245 (*Emphases added*).

We point out that, although *Hollywood Trucking* does cite to §18 of the Act ("All questions arising under this Act, if not settled by agreement of the parties interested therein, shall, except as otherwise provided, be determined by the Commission"), this case does not specifically mention §25.5 of the Act, which addresses fraudulent statements. It is also worth noting that the appellate court only specifically found that the questions surrounding the *claimant's* alleged fraud were issues for the Commission. Nothing in *Hollywood Trucking* suggests that the Commission should determine, as part of the workers' compensation case, whether Dr. Watters committed fraud.

In *Country Insurance*, the appellate court found:

> Here, Country Insurance's complaint seeks to recoup the benefits it paid to Roberts under the Act as well as the medical benefits, attorney fees and the costs of bringing the suit. **Because Roberts' application for adjustment of claim remains pending before the Commission, the Commission has not yet made any findings or rulings as to whether Roberts was entitled to receive any benefits under the Act. The complaint, premised on various theories of fraud, presents questions of fact such as the nature of Roberts' employment relationship with Lakes Underground and Exceptional Plumbing Services, the extent or existence of his injury and his representations to medical personnel regarding his injury. As in *Hollywood Trucking*, these are questions of fact in which the Commission can draw on its special expertise to answer**. Country Insurance's complaint does not present a question of law as in *Skilling*. As such, the cause should be before the Commission rather than the circuit court. The circuit court properly dismissed Country Insurance's complaint for lack of jurisdiction.

Country Insurance & Financial Services v. Roberts, 2011 IL App (1st) 103402, ¶ 14 (Emphasis added).

Again, similar to *Hollywood Trucking*, the holding in *Country Insurance* applied to the Commission's jurisdiction to determine questions of fact related to the *claimant's* own potentially fraudulent representations as part of his WC case. It did not address the Commission's jurisdiction to determine fraud by a third party (e.g., a doctor). Also, significantly, *Country Insurance* does not specifically mention §25.5 of the Act.

Based on the above review of these two cases, even if the Commission has jurisdiction to determine allegations of fraud *against the claimant*, (a party to the case) the above cases do not support Respondent's position that the Commission can do so against a non-party treating physician such as Dr. Forman.

The fact that neither *Hollywood Trucking* nor *Country Insurance* even mention §25.5 of the Act is also worth considering. In addition to §25.5(a) that Respondent cites in its brief regarding "unlawful acts" of misrepresentation and fraud, Section 25.5(b) also provides that "Sentences for violations of subsection (a)" range from a Class A misdemeanor to a Class 1 felony and that a person "convicted" shall be ordered to pay monetary restitution. The provisions of §25.5(b) are clearly meant for a criminal proceeding, which is beyond the Commission's statutory authority. There are, obviously, also serious due process issues involved if the Commission attempted to find a non-party, who was unrepresented by counsel, "guilty" of a criminal violation of §25.5. If it is still not obvious that §25.5 does not grant the Commission authority to determine fraud, §25.5(c) explicitly states:

> (c) The **Department of Insurance shall establish a fraud and insurance non-compliance unit responsible for investigating incidences of fraud and insurance non-compliance pursuant to this Section**. … **It shall be the duty of the fraud and insurance non-compliance unit to determine** the identity of insurance carriers, employers, employees, or other persons or entities **who have violated the fraud and insurance non-compliance provisions of this Section**. The fraud and insurance non-compliance **unit shall report violations of the fraud and insurance non-compliance provisions of this Section to the Special Prosecutions Bureau of the Criminal Division of the Office of the Attorney General or to the State's Attorney** of the county in which the offense allegedly occurred, **either of whom has the authority to prosecute violations under this Section.**

820 ILCS 305/25.5(c) (Emphases added).

In other words, the "fraud and insurance non-compliance unit" is responsible for investigating fraud and determining *who* has violated the provisions of §25.5 and shall report those violations to either the Attorney General's office or the State's Attorney of the applicable county "either of whom has the authority to prosecute violations under this Section." Therefore, the Act does not allow an arbitrator or the Commission to determine fraud under §25.5 of the Act. Rather, that responsibility is specifically given to the fraud and insurance non-compliance unit.

In the case at bar, if Respondent believes Dr. Forman committed fraud, it should avail itself of §25.5(d) which provides:

> (d) Any person may report allegations of insurance non-compliance and fraud pursuant to this Section to the Department of Insurance's fraud and insurance non-compliance unit whose duty it shall be to investigate the report.

820 ILCS 305/25.5(d)

The above notwithstanding, the Commission must always determine the veracity and validity of the evidence before us, and we conclude that Dr. Forman's amendment is credible and was not produced under suspicious circumstances.

Respondent submitted into evidence the two sets of Dr. Forman's records it received. Rx6 contains a fax cover sheet from Dr. Forman's office to Respondent's attorney dated April 19, 2018. This exhibit includes a March 6, 2018 record that does not mention Petitioner's injury at work on January 5, 2018. Interestingly, Respondent's Exhibit List identifies Rx6 as "Dr. Forman's records provided in response to our subpoena." However, there is no subpoena attached to Rx6 nor anywhere else in evidence from Respondent's attorney to Dr. Forman.

Even if Respondent's attorney had sent Dr. Forman a subpoena, the certification page contained in Rx6 indicates:

> "They are records, documents, reports pertaining to the treatment of Mark Sullivan on or after:
> *4/19/18*
> Date of Service
>
> *Chitown Orthopedics*
> Office in Charge of Records"

Although not excusing the failure to include the intake form, we note that the form is dated March 6, 2018 while this certification on its face only pertains to treatment "on or after" April 19, 2018. We believe it is reasonable to infer that the keeper of records mistakenly wrote the April 19, 2018 date on the Certification page because that was the date the records were faxed to Respondent's attorney. In any event, without a copy of the alleged subpoena in evidence, it is impossible to know what records Respondent's attorney had subpoenaed to know if Dr. Forman's office properly complied.

The second set of records (Rx5-DepRx3) accompanied the Notice of Physician's Lien that was sent to Respondent's attorney on June 12, 2018, as evidenced by the date on the Proof of Service. At Dr. Forman's deposition, Respondent's attorney stated that this second set of records was not sent in response to a subpoena. *Rx5 at 7.* Respondent argues that June 12th is the same date listed on the amended March 6, 2018 record, and that this somehow makes the amendment suspicious.

The Chitown Orthopaedics & Sports Medicine "Medical History Form" (colloquially referred to throughout the record and herein as "intake form") is dated March 6, 2018, and indicates Petitioner sustained a right shoulder injury at work on January 5, 2018. *Px4, Px10*. Petitioner

testified that he completed this form on March 6, 2018. *T.25-26*. On cross-examination, he specified which portions he filled out and agreed that another person completed other parts including the "circles" and the date in the upper right corner. *T.55-56*. Dr. Forman testified that, as a new patient, Petitioner filled out the written intake form. *Rx5 at 15*. However, "both the patient and myself [sic] had written on that." *Id. at 11*. Dr. Forman explained that the information on the intake form "did not get placed in there initially with the transcription." *Id*. It was in the written records but not the transcribed ones, so he made the addendum to the March 6, 2018 record on June 12, 2018. *Id. at 10-11, 15*.

Based on all of the evidence, we believe that the March 6, 2018 intake form was created on that date. The date was most likely written on the form by Dr. Forman's office staff when it was given to Petitioner. Petitioner testified that he completed the form and Dr. Forman testified that he also took notes on the form during the examination. This would account for the different handwriting that Respondent argues is "fraudulent." It seems likely that, once Dr. Forman's office realized that the March 6, 2018 intake form had not been transcribed into that record, the addendum was made on June 12, 2018 and the lien notice was sent the same day. Therefore, we believe Dr. Forman gave a perfectly logical and reasonable explanation as to why the addendum was added later.

Finally, at three places in ¶3 on page 4, we correct the date of Dr. Forman's initial medical record from "March 6, 2016" to "March 6, 2018."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $844.21 per week for a period of 20-3/7 weeks, 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 shall receive credit for $15,195.96 in temporary total disability benefits already paid to Petitioner.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the expenses contained in Px1 through Px10 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 shall pay for the prospective right shoulder total arthroplasty as prescribed by Dr. Garbis, along with reasonable and necessary follow-up care, 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 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.

May 24, 2023

SE/
O: 3/28/23
49

/s/ *Maria E. Portela*

/s/ *Deborah J. Baker*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION 23IWCC0234
NOTICE OF ARBITRATOR DECISION
8(A)

SULLIVAN, MARK Case# **18WC003021**
Employee/Petitioner

ABF FREIGHT SYSTEM INC
Employer/Respondent

On 4/28/2020, 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 0.15% 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:

1876 CZAPLA LAW
EDWARD A CZAPLA
1821 WALDEN OFFICE SQ #400
SCHAUMBURG, IL 60173

2965 KEEFE CAMPBELL BIERY & ASSOC
LINDSAY R VANDERFORD
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

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
8(A) ARBITRATION DECISION

MARK SULLIVAN
Employee/Petitioner

v.

ABF FREIGHT SYSTEM, INC.
Employer/Respondent

Case # **18** WC **3021**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **FRANK SOTO**, Arbitrator of the Commission, in the city of **WHEATON**, on **1/29/20**. 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] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [x] 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. [x] Other **PROSPECTIVE MEDICAL TREATMENT**

FINDINGS

On **1/5/2018**, 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 $**65,848.83**; the average weekly wage was $**1,266.32**.

On the date of accident, Petitioner was **49** 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 $**15,195.96** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**15,195.96**.

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

ORDER

THE ARBITRATOR FINDS THAT PETITIONER DID SUSTAIN AN ACCIDENT ON JANUARY 5, 2018 THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT WITH RESPONDENT, ACT AS SET FORTH IN THE CONCLUSIONS OF LAW ATTACHED HERETO;

THE ARBITRATOR FINDS PETITIONER'S CURRENT CONDITION OF ILL BEING CAUSALLY RELATED TO THE JANUARY 5, 2018 INJURY AT WORK, ACT AS SET FORTH IN THE CONCLUSIONS OF LAW ATTACHED HERETO;

RESPONDENT SHALL PAY PETITIONER THE MEDICAL EXPENSES CONTAINED IN PX.1, PX.2, PX.3., PX.4.,PX.5., PX.6., PX.7., PX.8., PX.9., AND PX.10 PURSUANT TO SECTIONS 8(A) AND 8.2 OF THE ACT SUBJECT TO THE MEDICAL FEE SCHEDULE, ACT AS SET FORTH IN THE CONCLUSIONS OF LAW ATTACHED HERETO;

RESPONDENT SHALL PAY PETITIONER TEMPORARY TOTAL DISABILITY BENEFITS OF $844.21/WEEK FOR 20 AND 3/7 WEEKS COMMENCING JANUARY 12, 2018 THROUGH JUNE 3, 2018, AS PROVIDED IN SECTION 8(A) OF THE ACT AND RESPONDENT SHALL RECEIVE A CREDIT FOR TTD BENEFITS PREVIOUSLY PAID, ACT AS SET FORTH IN THE CONCLUSIONS OF LAW ATTACHED HERETO;

PETITIONER'S REQUEST FOR PROSPECTIVE MEDICAL TREATMENT IS DENIED AS SET FORTH IN THE CONCLUSIONS OF LAW ATTACHED HERETO;

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

4/24/20
Date

APR 2 8 2020

Procedural History

This matter was tried before Arbitrator Frank J. Soto on January 29, 2020 pursuant to Sections 19(b) and 8(a) of the Act. The disputed issues involve whether Petitioner sustained accidental injuries arising out of and in the course of employment, whether Petitioner's current condition of ill-being is causally related to his injury, whether Respondent is liable for medical expenses, whether Petitioner is entitled to temporary total disability benefits from January 12, 2018 through June 3, 2018 and whether Petitioner is entitled to prospective right shoulder surgery. The parties stipulated that Petitioner's average weekly wage pursuant to Section 10 of the Act was $1,266.32 and that Respondent is entitled to a credit in the amount of $15,195.96, for TTD benefits paid. (Arb. #1)

Finding of Fact

Mark Sullivan (hereafter referred to as "Petitioner") testified, on January 5, 2018, he was 49-years-old truck driver/dock worker employed by ABF Freight System (hereinafter referred to as "Respondent"). (T 12). Petitioner worked on the dock loading/unloading trucks and he also drove a truck picking up and delivering freight. (T 12-13). Petitioner described his work as *"physically demanding"*. (T.14)

Petitioner worked out of the South Elgin Terminal. (T 14-15). Petitioner testified that, on Friday, January 5, 2018, he was working on Respondent's dock and he injured his right shoulder lifting a dock plate. (T 15-17). Petitioner testified he felt "sharp pain" on the back side of his right shoulder while lifting the dock plate. Petitioner testified he reported accident to his supervisor, Gary, and submitted a written accident. (T 19-20). Petitioner testified the injury occurred around 1 p.m. (T 17).

Petitioner testified he completed his shift and over the weekend his right shoulder was killing him. (T 21). Petitioner testified on the following Monday he scheduled an appointment with his primary care physician, Dr. Abdulmassih, and the soonest appointment he could secure was on Friday. (T.22)

On January 12, 2018, Petitioner presented to Dr. Abdulmassih reporting for the past 7 days localized muscle and joint pain in the right shoulder after lifting a heavy bar with both arms at work. The exam noted decrease range of motion of the right shoulder with flexion, extension, adduction and abduction. The exam also noted pain in the right shoulder with flexion, extension, adduction and abduction. Petitioner was assessed with having right shoulder pain. Dr.

Abdulmassih ordered an MRI and took Petitioner off work. (Rx1). Petitioner underwent the MRI at Advocate Lutheran General on January 31, 2018 which noted the following: Moderate glenohumeral osteoarthritis and articular cartilage degeneration; macerated labrum; spinal glenoid notch cyst; mild supraspinatus and mild acromioclavicular osteoarthritis. (Px2)

On February 9, 2018, Petitioner returned to Dr. Abdulmassih reporting right shoulder pain in the anterior and superior that radiated into the arm. The records state the precipitating event of Petitioner's right shoulder pain was a work injury. Dr. Abdulmasshi noted Petitioner's medical history was pertinent for shoulder bursitis. Dr. Adbulmasshi administered a methylprednisolone injection in the right shoulder. Petitioner returned to Dr. Abdulmasshi on February 23, 2018, who prescribed physical therapy, kept Petitioner off work and referred him to an orthopedist. Dr. Abdulmassih diagnosed shoulder bursitis and adhesive capsulitis of right shoulder (Px1).

On March 6, 2018, Petitioner presented to Dr. Forman of Chitown Orthopaedics. The records state Petitioner injured his right shoulder while pulling up a dock plate at work and that Petitioner had not worked since January 11, 2018. The records indicate right shoulder soreness and the date of injury as January 5, 2018. The records contained the following passage,

> *"Addendum: HPI has been re-transcribed from the patient's original intake form which was filled out by the patient and has physician documentation documenting the nature of the injury is related by the patient. The HPI did not carryover through the electronic medical record, but was documented by the physician on the initial intake form on March 6, 2018 documenting the patient's injury...He presented with shoulder pain. Right. It is located on the right shoulder. Mechanism of injury includes Patient reports pulling up on a dock plate at work at ABF trucking. He states this occurred on January 5, 2018 and he reported it. The injury occurred at work. It is described as aching, sharp, and throbbing. The complaint is moderate and severe. The duration of symptoms is constant. Episodes occur during activity and overhead use. The symptoms(d) is/are alleviated by medication. The symptom(s) is/are aggravated by activity."* (Px4)

Examination of the right shoulder revealed limited cross body abduction, limited degrees of abduction 150 ° and limited range of motion 170 ° flexion. (Px4). Hawkins, Jobe and Neer test were all positive. (Px4).

Dr. Forman reviewed the MRI study and noted some mild supraspinatus tendonitis with a small amount of fluid in the joint with mild changes in the labrum. (Px4). Petitioner was diagnosed with impingement syndrome and a subacromial injection to the right shoulder was

administered. (Px4). A course of physical therapy was ordered which Petitioner completed at Athletico between March 14 and April 16, 2018. (Px5). Petitioner testified the physical therapy did not relieve his right shoulder pain. (TR 27)

On March 9, 2018, Petitioner returned to see Dr. Abdulmassih reporting right shoulder pain that radiates to the arm. (Px1). Dr. Andulmassih's examination revealed decreased in range of motion and pain with right shoulder flexion, extension, adduction and abduction. (Px1).

Petitioner followed up with Dr. Forman on April 24, 2018 reporting no relief of his right shoulder pain with the injection and physical therapy. (T27-28 and Px4) In his records, Dr. Forman stated that *"while this is now going on 3 months of symptomatology and he has had injections in the subacromial space as well as had physical therapy with no symptomatically relief and an MRI which does not demonstrate any evidence of rotator cuff tear, but does show signs of impingement I have discussed with him that I think he would benefit from a right shoulder arthroscopy."* (Px 4).

On April 26, 2018 Petitioner was examined by Dr. Bryan Neal pursuant to Section 12 of the Act. Thereafter, Petitioner returned to work on Monday June 4, 2018 after being contacted by his supervisor, Gary. Petitioner testified he went back to work driving a truck and he was provided a truck with an automatic transmission and that Respondent accommodated his request not to perform the heavy dock work. (T.33-35).

Petitioner continued to experience right shoulder pain, so he went to Dr. Pietro Tonino at Loyola on October 22, 2018. At that visit, Petitioner reported he was injured on January 5, 2018 while lifting a dock plate at work. The records state Petitioner had no significant prior history of right shoulder complaints. The examination revealed elevation 60 on right compared to 120 on the left. External rotation 30 on right compared to 60 on the left. X-rays of the right shoulder show a large inferior humeral head spur. Dr. Tonino reviewed the MRI of January 31, 2018 and x-rays and noted glenohumeral degenerative changes. In his records, Dr. Tonino opined that Petitioner's condition was due to an injury occurring at work on January 5, 2018 based upon Petitioner's history and lack of prior right shoulder problems. Dr. Tonino administered an intraarticular injection and referred Petitioner to Dr. Garbis, a shoulder specialist for further evaluation and treatment. (Px6).

On December 21, 2018, Petitioner presented to Dr. Garbis reporting his symptoms began last year when at work when he felt pain in his arm while lifting his arm. The examination revealed 90 ° elevation on the right and 160 ° on the left. External rotation 30 on the right and 70 on the left. The examination also revealed pain with impingement type maneuvers Dr. Garbis diagnosed Petitioner with right shoulder osteoarthritis with posterior subluxation. Dr. Garbis opined that Petitioner's injury in January caused an aggravation of his preexisting condition. Dr. Garbis recommended a total shoulder arthroplasty which, the records state, Petitioner did not wish to pursue at that time. (Px 6). On March 29, 2019, Petitioner returned to Dr. Garbis reporting his symptoms remain unchanged. Dr. Garbis renewed his recommendation for right shoulder arthroplasty. (Px 7).

Testimony of Dr. Edward Forman:

Dr. Forman testified pursuant to Respondent's Motion for *Dedimus Potestatem* which was granted on December 11, 2018. The Motion for *Dedimus Postesatem* states Respondent filed the motion to secure testimony to rebut the presumption the medical records received in response to a subpoena were true and correct. (Rx 5, Respondent's Deposition Exhibit #1).

At the deposition, Respondent entered Dr. Forman's medical records into evidence as Respondent's Deposition Exhibit #3. (Rx 5, pg. 7). During direct examination, Respondent asked Dr. Forman whether any other records were generated for the date of March 6, 2018. (Rx 5. Pgs. 9-10). Dr. Forman responded the March 6, 2016 record was amended to reflect the history Petitioner provide at his initial appointment. Dr. Forman testified he uses a history intake form which the patient fills out and that he writes on during the examination. The form is later transcribed into the medical records. Dr. Forman testified, in this case, the initial intake notes were not transcribed completely so the March 6, 2016 record was later amended to reflect the information obtained on March 6, 2016. (Rx. 5, pgs. 9-12).

On cross-examination, Dr. Forman testified the history Petitioner provided, on March 6, 2018, was that he injured his right shoulder pulling up a dock plate at work on January 5, 2018. (Rx 5, pg. 16). Dr. Forman testified he diagnosed Petitioner with impingement syndrome of the right shoulder. (Px. 5, pg. 17). [1] Dr. Forman opined, based upon the history obtained from

[1] Respondent made a continuing objection of outside the scope of direct examination and *Ghere* during Petitioner's cross examination Dr. Forman regarding the content of his medical records which Respondent submitted into evidence. Respondent's objections were overruled since Respondent offered Dr. Forman's medical records into evidence during direct examination and any opinions solicited during cross examination were derived

Petitioner and the examination, Petitioner injured his right shoulder at work on January 5, 2018. Dr. Forman also opined pulling up the dock plate was a proximate cause of Petitioner's right shoulder impingement and arthroscopic surgery was recommended and that the surgery was causally related to the trauma sustained at work on January 5, 2018. (Rx 5, pgs. 24-26).

Testimony of Dr. Bryan Neal, Section 12 examiner.

Dr. Neal testified he reviewed the medical records from Dr. Abdulmassih including those from 2011 through 2018. Dr. Neal testified Petitioner reported, on January 5, 2018, he was working on a dock plate that was stuck and he used his left hand to hold the dock plate while using his right hand to unjam the dock plate when he injured his right shoulder. Dr. Neal testified Petitioner reported that he was good health prior to January 5, 2018. Dr. Neal also testified that Petitioner denied suffering any prior right shoulder injuries and receiving prior medical treatment or having x-rays or MRIs of the right shoulder. (Rx1).

Dr. Neal opined Petitioner's history was inconsistent with the medical records because Dr. Abdulmassih's records show Petitioner had a long history of multiple joint pains and complaints. Dr. Neal testified Dr. Abdulmassih's records may not state which joints were involved but that the knees, hip and shoulders are the most frequent joints people seek orthopedic care. (Rx1). Dr. Neal testified on two occasions (*i.e.* September of 2013 and March of 2015) Dr. Abdulmassih's records show that Petitioner reported right shoulder pain. (Rx 1, pgs. 16-17).

Dr. Neal testified Petitioner reported his right shoulder was asymptomatic and he was able to work prior to January 5, 2018. Dr. Neal diagnosed Petitioner with severe arthritis with glenohumeral joint arthritis. Dr. Neal testified Petitioner's history was inconsistent with the medical record of severe arthritis. (Rx 1, pg. 21). Dr. Neal opined Petitioner's severe shoulder arthritis was not causally related to his work activities on January 5, 2018. (Rx 1, pg. 25). Dr. Neal also opined since the arthritis was preexisting the symptomatic arthritis is not related to Petitioner's work injury and the medical treatment received was not causally related to his work accident of January 5, 2018. However, Dr. Neal opined Petitioner's medical treatment was reasonable and necessary. (Rx. 1, pgs. 25-29).

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from the records or could be reasonable derived from the records and, as such, were not an unfair surprise opinion as contemplated by the holding in *Ghere*.

On cross examination Dr. Neal admitted Petitioner did not receive medical treatment for his right shoulder prior to January 5, 2018. (Rx 1, pg. 65). Dr. Neal also admitted prior to January 5, 2018, Petitioner was not prescribed any right shoulder work restrictions. (Rx. 1, pg. 66). Dr. Neal further admitted Dr. Abdulmassih's medical records indicate that Petitioner's date of injury was January 5, 2018. (Rx. 1, pg. 68).

Dr. Neal was asked if he agreed that Dr. Abdulmassih's July 2012 medical record does not reference any right shoulder complaints and Dr. Neal responded "*I don't' think you can state that because he has multiple sites and it's a common site. So it is true he doesn't use the word right shoulder but it's true it doesn't state the right shoulder is asymptomatic so it's unknown and it is silent specially to the shoulder although there are multiple joints that are problematic*". (Rx 1, pg. 44). Dr. Neal was asked to confirm whether Dr. Abdulmassih's record of July 28, 2012 which states Petitioner reported diffused joint pain does not reference any right shoulder complaints and Dr. Neal responded "*I won't agree with that. It states he has multiple joint sites...it does not state that the right shoulder is painful but somewhere multiple sites are painful. We don't know which one they are. It might be the shoulder. It may not be the shoulder. The medical record is silent on that issue.* (Rx 1. Pg. 46).

Additional testimony

Petitioner testified Dr. Garbis recommended surgery when Petitioner was ready to proceed. Petitioner testified he would like to proceed with the surgery at this time. (T. 44). Petitioner testified the last doctor he saw for his right shoulder was Dr. Garbis on March 29, 2019. (T 60). Petitioner testified his doctor wanted to issue restrictions, but he needed to work so he told the doctor to send him back to work without restrictions. (T. 61). Petitioner testified he returned to work full duty on June 4, 2018 and he has worked overtime since returning to work. (T. 58-59).

Petitioner testified his daily pain level is at 8 out of 10 but can be as low as 4 or 5. (T. 49). Petitioner testified he takes Tylenol 3 for pain. Petitioner testified in January of 2020 he missed 3 days of work because he had to take pain medicine which prohibits driving. (T. 50).

Petitioner testified he currently doesn't use his right shoulder due to pain and he uses his left arm for everything. (T. 45). Petitioner said he has problems opening/closing trailer doors, dock doors and with dock plates. (T. 45). Petitioner testified using a snowblower causes

extreme pain in his right shoulder and that it is difficult to do anything over head such as putting on a t-shirt. (T. 46-47). Petitioner testified he can't sleep on his right shoulder. (T. 51).

The Arbitrator found the testimony of Petitioner to be credible.

Conclusions of Law

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

The claimant bears the burden of proving every aspect of her claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill App. 3d 706 (1992). To obtain compensation under the Act, the claimant bears the burden of showing by a preponderance of the evidence, he suffered a disabling injury which arose out of, and in the course of his employment. *Baggett v. Industrial Commission*, 201, Ill 2d. 187, 266 Ill. Dec. 836, 775 N.E. 2d 908 (2002).

With respect to issue "C" whether Petitioner sustained an accidental injury that arose out of and in the course of employment, the Arbitrator finds as follows:

To recover benefits under the Act, a claimant bears the burden of proving by a preponderance of the evidence that his injury "arose out of" and "in the course of" his employment. 820 *ILCS* 305/1(d) (West 2014). Both elements must be present to justify compensation. *First Cash Financial Services v. Industrial Comm'n*, 367 Ill.App.3d 102, 105, 853 N.E.2d. 799, 803 (2006).

The requirement that the injury "arise out" of the employment concerns the origin or cause of the claimant's injury. *Sisbro, Inc. v. Industrial Comm'n*, 2017 Ill. 2d. 193, 203. 797 N.E.2d 665, 672 (2003). The occurrence of an accident at the claimant's workplace does not automatically establish that the injury "arose out of" the claimant's employment. *Parro v. Industrial Comm'n*, 167 Ill. 2d 385, 393, 212 N.E.2d 882, 885 (1995). Rather, "[T]he "arising out of" component is primarily concerned with causal connection and is satisfied when the claimant has "shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury" *Sisbro*, 207 Ill. 2d at 203.

The Arbitrator finds that Petitioner proved by the preponderance of the evidence that he sustained and accidental injury that arose out of and in the course of employment. Petitioner testified that he injured his right shoulder on January 5, 2018, around 1 p.m., while on the dock attempting to open a dock plate. Petitioner's unrebutted testimony was that he injured his right

shoulder pulling up a stuck dock plate at Respondent's South Elgin Terminal. (T.17-18). The dock plate was stuck so Petitioner had to unjam it with his left hand while pulling the dock plate bar/handle with his right arm. (T.17-18) Petitioner testified he experienced a "sharp pain" in his right shoulder trying to pull up the dock plate. (T.18-19). Respondent did not proffer any evidence rebutting Petitioner's testimony. The testimony of the employee, if not impeached or rebutted, is sufficient to support an award. *Phoell Manufacturing Co. v. Industrial Comm'n,* 54 Ill.2d 119, 295 N.E.2d 469 (1973); *Sahara Coal Co. v. Industrial Comm'n,* 66 Ill.2d 353, 362 N.E.2d 343 (1977).

The Arbitrator finds Petitioner's testimony to be consistent with the histories contained in the medical records. On January 12, 2018, Petitioner told Dr. Abdulmassih that he injured his right shoulder 7 days ago while lifting a heavy bar with both arms at work. On March 6, 2018, Petitioner told Dr. Forman he injured his right shoulder while pulling up a dock plate at work. On October 22, 2018, Petitioner told Dr. Tonino he was injured on January 5, 2018 while lifting a dock plate at work. The Courts presume that when a person seeks treatment for an injury, will not falsify statements to a physician from whom he expects to receive medical aid. *Shell Oil Co. v. Industrial Comm'n,* 2 Ill.2d 590, 592; 119 N.E. 2d 224, 226 (1954).

With respect to issue "F", whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease such that the employee's current condition of ill-being can be said to have been causally-connected to the work-related injury and not simply the result of a normal degenerative process of a pre-existing condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n,* 89 Ill.2d 432, 60 Ill.Dec. 629, 433 N.E.2d 671 (1982). When an employee with a preexisting condition is injured in the course and of his employment the Commission must decide whether there was an accidental injury which arose out of the employment, whether the accidental injury aggravated or accelerated the preexisting condition or whether the preexisting condition alone was the cause of the injury. *Sisbro, Inc. Industrial Comm'n*, 207 Ill.2d 193, 278 Ill.Dec. 70,797 N.E.2d 665, (2003). Even though an employee has a preexisting condition which

may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989). When 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. *Shafer v. Illinois Worker's Compensation Comm'n*, 2011 IL App. (4th) 100505 WC. The chain-of-events principles have been applied where an accident is claimed to have aggravated a preexisting condition. See *Schroeder v. Illinois Worker's compensation Comm'n,* 2017 IL App. (4th) 160192 WC.

The Arbitrator has carefully reviewed and considered all the evidence and finds that Petitioner has proven by the preponderance of the credible evidence that his current right shoulder condition is causally related to his work accident of January 5, 2018, as set forth more fully below:

Prior to his work accident of January 5, 2018, Petitioner was working full time/full duty performing a *"physically demanding"* job as a truck driver/dock worker for Respondent. (T 12-14). Petitioner was not under any type of active medical care for his right shoulder. Petitioner had no prior right shoulder injury, nor had he received any medical treatment for his right shoulder prior to his January 5, 2018 work injury. (T 41-42). Petitioner testified his right shoulder was asymptomatic prior to the January 5, 2018 injury at work. (T 42-43). Petitioner testified he felt a *"sharp pain"* in his right shoulder while trying to pull up the handle on the dock plate at work which he reported to his supervisor, Gary, that same day. (T 18-19).

On Friday, January 12, 2018, Petitioner was taken off work by Dr. Abjulmassih. Petitioner testified that this was the first available appointment he could secure with Dr. Abjulmassih. At that visit, Petitioner reported right shoulder pain for the past 7 days. (Px.1). The history recorded by Dr. Abdulmassih reflects *"lifting heavy bar with both arms at work"*. Examination revealed decreased range of motion along with right shoulder pain. (Px.1). Petitioner was referred to Dr. Forman who also kept Petitioner off work. The history contained in Dr. Forman's records states *"shoulder R pulling up a dock plate while @ ABF."* Similarly, the history documented by Dr. Forman on the initial March 6, 2018 office visit reflects *"mechanism of injury includes patient pulling up on a dock plate at work at ABF trucking. He states this occurred on January 5, 2018 and he reported it. The injury occurred at work."*

(Px.4). Petitioner did not return to work until June 4, 2018 after attending the April 26, 2018 IME with Dr. Neal.

The Arbitrator also notes Petitioner was examined by Dr. Pietro Tonino and Loyola University Medical Center on October 22, 2018 for ongoing right shoulder pain. (PX.6). The history reflected that *"on 1/5/2018 he was lifting up a dock plate. He works as a parked truck driver. He felt a pop in his right shoulder"*. (Px.6). Dr. Tonino reviewed x-rays and MRI of the right shoulder. (Px.6.) It was Dr. Tonino's opinion that *"based on the information provided today it also would be my opinion that his condition is due to an injury occurring at work on 01/05/2018, based on the fact he reports no prior problems with his shoulder."* (Px.6). An intradural injection to the right shoulder failed to relieve Petitioner's pain so Dr. Tonino referred Petitioner to Dr. Garbis, a shoulder specialist at Loyola, for further evaluation and treatment. Petitioner saw Dr. Garbis on December 24, 2018. The history notes *"symptoms began last year when he was at work. He was lifting up his right arm and developed pain in his right shoulder."* (Px.6). Physical examination revealed decrease in right shoulder range of motion and pain with impingement type maneuvers. (PX.6). Dr. Garbis reviewed the diagnostic studies and diagnosed Petitioner with right shoulder osteoarthritis with posterior subluxation. It was Dr. Garbis' opinion that Petitioner *"had an injury in January that caused an aggravation of prior preexisting condition."* (PX.6). Dr. Garbis recommended proceeding with right total shoulder arthroplasty. (PX.6). Moreover, on March 29, 2019, Dr. Garbis noted *"if this were to be just an exacerbation, I would have expected him to return back down to his baseline or potentially be just a little bit worse often it was, but he is really quite symptomatic with the right now. I think given the fact that he has failed extensive conservative management, the best course of action would be to proceed with shoulder arthroplasty. I do think this sounds like it is causally related to the incident he had at work."* (PX.7).

Pursuant to Section 12 of the Act, Petitioner was examined by Dr. Bryan Neal on April 26, 2018. X-rays of Petitioner's right shoulder revealed severe glenohumeral arthritis. Dr. Neal diagnosed Petitioner with right shoulder osteoarthritis (RX 1, pg. 22). Dr. Neal opined Petitioner's right shoulder arthritis was not causally related to the January 5, 2018 work injury. (RX 1 pg. 25). The Arbitrator notes Petitioner is not claiming the January 5, 2018 accident at work caused his arthritis condition but that his work accident of January 5, 2018 aggravated his pre-existing osteoarthritis and need for surgery.

The Arbitrator does not find the opinions of Dr. Neal persuasive nor does he give his opinions much weight. Dr. Neal based his opinions, in part, upon notations contained in Dr. Abdulmassih's records referencing general joint pain complaints, prior to Petitioner's work injury of January 5, 2018, as supporting a history of ongoing right shoulder complaints. Dr. Neal testified he believed the prior joint complaints, contained in Dr. Abdulmassih's records which did not specify the right shoulder, were "probably" right shoulder complaints because, he testified, the shoulder joint is the third most frequent joint people seek orthopedic care after the knee and hip. (Rx. 1 pg. 17). Based upon this assumption, Dr. Neal opined Petitioner must have been systematic prior to the date of the accident which was inconsistent with Petitioner's reported history of being asymptomatic prior to his work accident of January 5, 2018. (Rx 1, pg. 21, 29).

Dr. Neal acknowledged Dr. Abdulmassih's records did not refer to right shoulder symptoms. However, Dr. Neal testified just because Dr. Abdulmassih's records did not refer to right shoulder symptoms doesn't mean Petitioner's right shoulder was asymptomatic because Dr. Abdulmassih did not "specifically" state, in Petitioner's records, the right shoulder was asymptomatic and, as such, it is not clear that Petitioner's right shoulder as asymptomatic. (Px 1. 43-44). The Arbitrator finds Dr. Neal's opinions to be based upon speculation and conjecture at best. Dr. Neal appears to speculate that Petitioner's right shoulder was symptomatic despite the lack of any such finding contained in Dr. Abdulmassih's records. Dr. Neal speculates that since shoulders are the third most common joint people seek orthopedic treatment the diffused multiple joint pain, referred to is Dr. Abdulmassih's records, was "actually" right shoulder joint complaints. It is axiomatic that the weight accorded an expert opinion is measured by the facts supporting it and the reason given for it; an expert opinion cannot be based on guess, surmise or conjecture. *Wilfert v. Retirement Board*, 318 Ill.App.3d 507, 514-15 (First Dist. 2000).

The Arbitrator finds Petitioner's testimony to be credible and consistent with the medical records. Petitioner testified his right shoulder was asymptomatic prior to his injury at work. (T.43). The Arbitrator finds a temporal relationship between Petitioner's January 5, 2018 lifting injury at work and the immediate onset of right shoulder pain and medical treatment for the right shoulder.

With respect to issues "J" whether the medical services provided were reasonable and necessary, the Arbitrator finds as follows:

Under Section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising out of and in the scope of employment and which are necessary to diagnose, relieve, or cure the effects of the claimant's injury. *Absolute Cleaning/SVMBL v. Ill. Workers' Compensation Comm'n*, 409 Ill.App.3d 463, 470 (4th Dist. 2011).

Respondent disputed liability for the medical expenses based upon causation. As stated above, the Arbitrator finds that Petitioner's right shoulder condition is causally connected to his work injury of January 5, 2018. The Arbitrator finds the medical treatment Petitioner received to be reasonable and necessary. Therefore, the Arbitrator finds Respondent shall pay to Petitioner the medical expenses contained in PX.1 – PX.10, pursuant to Section 8.2 of the Act and the Illinois Medical Fee Schedule.

With respect to issue "K" whether Petitioner is entitled to TTD benefits, the Arbitrator finds as follows:

"The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, "*i.e.*, until the condition has stabilized." *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized, i.e., reached MM.I. *Sunny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130028WC at 28 (June 26, 2014, Opinion Filed); *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To show entitlement to temporary total disability benefits, a claimant must prove not only that he did not work, but also that he was unable to work. *Gallentine*, 201 Ill. App. 3d at 887; *see also City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (5th Dist. 1996).

Petitioner is seeking TTD benefits from January 12, 2018 through June 3, 2018. (Arb. Ex. #1). Petitioner was initially taken off work by Dr. Abdulmassih on January 12, 2018. (Px 1). Thereafter, Petitioner was restricted from work by Dr. Forman. (Px 4). Following the April 26, 2018 examination with Dr. Neal, Petitioner spoke to his supervisor, Gary, and returned to work on Monday June 4, 2018. (T 31-32). Petitioner testified that he did not Respondent's letter

dated May 25, 2018 advising him to return to work. (T 31-32). As such, the Arbitrator finds that Petitioner is entitled to Temporary Total Disability benefits of $844.21/week for 20 3/7 weeks, commencing January 12, 2018 through June 3, 2018. The Arbitrator further finds that Respondent is entitled to a credit in the amount of $15,195.96 for Temporary Total Disability benefits previously paid.

With Respect to issue "O", prospective medical treatment, the Arbitrator finds as follows:

The Arbitrator notes Respondent did not proffer evidence the surgery recommended by Dr. Garbis was not reasonable, necessary or that a different, less invasive, procedure was more appropriate. Petitioner proffered evidence that two different surgical procedures had been recommended the most current surgical recommendation was from Dr. Garbis on March 29, 2019. After receiving the surgical recommendation, Petitioner was able to return to work and has been able to continue working with some work accommodations. As such, the Arbitrator finds that Petitioner failed to prove which surgical procedure was more appropriate, reasonable or necessary given that Petitioner was capable for returning to work and has not undergone any right shoulder medical treatment since March of 29, 2019.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC012248
Case Name	Mark Sullivan v. ABF Freight Inc
Consolidated Cases	18WC003021; 21WC000982;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0235
Number of Pages of Decision	17
Decision Issued By	Maria Portela, Commissioner, Deborah Baker, Commissioner

Petitioner Attorney	EDWARD CZAPLA
Respondent Attorney	Lindsay Vanderford

DATE FILED: 5/24/2023

/s/Maria Portela, Commissioner
Signature

DISSENT: /s/Deborah Baker, 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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARK SULLIVAN,

Petitioner,

vs. NO: 20 WC 12248

ABF FREIGHT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses and "credit for the deposition of Dr. Shadid," 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).

Initially, we address a jurisdictional issue regarding the Arbitrator's decisions and each party's Petition for Review (PFR). The Arbitrator issued a Decision on May 23, 2022. On June 13, 2022, Respondent filed a motion pursuant to §19(f) of the Act to correct a clerical error. On that same date, Respondent filed a PFR of that first Decision. On June 21, 2022, the Arbitrator issued an Amended Decision. Respondent then filed a second PFR on June 25, 2022 relating to the Amended Decision and Petitioner also filed a PFR on July 5, 2022. However, we find the Arbitrator did not have jurisdiction to issue the Amended Decision. Section 19(f) provides:

> (f) The decision of the Commission acting within its powers, according to the provisions of paragraph (e) of this Section shall, in the absence of fraud, be conclusive unless reviewed as in this paragraph hereinafter provided. However, the **Arbitrator or the Commission may on his or its own motion, or on the motion of either party, correct any clerical error or errors in computation within 15 days after the date of receipt of any award** by such

> Arbitrator or any decision on review of the Commission and shall have the power to recall the original award on arbitration or decision on review, and issue in lieu thereof such corrected award or decision. Where such correction is made the time for review herein specified shall begin to run from the date of the receipt of the corrected award or decision. (Emphasis added.)

Since Respondent filed its §19(f) motion more than 15 days after the Arbitrator issued his original Decision, the Arbitrator did not have jurisdiction to recall or change it. As a result, the Arbitrator's Amended Decision is invalid and the original Decision, issued on May 23, 2022, remains valid. Although Respondent filed a timely PFR of that original Decision on June 13, 2022, Petitioner did not file a PFR until July 5, 2022. Not only was Petitioner's PFR filed in relation to the invalid Amended Decision, his PFR was also filed past the 30-day limit to file a PFR of the original Decision.

Therefore, we hereby vacate the Arbitrator's Amended Decision, dated June 21, 2022. We also find that the original Decision, dated May 23, 2022, is valid and the only PFR that is properly before us is the one filed by Respondent on June 13, 2022.

Regarding the causation analysis, we strike that section on page 6 of the Arbitrator's Decision beginning with "as set forth more fully below," which appears at the end of the first full paragraph on that page. Rather than finding that the subsequent accident on January 6, 2021 was an intervening accident, we find that the April 24, 2020 accident (the subject of this Decision) was a temporary exacerbation of a pre-existing condition. Although the June 16, 2020 MRI revealed some changes that did not exist in 2018, Petitioner's treatment recommendation remained the same: total right shoulder arthroplasty. There is no medical opinion to causally relate the MRI changes to the April 2020 fall. Petitioner also returned to work with no restrictions in October 2020. Therefore, we find that the April 24, 2020 accident caused a temporary exacerbation of his pre-existing arthritic condition.

In Section (O) on page 9, we strike the first paragraph and replace it with: "The Commission finds the accident of April 24, 2020 to be a temporary exacerbation of a pre-existing condition. Petitioner failed to prove by a preponderance of the evidence that the need for prospective medical treatment is causally related to the accident on April 24, 2020." We affirm the remainder of that section relating to the denial of reimbursement to Respondent for costs associated with a Section 12 examination.

In the first paragraph of the Order section, we strike the reference to "Rx14" and replace it with "Px14."

In the second paragraph on Page 1, we correct the date of the third shoulder injury from "January 6, 2012" to reflect that it occurred on "January 6, 2021."

In the Order section and also the analysis on page 8, we modify the Decision to award medical through "January 5, 2021" instead of "January 6, 2021," which was the date of Petitioner's third accident.

Finally, in the third full paragraph on page 2, the date Petitioner underwent the MRI is changed from "June 16, 2021" to "June 16, 2020."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Amended Decision, dated June 21, 2022, is hereby vacated and order that the original Decision, dated May 23, 2022, is valid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the medical expenses incurred from April 24, 2020 through January 5, 2021, identified in Px.6, Px.14, Px.15, Px.16 and Px.17, 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 Petitioner's requests for temporary total disability benefits, penalties and attorney's fees are denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent's request for reimbursement of Section 12 examination expenses is denied.

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 $10,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

May 24, 2023

/s/ *Maria E. Portela*

SE/
O: 3/28/23
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/s/ *Kathryn A. Doerries*

DISSENT, IN PART

I disagree with the majority's decision to vacate the Arbitrator's June 21, 2022 Amended Decision and I also disagree with the majority's finding that Respondent's June 25, 2022 Petition For Review[1] and Petitioner's July 5, 2022 Petition For Review should not be considered on review. Whatever error the Arbitrator made in granting Respondent's §19(f) motion and issuing an Amended Decision has no bearing on the Commission's proceedings on review under the facts of this case. I note that Respondent's June 25, 2022, Petition For Review and Petitioner's July 5, 2023, Petition For Review were both set for oral arguments on March 28, 2023 and Respondent presented oral arguments on that day.[2] During oral arguments, neither party addressed the §19(f) motion or Amended Decision, and the parties were not questioned about either. Of significance, Respondent's June 13, 2022, Petition For Review was not scheduled for oral arguments in the Commission's electronic case management system. During the pendency of the reviews in this case, all parties proceeded upon the belief that the Arbitrator's Amended Decision dated June 21, 2022, was valid. In my view, once a corrected decision (an "amended decision" in this case) has been issued, that decision supersedes the original decision regardless of whether it was improper to issue a corrected decision, especially when there are no objections from the parties. In the interest of efficiency and for practical reasons, the Arbitrator's June 21, 2022, Amended Decision should stand and should be reviewed as a valid decision. For these reasons, I respectfully dissent.

/s/ *Deborah J. Baker*

[1] Respondent's June 25, 2022, Petition For Review appears to be identical to its June 13, 2022 Petition For Review.
[2] The only reason Petitioner did not present oral arguments on March 28, 2023, is because of an issue with respect to the filing of Petitioner's Statement of Exceptions and supporting brief.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC012248
Case Name	SULLIVAN, MARK v. ABF FREIGHT, INC.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Edward Czapla
Respondent Attorney	Lindsay Vanderford

DATE FILED: 5/23/2022

THE INTEREST RATE FOR THE WEEK OF AMY 17, 2022 1.49%

/s/Frank Soto, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MARK SULLIVAN
Employee/Petitioner

v.

ABF FREIGHT, INC.
Employer/Respondent

Case # **20** WC **12248**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Frank Soto** , Arbitrator of the Commission, in the city of **Geneva**, on **3/22/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **4/24/20**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**55,535.95**; the average weekly wage was $**1,068.00**.

On the date of accident, Petitioner was **51** 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 $**0.00** 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** under Section 8(j) of the Act.

ORDER

Respondent shall pay the medical expenses incurred from April 24, 2020 through January 6, 2021, identified in Px.6, Rx.14, Px.15, Px.16 and Px.17 pursuant to Section 8.2 of the Act and the Illinois Medical Fee Schedule, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Petitioner's request for TTD benefits is hereby denied, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Petitioner's request for penalties and fees is hereby denied, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Respondent's request for reimbursement of expenses paid to the Section 12 examiner is hereby denied, as set forth in the Conclusions of Law attached hereto and incorporated herein.

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

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

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

By: /o/ *Frank J. Soto* **MAY 23, 2022**
Arbitrator

Procedural History

Petitioner filed three claims involving injuries to his right shoulder while working for Respondent. The first claim involved a January 5, 2018 date of injury, which was proceeded to trial on January 29, 2020 pursuant to Sections 19(b) and 8(a). *See Mark Sullivan v. ABF Freight Systems, Inc.* 18 WC 003021. (Px 1). In that case Petitioner was found to have sustained an accidental injury to his right shoulder which arose out of an in the course of his employment and was causally related to his work accident. (Px. 1). At trial, Petitioner sought prospective medical treatment. One of Petitioner's physicians recommended an arthroscopic procedure while the other physician recommended right shoulder arthroplasty. (Px 1). Prospective medical care was not awarded because Petitioner failed to testify regarding which surgical procedure he wanted to undergo. (Px. 1). A review of the decision was filed by both parties which is currently pending.

Petitioner returned to work for Respondent and sustained a second injury to his right shoulder on April 24, 2020 (*i.e*. Case #20 WC 12248) and a third injury to his right shoulder on January 6, 2012 *(i.e.* Case #21 WC 000982). (Arb. Ex's 1, 2). The trial for these subsequent injuries was held on March 22, 2022 pursuant to Sections 19(b) and 8(a) of the Act. In both cases the disputed issues were whether Petitioner's current right shoulder condition is causally connected to his injuries, average weekly wage, whether Respondent is liable for unpaid medical bills, whether Petitioner is entitled to TTD benefits and prospective medical care consisting of a right shoulder arthroplasty. Respondent was also seeking reimbursement for the cost of a Section 12 examiner's deposition and Petitioner was seeking penalties and attorney's fees pursuant to Sections 19(k), 19(l) and 16 of the Act. (Arb. Ex. 1, 2).

Findings of Fact

Petitioner, a 53-year-old truck driver/dock worker, testified he was employed by Respondent, ABF Freight System, Inc. on April 24, 2020. (Tr. 19,31). Petitioner drove a truck and worked on the dock loading/unloaded trailers. (Tr.19-20), Respondent has two types of deliveries. One type of delivery is a pedal run and the driver is not responsible for unloading the freight. The other type of delivery involves a lift gate where the driver is responsible for unload the freight. (Tr. 21).

Following his initial injury at work on January 25, 2018, Petitioner returned to work later that year. (Tr. 22-24, 26). When Petitioner returned to work, he was allowed to perform the pedal

run. (Tr. 25). Thereafter, Petitioner resumed dock work but at a less physically demanding level than he performed prior to his January 5, 2018 work injury. (Tr. 26). Petitioner worked full time until sustaining a second work injury on April 24, 2020. (Tr. 31).

On April 24, 2020, Petitioner tripped on a dock plate unloading steel from a trailer. (Tr. 31-32). Petitioner was unloading the trailer with a co-worker, Dave Tiffany. (Tr. 32). Petitioner testified that he tripped on the dock plate while unloading the steel stumbling forward and falling on his outstretched right arm and shoulder landing on the concrete dock. (Tr. 32-33). A video was entered into evidence which Petitioner testified accurately reflected the fall. (Px.5). Petitioner testified he felt immediate right shoulder pain. (Tr. 34). Petitioner reported the accident to his supervisor and completed a written accident report. (Tr. 35, 36, PX.12).

On May 2, 2020, Petitioner presented to his primary care physician Dr. Abdulmassih reporting right shoulder pain. (Tr. 39, PX.14). The medical records state "*he presents with fell and reinjured right shoulder on April 24, 2020."* (PX.14). Dr. Abdulmassih diagnosed right shoulder capsulitis, ordered an MRI of the right shoulder and placed Petitioner on light duty work or office work restrictions. (Px. 14).[1] Petitioner was also prescribed Tylenol-codeine, methocarbamol, and Naproxen. (Px14).

Petitioner underwent the MRI on June 16, 2021 which found: (1) severe hypertrophic arthritis of the glenohumeral joint with multiple small subchondral cysts, (2) hypertrophic arthritis of the AC joint with small joint effusion, (3) mixed signal intensity within subchondral bone of the glenoid and the humeral head more consistent with sclerosis, (4) mixed signal intensity within supraspinatus tendon and a small partial-thickness undersurface tear of its anterior boarder, (5) tear of the anterior glenoid labrum and a degenerative tear of the posterior glenoid labrum consistent with a SLAP tear and (6) proximal migration of the humeral head in the subacromial space consistent with impingement syndrome. (PX 6.)

Petitioner followed up with Dr. Abdulmassih on June 20, 2020. The examination of the right shoulder noted pain and decrease in range of motion. (PX.14). Petitioner was restricted from work because of the medications which prevented him from driving. (PX.15)

[1] Prior to the second work accident on April 24, 2020, Petitioner was seen by Dr. Abdulmassih on February 15, 2020 and, at that time, Petitioner reported ongoing right shoulder pain that radiated into the arm. The medical record state the apparent precipitating event was a work injury referring to Petitioner's original injury to his right shoulder on January 5, 2018. Petitioner was assessed with right shoulder adhesive capsulitis but Dr. Abdulmassih did not issue restrictions were issued nor ordered an MRI. (Px 14).

On July 10, 2020, Petitioner presented to Dr. Nickolas Garbis, an orthopedic surgeon at Loyola University Medical Center. The medical history state Petitioner was previously seen for shoulder osteoarthritis but that, on April 24, 2020, Petitioner tripped landing directly onto his shoulder developing increased pain. (Px 7). The exam noted decreased range of motion and crepitus. Dr. Garbis assessed right shoulder osteoarthritis with posterior subluxation, Walch B2 variant. Dr. Garbis recommended shoulder replacement surgery due to Petitioner's increased pain after April which had not gotten better. (Px. 7). Dr. Garbis ordered a right shoulder CT scan. (Px. 7).

On September of 2020, Petitioner was examined by Dr. Hythem Shadid pursuant to Section 12 of the Act. Dr. Shadid diagnosed advanced right shoulder osteoarthritis. Dr. Shadid opined Petitioner's advanced osteoarthritis condition was not causally related to Petitioner's complaints or Petitioner's problems while at work on April 24, 2020. (Rx. 2, pg. 33). In support of his opinion Dr. Shadid testified "*The patient sustained a right shoulder contusion, which by definition resolved four to six weeks following the date of injury. Right shoulder osteoarthritis is a long-time preexisting degenerative condition of the right shoulder and not related to the work injury of April 24, 2020, nor was it aggravated, exacerbated or accelerated by the fall.*" (Rx. 2, pg. 33). Dr. Shadid further opined Petitioner achieved maximum medical improvement in six weeks following the date of injury. (Rx. 2, pg. 34). Dr. Shadid testified a contusion was a temporary condition and Petitioner return to work doing what he was doing before the accident. (Rx. 2. Pg. 51).

On October 20, 2020, Dr. Abjulmassih completed a Fitness-for-Duty Certification finding Petitioner could safely perform his essential job functions. (Px. 15). Petitioner testified he returned to work on the dock and performing the pedal run. (Tr. 32). Petitioner testified although he returned to work, he was not doing the heavy dock work like he had done before. (Tr. 26). Petitioner testified he did not do heavy lifting while on the dock. (Tr. 54).

On January 6, 2021, Petitioner was assigned a lift gate trailer delivery. (Tr. 53). Petitioner testified this was the first time since returning to work. (Tr. p.54). Petitioner testified he aggravated his right shoulder while unloading an elliptical exercise machine. (Tr. 55 – 66). The machine was in the back of the 26-foot trailer on an 8 to 10-foot pallet or skid. (Tr. 56,61). Petitioner testified the combined weight of the elliptical machine and skid was between 275-280 pounds. (Tr. 66). Petitioner testified he pulled the truck along the side of a residential driveway. (Tr. 57). Petitioner

testified the owner of the home had not plowed the snow off the bottom of the driveway making it difficult to pull the pallet jack. (Tr.57).

Petitioner testified he was using a manual pallet jack to unload the skid from the back of the truck and after unloaded the skid he tried to pull pallet jack and skid up the driveway but the tires of the pallet jack became buried in the snow causing the pallet jack to get stuck. (Tr. 61-64). Petitioner testified as he was pulling the pallet jack to loosen it from the snow, he felt a "pop" in his right shoulder and felt immediate right shoulder pain. (Tr. 65-66). Petitioner testified he took photographs of the area. (Tr.58 and PX.18).

Petitioner was able to free the pallet jack and complete the delivery before calling his supervisor and reporting the injury to his right shoulder. (Tr. 67). Petitioner made two more deliveries before returning to the terminal (Tr. 68). Petitioner completed an accident report. (Tr. 69).

On January 13, 2021, Petitioner returned to Dr. Abdulmassih reporting right shoulder pain. The medical records state "*he presents with fell and re-injured his right shoulder on 4/24/2020, and re injury 1/6/2021 while pulling a ballot (pallet).*" (Px. 16). Petitioner was diagnosed with adhesive capsulitis right shoulder and received an arthrocentesis injection of the right shoulder. At this time, Dr. Abdulmassih restricted Petitioner from all work activity. (Px.15).

On January 27, 2021, Petitioner followed up with Dr. Abdulmassih reporting right shoulder pain and that he was unable to lift his right arm. Petitioner did not receive any relief from the injection. Dr. Abdumassih referred Petitioner to an orthopedic surgeon. (Px.16)

On April 9, 2021 Petitioner returned to Dr. Garbis reporting continued pain. The medical records state Petitioner "*keeps trying to get back to work and restarting using it and he has difficulty with it.*" Dr. Garbis assessed right shoulder osteoarthritis with posterior subluxation Walch B2 variant and recommended right shoulder arthroplasty. (Px. 7). Petitioner's surgical procedure recommended was the same procedure as previously recommended. (Px. 7). Petitioner testified the right shoulder pain had worsen since his last visit. (Tr.73).

Petitioner was examined by Dr. Shadid on September 29, 2021 pursuant to Section 12 of the Act. Petitioner reported returning to work and reinjuring his right shoulder on January 6, 2021 while delivering exercise equipment. Petitioner described feeling a pop in his right shoulder while pulling a cart or a skid. (Rx. 1 pg. 52). Dr. Shadid diagnosed advanced right

shoulder degenerative joint disease. (Rx. 1 pg. 67). Dr. Shadid opined Petitioner's current condition was not causally related to his January 6, 2021 accident. (Rx. 1, pg. 68). Dr. Shadid testified there was no evidence suggesting the accident accelerated or aggravated Petitioner's underlying condition. Dr. Shadid testified Petitioner sustained a right shoulder strain which would had resolved within four or six weeks. (Px. 1, pg. 68). Dr. Shadid further testified Petitioner's January 6, 2021 accident re-exposed the condition but did not cause, accelerate, or aggravate the arthritic condition. (Px. 1. Pg. 68).

Petitioner continued to follow up with Dr. Abdulmassih monthly throughout 2021 for right shoulder pain. (Px.16). Dr. Abdulmassih continued to restrict Petitioner from all work activity and continued to prescribe the Methocarbamol and Gabapentin. Petitioner testified he saw Dr. Abdulmassih in January and February of 2022 and that he is still restricted from working. (Tr.76).

Petitioner testified he is unable to drive due to the medications he is taking. (Tr. 77). Petitioner testified he takes Tylenol 3 and methocarbamol which makes him sleepy and because he drives a truck, he could be issued a DUI. (Tr. 77, 78). Petitioner testified his current right shoulder pain level is between 9 and 10 and he has not worked since January of 2021. (Tr. 79). Petitioner testified he experiences difficulties getting dressed, taking showers and that he is unable to do things such as mow a lawn or shovel snow. (Tr. 79). Petitioner testified he is unable to raise is right arm above his shoulder and he is unable to lift his arm from his side to shoulder level without experiencing pain. (Tr. 80). Petitioner testified he is right-handed and he must do everything with his left arm. (Tr. 81). Petitioner testified he would like to proceed with the surgery recommended by Dr. Garbish. (Tr. 82).

The Arbitrator found Petitioner's testimony to be credible.

Conclusions of Law

The Arbitrator adopts the finding of fact in support of the Conclusions of Law as Set forth below.

WITH RESPECT TO ISSUE "F" WHETHER PETITIONER'S CURRENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE APRIL 24, 2020 INJURY AT WORK, 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). Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co., v. Industrial Comm'n.,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989). When a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee' injury. *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 Ill.App. (4th) 100505 WC. The chain of events principles has been applied where an accident is claimed to have aggravated a preexisting condition. See *Schroeder v. Illinois Workers' Compensation Comm'n*, 2017 IL.App. (4th) 160192WC.

The Arbitrator has carefully reviewed and considered all of the evidence presented at trial and finds that Petitioner failed to prove by the preponderance of the credible evidence that his current right shoulder condition is casually related to his work injury of April 24, 2020, as set forth more fully below.

Petitioner returned to work after his second right shoulder injury. On October 10, 2020, Dr. Abjulmassihi, Petitioner's primary care physician, opined that Petitioner could safely perform his job duties and Dr. Abjulmassihi completed a Fitness-For-Duty Certificate. Thereafter, Petitioner sustained a third right shoulder injury on January 6, 2021. After that accident, Petitioner was restricted from all work. In that case, the Arbitrator found Petitioner's current right shoulder condition was causally related to his January 6, 2021 work injury. *See Mark Sullivan v. ABF Freight,* 21 WC 000982. The Arbitrator finds Petitioner's subsequent right shoulder injury of January 6, 2021 was an intervening accident which broke the causal chain between the April 24, 2020 accident and Petitioner's ensuing condition. *See Boatman v. Industrial Comm'n,* 256 Ill.App.3d 1070, 628 N.E.2d 829, 195 Ill.Dec. 365 (1st Dist. 1993).

WITH RESPECT TO ISSUE (G) WHAT WERE PETITIONER'S EARNINGS, THE ARBITRATOR FINDS AS FOLLOWS:

Section 10 of the Illinois Workers' Compensation Act provides as follows:

> *The compensation shall be computed on the basis of the "Average weekly wage" which shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ending with the last day of the employee's last full pay period immediately proceeding the date of injury, illness, or disablement excluding overtime, and bonus divided by 52; but, if the injured employee lost 5 or more calendar days during such period, whether or not in the same week, then the earnings for the remainder of the 52 weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted… 820 ILCS 305/10.*

Petitioner, who is a member of the Teamsters' union, testified he worked 5 days a week, Monday through Friday, and pursuant to the collective bargaining agreement he could be required to work 10 hours a day. (Tr. 26-27). Petitioner testified overtime work was regular and mandatory. (Tr. 28).

In the instant case, Petitioner admitted he could not give a specific reason for his having taken days off from the employer. He did confirm the reason for this time off had nothing to do with being called off by any ABF employee and that a 40-hour work week was not guaranteed by any union contract or employee-employer agreement. Therefore, a traditional wage calculation is appropriate. Petitioner worked 52 weeks prior to the date of loss. Including overtime at the straight rate, he earned a total of $55,535.95 for those weeks. As such, the Arbitrator finds Petitioner's average weekly wage for this claim to be $1,068.00 based on a calculation of [(Reg Hours 334.17 + OT Hours 67.65) x pay rate 26.7835] + [(Reg Hours 1376.34 + OT Hours 273.79) x pay rate 27.1335] / 52.

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

Under Section 8(a) of the Act, claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising our or and in the scope of employment and which are necessary to diagnose, relieve, or cure the effects of the claimant's injury. *Absolute Cleaning/SVMBC v. Illinois Workers' Compensation Comm'n,* 409 Ill.App.3d 463, 470 (4th Dist. 2011).

Respondent disputed liability for the medical expenses based upon causation. As stated above, the Arbitrator found Petitioner sustained an intervening accident on January 6, 2021 which broke the causal change between Petitioner's April 24, 2020 accident and his ensuing condition. The Arbitrator finds that Petitioner proved by the preponderance of the evidence the medical treatment he received, prior to January 6, 2021, was causally related to his April 24, 2020 work accident and necessary to diagnose, relieve or cure him from the effects of his injury through January 6, 2021. As such, Respondent shall pay the medical expenses incurred from April 24, 2020 through January 6, 2021, identified in Px.6, Rx.14, Px.15, Px.16 and Px.17 pursuant to Section 8.2 of the Act and the Illinois Medical Fee Schedule.

WITH RESPECT TO ISSUE "K" WHETHER PETITIONER IS ENTITLED TO TTD BENEFITS, THE ARBITRATOR FINDS AS FOLLOWS:

The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, *"i.e., until the condition has stabilized." Gallentine v., Industrial Comm'n,* 201 Ill.App.3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized (i.e., reached M.M.I.). *Sunny Hill of Will County v. Ill. Workers' Comp Comm's* 2014 IL App (3d) 130028WC at 28 (June 26, 2014, Opinion filed); *Mechanical Devices v. Industrial Comm'n*, 344 Ill.App.3fd 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).

Petitioner claimed TTD benefits from April 25, 2020, through October 11, 2020. (Arb. Ex. 1). Petitioner testified he received TTD benefits from April to October following the second accident at work. (Tr.46-47). As such, the Arbitrator finds Petitioner failed to prove by the preponderance of the evidence that he is entitled to receive temporary total disability benefits.

WITH RESPECT TO ISSUE (M) SHOULD PENALTIES OR FEES, THE ARBITRATOR FINDS AS FOLLOWS:

Respondent obtained a Section 12 medical examination and Respondent relied upon the opinions of the examiner to deny Petitioner's benefits. Consequently, the Arbitrator finds Petitioner failed to prove by the preponderance of the evidence an entitlement of fees and penalties pursuant to the Act.

WITH RESPECT TO ISSUE (O) PROSPECTIVE MEDICAL TREATMENT AND WHETHER PETITIONER IS LIABLE TO REIMBURSE RESPONDENT FOR COSTS ASSOCIATED WITH A SECTION 12 EXAMINATION, THE ARBITRATOR FINDS AS FOLLOWS:

Based upon the above finding that Petitioner's January 6, 2021 right shoulder injury was an intervening accident which broke the causal chain between his April 24, 2020 injury and his ensuing condition. As such, Petitioner failed to prove by the preponderance of the evidence the need for prospective medical treatment was related to his April 24, 2020 injury.

Respondent also seeks reimbursement for cost associated with securing a Section 12 Examination. Respondent does not cite to any provision in the Act which provides the Commission jurisdiction and/or authority to issue such an award. However, Respondent sites to several cases involving claims for reimbursement for deposition fees. In this case, Petitioner agreed to proceed with the deposition of the Section 12 examiner but, subsequently, rescinded his agreement when the Section 12 examiner failed to comply with a subpoena issued by Petitioner. It is not disputed that the Section 12 examiner failed to comply with the subpoena. Without addressing the issue of whether the Act grants the Commission the authority or jurisdiction to issue such an award, the Arbitrator herby denies Respondent's request. The deposition did not proceed because the Section 12 examiner failed to comply with the subpoena. This not a situation where the attorney failed to appear for deposition without any legitimate reason.

By: /o/ *Frank J. Soto* May 20, 2022
Arbitrator Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000982
Case Name	Mark Sullivan v. ABF Freight Inc
Consolidated Cases	18WC003021; 20WC012248;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0236
Number of Pages of Decision	16
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Edward Czapla
Respondent Attorney	Lindsay Vanderford

DATE FILED: 5/24/2023

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARK SULLIVAN,

Petitioner,

vs. NO: 21 WC 982

ABF FREIGHT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, prospective medical 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, 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 hereby make the following clarifications and corrections:

- Page 1, ¶2, Line 3: The date of the third shoulder injury is changed from "January 6, 2012" to reflect that it occurred on "January 6, 2021."

- Page 2, ¶3, Line 1: The date Petitioner underwent the MRI is changed from "June 16, 2021" to "June 16, 2020."

- Page 5, Heading of Section (F): "20212" is replaced with "2021"

- Page 10, Issue (O), Line 5: We strike the word "not" before "causally."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 23, 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.

May 24, 2023

SE/
O: 3/28/23
49

/s/ *Maria E. Portela*

/s/ *Deborah J. Baker*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000982
Case Name	SULLIVAN, MARK v. ABF FREIGHT, INC.
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Edward Czapla
Respondent Attorney	Lindsay Vanderford

DATE FILED: 5/23/2022

THE INTEREST RATE FOR THE WEEK OF MAY 17, 2022 1.49%

/s/Frank Soto, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
19(B)/8(A) ARBITRATION DECISION

MARK SULLIVAN
Employee/Petitioner

v.

ABF FREIGHT, INC.
Employer/Respondent

Case # **21** WC **00982**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Frank Soto** , Arbitrator of the Commission, in the city of **Geneva**, on **3/22/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **1/6/2021**, 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 $33,568.77; the average weekly wage was $1,118.96.

On the date of accident, Petitioner was **52** 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 $2,983.88 for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $2,938.88

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

ORDER

THE ARBITRATOR FINDS PETITIONER'S CURRENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO HIS JANUARY 6, 2021 WORK INJURY, AS SET FORTH IN THE CONCLUSIONS OF LAW ATTACHED HERETO.

RESPONDENT SHALL PAY PETITIONER THE MEDICAL EXPENSES IDENTIFIED IN PX.6, PX.14, PX.15 PX. 16 AND PX. 17 PURSUANT TO SECTION 8(A) AND 8.2 OF THE ACT SUBJECT TO THE ILLINOIS MEDICAL FEE SCHEDULE, AS SET FORTH IN THE CONCLUSIONS OF LAW ATTACHED HERETO.

THE ARBITRATOR FINDS THAT RESPONDENT SHALL PAY PETITIONER TEMPORARY TOTAL DISABILITY BENEFITS OF FOR 62 WEEKS FROM JANUARY 13, 2021 THROUGH MARCH 22, 2022, AS PROVIDED IN SECTION 8(A) OF THE ACT LESS A CREDIT OF $2,983.88 FOR TTD BENEFITS RESPONDENT PREVIOUSLY PAID, AS SET FORTH IN THE CONCLUSIONS OF LAW.

PETITIONER'S REQUEST FOR PENALTIES AND ATTORNEY'S FEES IS DENIED AS SET FORTH IN THE CONCLUSIONS OF LAW ATTACHED HERETO.

RESPONDENT SHALL PAY FOR THE RIGHT SHOULDER REPLACEMENT SURGERY RECOMMEDED BY DR. GARBIS AS WELL AS REASONABLE AND NECESSARY PRE-SURGERY TESTING AND EXAMS AS WELL AS POST-SURGERY FOLLOW UP CARE AND THERAPIES PURSUANT TO SECTIONS 8.2 AND 8(A) OF THE ACT AND THE ILLINOIS MEDICAL FEE SCHEDULE, AS SET FORTH IN THE CONCLUSIONS OF LAW ATTACHED HERETO.

RESPONDENT'S REQUEST FOR REIMBURSEMENT OF EXPENSES PAID TO THE SECTION 12 EXAMINER IS HERBY DENIED, AS SET FORTH IN THE CONCLUSIONS OF LAW ATTACHED HERETO AND INCORPORATED HEREIN,

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

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

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

By: /o/ Frank J. Soto **MAY 23, 2022**

Arbitrator

Procedural History

Petitioner filed three claims involving injuries to his right shoulder while working for Respondent. The first claim involved a January 5, 2018 date of injury, which was proceeded to trial on January 29, 2020 pursuant to Sections 19(b) and 8(a). *See Mark Sullivan v. ABF Freight Systems, Inc.* 18 WC 003021. (Px 1). In that case Petitioner was found to have sustained an accidental injury to his right shoulder which arose out of an in the course of his employment and was causally related to his work accident. (Px. 1). At trial, Petitioner sought prospective medical treatment. One of Petitioner's physicians recommended an arthroscopic procedure while the other physician recommended right shoulder arthroplasty. (Px 1). Prospective medical care was not awarded because Petitioner failed to testify regarding which surgical procedure he wanted to undergo. (Px. 1). A review of the decision was filed by both parties which is currently pending.

Petitioner returned to work for Respondent and sustained a second injury to his right shoulder on April 24, 2020 (*i.e*. Case #20 WC 12248) and a third injury to his right shoulder on January 6, 2012 *(i.e.* Case #21 WC 000982). (Arb. Ex's 1, 2). The trial for these subsequent injuries was held on March 22, 2022 pursuant to Sections 19(b) and 8(a) of the Act. In both cases the disputed issues were whether Petitioner's current right shoulder condition is causally connected to his injuries, average weekly wage, whether Respondent is liable for unpaid medical bills, whether Petitioner is entitled to TTD benefits and prospective medical care consisting of a right shoulder arthroplasty. Respondent was also seeking reimbursement for the cost of a Section 12 examiner's deposition and Petitioner was seeking penalties and attorney's fees pursuant to Sections 19(k), 19(l) and 16 of the Act. (Arb. Ex. 1, 2).

Findings of Fact

Petitioner, a 53-year-old truck driver/dock worker, testified he was employed by Respondent, ABF Freight System, Inc. on April 24, 2020. (Tr. 19,31). Petitioner drove a truck and worked on the dock loading/unloaded trailers. (Tr.19-20), Respondent has two types of deliveries. One type of delivery is a pedal run and the driver is not responsible for unloading the freight. The other type of delivery involves a lift gate where the driver is responsible for unload the freight. (Tr. 21).

Following his initial injury at work on January 25, 2018, Petitioner returned to work later that year. (Tr. 22-24, 26). When Petitioner returned to work, he was allowed to perform the pedal

run. (Tr. 25). Thereafter, Petitioner resumed dock work but at a less physically demanding level than he performed prior to his January 5, 2018 work injury. (Tr. 26). Petitioner worked full time until sustaining a second work injury on April 24, 2020. (Tr. 31).

On April 24, 2020, Petitioner tripped on a dock plate unloading steel from a trailer. (Tr. 31-32). Petitioner was unloading the trailer with a co-worker, Dave Tiffany. (Tr. 32). Petitioner testified that he tripped on the dock plate while unloading the steel stumbling forward and falling on his outstretched right arm and shoulder landing on the concrete dock. (Tr. 32-33). A video was entered into evidence which Petitioner testified accurately reflected the fall. (Px.5). Petitioner testified he felt immediate right shoulder pain. (Tr. 34). Petitioner reported the accident to his supervisor and completed a written accident report. (Tr. 35, 36, PX.12).

On May 2, 2020, Petitioner presented to his primary care physician Dr. Abdulmassih reporting right shoulder pain. (Tr. 39, PX.14). The medical records state "*he presents with fell and reinjured right shoulder on April 24, 2020."* (PX.14). Dr. Abdulmassih diagnosed right shoulder capsulitis, ordered an MRI of the right shoulder and placed Petitioner on light duty work or office work restrictions. (Px. 14).[1] Petitioner was also prescribed Tylenol-codeine, methocarbamol, and Naproxen. (Px14).

Petitioner underwent the MRI on June 16, 2021 which found: (1) severe hypertrophic arthritis of the glenohumeral joint with multiple small subchondral cysts, (2) hypertrophic arthritis of the AC joint with small joint effusion, (3) mixed signal intensity within subchondral bone of the glenoid and the humeral head more consistent with sclerosis, (4) mixed signal intensity within supraspinatus tendon and a small partial-thickness undersurface tear of its anterior boarder, (5) tear of the anterior glenoid labrum and a degenerative tear of the posterior glenoid labrum consistent with a SLAP tear and (6) proximal migration of the humeral head in the subacromial space consistent with impingement syndrome. (PX 6.)

Petitioner followed up with Dr. Abdulmassih on June 20, 2020. The examination of the right shoulder noted pain and decrease in range of motion. (PX.14). Petitioner was restricted from work because of the medications which prevented him from driving. (PX.15)

[1] Prior to the second work accident on April 24, 2020, Petitioner was seen by Dr. Abdulmassih on February 15, 2020 and, at that time, Petitioner reported ongoing right shoulder pain that radiated into the arm. The medical record state the apparent precipitating event was a work injury referring to Petitioner's original injury to his right shoulder on January 5, 2018. Petitioner was assessed with right shoulder adhesive capsulitis but Dr. Abdulmassih did not issue restrictions were issued nor ordered an MRI. (Px 14).

On July 10, 2020, Petitioner presented to Dr. Nickolas Garbis, an orthopedic surgeon at Loyola University Medical Center. The medical history state Petitioner was previously seen for shoulder osteoarthritis but that, on April 24, 2020, Petitioner tripped landing directly onto his shoulder developing increased pain. (Px 7). The exam noted decreased range of motion and crepitus. Dr. Garbis assessed right shoulder osteoarthritis with posterior subluxation, Walch B2 variant. Dr. Garbis recommended shoulder replacement surgery due to Petitioner's increased pain after April which had not gotten better. (Px. 7). Dr. Garbis ordered a right shoulder CT scan. (Px. 7).

On September of 2020, Petitioner was examined by Dr. Hythem Shadid pursuant to Section 12 of the Act. Dr. Shadid diagnosed advanced right shoulder osteoarthritis. Dr. Shadid opined Petitioner's advanced osteoarthritis condition was not causally related to Petitioner's complaints or Petitioner's problems while at work on April 24, 2020. (Rx. 2, pg. 33). In support of his opinion Dr. Shadid testified "*The patient sustained a right shoulder contusion, which by definition resolved four to six weeks following the date of injury. Right shoulder osteoarthritis is a long-time preexisting degenerative condition of the right shoulder and not related to the work injury of April 24, 2020, nor was it aggravated, exacerbated or accelerated by the fall.*" (Rx. 2, pg. 33). Dr. Shadid further opined Petitioner achieved maximum medical improvement in six weeks following the date of injury. (Rx. 2, pg. 34). Dr. Shadid testified a contusion was a temporary condition and Petitioner return to work doing what he was doing before the accident. (Rx. 2. Pg. 51).

On October 20, 2020, Dr. Abjulmassih completed a Fitness-for-Duty Certification finding Petitioner could safely perform his essential job functions. (Px. 15). Petitioner testified he returned to work on the dock and performing the pedal run. (Tr. 32). Petitioner testified although he returned to work, he was not doing the heavy dock work like he had done before. (Tr. 26). Petitioner testified he did not do heavy lifting while on the dock. (Tr. 54).

On January 6, 2021, Petitioner was assigned a lift gate trailer delivery. (Tr. 53). Petitioner testified this was the first time since returning to work. (Tr. p.54). Petitioner testified he aggravated his right shoulder while unloading an elliptical exercise machine. (Tr. 55 – 66). The machine was in the back of the 26-foot trailer on an 8 to 10-foot pallet or skid. (Tr. 56,61). Petitioner testified the combined weight of the elliptical machine and skid was between 275-280 pounds. (Tr. 66). Petitioner testified he pulled the truck along the side of a residential driveway. (Tr. 57). Petitioner

testified the owner of the home had not plowed the snow off the bottom of the driveway making it difficult to pull the pallet jack. (Tr.57).

Petitioner testified he was using a manual pallet jack to unload the skid from the back of the truck and after unloaded the skid he tried to pull pallet jack and skid up the driveway but the tires of the pallet jack became buried in the snow causing the pallet jack to get stuck. (Tr. 61-64). Petitioner testified as he was pulling the pallet jack to loosen it from the snow, he felt a "pop" in his right shoulder and felt immediate right shoulder pain. (Tr. 65-66). Petitioner testified he took photographs of the area. (Tr.58 and PX.18).

Petitioner was able to free the pallet jack and complete the delivery before calling his supervisor and reporting the injury to his right shoulder. (Tr. 67). Petitioner made two more deliveries before returning to the terminal (Tr. 68). Petitioner completed an accident report. (Tr. 69).

On January 13, 2021, Petitioner returned to Dr. Abdulmassih reporting right shoulder pain. The medical records state "*he presents with fell and re-injured his right shoulder on 4/24/2020, and re injury 1/6/2021 while pulling a ballot (pallet).*" (Px. 16). Petitioner was diagnosed with adhesive capsulitis right shoulder and received an arthrocentesis injection of the right shoulder. At this time, Dr. Abdulmassih restricted Petitioner from all work activity. (Px.15).

On January 27, 2021, Petitioner followed up with Dr. Abdulmassih reporting right shoulder pain and that he was unable to lift his right arm. Petitioner did not receive any relief from the injection. Dr. Abdumassih referred Petitioner to an orthopedic surgeon. (Px.16)

On April 9, 2021 Petitioner returned to Dr. Garbis reporting continued pain. The medical records state Petitioner "*keeps trying to get back to work and restarting using it and he has difficulty with it.*" Dr. Garbis assessed right shoulder osteoarthritis with posterior subluxation Walch B2 variant and recommended right shoulder arthroplasty. (Px. 7). Petitioner's surgical procedure recommended was the same procedure as previously recommended. (Px. 7). Petitioner testified the right shoulder pain had worsen since his last visit. (Tr.73).

Petitioner was examined by Dr. Shadid on September 29, 2021 pursuant to Section 12 of the Act. Petitioner reported returning to work and reinjuring his right shoulder on January 6, 2021 while delivering exercise equipment. Petitioner described feeling a pop in his right shoulder while pulling a cart or a skid. (Rx. 1 pg. 52). Dr. Shadid diagnosed advanced right

shoulder degenerative joint disease. (Rx. 1 pg. 67). Dr. Shadid opined Petitioner's current condition was not causally related to his January 6, 2021 accident. (Rx. 1, pg. 68). Dr. Shadid testified there was no evidence suggesting the accident accelerated or aggravated Petitioner's underlying condition. Dr. Shadid testified Petitioner sustained a right shoulder strain which would had resolved within four or six weeks. (Px. 1, pg. 68). Dr. Shadid further testified Petitioner's January 6, 2021 accident re-exposed the condition but did not cause, accelerate, or aggravate the arthritic condition. (Px. 1. Pg. 68).

Petitioner continued to follow up with Dr. Abdulmassih monthly throughout 2021 for right shoulder pain. (Px.16). Dr. Abdulmassih continued to restrict Petitioner from all work activity and continued to prescribe the Methocarbamol and Gabapentin. Petitioner testified he saw Dr. Abdulmassih in January and February of 2022 and that he is still restricted from working. (Tr.76).

Petitioner testified he is unable to drive due to the medications he is taking. (Tr. 77). Petitioner testified he takes Tylenol 3 and methocarbamol which makes him sleepy and because he drives a truck, he could be issued a DUI. (Tr. 77, 78). Petitioner testified his current right shoulder pain level is between 9 and 10 and he has not worked since January of 2021. (Tr. 79). Petitioner testified he experiences difficulties getting dressed, taking showers and that he is unable to do things such as mow a lawn or shovel snow. (Tr. 79). Petitioner testified he is unable to raise is right arm above his shoulder and he is unable to lift his arm from his side to shoulder level without experiencing pain. (Tr. 80). Petitioner testified he is right-handed and he must do everything with his left arm. (Tr. 81). Petitioner testified he would like to proceed with the surgery recommended by Dr. Garbish. (Tr. 82).

The Arbitrator found Petitioner's testimony to be credible.

Conclusions of Law

The Arbitrator adopts the finding of fact in support of the Conclusions of Law as Set forth below.

WITH RESPECT TO ISSUE (F) WHETHER PETITIONER'S CURRENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE JANUARY 6, 20212 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 in injured in the course and of his employment the Commission must decide whether there was an accidental injury which arose out of the employment. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill.2d 193, 278 Ill. Dec. 70. 797 N.E.2d 665, (2003). Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co., v. Industrial Comm'n.,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989). When a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee' injury. *Shafer v. Illinois Workers' Compensation Comm'n,* 2011 Ill.App. (4th) 100505 WC. The chain of events principles has been applied where an accident is claimed to have aggravated a preexisting condition. See Schroeder v. Illinois Workers' Compensation Comm'n, 2017 IL. App. (4th) 160192WC.

The Arbitrator has carefully reviewed and considered all the evidence and finds Petitioner has proven by the preponderance of the credible evidence that his current right shoulder condition is causally related to his work accident of January 6, 2021, as set forth more fully below.

Following his April 24, 2020 work injury Petitioner returned to work for Respondent. On October 20, 2020 Dr. Abjulmassih, Petitioner's primary care physician, found that Petitioner could safely perform his job duties and Dr. Abjulmassih completed a Fitness-For-Duty Certificate. Dr. Shadid also agreed Petitioner could return to work.

Petitioner continued working for Respondent until January 6, 2021. On that date, Petitioner reinjured his right shoulder while pulling a pallet jack that became stuck in the snow. (Tr. 56-65). On January 13, 2021, Petitioner returned to Dr. Abdulmassih reporting right shoulder pain. The medical records state "*he presents with fell and re-injured his right shoulder on 4/24/2020, and re injury 1/6/2021 while pulling a ballot (pallet).*" (Px. 16). Petitioner was diagnosed with right shoulder adhesive capsulitis and he received an arthrocentesis injection. At that time, Dr. Abdulmassih restricted Petitioner from all work activity. (Px.15). Petitioner has

not returned to work and he continues to remain off work due work restrictions. On April 9, 2021, Dr. Garbis noted that Petitioner was unable to lift his right arm and Petitioner testified he still is unable to raise is right arm above his shoulder. (Tr. 80). Petitioner testified after the second accident his right shoulder pain went down to 7- 8 but, after the third accident, his right shoulder pain went up to 8-9 and is currently between 9-10. (Tr. 53, 70, 79). After his third right shoulder accident Petitioner was placed on pain medications which restrict him from driving.

The Arbitrator notes that Petitioner did not sustain any other injury to the right shoulder following the April 24, 2020, accident at work (2nd accident) prior to reinjuring the shoulder on January 6, 2021 (3rd accident) nor has Petitioner sustained any subsequent trauma to his right shoulder since his January 6, 2021 work accident. (Tr.83).

The Arbitrator finds Petitioner's January 6, 2021 right shoulder injury aggravated his preexisting arthritic condition. Prior to the January 6, 2021 injury, Petitioner was able to work but after that injury he has been unable to work, his pain levels increased, his use of pain medications increased, and he has been unable to lift his right arm above this shoulder. Additionally, the Arbitrator also finds Petitioner's current condition of ill-being is causally related to his work injury of January 6, 2021 based upon a chain of events theory. Prior to January 6, 2021, Petitioner was in relatively good heath when he suffered a subsequent work injury resulting in his physical condition to worsen which demonstrates a causal nexus between the injury and his current condition of ill-being.

The Arbitrator does not find the opinions of Dr. Shadid persuasive. Dr. Shadid opined Petitioner's current condition was not causally related to his January 6, 2021 accident. (Rx. 1, pg. 68). Dr. Shadid testified there was no evidence suggesting the accident accelerated or aggravated Petitioner's underlying condition. Dr. Shadid testified Petitioner sustained a right shoulder strain which would had resolved within four or six weeks. (Px. 1, pg. 68). The Arbitrator notes Dr. Shadid failed to explain why, after the January 6, 2021 work injury, Petitioner's pain levels increased, Petitioner's pain medicine prescriptions increased, Petitioner was taken off all work and Petitioner could no longer lift his right arm above his shoulder were not evidence to be considered when deciding whether Petitioner's January 6, 2021 injury accelerated or aggravated his preexisting condition.

The Arbitrator also notes that Dr. Shadid failed to articulate what was Petitioner's physical condition or baseline prior to his January 6, 2021 injury and when Petitioner returned to that physical condition or baseline after his January 6, 2021 injury. As such, the Arbitrator finds Dr. Shadid's causation opinions to be based upon guess, surmise, or conjecture. It is axiomatic that the weight accorded an expert opinion is measured by the facts supporting it and the reasons given for it; an expert opinion cannot be based on guess, surmise, or conjecture. *Wilfert v. retirement Board*, 318 Ill.App.3d 507, 514-15 (1st. Dist. 2000).

WITH RESPECT TO ISSUE (G) WHAT WERE PETITIONER'S EARNINGS? THE ARBITRATOR FINDS AS FOLLOWS:

Section 10 of the Illinois Workers' Compensation Act provides as follows:

> *The compensation shall be computed on the basis of the "Average weekly wage" which shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ending with the last day of the employee's last full pay period immediately proceeding the date of injury, illness, or disablement excluding overtime, and bonus divided by 52; but, if the injured employee lost 5 or more calendar days during such period, whether or not in the same week, then the earnings for the remainder of the 52 weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted… 820 ILCS 305/10.*

For Petitioner's January 6, 2021 accident, Petitioner worked 30 weeks prior to the date of loss. Including overtime at the straight rate, he earned a total of $33,568.77 for those weeks. As such, the Arbitrator finds Petitioner's average weekly wage to be $1,118.96 based on a calculation of [(Reg Hours 552.08 + OT Hours 91.27 + PTO 50) x pay rate 27.1335] + [(Reg Hours 341.71 + OT Hours 46.21 + PTO 148) x pay rate 27.5335] / 30.

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

Under Section 8(a) of the Act, claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising our or and in the scope of employment and which are necessary to diagnose, relieve, or cure the effects of the claimant's injury. *Absolute Cleaning/SVMBC v. Illinois Workers' Compensation Comm'n,* 409 Ill.App.3d 463, 470 (4th Dist. 2011).

Respondent disputed liability for the medical expenses based upon causation. A stated above, the Arbitrator finds Petitioner's right shoulder condition causally related to his January 6, 2021 work accident. The Arbitrator further finds the medical treatment Petitioner received to be reasonable and necessary, As such, Respondent shall pay to Petitioner the medical expenses as identified in Px.6, Px.14, Px.15, Px.16 and Px.17 pursuant to Section 8.2 and 8(A) of the Act and the Illinois Medical Fee Schedule.

WITH RESPECT TO ISSUE (K) WHETHER PETITIONER IS ENTITLED TO TTD BENEFITS, THE ARBITRATOR FINDS AS FOLLOWS:

The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, *"i.e., until the condition has stabilized." Gallentine v., Industrial Comm'n,* 201 Ill.App.3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized (i.e., reached M.M.I.). *Sunny Hill of Will County v. Ill. Workers' Comp Comm's* 2014 IL App (3d) 130028WC at 28 (June 26, 2014, Opinion filed); *Mechanical Devices v. Industrial Comm'n*, 344 Ill.App.3fd 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).

Petitioner seeks TTD benefits from January 7, 2021 through March 22, 2022, the date of trial. (Arb. Ex.#2). Petitioner was restricted from work by Dr. Abdulmassih on January 13, 2021. (Px. 16). Petitioner continues to be restricted from work by Dr. Abdulmassih. Surgery has been recommended by Dr. Garbi. The Arbitrator finds Petitioner's condition has not stabilized. The Arbitrator also finds Petitioner proved by the preponderance of the evidence he is entitled to Temporary Total Disability benefits for 62 weeks from January 13, 2021 through the March 22, 2022, the date of the trial. Respondent issued Petitioner benefits of $2,983.88 on September 13, 2021. (Rx.3). As such, Respondent is entitled to a credit in the amount of $2,938.88 for Temporary Total Disability benefits previous paid.

WITH RESPECT TO ISSUE (M) SHOULD PENALTIES OR FEES BE IMPOSED UPON RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Respondent obtained a Section 12 medical examination and Respondent relied upon the opinions of the examiner to deny Petitioner's benefits. Consequently, the Arbitrator finds

Petitioner failed to prove by the preponderance of the evidence an entitlement of fees and penalties pursuant to the Act.

WITH RESPECT TO ISSUE (O) PROSPECTIVE MEDICAL TREATMENT AND WHETHER PETITIONER IS LIABLE TO REIMBURSE RESPONDENT FOR COSTS ASSOCIATED WITH A SECTION 12 EXAMINATION, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds Petitioner proved by the preponderance of the evidence that he is entitled to prospective medical treatment consisting of the right shoulder replacement surgery recommended by Dr. Garbis. As stated above, the Arbitrator found Petitioner's current right shoulder is causally related to his January 6, 2021 work injury. Petitioner testified he wished to pursue the surgery recommended by Dr. Garbis. Respondent disputed the surgery was not causally related to his January 6, 2021 injury not that the surgery was unreasonable or unnecessary. As such, Respondent shall pay for the right shoulder replacement surgery recommended by Dr. Garbis as well as reasonable and necessary pre-surgery testing and exams as well as post-surgery follow up care and therapies, pursuant to Sections 8.2 and 8(A) of the Act and the Illinois Medical schedule.

Respondent also seeks reimbursement for cost associated with securing a Section 12 Examination. Respondent does not cite to any provision in the Act which provides the Commission jurisdiction and/or authority to issue such an award. However, Respondent sites to several cases involving claims for reimbursement for deposition fees. In this case, Petitioner agreed to proceed with the deposition of the Section 12 examiner but, subsequently, rescinded his agreement after the Section 12 examiner failed to comply with a subpoena issued by Petitioner. It is not disputed that the Section 12 examiner failed to comply with the subpoena. Without addressing the issue of whether the Act grants the Commission the authority or jurisdiction to issue such an award, the Arbitrator herby denies Respondent's request. The deposition did not proceed because the Section 12 examiner failed to comply with the subpoena. This not a situation where the attorney failed to appear for deposition without any legitimate reason.

By: /s/ Frank J. Soto — May 20, 2022
Arbitrator — Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC025453
Case Name	Sharon Botkin (Widow of Jack Botkin Deceased) v. Walter D Laud Construction
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0237
Number of Pages of Decision	5
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Karolina Zielinska
Respondent Attorney	James Kelly

DATE FILED: 5/23/2023

/s/Marc Parker, 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 Accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Sharon Botkin, Widow of Jack Botkin,
deceased,

Petitioner,

vs. No. 19 WC 025453

Walter D. Laud Construction,

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 issue of intoxication under Section 11 of the Act, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

Finding of Facts

Petitioner's husband, Jack Botkin (hereinafter "decedent"), had been employed by Respondent for 13 years as a laborer, performing heavy construction work on roadways. Petitioner testified that every day since they had married almost six years ago, she and decedent had shared a "bowl"[1] of marijuana to help them relax after work. Sometimes they smoked an additional bowl before bedtime, and Petitioner admitted that her husband also smoked with his friends on social occasions. She recalled that on the morning of August 23, 2019, her husband was particularly anxious, as he would be performing potentially dangerous street paving work. She also noted that he had not taken his prescription medicine that morning as he customarily did. He did not habitually smoke marijuana before leaving for work, and Petitioner did not observe him doing so that morning.

Petitioner testified that she did not speak to decedent after he left the house and did not know what he had done from the time he left home until she saw his body at the hospital following

[1] Petitioner testified that a "bowl" is like a pipe for smoking marijuana. Their bowl contained about .25 grams.

the accident. However, she did not notice anything unusual about his behavior that morning, except for his anxiety and failure to take his medications.

Richard Willemkens testified at hearing that he was driving a large dump truck for one of Respondent's subcontractors on the date of accident. Decedent's co-worker, "Opie," was 15 feet away from Willemkens on the driver's side of the truck, helping direct him as he backed his truck at idle speed. No lookout was stationed behind the truck. The truck's back-up lights were flashing and the beeper was sounding. Willemkens used both mirrors and testified he had no blind spot as he was backing up. He observed decedent in the side mirror on the passenger side as he was walking alongside the truck. For a moment, he lost sight of decedent and felt his truck strike something, which he assumed to be a barricade. However, when Willemkens left his truck to see what he had hit, he found decedent lying on the ground behind the truck. Opie called 9-1-1.

Bryce Laud, non-owner but long-time employee of Respondent, was at the jobsite that morning and observed decedent as he approached the worksite. He testified that decedent was coming from the area where he had parked and where a portable toilet was located. Decedent had nothing in his hands and had not yet reached the area where he would be working. Laud was about 40 feet away from the accident site, moving toward Willemkens' truck at the time, and witnessed the accident. He noted that decedent did not trip or fall behind the truck but appeared to walk deliberately right into its path. Laud testified that he waited with decedent until the EMTs and police arrived.

When the police arrived, decedent was unconscious and only responded to painful stimuli. The ambulance transported him to the Trinity Rock Island Emergency Department. CPR was administered en route, but decedent did not regain consciousness. He was pronounced dead at 7:57 a.m. An autopsy and blood screen were requested and both were authorized by Petitioner.

Coroner Brian Gustafson issued an investigative report that included an autopsy report in which Dr. Mark Peters attributed the decedent's death to "blunt trauma of the chest and abdomen caused by a motor vehicle-pedestrian crash." Attached to the autopsy report was a toxicology report from NMS Labs that detected over 50 ng/ml of Delta-9 THC[2] in decedent's cardiac blood.

Both parties offered expert toxicology opinions interpreting the NMS report. Petitioner's expert, Dr. Gussow, opined that, due to the nature of his injuries, decedent's level of intoxication could not accurately be determined from his post-mortem cardiac blood. Dr. Gussow espoused a theory that the THC that had naturally accumulated in decedent's fat cells would have been released into his bloodstream when his abdomen was crushed by the truck tire. This reserved Delta-9 THC would have combined with the THC already present in decedent's blood due to his chronic marijuana use to show an elevated count which Dr. Gussow explained would not accurately reflect his level of intoxication. Dr. Gussow could not, therefore, testify that the decedent was or was not intoxicated or impaired at the time of the accident. Moreover, the doctor testified that there is no way to know for sure whether a specific amount of THC is impairing. He did admit, however, if the THC test results were accurate, decedent would have been impaired at the time of his accident.

[2] The drug screen measured three different THC levels. Delta-9 THC is the psychoactive component and measures the neurobehavioral effects of THC resulting in intoxication from cannabis use. The other two entries are for inactive metabolites (Carboxy and Hydroxy), which usually indicate recent use.

Respondent's expert, Dr. Leikin, is a medical toxicologist board-certified in addiction medicine, a certified forensic examiner, and a certified medical review officer.[3] He disagreed with Dr. Gussow's opinions including his belief that the crush injury had caused elevated THC readings. He testified that a blood test is the gold standard for determining acute impairment.[4] According to Dr. Leikin, in the medical field 5 ng/ml of Delta-9 THC represents an increased risk of being involved in an accident, and he believed that count should be even lower. Based upon decedent's THC measures, including the Delta-9 THC level showing higher concentration than 50 ng/ml, Dr. Leikin concluded that he had probably smoked marijuana within a few hours of the accident, leaving him impaired at that time. He did not believe decedent would have been fit for duty in his heavy construction position. As a result of the impairment, decedent would have been distracted and it would have taken him longer to react. Even considering any post-mortem redistribution of THC, Dr. Leikin testified that decedent was definitely intoxicated when he was struck and killed by the dump truck.

The Arbitrator found that Respondent proved that Petitioner's husband was intoxicated at the time of his accident and concluded Petitioner had failed to rebut the Section 11 presumption that her husband's intoxication was the proximate cause of his death. Despite this determination, the Arbitrator awarded Petitioner death benefits and medical and burial expenses, finding that Respondent's negligence in failing to provide a safe workplace for the decedent was a concurrent proximate cause of his accident and death.

Conclusions of Law

Section 11 of the Act provides in relevant part as follows:

> No compensation shall be payable if (i) the employee's intoxication is the *proximate cause* of the employee's accidental injury… If at the time of the accidental injuries . . . there is any evidence of impairment due to the unlawful or unauthorized use of (1) cannabis as defined in the Cannabis Control Act . . . then there shall be a rebuttable presumption that the employee was intoxicated and that the intoxication was the *proximate cause* of the employee's injury. The employee may overcome the rebuttable presumption by the preponderance of the admissible evidence that the intoxication was not the sole proximate cause or *proximate cause* of the accidental injuries. . ..

820 ILCS 305/11 (*emphasis added*).

Under Section 11, if there is any evidence of impairment due to the use of cannabis then there exists a rebuttable presumption that the employee was intoxicated and that the intoxication was the proximate cause of the employee's injury. If the preponderance of the admissible evidence establishes that the intoxication was not the sole proximate cause or proximate cause of the injuries, then the presumption is rebutted, and Petitioner is entitled to benefits assuming he proves all

[3] Medical Review Officers verify drug testing for fitness for duty purposes in safety sensitive positions. They verify the accuracy of drug tests, reviews the chain of custody, and reads the results.
[4] Acute impairment means a person is at risk for being involved in an accident in an acute sense.

elements of the claim. If the preponderance of admissible evidence fails to establish that the presumption was rebutted, then the Petitioner is not entitled to benefits and no further inquiry is warranted or necessary.

The Commission has considered the entire record, with particular focus on Petitioner's testimony regarding decedent's habitual marijuana use, the autopsy toxicology results[5], the medical experts' interpretations of said results, and eyewitness testimony from Bryce Laud. In finding Dr. Leiken's opinions more persuasive that Dr. Gussow's, the Commission concludes that decedent was intoxicated at the time of the accident, and that his inexplicable walking behind the truck with lights and sirens activated demonstrates decedent's impairment at the time of the accident. As there was no other evidence in the record proving by the preponderance of the evidence that the intoxication was not the sole proximate cause or proximate cause of the injuries, Petitioner has not overcome the presumption that decedent was intoxicated under Section 11 of the Act. Therefore, all benefits must be denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on August 15, 2022, awarding benefits is reversed.

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.

May 23, 2023

mp/dak
o: 4/6/23
068

/s/ *Marc Parker*
Marc Parker

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

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

[5]Although Petitioner captioned her brief before the Commission "Petitioner's Statement of Exceptions and Supporting Brief," it is mislabeled. Commission Rule 9040.70 defines a "Statement of Exceptions" as a brief filed *by the party petitioning for review of the arbitrator's decision*. Petitioner did not file a petition for review and so could not file a statement of exceptions in support thereof but only a response to Respondent's statement of exceptions. The Commission, therefore, declines to address the issue of the admissibility of the toxicology report raised in Petitioner's brief. *Jetson Midwest Maintenance v. Industrial Comm'n*, 296 Ill. App. 3d 314, 315-16 (1998).

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	07WC029638
Case Name	Aaron Cordova v. H&M International
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0238
Number of Pages of Decision	31
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Miles Cahill

DATE FILED: 5/25/2023

/s/ Deborah Baker, Commissioner

Signature

23IWCC0238

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

Aaron Cordova,

Petitioner,

vs. NO: 07 WC 29638

H&M International,

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 all issues, and being advised of the facts and law, modifies the Decision of the Arbitrator. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Procedural History

As an initial matter, the Commission notes that prior to the October 25, 2021, arbitration hearing, the parties consolidated this case with two additional cases. In the instant case, Petitioner alleged he sustained a work-related injury on December 14, 2006. In case number 12 WC 10675, Petitioner alleged he sustained a work-related injury on January 20, 2012. In case number 12 WC 10589, Petitioner alleged he sustained a work-related injury on January 21, 2012. All three cases were heard in a single hearing on October 25, 2021. On February 3, 2022, the Arbitrator issued separate Arbitration Decisions for each case. While Respondent timely filed a Petition for Review in this case, it did not file a Petition for Review in either of the consolidated cases. Respondent also did not include the consolidated case numbers on its Petition for Review. Therefore, the Arbitration Decisions in case numbers 12 WC 10589 and 12 WC 10675 became final on March 7, 2022.

Additionally, the Commission must clarify the issues that were in dispute in this case at the arbitration hearing. A review of the Request for Hearing form completed by the parties as well as the preliminary discussion the Arbitrator held on the record with the parties, confirms that the disputed issues in this case were accident, notice, causal connection, average weekly wage, medical expenses, temporary total disability ("TTD"), the statute of limitations regarding a

possible November 29, 2007, injury, and the nature and extent of Petitioner's injury.[1] However, on the Arbitration Decision Form, the Arbitrator mistakenly identified the issues in dispute as accident, notice, causal connection, average weekly wage, medical expenses, TTD, and prospective medical treatment.

Findings of Fact

In the interest of efficiency, the Commission primarily relies on the detailed recitation of facts provided in the Decision of the Arbitrator, except as stated below.

Petitioner's Testimony

Petitioner began working as a train spotter in a rail yard for Respondent on November 16, 2006. Petitioner testified that on December 14, 2006, he injured his right shoulder while driving and trying to close an access door on an old truck. Petitioner continued working his normal job until his doctor took him off work on March 15, 2007. He testified that he eventually underwent two right shoulder surgeries. Petitioner testified that he eventually returned to work with light duty restrictions in June 2010. He testified that he continued to work with light duty restrictions until he sustained his subsequent work injuries on January 20, 2012, and January 21, 2012. He testified that from June 2010 until the January 2012 work incidents, he continued to experience constant pain in his right shoulder as well as swelling and numbness in his right hand. Following the subsequent work injuries, Petitioner continued to treat with Dr. Chudik for his significant chronic right shoulder pain.

Petitioner testified that he continues to suffer from severe pain, lack of motion, and lack of strength in the right shoulder. He testified that his right hand continues to swell and he loses sensation on his fingers. He testified that this swelling began after his first right shoulder surgery. Petitioner testified that he uses ice to reduce the swelling. Petitioner testified that he does household chores such as laundry, dishes, and cleaning the bathroom. He testified that he must break the laundry into several small loads. He testified that because hot water causes his hands to swell, he must take several breaks while doing the dishes or cleaning the bathroom.

Medical Treatment

Dr. Prodromos began treating Petitioner in March 2007. On May 22, 2007, the doctor performed a right shoulder rotator cuff repair. (PX 7). On June 8, 2007, Dr. Lang wrote a note stating Petitioner had been unable to work since February 26, 2007. On November 28, 2007, Petitioner reported having good strength and only occasional twinges when he abducted the shoulder over his head. He complained of his right hand swelling with increasing frequency. On December 19, 2007, Petitioner told Dr. Prodromos that his shoulder felt good, but complained of pain over his right medial scapula radiating into his neck. After examining Petitioner, Dr.

1 The second page of the Request for Hearing forms in the current case and case no. 12 WC 10675 were mistakenly switched in the transcript. Thus, in the transcript, what appears as the second page of the Request for Hearing form in this case is actually the second page of the Request for Hearing form in case no. 12 WC 10675. What appears as the second page of the Request for Hearing form for case 12 WC 10675 is actually the second page of the Request for Hearing form in this case.

Prodromos diagnosed a right trapezius strain with possible radiculitis and swelling of the right hand. The doctor placed Petitioner at maximum medical improvement ("MMI") for the right shoulder and told Petitioner to return as needed.

Dr. Chudik first examined Petitioner on April 29, 2008. Petitioner reported he initially did well after the first shoulder surgery until December 2007 and while his range of motion had returned to normal, he continued to have right shoulder pain. Dr. Chudik took Petitioner off work and performed a trigger point injection in the right periscapular region. On February 24, 2009, Dr. Chudik performed a right shoulder arthroscopy including arthroscopic labral debridement, subacromial decompression, and rotator cuff repair revision. Dr. Chudik continued to keep Petitioner off work while Petitioner attended physical therapy and work conditioning.

On November 18, 2009, Petitioner complained of continued pain and weakness with lifting overhead. Dr. Chudik recommended Petitioner return to work within the FCE restrictions and placed Petitioner at MMI. On December 11, 2009, Petitioner reported he had returned to work and noticed an increase in right shoulder discomfort, right-sided neck pain, and some numbness and tingling extending into the fifth digit of his right hand. Dr. Chudik increased Petitioner's restrictions to include no use of the right arm. On February 22, 2010, Dr. Chudik ordered an updated right shoulder MRI, put physical therapy on hold, and once again took Petitioner off work due to Petitioner's complaints of pain. Dr. Chudik interpreted the February 2010 right shoulder MRI as showing some atrophy of the supraspinatus tendon. On April 2, 2010, Petitioner continued to complain of significant pain. Dr. Chudik prescribed an updated FCE and kept Petitioner off work.

Petitioner underwent the FCE on April 5, 2010. (PX 3). It was deemed to be a valid representation of Petitioner's physical capabilities. The results revealed that Petitioner demonstrated functional capabilities most consistent with the sedentary to light physical demand levels. This meant Petitioner could occasionally lift approximately 17 pounds from the floor bilaterally, approximately 15 pounds above shoulder level with the left arm, carry approximately 7 pounds in his right hand, and carry approximately 42 pounds in his left hand. The therapist wrote Petitioner's job description stated that Petitioner had to lift up to 10 pounds. She wrote that Petitioner's demonstrated capabilities met this level with all bilateral lifting except for lifting above the shoulder level. On April 21, 2010, Dr. Chudik wrote that the FCE revealed Petitioner tolerated work at the sedentary to light physical demand levels. The doctor cleared Petitioner to return to work per the FCE restrictions. On May 3, 2010, Petitioner complained of continued right shoulder pain to Dr. Lang and reported he returned to work a few weeks earlier.

On May 5, 2010, Dr. Chudik noted Petitioner's complaints regarding certain work activities and his chronic right shoulder pain. Dr. Chudik once again placed Petitioner at MMI. Regarding work restrictions, he wrote: "Return to work according to the [FCE] restrictions but limit repetitive and strenuous right upper extremity work with his arm away from his body that includes using the steering wheel with his right arm." (PX 2). On June 21, 2010, Dr. Chudik advised Petitioner to continue working per the FCE restrictions, limit any repetitive right arm actions, and avoid performing any overhead work. On January 23, 2012, Petitioner returned to Dr. Chudik and gave a history of his work-related falls on January 20, 2012, and January 21, 2012. Petitioner reported that his right shoulder was progressively worsening before these work-related falls. Dr. Chudik

ordered an updated MRI of the right shoulder and cleared Petitioner to return to work with restrictions of no lifting with his right arm, no climbing ladders, and no overhead activities.

Dr. Steven Chudik, Treating Physician, Testimony

Dr. Chudik testified via evidence deposition on Petitioner's behalf on March 4, 2019. (PX 1). He testified that Petitioner was at MMI regarding his right shoulder and had permanent restrictions relating to that shoulder. Regarding the prognosis for the right shoulder, he testified as follows: "Well, the right shoulder unfortunately he had a failed surgery from before and the outcomes for that surgery are not as good for primary surgery. With revision surgery we had a healed tendon. There is some chronic atrophy and limitations." (PX 1 at 20). Under cross-examination, he testified that he last saw Petitioner in June 2010 and at that time returned Petitioner to work pursuant to the restrictions identified in the April 2010 FCE. The doctor also limited any repetitive use of the right upper extremity or overhead work. Dr. Chudik testified that Petitioner's work restrictions regarding the right shoulder were unchanged.

Dr. Nikhil Verma, Respondent's Section 12 Examiner, Testimony

Dr. Verma testified via evidence deposition on Respondent's behalf on December 2, 2020. (RX 1). When asked why he believed Petitioner had a fair prognosis regarding the right shoulder in 2014, Dr. Verma testified:

> Based on the fact [Petitioner] had had chronic [pain] with an unexplained etiology over a period of four years now. His exam was unchanging. He had not only pain in his shoulder…and in my opinion, based on the chronicity of the symptoms, the lack of the ability to objectify the symptoms based on the diagnostic imaging studies, and the fact that he was not improving, that all portended an unfavorable prognosis with regard to his future recovery. (RX 1 at 11).

He testified that x-rays he performed in July 2020 as part of his examination showed no significant arthritis in the right shoulder. The doctor testified that he saw no basis for further medical care relating to Petitioner's right shoulder. Under cross-examination, Dr. Verma agreed that Petitioner's right shoulder condition required permanent work restrictions established by the April 2010 FCE.

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 affirms the Arbitrator's conclusion that Petitioner met his burden of proving he sustained an injury to his right shoulder due to an accident arising out of and in the course of his employment on December 14, 2006. The Commission also affirms the Arbitrator's conclusions that Petitioner gave Respondent timely notice of the injury and that Petitioner's current condition of ill-being regarding the right shoulder is causally related to the December 14, 2006, work accident. Additionally, the Commission affirms the Arbitrator's award of medical expenses. However, the Commission modifies the Arbitrator's award of TTD

benefits and vacates the award of prospective medical treatment. Additionally, the Commission assesses the nature and extent of Petitioner's injury due to the work accident. Finally, the Commission corrects certain scrivener's errors.

Corrections to the Decision of the Arbitrator

As indicated above, the Commission must modify the Arbitration Decision Form so that it conforms to the parties' stipulations on the Request for Hearing form. Therefore, the Commission strikes the Arbitrator's identification of prospective medical treatment as a disputed issue under item O, "Other." The Commission also adds the identification of item L, "What is the nature and extent of the injury?" as a disputed issue to the Decision Form.

Likewise, the Commission corrects the second paragraph in the Findings of Fact to identify the correct issues in dispute for the instant case. As stated above, the disputed issues in this case were accident, notice, causal connection, average weekly wage, medical expenses, TTD, the statute of limitations regarding a possible November 29, 2007, injury, and the nature and extent of Petitioner's injury.

Additionally, the Commission corrects the Conclusions of Law on page fifteen (15) of the Decision of the Arbitrator where it mistakenly refers to the date of accident as December 14, 2016. The Commission hereby replaces any references to an accident date of December 14, 2016, with December 14, **2006**.

Further, the Commission corrects the Conclusions of Law under "Issue L" on page eighteen (18) of the Decision of the Arbitrator, which states in relevant part: "On 7/26/07, Dr. Verma observed that Petitioner had not reached MMI for his injury." The Commission hereby modifies this sentence to read as follows: "On 7/26/07, Dr. **Marra** observed that Petitioner had not reached MMI for his injury." (Emphasis added).

Temporary Total Disability Award

On the Request for Hearing form, Petitioner claimed entitlement to TTD benefits from March 15, 2007, through December 19, 2007; April 27, 2008, through November 19, 2009; and December 12, 2009, through June 11, 2020, for a total period of 147-4/7 weeks. The reference to June 11, 2020, appears to be a scrivener's error, as the date of June 11, 2010, corresponds with the total claimed period of benefits as well as Petitioner's testimony. The Arbitrator awarded Petitioner TTD benefits from February 26, 2007, through June 11, 2010, for a total period of 171-5/7 weeks. After considering the evidence, the Commission modifies the Arbitrator's award of TTD benefits to conform with the Request for Hearing form and the evidence.

When determining whether a claimant is entitled to TTD benefits, "…the dispositive inquiry is whether the claimant's condition has stabilized, *i.e.*, whether the claimant has reached maximum medical improvement." *Interstate Scaffolding, Inc. v. Ill. Workers' Comp. Comm'n*, 236 Ill. 2d 132, 142 (2010) (internal citation omitted). To prove an entitlement to TTD benefits, a claimant must prove that they did not work and that they were unable to work. *Freeman United Coal Mining Co. v. Indus. Comm'n.*, 318 Ill. App. 3d 170, 177 (2000). A claimant is temporarily

and totally disabled from the time a work injury incapacitates them from work until such time that they are "…as far recovered or restored as the permanent character of [their] injury will permit." *Shafer v. Ill. Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC at ¶ 45.

The Commission finds Petitioner proved entitlement to three separate periods of TTD benefits in this matter. Petitioner's first claimed period of TTD benefits is from March 15, 2007, through December 19, 2007. Of note, Respondent stipulated that in the event the Commission finds a compensable accident occurred, Petitioner was entitled to TTD benefits from March 15, 2007, through December 19, 2007. The Commission finds the parties are bound by their stipulations. Further, the credible evidence proves Petitioner was off work due to his work injury from March 15, 2007, through December 19, 2007 (40 weeks).

Petitioner's second claimed period of TTD benefits is from April 27, 2008, through November 19, 2009. After Dr. Prodromos released Petitioner on December 19, 2007, Petitioner did not seek additional treatment until his first visit with Dr. Chudik on April 29, 2008. On that day, Dr. Chudik took Petitioner off work. The evidence shows that Dr. Chudik restricted Petitioner from all work from April 29, 2008, through November 18, 2009. On November 18, 2009, Dr. Chudik cleared Petitioner to return to work with restrictions pursuant to a recent FCE. Petitioner testified that Respondent accommodated the restrictions and he continued to work until Dr. Chudik increased his restrictions the following month. The Commission finds Petitioner proved entitlement to TTD benefits from April 29, 2008, through November 18, 2009 (81-2/7 weeks).

Petitioner's third claimed period of TTD benefits is from December 12, 2009, through June 11, 2010. On December 11, 2009, Dr. Chudik increased Petitioner's restrictions to exclude any use of the right arm. It appears that Respondent was unable to accommodate this increased restriction, and Petitioner testified that he was placed off work. These restrictions remained in place until Dr. Chudik released Petitioner to return to work on April 21, 2010, pursuant to the restrictions established by the April 2010 FCE. Although Petitioner testified that he returned to work on or around June 11, 2010, the medical records indicate that on May 3, 2010, Petitioner told Dr. Lang that he had been back to work for a few weeks. Respondent was able to accommodate the updated restrictions and Petitioner continued to work pursuant to the restrictions established by the April 2010 FCE until his subsequent January 2012 work injuries. The Commission finds Petitioner proved entitlement to TTD benefits from December 12, 2009, through April 21, 2010 (18-5/7 weeks).

Prospective Medical Treatment Award

The Arbitrator awarded prospective medical treatment in the form of pain management for Petitioner's right shoulder condition. The Commission vacates this award of prospective medical treatment as it was not identified as an issue at the arbitration hearing and instead, the parties agreed on the record that the nature and extent of Petitioner's injuries with respect to the December 14, 2006, accident was in dispute.

Permanent Disability

After carefully considering the totality of the evidence, the Commission finds Petitioner

sustained a 35% loss of the whole person due to the injuries sustained on December 14, 2006. The Commission notes that the date of accident preceded the effective date of the 2011 amendments to the Act, thus, an analysis pursuant to Section 8.1b of the Act is not required. However, the Commission finds it appropriate to provide some analysis of Petitioner's permanent disability.

As a result of the December 14, 2006, work accident, Petitioner sustained a significant injury to his right shoulder. Petitioner continued to work following the work accident and did not seek treatment until the end of February 2007. In May 2007, Dr. Prodromos performed a right shoulder rotator cuff repair. Petitioner's right shoulder condition initially improved following the surgery; however, his shoulder pain never completely resolved. Dr. Prodromos treated Petitioner until he placed Petitioner at MMI and released him to work without restrictions in December 2007.

Petitioner began treatment with Dr. Chudik in April 2008, because he continued to experience significant right shoulder pain and swelling in his right hand. Dr. Chudik eventually diagnosed Petitioner with a non-healed rotator cuff repair. While Petitioner eventually returned to work, the credible evidence reveals that he was never able to return to his original job as a train spotter. Instead, he returned to work with significant restrictions that Respondent accommodated. In February 2009, Petitioner underwent a second right shoulder surgery performed by Dr. Chudik that included labral debridement, subacromial decompression, and a rotator cuff repair revision. Despite attending extensive physical therapy and participating in work conditioning, Petitioner has continued to experience significant chronic right shoulder symptoms including pain and weakness. In April 2010, Petitioner underwent a valid FCE, which stated Petitioner demonstrated functional capabilities consistent with the sedentary to light physical demand levels. Petitioner's ability to lift and carry items with his right hand and arm was severely limited. Dr. Chudik prescribed permanent restrictions pursuant to the FCE. In June 2010, Dr. Chudik added restrictions of limited repetitive right arm actions and no overhead work to Petitioner's permanent restrictions due to Petitioner's continued pain. Dr. Verma, Respondent's Section 12 examiner, agreed that Petitioner has permanent restrictions pursuant to the April 2010 FCE.

The credible evidence reveals that the subsequent work accidents in January 2012 did not significantly affect Petitioner's right shoulder condition. By January 2012, Petitioner had worked in a light duty position pursuant to his permanent restrictions for almost two years. The credible evidence also reveals that from May 5, 2010—the date Dr. Chudik last placed Petitioner at MMI regarding his right shoulder condition—through January 2012, Petitioner's right shoulder complaints never resolved. Petitioner told Dr. Chudik that his right shoulder symptoms were worsening before the January 2012 work accidents. The Commission finds Petitioner sustained significant injuries to his right shoulder as a result of the December 14, 2006, work accident, distinct from any injuries he sustained in the subsequent work accidents. Thus, we elect to award permanent partial disability benefits pursuant to Section 8(d)2 of the Act. *See Vill. of Deerfield v. Ill. Workers' Comp. Comm'n*, 2014 IL App (2d) 131202WC at ¶ 52-55. The Commission finds that Petitioner's permanent restrictions prevent him from returning to his original position as a train spotter. Therefore, the Commission finds Petitioner suffered a loss of occupation due to the December 14, 2006, work accident resulting in a 35% loss of the whole person.

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 February 3, 2022, is modified as stated herein.

IT IS FURTHER ORDERED that Respondent shall pay any outstanding reasonable and necessary medical expenses outlined in Petitioner's Exhibit 14, pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving a credit, as provided in Section 8(j) of the Act.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner temporary total disability benefits of $476.95/week for 140 weeks, commencing March 15, 2007, through December 19, 2007, April 29, 2008, through November 18, 2009, and December 12, 2009, through April 21, 2010, as provided in Section 8(b) of the Act. The parties stipulated that Respondent is entitled to a credit in the amount of $77,785.18 for the total amount of TTD benefits Respondent paid to Petitioner in all three of the consolidated claims.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner permanent partial disability benefits of $429.26/week for 175 weeks, because the injuries sustained caused the 35% loss of the whole person, as provided in Section 8(d)2 of the Act.

IT IS FURTHER ORDERED that the Arbitrator's award of prospective medical treatment is vacated.

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

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

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.

May 25, 2023
d: 3/28/23
DJB/jds
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/s/ *Deborah J. Baker*
Deborah J. Baker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	07WC029638
Case Name	CORDOVA, AARON v. H&M INTERNATIONAL
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Miles Cahill

DATE FILED: 2/3/2022

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

/s/ Rachael Sinnen, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

AARON CORDOVA
Employee/Petitioner

v.

H&M INTERNATIONAL
Employer/Respondent

Case # **07** WC **29638**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **10/25/21**. 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. [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. [x] Was timely notice of the accident given to Respondent?
F. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [x] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [x] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [x] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [x] TTD
L. [ ] 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. [x] Other **prospective medical**

FINDINGS

On **12/14/06**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**3,066.15 over 4 2/7 weeks**; the average weekly wage was $**715.43**.

On the date of accident, Petitioner was **52** years of age, ***married*** with **1** dependent children.

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

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

ORDER

Respondent shall pay Petitioner directly for any reasonable and necessary medical services outlined in Petitioner's Exhibit 14 as provided in Section 8(a) of the Act, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is claiming a credit under Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $476.95/week for 171 5/7 weeks, commencing 2/26/07 through 6/11/10, as provided in Section 8(b) of the Act. Respondent shall be given a total credit of $77,785.18 for temporary total disability benefits that have been paid in total for all three claims.

Respondent shall approve and pay for pain management as recommended by Dr. Chudik for Petitioner's right shoulder as provided in Section 8(a) and 8.2 of the Act.

See Arbitration Decision orders for case numbers 12WC10589 and 12WC10675, incorporated herein by reference.

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

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

Signature of Arbitrator

FEBRUARY 3, 2022

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Aaron Cordova	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 07WC29638
H&M International	)	*consolidated with*
	)	12WC10589 & 12WC10675
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on October 25, 2021 in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing.

For date of accident December 14, 2006 (Case No. 07WC29638), issues in dispute include accident, notice, casual connection, average weekly wage "AWW," medical bills, and temporary total disability "TTD." (Arbitrator's Group Exhibit "Ax" 1)

For date of accident January 20, 2012 (Case No. 12WC10675), issues in dispute include accident, casual connection, medical bills, TTD, and prospective medical treatment (Ax 1)

For date of accident January 21, 2012 (Case No. 12WC10589), issues in dispute include accident, casual connection, medical bills, TTD, and prospective medical treatment (Ax 1)

Accident of December 14, 2006

Petitioner worked as a train spotter for H&M International. (Transcript "T." 18) Petitioner was assigned to a junky spotter truck, which had a door that would not stay latched. (T.20) The door was located directly behind his seat, so he reached back with his right arm to close the door. (T.20-21) On 12/14/06, the door swung open as he made a turn, and the door jammed as he was pulling it closed. (T.20) Petitioner felt a pop and pain in his right shoulder when the door abruptly jammed. (T.20) He stopped the vehicle and used both hands to close the door. (T.21) He worked the night shift and there were no supervisors to report the accident to. (T.22) So he reported the accident when he came in on Monday, to a young supervisor in his 30s. (T.22-23)

Petitioner continued working after the accident for three months until he could no longer handle the work. (T.23) His arm got stiffer and stiffer during this period, leading him to see treatment. (T.183) Petitioner then started receiving TTD and treatment. (T.24, 28) Petitioner had experienced

some discomfort pulling that door closed in that truck before the door jammed on 12/14/06. (T.182) However, he testified that the 12/14/06 event led to his injury. (T.182-3)

Treatment post December 14, 2006

Petitioner sought treatment with his general practitioner on 2/26/07. (Petitioner's Exhibit "PX" 8 p.9-10) Dr. Lang recorded Petitioner's right shoulder pain associated with the increased use of right arm at work. His handwritten notes included Petitioner's history of the right shoulder popping out over the last month, and that the pain was worse with "closing [the] truck door". (PX8 p.10) The pain was now constant, and the shoulder tightened up after work. (PX8 p.10) Petitioner's past history of shoulder dislocation and bicipital tendon rupture were documented. Dr. Lang suspected that Petitioner had a rotator cuff injury and sent him to an orthopedic surgeon for evaluation. He also prescribed Naprosyn and Vicodin to handle nighttime pain. (PX8 p.10)

Petitioner saw the orthopedic surgeon, Dr. Prodromus, on 3/7/07. (PX7 p.23) Petitioner reported his motorcycle accident from 2000 which led to his shoulder coming out of socket once or twice a year. The shoulder had not come out during the year prior to this visit. Dr. Prodromus noted that Petitioner developed shoulder pain while driving a truck and bringing his arm behind himself during work. The diagnosis included [right] shoulder instability and chronic pain. Dr. Prodromus sent Petitioner for an MRI. He also reported that Petitioner would pursue the case under the Workers Compensation Act since it had only been in his present job that he had noticed pain in the shoulder.

The 5/1/07 MR arthrogram revealed a complete tear of the supraspinatus tendon with retraction of the myotendinous junction and some arthropathy of the supraspinatus muscle. (PX7 p.6-7) Dr. Prodromus recommended a rotator cuff repair. In the event Petitioner had continuing instability after the arthroscopy, they would consider an open Bankart repair.

Dr. Prodromus performed the surgery on 5/22/07 at St. Elizabeth's Hospital (PX7 p.4). During the procedure, he tested the stability of the shoulder itself. Full range of motion was achieved and Prodromus found no instability with abduction, external rotation, and extension. Further examination revealed a large cuff tear which Prodromus thought was causing Petitioner's symptoms. He freed up the ligament, put in an anchor and sutured the ligament to the anchor. (PX7 p.8) He also performed a subacromial decompression and removed some spurring.

At the post-surgical visit on 6/6/07, Dr. Prodromus reported that he found no evidence of instability in the shoulder during the surgery after the repair. (PX7 p.20) At the 7/18/07 visit, Dr. Prodromus noted the cuff was improving. (PX7 p.18) Examination revealed 110 degrees of forward flexion and 100 degrees of abduction. Therapy would start in two weeks. Dr. Prodromus documented the gradual improvements in range of motion and strength of the shoulder with the therapy. (PX7 p.17, 16, 15) Petitioner exhibited full range of motion by his 9/19/07 visit with Dr. Prodromus, although he complained of some pain with extreme resisted contraction of the shoulder elevators. (PX7 p.16) By 11/28/07, Petitioner reported good strength with occasional twinges when abducting the arm at his side overhead. (PX7 p.14) However, he was now experiencing swelling in the hand once or twice a day. With the swelling, Petitioner reported his hand became blue and he would have trouble closing his fingers. (PX7 p.14) Dr. Prodromus found

no difference between the hands during his examination. He diagnosed Petitioner with a possible vascular problem of the right upper extremity and sent the Petitioner for vascular studies. (PX7 p.14)

Petitioner returned to Dr. Prodromus on 12/19/07 after the vascular study. (PX7 p.12) The vascular study showed the major veins in the shoulder, except the cephalic vein was not visualized in the area of the shoulder where the surgery had been performed. (PX7 p.9) Thrombosis of the vein could not be excluded. (PX7 p.9) Petitioner was also complaining of radiation of pain from the neck into the scapula when rotating the neck. (PX7 p.12) Diagnoses included right trapezius strain with possible radiculitis and a swelling hand. Swelling in the hand persisted but had improved and Dr. Prodromus did not think it would not be a long-term problem. (PX7 p.12) For his neck and shoulder blade pain, the problems came at night so Prodromus gave him a cervical collar to wear while sleeping. (PX7 p.12) Petitioner was released for full work with respect to his shoulder. He was told to return for the other conditions if they did not resolve.

Petitioner next sought treatment with Dr. Steven Chudik from Hinsdale Orthopedic Associates on 4/29/08. (PX2 p.5) Petitioner also reported his work and treatment history to Dr. Chudik. Petitioner noted that he continued having pain after surgery even though his range of motion improved. Dr. Chudik's examination revealed good passive range of motion in all planes. He had pain with some weakness with abduction resistance, and 4+/5 strength to resistance with external and internal rotation. Dr. Chudik noted an onset of periscapular discomfort as well as right-sided neck discomfort which began with therapy. Petitioner was taken off work and sent for therapy. Dr. Chudik performed a trigger point injection in the periscapular region on the distal mid-aspect which relieved some of the pain.

On 5/27/08, Dr. Chudik opined that the relief Petitioner got from the trigger point injection suggested that his periscapular discomfort was due to some continuing right shoulder weakness and inefficiency. (PX2 p.8) Dr. Chudik recommended an MRI to evaluate the cuff repair. The 5/29/08 MRI demonstrated a full thickness, slightly retracted supraspinatus tendon tear. (PX2 p.9) Dr. Chudik summarized the MRI as showing a non-healed right rotator cuff repair. (PX2 p.10) Surgery was offered.

Petitioner went in for the surgery on 2/24/09. (PX2 p.12) Dr. Chudik performed an arthroscopic labral debridement, subacromial decompression and supraspinatus rotator cuff revision.
Petitioner reported progress at the 4/13/09 visit with Dr. Chudik. (PX2 p.15) He was told to continue therapy. (PX2 p.16) Petitioner's continuing progress is documented in Chudik's following notes. Petitioner's therapy progressed to work hardening. During his 7/24/09 visit with Dr. Chudik, Petitioner reported an increase in pain and limitations when the therapists doubled the weight, he was lifting in work hardening. (PX2 p.19) Dr. Chudik recommended cessation of work hardening for a couple of weeks and a return to therapy. The following visits with Dr. Chudik record Petitioner's progress with treatment.

Petitioner underwent a functional capacity evaluation on 10/22/09. (PX3 p.296) The FCE measured Petitioner's functional capabilities at the light/medium physical demand level. (PX2 p.22) Petitioner returned to Dr. Chudik on 11/18/09. (PX2 p.22) By this point, Petitioner was experiencing pain and weakness principally with overhead lifting. He also reported some pain

and weakness with grasping. (PX2 p.22) The examination revealed limitations in passive forward flexion and external rotation in comparison with the left shoulder. (PX2 p.22) Dr. Chudik released Petitioner to return to work within the light to medium FCE guidelines. (PX2 p.22)

Petitioner returned to work on 11/19/09. On 12/11/09, he returned to Dr. Chudik complaining of an increase in right shoulder discomfort over the last three weeks of work, as well as right-sided neck pain and some numbness and tingling extending into his fifth digit of the right hand. (PX2 p.23) Dr. Chudik recommended an MRI for the neck and further restricted Petitioner's work release to avoid use of the right upper extremity. Dr. Chudik also performed a steroid injection into the subacromial space of the right shoulder. (PX2 p.25) He also sent Petitioner back to therapy at ATI. (PX3 p.270) At the 12/16/09 initial evaluation, the therapist documented complaints of right shoulder and cervical pain with radicular symptoms into the right upper extremity. (PX3 p.272) Petitioner had decreased range of motion, decreased strength and decreased flexibility of the shoulder and the cervical spine. (PX3 p.272) He was reporting problems driving, sleeping and was unable to raise his arm and turn head completely. (PX3 p.272) Petitioner saw Dr. Lorenz's staff on 1/14/10 for the neck complaints. (PX2 p.29) The diagnoses included C5-6 spondylosis with axial neck pain, right arm radiculitis vs ulnar neuritis vs brachial plexopathy, and right shoulder pain. Dr. Lorenz opined that the work accident caused some of the neck and right shoulder pain. (PX2 p.30)

Respondent selected Dr. Nikhil Verma for a Section 12 examination. (Respondent's Exhibit "RX" 2) The 2/1/10 examination revealed some range deficits and strength deficits of 4/5 with abduction in the scapular plane and 4+/5 with external rotation at the side. (RX2 p.3-4) Dr. Verma diagnosed the condition as persisting pain following the right shoulder revision and recommended an MRI arthrogram to evaluate the condition of the repair. (RX2 p.4)

Dr. Chudik noted at his 2/22/10 visit that therapy had improved his cervical symptoms and that the numbness and tingling had improved in the fifth digit. (PX2 p.32) Petitioner's right shoulder bothered him on the lateral aspect with overhead lifting. Examination revealed good passive range of motion in all planes. His strength was 3/5 in abduction and he experienced significant pain with resisted external rotation. (PX2 p.32) Dr. Chudik recommended a repeat MRI for the shoulder, suspension of therapy and restricted Petitioner from work. (PX2 p.33) At the 3/10/10 follow-up visit, Dr. Chudik read the MRI as showing an intact supraspinatus. (PX2 p.36) He sent Petitioner back to therapy.

At the 4/2/10 visit, Dr. Chudik found no change in Petitioner's condition from three weeks earlier. (PX2 p.38) Petitioner had good passive range of motion with pain at the extremes. Strength testing remained 3/5 in abduction, external rotation, and pain with all motions in resistance. Dr. Chudik recommended a repeat FCE which was done on 4/5/10 (PX3 p.238) The FCE found Petitioner capable of work at the sedentary-light category of work. (PX3 p.238) He could lift 17 lbs. from the floor on an occasional basis, 15 lbs. with his left arm above shoulder level, and carry 7 lbs. in the right hand versus 42 lbs. on the left. Petitioner did not meet the overhead lifting requirement for his job. (PX3 p.238)

Petitioner reviewed the FCE findings with Dr. Chudik on 4/21/10. (PX2 p.40) Dr. Chudik released Petitioner to work with the FCE findings and told him to come back in four to six weeks for a repeat exam. (PX2 p.41)

Petitioner returned to Dr. Lang on 5/3/10, complaining of continuing pain in the shoulder blade and persisting swelling of the right hand. (PX8 p.5) Petitioner had been back at work for two weeks, experiencing pain in the shoulder and neck after work. Examination revealed pain and tenderness in the shoulder girdle. Dr. Lang recommended cold packs, Flexeril, a return visit with his orthopedic doctor and pain management treatment with a physiatrist. (PX8 p.6)

Petitioner next saw Dr. Chudik on 5/5/10. (PX2 p.42) Petitioner had returned to work but was experiencing pain from repetitive turning of the steering wheel of his truck. He was also experiencing pain with shifting and bouncing of the truck and with overhead work and repetitive actions. Dr. Chudik modified the work release to avoid repetitive and strenuous right upper extremity work with his arm away from his body, including steering the spotter truck. (PX2 p.43) MMI was declared.

Petitioner returned to Dr. Chudik's office on 6/21/10. (PX2 p.44) Petitioner reported continuing superior and lateral discomfort despite therapy and work conditioning. Petitioner was still working within his restrictions. However, his continuing symptoms were enough to cause him to use narcotics at night. Examination revealed AC joint tenderness and pain at the extremes of range of motion. There was also pain and weakness with abduction and external rotation resistance, as well as positive impingement signs. Dr. Chudik continued the work restrictions. He also recommended pain management for the continuing discomfort. (PX2 p.44)

Petitioner returned to Dr. Chudik on 8/29/11. (PX2 p.142) Petitioner was tolerating work within his FCE guidelines, but also reported increasing fatigue and pain in the right shoulder after one to two hours of continuous work. He also reported that rest improved his condition which allowed him to complete the next session of work. Examination revealed good range of motion with pain at the extremes of range of motion. Strength was 3+ out of 5 with abduction. He also reported tenderness to palpation over superior aspect of the shoulder. Dr. Chudik again released Petitioner to return to work within his FCE findings.

Petitioner noted that when he returned to work, he still experiencing constant pain in the right shoulder, constant pain and swelling of the right hand and numbness in the hand. (T.30) The company moved him into a light duty job where he was fueling trucks, helping maintenance with their inventory, and sweeping and cleaning up the facility. (T.31) He did not return to the spotter truck job. (T.31) He modified the way he performed work to accommodate the injured right arm, using the left shoulder constantly to avoid using the right shoulder. (T.31) However, he did not notice any problems with the left shoulder before the falls in 2012. (T.31)

Accidents of January 20 and 21, 2012

On 1/20/12, Petitioner was shoveling in the H&M yard with his left arm when the shovel hit a rut and he went flying forward. (T.32) He landed on the left shoulder and side trying to protect the right shoulder. (T.32) After the fall, Petitioner noticed a lot of pain in the left shoulder, side, and

leg. (T.34) He still had the radiating pain into the right shoulder but now he also had left shoulder pain. (T.34) He was at the end of his shift and was told he needed to come back to work the next day. (T.35) So he did return to work on 1/21/12. (T.35) As he was walking to one of the trucks to fuel it up on 1/21/12, he slipped again on the ice landing on his back and hitting his head. (T.36) That fall resulted in pain in the back, head, and neck. (T.37) The shoulders were also still hurting. (T.37) Petitioner reported the falls to a supervisor the following Tuesday and the boss sent him to Concentra. (T.37-38) He saw Dr Chudik two days after these accidents. (T.38)

On 1/23/12, Petitioner typed up a narrative of what had happened and gave it to his supervisor. (PX15) The narrative reports that both shoulders and his neck were hurting after the falls. Petitioner typed the narrative up rather than handwriting it as his right arm hurt and his writing would not be legible. He also noted that Dr. Chudik took him off work so they could make sure the right shoulder was not further damaged in the falls.

Treatment post Petitioner's January 2012 falls

Petitioner testified that his right shoulder was already progressively worsening before the falls. Petitioner returned to Chudik on 1/23/12 with right shoulder complaints, noting his right hand was already swelling up and was difficult to close and grip, sometimes feeling numb. (PX2 p.48) Dr. Chudik documented that Petitioner had been using his left arm a lot at work to compensate for the right shoulder problems. (PX2 p.48) Petitioner stated that since the workers comp carrier had refused to authorize pain management, he looked into treatment through his own means. Dr. Chudik agreed with the pain management plan. (PX2 p.48) Petitioner reported that his pain had not been manageable, and he could not dress himself. He had difficulty leaning over his left shoulder to check the side mirror when driving. Gripping the steering wheel caused discomfort. He had also been sleeping in a recliner with a pillow under the right arm. He had recently been diagnosed with fibromyalgia. Dr. Chudik sent Petitioner for a new MRI and restricted Petitioner to modified work as of 1/23/12, restricting use of the right arm at all. (PX2 p.49)

Respondent sent Petitioner to the company clinic at Concentra on 1/24/12, where he reported injuring his right shoulder, neck, left shoulder, and left thigh. (PX12 p.3) Petitioner reported that he had been experiencing increased right shoulder pain since the falls in addition to the left shoulder complaints. (PX12 p.4) The clinic records also document that he was waiting for approval for pain management for the right shoulder. (PX12 p.4) The examination of the left shoulder revealed 4/5 strength, while the right shoulder was 3+/5 strength with atrophying of the muscle. (PX12 p.5) Petitioner was told to follow up with his treating surgeon.

At the follow-up visit with Dr. Chudik on 04/04/12, Petitioner reported pain in the left shoulder located over the anterior aspect of the shoulder. (PX2 p.51) He also reported some pain around his ribs, left wrist pain and left hamstring tightness from the falls. (PX2 p.51) The clinical exam found decreased left shoulder abduction, decreased external rotation, and decreased internal rotation. (PX2 p.52) He was able to get to 130 degrees of flexion with muscle guarding. (PX2 p.52) Tenderness was detected over the AC joint, the trapezius, and the distal radius of the left wrist. Radiographs revealed no fracture or dislocation. Dr. Chudik was concerned that Petitioner had injured his rotator cuff from the falls on 1/20 and 1/21/12. An MRI scan was also recommended for the left shoulder. (PX2 p.52)

Petitioner was given a right shoulder MRI. Dr. Chudik read this scan as showing thinning and degenerative changes in the cuff but no complete tear. (PX2 p.54) Given the persisting pain and limitations in the shoulder, Dr. Chudik renewed the recommendation for pain management for the right shoulder. (PX2 p.55) Petitioner was released to return to work within the sedentary FCE limits identified in the 4/5/10 FCE test. (PX2 p.55) The left shoulder MRI still had not been approved.

At the next visit on 5/11/12, Petitioner reported that he still had not been able to get the MRI for the left shoulder, so the plan was to use personal insurance for the scan. (PX2 p.56) The majority of pain at that point was in the anterolateral aspect of the left shoulder. Certain carrying activities bothered the shoulder when reaching away from the body was not as painful. (PX2 p.56) He was also seeking a referral for the neck given some discomfort in that area. The examination revealed limited abduction and external rotation. He had positive provocative tests, including an empty can test, positive lift-off test and positive Neer's. (PX2 p.56) Dr. Chudik again suspected a rotator cuff tear from the falls at work.

A left shoulder MRI was done at Health Medical Imaging in Oak Lawn, with the radiologist reporting an unremarkable study. (PX2 p.58) The rotator cuff was intact. No joint effusion. Mild degenerative changes.

Petitioner then saw Dr. Bardfield on 05/16/2012 for his cervical spine. (PX2 p.60) A cervical MRI was recommended and performed again at an outside facility on 5/30/12, revealing degenerative changes in the cervical spine. (PX2 p.64) On 06/06/2012, Dr. Bardfield diagnosed the neck as cervical myofascial pain with underlying mild disc bulges. (PX2 p.66) He sent Petitioner for therapy at ATI and gave him Flexeril as needed. (PX2 p.66)

Therapy began on 6/12/12 for what was identified as left sided impingement in the shoulder. (PX2 p.67) Petitioner plateaued and was discharged from therapy on 7/20/12 with a measured lifting capacity of 15 lbs., 5 lbs. overhead press, 12 lbs. push and pull, and deadlifting 12 lbs. (PX2 p.67) The therapist recommended an FCE. (PX2 p.67) Strength testing for the left arm found deficits in shoulder flexion, abduction, internal and external rotation, and elbow flexion. (PX2 p.68) The right shoulder was not tested given the "severe pain" he was complaining of for that shoulder. (PX2 p.68)

On 7/25/2012, Dr. Bardfield sent Petitioner for aquatic physical therapy, also recommending a FCE when he completed therapy. (PX2 p.71) Petitioner also saw Dr. Chudik on 7/25/2012, reporting left and right shoulder pain. (PX2 p.72) Therapy had improved his left shoulder strength and range of motion. However, examination still showed a 4/5 strength deficit with pain in the shoulder. The right side was documented as being at 4/5 for abduction, internal and external rotation. (PX2 p.74) Dr. Chudik noted that Petitioner was not able to use his right arm due to pain and stiffness. (PX2 p.75) The left shoulder involved arm impingement; more therapy was recommended followed with an FCE. He was again restricted from work. (PX2 p.76)

At the 10/17/12 return visit with Chudik, Petitioner reported that workers comp had shut down therapy and he had been doing a home exercise program on his own. (PX2 p.82) He had been

stretching the left shoulder and had purchased a hydrotherapy unit to improve his stiffness. He had not been exercising or stretching the right shoulder given how painful it was. (PX2 p.82) The examination revealed pain and limited motion of the right shoulder, and 4/5 strength. (PX2 p.83) The left shoulder had better range and strength, but he had positive Hawkins testing and cross arm adduction testing. (PX2 p.83) Dr. Chudik again noted that Petitioner was not able to use his right arm and diagnosed the left with impingement. (PX2 p.84) Chudik's plan at that point was to do therapy and then an FCE. Petitioner would put therapy through his group insurance. (PX2 p.84) He was released to work within the FCE from 2010. (PX2 p.86)

Petitioner did not return to see Dr. Chudik until 1/8/14 for both shoulders. (PX2 p.87) Left shoulder pain was again documented. Petitioner had not been able to get therapy after June 2012 as workers comp denied it, nor did they approve the FCE. He had been exercising the left shoulder on his own at home. Range of motion testing revealed 90° of extension on the right and 170° on the left. (PX2 p.88) Both AC joints and subacromial areas were tender and the biceps tendon was tender on the left side. He had 4/5 strength on the right for abduction, internal and external rotation. (PX2 p.88-89) The left had 5/5 strength but with pain on abduction. (PX2 p.89) Both shoulders had positive Neer's and Hawkin's impingement results. Dr. Chudik renewed the same work restrictions and told him to do a home exercise program. (PX2 p.89) He was also told to see Dr. Bardfield for the neck.

Dr. Bardfield saw him again on 2/07/2014, diagnosing cervical myofascial pain with underlying disc protrusions. (PX2 p.94) Dr. Bardfield took him off work and again recommended the aquatic therapy that had not been approved, noting that Petitioner was experiencing more neck pain involving the neck and back regions, especially on the right side. (PX2 p.93) He had tried vocational retraining but was not able to tolerate even sedentary activities due to the neck pain. (PX2 p.93)

The ATI assessment from 03/24/2014 documented pain in his right shoulder after the occupational injury. His lifting was occasional above shoulder level 8 pounds, right 2 pounds, left 6 pounds, desk to chair lifting 21 pounds, right 4 pounds, left 10 pounds, chair to floor lift bilateral 11 pounds. Push/pull was at 11 pounds. (PX2 p.99)

Petitioner returned to Dr. Chudik on 10/10/14, reporting increased pain in the right shoulder and increased pain in the left shoulder because he was having to compensate for the limited use of his right arm. (PX2 p.106) Examination findings for the shoulder had not changed since 1/8/14. (PX2 p.108) Dr. Chudik noted that Petitioner had permanent function and strength limitations on the right shoulder, which he needed pain management for. (PX2 p.108-9) He would likely need future injections, therapy, and future surgery for the right shoulder, but he was currently at MMI from a surgical standpoint. (PX2 p.109) On the left side, Petitioner had compensatory pain and required formal therapy. (PX2 p.109) Dr. Bardfield also saw him on 10/10/14, also recommending a comprehensive pain clinic. (PX2 p.111) He thought Petitioner shoulder repeat the FCE when he got his pain levels under better control. (PX2 p.111) Petitioner remained totally restricted from work.

Additional MRIs were done for the shoulder and neck on 12/24/14. (PX2 p.114-117) The left shoulder MRI showed low-grade partial bursal rotator cuff fraying with underlying rotator cuff

tendinopathy and labral degeneration with small joint effusion. (PX2 p.116-7) An arthrogram was recommended. (PX2 p.117)

The cervical spine MRI showed mild multilevel degenerative changes. (PX2 p.114-5) A MRI of the right shoulder showed a moderate grade delamination tear of the supraspinatus with tendinosis in the remainder of the supraspinatus and infraspinatus tendons. (PX2 p.118) The long head of the biceps tendon was torn and not visualized. The middle and inferior glenohumeral ligaments were torn and not seen. The labrum was torn anteriorly, posteriorly, and inferiorly. A left shoulder arthrogram was done on 2/27/15, resulting in a suboptimal image. (PX2 p.121) Even so, the radiologist reported a small near thickness high grade articular surface anterior insertional supraspinatus tear and a small partial thickness articular surface posterior insertional infraspinatus tear. There was partial tearing of the biceps tendon and diffuse labral tearing.

Petitioner returned to Chudik on 3/11/15. (PX2 p.124) The examination findings were the same. (PX2 p.125) Dr. Chudik felt the MRI showed a healed shoulder repair on the right side and there would be no need for additional surgery. (PX2 p.126) The left side would need surgery however, to address the cuff tear which was not resolving through conservative treatment. (PX2 p.126) Surgery was ordered and Petitioner was restricted from work. (PX2 p.127) Workers comp would not approve any additional treatment. (PX2 p.128)

Petitioner sought counseling on 4/21/15 with psychologist Scott De Valka at Lifework Counseling. (PX11 p.3) Counseling ran through 11/1/15. Petitioner reported that his multiple disabilities had precluded him from gainful employment, thus putting greater work demand on his wife and limiting their revenue stream. (PX11 p.3) He expressed frustration and anger of the disability issues. His wife encouraged him to attend counseling. (P11 p.3)

On 7/1/15, Petitioner also sought mental health treatment at Stillpoint Mental Health. (PX5) He reported he had no mental health problems until industrial injuries to shoulder, neck and he was fired. Petitioner reported that workers comp had stopped. (PX5 p.15) He was involved in a long legal battle and was now irritable and angry. (PX5 p.15) He was using Flexeril, Amitriptyline and Tramadol. (PX5 p.15) He was diagnosed with Major Depressive Disorder and given Cymbalta and enrolled for psychotherapy. (PX5 p.16-17) Additional diagnoses included anxiety and insomnia due to mental disorder. (PX5 p.13) He was no better by the 8/12/15 visit and was still angry about the workers comp case. (PX5 p.13) The 9/25/15 visit documented his struggles with depression, anxiety and stress from medical problems and the limitations they put on his life. (PX5 p.11) He reported a lot of sadness, loss of concentration and some helplessness. No medical evaluations were planned as workers comp had cut everything off. (PX5 p.11) The 10/23/15 visit revealed his continuing struggle with depression. (PX5 p.9) He really thought that he needed shoulder surgery, his sleep was interrupted by pain and he had nightmares. He was sad that things were out of his control. (PX5 p.9) He had poor concentration and energy. (PX5 p.9) At the 12/4/15 visit, he felt he was in limbo over his shoulder and the workers comp system. (PX5 p.7) He was angry and frustrated about his status and was out of pain medications and he had to find a new primary care physician. (PX5 p.7)

Petitioner returned to Dr. Chudik on 10/24/18, noting he had not been able to get any treatment since his last visit in 2015. (PX2 p.128) Workers comp had stopped approving treatment.

Examination revealed essentially the same deficits on the right shoulder. (PX2 p.130) The left side had gotten worse with 4/5 in abduction accompanied with pain, and 5-/5 for external rotation with pain. (PX2 p.130) Dr. Chudik noted that Petitioner continued to suffer from bilateral shoulder pain following his falls at work in 2012. (PX2 p.131) The right shoulder had permanent strength and functional limitations and the left shoulder had the hallmarks of an unrepaired rotator cuff tear. (PX2 p.131) They again sought workers comp approval for the left shoulder repair and restricted Petitioner from work. (PX2 p.131, 133)

The patient was last seen by Dr. Chudik on 2/15/2019 for his bilateral shoulder pain. (PX2 p.138) His shoulder symptoms were about the same and he denied any new injury. (PX2 p.139) Arthroscopic surgery for the left shoulder was again recommended and a new pre-operative MRI ordered. (PX2 p.139)

Petitioner's current condition

Petitioner explained that he wanted to get the surgery recommended by Chudik so he would get better. (T.42) That treatment recommendation had been pending since 2014 or 2015. (T.43) Petitioner noted that he was given work restrictions up until Bardfield took him off work completely. (T.44) Dr. Bardfield never released him to return to work. (T.44) Dr. Chudik also maintained significant work restrictions on Petitioner throughout his care. (T.44)

Respondent sent Petitioner to IME Verma at least four times. (T.45) Petitioner testified that Dr. Verma did not recommend the treatment he needed for the left shoulder. (T.45) He further testified that pain management was also recommended by his treaters, but all he received was narcotics which he became addicted to. (T.46) Petitioner explained that the pain was so severe that he started ratcheting up the amount of narcotic he was using. (T.48) His wife noticed he was abusing the narcotics and made him go for counseling. (T.49) He enrolled in a couple different mental health facilities and they helped him get off the narcotics. (T.49) Petitioner also focused on church and Christian music which he found calming. (T.50) He believes he was off narcotics by 2016, but was still experiencing severe pain, lack of motion and strength in his shoulders. (T.50-51) His right hand still swelled up and he lost touch with the fingers. (T.51) Sometimes his wife would touch the shoulders and it would cause excruciating pain, he could not be touched. (T.51) Petitioner still wanted the surgery to the left shoulder and pain management for the right shoulder. (T.51-52) The right hand started swelling during therapy after the first right shoulder surgery. (T.52) When his hand swells up, he ices it, along with icing the shoulder and the neck. (T.53) He was icing every other day by the time of trial. (T.53) He had not returned to work because the pain was so severe when he used his arms and hand. (T.54) He wanted to work, but his body was telling him he could not. (T.57)

Petitioner admitted his arm popped out of socket with certain movements after the 2000 motorcycle accident. (T.63) When this happened, he just moved the shoulder up and it went back into place. (T.64) Petitioner did not recall how often this happened but assured that he had no pain with these episodes. (T.85) He did not consider the events a problem because it did not hurt when it happened. (T.85) He continued playing basketball and volleyball up through the summer of 2006 but stopped doing those sports due to a change in his wife's schedule. (T.80-1) Petitioner experienced the normal aches and pains in the joints after engaging in the sports. (T.101) After

the 12/2006 accident, the shoulder continued getting worse as he continued doing the spotter truck work. (T.97) He did not seek treatment for the right shoulder until he could not move his shoulder anymore. (T.78)

Petitioner was asked on cross examination about a 11/29/09 note with Dr. Chudik where Petitioner reported the onset of neck pain while operating a poorly shifting transmission in a spotter truck. (T.107) Petitioner did not file a claim for that injury. (T.111) He thought the symptoms from that event did not last long and he was ultimately told to deal with it. (T.112-3) Petitioner could not remember how long the symptoms last when he sought treatment or details from the visits. (T.113-118)

Petitioner admitted he cooperated with vocational services even though his doctor had him restricted from work at the time. (T.136) A young lady assisted him with the vocational efforts. (T.138) He applied at 10 to 20 employers per day without success. (T.148) He trained for an insurance sales position, but that job required him to lift heavy weights, including a large 14x12x16 briefcase filled with paperwork that did not have wheels on it. (T.137) He went to Staples and Walmart to look for an alternative case, but all he could find were carry-on cases without wheels in that size. (T.137) The case he needed for the insurance job had to be placed on its side and opened up for use. Petitioner explained that carry-on cases did not have pockets like the cases lawyers were using for the trial. (T.138)

Steven Chudik MD Testimony

Dr. Chudik is a board-certified orthopedic surgeon specializing in treatment of shoulder, knee, and sports medicine. (PX1 p.5) He performs fundamental research with respect to the shoulders and knees. (PX1 p.5) He had last examined Petitioner in October 2018 before the deposition. (PX1 p.6) He was treating a left shoulder rotator cuff tear related to a fall in January of 2012. (PX1 p.6-7) To that point, he had treated the condition conservatively but now he recommended a cuff repair for the left shoulder. (PX1 p.7) The shoulder findings on the MRI and arthrogram correlated with the mechanism of the fall. (PX1 p.8)

At the 1/23/12 visit, Petitioner reported the fall at work and noted that he was now using the left hand for the majority of his activities because of the injury to the right shoulder. (PX1 p.9) Dr. Chudik explained that even with the complaints on the left, he was mostly focusing on the right shoulder in January 2012, including recommending a new MRI for the right shoulder and restricting Petitioner from work. (PX1 p.10)

At the 4/4/12 visit, Petitioner returned complaining of left shoulder symptoms. (PX1 p.11) He reported using Biofreeze for the shoulder and that he had not worked since 1/23/12. (PX1 p.11) Examination revealed most of the left shoulder pain localized to the anterior aspect of the shoulder. (PX1 p.11) No treatment had yet been performed to the left shoulder. (PX1 p.12) Dr. Chudik was concerned about a rotator cuff tear from the work accident and he ordered an MRI. (PX1 p.12) He also removed Petitioner from work as he had a bad left shoulder in addition to the right shoulder. (PX1 p.12) Petitioner did not get the MRI until 2014, although he did treat for some cervical pain through Dr. Bardfield. (PX1 p.12-13) The left MRI revealed partial tearing of the supraspinatus of the rotator cuff, mainly bursal sided. (PX1 p.14) Dr. Chudik next

recommended an arthrogram to better define the structures, which revealed a near full thickness high grade partial tear of the supraspinatus. (PX1 p.15) At that point, Dr. Chudik recommended a rotator cuff repair. (PX1 p.15) Dr. Chudik noted that all work restrictions he gave to Petitioner were medically necessary because of the work injury. (PX1 p.16) He intended to fix the tear and restore function to Petitioner's arm. (PX1 p.16) He predicted a good prognosis for a repair of this size of a tear in the shoulder. (PX1 p.17) He felt that the left shoulder tear and need for treatment related to the January 2012 fall on the ice at work. (PX1 p.18) The mechanism of injury was consistent with the MR arthrogram findings, his diagnosis, his symptoms, and Petitioner's presenting complaints. (PX1 p.18) Dr. Chudik also explained that Petitioner's overcompensation with the left shoulder also contributed to his pain and symptoms and the need for surgery. (PX1 p.19-20)

Dr. Chudik had revised a prior shoulder repair done by an outside physician. (PX1 p.20) This was a failed surgery which Dr. Chudik had to correct, and second surgeries had a worse prognosis than the initial repairs. (PX1 p.20) Petitioner now had chronic atrophy and limitations in his use of the right shoulder. (PX1 p.20) Petitioner needed the activity restrictions Dr. Chudik had placed on him for the right shoulder, although Petitioner was currently fully restricted on account of the need for surgery to the left shoulder. (PX1 p.21) Respondent had not authorized that surgery. (PX1 p.21)

On cross exam, Dr. Chudik thought that the right shoulder restrictions would remain at the level they were at after that treatment and the 2010 FCE. (PX1 p.25) Dr. Chudik had released Petitioner to work for the right shoulder in accord with the FCE findings, as well as limiting any repetitive upper extremity and overhead work. (PX1 p.25) Dr. Chudik did not recommend the surgery until after he got the MRI arthrogram in 2014, even though he thought the left shoulder tear dated back to his initial evaluation of Petitioner shortly after the 2012 fall. (PX1 p.28)

A 5/16/12 MRI from an outside facility did not reveal the tendon tear, but the scan was of poor quality. (PX1 p.31-34) A new scan was ordered by Dr. Bardfield and that scan was done on 12/24/14. (PX1 p.35-37) Dr. Bardfield sent Petitioner for the new scan when the neck-directed treatment did not resolve the complaints. (PX1 p.37) Petitioner got the arthrogram study shortly after that. Dr. Chudik reviewed the scans at his 3/11/15 visit, noting an articular partial thickness supraspinatus tear but no evidence of a full thickness tear. (PX1 p.39-41)

When questioned about whether Petitioner's condition had changed in the left shoulder between the 2012 and 2014 MRIs, Dr. Chudik thought the clinical picture had not changed, but the MRIs were different. (PX1 p.43) Chudik had diagnosed Petitioner with a rotator cuff tear back in 2012 but the outside MRI from 2012 did not reveal it. (PX1 p.44) Dr Chudik explained that the 2012 MRI was of terrible quality. (PX1 p.46) The poor initial MRI complicated the treatment plan. (PX1 p.46) When asked if the MRI from 2012 might have been correct in finding no tear, Dr. Chudik disagreed, noting that his clinical picture was that of a tear in the left shoulder. (PX1 p.57-58) Dr. Chudik was surprised by the 2012 MRI result, but given that a neck was potentially involved, he sent Petitioner to Dr. Bardfield to evaluate the neck. (PX1 p.58) It took some time to sort out that it was the shoulder all along which was the source of the problem. (PX1 p.58) Petitioner could have gotten the shoulder repair surgery back in 2012 had the poor MRI not complicated the situation. (PX1 p.46-47) On the overcompensation issue, Dr. Chudik had taken

care of Petitioner's right shoulder for quite some time by the time the left shoulder became symptomatic. (PX1 p.50) He knew what problems Petitioner was experiencing with the both shoulders. (PX1 p.50)

Nikhil Verma MD Testimony

Dr. Verma is a board-certified orthopedic surgeon focusing on sports medicine, shoulder elbow and knee. (RX1 p.5) He performed many IMEs on Petitioner. He first examined Petitioner on 2/1/10 and made recommendations for right shoulder treatment. (RX1 p.6) Petitioner was not complaining of the left shoulder at that time. (RX1 p.7) Dr. Verma saw Petitioner again in May 2012 but he made no left shoulder complaints at that time. (RX1 p.8) Dr. Verma compared the right shoulder MRIs from 2/26/10 and 4/6/12, seeing no interval change to indicate an intervening trauma to the right shoulder. (RX1 p.8-9) Dr. Verma saw Petitioner again on 5/19/14 for the right shoulder and he again thought there was no interval change and that Petitioner was able to return to work per the FCE. (RX1 p.10) Petitioner had been in a vocational program and reported being unable to tolerate pulling a computer behind him. (RX1 p.10)

Dr. Verma thought he should be able to drive and pull the computer. (RX1 p.10) Dr. Verma thought Petitioner's prognosis was unfavorable given that he had chronic pain from an unexplained etiology for 4 years and that he was not improving. (RX1 p.11) He was also complaining of pain in more body parts over time, including the neck, leg, and left shoulder. (RX1 p.12) Dr. Verma did not see evidence that they were related to the work accidents, per se. (RX p.12) Dr. Verma's final exam on 7/1/20 was directed at the left shoulder. (RX1 p.12) Dr. Verma noted that Petitioner had complained of left shoulder symptoms at the 2014 visit (RX1 p.13)

By the 2020 visit, Petitioner reported pain in the neck, both shoulders, and pain ran down into the arms. (RX1 p.13) Dr. Verma noted that one cannot get a good physical exam when a patient reports all those problems as everything hurts. (RX1 p.14) It was difficult to recommend treatment that might give relief to the patient. (RX1 p.14) Dr. Verma noted that the records showed an issue with narcotic dependency, so Petitioner was weaned off the opioids. (RX1 p.15) Summarizing what he had reviewed, the medical records did not show an acute injury to the left shoulder around 2012 and the diagnostic imaging suggested age appropriate changes. (RX1 p.16) The physical examination revealed global tenderness and a reduced range of motion for the shoulders. (RX1 p.17-18) Dr. Verma thought the global tenderness was consistent with symptom magnification. (RX1 p.17) The rotator cuff clinical tests showed no instability. (RX1 p.18)

Dr. Verma read the December 2014 MRI as showing early arthritis, rotator cuff tendinosis and degeneration with no high-grade partial or full thickness tear. (RX1 p.20) The 2015 MRI showed a progression of the tendinosis and degenerative changes. (RX1 p.21) Dr. Verma diagnosed the left shoulder as subjective pain of the left shoulder. (RX1 p.21) The imaging showed typical age-related findings, the pain response were out of proportion to what he saw, and he could not identify a particular diagnosis which might respond favorably to surgery. (RX1 p.21-22) There was no causal relationship between the left shoulder and a work accident. (RX1 p.22) He also found no evidence to suggest a compensatory mechanism for the left shoulder. (RX1 p.24) In fact, Dr. Verma did not even feel that treatment or work restrictions were needed for the left shoulder. (RX1 p.28-29) On cross, Dr. Verma admitted that he only disputed the left shoulder as being

related to the fall. (RX1 p.30) Petitioner required work restrictions consistent with the FCE for the right shoulder. (RX1 p.31) He also noted that Petitioner did report left shoulder pain to Dr. Chudik at the April 2012 visit. (RX1 p.35)

CONCLUSIONS OF LAW

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

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

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and compared Petitioner's testimony with the totality of the evidence submitted. The Arbitrator acknowledges several inconsistencies associated with the petitioner's complaints at the time of his alleged accidents and his history of pre-existing conditions and complaints. However, the Arbitrator did not find any material contradictions that would deem the witness so unreliable as to defeat his claim.

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.

Petitioner has proven that he suffered accidents on 12/14/16, 1/20/12 and 1/21/12 all arising out of and in the course of his employment with Respondent. Petitioner testified that the door of his spotter truck would not stay shut and slid open while he was operating the truck. He credibly testified that on 12/14/06 Petitioner reached behind his chair with his right arm to slide the door shut as he made a turn in the truck. Petitioner testified that the door jammed as it was closing, causing a snap and pain in the right shoulder joint. (See T.20-21) Petitioner further testified that he was shoveling Respondent's yard with his left arm on 1/20/12 when the shovel hit a rut and he went flying forward. (See T.32) He landed on the left shoulder and side trying to protect the right shoulder. Petitioner came back to work on 1/21/12 and slipped on the ice landing on his back and hitting his head. (See T.36)

The Arbitrator finds that Petitioner has met his burden in proving that he sustained accidents arising out of and in the course of his employment on 12/14/16, 1/20/12 and 1/21/12.

Issue E, whether timely notice of the accident was given to Respondent, the Arbitrator finds as follows:

Pursuant to Section 6(c) of the Act, a claimant is required to give notice to his or her employer within 45 days of a work-related accident. 820 ILCS 305/6(c). Respondent stipulated to notice of Petitioner's 1/20/12 and 1/21/12 accidents.

Petitioner provided timely notice of his 12/14/16 accident to Respondent. Although Petitioner did not remember his supervisor's name, he was able to describe the man in sufficient detail and testified that he reported the injury to his supervisor approximately four days after the date of accident.

As such, Arbitrator finds that Petitioner has met his burden in proving that he gave timely notice to Respondent of his 12/14/16 accident.

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).

12/14/06 Accident

The Arbitrator finds that Petitioner's current right shoulder condition of ill-being is causally related to the injury of 12/14/06.

Although Petitioner had experienced instability in his right shoulder with certain forceful movements of the arm before the accident, Petitioner testified that those episodes did not cause pain and did not cause the tissue to pop as he described in his 12/14/06 accident. Petitioner testified that he was active and was fully functional in his work and home activities before the 12/14/06 accident. Petitioner credibly testified that he experienced a snapping and severe pain on 12/14/06 when the door jammed up while he was trying to slide it closed again.

Dr. Chudik addressed causation in his 4/29/08 note, stating that Petitioner's right shoulder was injured in the December 2006 door pulling accident resulting in a rotator cuff repair. (See PX2 p.6) Regardless of Petitioner's history of shoulder instability, Dr. Prodromus explained that the behind-the-back movement that Petitioner engaged in on 12/14/06 catches the supraspinatus tendon in a pincer between the anterior acromion and the greater tuberosity of the humerus. (See PX7 p.10) Dr. Prodromus further noted that Petitioner's pre-existing instability would not be the source for his shoulder pain. (See PX7 p.10, 13)

Based on the record as a whole including Petitioner's testimony, the medical records, and the medical opinions of Petitioner's treaters over those of Dr. Verma, the Arbitrator finds that Petitioner has met his burden in proving a causal connection between his 12/14/06 accident and his current right shoulder condition of ill-being.

1/20/12 and 1/21/12 Accidents

The Arbitrator finds that Petitioner's current right and left shoulder condition of ill-being is causally related to the injuries of 1/20/12 and 1/21/12.

Dr. Chudik related the left shoulder rotator cuff tear to the accidents in January of 2012. (See PX1 p.6-7) Dr. Chudik also explained that Petitioner's overcompensation with the left shoulder also contributed to the pain and symptoms and need for surgery. (See PX1 p.19-20)

Dr. Chudik stated that the mechanisms of injury were consistent with the MRI arthrogram findings, his diagnosis, Petitioner's symptoms, and his presenting complaints. (See PX1 p.18) Although the 5/16/12 MRI failed to image shoulder damage on the left side, Dr. Chudik explained that the 5/16/12 MRI was done at an outside facility and was of poor quality. (See PX1 p.31-34) Dr. Chudik stated that Petitioner's clinical picture since the January 2012 accidents have always been consistent with a rotator cuff injury. Dr. Chudik explained that Petitioner's left shoulder treatment was complicated by the poor-quality MRI, focus on his right shoulder treatment and

treatment with Dr. Bardfield to determine if the neck was the source of pathology. When Dr. Bardfield ordered a new shoulder scan on 12/24/14 (See PX1 p.35-37), an arthrogram quickly followed, revealing an articular partial thickness supraspinatus tear but no evidence of a full thickness tear. (See PX1 p.39-41)

Dr. Chudik explained that Petitioner's clinical picture remained consistent. (See PX1 p.43) In his 4/20/12 note, Dr. Chudik mentioned his concern for a left sided cuff tear resulting from the falls at work on 1/20 and 1/21/12. (See PX2 p.55) In addition, Dr. Chudik believed that the left shoulder was aggravated through an overcompensation mechanism due to the right shoulder treatment. (See PX1 p.50)

Dr. Verma opined that the left shoulder findings were primarily age related. (See RX1 p.47) Dr. Verma agreed that overusing the left side to compensate for a right sided injury could lead to injury developing in the left arm. (See RX1 p.48-49) The medical records support Petitioner's testimony that he significantly reduced his use of the right arm since the time of the 2006 accident. Overall, Petitioner's persisting problems with the right shoulder are documented in his treatment notes, as is his overuse of the left arm to accommodate the right shoulder problem.

Based on the record as a whole including Petitioner's testimony, the medical records, and the medical opinions of Petitioner's treaters over those of Dr. Verma, the Arbitrator finds that Petitioner has met his burden in proving a causal connection between his 1/20/12 and 1/21/12 accidents and his current right and left shoulder conditions of ill-being.

Issue G, Petitioner's earnings, the Arbitrator finds as follows:

For the 12/14/06 accident, the Arbitrator relies on a statement of Petitioner's earnings for the period of work before his initial accident. (See RX6) Petitioner worked 4 2/7 weeks prior to the 12/14/06 accident earning a total of $3,066.15. Dividing Petitioner's earnings of $3,066.15 by the 4 2/7 weeks worked results in an AWW of $715.43.

For the 1/20/12 and 1/21/12 accident dates, the stipulated AWW is $ 712.08.

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:

With respect to all of Petitioner's claims, having found for Petitioner on accident, notice and causation, the Arbitrator further 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 outlined in Petitioner's Exhibit 14, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. See also Perez v. Illinois Workers' Compensation Comm'n, 2018 IL App (2d) 170086WC, ¶ 17, 96 N.E.3d 524. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is claiming a credit under Section 8(j) of the Act.

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

With respect to all of Petitioner's claims, having found for Petitioner on accident, notice, causation, past medical treatment, the Arbitrator further finds that Respondent is liable for prospective medical care.

For the right shoulder, Respondent shall provide pain management treatment for the right shoulder as recommended by Dr. Chudik. With respect to the left shoulder, Petitioner is entitled to the rotator cuff repair recommended by Dr. Chudik including all reasonable and necessary pre-operative clearance and imaging as well as post-operative care.

Issue L, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Westin Hotel v. Indus. Comm'n*, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. Archer Daniels Midland Co. v. Indus. Comm'n, 138 Ill.2d 107, 118 (1990).

12/14/06 Accident

Dr. Lang noted in his 6/8/07 note that Petitioner had been unable to work since 2/26/07 due to his right shoulder condition. Dr. Lang issued an additional off work slip on 3/14/07 removing Petitioner from work until surgery. On 7/26/07, Dr. Verma observed that Petitioner had not reached MMI for his injury. Under the care of Dr. Chudik, Petitioner was either off work or on work restrictions from 4/29/08 through 11/19/09. (See T.29) Dr. Chudik released Petitioner back to work within the FCE guidelines on 11/19/09. Petitioner next returned to Dr. Chudik on 12/11/09, who sent Petitioner for further work-up on the arm due to pain and restricted him from right arm use. Dr. Chudik continued treating Petitioner and restricting his work activity up through 6/11/10 when Petitioner was again released to return to work. Respondent paid periodic periods of TTD totaling $77,785.18 for all three claims.

Based on the Arbitrator's prior findings and the record as a whole, the Arbitrator finds that Petitioner has met his burden in showing that he is entitled to TTD benefits from 02/26/07 through 6/11/10.

1/20/12 & 1/21/12 Accidents

Following his falls, Petitioner returned to Dr. Chudik on 1/23/12 who took him off work. Petitioner never went back to work again. On 10/10/14, Dr. Chudik noted that Petitioner had permanent function and strength limitations on the right shoulder, that he needed pain management, but was currently at MMI from a surgical standpoint. (See PX2 p.109) As such, the Arbitrator finds that Petitioner reached MMI on 10/10/14 for the right shoulder. Even though Petitioner participated in a vocational rehabilitation program in 2013, vocational efforts were premature as Petitioner has not reached MMI for his left shoulder. His surgery is still pending and Dr. Chudik never released Petitioner back to work. (See PX2 p.131, 133)

Based on the Arbitrator's prior findings and the record as a whole, the Arbitrator finds that Petitioner has met his burden in showing that he is entitled to TTD benefits from 01/23/12 through the date of hearing, 10/25/21.

It is so ordered:

Arbitrator Rachael Sinnen

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC006540
Case Name	Jennifer Donaldson v. Hallcon Corporation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0239
Number of Pages of Decision	16
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	William Lemp

DATE FILED: 5/25/2023

/s/Amylee Simonovich, 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

JENNIFER DONALDSON,

Petitioner,

vs. NO: 19 WC 06540

HALLCON CORPORATION,

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(s) of accident, causal connection, medical expenses, prospective medical care, and temporary total disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 3, 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.

May 25, 2023
o050923
AHS/ldm
051

/s/*Amylee H. Simonovich*
Amylee H. Simonovich

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC006540
Case Name	DONALDSON, JENNIFER v. HALLCON CORPORATION
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	William Lemp

DATE FILED: 1/3/2022

/s/Linda Cantrell, Arbitrator

Signature

INTEREST RATE WEEK OF DECEMBER 28, 2021 0.21%

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)

JENNIFER DONALDSON
Employee/Petitioner

v.

HALLCON CORPORATION
Employer/Respondent

Case # **19** WC **006540**

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 **October 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, **10/30/2018**, 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*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**23,414.56**; the average weekly wage was $**450.28**.

On the date of accident, Petitioner was **44** years of age, ***single*** with **0** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services related to Petitioner's left shoulder.

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

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

ORDER

The Arbitrator finds that the care and treatment to Petitioner's left shoulder was reasonable and necessary and causally connected to her injury on 10/30/18. Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's group exhibit 1 directly to the medical providers and pursuant to the medical fee schedule, 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 indemnify and hold Petitioner harmless from any claims made by providers for the expenses for which it claims credit.

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 **January 3, 2022**

ICArbDec19(b)

STATE OF ILLINOIS)
) **SS**
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

JENNIFER DONALDSON,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 19-WC-006540
	)	
HALLCON CORPORATION,	)	
	)	
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 October 30, 2018 Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent. The Arbitrator takes judicial notice of the Commission's Decision entered on August 20, 2021, wherein the Commission corrected a scrivener's error with respect to cervical MRI findings and otherwise affirmed and adopted the Decision of Arbitrator Dennis O'Brien entered on April 30, 2020. Arbitrator O'Brien found that Petitioner's cervical spine condition was causally connected to her injury and awarded prospective medical care in the form of a C4-5, C5-6 arthroplasty. The parties stipulated at the hearing held on March 11, 2020 that Petitioner's right arm, knee, and low back conditions of ill-being were causally connected to her work injury. The only disputed injury subject to this Section 19(b) hearing is Petitioner's left shoulder. The issues in dispute are causal connection and the reasonableness and necessity of medical treatment related to Petitioner's left shoulder only. All other issues have been stipulated.

TESTIMONY

Petitioner was 44 years old, single, with no dependent children at the time of accident. Petitioner testified that following the Section 19(b) hearing in April 2020 she underwent surgery on her cervical spine and left shoulder. She testified that following the accident she had neck and bilateral shoulder pain, with her worst pain immediately coming from her neck. Petitioner testified that she reported both right and left shoulder pain to her physicians following the accident. She testified in her previous 19(b) hearing that immediately following the accident she had pain in various parts of her body, and at the time of that hearing she had pain in her left arm, right arm, and neck.

Petitioner testified that she presented to the Orthopedic Institute of Southern Illinois (OISI) on 12/20/18 and reported persistent laterally based shoulder pain radiating down the left and right top parts of the arm. Petitioner demonstrated at trial her pain is located at the top of her left shoulder and runs down the front of her left arm. She demonstrated she cannot lift her arm very high. She stated she presented to OISI again on 1/11/19 and reported right greater than left bilateral shoulder pain increased with range of motion. She had tenderness in her left shoulder and trapezius upon examination.

Petitioner testified she was examined by Dr. Rutz on 1/28/19 and 5/21/19 and reported bilateral shoulder pain, with numbness and tingling into her left shoulder greater than the right, with limited range of motion. On 10/26/20, Dr. Rutz performed a two-level disc surgery. Petitioner stated that prior to this surgery her neck was her worst condition. The cervical surgery has improved her sleep, headaches, and increased her range of motion. Petitioner testified that two weeks after surgery she reported to Dr. Rutz she still had left greater than right intermittent upper extremity pain.

Petitioner testified she was examined by Dr. Bradley on 12/1/20 who examined both of her shoulders. Dr. Bradley ordered a left shoulder MRI and recommended surgery which Petitioner underwent on 1/13/21. She stated the surgery did not improve her symptoms and she still has limited range of motion. She underwent injections and therapy and her left shoulder continued to regress. She stated her left shoulder is tight, she has difficulty lifting, and has loss of strength and range of motion. On 7/5/21, Dr. Bradley recommended a revision left rotator cuff repair which she desires to undergo. She stated that scar tissue has prevented her from performing home exercises and lifting her arm above shoulder level.

On cross-examination, Petitioner recalled telling Dr. Rutz that she had neck pain and pain radiating into both arms. She agreed she had some resolution of radicular pain following cervical surgery. Dr. Rutz is not recommending additional cervical surgery. She agreed that the Section 12 examiner Dr. Wayne opined she needed right shoulder surgery that was causally connected to her work accident. Petitioner stated she has not undergone the recommended right shoulder surgery because she is right-handed and would not be able to use her left arm during recovery. She stated that Dr. Bradley also recommends a right shoulder surgery, but it is contingent on treatment of her left shoulder.

Petitioner testified that immediately after the accident she hurt everywhere. She had glass in her eyes and blood all over. She stated her right arm was bruised and very swollen. She agreed that the focus of her treatment in the emergency room was on her neck and she reported she struck her right shoulder and right knee. She is not aware there is no history in the ER records of left shoulder complaints. She is not aware of no left shoulder/arm complaints in the medical records of SIH Health dated 11/1/18. She is not aware of no left shoulder complaints in the records of OISI dated 11/29/18 and stated she was primarily there for a right shoulder injury consisting of a hematoma, right deltoid partial tear, and traumatic partial thickness rotator cuff tear. She stated that the first time anyone mentioned treatment for her left shoulder was by Dr. Bradley on 12/1/20.

Petitioner testified that Dr. Bradley's office is awaiting approval for left shoulder surgery. She stated that Dr. Bradley did not tell her he is not going to perform the revision left shoulder surgery pending workers' compensation approval. She stated she is not supposed to lift anything heavy, push or pull, or perform overhead activities with her left arm. Petitioner is not aware of any restrictions on her right arm by Dr. Bradley at this time. Petitioner testified she does have restrictions from the Section 12 examiner with regard to her right shoulder that prevents her from returning to her former occupation.

MEDICAL HISTORY

As mentioned in the Arbitrator's decision of 4/30/20 and incorporated into the Commission's decision of 8/20/21, emergency medical services responded to the scene of the accident on 10/30/18. Petitioner was given emergency care and transported to the emergency room by Johnson County Ambulance. Responding paramedics noted Petitioner's vehicle left the side of the road and struck a mile marker which entered Petitioner's windshield and struck her in the right arm and shoulder area. Petitioner reported that she hurt "all over."

The Arbitrator notes that on 12/20/18, when presenting to the Orthopedic Institute of Southern Illinois (OISI), Petitioner reported both left and right shoulder pain. It was noted Petitioner had persistent laterally based shoulder pain, lateral bracial pain, and paracervical tenderness to palpation with radiculopathy down the left and right top parts of the arm. She returned to OISI on 1/11/19 with reported pain in her neck on the right and left side equally and pain radiating from the neck on the right greater than the left, and to the shoulder on the right greater than the left. Physical examination revealed tenderness to palpation in the mid cervical spine to the left as well as soft tissue tenderness in the left trapezius region. Her pain to the left side of her neck increased with range of motion and she had pain across both shoulders. At that time, treatment was focused on her neck and right shoulder, and she was recommended to receive cervical epidural steroid injections and physical therapy for her neck.

Petitioner again reported pain in her left upper extremity on 1/28/19 during her initial evaluation with Dr. Kevin Rutz. Dr. Rutz noted Petitioner had "neck pain, worse on the left than right, with some pain, numbness, and tingling into the left greater than the right arms." Physical examination revealed tenderness over the entire cervical region and increased pain with right greater than left shoulder range of motion.

Petitioner was examined by Dr. Andrew Wayne on 4/24/19 pursuant to Section 12 of the Act. While Dr. Wayne did not evaluate Petitioner's left shoulder, he noted in his report that since her work incident, Petitioner noticed pain in her neck, right shoulder, right arm, and upper back, with pain shooting down the left upper limb.

On 10/26/20, Dr. Rutz performed C4-5 and C5-6 anterior cervical discectomies and placement of total disc arthroplasties. Upon follow up with Dr. Rutz's office, ANP Loren Vandergriff noted Petitioner had appropriate aching and soreness in her neck, with intermittent left greater than right upper extremity and hand paresthesias but felt the symptoms had improved some since surgery. Prednisone and Percocet were prescribed, and Petitioner was instructed to follow up in two weeks.

Petitioner presented to Dr. Matthew Bradley for evaluation of her bilateral upper extremities at the referral of Dr. Rutz. Dr. Bradley noted that on 10/30/18 Petitioner fell asleep at the wheel and flipped the car. The mile marker sign went through her windshield. She states the seat belt did not lock causing her entire body to be flung towards the steering wheel with her right elbow going through the air conditioning vents. She reported immediate pain in her bilateral shoulders and severe ecchymosis in her right arm. Dr. Bradley noted Petitioner initially sought treatment for right shoulder and arm pain and an MRI revealed a torn bicep muscle and rotator cuff for which surgery was recommended. He noted Petitioner's cervical spine surgery performed by Dr. Rutz on 10/26/20 resolved her parascapular and myofascial pain, but she had significant pain in her bilateral shoulders, along the anterior aspect of her right arm towards her elbow. She denied any interval traumas or falls.

Dr. Bradley's physical examination of Petitioner's left shoulder revealed decreased rotator cuff strength and positive impingement testing. Examination of her right shoulder revealed decreased rotator cuff strength, positive impingement testing, and positive bicep provocative testing. Dr. Bradley noted that since Petitioner's accident, and following her cervical surgery, she has persistent dysfunction and pain in both shoulders. He recommended right and left shoulder MRIs and ordered her to remain off work.

The MRIs were performed on 12/15/20. Dr. Greg Cizek appreciated an intact right rotator cuff with mild tendinopathy and a defect in the superior labrum, which he noted could possibly be a tear. The left shoulder MRI revealed a 9-mm anterior insertional tear of the supraspinous tendon which appeared complete without retraction.

Petitioner returned to Dr. Bradley on 12/17/20 and reported no change in her bilateral shoulder symptoms. Dr. Bradley reviewed records from Heartland Regional Medical Center, Dr. Rodney Miller, OISI, the 11/16/18 right shoulder MRI, and most recent MRIs. He appreciated a right shoulder labral tear and rotator cuff tendinopathy without tear and a left shoulder rotator cuff supraspinatus 9-mm tear with some retraction. He noted Petitioner's left shoulder was causing her more pain and dysfunction than her right and she wanted to address the left shoulder first. He found the left shoulder MRI showed a very high grade to full thickness tear to the supraspinatus tendon without significant retraction. He recommended proceeding with a left shoulder rotator cuff repair with subacromial decompression.

On 1/5/21, Petitioner returned to Dr. Rutz and despite some stiffness in her neck, she had improved since surgery. He noted her primary concern was pain in her left shoulder, for which she was scheduled to have surgery with Dr. Bradley. Dr. Rutz released Petitioner to full duty work for her neck and noted any restrictions she had would be secondary to her shoulder which Dr. Bradley was treating.

On 1/13/21, Dr. Bradley performed a left shoulder rotator cuff repair and subacromial decompression. Intraoperative findings confirmed the presence of a high-grade partial tear with a small area of full thickness tear to the anterior aspect of the supraspinatus. Dr. Bradley noted the tear was fairly acute and there were no significant degenerative changes. Petitioner returned to Dr. Bradley two weeks later and was progressing as expected with no signs of postoperative

complication or infection. He prescribed physical therapy, placed her on restrictions, prescribed Percocet, valium, and Meloxicam, and ordered her to return in five to six weeks.

Petitioner presented to Herron Rehab and Wellness Center for therapy. Her symptoms included pain and decreased range of motion secondary to a left rotator cuff repair. Skilled occupational therapy was recommended over the next four weeks.

Upon return to Dr. Bradley, Petitioner reported she was doing very well and her range of motion was improved until two days prior. She reported she slept in her bed for the first time since surgery and woke up with severe left shoulder pain. Following examination, Dr. Bradley believed Petitioner was suffering from subacromial bursitis post left rotator cuff repair. He noted Petitioner likely slept in an awkward position which created a subacromial bursitis. He performed a subacromial injection and instructed Petitioner to follow up in four weeks.

On 3/15/21, Petitioner was evaluated by Dr. Michael Nogalski pursuant to Section 12 of the Act. Dr. Nogalski noted that on 10/30/18 Petitioner was driving a van when she had a motor vehicle accident which required her to be extracted by first responders. She reported she did not recall much about her accident besides that she "hurt all over and she hurt in her back, neck, and shoulders." Dr. Nogalski believed Petitioner sustained a significant traumatic event to her right shoulder in the accident but did not believe she suffered more than idiopathic adhesive capsulitis in her left shoulder. He believed there was "absolutely no support" for a traumatic injury to the left shoulder.

Petitioner returned to Dr. Bradley the following month and reported 50% improvement in pain from the injection. Dr. Bradley noted her range of motion had significantly improved. He recommended she continue therapy, daily home exercises, and anti-inflammatories as needed. Petitioner returned to Dr. Bradley on 6/10/21 with significant left arm pain and a mass along the anterior medial aspect of her left elbow which was painful to touch. Following examination, Dr. Bradley believed Petitioner was losing function in her shoulder. He noted her range of motion had decreased since her last visit and she had increased pain in her shoulder as well as a painful mass over the anterior medial aspect of her elbow. Dr. Bradley recommended an MRI arthrogram of the left shoulder as well as an MRI of the left elbow to evaluate the healing of the rotator cuff repair and to evaluate the painful mass of her elbow. She was instructed to continue using Tylenol as needed and her home exercise program.

On 7/5/21, Petitioner reported to Dr. Bradley continued left shoulder pain and loss of strength and motion. The pain prevented her from performing home exercises. Dr. Bradley stated the left shoulder MRI revealed a full thickness tear of the central portion of the superior spinatis with retraction of the free edge, while the anterior portion of the previous repair remained intact and healed. The left elbow MRI revealed mild distal bicep tendon neuropathy and nonspecific skin thickening and subcutaneous edema located superficial to the proximal ulna. Dr. Bradley assessed partial healing of the rotator cuff repair versus a recurrent tear in the near proximity to her original tear. Given the severity of her dysfunction, age, and pain, he recommended a revision left rotator cuff repair. He ordered Petitioner to continue using anti-inflammatories and Tylenol, and to continue her home exercise program.

Dr. Michael Nogalski testified by way of evidence deposition on 6/14/21. Dr. Nogalski is a board-certified orthopedic surgeon who devotes 40% of his practice to shoulder treatment. He testified that he had been performing medical legal work for over 15 years, 90% of which was at the request of the defense and insurance carriers. He stated he completes about four IMEs per week. Dr. Nogalski testified that he did not review any medical records that documented treatment or a history of pain to Petitioner's left shoulder prior to the 10/30/18 accident. He stated he reviewed records from Dr. Rutz dated 1/28/19 and agreed there was pain documented into Petitioner's shoulders and throughout her bilateral upper extremities. He also reviewed records from 1/11/19 from OISI which documented pain across both shoulders. Dr. Nogalski testified that he was not provided with Petitioner's left and right shoulder MRIs from 12/15/20 and did not review those MRIs prior to authoring his report or performing his examination. Dr. Nogalski testified he diagnosed Petitioner's left shoulder pain as idiopathic adhesive capsulitis. He testified that individuals can have small rotator cuff tears that are asymptomatic and are incidental to adhesive capsulitis. He testified that it was possible that a traumatic car accident such as the one Petitioner experienced could cause a rotator cuff tear or aggravate a small pre-existing tear. He opined that Petitioner's right shoulder sustained a significant traumatic event and was possibly aggravated by the 10/30/18 accident. Dr. Nogalski agreed that a patient's symptoms were the driving force behind treatment recommendations and stated he had no information to support or refute any prior left shoulder pain prior to the accident. He stated that he had not seen Petitioner since March 2021 and was unaware of what treatment, if any, she had received since then, or how she was currently doing.

Dr. Bradley testified by way of evidence deposition on 5/18/21. Dr. Bradley is a board-certified orthopedic surgeon who operates on musculoskeletal conditions throughout the entire body, with the exclusion of the spine, with one-third to 40% of his practice involving treatment of shoulder injuries. Dr. Bradley testified he first saw Petitioner on 12/1/20 and took a history of her complaints to include her workplace accident on 10/30/18. Dr. Bradley noted Petitioner reported bilateral shoulder pain and severe bruising over her right arm immediately after the accident. He testified that Petitioner had undergone a two-level cervical disc replacement a month and a half prior to her first visit with him and she had treatment on her right shoulder.

When asked whether he believed Petitioner had overlap of her neck and shoulder pain following the accident, he stated it was a difficult question to answer. He testified that Petitioner was involved in a pretty significant car wreck, in which she injured multiple parts of her body, including her neck and her right arm. She had a concussion and was seen by multiple physicians. He opined that any time somebody has bilateral arm pain, or some tingling or shooting pain like Petitioner described, the neck is quite frequently the biggest cause of the problem. Petitioner had neck surgery that improved a lot of her symptoms, particularly those around the shoulder and near the shoulder. He testified that Petitioner's true shoulder pain did not resolve. He believed that the fact Petitioner suffered multiple injuries, including neck and shoulder, complicated things but she ultimately ended up having problems with both her neck and shoulder.

Dr. Bradley opined that Petitioner had multiple injuries causing different levels of pain immediately following her accident. He noted her more serious injuries were addressed first, such as the bruising and pain in her right arm, concussion, and neck symptoms, and now she was left with some of the less painful etiologies. He believed her prior treatment was appropriate, as

her more severe symptoms were addressed first, and by the time Petitioner presented to him she had some of the lesser pains to address.

Dr. Bradley testified that Petitioner initially presented with signs of rotator cuff tears in both shoulders. He recommended MRIs of both shoulders which revealed a small right labral tear and tendinopathy of the rotator cuff and a full-thickness tear to the left rotator cuff. Dr. Bradley stated his findings were very similar to the musculoskeletal radiologist Dr. Greg Cizek's findings. When asked if her mechanism of injury was consistent with the MRI findings, he stated it was hard to say what mechanism she had. She was in a rollover motor vehicle collision at 70 miles an hour that resulted in injuries to her neck resulting in surgery. She bruised up her right arm pretty significantly. Her elbow went through the air conditioning vents and destroyed the vents. She had very significant trauma to her entire body. He opined that the energy and amount of trauma that Petitioner's body absorbed could certainly be consistent with a rotator cuff tear.

Dr. Bradley testified that Petitioner's physical examination was consistent with the MRI findings. He recommended that she address her left shoulder first as it was causing her the most pain and loss of function. He stated that Petitioner's left shoulder had a large rotator cuff tear which can be more difficult to repair with time. He noted labral tears, like the one in her right shoulder, would not become as difficult to repair with time.

Dr. Bradley testified that he could conclude with medical certainty that the motor vehicle collision was at least a contributing factor to both her left shoulder pain and etiology and subsequent need for surgery. He testified his opinion was buttressed by the fact that Petitioner did not have any significant pain or dysfunction in her left shoulder predating the motor vehicle collision. Dr. Bradley performed surgery on 1/1/21 and found, intraoperatively, a full-thickness rotator cuff tear that appeared fairly acute, without a lot of fraying. He stated that on 1/27/21 she was doing as expected and he prescribed physical therapy. When Petitioner returned, she stated she slept in her bed for the first time since surgery and had increased pain in her shoulder for which he performed an injection to help with inflammation and scar tissue. The injection reduced her pain by 50% and she was completing physical therapy.

Dr. Bradley testified he was able to review Dr. Wayne's Section 12 examination report dated 4/24/19. Dr. Bradley stated that what Petitioner reported to Dr. Wayne was similar to what she reported to him about her symptoms. He stated that it appeared Dr. Wayne did not evaluate her left shoulder, but noted pain shooting down her left upper extremity. Dr. Bradley testified that he also reviewed Dr. Nogalski's report and disagreed with his opinions regarding her left and right shoulder. With regard to her left shoulder, Dr. Bradley testified that there were multiple reports that Petitioner had bilateral shoulder pain and pain into her left shoulder, which was documented by both Dr. Wayne and Dr. Rutz. Dr. Bradley testified that Petitioner could be at risk for adhesive capsulitis, which Dr. Nogalski believed was the source of her left shoulder pain but physical examination was not consistent with capsulitis. He stated Petitioner had relatively good passive range of motion and external rotation following her surgery which was very limited in capsulitis. Dr. Bradley testified that it was interesting that Dr. Nogalski believed Petitioner suffered a significant traumatic event to her right shoulder on 10/30/18, but no injuries to her left shoulder.

On cross-examination, Dr. Bradley testified that in reviewing records from OISI, a note dated 1/11/19 mentioned pain radiating into the left shoulder. When asked about Petitioner's left shoulder surgery and specifically what the acute findings were intraoperatively, Dr. Bradley testified that meant the edges of the tear were fairly clean. He explained that Petitioner's case is a very classic rotator cuff tear etiology, or natural history, with a high-grade partial tear. If you tear greater than 50% of a tendon, over time that tendon slowly tears more resulting in a full-thickness tear. He believes that is what happened in Petitioner's case. The motor vehicle collision occurred two years prior to her surgery and the full-thickness rotator cuff tear did not appear to be two years old. He opined that the reason the shoulder did not cause so much pain initially is that the condition progressed over a two-year time frame.

Dr. Bradley testified that patients would likely report pain with a 50% rotator cuff tear shortly after the event if that was the only injury sustained. He testified that those types of tears are often overlooked and overshadowed by both the patient and doctors when patients sustain head and neck injuries.

CONCLUSIONS OF LAW

Issue (F): Is Petitioner's current condition of ill-being causally related to the 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 workers' compensation claimant's injury. *Shafer v. Illinois Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC, 976 N.E.2d 1 (2011).

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). 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). [Emphasis added]. "Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Indus. Comm'n*, 723 N.E.2d 846 (3d Dist. 2000). Employers are to take their employees as they find them. *A.C. & S. v. Indus. Comm'n*, 710 N.E.2d 837 (Ill. App. 1st Dist., 1999) citing *General Elec. Co. v. Indus. 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).

There is no dispute Petitioner sustained a significant work-related accident on 10/30/18. Emergency medical services responded to the scene of the accident and found Petitioner with pain over her entire body, with the worst pain coming from her neck. Petitioner came under the care and treatment of numerous medical providers who documented pain in her left shoulder as well as her right, including OISI, Dr. Rutz, and Dr. Bradley. While Petitioner initially reported her worst pain was located in her neck and right arm, she consistently reported pain in both

shoulders since the accident. Numerous physicians who evaluated Petitioner, including Dr. Wayne and Dr. Nogalski, noted Petitioner had no history of treatment or complaints to the left shoulder prior to the accident. Dr. Wayne specifically documented left upper extremity symptoms at the time of his Section 12 examination on 4/24/19. Petitioner was working full duty with no reported issues with her left shoulder prior to the work accident. Since the accident, Petitioner reported bilateral shoulder pain to numerous physicians and reported continued left shoulder pain following her cervical spine surgery.

Dr. Nogalski did not believe Petitioner suffered an injury to her left shoulder on 10/30/18, but believed she injured her right shoulder in the accident. Dr. Nogalski testified he did not review any records that documented treatment or a history of pain to Petitioner's left shoulder prior to the work accident. Dr. Nogalski testified he believed Petitioner had idiopathic adhesive capsulitis in her left shoulder and stated individuals could have small rotator cuff tears which were asymptomatic and incidental to the capsulitis. Dr. Nogalski testified that it was indeed possible that a traumatic car accident such as the one Petitioner experienced could cause a rotator cuff tear or aggravate a small pre-existing tear. He had no explanation for Petitioner's complete lack of left shoulder symptomology prior to the accident and testified he had no information to support or refute any prior left shoulder complaints prior to her work accident. The Arbitrator notes that Dr. Nogalski evaluated Petitioner once following her injury, which was after her left shoulder rotator cuff repair.

Dr. Bradley testified that Petitioner reported bilateral shoulder pain since the accident and believed her symptoms were complicated by her neck and right shoulder injuries. He testified that Petitioner's more serious injuries were addressed first and due to her successful treatment, she was left with her lesser pains, which included her left shoulder symptomology. Dr. Bradley noted at the time of his initial examination, Petitioner showed signs of tears in both shoulders which was confirmed with Petitioner's left shoulder MRI that revealed a full-thickness tear to the rotator cuff. Dr. Bradley testified that Petitioner's mechanism of injury was consistent with a rotator cuff tear, as she had significant trauma to her entire body due to being in a rollover motor vehicle collision at 70 miles per hour. Dr. Bradley testified his opinion was buttressed by the fact that Petitioner did not have any significant pain or dysfunction in her left shoulder prior to her accident. Dr. Bradley testified that Petitioner's intraoperative findings confirmed a full thickness rotator cuff tear. In reviewing Dr. Nogalski's report, Dr. Bradley testified that Petitioner could be at risk for adhesive capsulitis, but her physical examination was not consistent with capsulitis. He stated Petitioner had relatively good passive range of motion, and external rotation following her surgery which was very limited in capsulitis. Dr. Bradley was not sure how Dr. Nogalski could argue the traumatic event Petitioner experienced was not at least a contributing factor to the development of his suspected diagnosis of capsulitis.

The Arbitrator finds the opinions of Dr. Bradley to be more persuasive than that of Dr. Nogalski. The Arbitrator concludes that Petitioner's current condition of ill-being with respect to her left shoulder is causally connected to her injury on 10/30/18.

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

Based upon the above findings as to causal connection, the Arbitrator herby awards the medical expenses claimed in Petitioner's group exhibit 1 related to Petitioner's left shoulder. In support thereof, the Arbitrator notes that Petitioner's treating physician, Dr. Bradley, testified that Petitioner's reported mechanism of injury, physical examination, lack of prior left shoulder symptoms or treatment, and objective studies support his opinion that the 10/30/18 work accident caused the need for the left shoulder surgery. Additionally, Dr. Bradley's diagnosis was based on physical examination, history, and objective findings confirmed intraoperatively. Therefore, the Arbitrator finds the treatment to Petitioner's left shoulder, including surgery, was reasonable and necessary.

Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's group exhibit 1 directly to the medical providers and pursuant to the medical fee schedule, 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 indemnify and hold Petitioner harmless from any claims made by providers for the expenses for which it claims credit.

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

Affirm and Adopt (No Changes) No Affirm with Changes Yes No Reverse Reason No Modify	Injured Workers' Benefit Fund (§4(d)) No Rate Adjustment Fund (§8(g)) No Second Injury Fund (§8(e)18) No PTD/Fatal denied No

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC002067
Case Name	Judy A Garrett v. St. Mary's Good Samaritan Inc DBA Good Samaritan Inc/Good Samaritan Regional
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0240
Number of Pages of Decision	17
Decision Issued By	Amylee Simonovich, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	Michael Meyer
Respondent Attorney	Michael Karr

DATE FILED: 5/26/2023

/s/Kathryn Doerries, Commissioner
Signature

DISSENT: /s/Amylee Simonovich, Commissioner
Signature

23IWCC0240

STATE OF ILLINOIS)
) SS.
COUNTY OF)
JEFFERSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JUDY A. GARRETT,

Petitioner,

vs. NO: 14 WC 002067

ST. MARY'S GOOD SAMARITAN, INC.,
d/b/a GOOD SAMARITAN REGIONAL
HEALTH CENTER,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, temporary total disability, and permanent disability including permanent total 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 Decision of the Arbitrator in its entirety with respect to the Findings of Facts. The Commission further affirms and adopts the Conclusions of Law in the Decision of the Arbitrator with respect to disputed issues in Sections C and F, finding the Petitioner failed to meet her burden of proof on the issues of accident and causal connection. All other issues are moot and benefits are denied. Therefore, the Commission strikes Sections E, J, K, and L of the Arbitrator's Decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on February 22, 2022, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that based upon the Commission's finding that Petitioner failed to meet her burden of proof on the issues of accident and causal connection, all benefits 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.

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)*. 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 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.

May 26, 2023
KAD/bsd
O050923
42

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

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

DISSENT

I respectfully dissent from the opinion of the majority and would reverse the Decision of the Arbitrator. After carefully considering the totality of the evidence, I believe Petitioner met her burden of proving that she sustained an accident that arose out of and in the course of her employment.

I disagree with the Arbitrator that there is minimal evidence in the record regarding Petitioner's job duties. Petitioner testified that she worked three, twelve-hour shifts per week, during which she "did baths, bed people, changed them…had to roll them, physically roll them, and…had to help them up physically." T. 13. This was a physical job that required "a lot of lifting." T. 14.

Dr. Kovalsky had specific knowledge of Petitioner's job duties. He testified, "…she has to do a lot of patient care, lifting, carrying, feeding, bathing, also does you know, some taking of vital signs, things like that, much more physical job than the nurses job." T. 69. Based on his experience working in the same hospital for 30 years, he testified "CNAs have to help the patients up in bed, in and out of bed to the bathroom, help bathe them, feed them and that's part of their job description, depending on the length of the shift, they are going to probably do that 70 percent of the time." T. 91.

Dr. Kovalsky did not dispute that Petitioner had a pre-existing condition from her prior work-related injury, but opined that her repetitive job duties accelerated said condition. He testified:

> It's my feeling that the fact that she had previous surgery from C4 to C7 and was fused predisposes the adjacent levels to degenerate, become problematic, the more physical, the more you do, the more you cycle your spine, the more likely you are to develop adjacent segment spondylosis so if Judy had a desk job this probably wouldn't be as big an issue and would most likely not have required surgery, the fact that her job involved carrying, lifting and bending, I think that accelerated the rate of degeneration at C4-5 and again a big part of this was the fact that she had already had surgery and a fusion from C4 to C7 so it's my opinion within a reasonable degree of medical certainty that the repetitive bending, lifting and carrying accelerated the degenerative process at C3-4 which ultimately required an additional operation.
> T. 70.

Dr. Kovalsky's opinion was more persuasive than that of Dr. Taylor. Dr. Taylor opined that Petitioner's condition worsened as a result of adjacent segment degeneration, as well as the natural progression of her age-related disc degeneration. T. 326. While claiming that activities of daily living would have resulted in the need for surgery, Dr. Taylor fails to acknowledge that repeated heavy lifting and carrying would have any greater effect. T. 329.

The medical records confirm that Petitioner returned to Dr. Kovalsky in 2012 with increased neck pain. T. 128. Petitioner testified, unrebutted, that she informed her supervisor that her job duties were worsening her condition. T. 42.

There is an adequate basis for finding that Petitioner's occupational activities aggravated or accelerated her pre-existing condition and thereby caused her disability. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 215 (2003). The record shows that Petitioner's repetitive activities as a CNA were a causative factor in the hastening of her adjacent segment degeneration, and thus her need for additional surgery.

For the foregoing reasons, I would reverse the Decision of the Arbitrator.

o: 05/09/2023
AHS
51

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC002067
Case Name	GARRETT, JUDY A v. ST MARY'S GOOD SAMARITAN, INC., D/B/A GOOD SAMARITAN REGIONAL HEALTH CENTER
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Michael Meyer
Respondent Attorney	Michael Karr

DATE FILED: 2/22/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 15, 2022 0.77%

/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

Judy A. Garrett
Employee/Petitioner

v.

St. Mary's Good Samaritan, Inc., d/b/a Good Samaritan Regional Health Center
Employer/Respondent

Case # **14** WC **002067**

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 **11/8/21**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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, **9/9/2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was not*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**25,041.64**; the average weekly wage was $**481.57**.

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

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, $**0** for nonoccupational indemnity disability benefits, and $**All short and long term disability benefits paid**, for a total credit of $**All short and long term disability benefits paid**.

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

ORDER

Based on the Arbitrator's finding that Petitioner did not sustain 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 not causally connected to her injury, 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.

FEBRUARY 22, 2022

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) **SS**
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JUDY A. GARRETT,
Employee/Petitioner,
v.
ST. MARY'S GOOD SAMARITAN, INC., d/b/a GOOD SAMARITAN REGIONAL HEALTH CENTER,
Employer/Respondent.

Case No.: 14-WC-002067

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on November 8, 2021. On January 22, 2014, Petitioner filed an Application for Adjustment of Claim alleging injuries to her cervical spine as a result of repetitive trauma on September 9, 2012. The issues in dispute are accident, notice, causal connection, medical bills, temporary total disability benefits, maintenance benefits, and the nature and extent of Petitioner's injuries. All other issues have been stipulated.

TESTIMONY

Petitioner was 48 years old, married, with no dependent children at the time of accident. Petitioner completed high school and is a certified nurse's aide. She was hired by Respondent in or around 1999 as a CNA. She underwent cervical spine surgeries in 2005 and 2007 by Dr. Kovalsky due to a work-related injury that occurred in 2004. Dr. Kovalsky performed fusions from C4 through C7. Following both surgeries, Petitioner continued to work as a CNA for Respondent in a full duty capacity, working 12-hour shifts three days per week. Petitioner's job duties involved bathing, changing, and bedding patients, and caring for the needs of her patients. She stated her job required a lot of walking and lifting. She last worked for Respondent in September 2012.

Petitioner stated she underwent another cervical surgery by Dr. Kovalsky on 9/10/12 and worked up until the date of her surgery. From 2007 through 2012, Petitioner stated she experienced sharp muscle spasms and pain in the back of her neck that increased while performing her job duties. She stated Dr. Kovalsky has not released her to return to work since her last surgery on 9/10/12. Petitioner has not sought employment since 2012 because she "is not able to".

Petitioner testified she still has constant pain in the back of her neck. She has muscle spasms in the back of her neck extending between her shoulder blades with weather changes.

Petitioner has headaches 3 to 4 times per week when her neck pain increases. She takes Norco and Baclofen to manage her neck pain and headaches. The medication makes her tired and she has difficulty concentrating. Petitioner follows up with Dr. Kovalsky every three months.

Petitioner testified she leads a sedentary lifestyle. She watches television and sits in a recliner chair. She stated she cannot sweep because the motion causes muscle spasms. She is not able to do laundry, wash dishes, cook, or perform yard work due to increased neck pain. Petitioner relies on her husband to perform all household chores. Petitioner testified she has not sustained any injuries or accidents to her cervical spine from 2012 to the present.

Petitioner testified that Teresa Young was her direct supervisor prior to 2012. She testified that she informed Ms. Young she was going to undergo another cervical surgery in 2012 and that her symptoms were related to her job duties. Petitioner stated she complained of neck pain at work but was not sure if Ms. Young overheard her. She testified that other CNAs and a couple of nurses heard her complaints. She testified that her job duties were impaired by her cervical condition the last couple of months prior to her surgery. She agreed her boss never complained or spoke to her about her job performance. She testified that she received a lot of assistance from her co-workers in performing her job duties, particularly with lifting and turning patients.

Petitioner testified that all of her cervical surgeries were performed at Respondent's facility. She stated that her last surgery on 9/10/12 was paid for by her group medical plan with Respondent. Petitioner testified that her employment was terminated causing her group plan to end in March 2013. She received short term disability benefits for eleven weeks following her surgery. She received long term disability benefits until she began receiving social security disability in 2015. Both STD and LTD were benefits provided through her employment with Respondent.

On cross-examination, Petitioner testified she was still taking pain medication following her 2007 surgery, but only took them when she was not working. She took medication for cervical pain and muscle spasms from 2007 up through the date of her last surgery in 2012. Petitioner testified that her neck spasms began following her first surgery and continued through her surgery in 2012. Petitioner stated she received a settlement from her 2004 work accident and the contract was approved in 2009. She stated a screw was backing out of the hardware in her neck causing her to have difficulty swallowing in 2008-2009. She agreed that the terms of the 2009 settlement left her medical rights open which covered a revision surgery to replace the plate in 2009. She agreed she returned to full duty work following the 2009 revision surgery. She stated that the 2012 surgery involved fusing the level above her previous fusions at C4 through C7.

Petitioner testified she returned to Dr. Kovalsky in 2012 as part of a regular, prescheduled follow up appointment and mentioned her symptoms were worsening. At that time, she elected to have another surgery to fuse one level above her prior fusions. She denied telling her supervisor that her need for the 2012 surgery was a result of her prior 2004 injury. She stated she provided her supervisor with off work slips from Dr. Kovalsky following her 2012 surgery. Petitioner testified she does not recall hurting her neck in a new accident in 2012, but that her neck hurt all of the time. Petitioner testified she underwent nine right knee surgeries in the last three and a half years, including two right knee replacements. She underwent a right rotator cuff surgery two years ago as a result of falling in her yard. She stated she was diagnosed with diabetes last year

and she continues to smoke one pack per day. She agreed that her husband had to assist her between 2007 and 2012, and her dependence has increased since her 2012 surgery.

MEDICAL HISTORY

Petitioner acknowledged having filed an earlier Application for Adjustment of Claim alleging injuries to her left arm, neck, and body as a whole. (Case No. 06-WC-004130). The Settlement Contract was admitted into evidence and states Petitioner was pulling a pad to reposition a patient on 8/26/04. (RX4). The Settlement Contract was approved on 11/19/09, wherein Petitioner's prospective medical rights were left open and specifically limited to removal of the surgically implanted anterior plate if necessary. (RX4).

As a result of Petitioner's 2004 work injury, she came under the care of Dr. Don Kovalsky beginning on 2/1/05. (RX5). On 5/27/05, an MRI of the cervical spine was obtained which showed progressive degenerative changes, most significantly at C5-6, a central disc herniation at C4-5 with mild stenosis and some foraminal narrowing, significant stenosis at C5-6, early spinal cord edema and very minor signal changes at C5-6 with no frank gliosis or myelomalacia, an apparent left-sided disc herniation superimposed on spondylosis at C6-7, and multi-level degenerative disc disease with central and right paracentral diffuse disc bulge at C3-4 causing mild right lateral recess encroachment. (RX5). As a result of these findings, Dr. Kovalsky recommended a three-level cervical fusion at C4-5, C5-6, and C6-7 with right iliac graft anterior plating, which was performed on 6/28/05. (RX5).

Following the 2005 fusion, Petitioner continued to follow up with Dr. Kovalsky on a regular basis and reported persistent neck pain and muscle spasms. (RX5). Petitioner was diagnosed with a delayed union at C5-6 and C6-7 and Dr. Kovalsky recommended removal of the anterior cervical plate and a revision anterior fusion from C5 to C7 which was performed on 6/11/07. Petitioner continued to report pain in her cervical spine following the revision surgery. On 7/9/07, Dr. Kovalsky performed a third surgery consisting of removal of posterior segmental instrumentation of the cervical spine, removal of C6 lateral mass screw, and re-instrumentation from C5 to C7. Dr. Kovalsky documented Petitioner made a full recovery and returned to work without restrictions within three months of surgery. Dr. Kovalsky's records indicate Petitioner continued to consistently complain of increased neck pain, muscle spasms, and headaches throughout her routine post-operative visits over the next several years.

In April 2012, Petitioner reported to Dr. Kovalsky she had increased neck pain, muscle spasms and sub-occipital headaches. (RX5). No explanation was recorded for her increased symptoms. On 4/13/12, an MRI of the cervical spine revealed severe central canal spinal stenosis at C3-4 with retrograde spondylolisthesis of C3 relative to C4, along with cervical cord myelopathy and bilateral neural foraminal encroachment. (PX2). Dr. Kovalsky opined, based on the MRI and Petitioner's age, that she was not a candidate for conservative treatment due to the extent of the stenosis and the fact C3-4 was the first mobile level above a long fusion mass. He recommended additional surgery. (RX5).

On 9/10/12, Dr. Kovalsky performed an anterior/posterior cervical fusion at C3-4 for adjacent segment disease. (PX2). Petitioner continued to routinely follow up with Dr. Kovalsky following the 9/10/12 surgery, and consistently complained of severe neck pain and constant muscle spasms. (PX2). Dr. Kovalsky noted atrophy of the paracervical and trapezius muscles with palpable hardware beneath the skin. (PX2).

On 8/5/13, Dr. Kovalsky removed the segmental instrumentation from C3 to C7 in Petitioner's fifth cervical spine surgery. (PX2). Petitioner continued to complain of neck pain, in addition to left trapezius muscle pain with some left radicular arm pain and numbness and tingling into the fingers of the left hand. (PX2).

On 12/18/13, Dr. Kovalsky advised Petitioner to "have her workers' compensation attorney contact him to figure out a plan to have her surgery and ongoing care paid for." (PX2). Dr. Kovalsky reported he ultimately expected Petitioner would "win her claim with Workman's Comp, because all the surgeries she's had go back to her original injury when she had a 3-level cervical fusion." (RX6).

On 1/22/14, Petitioner filed an Application for Adjustment of Claim alleging injury to her cervical spine as a result of repetitive trauma while working for Respondent with a date of injury 9/9/12. (AX2). An Employer's First Report of Injury was completed by Respondent on 4/21/14 and reported a neck injury from repetitive duties. (RX3). The Report indicates 1/31/14 was the date the injury was first reported to a supervisor/manager.

Dr. Don Kovalsky testified by way of deposition on 6/10/15. He is an orthopedic surgeon subspecializing in spine surgery. Dr. Kovalsky testified Petitioner came under his care in September 2004 and he performed an anterior cervical discectomy and interbody fusion from C4 to C7 in June 2005. Dr. Kovalsky testified about a month after the surgery Petitioner underwent a second operation to remove a screw. He felt Petitioner made an adequate recovery from her first operation until she formed a delayed union at C6-7. In June 2007, Dr. Kovalsky performed another operation to remove the anterior plate at C4 through C7, revise the fusion at C7, and implant instrumentation with lateral mass screws to fuse C5 through C7.

Dr. Kovalsky testified that Petitioner began to have "recurrent symptoms" in the cervical spine in 2012. He stated the MRI showed severe degenerative changes at C3-4 with spinal stenosis at the level causing significant compression of the spinal cord. Dr. Kovalsky testified that the cause of Petitioner's symptoms was C3-4, where she had degeneration and spinal stenosis. He felt she was developing problems at C3-4 due to her work activities and also due to the fact she had previously undergone surgery at the other three levels below. On 9/10/12, Dr. Kovalsky performed a fusion at C3-4 which required the removal of the anterior plate that was partially secured to the C4 vertebrae. He testified that removal of the plate was necessary to install a new plate at the C3-4 level. Dr. Kovalsky admitted the anterior plate was not removed because it was causing problems with swallowing.

Dr. Kovalsky testified that Petitioner did not recover from the 9/9/12 operation as well as she had previously. He explained this was the third time Petitioner's posterior incision had to be reopened which caused diastasis to occur. He stated he was able to feel the screws in Petitioner's neck at C3-4. He performed another surgery to remove the hardware and bring the muscles together.

Dr. Kovalsky agreed that when a level in the spine is fused, the fusion accelerates degeneration at the levels both above and below the fused level. He also acknowledged that studies suggest cigarette smoking increases the rate of disc degeneration and degenerative processes in the spine.

Dr. Kovalsky obtained x-rays of Petitioner's cervical spine in 2010 and again in 2012. He stated the 2012 films showed significant degeneration at C3-4 with collapsed disc space and large anterior and posterior osteophytes. He admitted there was only a slight change in these 2012 findings as compared to the 2010 findings in that the bone spurs were larger.

Dr. Kovalsky testified he was familiar with the job duties of a CNA; however, he had no knowledge specifically of what Petitioner did on a daily basis. He initially testified it was his opinion Petitioner's work activities accelerated the degenerative process at C3-4 which required the 9/10/12 surgery. Dr. Kovalsky further testified that the 9/10/12 operation subsequently caused posterior muscle dysfunction which required the 8/5/13 operation. However, Dr. Kovalsky testified it was his opinion that all of the treatment Petitioner received, including office visits, medications, physical therapy, and multiple surgeries were all related to the initial injury she sustained as a CNA in 2005. Dr. Kovalsky further testified "this all started from a work injury in 2004" which ultimately required surgery. Dr. Kovalsky believed the adjacent segment problems were in part due to Petitioner's fusions from C4 to C7 for treatment of the original work-related injury, and in part due to her subsequent activities and job. He further testified that the levels of the spine that tend to degenerate spontaneously are C5-6 and C6-7, not C3-4, "so her original injury requiring a three-level fusion was part of the cause and her activity levels were secondary."

Dr. Kovalsky testified he had conversations with Respondent's insurer years prior to the 2012 operation regarding Petitioner's 2004 workers' compensation claim. It was Dr. Kovalsky's understanding from these conversations that workers' compensation would cover treatment of Petitioner's neck "which was a result of the … original injury", and it was his feeling the subsequent 2012 operation "was all part of that."

Dr. Brett Taylor testified by way of deposition on 8/25/15. Dr. Taylor is an orthopedic spine surgeon who performed a records review at the request of Respondent in 2015. Dr. Taylor noted the first reference to Petitioner's C3-4 disc was in an MRI report dated 5/27/05, which revealed mild disc desiccation, right paracentral diffuse disc bulge, posterior vertebral osteophytes, and mild-to-moderate spinal stenosis. Dr. Taylor testified this was evidence of degeneration at C3-4 prior to Petitioner's first fusion that persisted until Petitioner required additional treatment in 2012. Dr. Taylor explained that a paracentral diffuse disc bulge is a degenerative condition involving a collapse of the disc resulting in the disc pushing out to impact the spinal cord and/or spinal canal. He testified it would be expected for a diffuse disc bulge to continue to degenerate as there is no way to halt the progression of degeneration short of performing a spinal fusion. He further testified that this degenerative process is progressive, continuing until a fusion is performed or the arthritic process autofuses over a significant amount of time. Dr. Taylor explained that an individual's genetics may also play a factor in how frequently or to what degree the spine will fuse itself over time in cases of severe arthritic degeneration. He stated that smoking was a component of Petitioner's history throughout the medical records he reviewed and explained smoking can play a role in the development of spinal arthritis or degenerative disc disease.

Dr. Taylor testified that Petitioner's three-level fusion from C4 to C7 would have accelerated the degenerative changes at the C3-4 level. He explained that when a fusion is performed the region is stiffened, increasing stress at the levels above and below, resulting in adjacent segment arthritis developing over a 10-year period at a rate of approximately 25% to 30%. In Petitioner's case, adjacent segment arthritis was more likely because she had evidence of

abnormality at C3-4 at the time of her primary fusion. Dr. Taylor explained it is critically different when a person has abnormalities at the time of an original fusion when considering whether or not activities and use of the cervical spine are a component of the "increased stress" at the levels above and below a fusion. Dr. Taylor testified that the regions of pathology adjacent to the fusion surgery should be addressed during the initial surgery for that reason. He testified that if Petitioner were to have resumed employment on a full-time basis as a CNA the effect of her work exposure between 2007 and 2012 would have no more effect on her spine than her activities of daily living.

Dr. Taylor opined that Petitioner had multi-level cervical degenerative disc disease which was not connected to either the 8/26/04 or the 9/9/12 work exposures. He explained that Petitioner had a condition that is a combination of congenital stenosis and advanced-age related degenerative disc disease. He further explained that individuals who have this diagnosis are severely predisposed to develop significant neurologic impingement early in life due to their congenitally decreased space available for the spinal cord, and smoking can certainly accelerate the age-related disc condition. Dr. Taylor opined that no additional treatment was required due to either work exposures.

Dr. Taylor subsequently performed an in-person Section 12 evaluation of Petitioner on 4/1/15. Dr. Taylor testified he obtained Petitioner's work history as a CNA, and further testified as a medical professional, he has worked in hospitals and observed CNA's and is familiar with their job duties and activities. Dr. Taylor also obtained a social history from Petitioner which included persistent nicotine use up through the date he examined her and through all of her treatment history. He testified that Petitioner reported she was disabled and denied any specific accidents or incidents occurring on 9/9/12. He testified that Petitioner did not describe any new symptoms arising out of her cervical spine other than some hardware issues involving a screw coming out which was removed in 2013.

Dr. Taylor testified he was able to obtain new x-rays of Petitioner's cervical spine in conjunction with his 4/1/15 examination. The x-rays revealed significant stenosis, a prominent anterior C3 screw, and a solid osseous union from C3 to C7 with no motion on flexion and extension views. Dr. Taylor opined Petitioner's diagnosis was failed cervical spine syndrome caused by a failed fusion and adjacent segment degeneration. He opined that Petitioner's conditions were not related to her work exposure as a CNA for Respondent. He explained that the cause of her condition is congenital stenosis resulting from her own genetics and the degenerative age-related disc arthritis which was further influenced by behavioral factors such as nicotine use. These two factors resulted in decreased space available for her cervical spinal cord and her need for treatment. Dr. Taylor testified that Petitioner required no additional treatment as it related to her work activities. Dr. Taylor opined Petitioner could work in the sedentary demand level if she could be weaned from her high-dose narcotics. He testified her need of such narcotics was not caused by any work exposure.

On 12/20/18, Petitioner underwent a vocational assessment at Respondent's request with vocational counselor Karen Kane. Ms. Kane reviewed Petitioner's records from 12/16/04 to 10/27/18 and obtained Petitioner's transferable skills and education by interview. Ms. Kane identified nine employment opportunities within the Mt. Vernon, IL area suitable for Petitioner. Ms. Kane opined Petitioner would be able to participate in the work force if she were to seek, accept, be hired, and maintain full-time gainful employment with a good faith effort. Ms. Kane reported that even assuming Dr. Kovalsky's restrictions as outlined in the record and the abilities

outlined by Petitioner's vocational expert, such as "can sit a total of about 2 hours in an 8-hour day and can stand/walk less than 2 hours in an 8-hour day" and "needs to be able to walk around for 5 minutes every 30 minutes during an 8-hour work day," it was her opined that Petitioner would be able to obtain and maintain full-time employment with an earning capacity near or at a comparable earning capacity.

On 9/3/19, Petitioner underwent a vocational assessment with Dr. Leslie Freels-Loyd. Dr. Loyd reviewed Petitioner's medical records from 4/4/12 to 8/1/14. After interviewing Petitioner and administering tests, Dr. Loyd concluded Petitioner's workplace injuries, subsequent physical limitations, and assessed skills and abilities, render her incapable of returning to her previous employment as a CNA. Dr. Loyd further opined that Petitioner's workplace restrictions, assessed skills, and abilities preclude her from performing services in the workforce sufficient to justify payment of wages. He reported that although Petitioner does have skills, they are not transferable to any jobs in competitive employment for which she has the physical capacity and necessary aptitudes to perform. He opined that Petitioner is no longer qualified for, or capable of, obtaining gainful employment. Dr. Loyd concluded her assessment by stating Petitioner is not, nor will she ever be a candidate for gainful employment given the degenerative nature of her injury and the opinions of her treating physician Dr. Kovalsky.

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator finds Petitioner failed to meet her burden of proof on the issues of accident and causal connection.

Petitioner alleges having sustained a repetitive trauma injury with an onset date of 9/9/12. Despite alleging a repetitive trauma injury there is minimal evidence in the record as to what Petitioner's job duties were or what activities allegedly aggravated her underlying condition. Nothing in the record mentions specific repetitive duties and there is no mention of specific job duties in Dr. Kovalsky's records. There is no mention of aggravating activities in the treatment records, nor does Dr. Kovalsky document a repetitive trauma or use a repetitive trauma theory to explain Petitioner's C3-4 condition of ill-being. Instead, Dr. Kovalsky opines Petitioner's condition and symptoms all relate back to her original 2004 work injury. There is no documentation of any changed symptoms leading up to the 2012 onset date alleged. The record reflects that Petitioner continued to report the same symptoms and complaints of neck pain, headaches, and muscle spasms from 2004 leading up to her 2012 surgery and even continuing to the present. Petitioner continued to take the same medications for the same issues, prescribed by the same physician, all following her original 2005 fusion and leading up to her 2012 surgery. These facts support a finding that an accident or repetitive injury was not sustained on 9/9/12, and instead support a finding that Petitioner's condition relates back to her 2004 injury, without any new intervening accident ever having occurred.

Furthermore, although Petitioner claims she reported to Respondent that the need for the 2012 surgery was due to her work activities, she did not report an accidental injury until 2014, almost contemporary with filing her Application. The record indicates that the filing of her Application was made shortly after Dr. Kovalsky advised she should win her workers'

compensation claim and requested her attorney call him to figure out how to have workers' compensation pay for the treatment. This immediately calls into question Petitioner's motivation and credibility.

Petitioner suffered from congenital stenosis and advanced-age related degenerative disc disease as evidenced by the medical records and the opinions of Dr. Taylor. As demonstrated by the 5/27/05 MRI, Petitioner's C3-4 level began showing degeneration long before the 9/10/12 surgery was performed. The objective degenerative findings continued to progress naturally throughout the years following her initial fusion and subsequent surgeries. Both Drs. Taylor and Kovalsky explained a fusion can accelerate the degeneration at the levels above and below the fused levels. Dr. Taylor testified that a fusion can create increased stress resulting in arthritis. Dr. Taylor also explained that when a person already has abnormalities at the level above or below a fused level, as did Petitioner, they are even more likely to develop segment arthritis. The record contains no specific details of Petitioner's work activities. Although both doctors are aware of what a CNA's activities are, Petitioner was not detailed in explaining what her job duties were and even admitted she was not fully performing them, instead receiving "a lot" of assistance from other co-workers. As Dr. Taylor testified, even if Petitioner were to have resumed employment on a full-time basis as a CNA, the effect of her work exposure between 2007 and 2012 would have no more effect on her spine than her activities of daily living.

The Arbitrator finds Dr. Kovalsky's opinions regarding the cause of Petitioner's C3-4 condition to be less credible than those of Dr. Taylor. Throughout Petitioner's treatment and leading up to the 2012 surgery, Dr. Kovalsky never cited work activities as a reason for causing Petitioner's condition of ill-being. Furthermore, Dr. Kovalsky himself admitted on more than one occasion that Petitioner's condition of ill-being, and the subsequent surgeries he performed after the initial fusion, all relate back to the 2004 claim which has long been settled and resolved. The record strongly supports a causative link between Petitioner's current condition of ill-being at the C3-4 level and the original 2004 work injury, but not for a 9/9/12 repetitive trauma injury as is now being alleged by Petitioner.

There is ample evidence that Petitioner's cervical symptoms continued following her first fusion related to the 2004 workers' compensation claim through her prescheduled follow up visit with Dr. Kovalsky related to her prior claim. Petitioner denied sustaining any accident or incident which may have reinjured her neck in 2012. The medical records establish Petitioner neither sustained a new accident on 9/9/12 nor were her job duties causally connected to her current condition of ill-being. Additionally, the MRIs showed what Dr. Taylor explained was nothing more than a natural progression of her degenerative disc disease. The fact that Petitioner's condition worsened during the years following her initial fusion supports Dr. Taylor's opinion that her current condition and need for further surgery was the result of the natural progression of her underlying arthritic condition. There is nothing in the record before the Arbitrator to suggest Petitioner's condition is anything other than the natural progression of underlying spinal degeneration and arthritis.

Therefore, the Arbitrator finds Petitioner failed to prove she sustained an accident that arose out of and in the course of her employment or that her current condition of ill-being is causally related to the alleged work exposure on 9/9/12.

Issue (E): Was timely notice of the accident given to Respondent?

Section 6(c) of the Illinois Workers' Compensation Act states that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. Section 6(c)(2) states that "no defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." *820 ILCS 305/6(c)*.

In repetitive trauma claims, the date the notice is required to be given depends on the manifestation date for Petitioner's medical condition as defined in *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524 (1987). The potential accident dates in repetitive trauma claims can include Petitioner's last day of employment or the date a reasonable person would be on notice that a medical condition is related to work activities. *Three "D" Discount Store v. Industrial Commission,* 198 Ill. App. 3d 43 (4th Dist. 1989).

Petitioner testified that her last day worked was 9/9/12. She testified she never had any discussion with her supervisor about her pain impairing her ability to perform her job. Although Petitioner testified that she told her supervisor Teresa Young she was going to have another neck surgery and her symptoms were worsening because of her job duties, the record indicates otherwise. Petitioner did not file an Application for Adjustment of Claim until 1/22/14. Additionally, an Employer's First Report of Injury was completed by Respondent on 4/21/14 which reported a neck injury from repetitive duties. The reporting system indicates that the date of injury was first reported to a supervisor/manager on 1/31/14. Therefore, Respondent was not provided notice until approximately one and a half years after the alleged date of injury.

As a result, Respondent was not afforded the opportunity to timely investigate Petitioner's claims and support their position of denial by timely having Petitioner examined and evaluated by an expert of their choosing prior to the 2012 surgery.

The Arbitrator further finds that Section 8(j)1 of the Act does not apply in this case. Section 8(j)1 provides that if an injured employee receives benefits under a group plan paid whole or partially by her employer, then the time period of notice does not commence until the termination of such payments, the Arbitrator notes Section 8(j)1 also provides that the paragraph does not apply to payment made under any group health plan which would have been payable irrespective of an accidental injury under the Act. (820 ILCS 305/4 section 8(j)1). Petitioner submitted into evidence records showing she received long term disability through Respondent from December 2012 through March 2015. However, the Arbitrator finds section 8(j)1 does not apply because Petitioner received payments of benefits under her group health irrespective of an accidental injury under the Act. The record clearly establishes Petitioner was receiving benefits under her group plan through Respondent without any knowledge of an accidental injury.

Therefore, the Arbitrator finds Petitioner failed to provide adequate notice of the accident to Respondent. Furthermore, the Arbitrator finds Petitioner did not prove Respondent was not prejudiced as a result of her failure to provide timely notice.

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

Based on the above findings as to accident and causal connection, the Arbitrator finds Respondent is not liable for payment of Petitioner's medical bills and such claim for said benefits is denied.

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

Based on the above findings as to accident and causal connection, the Arbitrator finds Respondent is not liable for payment of temporary total disability benefits or maintenance benefits and Petitioner's claim for said benefits are denied.

Issue (L): **What is the nature and extent of Petitioner's injuries?**

Based on the above findings as to accident and causal connection, the Arbitrator finds Respondent is not liable for payment of permanent partial disability benefits or permanent total disability benefits and Petitioner's claim for said benefits is denied.

Linda J. Cantrell, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC003588
Case Name	Sara Supergan v. Red Lobster Restaurants, LLC - Springfield
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0241
Number of Pages of Decision	10
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Francis Lynch
Respondent Attorney	Daniel Flores

DATE FILED: 5/31/2023

/s/ Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
X Modify Order section, add TTD period, state PPD section, correct weeks of PPD, modify Section 8.1 Factor (iv)	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SARA SUPERGAN,

Petitioner,

vs. NO: 21 WC 03588

RED LOBSTER RESTAURANTS, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission, herein, affirms as to all issues, but modifies the Order section to add the dates of temporary total disability (TTD), to add the applicable section regarding permanent partial disability (PPD), to correct the number of weeks of PPD awarded, and to modify Section 8.1b(b), factor (iv), as follows:

The Commission, herein, corrects the Order section of the Arbitrator's decision to add the period of TTD to be "from November 25, 2020, through February 18, 2021".

The Commission, herein, corrects the Arbitrator's decision to add the applicable section of the PPD award to be "Section 8(e)(9) of the Act".

The Commission notes that the total number of available weeks of permanent partial disability regarding carpal tunnel cases, per Section 8(e)(9) of the Act, states, in part, "…190 weeks if the accidental injury involves carpal tunnel syndrome due to repetitive or cumulative trauma…" The Commission, therefore, herein, in the Order section, corrects the number of weeks of PPD awarded to strike "a total of 41 weeks", to replace with "a total of 38 weeks".

The Commission, herein, affirms the Arbitrator's Section 8.1b(b) findings as to factors (i), (ii), (iii), and (v), but modifies factor (iv) and assigns it "no" weight because Petitioner is earning the same wages as prior to the accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 14, 2022, is, hereby, otherwise, 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 $39,300.00. 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.

May 31, 2023

o- 5/9/23
KAD/jsf

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

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

/s/*Amylee H. Simonovich*
Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC003588
Case Name	SUPERGAN, SARA v. RED LOBSTER RESTAURANTS, LLC-SPRINGFIELD
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Francis Lynch
Respondent Attorney	Daniel Flores

DATE FILED: 2/14/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 8, 2022 0.58%

/s/Edward Lee, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

SARA SUPERGAN
Employee/Petitioner

v.

RED LOBSTER RESTAURANTS, LLC-SPRINGFIELD
Employer/Respondent

Case # **21** WC **003588**

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 Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **1/21/22**. 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 **9/14/20 (EMG)**, 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 $**11,900.89**; the average weekly wage was $**383.90**. The TTD rate is the minimum of $266.67. The PPD rate is the minimum of $266.67.

On the date of accident, Petitioner was **35** 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-** for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $.

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

ORDER

The Petitioner is awarded 12-1/7 weeks of TTD at the minimum rate of $266.67.

The Petitioner is awarded medical expenses as set forth in the medical bill summary submitted by agreement of parties. Respondent shall pay Petitioner an amount equal to those medical bills pursuant to the Fee Schedule.

The Petitioner is awarded 10% of the right hand for carpal tunnel and 10% of the left hand for carpal tunnel for a total of 41 weeks at the minimum rate of $266.67.

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_____ **FEBRUARY 14, 2022**
Signature of Arbitrator

Sara Supergan v. Red Lobster Restaurants, LLC-Springfield –
21 WC 003588

The Petitioner, Sara Supergan, was an employee of Respondent Red Lobster Restaurants, LLC, in Springfield, Illinois. She worked at Respondent's restaurant on Dirksen Parkway. She had worked there approximately 2 years before the alleged date of accident. The Petitioner did not work during the 2020 quarantine period but returned to work for Red Lobster in March of 2020.

In August of 2020, the Petitioner sought consultation with her primary care physicians at Central Counties Health Center. On 8/3/20, she advised her Nurse Practitioner, Brittany Cunningham, that she was a server at Red Lobster and had to carry numerous heavy trays during the course of her work shift. She advised that after work she would notice numbness and tingling bilaterally. She had done an internet search on carpal tunnel and sought medical care at Central Counties Health Center to discuss her condition (P.Ex.7).

NP Cunningham took x-rays of her right and left hands on August 3 (P.Ex.8) and saw the Petitioner again on August 12 (P.Ex.9). At that time, the Nurse Practitioner noted that imaging was negative and an EMG was ordered.

Petitioner returned to Central Counties on August 28 (P.Ex.10) and her Nurse Practitioner noted that her EMG was scheduled for 2 weeks.

Her EMG was conducted on September 14 and on September 24, Central Counties Health was notified that her EMG of 9-14 showed bilateral carpal tunnel syndrome. The Petitioner was referred to Dr. Robert Russell.

Dr. Robert Russell evaluated the Petitioner on October 13 and Dr. Russell recommended bilateral carpal tunnel release (P.Ex.2).

Her first carpal tunnel release was performed by Dr. Russell on November 25, 2020. Dr. Russell performed a right-sided release. The Petitioner was off work beginning on her surgery date.

Dr. Russell operated on the left side on January 6, 2021 and the Petitioner remained off work following the second operation.

The Petitioner returned to see Dr. Russell on January 19. At that time, she was released to normal activities. Petitioner was released to return to work on 2/18/21.

The Petitioner followed up with Dr. Russell and was released from final follow-up and care subsequent to a substantial post-operative period. On April 20, 2021, Dr. Russell saw the Petitioner, reviewed her work history, and released her from all further care at that time.

The Petitioner's attorney obtained the deposition of Dr. Russell. Dr. Russell was given a detailed history of the Petitioner's job duties and assignments. He testified that he was aware of the nature of the Petitioner's work, the weight she lifted and the manner in which she carried trays on her job. Dr. Russell testified that the Petitioner's work or work activity caused, contributed to, or exacerbated the Petitioner's physical condition so as to result in symptomatic carpal tunnel bilaterally. He stated that but for the Petitioner's work or work activity, the Petitioner would not have required surgical intervention. See Russell's dep., (P.Ex. 12), P.49, L.15, P.18, L.11).

Dr. Russell described in detail his care of the Petitioner, as well as his experience as a board-certified plastic surgeon. His testimony was credible. (P.Ex. 12)

The Petitioner was off work from November 25, 2020 through February 18, 2021.

The Respondent has admitted into evidence a report of Dr. Neal who performed a Section 12 examination on the Petitioner at his office in Chicago. That examination was on June 12, 2021.

The doctor's report shows that the Petitioner gave the Section 12 doctor a history of her employment indicating that she worked in beverage service prior to taking her job at Respondent's restaurant.

Significantly, the IME doctor asked the Petitioner about specific injuries (Respondent's Section 12 Examination Report, Pg. 4). The Petitioner was asked why she thought she had carpal tunnel and based on the contents of the report, it appears that the Petitioner raised the issue of repetitive work as causing her condition. The history given by the Petitioner to the IME examiner is consistent with the history given to the Petitioner's healthcare providers and her surgeon and is consistent with the work history described by Dr. Russell.

A substantial portion of Respondent's Section 12 report cites or references medical literature, publications, or treatises. Petitioner has objected to the introduction or reliance on those treatises as substantive evidence (Kayla Roach v. Springfield Clinic, 157 Ill.2d 29 (1993)). The Arbitrator sustains Petitioner's objection. The Arbitrator notes that the Section 12 physician claims to have relied on literature but the Arbitrator gives no weight to the contents of the literature itself, as that information is not admissible as substantive evidence.

The Section 12 doctor notes that he relied on said medical authority, and appears to rely on statistical evidence to conclude that the Petitioner's work did not cause her condition. It appears from the content of the Section 12 report that the IME doctor asked the Petitioner about direct injuries. His report suggests he relied on the Petitioner to suggest to him that her condition was the result of repetitive trauma rather than closely considering the Petitioner's work activity.

In contrast with Dr. Russell's opinions, the Section 12 doctor's opinions appear to be based on a review of the literature rather than a consideration of the patient's specific problems, work history, and direct clinical and physical findings.

The Arbitrator finds that Dr. Russell's deposition testimony is more specific to the facts, detailed, and credible, and deserves greater weight than the Section 12 examination report of Dr. Neal.

The Arbitrator finds that the Petitioner's condition if ill-being arose out of and in the course of, and is causally connected to, the Petitioner's employment with Respondent.

The parties have stipulated that the medical care received for treatment of carpal tunnel was reasonable and necessary. The Petitioner has introduced medical bills into evidence as Exhibit #13 by stipulation of Respondent.

Respondent is ordered to pay Petitioner her medical bills incurred for treatment of her bilateral carpal tunnel, as set forth in Petitioner's Exhibit #13, for bilateral carpal tunnel treatment and surgery, in accordance with the Fee Schedule or at the reimbursement rates paid by Petitioner's insurer.

The Petitioner was off work as a result of her work-related condition from November 25, 2020 through February 18, 2021. Respondent shall pay Petitioner 12-1/2 weeks of temporary total disability benefits at the minimum rate of $266.67.

Regarding Issue (M): What is the nature and extent of the injury:

The Arbitrator finds that Petitioner's bilateral carpal tunnel syndrome is causally related to her employment with Respondent and awards 10% loss of use of each, 41 weeks, at a PPD rate of $266.67 for a total award of $10,933.47.

Section 8.1(b) of the Illinois Workers' Compensation Act establishes 5 factors for the Commission to weigh in determining permanent partial disability:

1. **The reported level of impairment pursuant to subsection (a)**

Dr. Neal found that Petitioner has 0% impairment for her bilateral carpal tunnel syndrome. (RX1 at 19). The Arbitrator gives moderate weight to this factor.

2. **Petitioner's occupation**

Petitioner worked as a server, a job requiring carrying a heavy tray at shoulder level with the wrists flexed, at Red Lobster at the onset of her symptoms. In February the Petitioner returned to her same job, working full time as a server. The Arbitrator gives significant weight to this factor.

3. Petitioner's age

Petitioner was 35 years old when her carpal tunnel symptoms developed. Petitioner provided no evidence that her age had an effect on her treatment or permanency. The Arbitrator gives little weight to this factor.

4. Petitioner's future earning capacity

Petitioner's future earning capacity was not negatively affected. In February of 2021 Petitioner was released to full duty work with no restrictions. Petitioner returned to working as a server after her carpal tunnel release surgeries. She currently works full time, earns the same amount as she did prior to her injury, The Arbitrator gives moderate weight to this factor.

5. Evidence of disability corroborated by the treating medical records

Petitioner underwent bilateral carpal surgeries and testified that she experienced no ongoing pain, tingling or numbness attributable to her carpal tunnel syndrome. The Arbitrator gives significant weight to this factor.

Therefore, the Arbitrator 10% loss of use of each hand to the Petitioner.